


# ***CR 2020/46 - The University of Wollongong - early retirement scheme 2020***

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## Class Ruling

# The University of Wollongong – early retirement scheme 2020

### **📌 Relying on this Ruling**

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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### **What this Ruling is about**

1. This Ruling sets out the tax consequences of an early retirement scheme implemented by the University of Wollongong (the University).
2. Full details of this scheme are set out in paragraphs 9 to 27 of this Ruling.
3. All legislative references are to provisions of the *Income Tax Assessment Act 1997* unless otherwise indicated.

### **Who this Ruling applies to**

4. This Ruling applies to employees of the University who receive a payment under this scheme.

### **When this Ruling applies**

5. This Ruling applies from 2 September 2020 to 1 December 2020.

## Ruling

6. The University of Wollongong early retirement scheme 2020 (hereafter referred to as 'the Scheme') is an early retirement scheme for the purposes of section 83-180.

7. 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.

8. In addition, so much of the Scheme payment as falls within the threshold calculated in accordance with section 83-170 is not assessable income and is not exempt income.

## Scheme

9. The following description of the Scheme is based on information provided by the applicant. If the Scheme is not carried out as described, this Ruling cannot be relied upon.

10. The University is in a need of transformation given the changing higher-education landscape in Australia. The COVID-19 epidemic has exacerbated and accelerated these changes, which has had a significant and immediate financial impact.

11. The University has two main overlapping purposes for wanting to implement the Scheme. Namely, the University is facing a significant deterioration in its financial situation, as well as attempting to transition its operations in a rapidly-changing higher education sector.

12. The University is considering the composition and nature of its staffing profile to better align that profile with the University's future business needs. A critical aspect of this is to realign the University's staffing profile with its 2020 – 2025 Strategic Plan.

13. The University is undertaking various measures in response to its significantly adverse financial situation, including looking to reduce and rationalise the size of its workforce.

14. The class of employees to whom the Scheme applies is all persons who meet all of the following criteria:

- are continuing academic staff or professional service staff employed in classifications set out in the University of Wollongong (Academic Staff) Enterprise Agreement 2019 (Academic Agreement) or the University of Wollongong (Professional Services Employees) Enterprise Agreement 2019 (Professional Staff Agreement)
- are 55 years old or older as at 1 December 2020, and
- as at 2 September 2020, have not formally advised the University of their resignation or retirement, have not accepted a pre-retirement contract, and do not have a formal agreement in place that will result in termination of their employment on a specified date.

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

- employees who hold or receive external research grants, and the grant is not transferable within the University
- employees who hold a chair or other honorary or elected position to a strategic committee, working group or legislated body

- employees on fixed-term or maximum-term contracts
- casual employees
- employees with an active workers' compensation claim where there is a payment for loss of income
- employees who are subject to a misconduct, serious misconduct or research misconduct process under clause 42 of the Academic Agreement or clause 35 of the Professional Staff Agreement.

16. Eligible employees who retire under the Scheme will receive payment of 26 weeks ordinary salary, plus two weeks of ordinary salary for every year of completed service to a maximum of 26 weeks. As such, the maximum payment is 52 weeks of total pay.

17. The payment is calculated with reference to the Scheme participant's ordinary rate of pay, as defined in the Academic Agreement or the Professional Staff Agreement.

18. Part-time staff will receive a pro-rated payment based on their employment fraction as at the date of termination of employment.

19. All eligible employees who terminate employment 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 Scheme will operate as follows:

- Eligible employees will be invited to submit an expression of interest to participate in the Scheme.
- Eligible employees who submit an expression of interest will be notified of the outcome.
- All eligible employees who retire under the Scheme will terminate their employment and receive payment no later than 1 December 2020.

21. The number of early retirement packages will be limited. If the Scheme is oversubscribed, applications will be processed based on years of service. The longest-serving employees will receive priority.

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

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

24. The retirement of employees who receive a payment under the Scheme will occur before they reach pension age.

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

26. 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 the retirement under the Scheme.

27. Participation in the Scheme is entirely voluntary.

**Appendix – Explanation**

**ⓘ** *This Explanation 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.*

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**Requirements for an early retirement scheme**

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

29. 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 requirements are considered in paragraphs 30 to 37 of this Ruling.

***All employees within a class approved by the Commissioner may participate in the scheme***

30. In order to satisfy the first requirement of subsection 83-180(3), the scheme must be offered to all employees in a class approved by the Commissioner.

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

32. 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 reorganisation 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***

33. The proposed scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer, as required by paragraph 83-180(3)(b).

34. Paragraphs 10 to 13 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 University. It is considered that the Scheme is to be implemented by the University with a view to rationalising or reorganising the operations of the University for the purposes of paragraph 83-180(3)(b).

35. Accordingly, the second requirement of subsection 83-180(3) has been met.

***The Scheme must be approved by the Commissioner prior to its implementation***

36. The Scheme is proposed to operate for a period from 2 September 2020 to 1 December 2020. As the approval provided by this Ruling was granted prior to implementation, the third requirement of subsection 83-180(3) is satisfied.

37. The Scheme will be in operation for a period considered appropriate due to the circumstances of the reorganisation.

***Other relevant information***

38. 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.

39. 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), (5) and (6)):

- the retirement occurred before the employee reached pension age 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)).

40. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.

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 2020-21 income year, the tax-free amount is limited to \$10,989 (base amount) plus \$5,496 (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.

44. 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.

45. 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 of this Ruling to determine the tax-free amount of the early retirement scheme payment.

46. The tax-free amount will not be:

- an employment termination payment (ETP), and
- able to be rolled-over into a superannuation fund.

47. 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.

48. 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.

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**References**

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*Previous draft:*

Not previously issued as a draft

- 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
- Social Security Act 1991 23(1)

*Legislative references:*

- 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)

## ATO references

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