

# ***CR 2014/102 - Income tax: Murdoch University ATO Approved Voluntary Retirement Scheme***

⚠ This cover sheet is provided for information only. It does not form part of *CR 2014/102 - Income tax: Murdoch University ATO Approved Voluntary Retirement Scheme*

⚠ Please note that an Addendum to this Class Ruling is currently being considered in consultation with the Applicant.

⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *28 January 2015*



## Class Ruling

### Income tax: Murdoch University ATO Approved Voluntary Retirement Scheme

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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.

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

## What this Ruling is about

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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.

### 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 which this Ruling applies is employees of Murdoch University who will receive a payment under the scheme described in paragraphs 8 to 20 of this Ruling.

## Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
5. 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 8 to 20 of this Ruling.
6. 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.

## Date of effect

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7. This Ruling applies from 17 December 2014 to 30 September 2015. The Ruling continues to apply after 30 September 2015 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this 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 this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

## Scheme

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8. The following description of the scheme is based on information provided by the applicant.
9. Murdoch University (Murdoch) is seeking approval from the Commissioner to implement an early retirement scheme. If approved by the Commissioner, it will be known as the 'Murdoch University ATO Approved Voluntary Retirement Scheme' (AAVRS).
10. Murdoch is a tertiary institution located in Western Australia. An underlying aim of Murdoch is to progress the vision of Murdoch as a high quality research-led university. This aim is articulated as part of Murdoch's Strategic Plan 2012-2017. To enable the achievement of this plan, Murdoch has identified the need to rejuvenate its academic staff profile to better reflect its research aspirations. The reshaping of the academy will be followed by a review and restructure of the centralised professional services, and a review of the professional support staff located within the schools.

11. The purpose of implementing the scheme is to contribute to the process of rationalising and re-organising Murdoch's operations and also to refresh the current academic workforce so that a higher proportion of staff are more aligned with Murdoch's strategic objectives to become a high quality research-led international university.

12. Through the AAVRS, Murdoch is seeking to offer financial support to the eligible employees, who take the opportunity to voluntarily leave the university.

13. The class of employees who will be invited to apply for participation in the AAVRS are:

- all academic and professional staff
- who are less than 65 years of age upon termination of employment (no minimum age will be set)
- have a continuous contract or a fixed term contract with a natural end date after 31 December 2016, and
- have been employed continuously for a period of at least 5 years as at 1 January 2015.

14. The Vice Chancellor, in his capacity as the Chief Executive Officer of Murdoch, will have a limited right of veto if key staff accept the offer to retire. Key staff are those identified below who are excluded from the Scheme:

- staff with a research active level which is three times the base 'Research Active' definition
- staff identified for teaching excellence (with reference to receiving a national or state recognised teaching award in the past three years)
- members of the strategic leadership group, that is, the (acting) Vice Chancellor, Provost, all School Deans, Chief Operating Officer, Academic Registrar and Chief Financial Officer
- staff with an active worker's compensation claim where there is payment made for loss of income, or
- staff under investigation for allegations of misconduct.

15. All eligible employees will be offered a lump sum payment of two weeks pay per completed year of service, up to a maximum of 52 weeks. This will be in addition to the terminating employee's statutory entitlements. However, these statutory entitlements will not form part of the payment made under the AAVRS.

16. The number of packages offered will be limited to 15% of full time equivalent (FTE) employees as at 31 March 2014.

17. Eligible employees will have the opportunity to submit an application to participate in the AAVRS from the date of Australian Taxation Office approval until mid-March 2015. Participation in the AAVRS is voluntary. Employees will retain the right to withdraw their application up until the closing date. Offers will then be made to successful applicants within two weeks of the closing day. All successful applicants must have their employment terminated and payments made before 30 September 2015.

18. The application process will involve the following steps:

- applications will be sent to the Dean or Director of the applicable school or office
- the Dean or Director will consider the application taking into account the eligible class of employees outlined in paragraph 13 of this Ruling and the key employees excluded at paragraph 14 of this Ruling
- if the applicant falls within the class of employees outlined at paragraph 13 of this Ruling, subject to paragraph 14 of this Ruling, the Dean or Director will forward their endorsed application to the AAVRS Review Panel
- should the applicant be a Director not excluded by paragraph 14 of this Ruling, then their application will be endorsed by an administrative head who is excluded by paragraph 14 of this Ruling
- if the number of received applications does not exceed 15% of FTE employees as at 31 March 2014, an offer to retire under the Scheme will be made to all applicants
- should the amount of applications exceed the amount of packages available, the AAVRS Review Panel will make offers to those employees with the greater length of service, and
- the AAVRS Review Panel will include the Provost, Deputy Vice Chancellor Research and Development, two Deans, the Chief Operating Officer, the Chief financial officer and secretarial support from the Human Resources Office.

