



CR 2006/78 - Income tax: Approved Early Retirement Scheme: Metropolitan Fire and Emergency Services Board

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 This document has changed over time. This is a consolidated version of the ruling which was published on *4 July 2007*



Class Ruling

Income tax: Approved Early Retirement Scheme: Metropolitan Fire and Emergency Services Board

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This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

2. This Ruling approves the particular early retirement scheme (ERS) and acknowledges the availability of tax concessions for entities receiving payment under the scheme. There are many conditions attached to this Ruling and readers should be careful to ensure that these conditions are met before relying on this Ruling.

Relevant provision(s)

3. The relevant provisions dealt with in this Ruling are:
- section 27A of the *Income Tax Assessment Act 1936* (ITAA 1936);
 - section 27CB of the ITAA 1936; and
 - section 27E of the ITAA 1936.

All legislative references in this Ruling are to the ITAA 1936 unless otherwise indicated.

Class of entities

4. The class of entities to which this Ruling applies is those employees of the Metropolitan Fire and Emergency Services Board (MFESB) who receive a payment under the scheme described in paragraphs 15 to 30 of this Ruling.

Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

6. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 15 to 30 of this Ruling.

7. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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9. A copy of this Ruling must be given to all employees eligible to participate in the approved early retirement scheme.

Date of effect

10. This Ruling applies after 16 August 2006. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or

- the relevant provisions are not amended.

11. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

12. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

13. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Note: The Addendum to this Ruling that issued on 4 July 2007 applies on and from 1 July 2007.

Withdrawal

14. This Ruling is withdrawn and ceases to have effect after 16 August 2007. The Ruling continues to apply, in respect of the relevant provisions ruled upon, to all entities within the specified class who enter into the specified scheme during the term of the Ruling. Thus, the Ruling continues to apply to those entities, even following its withdrawal, for scheme entered into prior to withdrawal of the Ruling. This is subject to there being no change in the scheme or in the entities' involvement in the scheme.

Scheme

15. The scheme that is subject to this Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the scheme are:

- correspondence from representatives of the MFESB; and
- records of telephone conversations with representatives of the MFESB.

Note: certain information received from the MFESB has been provided in-confidence and will not be disclosed or released under the Freedom of Information Legislation.

16. The MFESB is seeking approval for an early retirement scheme.
17. The purpose of the ERS is to facilitate the re-organisation of the MFESB's structure following on from a management review report. As a result of the report, the MFSEB has identified a need to align some of its work along functional lines and a need to reduce the number of employees at its Commander level, thereby resulting in flow on benefits for the MFESB and its overall operations.
18. The class of employees to whom the scheme will be open is all Commanders of the MFESB that are less than 65 years of age.
19. The offer for the class of employees to participate in the ERS will be open for four weeks from the date of the scheme's approval by the Commissioner.
20. All employees within the class who retire under the ERS will terminate employment and receive the payments, described in paragraph 23 of this Ruling, on a date determined by the MFESB but no later than 16 August 2007.
21. The MFESB will not veto any application for early retirement from those employees within the class.
22. If applications from employees exceed the number of employees the MFESB is prepared to allow to retire, then preference will be given to those applications received first.
23. The payments to be made under the scheme are as follows:
 - 4 weeks pay in lieu of notice;
 - a lump sum payment of \$10,000; and
 - 2 weeks pay for each year of continuous service up to a maximum of 15 years.

Payments made under the scheme

24. For a payment made under the above mentioned scheme to qualify as an early retirement scheme payment, the conditions set out in paragraphs 15 to 23 of this Ruling must be met. Please note, any payment made under the scheme that does not satisfy these requirements is not covered by this Ruling.
25. The payment must be an eligible termination payment (ETP) made in relation to the employee in consequence of his or her employment being terminated under the approved early retirement scheme.
26. The payment must not be made from an eligible superannuation fund.
27. The payment must not be made in lieu of superannuation benefits.

28. The employee must terminate his or her employment before the earlier of:

- age 65; or
- the date on which his or her employment would have necessarily terminated under the terms of employment because of the taxpayer attaining a certain age or completing a certain period of service.

29. Where the employee and the employer are not dealing with each other at arms' length (for example, because they are related in some way), the payment does not exceed what would have been paid to the employee had they been dealing at arm's length.

