

# ***CR 2013/100 - Income tax: University of Tasmania 2014 early retirement scheme***

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## Class Ruling

# Income tax: University of Tasmania 2014 early retirement scheme

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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

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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 provisions

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 whom this scheme applies is all employees of the University of Tasmania (UTAS), shown at paragraph 15, who receive a payment under the scheme described in paragraphs 9 to 32 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 paragraphs 9 to 32 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.

## Date of effect

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7. This Ruling applies from 1 January 2014 to 31 December 2014. The Ruling continues to apply after 31 December 2014 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).

## Previous Rulings

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8. A previous ruling issued to the UTAS under class ruling CR 2012/118.

## Scheme

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9. The following description of the scheme is based on information provided by the applicant.
10. The UTAS is seeking the Commissioner's approval to implement an early retirement scheme (the Scheme) in accordance with section 83-180.
11. The Scheme will be titled the 'University of Tasmania 2014 early retirement scheme' and referred to as the Scheme.

12. In early 2012, UTAS launched its 2012 to 2022 strategic plan, '*Open to Talent*'. To enable the achievement of the strategic plan, UTAS identified a need to re-profile its academic staff to better reflect its research and teaching performance aspirations as well as to review the delivery of professional services across the University. As a consequence, UTAS completed a review of both its professional services model and academic staff profile. The Scheme applies only to the academic staff.

13. A key aspect of the UTAS strategic plan is to further improve its teaching and research performance. This process will involve individual discussions with academic staff to align their personal career aspirations with those of the University.

14. The purpose of implementing the Scheme is to rationalise and re-organise the employer's operations and refresh the current academic workforce. UTAS seeks to offer eligible staff the opportunity to voluntarily leave the University with financial support should these aspirations not be aligned.

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

- are employed as continuing UTAS Academic staff and have neither resigned prior to the date of invitation nor accepted a voluntary redundancy payment;
- are not casual employees or fixed term employees with less than six years continuous employment;
- are not currently or recently a member of the Senior Management Team. For the purpose of the Scheme, the Senior Management Team is defined as an academic employed as a Dean of Faculty or Head of Institute or a member of the Senior Executive (which consists of the Vice Chancellor, Provost, Deputy Vice Chancellors and the Chief Operating Officer) either currently or in the immediate past three years;
- are not currently research active as a Principal Research Investigator on a competitive research grant valued at more than \$20,000;
- do not currently have an active worker's compensation claim where there is payment made for loss of income, that is, weekly payments/income maintenance; and
- are not under investigation for allegations of misconduct.

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16. The Scheme will not apply to academic staff at any level of classification if:

1. the employee has a formal arrangement that will result in their employment at UTAS naturally ceasing on or before 31 December 2014; or
2. the employee:
  - (a) based on their historical performance in research over the last three years, would have met or exceeded a minimum average level of annual research activity in the form of research publications and supervision of research higher degree candidates for their appointment level and a balanced workload as detailed in the table below:

Research activity	Academic classification Level				
	A	B	C	D	E
Publications #	0.5	1	1.5	2.4	3
Higher Degree by Research (HDR) candidates	0	1	2	3	3
# as defined in <i>Opening UTAS to Talent: The UTAS Academic</i>					

and based on their historical performance in research over the last three years, would have met or exceeded the expectations relating to the use of learning technologies and online resources, evaluation of teaching, undertaking professional development, and contribution to teaching practice as detailed in a table. The table will be incorporated into an internal UTAS website promoting the Scheme that will be available to all academic staff. The expectations for a higher classification level incorporate the requirements of all the lower levels.

- (b) has continuous service with UTAS greater than five years; and
- (c) is aged under 50 years of age at the proposed time of departure.

17. UTAS will be seeking expressions of interest from employees who wish to voluntarily leave the organisation under the Scheme. Following approval of the Scheme, eligible employees will be asked to nominate their expression of interest.

18. In the event the ERS is over subscribed, the ERS will be offered to the employee who first submitted their expression of interest will be made the offer to receive the payment under the Scheme.

