

CR 2022/27 - University of Southern Queensland - early retirement scheme 2022



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Class Ruling

University of Southern Queensland – early retirement scheme 2022

❶ Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Table of Contents	Paragraph
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	5
Ruling	6
Scheme	9
Appendix – Explanation	31

What this Ruling is about

1. This Ruling sets out the income tax consequences of an early retirement scheme implemented by the University of Southern Queensland (the University).
2. Full details of this scheme are set out in paragraphs 9 to 30 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to employees of the University who receive a payment under this scheme.

When this Ruling applies

5. This Ruling applies from 24 March 2022 to 30 June 2022.

Ruling

6. The University of Southern Queensland Early Retirement Scheme 2022 (hereafter referred to as ‘the Scheme’) is an early retirement scheme for the purposes of section 83-180.

7. 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.

8. In addition, so much of the Scheme payment, as falls within the threshold calculated in accordance with section 83-170, is not assessable income and is not exempt income.

Scheme

9. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

10. To meet the goals and objectives set out in the USQ Strategic Plan 2021–2025, the University has identified a number of transformational changes to its overall operating model and therefore the workforce that it needs in order to deliver its 2025 vision. In the ever-changing higher education environment, the University requires a workforce that is dynamic, innovative, mobile, agile and flexible.

11. The University’s workforce of the future must be able to find opportunities and meet and adapt to challenges to continue to position the University strategically in its shifting landscape.

12. The University needs high-quality academic staff who are active in research and have established research profiles and outputs, as well as those who are able to design and deliver a technology-enabled, contemporary and work-integrated education and learning experience for students.

13. It is in this context and as part of a wider strategy to address and drive strategic renewal that the University would like to offer the Scheme to all eligible employees who may be considering retirement with a financial incentive.

14. The Scheme provides an opportunity to regenerate the workforce with the necessary talent and capability to deliver strategic priorities. The ensuing realignment of resources will support the delivery of new initiatives and programs that shape the future competitiveness of the University’s teaching and research endeavours.

15. The program will also help aid ongoing improvements in organisational capability and efficiencies through optimising delivery of professional services and associated staffing. It will allow the University to rationalise, refocus and refresh its workforce with the requisite capabilities needed to meet the challenges of the future.

16. The class of employees that are eligible to participate in the Scheme are all academic and professional employees who are employed under the University of Southern Queensland Enterprise Agreement 2018–2021 (the EA) in continuing substantive positions

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(full-time or fractional) by the University who, as at the date of Scheme opens, meet the following criteria:

- are 55 years of age and above
- have not formally given notice of their resignation or retirement
- have not accepted a pre-retirement contract
- do not have a formal arrangement in place that will result in termination of their employment on a specific date, and
- are not otherwise excluded, as defined in paragraph 17 of this Ruling.

17. The employees who are excluded from the Scheme are those:

- who have entered into a written agreement or contract in accordance with clause 7.2 of the EA
- who meet any one of the following criteria
 - employees who are Investigators on a current University-administered externally-funded research project valued at more than \$25,000, as at the date the Scheme opens
 - employees who have an external research income greater than \$100,000 per annum averaged over the three calendar years prior to the year in which the Scheme opens, or
 - employees who have authored 10 or more Excellence in Research for Australia eligible research outputs during the three years prior to the date the Scheme opens
- who have received a competitive individual national Australian Award for University Teaching during the five years prior to the date the Scheme opens
- who have received a competitive individual internal University-level teaching award citation or grant during the five years prior to the date the Scheme opens
- who have been awarded a Fellowship from the Higher Education Academy or Advance HE or similar body during the five years prior to the date the Scheme opens
- with a current workers compensation claim on the date the Scheme opens that involves payment for actual loss of income
- under investigation within the meaning of applicable University policy or procedure for allegations of misconduct or serious misconduct on the date the Scheme opens, and/or
- who commenced employment in continuing substantive roles at the University after 1 January 2019.