30. At the termination time, there is no agreement in force between the employee and the employer or the employer and another person, to employ the employee after the date of termination.

Ruling

31. The early retirement scheme offered by the Metropolitan Fire and Safety Board is an approved early retirement scheme for the purposes of section 27E.

32. Accordingly, so much of the ETP as exceeds the amount of an ETP that could reasonably be expected to have been made in relation to the taxpayer if the termination of employment had occurred at the termination time otherwise that in accordance with the approved early retirement scheme, is an approved early retirement scheme payment in relation to the taxpayer.

33. In addition, so much of the approved early retirement scheme payment as it falls within the threshold calculated in accordance with subsection 27A(19) is non-assessable and is ignored in working out whether a capital gain has been made via the operation of section 27CB.

Commissioner of Taxation

16 August 2006

Appendix 1 – Explanation

❶ ***This Appendix is provided as information to help you understand how the Commissioner’s view has been reached. It does not form part of the binding public ruling.***

34. Where a scheme satisfies the requirements of section 27E of the ITAA 1936 that scheme will be an ‘approved early retirement scheme’

35. The Commissioner has issued Taxation Ruling TR 94/12 Income tax: approved early retirement scheme and bona fide redundancy payments, which sets out guidelines on the application of section 27E.

36. Paragraph 14 of TR 94/12 states that:

Three conditions need to be satisfied for a scheme to qualify as an approved early retirement scheme. Those conditions are:

- (i) the scheme must be offered to all employees within a class identified by the employer (paragraph 27E(1)(a));
- (ii) the scheme must be entered into with a view to rationalising or re-organising the operations of the employer with an identified purpose in mind (paragraph 27E(1)(b)); and
- (iii) the scheme must be approved by the Commissioner prior to its implementation (paragraph 27E(1)(c)).

These three conditions are discussed below.

The scheme must be offered to all employees within a class identified by the employer

37. In order to satisfy the first condition, the scheme must be offered to all employees within one of the categories specified in subparagraphs 27E(1)(a)(i) to (v).

38. The scheme will be open to all employees of Metropolitan Fire and Emergency Services Board that are employed as Commanders who are less than 65 years of age.

39. This class of employees does not come within subparagraphs 27E(1)(a)(i) to (iv), therefore it must be considered under subparagraph 27E(1)(a)(v), namely, all employees of the employer who constitute a class of employees approved by the Commissioner for the purposes of this paragraph. In approving this class of employees the Commissioner has considered the nature of the rationalisation or re-organisation of the operations of the employer. It is therefore considered that these employees meet the requirements of an approved class of employees for the purposes of subparagraph 27E(1)(a)(v) of the ITAA 1936.

The scheme must be entered into with a view to rationalising or re-organising the operations of the employer with an identified purpose in mind

40. The proposed scheme must be implemented by the employer with a view to rationalise or re-organise the operations of the employer by means of one or more of the objectives set out in subparagraphs 27E(1)(b)(i) to (vi).

41. Paragraph 17 of this Ruling describes the nature of the rationalisation or re-organisation of the operations. In approving the scheme, the Commissioner has had regard to the changes in the operations and nature of the workforce of the employer. It is therefore considered that the scheme is to be implemented by the employer with a view to rationalising or re-organising the operations of the employer for the purposes of subparagraph 27E(1)(b)(vi).

The scheme must be approved by the Commissioner prior to its implementation

42. The scheme is proposed to operate for a period from 17 August 2006 to 16 August 2007. Approval was granted prior to implementation therefore the third condition is satisfied.

43. The scheme will be in operation for 12 months which is within the period recommended in TR 94/12.

Other relevant information

44. Under section 27E, so much of the payment received by a taxpayer under the approved early retirement scheme, that exceeds the amount that would ordinarily have been received on voluntary resignation or retirement is an approved early retirement scheme payment.

