


CR 2016/65 - Income tax: the 'Western Sydney University Early Voluntary Retirement Scheme 2016'

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Class Ruling

Income tax: the 'Western Sydney University Early Voluntary Retirement Scheme 2016'

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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.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provisions 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 whom this scheme applies is those employees of Western Sydney University shown at paragraph 14, subject to paragraph 15, who receive a payment under paragraph 17 of this Ruling.

Qualifications

4. 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 under the heading *Scheme*.

5. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- the Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
- the Ruling may be withdrawn or modified.

Date of effect

6. This Ruling applies from 21 September 2016 to 14 July 2017. The Ruling continues to apply after 14 July 2017 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

7. Western Sydney University (the University) is seeking Commissioner's approval to implement an early retirement scheme in accordance with section 83-180.

8. The scheme will be titled the '***The Western Sydney University Early Voluntary Retirement Scheme 2016***', hereafter referred to as the Scheme.

9. The University is in an ever-changing environment with an increasing need to rethink its operating and service delivery models. Further, the University is impacted by increasing competition for domestic load, volatility in the recruitment of international students and acknowledgement that its financial sustainability cannot be solely dependent on government funding.

10. The University believes a workforce that is diverse, agile and flexible is required to meet and adapt the challenges and opportunities outlined above.

11. In this context, the University wants to ensure that its staffing profile supports its research agenda and its curriculum reform program. Both of which aim to meet the needs of industry, business and community as well as equipping graduates with capabilities that will enable them to successfully meet the challenges of an increasingly complex and globalised context.

12. The Scheme provides an avenue for a reduction in staff numbers to a level better aligned with the University's objectives as well as the refreshment of a portion of the University's workforce by seeking staff whose aspirations align with the University's future direction.

13. The Scheme also provides the University with an opportunity to engage new staff with a more established research record or those who aspire to a career in research and are able to design and deliver a technology enhanced, contemporary and work integrated curriculum. At the same time, the Scheme allows the University's staff who may be considering retirement, or whose aspirations no longer align with those of the University, to consider early retirement with a financial incentive.

14. The class of employees to whom the Scheme is sought to apply are all Academic (Level A – E) and Professional staff who are employed in continuing, ongoing positions by the University in Australia, who as at the date the Scheme comes into effect, meet the following criteria:

- are 54 years of age or older
- have not formally advised of their resignation or retirement, or who have not accepted a post or pre-retirement contract
- do not have a formal agreement in place that will result in termination of their employment on a specified date, and
- are not otherwise excluded as defined below.

15. The following academic and professional staff are excluded from the Scheme:

- any staff member of the University's Leadership Group including VC, DVC, VP, Dean, PVC, Chief Officer, Executive Director, Director of Research Institutes
- head of a Research Centre, Deputy Dean and Director (Professional Staff Classification)
- staff who hold a Category 1 HERDC grant at the time of offer
- staff within the top 15% of staff within their School in the most recent Excellence in Research Framework, assessed across a rolling three year period

- staff who have received an individual national teaching citation or award since 1 January 2014
- staff who have received an individual Vice-Chancellor's teaching award in 2014 or 2015
- staff who are employed by the University on a fixed-term basis and without a substantive position
- research and academic staff employed within the University's Research Institutes
- staff with an active workers' compensation claim where there is payment for loss of income, and
- any staff member under investigation for allegations of misconduct or serious misconduct.

16. All eligible employees who successfully apply under the Scheme will receive a payment as detailed in paragraphs 17, 18 and 19 of this Ruling.

17. The University will offer successful applicants two weeks' pay, for each completed year of continuous service (capped at 52 weeks) plus 15 weeks' pay.

18. All payments will be calculated with reference to the staff member's superannuable salary and any superannuable allowances applicable to their continuing appointment, as at the date of termination of employment.

19. Part time employees will receive a pro-rata lump sum payment based on their appointment fraction as at the date of application.

20. In addition, all employees terminated under the Scheme will receive their statutory entitlements such as annual leave and long service leave where applicable. These amounts will not form part of the payment made under the Scheme.

21. Following approval of the Scheme, all eligible employees will be formally invited to participate in the Scheme. Eligible employees will be given four weeks to submit their expression of interest in the Scheme.

22. If the number of employees initially willing to participate in the Scheme is less than 25% of eligible staff, the University may implement a second expression of interest process during the duration of the Scheme.

23. Employees who accept an offer to retire under the Scheme will terminate their employment and receive payment no later than 4 weeks after acceptance of the offer but in any event no later than 14 July 2017.

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

25. At the time of retirement, there will be no arrangement between any eligible employee and the University or between the University and another person, to employ the eligible employee after retirement under the Scheme.
26. The payment under the Scheme will not be made in lieu of superannuation benefits.
27. All payments will be made on an arm's length basis.
28. Participation in the Scheme is entirely voluntary.

Ruling

29. The early retirement scheme to be implemented by the University is an early retirement scheme for the purposes of section 83-180.
30. 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.
31. 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 Taxation
21 September 2016

Appendix 1 – Explanation

① *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.*

32. A scheme will be an **early retirement scheme** if it satisfies the requirements of subsection 83-180(3) which states:

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

33. 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).

34. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 14, subject to paragraph 15, of this Ruling.

35. 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. 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

36. 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).

37. The nature of the rationalisation or re-organisation of the employer's operations are described in paragraphs 11 to 13 of this Ruling. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the work force of the employer. It is therefore considered 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).

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

38. The Scheme is proposed to operate for a period commencing 22 September 2016 to 14 July 2017. 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.

39. The Scheme will be in operation for approximately 10 months. This is considered appropriate due to the circumstances of the re-organisation.

Other relevant information

40. 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.

41. 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 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)). A payment for unused long service leave is mentioned in section 82-135.

42. 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'.

43. 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.

44. For the 2016-17 income year, the tax-free amount is limited to \$9,936 (base amount) plus \$4,969 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. It should be noted that 6 months, 8 months or even 11 months do not count as a whole year for the purposes of this calculation.

45. For the 2017-18 income year, the base amount and the service amount is yet to be determined at the publication of this ruling. Therefore, employees should check the ATO website for the 2017-18 income year indexed amounts.

46. 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.

47. 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 paragraphs 44 and 45 of this Ruling to determine the tax-free amount of the early retirement scheme payment.

48. The tax-free amount will:

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

49. 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.

50. 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.

Appendix 2 – Detailed contents list

51. 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(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 960-285
 - ITAA 1997 995-1(1)
 - TAA 1953
 - ITAA 1997
 - ITAA 1997 82-135
 - ITAA 1997 82-135(e)
 - ITAA 1997 83-170
 - ITAA 1997 83-180
-

ATO references

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