CR 2013/72 - Income tax: the ANU Voluntary Early Retirement Scheme (VERS) - Professional staff

Class Ruling

Income tax: the ANU Voluntary Early Retirement Scheme (VERS) – Professional staff

Contents Para

What this Ruling is about

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 employees to whom this scheme applies is all Professional staff of the Australian National University, shown at paragraph 16, who receive a payment under the scheme described in paragraphs 9 to 38 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 9 to 38 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- this Ruling may be withdrawn or modified.

Date of effect

7. The Ruling applies from 25 September 2013 to 31 December 2013. The Ruling continues to apply after 31 December 2013 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

8. The following description of the scheme is based on information provided by the applicant.

9. The Australian National University (ANU) is seeking the Commissioner's approval to implement an early retirement scheme (ERS) in accordance with section 83-180.

10. The scheme will be titled 'The ANU Voluntary Early Retirement Scheme (VERS) – Professional Staff' referred to as the Scheme.

11. In August 2011, the ANU launched its strategic plan – '*ANU by 2020*'. To enable the achievement of the Strategic Plan, the ANU identified a need to refresh its academic staff profile to better reflect its research and teaching performance aspirations as well as to review the delivery of professional services across the University.

12. As one part of a wider strategy to address their budget issue, the ANU is seeking to offer an ERS to employees to rationalise and re-organise the University's operations, to refresh the current workforce so that a higher number of its employees are more aligned with the capabilities of a research intensive university. Non-academic staff are referred to as Professional staff.

13. The ANU has identified a need to review the delivery of professional services across the University in accordance with an overall strategy of regeneration and realignment of skills/workforce profile with employees having capabilities aligned to the University's strategic direction.

14. The ANU seeks to offer Professional staff the opportunity to leave the University with financial support should these aspirations not be aligned.

15. By reducing professional staff structures, the Scheme will assist the ANU to reduce duplication between Colleges and Schools, acceleration of the implementation of online processes and a review of fragmentation and duplication in marketing, student recruitment and communications activities.

16. The class of employees to whom the Scheme applies is all Professional staff of the ANU who are aged 55 or over as at 31 December 2013 and meet the following criteria:

- employed as a continuing (or contingent funded) professional staff member and has not resigned prior to the date of invitation.
- employed as a fixed term staff member with a contract expiry date after 31 December 2013.

17. Employees within this class may wish to express an interest in voluntarily leaving the organisation.

18. The payment to be made to eligible employees under the Scheme is as follows:

- The first component will be a payment of six months' salary; and
- The second component will recognise the length of service. Staff with more than 15 years of service will receive an additional one month salary payment; or staff with more than 20 years of service will receive an additional two months' salary payment.

19. In addition, all employees terminating employment under the Scheme will receive their accrued annual and long service leave entitlements, however they do not form part of the payment made under the Scheme. Staff are eligible for long service leave to be paid out on retirement if they have a minimum qualifying period of four years' continuous service.

20. The Australian National University (ANU) Enterprise Agreement (EA) 2010-12 (the ANU Enterprise Agreement) applies to all staff at ANU and prevails over all other awards.

21. The following employees are excluded from expressing an interest in the Scheme. They are:

- Staff employed by external and/or research funding;
- Senior Executives, Deans and Directors;
- Employees undertaking strategic roles as outlined in '*ANU by 2020*'; and
- Key personnel who have highly technical roles and are not easily replaced. These personnel will be defined as having roles classified within the technical stream of the ANU Enterprise Agreement and staff who operate significant and highly technical equipment, that are difficult to replace and whose early retirement would mean that there were not sufficient technical staff to operate the specialist and highly technical equipment.

22. The maximum number of packages available for retiring employees under the Scheme is limited.

23. In the case where the number of employees seeking access to the Scheme exceeds the number of packages available, the offer will be made to those employees with the greater length of service. If two or more employees have the same length of service, it will be determined on the first eligible employee to express an interest to retire under the Scheme.

24. There is no minimum number of employees required to retire under the Scheme.

25. Following approval of the Scheme, all eligible employees within the class will be invited to apply and will have four weeks to submit applications of interest in the Scheme.

26. Offers will be made to eligible employees approximately six weeks after the date that the Scheme was approved.

27. All employees who accept the offer to retire under the Scheme will terminate employment and receive the payment by 31 December 2013. The actual date of termination will be negotiated with each individual employee based on their operational requirements but no later than 31 December 2013.

28. It is proposed the Scheme will be implemented from 25 September 2013 to 31 December 2013.

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

30. Any employee who terminates employment other than under the proposed Scheme, will not be entitled to receive the payment.

31. The retirement of employees who receive a payment under the Scheme will occur before they turn 65 years of age.

32. For payments made to eligible employees who have reached age 65 or over the payment will not be an early retirement scheme payment and will not be eligible for the tax free base limits under the Scheme. These payments will be concessionally taxed as employment termination payments up to the employment termination payment cap (ETP cap).

33. Employment termination payments cannot be rolled over into a superannuation fund.

34. Payments made under the scheme will be at arm's length.

35. There is no agreement in place between the employee and the ANU, or between the ANU and another person to employ any employee after retirement under the scheme.

36. The Scheme payments will not be made in lieu of superannuation benefits.

37. Participation in the Scheme is entirely voluntary.

38. If an employee chooses not to participate, his or her employment shall continue with no change.

Ruling

39. The early retirement scheme to be implemented by the Australian National University (ANU) is an early retirement scheme for the purposes of section 83-180.

40. 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.

41. 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
25 September 2013

Appendix 1 – Explanation

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.

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

43. 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 now considered.

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

44. 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).

45. The class of employees to whom early retirement will be offered is set out in paragraph 16 of this Ruling.

46. The Commissioner considers that this is an appropriate class of persons to whom the scheme will be offered. 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

47. 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).

48. Paragraphs 11 to 15 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 the employer. It is considered that 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). Accordingly, the second condition for approval has been met.

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

49. The Scheme is proposed to operate for a period commencing from 25 September 2013 to 31 December 2013. 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.

50. The Scheme will be in operation for approximately three months. This is considered appropriate due to the circumstances of the reorganisation and the employees that will be given the option of early retirement under the Scheme.

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 his or her employment at the time of the retirement 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), 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 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)).

53. 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'.

54. 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.

55. For the 2013-14 income year, the proposed tax free amount is limited to $9,246 (base amount) plus $4,624 (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.

56. The total of the amount received on termination of employment calculated in accordance with paragraph 18 of this ruling may qualify as an early retirement scheme payment.

57. The total payment calculated in accordance with paragraph 56 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 55 of this ruling to determine the 'tax-free' amount of the early retirement scheme payment.

58. The 'tax-free' amount will:

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

59. Any payment in excess of this limit will be an employment termination payment where the payment is received no later than 12 months after termination of employment and will be split 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. The taxable component of the ETP will be taxed at various rates depending on the person's age. It should be noted the 'whole of income' cap does not apply to any part of the early retirement scheme payment.

Appendix 2 – Detailed contents list

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

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- early retirement
- employment termination
- redundancy or early retirement scheme payment

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)(b)
- 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

ATO references

NO:	1-4YEK264
ISSN:	1445-2014
ATOlaw topic:	Income Tax ~~ Assessable income ~~ employment termination payments - early retirement scheme