

CR 2015/39 - Income tax: The University of Queensland Academic Early Retirement Scheme 2015



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Class Ruling

Income tax: The University of Queensland Academic Early Retirement Scheme 2015

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	7
Scheme	8
Ruling	37
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	40
Appendix 2:	
Detailed contents list	59

ⓘ 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.

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 those employees of the University of Queensland who receive a payment under the scheme described in paragraph 14 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 36 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 11 June 2015 to 29 July 2016. The Ruling continues to apply after 29 July 2016 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 University of Queensland (the University) is seeking the Commissioner's approval to implement an early retirement scheme in accordance with section 83-180.
9. The scheme will be titled '*The University of Queensland Academic Early Retirement Scheme 2015*', hereafter referred to as the 'Scheme'.
10. The University acknowledges that a large scale change is occurring in the higher education sector through the transformation of global higher education. As outlined in the *University of Queensland Strategic Plan 2014 to 2017*, the University is focused on the three pillars of learning, discovery, and engagement to support the achievement of its strategic goals in this rapidly changing environment.

11. The University is focused on supporting innovative teaching practices; developing and promoting active learning pedagogies; and developing innovative online offerings and technologically enriched education approaches. It is striving to deploy new approaches and technologies to ensure it has the capacity to continue contributing to global innovation and become a leader in online learning.

12. The University aims to further improve its performance by attracting outstanding Research Higher Degree (RHD) students and high quality early career researchers to foster the next generation of research leaders. It aims to improve the quality, productivity and profile of its researchers across all its disciplines.

13. The purpose of the Scheme is to regenerate the University's academic work force by aligning its academic work force to the University's strategic goals, and to ensure academics who may be considering retirement, or whose aspirations no longer align with those of the University, are able to consider early retirement.

14. The class of employees to whom the Scheme applies are Academic staff Level A, Level B, Level C, Level D, and Level E who are employed on a continuing appointment with a length of service of five continuous years or greater.

15. **'Academic staff'** means all persons employed by the University other than:

- (a) Professional staff, or
- (b) Language Teachers in the Institute of Continuing and TESOL Education (ICTE).

16. **'Professional staff'** means all persons employed by the University other than:

- (a) Academic staff, or
- (b) Language Teachers in ICTE.

17. Exclusions from the class of employees to whom the Scheme applies are as follows:

- any continuing Academic staff member who is:
 - the Chief Investigator of a current successful Australian Competitive Research grant and who has generated sixteen or more research outputs submitted for assessment in the 2015 *Excellence in Research Australia* assessment process, or
 - identified for teaching excellence (through the receipt of a competitive external award within the past three years).

- members of the Vice-Chancellor's Committee, incorporating positions of:
 - Vice-Chancellor
 - Provost
 - Deputy Vice-Chancellor (Academic)
 - Deputy Vice-Chancellor (Research)
 - Deputy Vice-Chancellor (International), and
 - Chief Operating Officer.
- members of the University Senior Management Group, incorporating positions of:
 - all Pro Vice-Chancellors
 - President of the Academic Board
 - Dean of the Graduate School
 - all Faculty Executive Deans, and
- Institute Directors from the following Institutes:
 - Institute for Molecular Bioscience
 - Queensland Brain Institute
 - Australian Institute for Bioengineering and Nanotechnology; and
 - Sustainable Minerals Institute.

18. The exclusions are vital to the University delivering high level research outcomes, improving its student experience, and maintaining its status as a top 100 University worldwide. The University would be substantially impacted if the excluded employees departed the University under the Scheme.

19. Eligible employees who retire under the Scheme will be paid:

- two weeks' salary for each '*completed year of service*', with a minimum entitlement of 26 weeks' of salary, to a maximum entitlement of 60 weeks' salary, and
- pro rata long service leave if they are yet to reach the 10 year entitlement period.

20. A '*completed year of service*' calculation will be based on continuous service in a continuing or fixed-term capacity only. Casual service will be excluded from '*completed year of service*' calculations.

21. All employees terminating their employment under the Scheme will receive their recreational leave and long service leave entitlements. These amounts will not form part of the payment made under the Scheme.

22. The maximum number of packages available for retiring employees under the Scheme is limited.
23. There is no minimum number of packages to implement the Scheme.
24. If the number of employees wishing to participate in the Scheme exceeds the number of packages available, applications will be approved on the basis of the order (time and date) of submission.
25. If the number of employees wishing to participate in the Scheme is less than the maximum number of packages available, the University has the discretion to implement a second expression of interest process during the life of the ruling.
26. The Scheme will be implemented within 10 calendar days after 11 June 2015.
27. Eligible employees will have one week to consider applying to retire under the Scheme.
28. After this consideration period, eligible employees will have four weeks to submit an expression of interest to retire under the Scheme. At the completion of this period, submitted applications cannot be withdrawn.
29. Applicants will be formally notified of their approval to retire under the Scheme within 28 calendar days of the conclusion of the expression of interest period.
30. Approved employees must terminate their employment by 31 December 2015 after receiving formal notification of approval to retire under the Scheme, unless otherwise negotiated.
31. All approved employees without exception must terminate their employment prior to the expiration of the Scheme on 29 July 2016.
32. No payments will be made under the Scheme after 29 July 2016.
33. The payment made under the Scheme will be in excess of any superannuation or other benefits to which eligible employees would otherwise be entitled.
34. Any employee who terminates employment other than under the proposed Scheme will not be entitled to receive the Scheme payment.
35. The retirement of employees who receive a payment under the Scheme must occur before they turn 65 years of age.
36. There is no arrangement between the University and eligible employees, or between the University and any other person, for those employees to be employed after retirement.

Ruling

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

38. 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 their employment at the time of the retirement will be an early retirement scheme payment.

39. 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

10 June 2015

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.*

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

41. 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

42. 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).

43. The class of employees to whom early retirement will be offered is set out in paragraph 14 of this Ruling.

44. 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

45. 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).

46. Paragraphs 11 to 13 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 work force 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

47. The Scheme is proposed to operate for a period commencing from 11 June 2015 to 29 July 2016. 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.

48. The Scheme will be in operation for approximately 13 months. This is considered appropriate due to the circumstances of the re-organisation and the employees that will be given the option of early retirement under the Scheme.

Other relevant information

49. 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 their employment at the time of the retirement is an early retirement scheme payment.

50. 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)).

51. 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*'.

52. 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.

53. 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. 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.

54. For the 2015-16 income year, the tax-free amount is limited to \$9,780 (base amount) plus \$4,891 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates.

55. The total of the amount received on termination of employment calculated in accordance with paragraph 19 of this Ruling may qualify as an early retirement scheme payment.

56. The total payment calculated in accordance with paragraph 19 of this Ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraphs 53 and 54 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

57. The 'tax-free' amount will:

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

58. Any payment in excess of this limit will be an ETP 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 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. It should be noted the 'whole of income' cap does not apply to any part of the early retirement scheme payment.

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	7
Scheme	8
Ruling	37
Appendix 1 – Explanation	40
All employees within a class approved by the Commissioner may participate in the scheme	42
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	45
The scheme must be approved by the Commissioner prior to its implementation	47
Other relevant information	49
Appendix 2 – Detailed contents list	59

References

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

ATO references

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