


CR 2020/60 - The University of South Australia - early retirement scheme 2020

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Class Ruling

The University of South Australia – early retirement scheme 2020

❶ 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 the University of South Australia (the University).
2. Full details of this scheme are set out in paragraphs 9 to 38 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 employees of the University who receive a payment under this scheme.

When this Ruling applies

5. This Ruling applies from 29 October 2020 to 9 April 2021.

Ruling

6. The University of South Australia 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. The purpose of the Scheme is to support the implementation of the University's 2018–2025 strategic plan, *Enterprise25*, to ensure that the University's workforce profile enables reform of its products and services, chiefly its program offering, and the effectiveness of its new academic structure. This reform aims to meet the needs of industry, business and the wider community by equipping graduates with the capabilities that will enable them to meet the future workforce challenges.

11. *Enterprise25* places 'Programs, People and Precincts' at the heart of the University's operations. In 2019, the University embarked on an organisational transformation to orientate its structure around its programs and a new structure was progressed for its academic enterprise.

12. This new structure took effect from 6 April 2020, with seven new academic units focussed on the University's programs, ensuring its resources were focused on quality teaching, industry engaged and informed research, and the student experience. As part of this restructure, the University redefined program oversight, the management structures for academic delivery and professional services support, and the workforce capabilities required to deliver on its aspirations. The aim was to bolster academic leadership and oversight of quality and performance and increase the efficiency and effectiveness of professional management of enabling and support services to reflect and reinforce the University's program focus. To achieve this, the University transitioned from a two-layer leadership and administration structure, comprised of four divisions and fourteen schools, to a single-layer structure comprised of seven academic units reporting directly to the Provost and Chief Academic Officer, and supported by central administrative support units delivering academic and student services, research and innovation support, and corporate functions, such as finance, human resources and marketing.

13. The University has undertaken workforce planning in support of the academic organisational transformation, establishing the workforce profile of each of the new academic units. The skills and experience of some current employees are not aligned to the current and future course and program requirements and commitments to the student experience and industry/accrediting body expectations. The University is seeking to refresh and more closely align its workforce with the current and anticipated course and program needs in terms of capability, knowledge and experience.

14. Additionally, the global COVID-19 pandemic has generated significant economic impacts for the University and the sustainability of its operations and financial position.

15. These impacts have created potential significant revenue shortfalls in 2020 and 2021 arising from:

- constraints on international travel which directly impact potential international students
- the ongoing unpredictability and increasing competition for the recruitment of international students both onshore and online
- increasing competition for domestic students, and
- in the context of recently-announced Commonwealth funding reforms and the shifts emerging in industry and business, the University is having to reconsider future work requirements and how its program and course offering and research priorities adapt, and what implications that has for the workforce capabilities and employee knowledge and experience required in the near future if the University is to consolidate its position and ensure its future financial viability.

16. In summary, the University needs to ensure that its workforce profile supports reform of its products and services and the effectiveness of its new structure, in an increasingly complex, competitive and globalised environment. It is for these reasons that the University has elected to implement the Scheme to achieve these critical objectives.

17. By implementing the Scheme, the University will provide an opportunity for those employees whose personal aspirations and inclinations do not align sufficiently with the University's future direction and requirements to consider taking early retirement with a financial incentive. It will also provide an opportunity to attract and engage new staff capabilities into the University in support of the refocussed program offering, building a future pipeline of talent that will more sustainably and relevantly deliver future work-oriented programs, drive innovation and enhance the quality and impact of its research.

18. The class of employees to whom this Scheme applies is all persons who meet all of the following criteria:

- are a continuing full-time or part-time employee employed pursuant to the *University of South Australia Enterprise Agreement 2019* (as amended or replaced) (Enterprise Agreement) as at 31 December 2020
- have completed five or more years of continuous service with the University as at 31 December 2020
- are aged 55 years or older as at 31 December 2020
- have neither provided written notice of their intention to resign nor accepted or are currently employed under a workforce planning contract as at 29 October 2020
- do not have an active workers' compensation claim where there is an income payment as at 29 October 2020
- are not currently under investigation for allegations of misconduct/serious misconduct as at 29 October 2020, and
- are not named as Chief Investigators on a Category 1 Australian Research Council and/or National Health and Medical Research Council or multi-million dollar Cooperative Research Centre project grant as at 29 October 2020, with an end date post-31 December 2020.

19. For the purposes of determining each employee's date of termination under the Scheme, all eligible employees, as set out in paragraph 18 of this Ruling, will either be

considered 'professional staff' or 'academic staff', depending on the nature of their role within the University.

20. 'Professional staff' means full-time and part-time employees engaged under the Enterprise Agreement who are:

- professional levels 'higher education officer' HEO1 to HEO10
- 'grandparented' at Level 4GP and level 8GP, and
- security staff (non-grandparented and grandparented).

