



CR 2006/7 - Income tax: Approved Early Retirement Scheme - Queensland Government

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 This document has changed over time. This is a consolidated version of the ruling which was published on *11 October 2006*



Class Ruling

Income tax: Approved Early Retirement Scheme – Queensland Government

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ⓘ This Ruling provides you with the following level of protection:

This publication (excluding appendices) 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 under-paid 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 taxation 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 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 taxation provision(s)

3. The tax 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.

Class of entities

4. The class of entities to which this Ruling applies is all employees of the nominated departments and agencies in the Queensland Government who receive a payment under the arrangement described in paragraphs 12 to 32.

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 12 to 32.

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 from 1 March 2006 until it is withdrawn (see paragraph 11). However, this 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 this Ruling (see paragraphs 21 to 22 of Taxation Ruling TR 92/20). Furthermore this Ruling applies to the extent that the relevant tax laws are not amended.

Withdrawal

11. This Ruling is withdrawn and ceases to have effect after 28 February 2007. The Ruling continues to apply, in respect of the tax provisions(s) 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 schemes 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

12. The scheme that is the subject of 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 Queensland Treasury; and
- record of telephone conversations with representatives of Queensland Treasury.

13. Queensland Treasury is seeking approval for an early retirement scheme for nominated departments and agencies in the Queensland Government (refer to paragraph 17 for a list of the nominated departments and agencies). The scheme is known as the Workforce Skills Alignment Scheme.

14. The purpose of the scheme is to improve the match between the skills available and the skills required to meet current and future business/service delivery needs.

15. The nominated departments and agencies do not currently have the appropriate mix of workforce skills to meet service delivery priorities and to address the continuing impacts of economic, demographic, technological, employment and social changes. Accordingly, the scheme will provide the departments and agencies with an opportunity to change the mix of skills and abilities of their employees to better match the services they have to provide.

16. The guiding principles for the scheme support responsive workforce planning and management and the ongoing development of the appropriate mix of workforce skills for departments and agencies. Processes are to focus on identifying opportunities for enhanced service delivery through an improved alignment between identified service delivery priorities and skill sets. Departments and agencies are to target opportunities for improving their skill profiles and to attract employees with skill sets that are critical to meeting service delivery priorities.

17. The class of employees who will be made an offer of early retirement is all employees of the nominated departments and agencies in the Queensland Government. The nominated departments and agencies are:

- Aboriginal and Torres Strait Islander Policy
- Child Safety
- Communities
- Coordinator-General
- Corrective Services
- Disability Services Queensland
- Education and the Arts
- Electoral Commission of Queensland
- Emergency Services
- Employment and Training
- Energy
- Environmental Protection Agency
- Health
- Housing
- Industrial Relations
- Justice and Attorney-General
- Legislative Assembly
- Local Government, Planning, Sport and Recreation
- Main Roads
- Natural Resources and Mines
- Office of the Governor
- Office of the Ombudsman
- Office of the Public Service Commissioner
- Police
- Premier and Cabinet
- Primary Industries and Fisheries

Public Works
State Development, Trade and Innovation
The Public Trustee of Queensland
Tourism, Fair Trading and Wine Industry Development
Transport
Treasury
Citec
GoPrint
Main Roads – Road Tek
Project Services
Project Services Group
Q-Build
Q-Fleet
Sales and Distribution Services
Corporate Administration Agency
Corporate and Professional Services
Corporate Solutions Queensland
Queensland Health Shared Service Provider
PartnerOne
CorporateLink
CorpTech
Forestry Plantations Queensland
Forestry Plantations Queensland Office
Queensland Audit Office
Motor Accident Insurance Commission.

18. The nominated departments and agencies may wish to apply a limited veto on acceptances from key employees. For the purposes of this scheme any senior executive service (SES) officer may be treated as a key employee and not permitted to retire under the scheme. Departments and agencies that wish to use this veto for employees other than SES officers will not begin to implement the scheme or call for expressions of interest from employees until they have provided the Tax Office with an agreed list of key employees (excluding SES officers) excluded from retiring under the scheme.

19. The nominated departments and agencies may apply a limited veto on acceptances from employees if more employees from the nominated department or agency accept the offer to retire than the number of packages available under the scheme. Departments or agencies who may need to use this veto will advise the Tax Office of

the number of packages available prior to implementing the scheme or calling for expressions of interest from employees. If more employees in a department or agency accept the offer to retire the veto will be based on the length of an employee's service, with employees having the longest period of service being able to retire.