19. All employees who accept the offer to retire under the Scheme will terminate employment and receive the payment at a date mutually determined by UTAS and the individual employee based on their operational requirements but no later than 31 December 2014.
20. The separation payment under the Scheme will comprise:
- 22 weeks' salary in lieu of Notice of Termination; and
  - 3 weeks' salary for each continuous year of service;
- and be capped to a maximum of 70 weeks in total.
21. In addition, all employees terminated under the Scheme will receive their statutory entitlements however they do not form part of the payment made under the Scheme.
22. The maximum number of packages available for retiring employees under the Scheme is limited.
23. The Scheme will operate from 1 January 2014 to 31 December 2014.
24. UTAS and the relevant employees will be dealing with each other at arm's length under the Scheme.
25. There is no arrangement in place between UTAS and the terminating employees, or between UTAS and any other person, for those employees to be re-employed after retirement under the Scheme.
26. The payment made under the Scheme is in excess of any superannuation and any other benefits to which eligible employees would otherwise be entitled.
27. The Scheme payments will not be made in lieu of superannuation benefits.
28. Participation in the Scheme is entirely voluntary. If an employee chooses not to participate, his or her employment shall continue with no change.
29. The retirement of employees who receive a payment under the Scheme will occur before they turn 65 years of age.
30. For payments made to eligible employees who have reached age 65 or over the payment will not be eligible for the tax free base limits under the Scheme. These payments will be concessionally taxed as employment termination payments up to the employment termination payment cap (ETP cap).
31. The ETP cap for the 2013-14 income year is \$180,000.
32. All eligible employees are employed under the University of Tasmania Academic Staff Agreement 2010-12.

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## **Ruling**

33. The early retirement scheme to be implemented by UTAS is an early retirement scheme for the purposes of section 83-180.

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34. 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 voluntary termination of his or her employment at the time of the retirement will be an early retirement scheme payment.

35. 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.

## Appendix 1 – Explanation

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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.***

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

37. 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 now considered.

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

38. 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).

39. The class of employees to whom early retirement will be offered is set out in paragraph 15 and subject to the exclusions set out in paragraph 16 of this Ruling.

40. The Commissioner considers that this is an appropriate class of persons to whom the scheme will 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***

41. 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).

42. Paragraphs 12 to 14 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 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***

43. The Scheme is proposed to operate from 1 January 2014 to 31 December 2014. The approval to be provided by the class ruling will have been granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

44. The Scheme will be in operation for approximately 12 months. This is considered appropriate due to the circumstances of the reorganisation and the employees that will be given the option of early retirement under the Scheme.

***Other relevant information***

45. 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 the retirement is an early retirement scheme payment.

46. 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 83-180(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)).

47. 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'.

48. 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.

49. For the 2013-14 income year, the proposed tax free amount is limited to \$9,246 (base amount) plus \$4,624 (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 eleven months do not count as a whole year for the purposes of this calculation.

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

51. The total payment being made to eligible employee under the age of 65 years and calculated in accordance with paragraph 50 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 49 of this ruling to determine the 'tax-free' amount of the early retirement scheme payment.

52. The 'tax-free' amount will:

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

53. Any payment in excess of this limit will be an employment termination payment where the payment is received no later than 12 months after termination of employment and will be split into tax free and taxable components. The tax-free component of an employment termination payment (ETP) includes the pre-July 83 segment of the payment. The tax free component is not assessable income and is not exempt income.

54. Payments made under the ERS in excess of the tax-free limit will be concessional taxed up to the ETP cap of \$180,000 for the 2013-14 income year and will continue to have access to the full benefit of an ETP tax offset under subsection 82-10(3).

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55. The ETP cap is reduced by ETPs received earlier in the year or by ETPs received in an earlier year relating to the same termination.

## **Appendix 2 – Detailed contents list**

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

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## References

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- Previous draft:*
- Not previously issued as a draft
- Related Rulings/Determinations:*
- TR 2006/10; CR 2012/118
- Subject references:*
- early retirement
  - employment termination
  - eligible termination payment
  - redundancy or early retirement scheme payment
- Legislative references:*
- ITAA 1997
- ITAA 1997 82-10(3).
  - 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
  - Copyright Act 1968
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### ATO references

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