

CR 2018/56 - Income tax: Charles Darwin University Professional Staff Voluntary Early Retirement Scheme 2018

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Class Ruling

Income tax: Charles Darwin University Professional Staff Voluntary Early Retirement Scheme 2018

Contents	Para
LEGALLY BINDING SECTION:	
Summary - what this Ruling is about	1
Date of effect	6
Scheme	7
Ruling	33
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	36
Appendix 2:	
Detailed contents list	56

❶ This publication provides you with the following level of protection:

This publication (excluding appendices) 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 subsequent legislative references in this Ruling are to provisions of the ITAA 1997 unless specified otherwise.

Class of entities

3. The class of entities to whom this scheme applies is those employees of Charles Darwin University shown at paragraph 12 of this Ruling, and subject to those at paragraph 15 of this Ruling, who

CR 2018/56

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:
 - 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

6. The Ruling applies from 12 December 2018 to 31 December 2019. The Ruling continues to apply after 31 December 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. Charles Darwin University (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 the '**Charles Darwin University Professional Staff Voluntary Early Retirement Scheme 2018**', hereafter referred to as the 'Scheme'.
9. The University recognises that there are large scale changes occurring in higher education in Australia and globally. Significant increases in competition for students and research funding, the importance of research driven international rankings, and the impact of new technology have led the University to give consideration to the composition and nature of the staffing profile needed for the future.
10. The University intends to reorganise the provision of professional services and administrative support by reducing and re-aligning the professional staff cohort with its academic workforce, to enable proactive response to the challenges and opportunities of the changing external environment.

11. The purpose of the Scheme is to operate as a more effective and efficient organisation, as well as a refreshment of some of the workforce, by providing professional staff who may be considering retirement, or whose aspirations no longer align with those of the University, a financial incentive to retire early.

12. The class of employees to whom the Scheme applies is individual members of the general/professional staff employed by the University in Australia who, as at the date that the Scheme comes into effect (the commencement date), meet the following criteria:

- are permanent staff members employed in a continuing position
- have not formally advised of their resignation
- do not have a formal arrangement in place that will result in termination of their employment on a specified date, and
- are 55 years of age or older but less than 65 years of age.

13. For the purposes of the Scheme, a member of the University's general staff means a person so defined under the '*The Charles Darwin University and Union Enterprise Agreement 2013*'.

14. The term professional/general staff is used to describe staff that are not academic staff. For the purposes of the Enterprise Agreement, clause 3.16 defines the term as follows:

HEW means Higher Education Worker, also known as General Staff, who are employees not employed as academic staff, and who are engaged by the University in professional, managerial, administrative including research assistance, cleaning, maintenance and other non-teaching and non-research roles.

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

- general/professional staff members of the Senior Executive Team and Executive Directors
- staff with an active workers' compensation claim where there is payment for loss of income
- fixed-term or casual staff
- essential professional and technical staff such as front-line student support staff (that is, face to face contact with students) and key staff who are responsible for the integrity and viability of the University's corporate systems
- managers and employees supporting essential teaching and/or research infrastructure

CR 2018/56

- professional staff with niche/non-transferable skills and whose departure is likely to jeopardise the University's ability to continue the required field in their specialised area, and
- any staff member under investigation for allegations of misconduct or serious misconduct.

16. Eligible employees who retire under the Scheme will be paid a lump sum payment of two weeks' salary per each completed year of service (capped at 52 weeks).

17. A '*completed year of service*' calculation will be based on continuous service in a continuing capacity only. Any unpaid time will not count as service but will not break service.

18. All payments will be calculated with reference to the staff member's superannuable salary and any superannuable allowances applicable to their continuing role as at the date of termination of employment.

19. In addition, all eligible employees terminated under the Scheme will receive their statutory entitlements such as annual leave and long service leave where applicable. However, these amounts will not form part of the payment made under the Scheme.

20. The number of packages is limited. The number of eligible employees approved will also not exceed 30% of the general/professional employees of any department.

21. Following the approval of the Scheme, all eligible employees will be formally invited to participate in the Scheme. Eligible employees will be given six weeks to submit their expression of interest in the Scheme.

22. Within four weeks after the conclusion of the expression of interest period, offers will be made by the University on the basis of the Scheme's criteria.

23. Eligible employees will have two weeks to accept the offer. Once an offer is accepted, voluntary withdrawal from the Scheme will not be permitted.

24. If the number of employees initially willing to participate in the Scheme is less than the number expected by the University, the University may implement a second expression of interest process during the duration of the Scheme.

25. Most employees who accept an offer to retire under the Scheme will terminate their employment and receive their payment within ten weeks of accepting an offer, but no later than 31 December 2019. The termination date will be subject to operational requirements but will be no later than the duration of the approved Scheme.

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

27. Employees who terminate their employment other than under the proposed Scheme, will not be entitled to receive the Scheme payment.

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

29. Employees who will be 65 or older at date of retirement will not be eligible for the Scheme but will have the same entitlements provided under a separate arrangement. These employees will not be eligible for any tax concessions applying to employees under the Scheme.

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

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

32. Participation in the Scheme is entirely voluntary.

Ruling

33. The '*Charles Darwin University Professional Staff Voluntary Early Retirement Scheme 2018*' is an early retirement scheme for the purposes of section 83-180.

34. 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.

35. 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

12 December 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.*

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

37. 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

38. 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).

39. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 12 of this Ruling, and subject to those in paragraph 15, of this Ruling.

40. 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

41. 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).

42. Paragraphs 9 to 11 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

43. The Scheme is proposed to operate for a period from 12 December 2018 to 31 December 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.

44. 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

45. 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.

46. 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

CR 2018/56

- 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)).

47. 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'*.

48. 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.

49. 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.

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

51. 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.

52. 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 paragraphs 49 and 50 of this Ruling to determine the tax-free amount of the early retirement scheme payment.

53. The tax-free amount will:

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

54. 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.

55. 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

56. 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	33
Appendix 1 – Explanation	36
All employees within a class approved by the Commissioner may participate in the scheme	38
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	41
The scheme must be approved by the Commissioner prior to its implementation	43
Other relevant information	45
Appendix 2 – Detailed contents list	56

CR 2018/56

References

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

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