18. Following approval of the Scheme, the University will invite employees within the class to submit an application to retire early. Employees will have a limited time to apply.

19. Shortly after applications close, the University will make offers of early retirement to employees. Employees will have a limited time to accept an offer and terminate employment. Once an offer is accepted, voluntary withdrawal from the Scheme will not be permitted.

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20. There is a limit on the number of employees who can retire under the Scheme. If more employees apply to participate in the Scheme than the number of packages available, offers will be made to the longest-serving employees.

21. The University and an employee may mutually agree to the termination date. Employees who retire under the Scheme will terminate employment and receive payment by no later than 30 June 2022.

22. Employees who retire under the Scheme will receive:

- two weeks' pay for each completed year of continuous service up to a maximum of 52 weeks, plus
- 14 weeks' salary.

23. All payments will be calculated on the employee's substantive salary on the date of ceasing employment.

24. Fractional employees will receive a pro-rated payment, based on their employment fraction, as at the date of ceasing employment.

25. In addition, all employees who terminate employment under the Scheme will receive their statutory entitlements, such as annual leave and long service leave, where applicable. These payments will not form part of the payment made under the Scheme.

26. No payment will be made in lieu of superannuation benefits under the Scheme.

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

28. Employees who retire under the Scheme will do so before they reach the pension age (as defined in the *Income Tax Assessment Act 1997* by reference to the *Social Security Act 1991*).

29. At the time of retirement under the Scheme, there will not be an arrangement in place between an employee and the University or between the University and another person to re-employ an employee.

30. Participation in the Scheme is voluntary. If an employee chooses not to participate, they will continue in their normal role with no change arising from the decision not to participate in the Scheme.

Commissioner of Taxation

23 March 2022

Appendix – Explanation

❶ *This Explanation 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.*

Table of Contents	Paragraph
Requirements for an early retirement scheme	31
<i>All employees within a class approved by the Commissioner may participate in the Scheme</i>	33
<i>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</i>	37
<i>The scheme must be approved by the Commissioner prior to its implementation</i>	40
Other relevant information	43

Requirements for an early retirement scheme

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

32. 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.

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

33. In order to satisfy the first requirement of subsection 83-180(3), participation in a scheme must be offered to all employees in a class approved by the Commissioner.

34. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 16, subject to paragraph 17, of this Ruling.

35. The Commissioner considers that, for the purposes of paragraph 83-180(3)(a), 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 University.

36. Therefore, the first requirement of subsection 83-180(3) is satisfied.

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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

37. The proposed scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer, as required by paragraph 83-180(3)(b).

38. Paragraphs 10 to 15 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 workforce of the University. 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).

39. Accordingly, the second requirement of subsection 83-180(3) has been met.

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

40. The Scheme is proposed to operate for a period from 24 March 2022 to 30 June 2022.

41. The Scheme will be in operation for a period considered appropriate due to the circumstances of the re-organisation.

42. As the approval provided by this Ruling was granted prior to implementation, the third requirement of subsection 83-180(3) is satisfied.

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 their employment at the time of termination, 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), (5) and (6)):

- the retirement occurred before the employee reached pension age 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)).

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45. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.

46. 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.

47. 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.

48. For the 2021–22 income year, the tax-free amount is limited to \$11,341 (base amount) plus \$5,672 (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 11 months do not count as a whole year for the purposes of this calculation.

49. The total of the amount received on the termination of employment, calculated in accordance with paragraph 22 of this Ruling, is an early retirement scheme payment.

50. The total payment calculated in accordance with paragraph 22 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 48 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 (ETP), and
- able to be rolled-over into a super fund.

52. 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.

53. 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.

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References

Legislative references:

- 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(5)
 - ITAA 1997 83-180(6)
 - ITAA 1997 995-1(1)
 - TAA 1953
 - Social Security Act 1991 23(1)
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ATO references

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