

CR 2011/73 - Income tax: early retirement scheme - Aurora Energy Pty Ltd

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Class Ruling

Income tax: early retirement scheme – Aurora Energy Pty Ltd

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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 provisions

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 in this Ruling are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is those employees of Aurora Energy Pty Ltd (Aurora) who receive a payment under the scheme described in paragraphs 10 to 29 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 29 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 20 July 2011 to 20 July 2012. The Ruling continues to apply after 20 July 2012 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. Aurora Energy Pty Ltd (Aurora) is seeking the Commissioner's approval to implement an early retirement scheme in accordance with section 83-180.

11. The scheme is to be known as 'The Aurora Energy Voluntary Early Retirement Scheme' (VERS).

12. The class of employees to whom this scheme applies is all Aurora Energy Group employees who are in teams or functions as Lineworkers, Inspectors, Operators, Logistic Personnel, Planners, Schedulers and Network Architects who meet the age and service requirements.

13. The age and service requirements of the class of employees to be offered the scheme will be all employees who are 50 years of age or over, but under the age of 65, who have completed five or more years of service.

14. The purpose in implementing the scheme is to rationalise or re-organise the employer's operations and workforce to ensure it has the right human resources to secure its position in the market into the future. Workforce renewal requires investing in the skills of Aurora's employees to ensure it has efficient, effective and highly productive resources to provide power at the lowest price to its customer.

15. As Aurora undertakes the reorganisation, the release of older longer serving employees will assist by providing expanded redeployment and development opportunities for trained apprentices and other classes of employees. This will assist the company to maintain and grow future employees that have the contemporary skills required, greater computer literacy, greater technical aptitude and are more flexible in terms of variation of duties and cross skilling skills.

16. Participation in the VERS is entirely voluntary.

17. In the case that the number of employees seeking access to the scheme exceeds the number of packages available, the offer will be made to those employees on a 'first in first accepted' basis up to a maximum of 25% of eligible employees within each team or function.

18. Following approval of the scheme, expressions of interest will be sought from all eligible employees.

19. Subject to the limitations outlined in paragraph 17, all eligible employees who express an interest in the scheme will be made an offer within eight weeks of submitting their expression of interest. Once an offer is made an eligible employee will have two weeks to decide whether to accept the offer.

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20. All eligible employees under the VERS will be offered a one off payment based on years of service as follows:

Years of continuous service	One-off gross payment
5 Years	\$10,000
10 Years	\$25,000
15 Years	\$40,000
20 Years and over	\$65,000

21. All eligible employees who retire under the scheme will terminate employment and receive the payment on a date negotiated with each individual employee based on their operational requirements. Employees must enter into the scheme no later than 20 July 2012.

22. It is proposed the scheme will be implemented from the date after the Commissioner’s approval to 20 July 2012.

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

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

25. All employees terminated under the scheme will receive their unused annual leave and long service leave entitlements however they do not form part of the payment made under the scheme.

26. The payment made under the scheme is at arm's-length.

27. Under the terms and conditions of employment at Aurora, there is no mandated requirement to retire, however all employees will be under the age of 65 when they terminate employment and the payment is made.

28. There is no agreement in place between the employee and Aurora, or between Aurora and another person to employ the employee after retirement.

29. Eligible employees are covered under the Aurora Energy Enterprise Agreement 2008 (Aurora is currently negotiating the 2011 Agreement).

Ruling

30. The early retirement scheme to be implemented by Aurora is an early retirement scheme for the purposes of section 83-180.

31. 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 voluntary termination of his or her employment at the time of the retirement will be an early retirement scheme payment.

32. 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

20 July 2011

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.***

33. Where a scheme satisfies the requirements of section 83-180 that scheme will be an ‘early retirement scheme’.

34. 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

35. 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).

36. The class of employees to whom early retirement will be offered is set out in paragraph 12 of this Ruling.

37. The Commissioner considers that this is an appropriate class of persons for the scheme to 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

38. 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).

39. Paragraphs 14 and 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 therefore considered 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

40. The Scheme is proposed to operate for a period from the date of the Commissioner's approval to 20 July 2012. Approval will be granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

41. The scheme will be in operation for approximately 12 months. This is considered to be appropriate in this case due to the circumstances of the restructure and for those employees that will be given the option of early retirement under the scheme.

Other relevant information

42. 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.

43. 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 83-130(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)).

44. 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'.

45. 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.

46. For the 2011-12 income year, the tax free amount is limited to \$8,435 (base amount) plus \$4,218 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. It should be noted that 6 months, 8 months or even 11 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 will be indexed in line with average weekly ordinary time earnings for each income year.

47. The total of the amount received on the termination of employment calculated in accordance with paragraph 20 of this Ruling may qualify as an early retirement scheme payment.

48. The total payment in paragraph 47 of this Ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 46 of this Ruling to determine the 'tax free' amount of the early retirement scheme payment.

49. The 'tax free' amount will:

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

50. 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.

Appendix 2 – Detailed contents list

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

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References

- Previous draft:*
- ITAA 1997 83-170
- Not previously issued as a draft
- ITAA 1997 83-180
 - ITAA 1997 83-180(1)
- Related Rulings/Determinations:*
- 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)
- TR 2006/10
- Subject references:*
- early retirement scheme payment
 - employment termination
- Legislative references:*
- ITAA 1997
 - ITAA 1997 82-135
 - ITAA 1997 82-135(e)
 - TAA 1953
 - Copyright Act 1968
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ATO references

NO: 1-2ZXXMRY
ISSN: 1445-2014
ATOlaw topic: Income Tax ~~ Assessable income ~~ employment termination payments ~~ early retirement scheme