



Class Ruling

The University of Notre Dame Australia – 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 this Ruling. That is, you will not pay any more tax or 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.

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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 Notre Dame Australia (the University).
2. Full details of this scheme are set out in paragraphs 9 to 32 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 22 October 2020 to 30 September 2021.

Ruling

6. The University of Notre Dame Australia 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 University is in need of transformation given the changing higher-education landscape in Australia. The COVID-19 epidemic has exacerbated and accelerated these changes, which has had a significant and immediate financial impact.

11. The University is preparing to implement a staged restructure and workforce realignment project as part of its response to underlying structural issues, and its economic sustainability. The University's difficult budgetary position has been amplified by the effects of COVID-19, further compounding underlying issues at the University.

12. The University has two main overlapping purposes for wanting to implement the Scheme. Namely, the University is facing a significant deterioration in its financial situation, as well as attempting to transition its operations in a rapidly-changing higher education sector.

13. The University is considering the composition and nature of its staffing profile to better align that profile with the University's future business needs. A critical aspect of this is to realign the University's staffing profile with its strategic plan.

14. The University is undertaking various measures in response to its significantly adverse financial situation, including looking to reduce and rationalise the size of its workforce.

15. The class of employees to whom the Scheme applies is all persons who meet both of the following criteria:

- are continuing staff employed in classifications set out in Schedules 1 to 4 of the *University of Notre Dame Australia Staff Enterprise Agreement 2015-2017* (Enterprise Agreement), and
- as at 10 October 2020, have not formally advised the University of their resignation or retirement, have not accepted a pre-retirement contract, and do not have a formal agreement in place that will result in termination of their employment on a specified date.

16. The following employees are specifically excluded from participating in the Scheme:
- employees who hold or receive external research grants, and the grant is not transferable within the University
 - employees with an active workers' compensation claim where there is a payment for loss of income, and
 - employees who are subject to a misconduct, serious misconduct or research misconduct process under clause 24 of the Enterprise Agreement.
17. The number of employees who can retire under the Scheme is limited.
18. Following approval of the Scheme, eligible employees will be invited to submit an application to participate in the Scheme. Employees will have two weeks from the date of invitation to submit an application.
19. Within two weeks of the closing date for applications, employees will be made a formal offer to retire under the Scheme. Employees will have two weeks from the date of offer to accept the offer.
20. If the Scheme is oversubscribed, offers will be processed based on years of service. The longest serving employees will receive priority.
21. The University may make further invitations to remaining employees (within the class of employees) to submit applications to participate in the Scheme if an insufficient number of employees apply to participate in the Scheme in the first instance.
22. Employees who retire under the Scheme will receive payment in accordance with clause 19 of the Enterprise Agreement, being up to 22 weeks of ordinary salary (based on period of continuous service), plus two weeks of ordinary salary for every year of completed service. The payment will not be more than 60 weeks of ordinary salary.
23. The payment is calculated with reference to the employee's ordinary rate of pay, as defined in the Enterprise Agreement.
24. Part-time staff will receive a pro-rated payment based on their employment fraction as at the date of termination of employment.
25. 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.
26. The payment made under the Scheme is not in lieu of superannuation benefits an employee may otherwise have been entitled to.
27. Employees who terminate their employment other than under the Scheme will not be entitled to receive the Scheme payment.
28. Payments made under the Scheme will be at arm's length.
29. The retirement of employees who receive a payment under the Scheme will occur before they reach pension age.
30. An employee retiring under the Scheme will terminate their employment and receive payment by 30 September 2021 at the latest.
31. There is no arrangement in place between any eligible employee and the University, or between the University and another person, to employ the eligible employee after the retirement under the Scheme.

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32. Participation in the Scheme is entirely voluntary.

Commissioner of Taxation

21 October 2020

Appendix – Explanation

❗ ***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

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; 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 35 to 44 of this Ruling.

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

35. In order to satisfy the first requirement of subsection 83-180(3), the Scheme must be offered to all employees in a class approved by the Commissioner.

36. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 15, subject to paragraph 16, of this Ruling.

37. 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.

38. 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

39. 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).

40. Paragraphs 10 to 14 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).

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

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

42. The Scheme is proposed to operate for a period from 22 October 2020 to 30 September 2021.

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

44. 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

45. 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.

46. 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)).

47. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.

48. 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.

49. 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.

50. 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.

51. For the 2021–22 income year, the base amount and the service amount are yet to be determined at the date of publication of this Ruling. Therefore, employees should check the ATO website for these indexed amounts at the relevant time.

52. The total of the amount received on the termination of employment calculated in accordance with paragraph 22 of this Ruling may qualify as an early retirement scheme payment.

53. The total payment calculated in accordance with paragraph 22 of this Ruling will be measured against the limit, in accordance with the formula mentioned in paragraphs 50 and 51 of this Ruling, to determine the tax-free amount of the early retirement scheme payment.

54. The tax-free amount will not be:

- an employment termination payment (ETP), and
- able to be rolled-over into a superannuation fund.

55. 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.

56. 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.

References

Previous draft:

Not previously issued as a draft

- 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
- Social security Act 1991 23(1)

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)

ATO references

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