


CR 2017/71 - Income tax: the ANU Voluntary Early Retirement Scheme (VERS) 2017

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Class Ruling

Income tax: the ANU Voluntary Early Retirement Scheme (VERS) 2017

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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.

Summary – 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 provision(s)

2. The relevant provisions dealt with in this Ruling are:

- section 83-170 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- 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 and Professional staff of the Australian National University, shown at paragraph 17, who receive a payment under the scheme described in paragraphs 9 to 37 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 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. The Ruling applies from 11 October 2017 to 30 June 2018. The Ruling continues to apply after 30 June 2018 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 Australian National University (ANU) 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 ANU Voluntary Early Retirement Scheme (VERS) 2017' referred to as 'the Scheme'.
11. In February 2017, ANU launched its strategic plan, the ANU Strategic Plan 2017-2021 (Strategic Plan). To enable the achievement of the Strategic Plan, ANU identified a need to refresh its academic staff profile to better reflect its research and teaching performance aspirations as well as to review the delivery of professional services across the University.
12. As one part of a wider strategy to address and drive the University's strategic plans of renewal of the workforce, the ANU is seeking to offer an ERS to employees to rebalance the University's operations and to refresh the current workforce required for a research intensive university.

13. Research is central to ANU, informing every activity of the University. This supports and differentiates ANU as a university with a clear concentration of research excellence.

14. The purpose in implementing the Scheme is to rationalise and re-organise ANU's operations and aim for the vast majority of academic staff to be highly research-active, producing scholarly outputs recognised internationally.

15. The ANU seeks to offer Academic staff the opportunity to leave the University with financial support should their aspirations and ambitions not be aligned.

16. The scheme will contribute to adjusting the Academic workforce profile and respond to the need to address sustainability and the University's age demographic and ensure the effective use of resources. The scheme is also an opportunity to plan a separation and arrange for adequate opportunities for Academic knowledge transfer and succession planning, including a reinvestment in research active early and mid-career academic staff.

17. The class of employees to whom the Scheme applies is all Australian National University Academic and Professional staff who are aged 55 or over as at 31 December 2017 and meet the following criteria:

Employed as a continuing Academic or Professional staff member and has not resigned prior to the date of invitation; or an Academic or Professional staff member who is currently employed on a pre-retirement contract.

18. Employees within this class may wish to express an interest in voluntarily leaving the organisation.

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

- The first component will be a payment of 26 weeks' salary.
- The second component will recognise the length of service up to a maximum 26 weeks. Staff with ten or more years of continuous service at the ANU will receive an additional 1 week salary payment per year of service or pro-rata year of a service, up to a maximum of 26 weeks.
- The total payment under the Scheme shall not exceed 52 weeks' salary.

20. In addition, all employees terminated under the Scheme will receive their accrued annual and long service leave entitlements, however they do not form part of the payment made under the Scheme. Staff are eligible for long service leave to be paid out on retirement if they have a minimum qualifying period of 4 years continuous service.

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21. The following employees are excluded from expressing an interest in the scheme. They are:

- staff employed by external and / or research funding
- staff currently highly research active
- identified for teaching excellence (with reference to receiving a competitive teaching award in the past 3 years), and
- key employees who are critical to the University's effective operation, they are:
 - staff in senior executive/leadership positions
 - staff undertaking strategic roles
 - staff possessing unique skills and/or attributes, and
 - may include Academic staff whose contribution to a research project, where significant investment has been made, is critical to the success and outcomes of the project.

22. There is no minimum or maximum number of packages available for retiring employees under the scheme.

23. The Australian National University (ANU) Enterprise Agreement (EA) 2013-16 applies to all staff at ANU and prevails over all other awards until a new enterprise agreement is ratified by the Fair Work Commission.

24. Following approval of the Scheme, all eligible employees within the class will be invited to apply and will have four weeks to submit applications of interest in the scheme.

25. Offers will be made to eligible employees approximately 6 weeks after the date that the scheme was approved.

26. All employees who accept the offer to retire under the Scheme will terminate employment by 31 December 2017, unless otherwise negotiated due to operational requirements. All employees retiring under the Scheme must, without exception, cease their employment prior to the expiration of the Scheme on 30 June 2018.

27. It is proposed the scheme will be implemented from 11 October 2017 to 30 June 2018.

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

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

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

31. 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 concessional taxed as employment termination payments up to the employment termination payment cap (ETP cap).
32. Employment termination payments cannot be rolled over into a superannuation fund.
33. Payments made under the scheme will be at arm's length.
34. There is no agreement in place between the employee and the ANU, or between ANU and another person to employ any employee after retirement under the scheme.
35. If an employee chooses not to participate, his or her employment shall continue with no change.

Ruling

36. The early retirement scheme to be implemented by the Australian National University (ANU) is an early retirement scheme for the purposes of section 83-180.
37. 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.
38. 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 Taxation11 October 2017

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.*

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

40. 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

41. 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).

42. The class of employees to whom early retirement will be offered is set out in paragraph 17 of this Ruling.

43. 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

44. 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).

45. 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

46. The Scheme is proposed to operate for a period commencing from 11 October 2017 to 30 June 2018. 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.

47. The Scheme will be in operation for approximately 10 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

48. Under subsection 83-180(1) so much of the payment received by an employee because the employee retires under an approved 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.

49. 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)).

50. 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'.

51. 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.

52. For the 2017-18 income year, the tax-free amount is limited to \$10,155 (base amount) plus \$5,078 (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.

53. The total of the amount received on termination of employment calculated in accordance with paragraph 19 of this ruling may qualify as an early retirement scheme payment.

54. The total payment 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.

55. The 'tax-free' amount will:

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

56. 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.

Appendix 2 – Detailed contents list

57. 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

Legislative references:

- 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
 - ITAA 1997
 - ITAA 1997 82-135
 - ITAA 1997 82-135(e)
 - ITAA 1997 83-170
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ATO references

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