


CR 2020/59 - The University of New England - early retirement scheme 2020

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Class Ruling

The University of New England – 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 New England (the University).
2. Full details of this scheme are set out in paragraphs 9 to 29 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 29 October 2020 to 30 June 2021.

Ruling

6. The University of New England 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 operating in a period of rapid change. It is facing increased competition domestically and internationally, changing government agendas and funding arrangements, advances in technology and ways of teaching, and changing expectations from students and their employers.

11. The University has identified the need to develop a porous, open workforce which operates as a 'connected team' to secure a resilient and sustainable institution. To do so it is instituting a program of managed organisational change and workforce reduction aligned to its strategic priorities.

12. The University's capacity to realise its aspirations will be determined by the drive, talent and performance of its staff. The Scheme will assist the University through the ability to renew its staff profile, with the appointment of staff who possess the required future capabilities and who are aligned to the University's priorities.

13. This includes the attraction of early career academics with the capability and passion for an enhanced student experience through the fostering of intellectual learning initiatives. The University wants to engage in research driven by the issues of importance to its communities and stakeholders and, importantly, to be focused on solutions that make a difference.

14. The University needs to refresh the capabilities of their professional staff with an uplift of specific capabilities such as digital literacy, data analytics and data science skills.

15. The University is also facing a revenue shortage and implementing the Scheme will be one of a number of activities/programs implemented to enable the recalibration of the workforce to ensure financial sustainability.

16. The class of employees to whom this Scheme applies consists of individual academic and professional staff members employed by the University who, as at 29 October 2020, meet all of the following criteria:

- are permanent staff members employed in a continuing position
- are 60 years of age or older
- have completed five or more years of continuous paid service with the University
- have not formally advised the University of their resignation or retirement
- have not accepted a pre-retirement contract

- do not have a formal agreement in place that will result in termination of their employment on a specified date
 - are not under a period of probation
 - do not have an active claim for workers' compensation where there is a payment for loss of income, and
 - are not under investigation for allegations of misconduct or serious misconduct or serious research misconduct process.
17. Academic staff are specifically excluded from participating in the Scheme if they:
- hold or receive external research grants, and the grant is not transferable within the University
 - have \$200,000 or more of external research funding for expenditure in 2020
 - hold a chair or other honorary or elected position to a strategic committee, working group or legislated body
 - have a teaching load of 60 or more equivalent full-time student load, or
 - were a recipient of a learning and teaching award from the University in 2020.
18. The Scheme will be run in two phases and the number of employees who can retire under each phase is limited.
19. Phase 1 will be available to academic staff only and will open following approval of the Scheme. Employees will have three weeks to submit an application to participate in the Scheme.
20. Under Phase 1, employees who retire under the Scheme will terminate their employment and receive payment by 16 December 2020.
21. Phase 2 will be available to both academic and professional staff. Employees will have three weeks from 3 May 2021 to submit an application to participate in the Scheme. Employees who retire under Phase 2 will terminate their employment and receive payment by 17 June 2021.
22. If either Phase 1 or Phase 2 is oversubscribed, applications will be processed based on years of service with priority given to longer-serving employees.
23. Employees who retire under the Scheme will receive a lump sum payment equal to four weeks' pay plus two weeks' pay for every completed year of continuous service (part-time service will be calculated on a pro-rata basis), capped at a maximum of 52 weeks' pay, plus a further:
- 29 weeks' pay for professional staff, or
 - 26 weeks' pay for academic staff.
24. The payment made under the Scheme is not in lieu of any superannuation benefit an employee may otherwise have been entitled to.
25. The payment made under the Scheme is additional to what an employee would be entitled to receive if they had otherwise voluntarily terminated their employment.
26. Employees who terminate employment under the Scheme will also receive their statutory entitlements, such as long service leave and annual leave, where applicable. However, these amounts will not form part of the payment made under the Scheme.
27. The University and the employees who participate in the Scheme will do so at arm's length.

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28. Employees who participate in the Scheme will terminate employment before they reach pension age.

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

Commissioner of Taxation

28 October 2020

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

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 requirements are considered in paragraphs 32 to 41 of this Ruling.

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

32. 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.

33. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 16, subject to paragraph 17, of this Ruling.

34. The Commissioner considers that, for the purposes of paragraph 83-180(3)(a), 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.

35. Therefore, the first requirement of subsection 83-180(3) is satisfied.

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 required by paragraph 83-180(3)(b).

37. Paragraphs 10 to 15 of this Ruling describe the nature of the rationalisation or re-organisation of the University's operations. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the workforce of the University. It is considered that the Scheme is to be implemented by the University with a view to rationalising or re-organising the operations of the University for the purposes of paragraph 83-180(3)(b).

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

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

39. The Scheme is proposed to operate for a period from 29 October 2020 to 30 June 2021.

40. The Scheme will be in operation for a period considered appropriate due to the circumstances of the re-organisation.

41. As the approval provided by this Ruling was granted prior to implementation, the third requirement of subsection 83-180(3) is satisfied.

Other relevant information

42. 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.

43. 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)).
44. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.
45. 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.
46. 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.
47. 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.
48. The total of the amount received on the termination of employment calculated in accordance with paragraph 23 of this Ruling may qualify as an early retirement scheme payment.
49. The total payment calculated in accordance with paragraph 23 of this Ruling will be measured against the limit, in accordance with the formula mentioned in paragraph 47 of this Ruling, to determine the tax-free amount of the early retirement scheme payment.
50. The tax-free amount will not be:
- an employment termination payment (ETP), and
 - able to be rolled-over into a superannuation fund.
51. 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.
52. 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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