


CR 2020/61 - University of Tasmania - early retirement scheme 2020

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Class Ruling

University of Tasmania – 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 the University of Tasmania (UTAS).
2. Full details of this scheme are set out in paragraphs 9 to 22 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 UTAS employees who receive a payment under this scheme.

When this Ruling applies

5. This Ruling applies from 29 October 2020 to 30 June 2021.

Ruling

6. The University of Tasmania 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. In response to the COVID-19 pandemic and the associated financial impact on UTAS, and to enable a sustainable institution, UTAS has identified a need to reduce operational staffing costs, while also reviewing the delivery of professional and academic services across UTAS.

11. UTAS has implemented a voluntary redundancy process and an Enterprise Agreement variation as measures to assist in reducing operational staffing costs. The Scheme will further support this objective.

12. A key aspect of UTAS' plan is to reshape its workforce to deliver the strategic objective of improving its teaching, research and professional support performance.

13. The class of employees to whom this Scheme applies:

- are employed as continuing UTAS academic or professional staff
- will be aged 60 years or over at the date of terminating their employment
- will not be under investigation for allegations of misconduct, and
- will not have reached their pension age at the date of terminating their employment.

14. The following employees are specifically excluded from participating in the Scheme:

- an employee who has either resigned prior to the date of invitation or accepted a voluntary genuine redundancy payment, or
- an employee with a formal arrangement that will result in their UTAS employment naturally ceasing on or before 30 June 2021.

15. Following approval of the Scheme, UTAS will offer eligible employees the opportunity to retire early.

16. Employees who accept the offer will terminate their employment and receive their payment on a date mutually agreed between the employee and UTAS, but no later than 30 June 2021.

17. Employees who retire under the Scheme will receive a lump sum payment equal to nine weeks' salary plus two weeks' salary for each continuous year of service. The payment will be capped at 52 weeks' salary.

18. Employees will receive payment for any accrued leave entitlements; however, these payments will not form part of the payment under the Scheme.

19. The Scheme payment will not be made in lieu of superannuation benefits.

20. Employees who terminate their employment other than under the proposed Scheme will not be entitled to receive the payment.

21. There is no arrangement in place between any eligible employee and UTAS, or between UTAS and another person, to employ the eligible employee after their retirement under the Scheme.

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

Commissioner of Taxation

28 October 2020

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

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

24. 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 25 to 34 of this Ruling.

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

25. 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.

26. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 13, subject to paragraph 14, of this Ruling.

27. 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 UTAS.

28. 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

29. 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).

30. Paragraphs 10 to 12 of this Ruling describe the nature of the rationalisation or re-organisation of UTAS' operations. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the workforce of UTAS. It is considered that the Scheme is to be implemented by UTAS with a view to rationalising or re-organising the operations of UTAS for the purposes of paragraph 83-180(3)(b).

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

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

32. The Scheme is proposed to operate for a period from 29 October 2020 to 30 June 2021.

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

34. 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

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), (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)).

37. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.
38. 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.
39. 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.
40. 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.
41. The total of the amount received on the termination of employment calculated in accordance with paragraph 17 of this Ruling may qualify as an early retirement scheme payment.
42. The total payment calculated in accordance with paragraph 17 of this Ruling will be measured against the limit in accordance with the formula mentioned in 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
 - able to be rolled-over into a superannuation fund.
44. 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.
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.

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

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