


CR 2016/5 - Income tax: the Victoria University Academic early retirement scheme

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Class Ruling

Income tax: the Victoria University 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 early retirement 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 whom this Ruling applies is those employees of the Victoria University (the University), shown at paragraph 14 of this Ruling, subject to paragraph 15 of this Ruling, who receive a payment under the scheme described in paragraphs 9 to 26 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 under the heading *Scheme*.
6. If the scheme actually carried out is materially different from the scheme that is described in the 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
 - the Ruling may be withdrawn or modified.

Date of effect

7. This Ruling applies from 20 January 2016 to 31 December 2016. The Ruling continues to apply after 31 December 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 University is seeking the Commissioner's approval to implement an early retirement scheme (ERS) in accordance with section 83-180.
9. The scheme will be titled '*Victoria University Voluntary Early Retirement Scheme*' (VUVERS), hereafter referred to as the Scheme.
10. The University aspires to be a leading new generation university that is internationally recognised for its innovative curriculum, engaged research, and high impact and robust student support initiatives.
11. To achieve its strategic plan, the University has identified the need to rejuvenate its academic staff profile to better reflect its strategic aspirations. This includes the attraction of early career academics with the capability and passion for an enhanced student experience through the provision of blended learning initiatives.

12. The University needs a fit-for-purpose academic work force to address its specialist research focus areas which are closely aligned to its industry engagement priorities. This new generation of early career academic staff will need expertise in science, technology, engineering and mathematics (STEM) and entrepreneurial capabilities to foster the next wave of academic leaders in learning and teaching, research and engagement.

13. Through implementing the Scheme, the University seeks to offer financial support to the eligible employees who take the opportunity to voluntarily retire from the University.

14. The class of employees to whom the Scheme applies is all academic staff who are:

- classified Level A through to Level E
- are 55 years or older as at 1 March 2016, and
- have been employed by the University continuously for a period of at least five years as at 1 March 2016.

15. The following employees are specifically excluded from participating in the Scheme:

- staff who are currently highly research-active which includes those staff who are contributing to most recent Excellence in Research in Australia (ERA) Band 4/5
- staff who have received national teaching citation, teaching excellence or program award since 1 January 2012
- staff who are employed by the University on a fixed-term basis, and
- staff employed within the University's Institutes and Centres.

16. Eligible employees will receive the following payment under the Scheme:

- two week's pay per completed year of service, up to a maximum of 52 weeks, and
- a further 26 weeks ex-gratia payment.

17. The maximum number of packages available under the Scheme is 39.

18. There is no minimum number of packages required to implement the Scheme.

19. The Scheme will operate as follows:

- The applications to retire under the Scheme will be open from 1 March 2016 until 1 May 2016.
- The applications will be sent to the Dean of the applicable College and to People and Culture.

- The Dean will ensure the applicant is an eligible employee as specified in paragraph 14 of this Ruling and is not excluded under paragraph 15 of this Ruling.
- If an applicant is eligible, the Dean will forward the application to the VUVERS review panel.
- If the number of applications received does not exceed the maximum number of packages available, an offer to retire under the Scheme will be made to all applicants.
- Should the number of applications exceed the maximum number of packages available, the VUVERS Review Panel will make offers to those employees with the greater length of service first.
- The VUVERS Review Panel will include the Provost, Pro-Vice Chancellor Research and Research Training, Executive Director Learning and Teaching, two Deans, Chief Operating Officer and a representative of People and Culture.

20. Participation in the Scheme is voluntary and employees retain the right to withdraw their application until the closing date of 1 May 2016.

21. Applicants will be advised of their application outcome within two weeks of the closing date. All successful applicants must have their employment terminated and payments made before 31 December 2016.

22. Employees who are terminated under the Scheme will receive their accrued unused annual and long service leave entitlements. Staff that are yet to meet seven years' service will receive a pro-rata amount of their long service leave. However, these payments will not form part of the Scheme payment.

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

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

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

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

Ruling

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

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

29. 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

20 January 2016

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.*

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

31. 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

32. 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).

33. 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.

34. 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

35. 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).

36. The nature of the rationalisation or re-organisation of the employer's operations is described above under the heading *Scheme*. 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 therefore considered 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).

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

37. The Scheme is proposed to operate for a period from 21 January 2016 to 31 December 2016. The approval to be provided by this class ruling will have been granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

38. The Scheme will be in operation for approximately one year. This is considered appropriate due to the circumstances of the re-organisation.

Other relevant information

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

40. 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)).

41. 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'*.

42. 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.

43. 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.

44. 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.

45. The total of the amount received on the termination of employment calculated in accordance with paragraph 16 of this Ruling may qualify as an early retirement scheme payment.

46. The total payment calculated in accordance with paragraph 16 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 43 and paragraph 44 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

47. The 'tax-free' amount will:

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

48. Any payment in excess of this limit will be an ETP. 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.

49. 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

50. 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) |
| | - ITAA 1997 83-180(5) |
| <i>Legislative references:</i> | - ITAA 1997 83-180(6) |
| - ITAA 1997 | - ITAA 1997 960-285 |
| - ITAA 1997 82-135 | - ITAA 1997 995-1(1) |
| - ITAA 1997 82-135(e) | - TAA 1953 |
| - ITAA 1997 83-170 | |
| - ITAA 1997 83-180 | |
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ATO references

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