


CR 2020/54 - Qantas Airways Limited - early retirement scheme 2020

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Class Ruling

Qantas Airways Limited – early retirement scheme 2020

📌 Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Ruling is about

1. This Ruling sets out the tax consequences of an early retirement scheme implemented by Qantas Airways Limited (Qantas).
2. Full details of this scheme are set out in paragraphs 9 to 25 of this Ruling.
3. All legislative references are to provisions of the *Income Tax Assessment Act 1997* unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to Qantas employees who receive a payment under this scheme.

When this Ruling applies

5. This Ruling applies from 8 October 2020 to 18 December 2020.

Ruling

6. The Qantas early retirement scheme 2020 (hereafter referred to as 'the Scheme') is an early retirement scheme for the purposes of section 83-180.

7. 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.

8. In addition, so much of the Scheme payment as falls within the threshold calculated in accordance with section 83-170 is not assessable income and is not exempt income.

Scheme

9. The following description of the Scheme is based on information provided by the applicant. If the Scheme is not carried out as described, this Ruling cannot be relied upon.

10. Qantas long-haul pilots are employed under the *Qantas Airways Limited Pilots (Long Haul) Enterprise Agreement 2020* (Long Haul EA).

11. Qantas currently employs pilots in its long-haul operations across four different aircraft fleet types used in international air travel – B747, A380, A330 and B787.

12. As a consequence of the impact of the COVID-19 pandemic, Qantas has announced:

- the retirement of the B747 aircraft type with immediate effect
- there will be nil or minimal international flying over at least the next 12 months for all A330, A380 and B787 aircraft
- there is a long-term surplus of long-haul pilots
- there will be a continuation of stand down for many long-haul pilots at least until such time as travel restrictions are lifted and international operations resume.

13. A small percentage of Qantas long-haul pilots will be subject to mandatory long-haul retirement on or before 1 July 2022. A pilot in long-haul operations cannot operate aircraft in international air travel past the age of 65 due to restrictions under international treaties to which Australia is a signatory.

14. Traditionally, Qantas has provided its long-haul pilots with the option of either retiring (from long-haul flying) or applying to transfer to a vacancy in its domestic short-haul operations, upon attaining the age of 65. However, due to the impact of COVID-19, Qantas currently has no vacancies for pilots in short-haul operations and is unlikely to have any vacancies over the next 12 to 24 months.

15. To address its long-term structural pilot surplus, Qantas will be conducting a voluntary redundancy program. Pilots subject to mandatory long-haul retirement, on or before 1 July 2022, are not eligible to participate in the voluntary redundancy program.

16. Given the lack of international flying and the absence of any current vacancies in short-haul operations, it is likely the majority of Qantas long-haul pilots that will be subject to mandatory long-haul retirement on or before 1 July 2022, will not be able to resume full operational pilot duties with the company. The Scheme is an alternative to long-haul pilots remaining on current stand down arrangements for the foreseeable future or sharing in the limited flying that may become available.

17. The class of employees to whom the Scheme applies are Qantas long-haul pilots employed under the Long Haul EA and who will be subject to mandatory long-haul retirement on or before 1 July 2022.
18. Pilots who accept the offer to retire early under the Scheme will be required to terminate their employment at least six months prior to reaching the mandatory long-haul retirement age of 65.
19. The Scheme will commence within 14 days of Qantas obtaining approval for the Scheme from the Commissioner.
20. All pilots who retire under the Scheme will terminate their employment and receive payment no later than 18 December 2020.
21. A pilot voluntarily retiring under the Scheme will receive a lump sum payment of:
- three months' salary based on their current rate of pay if they have a mandatory long-haul retirement age on or before 1 July 2021, or
 - four months' salary based on their current rate of pay if they have a mandatory long-haul retirement age after 1 July 2021 and on or before 1 July 2022.
22. The payment under the Scheme will be in addition to accrued annual leave and long service leave entitlements at termination (calculated on a pro rata/fractional basis for part-time employees).
23. The Scheme is entered into by both parties on an arm's length basis and there is no arrangement in place to re-employ any retiring pilot within Qantas, elsewhere within the Qantas Group or with any other employer.
24. Payments under the Scheme are not being paid in lieu of superannuation benefits.
25. A pilot retiring under the Scheme is required to sign a deed of release in favour of Qantas as a condition precedent to receiving the calculated payment.

Appendix – Explanation

ⓘ *This Explanation 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.*

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Requirements for an early retirement scheme

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 requirements are considered in paragraphs 28 to 35 of this Ruling.

All employees within a class approved by the Commissioner may participate in the scheme

28. In order to satisfy the first requirement of subsection 83-180(3), the scheme must be offered to all employees in a class approved by the Commissioner.

29. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 17 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 reorganisation 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

31. The proposed Scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer, as required by paragraph 83-180(3)(b).

32. 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 Qantas. It is considered that the Scheme is to be implemented by Qantas with a view to rationalising or re-organising the operations of Qantas for the purposes of paragraph 83-180(3)(b).

33. Accordingly, the second requirement of subsection 83-180(3) has been met.

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

34. The Scheme is proposed to operate for a period from 8 October 2020 to 18 December 2020. As the approval provided by this Ruling was granted prior to implementation, the third requirement of subsection 83-180(3) is satisfied.

35. The Scheme will be in operation for a period considered appropriate due to the circumstances of the re-organisation.

Other relevant information

36. 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.

37. 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), (5) and (6)):

- the retirement occurred before the employee reached pension age, 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)).

38. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.

39. 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.

40. 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.

41. For the 2020–21 income year, the tax-free amount is limited to \$10,989 (base amount) plus \$5,496 (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.

42. The total of the amount received on the termination of employment calculated in accordance with paragraph 21 of this Ruling may qualify as an early retirement scheme payment.

43. The total payment calculated in accordance with paragraph 21 of this Ruling will be measured against the limit, in accordance with the formula mentioned in paragraph 41 of this Ruling, to determine the tax-free amount of the early retirement scheme payment.

44. The tax-free amount will not be:

- an employment termination payment (ETP)
- able to be rolled-over into a super fund.

45. 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.

46. 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.

References

Previous draft:

Not previously issued as a draft

Legislative references:

- 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
- Social Security Act 1991 23(1)

ATO references

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