

CR 2010/59 - Income tax: early retirement scheme - Queensland University of Technology

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Class Ruling

Income tax: early retirement scheme – Queensland University of Technology

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

This publication (excluding appendixes) 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.

What this Ruling is about

1. This Ruling sets out the Commissioner’s opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with this Ruling are:
- section 83-170 of the *Income Tax Assessment Act 1997* (ITAA 1997); and
 - section 83-180 of the ITAA 1997.

All legislative references are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is employees of Queensland University of Technology who receive a payment under the scheme described in paragraphs 10 to 35 of this Ruling.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
5. 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 in paragraph 19 of this Ruling.
6. 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.
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Date of effect

8. This Ruling applies from the date of the Commissioner's approval to 1 September 2011. The Ruling continues to apply after 1 September 2011 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this 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 this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on information provided by the applicant.
10. Queensland University of Technology (QUT) has lodged an application seeking approval for an early retirement scheme.
11. The early retirement scheme will be known as The QUT Early Retirement Scheme (ERS).
12. QUT is seeking a class ruling to apply until 1 September 2011.

13. QUT therefore wishes to offer a Voluntary Early Retirement Scheme to staff as part of an overall strategy of regeneration and realignment of QUT's skill/workforce profile with employees having capabilities aligned to QUT's strategic direction and to the changing learning and research environment.

14. The learning environment, including learning delivery methods have changed considerably over the past decade requiring QUT to deliver more flexible and innovative teaching, including online delivery. These changes require academics to have the capability and skills to integrate information and communications technology into teaching practice and delivery.

15. QUT is seeking to increase the number of academic staff who are research active in select discipline areas. These capabilities need to include the ability to engage actively and collaboratively in the QUT's research agenda; contribute to research in selected areas to engage with industry, business, government and community; and in capabilities related to the commercialisation of research.

16. QUT's top level plan the Blueprint, is currently being revised to focus upon QUT priorities for the next five years. The revised Blueprint will outline QUT's ambitions for a major and themed institute to advance high quality, high-impact interdisciplinary research recruitment of academics with expertise in Science, Technology, Engineering and Mathematics (STEM) disciplines. The construction of a Science and Technology precinct will improve and customise QUT's capacity in strengthening offerings in STEM areas.

17. The ERS would assist QUT in renewing the capability profile of academic staff by providing an incentive for some academic staff to retire and therefore providing QUT with the opportunity to replace those employees with others with different and more aligned capabilities.

18. The ERS would also assist in a quicker transition to an outsourced service delivery model for cleaning and grounds maintenance service delivery. As cleaning and grounds maintenance are not the core business of QUT, the decision to transition to an outsourced service delivery model was based upon an assessment of core business on economic grounds. An outsourced service provision is a more efficient approach to the delivery and overall management of these services.

19. The class of employees who will be made an offer of early retirement are all employees of QUT employed on an on going basis (full-time or part-time) who are aged less than 65 years of age, in the following classifications:

- academic staff appointed at academic levels A to E; or
- professional staff appointed as ground maintenance staff and cleaners employed within Campus Services in the Department of Facilities Management, Division of Administrative Services.

20. Staff who chose not to participate in the ERS will not be relocated or terminated.
21. QUT retains a limited right of veto to be applied if key employees accept the offer to retire. Key personnel are those who are critical to the QUT's effective operation. In relation to academic staff (A to E), it may include a Professor whose contribution to a research project, where significant investment has been made, is critical to the success and outcomes of the project.
22. Once the scheme is approved by the Australian Taxation Office (ATO), the offer of the ERS by QUT would be made within 2 weeks of receipt of this approval. Staff members will then have three weeks within which to consider and accept the offer.
23. QUT prefer that offers be made to staff in 2010 to enable staff to depart under the scheme at the end of the academic year.
24. A staff member will be advised by QUT of the outcome of their application within four weeks of the closing date for receipt of the application.
25. At the time of a staff member's application for an ERS, a staff member and their supervisor will negotiate a retirement date that would be effective between the date of QUT's acceptance of an ERS application and 1 September 2011.
26. Once the scheme is approved by the ATO, the staff will leave under this scheme by or at the end of this academic year, that is, 31 December 2010. If there is a valid reason for a staff member to terminate later than this date but before 1 September 2011, QUT will consider the application.
27. Staff members whose early retirement is approved will receive a lump sum of two week salary for each completed year of service with a maximum payment of 52 weeks salary. All payments will be calculated on the staff member's salary, including any allowances, at the date of ceasing employment.
28. Staff will also receive their accrued recreation and long service leave entitlements. Those who have not completed ten years continuous service (QUT staff are normally entitled to long service leave after ten years continuous service), will receive payments on a pro-rata basis.
29. A staff member who resigns from QUT is normally entitled to receive their accrued recreation and long service leave entitlements where an entitlement exists.
30. The following enterprise agreements apply to the staff at QUT and prevail over all other awards:
- the QUT Enterprise Bargaining Agreement (Academic Staff) 2005-2008; and
 - the QUT Enterprise Bargaining Agreement (Professional Staff) 2005-2008.

