



CR 2020/71 - The University of Melbourne - early retirement scheme 2020

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Class Ruling

The University of Melbourne – early retirement scheme 2020

❶ Relying on this Ruling

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

If this ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in the ruling. That is, you will not pay any more tax or pay any penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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

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What this Ruling is about

1. This Ruling sets out the tax consequences of an early retirement scheme implemented by The University of Melbourne (the University).
2. Full details of this scheme are set out in paragraphs 9 to 27 of this Ruling.
3. All legislative references are to provisions of the *Income Tax Assessment Act 1997* unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to employees of the University who receive a payment under this scheme.

When this Ruling applies

5. This Ruling applies from 26 November 2020 to 30 June 2021.

Ruling

6. The University of Melbourne Early Retirement Scheme 2020 (hereafter referred to as 'the Scheme') is an early retirement scheme for the purposes of section 83–180.

7. Accordingly, so much of the payment received by an eligible employee that exceeds the amount that could reasonably be expected to be received by the employee in consequence of voluntary termination of their employment at the time of the retirement will be an early retirement scheme payment.

8. In addition, so much of the Scheme payment as falls within the threshold calculated in accordance with section 83–170 is not assessable income and is not exempt income.

Scheme

9. The following description of the Scheme is based on information provided by the applicant. If the Scheme is not carried out as described, this Ruling cannot be relied upon.

10. The higher education sector in Australia and globally is a niche employment market where there are limited opportunities for mobility between employers for academic employees. These constraints in the higher education sector result in limited opportunity for career academics to progress by way of lateral movement. This places more reliance on career progression vertically within the University, particularly during a time when the overall higher education sector faces contraction.

11. The COVID-19 pandemic in Australia and the subsequent contraction of student enrolments and revenue has necessitated a downsizing of the academic workforce across the higher education sector, including at the University. It has also become evident that there will be significant changes to the demand for education and research services offered by the University and the ways in which the curriculum will be delivered. This has the potential to exacerbate the limitation on career progression for early career academics.

12. Based on the information in paragraphs 10 and 11 of this Ruling, including the impact of the COVID-19 pandemic, there are significant changes to be made to the University's operations and an acceleration of the need for the University to refresh and realign its pool of academic employees. It is necessary for the University to re-evaluate the size and composition of the academic workforce. The University is also particularly concerned about ensuring that opportunities remain for career progression for academics employed by the University.

13. The University's purpose in implementing the Scheme is to rationalise and re-organise the academic workforce by offering senior academic employees the opportunity to retire from the University. Their positions can therefore be offered to academics in earlier stages of their career as a means of career progression where appropriate, particularly where the early or mid-career academics' employment might otherwise be at risk of redundancy in the current circumstances.

14. The class of employees that are eligible to participate in the Scheme are those employees who:

- are Senior Academics employed by the University as Professors (classified as Level E) or Associate Professors (classified as Level D)
- are aged between 50 years and the pension age as at the date of their retirement
- on the date expressions of interest for the Scheme open

- have not formally advised the University of their resignation or retirement
- have not accepted a pre-retirement contract
- do not have a formal agreement in place that will result in termination of their employment on a specified date
- are not under a period of probation
- are not subject to a misconduct, serious misconduct or serious research misconduct process, or
- do not have an open workers compensation claim.
- are not appointed (either in full or in part) in an Executive Position at, or prior to, their retirement
- are not employed by the University on a fixed-term or casual employment basis
- are not a lead investigator in active externally-funded research and whose departure would not accord with the terms of the funding arrangements and/or the research
- are not engaged in work subject to a partnership, joint venture, or formal collaboration arrangement between the University and another organisation, institution, or research institute and whose departure would not accord with the terms of those arrangements, and
- are not supervising graduate researchers whose candidature would discontinue because there is no readily available replacement for that Senior Academic.

15. There is a limit on the number of employees who can retire under the Scheme.

16. Following approval of the Scheme, employees will be invited to submit an expression of interest to participate in the Scheme. Employees will have a limited period in which to submit an expression of interest.

17. After expressions of interest have been received, the University will make formal offers of early retirement to employees. Employees will have a limited time to accept or decline the offer to participate in the Scheme. If more employees expressed interest in the Scheme than the number of places available, offers will be made on the basis of age where older employees will receive priority.

18. The University may call for further expressions of interest if the number of employees who retire under the Scheme is less than expected in the first instance.

19. Employees who accept the offer will terminate their employment and receive payment by no later than 30 June 2021.

20. Employees who retire under the Scheme will receive a lump sum payment equivalent to:

- (a) three months' salary in lieu of notice, plus
- (b) 22 weeks' salary plus three weeks' salary for every year of completed service to a maximum of 52 weeks.

21. The payment to part-time employees will be calculated and paid pro-rata to the part-time hours of work.

22. Employees who terminate employment under the Scheme will receive their statutory entitlements such as annual leave and long service leave where applicable. However, these amounts will not form part of the payment made under the Scheme.

23. The payment made under the Scheme is in addition to and will not be made in lieu of superannuation benefits, to which employees would otherwise be entitled.

24. The retirement of employees who receive a payment under the Scheme will occur before they reach pension age.

25. Payments made under the Scheme will be at arm's length.

26. There is no agreement in place between an employee and the University, or between the University and another person to employ the employee after the retirement under the Scheme.

