Class Ruling

Income tax: 'The Flinders University Professional Staff Early Retirement Scheme 2016'

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This publication provides you with the following level of protection:

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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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.

What this Ruling is about

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

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- section 83-170 of the *Income Tax Assessment Act 1997* (ITAA 1997), and
- section 83-180 of the ITAA 1997.

All legislative references are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to whom this scheme applies is those employees of The Flinders University of South Australia shown at paragraph 13, subject to paragraph 15, who receive a payment under the scheme described in paragraphs 9 to 29 of this Ruling.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling. The class of entities defined in the Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described under the heading *Scheme*.

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

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- the Ruling may be withdrawn or modified.

Date of effect

6. This Ruling applies from the 13 April 2016 to 31 October 2016. The Ruling continues to apply after 31 October 2016 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, the Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 75 and 76 of *Taxation Ruling TR 2006/10*).

Scheme

7. The following description of the scheme is based on information provided by the applicant.

8. The Flinders University of South Australia (the University), is seeking the Commissioner's approval to implement an early retirement scheme in accordance with section 83-180.

9. The scheme will be titled '*The Flinders University Professional Staff Early Retirement Scheme 2016'*, hereafter referred to as 'the Scheme'.

10. The University recognises that there are large scale changes occurring in higher education in Australia and globally. Significant increases in competition for students and research funding, the importance of research driven international rankings, and the impact of new technology have led the University to give consideration to the composition and nature of the staffing profile needed for the future.

11. The University wishes to re-organise the provision of professional services and administrative support by reducing and re-aligning the professional staff cohort with its academic work force, to enable a proactive response to the challenges and opportunities of the changing external environment.

12. The purpose of the Scheme is to operate as a more effective and efficient organisation and to ensure professional staff who may be considering retirement, or whose aspirations no longer align with those of the University, are able to consider early retirement with a financial incentive.

13. The class of employees to whom the Scheme applies is individual members of the professional staff employed by the University in Australia who, at the date that the Scheme comes into effect, meet the following criteria:

- hold continuing and recurrently-funded (untied) positions, and
- have not formally advised of their resignation, and
- do not have a formal arrangement in place that will result in termination of their employment on a specified date, and
- have completed ten or more years of continuous paid employment with the University, and
- are 55 years of age or older.

14. For the purposes of the Scheme, a member of the University's professional staff means a person so defined under the '*Flinders University Enterprise Agreement 2014 to 2017*'.

15. The following professional employees are excluded from expressing an interest in the Scheme:

- any professional staff member of the University's Senior Executive Team, for example the Vice President (Corporate Services) and Executive Director (2)
- staff with an active workers' compensation claim where there is payment for loss of income, and
- any staff member under investigation for allegations of misconduct or serious misconduct.

16. Eligible employees who retire under the Scheme will be paid a lump sum payment of two weeks' salary per each completed year of service plus 22 weeks' salary. Part time employees will receive a pro-rata lump sum payment based on their appointment fraction as at the date of termination of employment.

17. All payments will be calculated with reference to the staff member's superannuable salary and any superannuable allowances applicable to their continuing role as at the date of termination of employment.

18. In addition, all employees terminated 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.

19. Following the approval of the Scheme, all eligible employees will be formally invited to participate in the Scheme. Eligible employees will be given four weeks to submit their expression of interest in the Scheme.

20. Within three weeks after the conclusion of the expression of interest period, offers will be made by the University on the basis of the Scheme's criteria.

21. Eligible employees will have two weeks to accept the offer. Once an offer is accepted, voluntary withdrawal from the Scheme will not be permitted.

22. If the number of employees initially willing to participate in the Scheme is less than 75% of eligible staff, the University may implement a second expression of interest process during the duration of the Scheme.

23. Most employees who accept an offer to retire under the Scheme will terminate their employment and receive their payment within four weeks of accepting an offer. However, the termination date will be subject to the University's operational requirements but will be no later than 31 October 2016.

24. The payment made under the Scheme is in excess of any superannuation and any other benefits to which eligible employees would otherwise be entitled.

25. Employees who terminate their employment other than under the Scheme will not be entitled to receive the Scheme payment.

26. The retirement of employees who receive a payment under the Scheme will occur before they turn 65 years of age.

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

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

29. Participation in the Scheme is entirely voluntary.

Ruling

30. The *Flinders University Professional Staff Early Retirement Scheme 2016* is an early retirement scheme for the purposes of section 83-180.

31. 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.

32. In addition, so much of the early retirement scheme payment as falls within the threshold calculated in accordance with section 83-170 is not assessable income and is not exempt income.

Commissioner of Taxation
13 April 2016

Appendix 1 – Explanation

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.

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

34. 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;
>
> (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 conditions are now considered.

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

35. In order to satisfy the first condition, the scheme must be offered to all employees in a class approved by the Commissioner under paragraph 83-180(3)(a).

36. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 13, subject to paragraph 15, of this Ruling.

37. The Commissioner considers that 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 employer. It is therefore considered that these employees meet the requirements of an approved class of employees for the purposes of paragraph 83-180(3)(a).

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

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

39. Paragraphs 10 to 12 of this Ruling describe the nature of the rationalisation or re-organisation of the employer's operations. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the work force of the employer. It is 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 paragraph 83-180(3)(b).

40. Accordingly, the second condition for approval has been met.

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

41. The Scheme is proposed to operate for a period from 13 April 2016 to 31 October 2016. The approval to be provided by the class ruling will have been granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

42. The Scheme will be in operation for approximately seven months. This is considered appropriate due to the circumstances of the re-organisation.

Other relevant information

43. 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.

44. 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), 83-180(5) and 83-180(6)):

- the retirement occurred before the employee turned age 65 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)).

45. 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*'.

46. 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.

47. For the 2015-16 income year, the tax-free amount is limited to $9,780 (base amount) plus $4,891 (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 eleven months do not count as a whole year for the purposes of this calculation.

48. For the 2016-17 income year, the base amount is $9,936 and the service amount is $4,969.

49. The total of the amount received on the termination of employment calculated in accordance with paragraph 16 of this Ruling may qualify as an early retirement scheme payment.

50. The total payment calculated in accordance with paragraph 16 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 47 and paragraph 48 of this Ruling to determine the tax-free amount of the early retirement scheme payment.

51. The tax-free amount will:

- not be an employment termination payment (ETP), and
- not be able to be rolled-over into a superannuation fund.

52. 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.

53. 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.

Appendix 2 – Detailed contents list

54. 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 2006/10

Legislative references:

- ITAA 1997
- 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(3)(c)
- ITAA 1997 83-180(5)
- ITAA 1997 83-180(6)
- ITAA 1997 995-1(1)
- TAA 1953

ATO references

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