


# ***CR 2016/6 - Income tax: the Swinburne University Academic Staff Voluntary Early Retirement Scheme 2015-16***

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## Class Ruling

### Income tax: the Swinburne University Academic Staff Voluntary Early Retirement Scheme 2015-16

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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 provisions identified below apply to the defined class of entities, who take part in the early retirement 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 whom this Ruling applies is those employees of the Swinburne University of Technology (the University), shown at paragraph 12, who receive a payment under the scheme described in paragraphs 9 to 22 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 under the heading Scheme.
6. If the scheme actually carried out is materially different from the scheme that is described in the 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
  - the Ruling may be withdrawn or modified.

## Date of effect

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7. This Ruling applies from 27 January 2016 to 31 December 2016. The Ruling continues to apply after 31 December 2016 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

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8. The University is seeking the Commissioner's approval to implement an early retirement scheme in accordance with section 83-180.
9. The scheme will be titled '*Swinburne University Academic Staff Voluntary Early Retirement Scheme 2015-16*', hereafter referred to as the Scheme.
10. The purpose of the Scheme is to enable a voluntary renewal and rationalisation of the University's academic work force. The University aims to achieve this by enabling its academic staff whose personal career aspirations are no longer aligned with the University's aspirations and performance expectations (and who meet the eligibility criteria) to leave the University voluntarily with some financial support.
11. The University aspires to become a world leading university in science, technology and innovation and needs to move forward with a work force that is aligned to its strategic objectives. Through this process the University can refresh its work force, grow research performance in line with the University's strategic direction as set out in the University's 2020 Plan, forge new partnerships with industry and community and improve student engagement.

12. The class of employees to whom the Scheme applies is all employees who are:

- 50 years of age or over as of 31 December 2015
- appointed as an ongoing Academic Level A, B, C, D or E
- have not been promoted via Academic Promotions in 2013, 2014, and 2015
- have had at least three years of continuous service as at 31 December 2015
- have not met the discipline-specific 'expected' research performance standard as per the Research Expectations at Swinburne, averaged over the three year period from 2012 to 2015
- have not received a Vice-Chancellor's Teaching Award in 2013 and 2014
- have not resigned prior to 1 October 2015 nor have accepted a pre-retirement agreement, and
- are not currently employed as a Department Chair, Associate Dean, Dean, Executive Dean, Research Director, Pro Vice Chancellor, Deputy Vice Chancellor or Vice Chancellor role. These staff are excluded from participating in the Scheme because they play a critical role in leading, supervising and mentoring other academics and staff.

13. Eligible employees will receive a one-off payment based on years of service, calculated as two weeks' salary for each year of continuous service. The minimum payment is 26 weeks and is capped at 52 weeks.

14. There is no maximum or minimum number of packages under the Scheme.

15. The Scheme will initially operate as follows:

- Staff will be invited to express an interest in participating in the Scheme within an eight week period.
- Within this eight week period, an employee may withdraw an acceptance of an offer, however once the eight week period has ended, a voluntary withdrawal from the Scheme will not be permitted.
- Eligible employees who submit expressions of interest will be formally notified of the outcome within two weeks of the expression of interest closing date.
- 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. The actual termination date will be determined in accordance with the University's operational requirements.

16. The University may make multiple rounds of offers throughout the duration of the Scheme in accordance with paragraph 15 of this Ruling.
17. Participation in the Scheme is voluntary.
18. The payment made under the Scheme to employees who have not yet reached 65 years at the date of termination will be processed as an early retirement scheme payment.
19. The payment made to employees who are 65 years or older at the date of termination will not be eligible for tax-free base limits under the early retirement scheme.
20. The payment made under the Scheme is in addition to any superannuation payments and any other payments such as accrued annual and long service leave entitlements to which eligible employees would otherwise be entitled to upon leaving the organisation. Pro-rata long service leave will be paid to those staff that have seven years' continuous service. However those payments will not form part of the payment made under the Scheme.
21. The payment made under the Scheme will be at arm's length.
22. There is no agreement in place between the eligible employees and the University, or between the University and another person to employ any eligible employee after retirement under the Scheme.

## Ruling

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23. The early retirement scheme to be implemented by the Swinburne University of Technology is an early retirement scheme for the purposes of section 83-180.
24. 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 voluntary termination of their employment at the time of the retirement will be an early retirement scheme payment.
25. 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

**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.*

26. A scheme will be an early retirement scheme if it satisfies the requirements of subsection 83-180(3).

27. 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**

28. 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).

29. The class of employees to whom early retirement will be offered is set out in paragraph 12 of this Ruling.

30. The Commissioner considers that this is an appropriate class of persons for the scheme to be offered to. In approving this class of employees the Commissioner has considered the nature of the rationalisation or re-organisation of the operations of the University. 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**

31. 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).

32. The nature of the rationalisation or re-organisation of the employer's operations is described above under the heading Scheme. 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 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**

33. The Scheme is proposed to operate for a period from 28 January 2016 to 28 January 2017. The approval to be provided by this class ruling will have been granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

34. The Scheme will be in operation for approximately one year. This is considered appropriate due to the circumstances of the re-organisation.

### **Other relevant information**

35. 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 their employment at the time of termination is an early retirement scheme payment.

36. 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)).

37. 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'*.

38. In accordance with section 83-170, 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.

39. For the 2015-16 income year, the tax-free amount is limited to \$9,780 (base amount) plus \$4,891 (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 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.

40. For the 2016-17 income year, the base amount and the service amount is yet to be determined at the publication of this Ruling. Therefore, employees should check the ATO website for the 2016-17 income year indexed amounts.

41. The total of the amount received on the termination of employment calculated in accordance with paragraph 13 of this Ruling may qualify as an early retirement scheme payment.

42. The total payment calculated in accordance with paragraph 13 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 39 and paragraph 40 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

43. The 'tax-free' amount will:

- not be an employment termination payment (ETP), and
- not be able to be rolled-over into a superannuation fund.

44. Any payment in excess of this limit will be an ETP. 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.

45. The taxable component of the ETP will be taxed at various rates depending on the person's age. It should be noted that 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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46. 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

*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

## ATO references

NO: 1-7J1C8OD

ISSN: 2205-5517

ATOlaw topic: Income tax ~~ Assessable income ~~ Employment related  
~~ Employment termination payments - early retirement  
scheme

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