19. At the time of the offer or termination, there will not be an arrangement between the employee and Murdoch or between Murdoch and another person/entity to employ the employee after the termination.

20. All payments will be made on an arm's length basis.

20A. The payment made under the Scheme is in excess of any superannuation benefits to which eligible employees would otherwise be entitled to. Payments made under the Scheme cannot be rolled into a superannuation fund.

## **Ruling**

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21. The AAVRS to be implemented by Murdoch is an early retirement scheme for the purposes of section 83-180.

22. 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 voluntary termination of his or her employment at the time of the retirement will be an early retirement scheme payment.

23. 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.

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**Commissioner of Taxation**

17 December 2014

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## Appendix 1 – Explanation

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**ⓘ** *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.*

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

25. 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, 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 now considered.

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

26. 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).

27. The class of employees to whom early retirement will be offered is set out in paragraph 13 of this Ruling.

28. The Commissioner considers that this is an appropriate class of persons to whom the scheme will be offered. In approving this class of employees, the Commissioner has considered the nature of the rationalisation or re-organisation of the operation 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 operation in a way approved by the Commissioner**

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

30. Paragraphs 8 to 20 of this Ruling describe the nature of the rationalisation or re-organisation of the employer's operation. In approving the AAVRS, the Commissioner has had regard to the changes in the operations and nature of the workforce 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). Accordingly, the second condition for approval has been met.

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

31. The AAVRS is proposed to operate after the Commissioner's approval to 30 September 2015. 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. The scheme will be in operation for approximately 10 months. This is considered appropriate due to the circumstances of the reorganisation and the employees that will be given the option of early retirement under the scheme.

### **Other relevant information**

32. 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 the retirement is an early retirement scheme payment.

33. It should be noted that, in order for the 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 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)).

34. 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'.

35. 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.

36. For the 2014-15 income year, the tax free amount is limited to \$9,514 (base amount) plus \$4,758 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. For the 2015-16 income year, the base amount and the service amount is not available yet. Once available, it will be published in the ATO official website at [www.ato.gov.au](http://www.ato.gov.au).

37. The total of the amount received on termination of employment calculated in accordance with paragraph 15 of this Ruling may qualify as an early retirement scheme payment.

38. The total payment being made to eligible employee under the age of 65 years and calculated in accordance with paragraph 37 of this Ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 36 of this ruling to determine the tax-free amount of the early retirement scheme payment.

39. The 'tax-free' amount will:

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

40. Any payment in excess of this limit will be an employment termination payment where the payment is received no later than 12 months after termination of employment and will be split into tax free and taxable components. The tax free component of an employment termination payment (ETP) includes the pre-July 83 segment of the payment. The tax free component is not assessable income and is not exempt income. The taxable component of the ETP will be taxed at various rates depending on the person's age.

41. It should be noted the 'whole of the income' cap does not apply to any part of the early retirement scheme payment.

42. Payment made under the early retirement scheme in excess of the tax-free limit will be concessional taxed up to the ETP cap of \$185,000 for the 2014-15 income year and will continue to have access to the full benefit of an ETP tax offset under subsection 82-10(3).

43. The ETP cap is reduced by the ETPs received earlier in the year or by ETPs received in an earlier year relating to the same termination.

**Appendix 2 – Detailed contents list**

44. The following is a detailed contents list for this Ruling:

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## References

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- Previous draft:*
- ITAA 1997 82-135
- Not previously issued as a draft*
- ITAA 1997 82-135(e)
  - ITAA 1997 83-170
- Related Rulings/Determinations:*
- ITAA 1997 83-180
  - TR 2006/10
    - ITAA 1997 83-180(1)
    - ITAA 1997 83-180(2)
    - ITAA 1997 83-180(3)
- Subject references:*
- early retirement
    - ITAA 1997 83-180(3)(a)
    - ITAA 1997 83-180(3)(b)
    - ITAA 1997 83-180(3)(c)
  - employment termination
    - ITAA 1997 83-180(5)
  - eligible termination payment
    - ITAA 1997 83-180(6)
  - redundancy or early retirement scheme payment
    - ITAA 1997 995-1(1)
    - TAA 1953
- Legislative references:*
- ITAA 1997
  - ITAA 1997 82-10(3)
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### ATO references

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