


# ***CR 2016/67 - Income tax: the 'Griffith University Early Retirement Scheme 2016.'***

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## Class Ruling

### Income tax: the 'Griffith University Early Retirement Scheme 2016.'

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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

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 entities to whom this scheme applies is those employees of Griffith University (Griffith) shown at paragraph 12, subject to paragraph 13, who receive a payment under paragraph 14 of this Ruling.

## Qualifications

4. 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*.
5. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:
  - the 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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6. This Ruling applies from 28 September 2016 to 23 December 2016. The Ruling continues to apply after 23 December 2016 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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7. Griffith is seeking Commissioner's approval to implement an early retirement scheme in accordance with section 83-180.
8. The scheme will be titled the '**Griffith University Early Retirement Scheme 2016**,' hereafter referred to as the '**Scheme**'.
9. Griffith's Strategic Plan 2013 to 2017 (the Strategic Plan) and the Griffith 2020 Agenda (the Agenda) are focused on supporting innovation in its teaching and research performance. In particular, Griffith's goals include:
  - providing an excellent educational experience to attract and retain students and continuously improve their research performance.
  - attracting and retaining excellent staff who are able to positively contribute to Griffith's development as a university of influence.
10. In order to meet the goals of the Strategic Plan and the Agenda, Griffith has identified a need to refresh its academic staff profile to better reflect the increasing dependence on information technology for scholarly research and the increasing demand for online education. As a consequence, Griffith has reviewed its academic staff profile and the Scheme only applies to academic staff.

11. A key aspect of the Strategic Plan is to support innovation in its teaching and research performance. Griffith is working with academic staff to align their personal career aspirations and performance strengths with goals and aspirations of Griffith. Should these aspirations not be aligned, Griffith seeks to offer eligible staff the opportunity to leave the university with financial support.
12. The class of employees to whom the Scheme applies:
- are all full-time and part-time academic staff who are at least 55 years old by 23 December 2016, but not yet 65 years old or more by 23 December 2016, and
  - have been employed on a continuing basis for at least five (5) years.
13. The following employees are specifically excluded from participating in the Scheme:
- staff who are current holders of a National Competitive Research Grant awarded to Griffith University and name as a Chief Investigator A
  - staff who are current holders of an Office of Learning and Teaching Grant awarded to Griffith University and named as a Chief Investigator
  - any staff members of the 'Executive Group'
  - staff with an active worker's compensation claim where there is a payment made for loss of income
  - staff who have resigned prior to the date of invitation, or accepted a pre-retirement contract, and
  - seven (7) staff members who have been identified and notified as key employees who are critical to the University's effective operation or whose contribution is critical to the success of a teaching, learning and/or research project.
14. All eligible employees who retire under the Scheme will receive:
- two (2) weeks' pay per year of service, and
  - for employees with more than 20 years' service by 23 December 2016, they will be entitled to an additional 10 weeks' salary up to a maximum entitlement of 70 weeks of salary.
15. In addition, all eligible employees terminated under the Scheme will receive their statutory entitlements. However, these payments will not form part of the payment made under the Scheme.
16. Employees will receive payment in lieu of any untaken recreation leave plus leave loading. A staff member who has completed five (5) years and above recognised continuous service is entitled to a pro rata payment for long service leave.

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

18. The Scheme will open to employees following approval by the Commissioner, and will be implemented as follows:

- Employees will have up to three (3) months to apply to the Scheme.
- Employees will be notified that they have been granted a place in the Scheme as soon as practicable after making their application, but within two (2) weeks of making their application. Griffith will confirm the employee is eligible to participate in the Scheme and notify the employee they have been accepted once this is verified.
- Participants may not withdraw their application once they have been notified of approval.
- Employees will have to terminate by 23 December 2016 at the latest where they have been accepted into the Scheme.

19. The payment made under the Scheme is in excess of any superannuation and any other benefits to which eligible employees would otherwise be entitled.

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

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

22. There will be no agreement in place between any eligible employee and Griffith, or between Griffith and another person to employ the eligible employee after retirement under the Scheme.

23. Participation in the Scheme is entirely voluntary.

## Ruling

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

25. 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.

26. 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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**Commissioner of Taxation**28 September 2016

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## 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.**

27. A scheme will be an early retirement scheme if it satisfies the requirements of subsections 83-180(3) or (4).

28. 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**

29. 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).

30. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 12, subject to paragraph 13, of this Ruling.

31. 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 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**

32. 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).

33. Paragraphs 9 to 11 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).

34. Accordingly, the second condition for approval has been met.

### **The scheme must be approved by the Commissioner prior to its implementation**

35. The Scheme is proposed to operate for a period from 29 September 2016 to 23 December 2016. 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.

36. The Scheme will be in operation for approximately four (4) months. This is considered appropriate due to the circumstances of the re-organisation.

37. As all the conditions for approval under subsection 83-180(3) have been met, consideration of subsection 83-180(4) is not required.

### **Other relevant information**

38. 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.

39. 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)).

40. 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'.

41. 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.

42. For the 2016-17 income year the tax-free amount is limited to \$9,936 (base amount) plus \$4,969 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. It should be noted that 6 months, 8 months or even 11 months do not count as a whole year for the purposes of this calculation.

43. The total of the amount received on the termination of employment calculated in accordance with paragraph 14 of this Ruling may qualify as an early retirement scheme payment.

44. The total payment calculated in accordance with paragraph 14 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 42 of this Ruling to determine the tax-free amount of the early retirement scheme payment.

45. The tax-free amount will:

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

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

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

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## References

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- Previous draft:*
- ITAA 1997 83-180(1)
- Not previously issued as a draft
- ITAA 1997 83-180(2)
  - ITAA 1997 83-180(3)
- Related Rulings/Determinations:*
- TR 2006/10
- ITAA 1997 83-180(3)(a)
  - ITAA 1997 83-180(3)(b)
  - ITAA 1997 83-180(3)(c)
  - ITAA 1997 83-180(4)
- 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(5)
  - ITAA 1997 83-180(6)
  - ITAA 1997 960-285
  - ITAA 1997 995-1(1)
  - TAA 1953
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### ATO references

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