

# ***CR 2013/89 - Income tax: The University of South Australia - Academic early retirement scheme***

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## Class Ruling

### Income tax: The University of South Australia – Academic 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 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 employees to whom this scheme applies is those employees of the University of South Australia who receive a payment under the scheme described in paragraph 18 of this Ruling.

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## 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 39 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. The Ruling applies from 13 November 2013 to 30 June 2014. The Ruling continues to apply after 30 June 2014 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, the 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 the Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

## Scheme

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8. The following description of the scheme is based on information provided by the applicant.
9. The University of South Australia (UniSA) is seeking the Commissioner's approval to implement an early retirement scheme in accordance with section 83-180.
10. The scheme will be titled '2013 UniSA Academic Early Retirement Scheme' referred to as the Scheme.
11. The Scheme will be made available to certain eligible employees, namely academic staff employed by UniSA.
12. UniSA operates in the increasingly competitive higher education industry where it is critical to deliver high quality teaching and be a leader in research endeavours.
13. While UniSA continues to pursue excellence in its research programs, a critical aspect of the strategic plan is to further increase the quality of teaching informed by internationally recognised research.

14. UniSA's capacity to realise its aspirations will be determined by the drive, talents and performance of its staff. UniSA therefore requires a higher proportion of its academic workforce to have the skills, knowledge and abilities to make strong teaching and research contributions in a highly competitive industry sector.

15. The purpose of the Scheme is to align the career aspirations and ambition of the academic staff with UniSA's strategic plan. The rejuvenated academic workforce will deliver high quality teaching and be leaders in their research endeavours.

16. Under the Scheme, the number of academic positions in UniSA's workforce will not be reduced by the number of offers to retired. In this regard, the Scheme is to regenerate rather than to reduce UniSA's workforce.

17. Participation in the Scheme is at the discretion of the employee.

18. The class of employees to whom the Scheme applies is individual members of the academic staff employed by the UniSA who meet the following criteria:

- are employed as a continuing staff member and have neither resigned prior to the date of invitation nor accepted a pre-retirement contract;
- have completed five (5) or more years continuous service;
- are appointed at academic levels A-E;
- are employed either part-time or full-time; and
- are not otherwise identified as a 'key employee' by the relevant Head of School, Institute Director and/or Pro Vice Chancellor.

19. For the purposes of the Scheme a member of the UniSA academic staff means:

- (a) a person employed by UniSA and covered by the University of South Australia Enterprise Agreement 2011 (as amended or replaced); or
- (b) senior staff who hold a fixed position under the University of South Australia Senior Staff Collective Agreement 2006 and also hold a continuing Academic fall-back position (as covered by the University of South Australia Enterprise Agreement 2011).

20. UniSA retains a limited right of veto to exclude 'key employees' who fall within the class of employee able to participate in the Scheme.

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21. The 'key employees' are defined as those who:
  - are employed by external funding arrangements and/or critical industry partnerships which extend beyond June 2014; or
  - lead critical strategic projects, as defined by the *Crossing the Horizon Strategic Plan 2013-2018*, which extend beyond June 2014.
22. The payment to be made to eligible employees under the Scheme is a lump sum payment of two (2) week salary per completed year of service with a minimum of \$50,000 or 39 weeks salary, whichever is the greater, up to a maximum payment of 52 weeks salary. Part-time equivalent employees will receive a pro-rata lump sum payment based on their relevant full-time equivalent work fraction.
23. In addition, all employees terminated under the Scheme will receive their accrued annual and long service leave entitlements. Staff who have not completed ten years continuous service but have completed seven years continuous service will received their long service leave on a pro-rata basis. However, these entitlements will not form part of the early retirement scheme payment.
24. The Scheme is open to all academic staff employed by UniSA who meet the criteria.
25. The maximum number of packages available for retiring employees under the Scheme is limited.
26. In the case where 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.
27. There is no minimum number of employees required to retire under the Scheme.
28. The following enterprise agreements apply to the academic staff at UniSA and prevail over all other awards:
  - University of South Australia Enterprise Agreement 2011;
  - University of South Australia Senior Staff Collective Agreement 2006.
29. Following approval of the Scheme, all eligible employees within the class will be invited to apply and will have three weeks to submit applications of interest in the Scheme.
30. Once the three week period has elapsed, eligible employees will be made an offer within two weeks.
31. Once the offer has been accepted, voluntary withdrawal from the Scheme will not be permitted.

32. All employees who accept the offer to retire under the Scheme will terminate their employment by 31 December 2013 and payment will be made as soon as practicable at that time or in early January 2014. The actual date of termination will be negotiated with each individual employee based on their operational requirements. In this regard, there will be a small number of employees who may be required to teach for the duration of Study Period 2 in 2014, and thus retire by 30 June 2014.

33. It is proposed the scheme will be implemented from 13 November 2013 to 30 June 2014.

34. An employee who resigns from UniSA is normally entitled to receive their accrued annual and long service leave entitlements where an entitlement exists.

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

36. The retirement of employees who receive a payment under the Scheme will occur before they turn 65 years of age.

37. For payments made to eligible employees who have reached age 65 or over, the payment will not be an early retirement scheme payment and 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).

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

39. Payments made under the Scheme will be at arm's length.

40. There will be no arrangement between UniSA and terminating employees, or between UniSA and any other person, for those employees to be employed after retirement.

## **Ruling**

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41. The early retirement scheme to be implemented by the University of South Australia (UniSA) is an early retirement scheme for the purposes of section 83-180.

42. 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 early retirement scheme payment.

43. 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.

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Page status: **legally binding**

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**Commissioner of Taxation**

13 November 2013

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## **Appendix 1 – Explanation**

*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.*

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

45. 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***

46. 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).

47. The class of employees to whom early retirement will be offered is set out in paragraph 18 of this Ruling.

48. 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***

49. 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).

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50. Paragraphs 12 to 16 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***

51. The Scheme is proposed to operate for a period commencing from 13 November 2013 to 30 June 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.

52. The Scheme will be in operation for approximately seven 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***

53. 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.

54. 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)).

55. 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'.

56. 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.

57. 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.

58. The total of the amount received on termination of employment calculated in accordance with paragraph 22 of this ruling may qualify as an early retirement scheme payment.

59. The total payment calculated in accordance with paragraph 58 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 57 of this ruling to determine the 'tax-free' amount of the early retirement scheme payment.

60. The 'tax-free' amount will:

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

61. 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 includes the pre-July 83 segment of the payment. The tax free component is not assessable income and is not exempt income.

62. The taxable component of the employment termination payment will be taxed at various rates depending on the person's age. It should be noted the 'whole of income' cap does not apply to any part of the early retirement scheme payment.

## Appendix 2 – Detailed contents list

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

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## References

- Previous draft:*
- ITAA 1997 82-135
  - ITAA 1997 82-135(e)
- Not previously issued as a draft
- ITAA 1997 83-170
  - ITAA 1997 83-180
- Related Rulings/Determinations:*
- TR 2006/10
- 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
- Subject references:*
- early retirement scheme payment
  - employment termination payment
- Legislative references:*
- ITAA 1997

### ATO references

NO:	1-50HYMYW
ISSN:	1445-2014
ATOlaw topic:	Income Tax ~~ Assessable income ~~ employment termination payment ~~ early retirement scheme

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