

CR 2021/66 - Edith Cowan University - early retirement scheme 2021



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Class Ruling

Edith Cowan University – early retirement scheme 2021

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.

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What this Ruling is about

1. This Ruling sets out the income tax consequences of an early retirement scheme implemented by the Edith Cowan University (the University).
2. Full details of this scheme are set out in paragraphs 9 to 33 of this Ruling.
3. All legislative references in this Ruling are to 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 30 September 2021 to 31 January 2022.

Ruling

6. The Edith Cowan University – early retirement scheme 2021 (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 employees.

11. The COVID-19 pandemic in Australia and the subsequent contraction of student enrolments and revenue has necessitated a downsizing of the workforce across the higher education sector, including at the University.

12. It has also become evident that there will be significant changes to the demand for education and research services offered by the University and the ways in which the curriculum will be delivered.

13. The financial impact of the protracted COVID-19 pandemic has been assessed by the University as a multi-year funding problem linked to the timing of international borders reopening and the compounding impact of reducing international student enrolments from Semester 2, 2020 through 2021 and an uncertain outlook for 2022 and beyond.

14. The University has deployed and will continue to explore revenue and expenditure strategies to mitigate this multi-year revenue problem. In line with this, the University acknowledges that it would be beneficial to adopt a mechanism to address the financial impact of COVID-19 and reshape the workforce profile.

15. The class of employees that are eligible to participate in the Scheme are those employees who:

- are currently employed on an ongoing basis under the *Edith Cowan University Enterprise Agreement 2017*
- will be 55 years of age or older by 24 December 2021
- have not formally advised the University of their retirement or resignation, and
- do not have any formal arrangement in place that will result in the end of their employment on a specific date.

16. An employee may retire as early as five weeks after being advised their application has been successful. The exact retirement date will consider the operational and business needs of the University and will be determined by the employee's work area in discussion

with the employee. However, the retirement date will not be before the employee's 55th birthday.

17. The class of employees that are specifically excluded from participating in the Scheme are those employees who:

- are University Research Theme Leads and Directors of Strategic Research Centres and/or Institutes
- are Vice Chancellor Professorial Research Fellows and Research Fellows
- are employed on a Continuing Contingent Funded Employment contract
- have an active workers compensation claim where there is payment for loss of income, or
- are under investigation for alleged misconduct or serious misconduct.

18. Following approval of the Scheme, eligible employees will be invited to apply to participate in the Scheme. Employees will have three weeks from the date of invitation to apply by submitting an application.

19. After applications have been received, the University will confirm whether an employee's application has been successful within two weeks of the applications closing.

20. In the event that the number of employees seeking access to the Scheme exceeds the number of packages available across the Schools and Centres, the offers will be determined on the basis of the first eligible employees to apply to participate in the Scheme.

21. If two or more employees submit an application at the same time, it will be determined on the employee with the greater length of service.

22. Successful applicants will retire by no later than 24 December 2021 and will receive their payment in the next available pay.

23. Participation in the Scheme is entirely voluntary, with eligible employees being able to freely apply to participate in the Scheme. Other than satisfying the criteria outlined in paragraph 15 of this Ruling, there will be no processes in place to exclude individuals from the Scheme.

24. Employees who choose not to participate in the Scheme will continue with the University under the existing employment arrangement.

25. Employees who retire under the Scheme will receive a lump sum payment based on three weeks' salary per year of completed service up to a maximum of 39 weeks' salary.

26. The payment is in excess of any superannuation or other benefits employees may otherwise be entitled.

27. A completed year of service calculation will be based on continuous service in an ongoing or fixed-term capacity (where the fixed-term employee became an ongoing employee).

28. Any unpaid time of more than 10 days will not count as service for the Scheme but will not break the employee's period of service for the purpose of the Scheme.

29. All payments will be calculated with reference to the employee's superannuated salary and any superannuated allowances applicable to their substantive ongoing role as at the date of retirement. Staff will receive a pro-rated payment based on their full-time equivalent at 1 July 2021.

30. Employees will be paid any statutory entitlements, such as annual leave and/or long service leave, on retirement. Payment of these entitlements will not form part of the Scheme.

31. The University and the employees who participate in the Scheme will do so at arm's length.

32. Employees who participate in the Scheme will retire and cease employment with the University before they reach age pension age.

33. 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 retirement under the Scheme.

Commissioner of Taxation

29 September 2021

Appendix – Explanation

❶ *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

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

35. 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 36 to 45 of this Ruling.

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

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

37. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 15, subject to paragraph 17, of this Ruling.

38. 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.

39. 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

40. 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).
41. Paragraphs 10 to 14 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).
42. Accordingly, the second requirement of subsection 83-180(3) has been met.

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

43. The Scheme is proposed to operate for a period from 30 September 2021 to 31 January 2022.
44. The Scheme will be in operation for a period considered appropriate due to the circumstances of the re-organisation.
45. 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

46. 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.
47. 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)).

48. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.
49. 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.
50. 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.
51. For the 2021–22 income year, the tax-free amount is limited to \$11,341 (base amount) plus \$5,672 (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.
52. The total of the amount received on the termination of employment calculated in accordance with paragraph 25 of this Ruling may qualify as an early retirement scheme payment.
53. The total payment calculated in accordance with paragraph 25 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 51 of this Ruling to determine the tax-free amount of the early retirement scheme payment.
54. The tax-free amount will not be:
- an employment termination payment (ETP), and
 - able to be rolled-over into a superannuation fund.
55. 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.
56. 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 but will apply to the payment in lieu of notice.

References*Previous draft:*

Not previously issued as a draft

- 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(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)

ATO references

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