

CR 2018/46 - Income tax: Macquarie University Academic Staff Early Retirement Scheme 2018-2019



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Class Ruling

Income tax: Macquarie University Academic Staff Early Retirement Scheme 2018-2019

Contents	Para
LEGALLY BINDING SECTION:	
Summary – what this Ruling is about	1
Date of effect	6
Scheme	7
Ruling	28
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	31
Appendix 2:	
Detailed contents list	51

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.

Summary – 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 provisions

2. The relevant provisions dealt with in this Ruling are:
- section 83-170 of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - 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 scheme applies is those employees of Macquarie University (the University) shown at paragraph 15 (subject to paragraph 16) of this Ruling who receive a payment under the scheme described under the heading Scheme.

Qualifications

4. 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.
5. If the scheme actually carried out is materially different from the scheme that is described in this 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

6. The Ruling applies from 14 November 2018 to 1 November 2019. The Ruling continues to apply after 1 November 2019 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 *Public Rulings*).

Scheme

7. The University is seeking the Commissioner's approval to implement an early retirement scheme in accordance with section 83-180.
8. The scheme will be titled **Macquarie University Academic Staff Early Retirement Scheme 2018-2019**, hereafter referred to as 'the Scheme'.
9. The University operates in a dynamic environment which requires ongoing review of strategic priorities and operating models.
10. In August 2013, the University launched its strategic plan, '*Our University: A Framing of Futures*' (the Strategy). The strategic priorities outlined in the Strategy include fostering a culture of transformative learning in a research enriched environment, engagement and collaboration with industry and aligning the nature and size of the University for the future.
11. In support of the Strategy, the University has introduced the '*Strategic Research Framework 2015-2024*' and a Learning and Teaching Framework, which directly align with the University's research and teaching priorities. The University has also recently commenced a comprehensive review of its curriculum, with a new

curriculum suite to be launched in 2020. A major goal of this project is to ensure that the University's program offering is aligned with the interests and needs of students, which have changed over time and will continue to evolve in the future.

12. More broadly, the Higher Education sector is experiencing major change. For example, in December 2017, the Government announced significant changes to the funding model for the sector. This change, in turn, has caused other changes in the sector (for example, university entry and student enrolment patterns) which have impacted the University.

13. These changes have also made it increasingly important for the University to respond and adapt to student needs, both present and future. This means aligning the size and composition of its work force so that it is appropriately equipped to serve its students, including the alignment of human resources with student load, as well as areas of research focus.

14. In this context, the intent of the Scheme is to enable a voluntary renewal and re-organisation of the University's academic work force. The Scheme will enable staff whose personal career aspirations and capabilities no longer align with the University's strategic priorities and performance expectations, and who meet the eligibility criteria, to leave the University voluntarily, with appropriate financial support.

15. The class of employees to whom the Scheme applies is all academic staff who meet the following criteria:

- are appointed by the University on a continuing basis at Level B,C,D or E under the *Macquarie University Academic Staff Enterprise Agreement 2014*
- have at least three years of continuous service with the University
- are aged 50 years and over at the commencement of the Scheme
- have not formally advised of their resignation or retirement, or accepted a pre-retirement contract
- do not have any formal arrangement with the University that will result in the termination of their employment on a specified date
- are not otherwise excluded from the Scheme (see paragraph 16 of this Ruling).

16. The following staff are considered to be key employees and are excluded from the Scheme based on data as at the 'date of announcement' of the Scheme:

- members of the University Executive or staff members who are appointed to a senior leadership position, including an Executive Dean, Associate Dean, Head of

Department, Dean of a School, Pro Vice-Chancellor, Deputy Vice-Chancellor or Vice Chancellor

- staff members in the Faculty of Medicine and Health Sciences
- staff members in the Department of Chiropractic
- any staff members who have been promoted in the two years prior to the commencement of this Scheme
- any staff members who has been awarded the title of Macquarie University Distinguished Professor
- any staff member who is research productive as assessed against the University and/or relevant Faculty criteria
- staff members who hold any type of external research grant (including ARC, NHMRC, Future Fellow, DECRA)
- staff members who have been formally recognised for teaching excellence in the last three years through
 - the receipt of a national citation, competitive external teaching award or grant bestowed through the Australian Government's Office for Learning and Teaching (or its predecessor body, or
 - a Vice-Chancellor's Award for Excellence in Teaching or a University Learning and Teaching Grant
- any staff member with an active workers' compensation claim where there is payment for loss of income
- any staff member subject to processes related to allegation of misconduct or serious misconduct.

