

CR 2020/53 - Griffith University - early retirement scheme 2020



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Class Ruling

Griffith University – early retirement scheme 2020

❶ 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 Griffith University (Griffith).
2. Full details of this scheme are set out in paragraphs 9 to 25 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 Griffith employees who receive a payment under this scheme.

When this Ruling applies

5. This Ruling applies from 1 October 2020 to 24 December 2020.

Ruling

6. The Griffith University 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. As a result of the current COVID-19 pandemic, Griffith will experience a reduction in revenue in 2020. It is anticipated the revenue decline in 2021 will be even greater, as a result of the pipeline effect of students not able to commence study in 2020, plus the anticipated loss of commencing international students in 2021 due to border closures or restricted international access.

11. The class of employees to whom this Scheme applies are staff who:

- are currently employed, in a continuing position, under the Griffith University Academic Staff Enterprise Agreement 2017 – 2021 or the Griffith University Professional and Support Staff Agreement 2017 – 2021 (Agreements)
- will turn 55 years of age or over by 18 December 2020
- will not have or have not reached their pension age at the date of terminating their employment, and
- have been employed on a continuing basis for at least five years.

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

- current holders of a National Competitive Research Grant awarded to Griffith and named as a Chief Investigator, or who have \$200,000 or more of external research funding in 2020
- staff with an active workers' compensation claim where there is a payment made for loss of income
- staff who resigned prior to the date of invitation or accepted a pre-retirement contract.

13. For the purposes of clarity, it should be noted staff currently employed on a senior staff contract, regardless of whether they have an underlying position covered by one of the Agreements, are not included in the class of employees to whom this Scheme applies. Accordingly, they cannot apply to participate in the Scheme.

14. Following publication of this Ruling, Griffith will open applications to employees. At first instance, the employees will have up to one month to apply to participate in the Scheme. If the Scheme is undersubscribed in that one-month period, Griffith may re-open the Scheme for further applications at a later date.

15. As soon as practicable after an employee applies to participate in the Scheme, but within two weeks, Griffith will confirm if an employee is eligible to participate. Employees may not withdraw their application once they have been notified their participation has been confirmed.

16. All employees who retire under the Scheme will terminate their employment no later than 18 December 2020, with final payments to be made no later than 24 December 2020.
17. Participation in the Scheme will be entirely voluntary.
18. There is no retirement age provided for in the Agreements.
19. At the time of retirement, there will be no arrangement between Griffith and terminating employees, or between Griffith and any other person, for those employees to be employed after retirement.
20. Employees who retire under the Scheme will receive a lump sum payment as follows:
- Academic staff will be entitled to six-months' salary, plus two weeks' pay per year of completed service up to a maximum entitlement of 52 weeks of salary.
 - Professional and support staff will be entitled to 12 weeks' salary, plus two weeks' pay per year of completed service up to a maximum entitlement of 64 weeks of salary.
21. The payment under the Scheme will be additional to what employees are entitled to in the event they voluntarily resign (in which case they would receive their statutory unpaid leave entitlements only).
22. The payment made under the Scheme will be in excess of any superannuation or other benefit to which eligible employees would otherwise be entitled.
23. Any employee, who terminates employment other than under the proposed Scheme, will not be entitled to receive the payment.
24. Employees who terminate employment under the Scheme will receive payment for their statutory entitlements, such as untaken recreation leave plus leave loading and long service leave. These entitlements will not form part of the payment made under the Scheme.
25. Griffith is exercising this option to offer early retirement to simultaneously reduce workforce numbers in line with the anticipated reduction in revenue, and to reshape and reinvest in a workforce to deliver its new strategic intent as per its Strategic Plan 2020 – 2025 and reviewed core mission of teaching and research.

Appendix – Explanation

1 *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

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

27. 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 28 to 35 of this Ruling.

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

28. 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

29. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 11, subject to paragraph 12, of this Ruling.

30. 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

31. 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).
32. Paragraphs 10 and 25 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 Griffith. It is considered that the Scheme is to be implemented by Griffith with a view to rationalising or re-organising the operations of Griffith for the purposes of paragraph 83-180(3)(b).
33. Accordingly, the second requirement of subsection 83-180(3) has been met.

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

34. The Scheme is proposed to operate for a period from 1 October 2020 to 24 December 2020. As the approval provided by this Ruling was granted prior to implementation, the third requirement of subsection 83-180(3) is satisfied.
35. The Scheme will be in operation for a period considered appropriate due to the circumstances of the re-organisation.

Other relevant information

36. 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.
37. 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)).

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

39. 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.

40. 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.

41. 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.

42. The total of the amount received on the termination of employment calculated in accordance with paragraph 20 of this Ruling may qualify as an early retirement scheme payment.

43. The total payment calculated in accordance with paragraph 20 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 41 of this Ruling to determine the tax-free amount of the early retirement scheme payment.

44. The tax-free amount will not be:

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

45. 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.

46. 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.

References

Previous draft:

Not previously issued as a draft

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)
- 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)

ATO references

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