

CR 2014/32 - Income tax: James Cook University 2014 early retirement scheme



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Class Ruling

Income tax: James Cook University 2014 early retirement scheme

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① 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 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 James Cook University (JCU), shown at paragraph 17, who receive a payment under the scheme described in paragraphs 9 to 37 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 37 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

7. This Ruling applies from 19 March 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).

Scheme

8. The following description of the scheme is based on information provided by the applicant.
9. JCU is seeking the Commissioner's approval to implement an early retirement scheme (the Scheme) in accordance with section 83-180.
10. The Scheme will be titled the 'James Cook University 2014 early retirement scheme' and referred to as the Scheme.
11. JCU is a tertiary institution with campuses in Townsville, Cairns and Singapore, with smaller centres in Mackay, Mt Isa and Thursday Island. It also has remote outposts at different locations from time to time including Orpheus Island and a cattle station in Upper Burdekin Valley known as Fletcherview.
12. In July 2012, JCU established the JCU – Future Task Force (the Task Force) which was established to give stronger expression and effect to JCU's strategic intent, with the aim of establishing JCU as a great university, renowned for education and research.

13. Ernst and Young were engaged by the Task Force to carry out a review of services and operations. The review was undertaken by Ernst and Young in conjunction with JCU's own Business Review and Improvement team.

14. On 22 March 2013, the following reports were released to the University Community:

- Crystallising our purpose; and
- Review of services and operations.

15. Following the review and release of these reports, it became clear that some significant reorganisation of JCU was required to provide JCU with the strongest future possible.

16. The purpose of implementing the Scheme is to rationalise and re-organise the employer's operations and to align the career aspirations and ambitions of the Academic and Professional and Technical staff with JCU's new direction. JCU seeks to offer eligible staff the opportunity to voluntarily leave the University with financial support should these aspirations not be aligned.

17. The class of employees to whom the Scheme applies is individual members of the Academic and Professional and Technical staff employed by JCU in Australia 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;
- the employee does not have a formal arrangement that will result in their employment at JCU naturally ceasing on or before 31 December 2014;
- have completed three (3) or more years continuous service;
- are employed either part-time or full-time;
- not otherwise identified as a key employee (as defined in paragraph 19);
- are not engaged on a fixed term basis, however described;
- are not engaged as a Senior Staff member as defined in the *James Cook University Enterprise Agreement 2013*; and
- are aged less than 65 years of age at the proposed date of retirement.

18. For the purposes of the Scheme a member of the JCU Academic and Professional and Technical staff means a person employed by JCU under the *James Cook University Enterprise Agreement 2013*.

19. The following key employees are excluded from expressing an interest in the scheme. The key employees are defined as those Teaching and Research Academic Staff members who, in the period 1 January 2011 to 31 December 2013:

- have authored or co-authored five or more (unweighted) HERDC research publications; and/or
- have received a national teaching citation, teaching excellence or program award; and/or
- currently are, or were, Associate Deans-Learning and Teaching, Research, Research Education; and/or
- currently have, or have had, significant responsibility for course leadership, particularly for course coordination and/or professional accreditation.

20. The number of packages available within each work unit will be limited up to a maximum of 10% of eligible employees rounded up to the nearest person in respect of each category within each work unit to ensure that business operations can continue.

21. In the case where the number of employees seeking access to the Scheme exceeds the number of packages available within each work unit, the offer will be made to those employees with the greater length of service. If two or more employees within the employment category of a particular work unit have the same length of service, it will be determined on the basis of the first eligible employee in the class to apply to participate in the Scheme.

22. JCU will retain a limited right of veto with a view to ensuring that a person cannot accept the offer where that would unreasonably impair the efficient and effective operation of the work unit and/or JCU as a whole. The right of veto would be limited to persons within one or more of the following categories, determined by reference to paragraph 23:

- (a) Academic staff who deliver teaching in professionally accredited degrees and whose departure is likely to jeopardise the University's ability to continue to offer that degree or certification leading to professional qualification; and/or
- (b) Managers of essential teaching and/or research infrastructure, such as the RV Kirby, the Orpheus Island Research Station, and the Daintree Rainforest Observatory, and Laboratory Managers; and/or
- (c) Academic heads of disciplines; and/or
- (d) Essential professional and technical staff such as front-line (that is, face to face contact with students) student support staff and key staff who are responsible for the integrity and viability of JCU's corporate systems (including IT systems and research databases) and infrastructure.