31. The above named agreements are the current agreements and are available at <http://www.hrd.qut.edu.au/staff/agreements/>.
32. There is no compulsory retirement age for employees at QUT.
33. Payments made under the ERS will exclude any payment in lieu of superannuation benefits.
34. No agreement will be made or will be put in place by QUT, or any other employer, to employ a successful applicant following termination of employment through the ERS.
35. A draft copy of the information titled 'Information for Academic Staff (A to E)' that outlines the terms of the proposed early retirement scheme and the process for expressing an interest that QUT intends to provide to the class of employees, has been provided to the ATO.

Ruling

36. The early retirement scheme to be implemented by QUT is an early retirement scheme for the purposes of section 83-180.
37. Accordingly, so much of the payment received by an employee that exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of the retirement will be an ERS payment.
38. In addition, so much of the ERS payment that falls within the threshold calculated in accordance with section 83-170 is not assessable income and is not exempt income.

Commissioner of Taxation
3 November 2010

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.***

39. Where a scheme satisfies the requirements of section 83-180 that scheme will be an 'early retirement scheme'.

40. 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 will now be considered.

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

41. 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).

42. The class of employees to whom early retirement will be offered is set out in paragraph 19 of this Ruling.

43. 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

44. 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).

45. Paragraph 13 to 18 of this Ruling describes the nature of the rationalisation or re-organisation of the employer's operations. In approving the scheme, the Commissioner has had regard to the fact that the scheme is being implemented. 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). Accordingly, the second condition for approval has been met.

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

46. The scheme is proposed to operate for a period from the date of the Commissioner's approval to 1 September 2011. Approval was granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

47. The scheme will be in operation for 11 months. This is considered to be appropriate in this case due to the circumstances of the restructure and for those employees that will be given the option of early retirement under the scheme.

Other relevant information

48. Under subsection 83-180(1) so much of the payment received by an employee because the employee retires under an approved 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 his or her employment at the time of the retirement is an early retirement scheme payment.

49. It should be noted that, in order for a payment to qualify as an approved 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 made 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)).

50. 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'.

51. From 1 July 2007, 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.

52. For the 2010-11 income year, the tax-free amount is limited to \$8,126 (base amount) plus \$4,064 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. It should be noted that, 6 months, 8 months or even 11 months do not count as a whole year for the purposes of this calculation. In accordance with section 960-285, the base limit and service amount limits will be indexed in line with average weekly ordinary time earnings each income year.

53. The total of the amount received on the termination of employment calculated in accordance with paragraph 27 of the facts may qualify as an ERS payment.

54. The total of the payments in the previous paragraph will be measured against the limit calculated in accordance with formula mentioned in paragraph 52 of this Ruling to determine the 'tax-free' amount of the ERS payment.

55. The 'tax-free' amount will:

- not be an employment termination payment; and
- not be able to be rolled-over into a superannuation fund.

56. Any payment in excess of this limit will be an employment termination payment and split up into tax-free and taxable components. The tax-free component of an employment termination payment includes the pre-July 83 segment of the payment. The tax-free component is not assessable income and is not exempt income.

Appendix 2 – Detailed contents list

57. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- early retirement scheme payment
- employment termination payment

Legislative references:

- ITAA 1997
- 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 960-285
- ITAA 1997 995-1(1)
- TAA 1953
- Copyright Act 1968

Other references:

- Queensland University of Technology Enterprise Bargaining Agreement (Academic Staff) 2005-2008
- Queensland University of Technology Enterprise Bargaining Agreement (Professional Staff) 2005-2008

ATO references

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