


CR 2015/83 - Income tax: The University of Technology Sydney Academic early retirement scheme

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Class Ruling

Income tax: The University of Technology Sydney Academic early 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.

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 entities to which this Ruling applies is those employees of the University of Technology Sydney, shown at paragraphs 14 and 15 of this Ruling, who receive a payment under the scheme described in paragraphs 9 to 33 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 the Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described under the heading *Scheme*.
6. If the scheme actually carried out is materially different from the scheme that is described in the Ruling, then:
 - the Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
 - the Ruling may be withdrawn or modified.

Date of effect

7. This Ruling applies from 4 November 2015 to 31 July 2016. The Ruling continues to apply after 31 July 2016 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

8. The following description of the scheme is based on information provided by the applicant.
9. The University of Technology Sydney (the University) is seeking the Commissioner's approval to implement an early retirement scheme in accordance with section 83-180.
10. The scheme will be titled '*The University of Technology Sydney Academic Early Retirement Scheme*', hereafter referred to as the Scheme.
11. The University seeks to become a world leading university of technology and to be able to compete on a global stage. To do that, the University needs to focus on a significant lift in the scale and quality of its research, implementing new approaches to learning, and building new and holistic partnership with industry and the community. This requires a shift in academic profile away from the vocational teaching model to a model which integrates the three components of an academic profile found in the world leading universities, that is, research, teaching and external engagement.

12. To achieve the required shift in academic profile, the University will employ 300-400 new academic staff in strategic focus areas over the next four years. In addition, the University will reinvest in current academic staff whose skills fit with the academic profile required to deliver on its strategy to compete with world leading universities of technology.

13. The University recognises that there are employees whose capabilities and career aspirations are no longer aligned with the University's growth trajectory, particularly in relation to research quality and output, therefore, the University seeks to implement a separation scheme to enable voluntary renewal of its work force to rationalise and re-organise its operations to better support the achievement of its objectives.

14. The class of employees to whom the Scheme applies are academic staff employed by the University who meet the following criteria:

- are employed in one of the following faculties:
 - Faculty of Engineering and Information Technology
 - Faculty of Science
 - Business School, and
- are employed as a continuing staff member
- are employed either full-time or part-time at academic levels B,C,D,E, and
- have completed five or more years of continuous service in an academic role as at 30 June 2015.

15. Exclusions to the Scheme are the University's academic staff who:

- 15.1. have generated research income and publications at or above the national average relevant to their discipline, and relative to academic level, using the Excellence in Research for Australia (ERA) data
- 15.2. have been promoted during 2013 to 2015 (inclusive) through the internal competitive University promotion (recruitment) process
- 15.3. have received a UTS Vice-Chancellor's Research Award during 2013 to 2015 (inclusive)
- 15.4. are Distinguished Professors
- 15.5. are a Research Director of a University recognised strategic research strength of the relevant faculty
- 15.6. hold the Australian Research Council (ARC) Award of Future Fellow, or Discovery Early Career Research Award (DECRA)

- 15.7. hold positions on the Faculties' Senior Management Teams. These positions are covered by the UTS Senior Staff Group Agreement, and include:
 - Dean
 - Deputy Dean
 - Associate Dean positions
 - Head of School, and
 - Discipline Group Head,
 - 15.8. hold faculty specific academic leader roles. These positions will be published in internal communications available to University staff
 - 15.9. during the application period are receiving a salary supplementation allowance under the approved UTS Business School Salary Supplementation Scheme, awarded at a rate of pay that is 20% or greater of the mid-point of the salary range for the substantive level of appointment
 - 15.10. have resigned, or accepted a pre-retirement contract prior to the date of invitation to participate in the Scheme
 - 15.11. are under investigation for allegations of misconduct, or serious misconduct
 - 15.12. have an active worker's compensation claim where there is payment made for loss of income.
16. The above excluded employees, with the exception of subparagraphs 15.10, 15.11 and 15.12 of this Ruling, contribute directly to the University's lift in rankings. They are leaders in their field and are critical to supervising and mentoring other academics and higher degree students. As such, the University cannot afford to lose them as they cannot be replaced easily.
17. The number of packages available under the Scheme is limited.
18. In the event of oversubscription to the Scheme, the date on which the application is received will be used to determine the order of acceptance. That is, the earlier application will be approved first.
19. Eligible employees who retire under the Scheme will be paid (pro-rata for part-time appointments) two weeks' pay (base salary) for each completed year of service up to a maximum of 52 weeks or \$50,000, whichever is greater.
20. The payment made under the Scheme will not include any payment in lieu of other normal termination benefits or entitlements.
21. Employees who terminate their employment under the Scheme may be eligible to receive other payments from the University, including unused annual leave and long service leave

