

CR 2013/74 - Income tax: early retirement scheme for Griffith University

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⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *27 November 2013*



Class Ruling

Income tax: early retirement scheme for Griffith University

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ⓘ 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.

[Note: This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

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 those employees of Griffith University who receive a payment under the scheme described in paragraph 15 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 33 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 9 October 2013 to 30 June 2014. This Ruling continues to apply after 30 June 2014 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. Griffith University (GU) is seeking the Commissioner's approval to implement an early retirement scheme (the Scheme) in accordance with section 83-180.
10. The Scheme will be made available to certain eligible employees, namely academic staff employed by GU.
11. GU's Strategic Plan 2013 to 2017 (the Strategic Plan) is focused on improving research performance and growing centres of international research excellence with international impact. Concurrently, GU is committed to offering its students an innovative learning experience using online and digital strategies and high performance classroom practice.

12. In order to meet the goals of the Strategic Plan, GU has identified a need to refresh its academic staff profile to better reflect the required research and teaching performance. As a consequence, GU has reviewed its academic staff profile and the Scheme only applies to academic staff.

13. The Strategic Plan will allow academic staff to aspire to and attain high levels of achievement, informed by international standards and expectations, and at least comparable with the strongest performers in the best Australian universities.

14. A key aspect of the Strategic Plan is to support innovation in its teaching and research performance. GU is working with academic staff to align their personal career aspirations and performance strengths with goals and aspirations of GU. Should these aspirations not be aligned, GU seeks to offer eligible staff the opportunity to leave the university with financial support.

15. The class of employees to whom the Scheme applies are:

- academic staff from Level B, Level C, Level D, Level E, and
- who have been employed on a continuing basis for at least five years, and are at least 55 years old by 30 June 2014, but not yet 65 years old by 30 June 2014.

16. Exclusions from the class of employees to whom the Scheme applies are as follows:

- staff that are currently 'Research Active' (as defined in accordance with University Research Active Standards) or identified for teaching excellence (with reference to receiving a promotion (by application based on achievements in teaching) or competitive teaching award either within or outside the university within the past five years).
- any academic staff member who is named as the Chief Investigator on an Australian competitive research grant;
- staff who have resigned prior to the invitation or accepted a pre-retirement contract;
- staff with an active worker's compensation claim where there is payment made for loss of income;
- staff under investigation for allegations of misconduct;
- any academic staff member of the 'Executive Group or Senior Management Team'. For the purposes of the Scheme, the meaning of a member of the 'Senior Management Team' will be an academic currently employed as a Dean, Head of School, Head of Element, Director of a University Research Centre; and

- Staff members who have been identified and notified as 'critical to the University's teaching strategy'.

17. Under the Scheme, the employees will be entitled to two weeks of pay per year of service up to a maximum entitlement of 52 weeks of salary.

18. The payment made under the Scheme will be in excess of any superannuation or other benefit to which eligible employees would otherwise be entitled.

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

20. Employees will receive payment in lieu of any untaken recreation leave plus leave loading calculated on a pro-rata basis from December prior to the retirement date. A staff member who has completed seven years' recognised continuous service is entitled to a pro-rata payment for long service leave.

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

22. If the number of employees wishing to participate in the Scheme exceeds the number of places available, the date on which the application is received will be used to determine acceptance into the Scheme. If several applications are received on the same day then priority will be afforded to staff with a greater length of service.

23. [Omitted.]

24. [Omitted.]

25. [Omitted.]

26. Employees must terminate their employment and received the payment by 30 June 2014.

27. No payments will be made under the Scheme after 30 June 2014.

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

29. There will be no arrangement between GU and terminating employees, or between GU and any other person, for those employees to be employed after retirement.

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

Ruling

31. The early retirement scheme to be implemented by Griffith University (GU) is an early retirement scheme for the purposes of section 83-180.

32. 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.

33. 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

9 October 2013

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.***

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

35. 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

36. 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).

37. The class of employees to whom early retirement will be offered is set out in paragraph 15 of this Ruling.

38. 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

39. 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).

40. Paragraphs 11 to 14 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

41. The Scheme is proposed to operate for a period commencing from *the date after the Commissioner's approval* 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.

42. The Scheme will be in operation for approximately 3 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

43. 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.

44. 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)).

45. 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'.

46. 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.

47. 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.

48. The total of the amount received on termination of employment calculated in accordance with paragraph 17 of this ruling may qualify as an early retirement scheme payment.

49. The total payment calculated in accordance with paragraph 48 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 47 of this ruling to determine the 'tax-free' amount of the early retirement scheme payment.

50. The 'tax-free' amount will:

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

51. 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 employment termination payment will be taxed at various rates depending on the person's age.

52. 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

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

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References

<i>Previous draft:</i>	- ITAA 1997 82-135
Not previously issued as a draft	- ITAA 1997 82-135(e)
	- ITAA 1997 83-170
	- ITAA 1997 83-180
<i>Related Rulings/Determinations:</i>	- ITAA 1997 83-180(1)
TR 2006/10	- ITAA 1997 83-180(2)
	- ITAA 1997 83-180(3)
	- ITAA 1997 83-180(3)(a)
<i>Subject references:</i>	- ITAA 1997 83-180(3)(b)
- early retirement scheme payment	- ITAA 1997 83-180(3)(c)
- employment termination payment	- ITAA 1997 83-180(5)
	- ITAA 1997 83-180(6)
	- ITAA 1997 995-1(1)
	- TAA 1953
<i>Legislative references:</i>	- Copyright Act 1968
- ITAA 1997	

ATO references

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

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