


CR 2008/47 - 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 45 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 45 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 16 July 2008 to 30 June 2009. However, the Ruling continues to apply after 30 June 2009 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 CSU is seeking the Commissioner's approval to implement an early retirement scheme applying to eligible employees of the CSU.

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

18. The class of employees to be offered the scheme will be general staff members comprising of administrative/clerical, technical, library, professional, hospitality and trades employees who occupy non-academic (non-teaching) positions, who have completed a minimum of three years service with the CSU excluding employees who:

- are employed on a fixed term contract; or
- are employed on a pre-retirement contract; or
- an employee who has already indicated their intention to resign/retire from the employment of the CSU.

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 reorganization of the workforce in a manner necessary to achieve significant improvements with the aim to align staff performance with the objectives outlined in the Strategy and the published plans, in particular, the Institutional Development Plan.

21. Key changes anticipated over the next three years that will impact on the CSU workforce capability include: planned changes in service delivery; course review and approval processes; new research direction and focus; revenue generation activities; new technology; external legislative, quality and compliance requirements; and professional association and/or qualification requirements.
22. These changes affect such things as the volume, type and location of work to be performed; organizational structure and design; the mix of skills, knowledge and qualifications required; increasing/decreasing staffing levels in some organisational units; student/staff ratios; and existing business systems.
23. The changes outlined in the Strategy may not be aligned with the expectations of some general staff who are unable or unwilling to make the necessary transition.
24. The CSU will limit the number of eligible employees who can accept the offer of early retirement.
25. 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.
26. Following approval of the scheme, all eligible employees within the class will have until 22 August 2008 to express an interest in the scheme.
27. All offers will be made by 12 September 2008. Once an offer is made an eligible employee will have 30 days to decide whether to accept the offer.
28. 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, in October 2008.
29. All offers being made under the second round of applications to apply under the scheme will be made by 14 November 2008.
30. Once an offer is made, those eligible employees will have 30 days to accept the offer.
31. All discussions and negotiations for a voluntary separation package must be finalised by 31 December 2008.
32. It is proposed the scheme will be implemented from 16 July 2008 to 30 June 2009.
33. The terms and conditions of employment of CSU staff members are governed by either the Charles Sturt University Enterprise Agreement 2005-2008 (the Agreement) or an Australian Workplace Agreement (AWA).
34. The same redundancy provisions apply for the Agreement and in each AWA.

35. In order to maintain continuity of client service and business operations and to ensure the least disruption to students, the effective date of termination of an eligible staff member will normally take effect at the end of a teaching semester.

36. All employees who accept the offer to retire under the scheme will receive the payment and terminate employment no later than 30 June 2009. This extra period of time allows the CSU to put in place alternate arrangements prior to the end of the first semester in 2009. 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) a maximum payment equivalent to sixteen (16) weeks payment in lieu of notice; plus
- (b) a maximum payment of three (3) weeks payment for each completed year of continuous service with the CSU and its predecessor institutions.

The total combined payments under (a) and (b) above shall not exceed sixty (60) weeks.

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.

40. The payment will be received by an employee because the employee retires under an early retirement scheme. The early retirement scheme payments are amounts in excess of any payment that an employee receives in consequence of a voluntary termination of employment.

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

42. The employee will retire before the earlier of the following:

- the day he or she turned 65; or
- 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).

43. The employee and the employer are dealing with each other at arm's length.

44. There is no arrangement between the employee and the employer, or between the employer and another person, to employ the employee after the retirement.

45. The payments to be made under the early retirement scheme do not include payments in lieu of superannuation benefits to which the participating employee is entitled.

Ruling

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

47. 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.

48. 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

16 July 2008

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.*

49. 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.

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

51. 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

52. 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).

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

54. 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

55. 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.

56. Paragraphs 19 to 23 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

57. The scheme will operate from 16 July 2008 to 30 June 2009. Approval was granted prior to implementation therefore for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

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

Other relevant information

59. 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.

60. 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)).

61. 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'.

62. 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.

63. For the 2008-09 income year, the tax-free amount is limited to \$7,350 (base limit) plus \$3,676 (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.

64. 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.

65. The total of the payments in paragraph 64 of this Ruling will be measured against the limit calculated in accordance with paragraph 63 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

66. The 'tax-free' amount will:

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

67. 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.

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

Appendix 2 – Detailed contents list

69. 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:

- approved early retirement scheme payment
- employment termination payment

Legislative references:

- ITAA 1936 27E
- 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)(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
- Charles Sturt University Australian Workplace Agreement

ATO references

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