21. 'Academic staff' means full-time and part-time employees engaged under the Enterprise Agreement who are:

- academic levels A to E, and
- research levels ARA (research assistant) to ERP (research professor).

22. All academic and professional staff employed and covered by the *University of South Australia Senior Staff Collective Agreement 2006*, as at 31 December 2020, are not members of the class of employees for this Scheme as set out in paragraph 18 of this Ruling. In addition, all casual and fixed-term employees of the University, as defined by the Enterprise Agreement, are not members of the class of employees for this Scheme, as set out in paragraph 18 of this Ruling.

23. Following approval of the Scheme, eligible employees will be invited to submit a formal application to participate in the Scheme. Employees will have 10 business days to submit an application. Applications will be permitted at any time during that period and may be withdrawn up to and including the business day before the closure of the invitation period (that is, before the ninth business day). Once the invitation process has closed, withdrawal from the Scheme will not be permitted.

24. After the period in which employees are invited to make an application has elapsed, an effective termination date will be agreed with and formally confirmed to each employee. Each individual employee's actual date of termination will be the subject of individual negotiation and dependent on operational requirements and business needs. The last date of employment will be no later than 31 December 2020 for professional staff, and no later than 31 March 2021 for academic staff.

25. Employees who retire under the Scheme will receive payment no later than seven business days from the employee's exit date.

26. Employees who retire under the Scheme will receive a lump sum payment of two weeks' salary per completed year of service up to a maximum payment of 52 weeks' salary.

27. Part-time equivalent employees will receive a pro-rata lump sum payment based on their relevant full-time equivalent work fraction, as at the date of cessation of employment.

28. The payment is calculated with reference to the Scheme participant's ordinary rate of pay, as defined in the Enterprise Agreement, as at the date of cessation of employment (including fortnightly superannuable allowances and loadings). Where employees are regularly paid shift or penalty rates, the salary used for benefit-calculation purposes will be based on the average of the employee's fortnightly salary calculated over the preceding 12 months, including superannuable shift and penalty payments.

29. For employees who have worked a mix of full-time and part-time during their period of service, the benefit calculation will be based on the equivalent completed years of service at their employment fraction on the date of ceasing employment.

30. Calculation of the benefit will exclude periods of unpaid leave except for parental leave.

31. The payment is not being made in lieu of superannuation benefits.
32. The payment made under the Scheme is in excess of any superannuation and any other benefits to which eligible employees would otherwise be entitled.
33. Employees who terminate employment under the Scheme will also receive their statutory entitlements, such as accrued recreation and long service leave entitlements, where applicable. However, these amounts will not form part of the payment made under the Scheme.
34. Employees who terminate their employment other than under the Scheme will not be entitled to receive the Scheme payment.
35. The retirement of employees who receive a payment under the Scheme will occur before they reach pension age.
36. Payments made under the Scheme will be at arm's length.
37. There is no arrangement in place between any eligible employee and the University, or between the University and another person, to employ the eligible employee after the retirement under the Scheme.
38. Participation in the Scheme is entirely voluntary.

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

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

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 requirements are considered in paragraphs 41 to 50 of this Ruling.

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

41. 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.

42. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 18 of this Ruling.

43. The Commissioner considers that, for the purposes of paragraph 83-180(3)(a), 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.

44. Therefore, the first requirement of subsection 83-180(3) is satisfied.

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

45. 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).

46. Paragraphs 10 to 17 of this Ruling describe the nature of the rationalisation or re-organisation of the University's operations. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the workforce of the University. It is considered that the Scheme is to be implemented by the University with a view to rationalising or re-organising the operations of the University for the purposes of paragraph 83-180(3)(b).

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

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

48. The Scheme is proposed to operate for a period from 29 October 2020 to 9 April 2021.

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

50. As the approval provided by this Ruling was granted prior to implementation, the third requirement of subsection 83-180(3) is satisfied.

Other relevant information

51. 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.

52. 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)).

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

54. 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.

55. 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.

56. 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 11 months do not count as a whole year for the purposes of this calculation.

57. The total of the amount received on the termination of employment calculated in accordance with paragraph 26 of this Ruling may qualify as an early retirement scheme payment.

58. The total payment calculated in accordance with paragraph 26 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 56 of this Ruling to determine the tax-free amount of the early retirement scheme payment.

59. The tax-free amount will not be:

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

60. 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.

61. 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(5)
 - ITAA 1997 83-180(6)
 - ITAA 1997 995-1(1)
 - TAA 1953
 - Social Security Act 1991 23(1)

ATO references

NO: 1-N2UWENA
ISSN: 2205-5517
BSL: SEO
ATOlaw topic: Income tax ~~ Assessable income ~~ Employment related ~~ Employment termination payment – early retirement scheme

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