entitlements. However, these payments will not form part of the payment made under the Scheme.

22. All approved employees under the Scheme must terminate employment prior to the expiration of the Scheme on 31 July 2016.

23. Following approval of the Scheme, all eligible employees within the class will be invited to register an expression of interest to participate in the Scheme.

24. Eligible employees will have four weeks to register an expression of interest to participate in the Scheme.

25. After the closing date to register an expression of interest, the University will have two weeks to make offers to the registered eligible employees.

26. Eligible employees will have two weeks to accept an offer under the Scheme.

27. Employees who terminate their employment under the Scheme will have two months to finalise their employment and for transitional arrangements to be put in place.

28. No payments will be made under the Scheme after 31 July 2016.

29. Participation in the Scheme is voluntary.

30. Eligible employees who choose not to participate in the Scheme will not be terminated or required to relocate as an outcome of the Scheme.

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

32. 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 the retirement.

33. The retirement of employees who receive a payment under the Scheme must occur before they turn 65 years of age.

Ruling

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

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

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36. 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

4 November 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.*

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

38. 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

39. 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).

40. The class of employees to whom early retirement will be offered is set out in paragraph 14 of this Ruling, subject to paragraph 15 of this Ruling.

41. 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 University. 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

42. 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).

43. Paragraphs 11 to 13 of this Ruling describe the nature of the rationalisation or re-organisation of the University'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.

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

45. 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 from 4 November 2015' to 31 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.

Other relevant information

47. 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.

48. 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)).

49. 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'*.

50. In accordance with section 83-170, 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.

51. 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. It should be noted that six months, eight months or even 11 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 will be indexed in line with average weekly ordinary time earnings for each income year.

52. For the 2016-17 income year, the base amount and the service amount is yet to be determined at the publication of this Ruling. Therefore, employees should check the ATO website for the 2016-17 income year indexed amounts.

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

54. The total payment calculated in accordance with paragraph 19 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 51 and 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 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.

57. The taxable component of the ETP will be taxed at various rates depending on the person's age. It should be noted that the 'whole of income' cap does not apply to any part of the early retirement scheme payment.

Appendix 2 – Detailed contents list

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

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References

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| <i>Previous draft:</i> | - ITAA 1997 83-180(1) |
| Not previously issued as a draft | - ITAA 1997 83-180(2) |
| | - ITAA 1997 83-180(3) |
| <i>Related Rulings/Determinations:</i> | - ITAA 1997 83-180(3)(a) |
| TR 2006/10 | - ITAA 1997 83-180(3)(b) |
| | - ITAA 1997 83-180(3)(c) |
| <i>Legislative references:</i> | - ITAA 1997 83-180(5) |
| - ITAA 1997 | - ITAA 1997 83-180(6) |
| - ITAA 1997 82-135 | - ITAA 1997 960-285 |
| - ITAA 1997 82-135(e) | - ITAA 1997 995-1(1) |
| - ITAA 1997 83-170 | - TAA 1953 |
| - ITAA 1997 83-180 | |

ATO references

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