

CR 2014/89 - Income tax: RMIT University Academic Voluntary Departure Program 2014-2015 (AVDP)



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Class Ruling

Income tax: RMIT University Academic Voluntary Departure Program 2014-2015 (AVDP)

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❶ 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 provisions 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 all academic staff of the Royal Melbourne Institute of Technology (RMIT) University who meet the criteria shown at paragraph 16, who also receive a payment under the scheme described in paragraphs 10 to 35 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 10 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

7. The Ruling applies from 22 October 2014 to 22 October 2015. The Ruling continues to apply after 22 October 2015 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

8. The following description of the scheme is based on information provided by the applicant.
9. The Royal Melbourne Institute of Technology (RMIT) University (the University) is seeking the Commissioner's approval to implement an early retirement scheme (ERS) in accordance with section 83-180.
10. The scheme will be titled 'the RMIT University Academic Voluntary Departure Program 2014-2015 (AVDP)', referred to as the Scheme.
11. In a context of increasing competition and internationalisation, many universities across the sector have responded with strategies to optimise research performance. This is coupled with shifts in student and stakeholder expectations, and increasing technological advances.

12. Against this background, a number of priorities for the University to transform the academic work force were identified as reflected in *Impact through Innovation: Research and Innovation Plan 2011-2015*, the University's 5-year strategy for research and innovation. These priorities include:

- the recruitment of high-calibre academic staff and Higher Degree Research (HDR) students
- to develop and implement processes and mechanisms to establish expectations about research outcomes and to ensure an appropriate balance between research, teaching and leadership responsibilities for staff
- to develop staff and HDR students through outcomes focussed professional development programs and careers counselling to enhance skills to undertake academic work and boost research capability and productivity, and
- provide tailored support for academic staff and HDR students to build and sustain their research careers.

13. There is now an opportunity for the University to refresh its academic staff profile to grow research performance in line with the University's strategic direction. The intent behind the Scheme is to allow staff whose personal career aspirations are no longer aligned with the University's aspirations and performance expectations to leave the University voluntarily and with appropriate financial support.

14. Importantly, through this initiative there is no intention to reduce overall numbers of academic positions. The aim is to regenerate the academic workforce and align capabilities and performance with the University's strategic direction rather than to reduce the size of the academic work force.

15. Concurrent with this Scheme will be the need to source new academic and research talent to ensure workforce refresh and renewal. This will be managed via a strategic recruitment program designed to attract global talent.

16. The class of employees to whom the Scheme applies is all Academic employees who:

- are employed on a continuing basis (full-time or part-time) and who have not resigned prior to the date of the invitation to retire under the Scheme, nor have accepted a pre-retirement agreement prior to the date of the invitation
- are academic staff members appointed at academic levels B-E under the *RMIT University Academic and Professional Staff Enterprise Agreement 2014*
- have five or more years of continuous service with the University
- have not received a University Teaching Award in the years 2009-2013

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- have not generated any research income over the years 2011-2013
- have achieved no HDR completions as a Primary/Senior Supervisor over the years 2011-2013, and
- have not met at their academic level research ERA outputs over the years 2011-2013 based on the table below. For the purpose of this Class Ruling, ERA outputs include research books, book chapters, journal articles, refereed conference publications and commissioned reports, averaged across a three year period.

	Level B	Level C	Level D	Level E
ERA Outputs*	1 to 2	2 to 3	3 to 5	3 to 10

*the above level of ERA outputs are based on expected performance listed in the RMIT's document titled: *Academic Expectations and Development (Web edition version 2 Updated 8 March 2013)*.

17. The payment to be made to eligible employees under the Scheme is as follows:

- a one-off payment
- based on years of service calculated as two weeks' salary for each year of continuous service
- with a minimum payment of 39 weeks, and
- capped at 52 weeks.

18. In addition, all employees departing under the Scheme will receive their accrued annual and long service leave entitlements. Pro-rata long service leave will be payable to those staff who have four years' continuous service. However these payments will not form part of the payment made under the Scheme.

19. Participation in the Scheme is entirely voluntary. There is no immediate intention at this time to relocate or terminate employment of eligible staff who choose not to participate in the program.

20. There is no minimum number of early retirement offers under the Scheme.

21. The Vice-Chancellor, or their nominated representative, in their capacity as the Chief Executive Officer of the University has identified 20 key staff who are excluded from applying for the scheme. 'Key staff' are those employees who are critical to the University's effective and efficient operation. This may include members of the school executive, developing researchers, those who administer programs and those involved in ongoing research. The University has notified the key staff who are excluded from the Scheme.

22. Following approval of the Scheme, all eligible staff, with the exception of identified key staff, will be invited to express interest in participating in the program within the following eight weeks. Within this eight week application period an employee may withdraw an acceptance of offer, however once the eight week period has ended, a voluntary withdrawal from the Scheme will not be permitted.
23. Eligible staff who submit expressions of interest will be formally notified of the outcome within two weeks.
24. All employees who accept the offer to retire under the Scheme will terminate employment within twelve months following the Commissioner's approval of the Scheme, unless otherwise agreed by the University. The actual date of termination will be negotiated with each employee based on the operational requirements of the University. No payments will be made under the Scheme beyond twelve months from the date of the Commissioner's approval of the Scheme.
25. It is proposed the Scheme will be implemented from 22 October 2014 to 22 October 2015.
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. Any employee who terminates employment other than under the Scheme, will not be entitled to receive the payment.
28. Payments made under the Scheme for staff who have not yet reached 65 years of age will be processed as an early retirement scheme payment.
29. For payments made to eligible employees who have reached 65 years of age or over at the date of termination, the payments will not be eligible for tax-free base limits under the early retirement scheme. These payments will be concessional taxed as employment termination payments (ETPs) up to the ETP cap amount.
30. The Scheme payment will not be made in lieu of superannuation benefits.
31. Payments made under the Scheme will be at arm's length.
32. There is no agreement in place between the eligible employees and the University, or between the University and another person to employ any employee after retirement under the Scheme.

Ruling

33. The early retirement scheme to be implemented by the Royal Melbourne Institute of Technology (RMIT) University 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 eligible 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.

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.

Commissioner of Taxation

22 October 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.*

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 16 of this Ruling, subject to paragraph 17.

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).

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42. Paragraphs 11 to 15 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 work force 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 for a period commencing from 22 October 2014 to 22 October 2015. 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 twelve months. This is considered appropriate due to the circumstances of the re-organisation 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 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 2014-15 income year, the proposed tax-free amount is limited to \$9,514 (base amount) plus \$4,758 (service amount) for each completed year of 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. For any payments made during the 2015-16 income year, please note that the base amount and the service amount will be indexed in line with average weekly ordinary time earnings for the income year.

51. The total of the amount received on termination of employment calculated in accordance with paragraph 17 of this ruling may qualify as an early retirement scheme payment.

52. The total payment calculated in accordance with paragraph 17 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.

53. The 'tax-free' amount will:

- not be an ETP, and
- not be able to be rolled-over into a superannuation fund.

54. Any payment in excess of this limit will be an ETP 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 ETP includes the pre-July 83 segment of the payment. The tax-free component is not assessable income and is not exempt income. The taxable component of the ETP 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

55. 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 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 995-1(1)
 - TAA 1953
 - Copyright Act 1968
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ATO references

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