45. It should be noted that, in order for a payment to qualify as an approved early retirement scheme payment, it must also satisfy the following requirements (as set out in subsections 27E(4) and (5)):

- the payment must be an ETP made in relation to the taxpayer in consequence of the taxpayer's employment being terminated under an approved early retirement scheme;
- the payment must not be from an eligible superannuation fund;
- the payment must not be made in lieu of superannuation benefits;
- if the taxpayer and the employer are not dealing with each other at arm's length (for example, because they are related in some way) the payment does not exceed what would have been paid to the taxpayer had they been dealing at arm's length;

- the date of termination was before age 65 or such earlier date on which the taxpayer's employment would necessarily have had to terminate under the terms of employment because of the taxpayer attaining a certain age or completing a certain period of service (whichever occurs first); and
- there was no agreement at the date of termination between the taxpayer and the employer, or the employer and another person to employ the taxpayer after the date of termination.

46. The term 'agreement' is defined in subsection 27A(1) as meaning 'any agreement, arrangement or understanding whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable by legal proceedings'.

47. An approved early retirement scheme payment made on or after 1 July 1994 that falls within the specified limit will be exempt from income tax and called the 'tax-free amount'.

48. For the year ending 30 June 2007, the tax-free amount is limited to \$6,783 plus \$3,392 for each whole year of completed employment service to which the approved early retirement scheme payment relates. Please note that 6 months, 8 months or even 11 months do not count as a whole year for the purposes of this calculation.

49. The total of the amount received on the termination of employment calculated in accordance with paragraph 23 of this Ruling qualifies as an approved early retirement scheme payment.

50. The total of the payment in the previous paragraph will be measured against the limit calculated in accordance with paragraph 48 of this Ruling to determine the 'tax-free amount'.

51. The tax-free amount will:

- not be an ETP;
- not be able to be rolled-over;
- not include any amount from a superannuation fund or paid in lieu of a superannuation benefit; and
- not count towards the recipient's reasonable benefit limit.

52. Any payment in excess of this limit will be an ordinary ETP and split up into the pre-July 1983 and post-June 1983 (untaxed element) components. This ETP can be rolled-over.

Payments made after 30 June 2007

53. For payments made after 30 June 2007 the requirements in section 83-180 of the *Income Tax Assessment Act 1997* (ITAA 1997) for a payment to be an early retirement scheme payment remain essentially the same as set out in paragraphs 45 to 52 of this Ruling.

54. For the year ending 30 June 2008, the tax-free amount is limited to \$7,020 plus \$3,511 for each complete year of service.

55. The tax-free amount of the early retirement scheme payment made after 30 June 2007 that falls within the limit specified in section 83-170 of the ITAA 1997 will not be assessable income and will not be exempt income.

56. Any payment in excess of this limit will be an employment termination payment as defined in section 82-130 of the ITAA 1997, and will be split up into tax free and taxable components. The tax free component of an employment termination payment includes the pre-July 83 segment of the payment. The tax free component is not assessable income and is not exempt income.

57. Employment termination payments cannot be rolled-over into a superannuation fund.

Appendix 2 – Detailed contents list

58. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 94/12

Subject references:

- approved early retirement scheme payments
 - early retirement scheme payment
 - eligible termination payments
 - eligible termination payments components
 - employment termination payment

Legislative references:

- TAA 1953
 - TAA 1953 Sch 1 357-75(1)
 - ITAA 1936 27A
 - ITAA 1936 27A(1)
 - ITAA 1936 27A(19)

- ITAA 1936 27CB
 - ITAA 1936 27E
 - ITAA 1936 27E(1)(a)
 - ITAA 1936 27E(1)(a)(i)
 - ITAA 1936 27E(1)(a)(ii)
 - ITAA 1936 27E(1)(a)(iii)
 - ITAA 1936 27E(1)(a)(iv)
 - ITAA 1936 27E(1)(a)(v)
 - ITAA 1936 27E(1)(b)
 - ITAA 1936 27E(1)(b)(i)
 - ITAA 1936 27E(1)(b)(ii)
 - ITAA 1936 27E(1)(b)(iii)
 - ITAA 1936 27E(1)(b)(iv)
 - ITAA 1936 27E(1)(b)(v)
 - ITAA 1936 27E(1)(b)(vi)
 - ITAA 1936 27E(1)(c)
 - ITAA 1936 27E(4)
 - ITAA 1936 27E(5)
 - ITAA 1997 82-130
 - ITAA 1997 83-170
 - ITAA 1997 83-180
 - Copyright Act 1968

ATO references

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