

CR 2014/100 - Income tax: The University of Western Australia 2014-15 Voluntary Early Retirement Scheme



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Class Ruling

Income tax: The University of Western Australia 2014-15 Voluntary Early Retirement Scheme

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	7
Scheme	8
Ruling	39
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
<i>Explanation</i>	42
Appendix 2:	
<i>Detailed contents list</i>	61

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 employees to whom this scheme applies is all academic, professional and general staff employed by the University of Western Australia, who meet the criteria in paragraph 14 of this Ruling, and who receive a payment under the scheme described in paragraphs 8 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 10 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 11 December 2014 to 30 June 2015. The Ruling continues to apply after 30 June 2015 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 University of Western Australia (the University) 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 University of Western Australia 2014-15 Voluntary Early Retirement Scheme*', referred to as the Scheme.
11. In May 2014, the University launched its strategic plan, '*UWA 2020 Vision*'.
12. To achieve the strategic plan, the University needs to refresh its academic staff profile and operate as a more effective and efficient organisation by re-aligning and streamlining its administrative and operational capabilities.

13. In recognising the overall changing environment, the University acknowledges that the skills, capabilities and career aspirations of individuals may not align with those required by the University. Thus, the purpose of the Scheme is to rationalise and re-organise the University's operations and to align the career aspirations and ambitions of the academic and professional staff with the University's new direction.

14. The class of employees to whom the Scheme applies is all employees who are:

- employed under the *University of Western Australia Academic Staff Agreement 2014* or the *University of Western Australia Professional and General Staff Agreement 2014*
- aged 55 or over as at the closing date of applications
- employed as an ongoing professional/general or tenured/tenurable academic staff member and have neither resigned prior to the date of invitation nor accepted a pre-retirement contract
- employed on part-time or full-time (not casual) basis for a minimum of five years continuous service (academic staff must have a minimum FTE of 0.5)
- do not have an outstanding workers compensation claim, and
- not under an investigation for alleged or serious misconduct.

15. The University will retain a limited right of veto with respect to the employees whose departure would unreasonably impair the efficient and effective operation of the University's business or its long term strategic goals. To that effect the following employees are excluded from participating in the Scheme:

- University Executive
- Pro Vice Chancellors
- Deans
- Director of the Office for Operational Excellence
- Future Fellows
- Recipients of a nationally competitive research fellowship
- Chair of Academic Board committees and sub-committees
- Clinical Academics (that is. joint UWA and hospital appointments)
- Professional staff who are Divisional Directors, and
- Faculty Managers.

16. In addition, the following employees are eligible to participate in the Scheme, however an offer will only be made if the University can obtain a release from their contractual obligations from the relevant external parties in relation to their employment:

- Holders of HERDC Category 1 Research Grants, and
- Staff who hold positions funded by external and/or research funding of 50% or more.

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

- two weeks pay for each full year of continuous service up to a maximum of 26 weeks, and
- all payments will be calculated with reference to the employee's weekly base salary, excluding all allowances.

18. In addition, all employees whose employment is terminated under the Scheme will receive their statutory termination of employment entitlements. However, these payments will not form part of the payment made under the Scheme.

19. Participation in the Scheme is entirely voluntary. Employees who chose not to participate in the Scheme will be retained by the University under their existing employment arrangement.

20. There is no minimum number of early retirement offers under the Scheme.

21. The number of packages available under the Scheme is limited.

22. The early retirement process will be managed by specific caps that have been determined for various faculties/departments of the University. Should the number of applications be less than the relevant cap, all the applications will be automatically accepted. The caps are:

Faculty/Office	Academic	Professional/ General
Arch, Landscape & Visual Arts	2	1
Chief Operating Office		15
Community & Engagement		5
Corporate Services		4
DVC Office of Education	2	13
DVC Office of Research		3
Education	1	1
Faculty of Arts	5	5
Faculty of Engineering, Computing & Mathematics	5	3
Faculty of Law	3	
Faculty of Medicine, Dentistry & Health Sciences	10	13
Faculty of Science	10	10
UWA Business School	5	1
Vice-Chancellery		1

23. In addition, the following business units have specific maximum limits to the number of professional staff so as not to compromise the day-to-day operations of the University:

Business Unit	Employee Cap
Campus Management (with a further limit of 2 within Building Operations, 2 within Building Workshops, 2 within Security Operations)	10
Information Resources Access Management	5
Student Services	5
Oral Health Centre of WA	5

24. Where the number of employees seeking access to the Scheme exceeds the number of packages available within the specified caps, the offer will be made to those eligible employees who have expressed an interest on a 'first in - first accepted' basis.

25. The University may choose to exceed a particular faculty/office/business cap listed above where another faculty/office/business is undersubscribed.

26. Following approval of the Scheme, all eligible staff will be invited to voluntarily express their interest to retire and will have three weeks to submit their expression of interest in the Scheme.

27. Once an eligible employee has submitted an application, voluntary withdrawal from the Scheme will not be permitted.

28. When the three-week application period has expired, eligible employees will be made an offer within a further four-week period on the basis of the Scheme criteria. The University may commence informing applicants that an offer will be made during the application period.

29. In the event that the University's Christmas closedown period occurs either during the application period and/or the offer period, the process will be temporarily suspended for the duration of the closedown period and will recommence for the remaining period upon the re-opening of the University.

30. All employees who accept the offer to retire under the Scheme will terminate their employment and receive their payment four weeks after the end of the offer period. Termination date will be based on the University's operational requirements but not later than 30 April 2015 for professional and general staff, and not later than 30 June 2015 for academic staff.

31. It is proposed that the Scheme will be implemented from the 11 December 2014 to 30 June 2015.

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

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

34. Payments made under the Scheme for staff who have not yet reached 65 years will be processed as an early retirement scheme payment.

35. For payments made to eligible employees who are 65 years or over at the date of termination, the payments will not be eligible for tax-free base limits under the early retirement scheme. These payments will be concessional taxed as employment termination payments (ETPs) up to the ETP cap amount.

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

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

38. There is no agreement in place between the eligible employees and the University, or between the University and another person, to employ any employee after retirement under the Scheme.

Ruling

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

40. 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 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.

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.*

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

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 under the Scheme is set out in paragraph 14 of this Ruling, subject to paragraph 15 and 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 University. 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 13 of this Ruling describe the nature of the rationalisation or re-organisation of the University's operations. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the work force of the University.

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

50. It is considered that the Scheme is to be implemented by the University with a view to rationalising or re-organising the operations of the University 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

51. The Scheme is proposed to operate for a period commencing from 11 December 2014 of the Scheme to 30 June 2015. 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.

Other relevant information

52. 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.

53. 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)).

54. 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'.

55. 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.

56. For the 2014-15 income year, the 'tax-free' amount is limited to \$9,514 (base amount) plus \$4,758 (service amount) for each completed year of 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. In accordance with section 960-285, the base limit and service amount limits are indexed in line with average weekly ordinary time earnings for each income year.

57. 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.

58. The total payment calculated in accordance with paragraph 17 of this Ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 56 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

59. The 'tax-free' amount will:

- not be an ETP, and
- not be able to be rolled-over into a superannuation fund.

60. Any payment in excess of this limit will be an ETP 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 ETP 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

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

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	7
Scheme	8
Ruling	39
Appendix 1 – Explanation	42
All employees within a class approved by the Commissioner may participate in the scheme	44
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 scheme must be approved by the Commissioner prior to its implementation	51
Other relevant information	52
Appendix 2 – Detailed contents list	61

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

ATO references

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