27. Participation in the Scheme is voluntary.

Commissioner of Taxation

25 November 2020

Appendix 1 – Explanation

❶ *This Explanation 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.*

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Requirements for an early retirement scheme

28. A scheme will be an early retirement scheme if it satisfies the requirements of subsection 83–180(3).

29. Subsection 83–180(3) states that:

A scheme is an **early retirement scheme** if:

- (a) all the employer's employees who comprise such a class of employees as the Commissioner approves may participate in the scheme; and
- (b) the employer's purpose in implementing the scheme is to rationalise or re-organise the employer's operations by making any change to the employer's operations, or the nature of the work force, that the Commissioner approves; and
- (c) before the scheme is implemented, the Commissioner, by written instrument, approves the scheme as an early retirement scheme for the purposes of this section.

These three requirements are considered in paragraphs 30 to 39 of this Ruling.

All employees within a class approved by the Commissioner may participate in the scheme

30. In order to satisfy the first requirement of subsection 83–180(3), participation in a scheme must be offered to all employees in a class approved by the Commissioner.

31. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 14 of this Ruling.

32. The Commissioner considers that, for the purposes of paragraph 83–180(3)(a), this is an appropriate class of persons for the Scheme to be offered to. In approving this class of employees, the Commissioner has considered the nature of the rationalisation or re-organisation of the operations of the University.

33. Therefore, the first requirement of subsection 83–180(3) is satisfied.

The employer's purpose in implementing the scheme is to rationalise or re-organise the employer's operations in a way approved by the Commissioner

34. The proposed scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer as required by paragraph 83-180(3)(b).

35. Paragraphs 10 to 13 of this Ruling describe the nature of the rationalisation or re-organisation of the University's operations. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the workforce of the University. It is considered that the Scheme is to be implemented by the University with a view to rationalising or re-organising the operations of the University for the purposes of paragraph 83-180(3)(b).

36. Accordingly, the second requirement of subsection 83-180(3) has been met.

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

37. The Scheme is proposed to operate for a period from 26 November 2020 to 30 June 2021.

38. The Scheme will be in operation for a period considered appropriate due to the circumstances of the re-organisation.

39. As the approval provided by this Ruling was granted prior to implementation, the third requirement of subsection 83-180(3) is satisfied.

Other relevant information

40. Under subsection 83-180(1), so much of the payment received by an employee because the employee retires under an early retirement scheme as exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of their employment at the time of termination, is an early retirement scheme payment.

41. It should be noted that, in order for a payment to qualify as an early retirement scheme payment, it must also satisfy the following requirements (as set out in subsections 83-180(2), (5) and (6)):

- the retirement occurred before the employee reached pension age or such earlier date on which the employee's employment would have terminated under the terms of employment because of the employee attaining a certain age or completing a particular period of service (as the case may be)
- if 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 the amount that could reasonably be expected to be made if the retirement was at arm's length
- at the time of retirement there was no arrangement between the employee and the employer, or between the employer and another person, to employ the employee after the retirement

- the payment must not be made in lieu of superannuation benefits, and
 - it is not a payment mentioned in section 82–135 (apart from paragraph 82-135(e)).
42. The term ‘pension age’ has the meaning given by subsection 23(1) of the *Social Security Act 1991*.
43. The term ‘arrangement’ is defined in subsection 995–1(1) as meaning:
...any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings.
44. In accordance with section 83–170, an early retirement scheme payment that falls within the specified limit is referred to as the ‘tax-free’ amount and will not be assessable income and will not be exempt income.
45. For the 2020–21 income year, the tax-free amount is limited to \$10,989 (base amount) plus \$5,496 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. It should be noted that six months, eight months or even 11 months do not count as a whole year for the purposes of this calculation.
46. The total of the amount received on the termination of employment calculated in accordance with paragraph 20(b) of this Ruling may qualify as an early retirement scheme payment.
47. The total payment calculated in accordance with paragraph 20(b) of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 45 of this Ruling to determine the tax-free amount of the early retirement scheme payment.
48. The tax-free amount will not be:
- an employment termination payment (ETP), and
 - able to be rolled-over into a superannuation fund.
49. Any payment in excess of this limit will be an ETP and will be split into tax-free and taxable components. The tax-free component of an ETP includes the pre-July 83 segment of the payment. The tax-free component is not assessable income and is not exempt income.
50. The payment in lieu of notice in paragraph 20(a) of this Ruling will also be an ETP.
51. The taxable component of the ETP will be taxed at various rates depending on the person’s age. It should be noted that the ‘whole of income cap’ does not apply to any part of the early retirement scheme payment but will apply to the payment in lieu of notice.

References

Previous draft:

Not previously issued as a draft

Legislative references:

- ITAA 1997 82-135
- ITAA 1997 82-135(e)
- ITAA 1997 83-170
- ITAA 1997 83-180
- ITAA 1997 83-180(1)
- ITAA 1997 83-180(2)
- ITAA 1997 83-180(3)
- ITAA 1997 83-180(3)(a)
- ITAA 1997 83-180(3)(b)
- ITAA 1997 83-180(5)
- ITAA 1997 83-180(6)
- ITAA 1997 995-1(1)
- TAA 1953
- Social Security Act 1991 23(1)

ATO references

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