20. Alternatively a limited veto may be applied by nominated departments and agencies to limit the number of employees that retire in key areas of the departments and agencies. The nominated departments and agencies wishing to use this veto will not begin to implement the scheme or call for expressions of interest from employees until they have provided the necessary details to the Tax Office concerning the key areas in which retirement will be limited. If more employees in a key area accept the offer to retire the veto will be based on the length of an employee's service, with employees having the longest period of service being able to retire.

21. The nominated departments and agencies cannot implement or carry out this scheme at the same time as approval exists for the department or agency to carry out any other early retirement scheme.

22. All employees who accept the offer to retire under the scheme will terminate employment with the nominated departments and agencies and receive the payment under the scheme by no later than 28 February 2007.

23. The payment to be made under the scheme is as follows:

- (a) A severance benefit of two weeks' pay per year of service and a proportionate amount for an incomplete year of eligible service paid at the employees' substantive appointed level (minimum four weeks, maximum 52 weeks); and
- (b) An incentive payment to encourage employees to exit the department or agency on or by a specified date. For employees other than SES Officers and Senior Officers, the incentive payment is \$6,500 or 8 weeks' pay, at the employees' substantive level, whichever is the greater. For tenured SES Officers and Senior Officers, the incentive payment would be the equivalent of 10 weeks' pay.

24. The payment to be made to SES Officers employed under contracts will be in accordance with the terms of their contracts.

25. The scheme includes an alternative option for payment whereby employees may choose to take the severance benefit in the form of a one-off payment of \$30,000 in lieu of the payment to be made under paragraphs 23(a) and (b) of this Ruling.

Payments made under the Scheme

26. For a payment made under the above mentioned scheme to qualify as an approved early retirement scheme payment, the

conditions set out in paragraphs 27 to 32 must be met. Please note, any payment made under the scheme that does not satisfy these requirements is not covered by this Ruling.

27. 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.

28. The payment must not be made from an eligible superannuation fund.

29. The payment must not be made in lieu of superannuation benefits.

30. 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.

31. Where the employee 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 employee had they been dealing at arm's length.

32. 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

33. The Workforce Skills Alignment Scheme to be implemented by the nominated departments and agencies of the Queensland Government is an approved early retirement scheme for the purposes of section 27E of the ITAA 1936.

34. 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 than in accordance with the approved early retirement scheme, is an approved early retirement scheme payment in relation to the taxpayer.

35. In addition, so much of the approved early retirement scheme payment as falls within the threshold calculated in accordance with subsection 27A(19) of the ITAA 1936 is non-assessable and is ignored in working out whether a capital gain has been made via the operation of section 27CB of the ITAA 1936.

Class Ruling

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Page status: **binding**

Commissioner of Taxation

1 March 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.*

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

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

38. 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

39. 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).

40. The class of employees to which the scheme is proposed to be offered is set out in paragraph 17.

41. This class of employees does not come within any of 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).

42. It is noted, however, that the nominated departments and agencies retain a limited right of veto as set out in paragraphs 18, 19, and 20. The limitation of the scheme in this way is acceptable to the Commissioner.

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

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

44. Paragraphs 14, 15 and 16 describe the nature of the rationalisation or re-organisation of 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

45. The scheme is proposed to operate for a period from 1 March 2006 to 28 February 2007. Approval was granted prior to implementation therefore the third condition is satisfied.

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

Other relevant information

47. 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.

48. 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.

49. 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'.

50. 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'.

51. For the year ending 30 June 2006, the tax-free amount is limited to \$6,491 plus \$3,246 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. The \$6,491 and \$3,246 limits will be indexed to rise in each subsequent year in line with increases in average weekly ordinary time earnings.

52. The total of the amount received on the termination of employment calculated in accordance with paragraph 23, 24 or 25 qualifies as an approved early retirement scheme payment.

53. The total of the payment in the previous paragraph will be measured against the limit calculated in accordance with paragraph 51 to determine the 'tax-free amount'.

54. 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.

55. Any payment in excess of this limit will be an ordinary ETP and split up into the pre-July 83 and post-June 83 (untaxed element) components. This ETP can be rolled-over.

Appendix 2 – Detailed contents list

56. 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 92/20; TR 94/12

Subject references:

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

Legislative references:

- TAA 1953
- 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)
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- 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)
- Copyright Act 1968

ATO references

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