

CR 2007/76 - Income tax: early retirement scheme - Charles Sturt University

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Class Ruling

Income tax: early retirement scheme – Charles Sturt University

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

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 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 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

4. The class of entities to which this Ruling applies is those employees of the Charles Sturt University (CSU) who receive a payment under the scheme described in paragraphs 15 to 39 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 39 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 from 8 August 2007 to 31 July 2008. However, the Ruling continues to apply after 31 July 2008 to all entities within the specified class who entered into the specified scheme during the term of the Ruling.

11. 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.

12. If this 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)).

13. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the 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.

14. 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).

Scheme

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

16. The Charles Sturt University (CSU) is seeking the Commissioner's approval to implement an early retirement scheme applying to employees of CSU.

17. The scheme is known as a Strategic Voluntary Separation Scheme (SVSS).

18. The class of employees to be offered the scheme will be academic staff members of the CSU who undertake research, teaching and associated academic activity, who have completed more than five years service with the CSU or at least three years service with the CSU and an additional two years service with another recognised Australian University excluding employees who:

- are employed on a fixed term contract or a pre-retirement contract; or
- occupy any of the following roles: Associate Dean, Associate Head of School or Course Co-ordinator.

19. The CSU has undertaken a comprehensive review of its strategic direction and activities. This has resulted in the development of the University Strategy 2007-2011 (the Strategy).

20. The purpose of the scheme is to facilitate the reorganisation of the workforce in a manner necessary to achieve significant improvements in teaching and research performance that are aligned with the new directions specified in the Strategy.

21. The CSU aims to conduct strategic and applied research of an international standard and to enhance their national research profile by improved ranking in the Department of Education, Science and Training indicators of research performance.

22. The CSU will develop the flexible and distance learning resources of the CSU, including a Virtual Learning Environment, to enhance the learning experience of students. Academic staff will need to be proficient in the application of technology to teaching and be confident in utilising a range of multimedia and digital technologies in their teaching methodology, in order to support learning in all modes.

23. These new research and teaching performance requirements may not be aligned with the expectations of some Academic staff who are unable to make the necessary transition and the proficiency required.

24. In research, achieving the Strategy means that all teaching and research staff will be expected to qualify for entry in the next Research Quality Framework assessment in 2012.

25. In teaching, the main new performance requirement will be successful integration of the CSU's new online learning environment, CSU Interact, into learning and teaching on and off campus from 2008.

26. The CSU will limit the number of employees who can accept the offer of early retirement.

27. In the case that the number of employees seeking access to the scheme exceeds the number of packages available, the offer will be made to those employees with the longest continuous service with the CSU.

28. Following approval of the scheme, all eligible employees within the class will have until 14 September 2007 to express an interest in the scheme.

29. Once an offer is made an eligible employee will have 30 days to decide whether to accept the offer.

30. Should the expressions of interest from eligible employees be less than the number of employees required to participate in the scheme, the employer will call for a second round of applications for eligible employees to express an interest in the scheme.

31. Once an offer is made, those eligible employees will have 30 days to accept the offer.

32. The second round of applications to apply under the scheme will close on 31 October 2007, with all offers being made by 31 December 2007.

33. It is proposed the scheme will be implemented from 8 August 2007 to 31 July 2008.

34. The employees that fall within the scheme are employed under the Charles Sturt University Enterprise Agreement 2005-2008 (the Agreement).

35. Under the Agreement, academic staff are required to give written notice of not less than three months resignation, with the effective date of a resignation normally to take effect at the end of a teaching session.

36. All employees who accept the offer to retire under the scheme will receive the payment and terminate employment no later than 31 July 2008. The actual date of termination will be negotiated between the employer and the employee.

37. The SVSS payment to be made under the scheme is:

- a maximum payment equivalent to sixteen (16) weeks payment in lieu of notice; plus
- three (3) weeks payment per completed year of continuous service with a maximum payment capped at sixty (60) weeks payment.

38. Any employee who terminates employment other than under the proposed scheme, will not be entitled to receive a SVSS payment.

39. Employees will also receive other usual resignation or retirement entitlements, however they do not form part of the SVSS payment.

Payments made under the scheme

40. For a payment made under the above mentioned scheme to qualify as an early retirement scheme payment, the conditions set out in paragraphs 41 to 46 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.

41. The payment must be received by an employee because the employee retires under an early retirement scheme. The early retirement scheme payment will be so much of the payment that exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of the retirement.

42. The payment must not be a payment mentioned in subsection 82-135 (apart from paragraph 82-135(e)).

43. The employee retires before the earlier of the following:

- the day he or she turned 65;
- the date on which the employee's employment would have terminated when he or she reached a particular age or completed a particular period of service – the day he or she would reach the age or complete the period of service (as the case may be).

44. 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 the amount that could reasonably be expected to be made had they been dealing with each other at arm's length.

45. At the time of the 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.

46. The proposed scheme does not include any part of the employment termination payment that was paid to the employee in lieu of superannuation benefits to which the employee may have become entitled at the time the employment termination payment was made or at a later time.

Ruling

47. The early retirement scheme to be implemented by CSU is an early retirement scheme for the purposes of section 83-180.

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

49. 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.

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.***

50. 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 the former section 27E of the *Income Tax Assessment Act 1936*, which, as of 1 July 2007, has been replaced by section 83-180 of the ITAA 1997.

51. Where a scheme satisfies the requirements of section 83-180, that scheme will be an 'early retirement scheme'.

52. 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 conditions are discussed below.

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

53. 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).

54. The class of employees to whom early retirement will be offered is set out in paragraph 18 of this Ruling.

55. 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. 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

56. The proposed scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer, that the Commissioner approves.

57. Paragraphs 19 to 25 of this Ruling describes the nature of the rationalisation or re-organisation of the employer's operations. The scheme is to be implemented with a view to rationalising or re-organising the operations or work-force of the employer by making the changes approved by the Commissioner. Accordingly, the second condition for approval has been met.

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

58. The scheme will operate from 8 August 2007 to 31 July 2008. Approval was granted prior to implementation therefore for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

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

Other relevant information

60. 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 his or her employment at the time of termination is an early retirement scheme payment.

61. 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 made 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)).

62. The term 'arrangement' is defined in subsection 995-1(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'.

63. From 1 July 2007, 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.

64. For the 2007-08 income year, the tax-free amount is limited to \$7,020 (base limit) plus \$3,511 (service amount) for each whole year of completed employment service to which the 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 base limit and service amount limit will be indexed in line with average weekly ordinary time earnings each income year.

65. The total of the amount received on the termination of employment calculated in accordance with paragraph 37 of this Ruling may qualify as an early retirement scheme payment.

66. The total of the payments in paragraph 65 of this Ruling will be measured against the limit calculated in accordance with paragraph 64 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

67. The 'tax-free' amount will:

- not be an employment termination payment; and
- not be able to be rolled-over into a superannuation fund.

68. Any payment in excess of this tax-free limit will be an employment termination payment and 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.

69. Employment termination payments made under an approved early retirement scheme cannot be rolled-over into a superannuation fund.

Appendix 2 – Detailed contents list

70. 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:

- early retirement scheme payment
- employment termination payment

Legislative references:

- ITAA 1936 27E
- 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
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

Other references:

- Charles Sturt University Enterprise Agreement 2005-2008

ATO references

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