CR 2014/17 - Income tax: Queensland University of Technology - Early Retirement Scheme 2014

Class Ruling

Income tax: Queensland University of Technology - Early Retirement Scheme 2014

Contents Para

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.

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 employees to whom this scheme applies is all Academic staff of the Queensland University of Technology, shown at paragraph 17, who receive a payment under the scheme described in paragraphs 8 to 35 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 35 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- this Ruling may be withdrawn or modified.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

7. The Ruling applies from 12 February 2014 to 12 February 2015. The Ruling continues to apply after 12 February 2014 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

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

9. The Queensland University of Technology (QUT) is seeking the Commissioner's approval to implement an early retirement scheme (ERS) in accordance with section 83-180.

10. The scheme will be titled 'QUT Early Retirement Scheme 2014', referred to as the Scheme.

11. QUT's strategic planning document, Blueprint 3 2011-2016, articulates the University's key priorities, which include:

- to measurably strengthen teaching quality and learning outcomes;
- build a reputation for selectively intensive research; and
- develop and regenerate a sustainable and high quality workforce profile.

12. These strategic priorities are being pursued in an environment where major trends are reshaping the higher education sector. The combination of technological advances and stakeholder expectations will see a transformation of how curricula are designed and delivered. Shifts in student expectations and technology will require greater experimentation in facilitated learning outcomes and optimising student engagement.

13. The technological rise of big data and the opportunities to better use analytics provide new opportunities for research. At a time of increasing competition for research funds QUT will need to strengthen collaboration and engagement with other Universities, international research groups, industry, business, government and the community. There will be an increasing need to demonstrate commercial acumen, to take advantage of opportunities and to focus on productive partnerships with stakeholders.

14. The growth of Asian universities and the increasing global competition for students, staff and funding places increasing pressure on the university.

15. The changing environment requires different or enhanced academic capabilities and the University has identified a need to regenerate its academic staff profile. The Early Retirement Scheme would assist in renewing the academic and capability profile by providing a reward and incentive for some academic staff members to retire and allowing QUT to replace them with staff with the required future capabilities which are aligned with the University's priorities.

16. QUT has in place strategies to build capacity through its recruitment to the Early Career Academic Recruitment and Development program and its research-capacity building professors scheme. Internal academic capability will continue to be supported through a program of training and development.

17. The class of employees to whom the Scheme applies is all Queensland University of Technology Academic staff who are aged 55 or over as at 4 July 2014 and meet the following criteria:

- employed on an ongoing basis (full-time or part-time); and
- an academic staff member is defined as a staff member appointed at an academic levels A to E and International College Educators under the QUT Enterprise Agreement (Academic Staff) 2010 – 2012.

18. The payment to be made to eligible employees under the Scheme will be two weeks for each completed year of service, to a maximum of 52 weeks.

19. In addition, all staff terminating employment under the Scheme will receive their recreation leave, recreation leave loading and long service leave entitlements. Pro-rata long service leave will be payable for those staff who are yet to reach the 10 year entitlement period. These do not form part of the payment made under the Scheme.

20. There is no minimum or maximum number of packages available.

21. The Vice-Chancellor, in his capacity as the Chief Executive Officer of the University will only have a limited right of veto if key staff accept the offer to retire. Key staffs are those who are critical to QUT's effective and efficient operation. In relation to academic staff A to E, it may include a Professor whose contribution to a research project, where significant investment has been made, is critical to the success and outcomes of the project. QUT has identified four key staff who are excluded from the Scheme.

22. The QUT Enterprise Agreement (Academic staff) 2010-12 applies to all eligible staff at QUT and prevails over all other awards.

23. Following approval of the Scheme, all eligible employees within the class will be invited to apply and will have four weeks to submit applications of interest in the scheme.

24. At the conclusion of this period, eligible staff who have chosen to participate in the scheme will be formally notified of the outcome within an additional four weeks.

25. All employees who accept the offer to retire under the Scheme will terminate employment on or before 4 July 2014, unless otherwise agreed by the University.

26. It is proposed the scheme will be implemented from *the date after the Commissioner's approval* to *twelve months after the date of effect*.

27. No payments will be made under the Scheme after 12 months from the date of the Commissioner's approval.

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

29. Any employee who terminates employment other than under the proposed Scheme, will not be entitled to receive the payment.

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

31. For payments made to eligible employees who have reached age 65 or over the payment will not be an early retirement scheme payment and will not be eligible for the tax free base limits under the Scheme. These payments will be concessional taxed as employment termination payments up to the employment termination payment cap (ETP cap).

32. Employment termination payments cannot be rolled over into a superannuation fund.

33. Payments made under the scheme will be at arm's length.

34. There is no agreement in place between the employee and QUT, or between QUT and another person to employ any employee after retirement under the scheme.

35. Staff who are within the class applied for and who choose not to participate in the scheme, will not be disadvantaged nor will their employment be terminated for reasons outside the normal operating requirements.

Ruling

36. The early retirement scheme to be implemented by the Queensland University of Technology (QUT) is an early retirement scheme for the purposes of section 83-180.

37. 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.

38. 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

12 February 2014

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.

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

40. 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 now considered.

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

41. 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).

42. The class of employees to whom early retirement will be offered is set out in paragraph 17 of this Ruling.

43. 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 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

44. 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).

45. Paragraphs 11 to 16 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 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

46. The Scheme is proposed to operate for a period commencing from *the date after the Commissioner's approval* to *twelve months after the date of effect*. 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.

47. The Scheme will be in operation for approximately 12 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

48. Under subsection 83-180(1) so much of the payment received by an employee because the employee retires under an approved 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.

49. 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)).

50. 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'.

51. 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.

52. For the 2013-14 income year, the proposed tax free amount is limited to $9,246 (base amount) plus $4,624 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. It should be noted that 6 months, 8 months or even 11 months do not count as a whole year for the purposes of this calculation.

53. The total of the amount received on termination of employment calculated in accordance with paragraph 18 of this ruling may qualify as an early retirement scheme payment.

54. The total payment calculated in accordance with paragraph 53 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 52 of this ruling to determine the 'tax-free' amount of the early retirement scheme payment.

55. The 'tax-free' amount will:

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

56. 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 includes the pre-July 83 segment of the payment. The tax free component is not assessable income and is not exempt income.

Appendix 2 – Detailed contents list

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

References

Previous draft:
Not previously issued as a draft

Related Rulings/Determinations:
TR 2006/10

Subject references:
- approved early retirement scheme payments
- early retirement
- employment termination

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
- Copyright Act 1968

ATO references

NO:	1-53SHUPJ
ISSN:	1445-2014
ATOlaw topic:	Income Tax ~~ Assessable income ~~ employment termination payments - early retirement scheme