


CR 2012/21 - Income tax: early retirement scheme - Curtin University of Technology

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Class Ruling

Income tax: early retirement scheme – Curtin University of Technology

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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 in 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 those employees of the Curtin University of Technology (Curtin), shown at paragraph 11, who receive a payment under the scheme described in paragraphs 9 to 37 of this Ruling.

Qualifications

4. 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 paragraphs 9 to 37 of this Ruling.
5. 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

7. This Ruling applies from *the date of the Commissioner's approval* to 28 February 2013. The Ruling continues to apply after 28 February 2013 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

8. The following description of the scheme is based on information provided by the applicant.
9. The Curtin University of Technology (Curtin) is seeking the Commissioner's approval to implement an early retirement scheme.
10. The scheme will be titled the '2012 Curtin Academic Early Retirement Offer', referred to as the Scheme.

11. The class of employees to whom this Scheme applies is all Curtin 'academic staff' who meet all the following criteria:

- (i) Five (5) or more years continuous service;
- (ii) Employed as a continuing staff member and has neither resigned prior to the date of invitation nor accepted a pre-retirement agreement;
- (iii) Employed in a research grade appointment (B-E) and have not met the 50th Percentile in any of the past three (3) years based on the published Research Performance Index (RPI) maintained by Curtin;
- (iv) Not otherwise currently research active. For the purposes of the Scheme, the meaning of 'currently research active' will be considered an academic who is named as the Principal Research Investigator on a competitive research grant valued at more than \$20,000;
- (v) Not otherwise identified for teaching excellence (with reference to receiving a promotion or competitive teaching award in the past three (3) years);
- (vi) Not currently or recently a member of the 'senior management team'. For the purposes of the Scheme, the meaning of a member of the 'senior management team' will be an academic employed as a head of School or Dean either currently or in the immediate past three years; and
- (vii) Not otherwise identified as a 'key employee' (with reference to those roles set out in paragraph 28 of this Ruling).

12. The purpose in implementing the Scheme is to rationalise or re-organise the employer's operations and refresh the current academic workforce so that a higher proportion of its academic employees are more aligned with the capabilities of those employees who are able to adopt a research based teaching approach and contribute to the research outcomes of Curtin.

13. A key aspect of Curtin's strategic plan is to further increase the quality of teaching informed by research and to become a research intensive university and one of the wider region's top 20 universities.

14. In order to achieve this vision, Curtin requires a higher proportion of its academic workforce to have the skills, knowledge and abilities to make strong research contributions in a highly competitive industry sector. Curtin has identified that sections of its current academic workforce do not have the necessary skills, qualifications, capabilities or research track history.

15. The RPI provides an objective measurement to determine which employees who do not possess the necessary skills and capabilities to integrate their respective teaching approaches into a teaching practice and delivery that is consistent with the strategic plan.
16. The RPI provides a mechanism for collecting research performance data that must be submitted by Curtin to the Australian Government in order to access Commonwealth research block grants.
17. The RPI is used to allocate funds on the basis of performance inputs (for example external research grants) and outputs (for example publications, successful postgraduate research supervision).
18. Curtin currently has approximately 200 employees within the class.
19. There is a limited number of packages available for retiring employees under the Scheme.
20. In the case that the number of employees seeking access to the Scheme exceeds the number of packages available, the offer will be made to those employees with the greater length of service. If two or more employees have the same length of service, it will be determined on the first eligible employee to apply to participate in the Scheme.
21. All eligible employees under the Scheme will be offered a lump sum payment of two (2) weeks pay per completed year of service with a minimum of \$50,000 or 39 weeks whichever is the greater, up to a maximum payment equivalent to 52 weeks.
22. Following approval of the Scheme, all eligible employees within the class will have approximately 6 weeks to submit applications of interest in the Scheme.
23. Within this 6 week period an employee may withdraw an acceptance of the offer, however once the 6 week period has ended, a voluntary withdrawal from the Scheme will not be permitted.
24. Confirmation of which employees will be offered early retirement under the Scheme will occur approximately 7 weeks after the date that the Scheme was approved.
25. All employees who accept the offer to retire under the Scheme will terminate employment and receive the payment by 28 February 2013. The actual date of termination will be negotiated with each individual employee based on their operational requirements but no later than 28 February 2013.
26. It is proposed the Scheme will be implemented from the date after the Commissioner's approval to 28 February 2013.
27. Participation in the Scheme is entirely voluntary.

28. Some key employees will be excluded from the Scheme as they perform key business and operational functions that require unique skills and experience. They are particular employees whose involvement is significant in programs engaged in course redesign and coordination, regional and international commitments, low socio economic status enrolments, specialised teaching and clinical supervision, leadership at department head and deputy head, First Year programs, Faculty renewal and Accreditation, academic support and higher degree completions.

29. Employment termination payments cannot be rolled over into a superannuation fund.

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

31. Any employee who terminates employment other than under the proposed Scheme, will not be entitled to receive the payment.

32. All employees terminated under the Scheme will receive their unused annual leave and long service leave entitlements however they do not form part of the payment made under the Scheme.

33. The payment made under the Scheme is at arm's-length.

34. The retirement of employees who receive an early retirement scheme payment will occur before they turn 65 years of age.

35. For a payment made to an eligible employee who have reached age 65 or over the payment will not be an early retirement scheme payment and will not be eligible for the concessional tax free limits. These payments will be employment termination payments.

36. There is no agreement in place between the employee and Curtin, or between Curtin and another person to employ the employee after retirement.

37. For the purposes of the Scheme a member of the 'academic staff' means a person employed by Curtin who is covered by the *Curtin University of Technology Academic Staff Enterprise Agreement 2009-2012*.

Ruling

38. The early retirement scheme to be implemented by Curtin University of Technology is an early retirement scheme for the purposes of section 83-180.

39. Accordingly, so much of the payment received by an employee that exceeds the amount that could be reasonable be expected to be received by the employee in consequence of voluntary termination of his or her employment at the time of the retirement will be an early retirement scheme payment.

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

Commissioner of Taxation

28 March 2012

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.*

41. Where a scheme satisfies the requirements of subsection 83-180(3), that scheme will be an early retirement scheme.

42. 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 are discussed below.

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

43. 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).

44. The class of employees to whom early retirement will be offered is set out in paragraph 11 of this Ruling.

45. The Commissioner considers that this is an appropriate class of persons for the Scheme to be offered. 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

46. 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).

47. The facts at paragraphs 12 to 17 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 workforce of the employer. It is therefore considered 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).

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

48. The Scheme is proposed to operate for a period from *(the date after the Commissioner's approval)* to 28 February 2013. The approval provided by this class ruling has been granted prior to implementation therefore for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

49. The Scheme will be in operation for approximately 11 months. This is considered appropriate due to the circumstances of the restructure and the employees that will be given the option of early retirement under the Scheme.

Other relevant information

50. 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 his or her employment at the time of termination is an early retirement scheme payment.

51. 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), 83-180(5) and 83-130(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;
- it is not a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).

52. 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'.

53. 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.

54. For the 2011-12 income year, the tax free amount is limited to \$8,435 (base amount) plus \$4,218 (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 for each income year.

55. The total of the amount received on the termination of employment calculated in accordance with paragraph 21 of this ruling may qualify as an early retirement scheme payment.

56. The total payment calculated in accordance with paragraph 55 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 54 of this ruling to determine the 'tax free' amount of the early retirement scheme payment.

57. The 'tax free' amount will:

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

58. 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

59. 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
- employment termination
- redundancy or early retirement scheme payments

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

ATO references

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