Class Ruling

CR 2009/6

Income tax: early retirement scheme - Australian Catholic University

FOI status: may be released

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 stated.
Class of entities

3. The class of entities to which this Ruling applies is those employees of the Australian Catholic University (ACU) who receive a payment under the scheme and who are 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 26 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   • this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from 25 February 2009 to 30 June 2010. The Ruling continues to apply after 30 June 2010 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this 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 this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

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

10. ACU is seeking approval for an early retirement scheme.

11. The scheme is known as the Voluntary Early Retirement Scheme (VERS).

12. The purpose of the scheme is to change the profile of the staffing structure of the Faculty of Education to facilitate the reforming of the operating effectiveness of the academic staff. This re-organisation will provide greater diversity and expertise within the Faculty of Education.

13. Changes to the work of the Faculty of Education will include the following:

   • changes in course and unit profiles, and delivery of programs;
   • greater emphasis on new directions in research including research outcomes being more closely aligned to the strategic goals of the Faculty of Education;
• the use of new information and communication learning technologies in teaching; and
• the ability to better meet external accreditation requirements.

14. The ACU's aim is to replace academic staff members within the Faculty of Education, who do not have the necessary contemporary expertise in teaching or research knowledge skills to achieve the ACU’s research outcomes and teaching objectives.

15. The staff who are eligible to be accepted under the VERS will be teaching and research staff (Levels B - E) in the Faculty of Education, who:

• are between 55 and 65 years during the period the scheme is offered; and
• have been employed on a continuing basis for at least 5 years; and
• do not work on the ACT Campus.

16. If insufficient staff apply for the VERS then the ACU will adopt the following strategies:

(i) terminate staff who are not performing in line with the ACU's performance management policies;
(ii) where individual staff areas of specialisation are no longer required, implement genuine redundancy for those staff affected; and
(iii) implement pre-retirement/transition to retirement offers to staff.

17. The relevant agreements that apply to academic staff in the Faculty of Education are as follows:

• the Higher Education Academic Salaries Award 2002;
• the Higher Education Academic Core Conditions of Employment Award 2005; and
• the Australian Catholic University Staff Enterprise Agreement, 2005-2008 (the Agreement).

18. If there is an oversubscription of staff for the VERS the limiting factors will be the length of service, by location with no greater than 50% of the number of staff in any School or National School.

19. The final list of eligible staff based on the criteria above will be established by the Dean of the Faculty of Education and the Director of Human Resources.

20. The ACU will not offer a VERS to specific, named key staff because of their research, teaching and leadership skills.

21. Staff who retire under the proposed scheme will be offered payment as follows:

• incentive payment of 4 weeks salary to leave on an agreed date;
• the following weeks of salary for each completed years of service up to a maximum of 70 weeks for 15 or more years of service:

<table>
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<th>Completed years of service</th>
<th>Lump sum Weeks of salary</th>
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22. Any staff who do retire under the VERS will normally terminate employment at the end of a teaching semester. However, actual dates of termination will be negotiated with individual staff members.

23. The VERS will be in operation from 26 February 2009 to 30 June 2010.

24. The VERS is to be conducted at arm's length and there is no arrangement in force between the employee and the employer, or between the employer and another person, to employ any of the retirees after the date of termination. However, some staff members may be employed on a casual basis in the future. The shortest period between termination and possible re-employment will be 70 weeks.

25. Individual staff members are able to nominate their normal retiring date as there is no compulsory retirement age for ACU staff.

26. The VERS payments will not include any payment in lieu of other normal termination benefits to which the staff member is entitled. The payments do not include any payment in lieu of superannuation benefits.

**Ruling**

27. The VERS to be implemented by the ACU is an early retirement scheme for the purposes of section 83-180.

28. Accordingly, so much of the payment received by an employee 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 will be an early retirement scheme payment.

29. In addition, so much of the VERS 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 February 2009

**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.

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

31. 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 workforce, 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 discussed below.

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

32. 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).

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

34. The Commissioner considers that this is an appropriate class of employees 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 ACU. These employees meet the requirements of an approved class of employees for the purpose 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

35. 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).

36. Paragraphs 12 to 14 of this Ruling describe the nature of the rationalisation or re-organisation of the ACU'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 therefore considered that the scheme is to be implemented by the employer with a view to rationalising or re-organising the operations of the ACU for the purpose of paragraph 83-180(3)(b).

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

37. The scheme is proposed to operate from 26 February 2009 to 30 June 2010. As approval was granted prior to implementation, the third condition is satisfied.

38. The scheme will be in operation for approximately 16 months, which is a period considered appropriate by the Commissioner.

Other relevant information

39. 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 termination is an early retirement scheme payment.

40. 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 retirement is not at arm's length - the payment does not exceed the amount that could reasonably be expected to be made if the retirement was made at arms 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)).

41. 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.

42. An early retirement scheme payment made on or after 1 July 2007 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.

43. For the year ending 30 June 2009, this amount is limited to $7,350 (base limit) plus $3,676 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. Please note that six months, eight months or even eleven months do not count as a whole year for the purposes of this calculation.

44. The total of the amount received on the termination of employment calculated in accordance with paragraph 21 of this Ruling may qualify as an early retirement scheme payment.

45. The total of the payments calculated in accordance with paragraph 21 of this Ruling will be measured against the limit calculated in accordance with paragraph 43 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

46. The 'tax-free' amount will:

• not be an employment termination payment; and

• not be able to be rolled-over into a superannuation fund.

47. Any payment in excess of this limit will be an employment termination payment and split up 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.

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

Appendix 2 - Detailed contents list

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

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

Appendix 2 - Detailed contents list

Not previously issued as a draft

References

ATO references:
NO 2009/1800

ISSN: 1445-2014

Related Rulings/Determinations:
TR 2006/10

Subject References:
early retirement scheme payment
employment termination payment

Legislative References:
ITAA 1997
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
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