23. Notwithstanding paragraph 20 the number of packages available within each category of paragraph 22 will be limited up to a maximum of 10% of eligible employees in that category in a particular work area within a work unit, rounded up to the nearest person in respect of each category to ensure that business operations can continue. If two or more employees within the employment category of a particular work area within a particular work unit have the same length of service, it will be determined on the basis of the first eligible employee in the class to apply to participate in the Scheme.

24. The payments that will be made under the Scheme will be in accordance with clause 52.6 of the *James Cook University Enterprise Agreement 2013* as follows :

52.6 Redundancy Payment

52.6.1 A redundancy payment will comprise (A) + (B) + (C) + (D), plus the remaining balance of notice period (if any) as prescribed in Table 1 of this Clause 52.6.1, provided that (A) + (B) will not exceed 70 weeks in total.

TABLE 1		
A	Age of Staff Member	Weeks
	45 years or over	22 weeks
	40-44 years	20 weeks
	39 years or under	18 weeks
B	Each completed year of continuous service by the staff member	Weeks
	Less than and equal to 10 years	3 weeks for every year
	More than 10 years	2 weeks for every year in excess of 10 years
C	Payment of accrued Annual Leave and Annual Leave loading at date of termination.	
D	Payment of accrued and pro-rata Long Service Leave at date of termination.	

52.6.2 All payments will be calculated on the staff member's weekly base rate of pay for his or her ordinary hours of work except where the staff are regularly paid shift or penalty rates, where the salary used for calculation purposes will be based on the average of the staff member's fortnightly salary calculated over the preceding twelve months (including superannuable shift and penalty payments), at the date of ceasing employment.

52.6.3 For staff who have worked a mix of full-time and part-time during their period of service, calculations will be based on the equivalent years of service at their employment fraction on the date of ceasing employment. For staff who have held casual appointments those will not be included in the calculations.

25. 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.

26. Following approval of the Scheme, all eligible employees within the class will be invited by JCU to voluntarily express their interest to retire and will have two weeks to submit their application of interest in the Scheme.

27. Once the two week period has elapsed (which will be no later than seven days after ATO approval of the Scheme), eligible employees will be made an offer within one week on the basis of the Scheme criteria.

28. Once the offer has been accepted by an eligible employee, voluntary withdrawal from the Scheme will not be permitted. However, in the case of an expression of interest lodged prior to ATO approval of the Scheme, an eligible employee will have seven days in which to withdraw any such expression of interest prior to JCU making an offer.

29. All employees who accept the offer to retire under the Scheme will terminate their employment and receive the payment at a date determined by JCU based on its operational requirements but no later than 30 June 2014 for Professional and Technical Staff and no later than 31 December 2014 for Academic Staff who have ongoing course commitments.

30. At the time of retirement there will not be an arrangement between the employee and JCU or between JCU and another person, to employ the employee after the retirement.

31. The payment under the Scheme will not be made in lieu of superannuation benefits.

32. All payments will be made on an arm's length basis.

33. The maximum number of packages available for retiring employees under the Scheme is limited.
34. The Scheme will operate from the date of the Commissioner's approval to 31 December 2014.
35. There is no minimum number of employees required to retire under the Scheme.
36. Participation in the Scheme is entirely voluntary. If an employee chooses not to participate, his or her employment shall continue with no change arising from the decision not to participate in the Scheme.
37. The retirement of employees who receive a payment under the Scheme will occur before they turn 65 years of age.

Ruling

38. The early retirement scheme to be implemented by JCU 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 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.
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
19 March 2014

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 section 83-180 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 now considered.

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 17 and subject to the exclusions set out in paragraph 19 of this Ruling.

45. 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

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. Paragraphs 11 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

48. The Scheme is proposed to operate after the Commissioner's approval 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.

49. The Scheme will be in operation for approximately 9 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

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 the retirement 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 83-180(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)).

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. 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 2013-14 income year, the 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. For a payment made in the 2014-15 income year, the tax free amount is limited to \$9,514 (base amount) plus \$4,758 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates.

55. The total of the amount received on termination of employment calculated in accordance with paragraph 24 of this ruling may qualify as an early retirement scheme payment.

56. The total payment being made to eligible employee under the age of 65 years and 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 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.

59. Payments made under the ERS in excess of the tax-free limit will be concessionally 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).

60. 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

61. 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
- eligible termination payments
- redundancy or early retirement scheme payments

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

ATO references

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