


# ***CR 2009/5 - Income tax: early retirement scheme - University of Canberra***

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## Class Ruling

### Income tax: early retirement scheme – University of Canberra

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| Contents                            | Para      |
|-------------------------------------|-----------|
| <b>LEGALLY BINDING SECTION:</b>     |           |
| <b>What this Ruling is about</b>    | <b>1</b>  |
| <b>Date of effect</b>               | <b>8</b>  |
| <b>Scheme</b>                       | <b>9</b>  |
| <b>Ruling</b>                       | <b>32</b> |
| <b>NOT LEGALLY BINDING SECTION:</b> |           |
| <b>Appendix 1:</b>                  |           |
| <b>Explanation</b>                  | <b>35</b> |
| <b>Appendix 2:</b>                  |           |
| <b>Detailed contents list</b>       | <b>54</b> |

#### **ⓘ 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

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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); 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 which this Ruling applies is those employees of the University of Canberra (the University) who receive a payment under the scheme described in paragraph 18 of this Ruling.

## 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 11 to 17 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.
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## Date of effect

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8. This Ruling applies from 18 February 2009 to 31 December 2009. The Ruling continues to apply after 31 December 2009 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this 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 this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

## Scheme

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9. The following description of the scheme is based on information provided by the applicant.
10. The scheme is known as the Strategic Plan Academic Voluntary Retirement Scheme (the scheme).

11. The scheme is being implemented as part of the University of Canberra – Strategic Plan 2008-12 (the University's five year strategic plan) to revolutionise the University and to establish itself as a University of the future.

12. The University's five year strategic plan is strongly centred on research, including goals to:

- provide research training places and post-doctoral fellowships;
- increase research output;
- strengthen the University's research culture; and
- increase research income.

13. The implementation of the scheme will enable the University to reallocate funds to facilitate the reorganisation of the workforce in a manner necessary to achieve significant improvements in teaching and research performance that are aligned with the new directions specified in the University's strategy.

14. The outcomes to be achieved through implementing the scheme in relation to the University's strategic plan are as follows:

- deliver courses in a way that suits the busy lifestyles of modern students;
- attract and retain research-active educators who will improve the University's academic performance;
- invest in information technologies which can promote the University's education, research and administration;
- integrate flexible and distance learning resources, including virtual learning environments;
- utilise a range of multimedia and digital technologies in teaching methodology; and
- merge faculties to achieve greater economies of scale and improve teaching outcomes through course consolidation and enhancement.

15. Academic staff will need to be proficient in the application of technology to teaching and be confident in utilising a range of multimedia and digital technologies in their teaching methodology, in order to support learning in all modes.

16. The University has an ageing academic workforce, some of whom are unable to make the necessary transition to the level of proficiency required.

17. The class of employees to be offered the scheme are those employees who are permanent academic staff of the University, and are contracted to undertake research, teaching and associated academic activity. This class is limited to persons who have completed no less than five years of service, and are at least 55 years old, but not yet 65 years old on the date of termination of employment.

18. Academic employees who are excluded from this scheme include:

- employees who have been identified as highly research productive;
- employees employed on fixed-term or pre-retirement contracts; and
- all Vice Chancellor Group Members and Executive Deans.

19. The highly research productive employee category is limited to six named employees. The University considers highly research productive employees to be those who have the specialised skills and knowledge to obtain the greatest amount of grant funding.

20. If there is an insufficient number of employees who accept the offer to retire under the scheme, the University will examine other options for achieving the goals of its five year strategic plan. This may include the possibility of rationalising or re-organising its operations through a voluntary redundancy process.

21. If there is an oversubscription of the early retirement offer, in order to determine which employees will retire under the scheme, approval will first be given to those employees who have the longest continuous service with the University.

22. It is proposed that the scheme will be implemented from the date after the Commissioner's approval.

23. Staff will be under no obligation to accept an offer made under the scheme. However, staff that accept the offer must sign a standard Deed of Settlement which states the terms of departure.

24. Employees who are made an offer under the scheme will have one month from the date the scheme is approved and implemented to accept the offer.

25. All employees who accept the offer to retire under the scheme will cease employment no later than 31 December 2009.

26. The payment to be made under the scheme is two weeks pay per year of service with a maximum entitlement of 52 weeks of salary (calculated on a pro-rata/fractional basis for part time employees).

