


CR 2015/4 - Income tax: The Belmont Christian College Limited 2014-15 Early Retirement Scheme

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Class Ruling

Income tax: The Belmont Christian College Limited 2014-15 Early Retirement Scheme

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① 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 provisions 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 are Belmont Christian College Ltd (the College) employees who:

- are employed on a permanent and continuing basis for at least five years, and
- are at least 58 years, but less than 65 years at the time of retirement.

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 29 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 29 January 2015 to 30 June 2015. The Ruling continues to apply after 30 June 2015 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 College 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 'The Belmont College Early Retirement Scheme', referred to as the Scheme.
11. As a result of a decrease in enrolments and a strategic restructuring of its educational offering, the College proposes to rationalise and re-organise its operations by reducing the number of employees and the amount of staff members in executive positions.
12. The class of employees to whom the Scheme applies is all the College employees who are:
 - employed on a permanent and continuing basis for at least five years, and
 - are at least 58 years, but under 65 years at the time of retirement.

13. The payment to be made to eligible employees under the Scheme is as follows:

Job classification	Payment
Principal	50.25 weeks salary
Other executive staff	20 weeks salary
Management staff	15 weeks salary
Teaching staff	12 weeks salary
Non-teaching staff	6 weeks salary

14. In addition, all employees leaving under the Scheme will receive their statutory entitlements, such as accrued annual leave and long service leave entitlement, as at the date of termination. However these payments will not form part of the payment made under the Scheme.

15. Participation in the Scheme is entirely voluntary. Employees who chose not to participate in the Scheme will continue working with the College.

16. There is no minimum number of early retirement offers under the Scheme.

17. There is no maximum number of early retirement offers under the Scheme.

18. The College has identified two eligible employees whose departure would be very disruptive to operations and the smooth implementation of their re-organisation and rationalisation plans.

19. The two key employees are the Principal and the Deputy Principal of the College. The College will reserve the right to veto one of these key employees. Should they both choose to retire under the Scheme, they will be accepted on a first-come first served-basis.

20. Following approval of the Scheme, all eligible employees will be invited to express their interest to retire and will have until 31 March 2015 to submit their expression of interest in the Scheme.

21. After an employee has submitted an expression of interest in the Scheme, they will receive notice of acceptance within two weeks.

22. All employees who accept the offer to retire under the Scheme will be given their regular notice of termination period as per their employment agreement. This is ordinarily five weeks notice within the school term before they are terminated.

23. It is proposed the Scheme will be implemented from 29 January 2015 to 30 June 2015.

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

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

26. Payments made under the Scheme to employees who have not yet reached 65 years will be processed as an early retirement scheme payment.

27. The Scheme payment will not be made in lieu of superannuation benefits.

28. Payments made under the Scheme will be at arm's length.

29. There is no agreement in place between the eligible employees and the College, or between the College and another person to employ any employee after retirement under the Scheme.

Ruling

30. The early retirement scheme to be implemented by the Belmont Christian College Ltd is an early retirement scheme for the purposes of section 83-180.

31. Accordingly, so much of the payment received by an eligible 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.

32. 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.*

33. A scheme will be an early retirement scheme if it satisfies the requirements of subsection 83-180(3).

34. 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

35. 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).

36. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 12 of this Ruling.

37. 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 College. 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

38. 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).

39. Paragraph 11 of this Ruling describes the nature of the rationalisation or re-organisation of the College operations. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the work force of the College.

40. The Scheme will be in operation for approximately six months. This is considered appropriate due to the circumstances of the re-organisation.

41. It is considered that the Scheme is to be implemented by the College with a view to rationalising or re-organising the operations of the College 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

42. The Scheme is proposed to operate for a period commencing from 29 January 2015 to 30 June 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.

Other relevant information

43. 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.

44. 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 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)).

45. 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'.

46. 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.

47. For the 2014-15 income year, the 'tax-free' amount is limited to \$9,514 (base amount) plus \$4,758 (service amount) for each completed year of employment service to which the early retirement scheme payment relates. It should be noted that six months, eight months or even eleven months do not count as a whole year for the purposes of this calculation. In accordance with section 960-285, the base limit and service amount limits are indexed in line with average weekly ordinary time earnings for each income year.

48. The total of the amount received on termination of employment calculated in accordance with paragraph 13 of this ruling may qualify as an early retirement scheme payment.

49. The total payment calculated in accordance with paragraph 13 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 47 of this ruling to determine the 'tax-free' amount of the early retirement scheme payment.

50. The 'tax-free' amount will:

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

51. 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

52. 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 2006/10

Subject references:

- early retirement
- employment termination
- redundancy or early retirement scheme payment

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

ATO references

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