17. The Scheme will be open to eligible staff members from the day after the date of the Commissioner's approval, and will be implemented as follows:

- The University will invite staff members of relevant faculties or departments to submit an expression of interest (EOI) in the Scheme.
- Eligible staff members will have four weeks from the date of invitation to submit an EOI.
- All EOIs will be reviewed by a Faculty panel (the Panel), consisting of at least three members and including the relevant Faculty Executive Dean and the Director of Human Resources.

- The Panel will notify all eligible staff members of the outcome of their EOI within two weeks of the relevant closing date of the EOI.
- Eligible staff members will have two weeks to accept the offer.

18. The University may offer the Scheme to each Faculty on a phased basis if necessary.

19. All eligible staff members will be able to express an interest in the Scheme at some point during the duration of the Scheme.

20. The maximum number of early retirement offers under the Scheme will be 100.

21. If the number of eligible staff members who wish to retire under the Scheme is greater than the number of packages available, a Faculty level Committee, consisting of at least three members, including the Faculty Executive Dean and Director of Human Resources, will make a decision about which EOI should be accepted based on each individual's contribution to the University's strategic framework. Individuals who are considered to have made a lower contribution would be prioritised.

22. All eligible staff members under the Scheme will receive a payment as follows:

- two weeks' base salary for each completed year of continuous service, and
- with a minimum payment of 26 weeks base salary or \$50,000, whichever is greater, and
- up to a maximum of 52 weeks base salary.

23. The payment made under the Scheme is in excess of any superannuation and any other benefits to which eligible staff members would otherwise be entitled in consequence of the voluntary termination of their employment at the time of the retirement.

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

25. The retirement of eligible staff members who receive a payment under the Scheme will occur before they turn 65 years of age.

26. There is no agreement in place between an eligible staff member and the University, or between the University and another person to employ the eligible staff member after retirement under the Scheme.

27. Participation in the Scheme will be entirely voluntary.

Ruling

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

29. Accordingly, so much of the payment received by an eligible staff member that exceeds the amount that could reasonably be expected to be received by the staff member in consequence of voluntary termination of their employment at the time of the retirement will be an early retirement scheme payment.

30. 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

14 November 2018

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.*

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

32. 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

33. 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).

34. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 15 (subject to paragraph 16) of this Ruling.

35. 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 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

36. 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).

37. Paragraphs 9 to 14 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).

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

38. The Scheme is proposed to operate for a period from 14 November 2018 to 1 November 2019. 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.

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

Other relevant information

40. 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.

41. 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)).

42. 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'*.

43. 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.

44. For the 2018-19 income year, the tax-free amount is limited to \$10,399 (base amount) plus \$5,200 (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 eleven months do not count as a whole year for the purposes of this calculation.

45. For the 2019-20 income year, the base amounts and the service amounts are yet to be determined at the publication of this Ruling. Therefore, staff members should check the Australian Taxation Office website for these indexed amounts at the relevant time.

46. The total of the amount received on the termination of employment calculated in accordance with paragraph 22 of this Ruling may qualify as an early retirement scheme payment.

47. The total payment calculated in accordance with paragraph 22 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraphs 44 and 45 of this Ruling to determine the tax-free amount of the early retirement scheme payment.

48. The tax-free amount will:

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

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

50. 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

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

	Paragraph
Summary – what this Ruling is about	1
Relevant provisions	2
Class of entities	3
Qualifications	4
Date of effect	6
Scheme	7
Ruling	28
Appendix 1 – Explanation	31
All employees within a class approved by the Commissioner may participate in the scheme	33
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	36
The scheme must be approved by the Commissioner prior to its implementation	38
Other relevant information	40
Appendix 2 – Detailed contents list	51

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- | | |
|-----------------------|--------------------------|
| - ITAA 1997 | - ITAA 1997 83-180 |
| - ITAA 1997 82-135 | - ITAA 1997 83-180(1) |
| - ITAA 1997 82-135(e) | - ITAA 1997 83-180(2) |
| - ITAA 1997 83-170 | - 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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