27. In addition, employees who accept the offer to retire under the scheme will also be entitled to:

- long service leave entitlements based on the number of years service (calculated on a pro-rata/fractional basis for part time employees); and
- recreation leave credits (calculated on a pro-rata/fractional basis for part time employees).

The long service leave entitlements and recreation leave credits do not form part of the early retirement scheme payment.

28. The payments are not being made in lieu of superannuation benefits and are not mentioned in section 82-135 (apart from paragraph 82-135(e)).

29. The retirement is at arm's length and there is no arrangement in place with the employer, or any other employer, to employ the employees following termination of employment under the scheme.

30. The employees that fall within the scheme are employed under the University of Canberra Academic, General and UCELI Staff Agreement 2006-2008: A Union Collective Agreement (the Agreement). A copy of the Agreement has been provided.

31. There is no compulsory retirement age, but the University regards 65 years as the normal retirement age for employees.

## **Ruling**

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

33. 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.

34. 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**

18 February 2009

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## 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.*

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

36. 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 discussed below.

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

37. 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).

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

39. 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. 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**

40. The proposed scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer, that the Commissioner approves.

41. Paragraphs 11 to 17 of this Ruling describe the nature of the rationalisation or re-organisation of the employer's operations. The scheme is to be implemented with a view to rationalising or re-organising the operations or work-force of the employer by making the changes approved by the Commissioner. Accordingly, the second condition for approval has been met (see subsection 83-180(3)).

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

42. The scheme will operate from 19 February 2009 to 31 December 2009.

43. The scheme will be in operation for approximately 11 months, which is a period considered appropriate by the Commissioner.

**Other relevant information**

44. 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 his or her employment at the time of termination is an early retirement scheme payment.

45. 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 retirement is not at arm's length 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)).



46. The term 'arrangement' is defined in subsection 995-1(1) as meaning 'any agreement, arrangement or understanding whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable by legal proceedings'.

47. From 1 July 2007, 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.

48. For the 2008-09 income year, the tax-free amount is limited to \$7,350 (base limit) plus \$3,676 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. Please note that 6 months, 8 months or even 11 months do not count as a whole year for the purposes of this calculation. The base limit and service amount limit will be indexed in line with average weekly ordinary time earnings each income year.

49. The total of the amount received on the termination of employment calculated in accordance with paragraph 27 of this Ruling may qualify as an early retirement scheme payment.

50. The total of the payments in paragraph 52 of this Ruling will be measured against the limit calculated in accordance with paragraph 49 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

51. The 'tax-free' amount will:

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

52. Any payment in excess of this tax-free limit will be an employment termination payment and split up 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.

53. Employment termination payments made under an approved early retirement scheme cannot be rolled-over into a superannuation fund.

## **Appendix 2 – Detailed contents list**

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

|  | <b>Paragraph</b> |
|--|------------------|
| <b>What this Ruling is about</b>   | <b>1</b>         |
| Relevant provision(s)  | 2                |
| Class of entities  | 3                |
| Qualifications   | 4                |
| <b>Date of effect</b>  | <b>8</b>         |
| <b>Scheme</b>  | <b>9</b>         |
| <b>Ruling</b>  | <b>32</b>        |
| <b>Appendix 1 – Explanation</b>  | <b>35</b>        |
| All employees within a class approved by the Commissioner may participate in the scheme  | 37               |
| 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 | 40               |
| The scheme must be approved by the Commissioner prior to its implementation  | 42               |
| Other relevant information   | 44               |
| <b>Appendix 2 – Detailed contents list</b>   | <b>54</b>        |

## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*Subject references:*

- approved early retirement scheme payments
- employment termination

*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(1)
- ITAA 1997 83-180(2)
- ITAA 1997 83-180(3)
- ITAA 1997 83-180(3)(a)
- ITAA 1997 83-180(3)(c)
- ITAA 1997 83-180(5)
- ITAA 1997 83-180(6)
- ITAA 1997 995-1(1)
- TAA 1953
- Copyright Act 1968

*Other references:*

- University of Canberra Academic, General and UCELI Staff Agreement 2006-2008
- University of Canberra – Strategic Plan 2008-12

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ATO references

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