


# ***CR 2012/24 - Income tax: early retirement scheme Endeavour Energy***

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## Class Ruling

### Income tax: early retirement scheme Endeavour Energy

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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.

## 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 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 Endeavour Energy, shown at paragraph 15, who receive a payment under the scheme described in paragraphs 9 to 37 of this Ruling.

## Qualifications

4. 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 37 of this Ruling.
5. 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

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7. This Ruling applies from the date of the Commissioner's approval to 31 December 2013. The Ruling continues to apply after 31 December 2013 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

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8. The following description of the scheme is based on information provided by the applicant.
9. Endeavour Energy is seeking the Commissioner's approval to implement an early retirement scheme.
10. The scheme will be titled the 'Mix and Match Program', referred to as the Scheme.

11. Effective 1 March 2011, Origin Energy purchased Endeavour Energy's electricity retail business assets. The sale of the business did not involve the transfer of Endeavour Energy's employees.

12. Part of the entitlements for employees covered by the organisation's enterprise bargaining agreements (EBAs) include a guaranteed employment for five years from the date of the sale. Employees affected by the sale of the retail business have the option of requesting voluntary redundancy when roles are no longer required or remaining employed with Endeavour Energy.

13. The purpose in implementing the scheme is to rationalise and re-organise the employer's operations and reduce, by voluntary means, the size of the company's workforce with employees performing administratively-based roles which are directly affected by the sale of the retail business assets, with staff in other administratively-based roles that require no formal qualifications while maintaining their operational capabilities.

14. The organisation has identified redeployment opportunities for administrative employees in roles that do not require a tertiary qualification, who are not affected by the sale of the retail business assets, to voluntarily leave the organisation with a separation payment. Offering a Mix and Match Program will create employment opportunities for employees affected by the retail sale as they backfill the vacant positions.

15. The class of employees to whom this scheme applies is all Endeavour Energy's permanent employees covered by the organisation's EBAs, performing administratively-based roles that require no formal qualifications. In order to qualify, eligible employees must also be in positions that can be backfilled by employees whose roles are no longer required due to the sale of the organisation's retail business. This class can further be broken down into two sub-classes:

- Employees who will retire under the scheme before the day they turn age 65; and
- Employees who will be 65 years of age or older when they retire under the scheme.

16. Endeavour Energy has provided the number of employees within the class.

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

18. In the case that the number of employees seeking access to the Scheme exceeds the number of packages available in each business or organisation units, the offer will be made to those employees who first submitted their expression of interest.

19. The employer (Endeavour Energy) reserves the right to refrain from allowing one employee from each of its organisation units to retire under the Scheme.

20. All eligible full-time employees under the Scheme will be offered a lump sum payment as follows:

- 2 weeks severance pay for each completed year of service;
- 8 weeks Mix and Match Payment; and
- 4 weeks in lieu of notice (5 weeks if 45 years of age or older).

21. Part-time employees will receive a pro-rated voluntary separation payment based on the formula in paragraph 20.

22. Full-time EBA covered staff who commenced employment on or prior to 27 July 1996 with 1 to 19 years of completed service, will be further entitled to one week maturing/experience allowance for each completed year of service.

23. Full-time EBA covered staff who commenced employment on or prior to 27 July 1996 with 20 or more years of completed service, will be further entitled to two weeks maturing/experience allowance for each completed year of service.

24. All eligible employees within the class will be able to express an interest in the Scheme. Endeavour Energy will advise employees of the date by which expressions of interest must be received. This date will not be later than 30 September 2012.

25. Offers will be made to eligible employees by 31 January 2013.

26. All employees who accept the offer to retire under the Scheme will terminate employment and receive the payment by 31 December 2013. The actual date of termination will be negotiated with each individual employee based on their operational requirements but no later than 31 December 2013.

27. It is proposed the Scheme will be implemented from the date after the Commissioner's approval to 31 December 2013.

28. Participation in the Scheme is entirely voluntary.

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

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

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

32. 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.

33. The payment made under the Scheme is at arm's-length.

34. The retirement of employees who receive a payment under the scheme will occur before they turn 65 years of age.

35. 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 the tax free base limits under the scheme. These payments will be concessional taxed as employment termination payments.

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

37. All eligible employees are employed under the Endeavour Energy Enterprise Agreement 2010 and the Integral Energy Managers/Specialists Workplace Arrangement 2005.

## **Ruling**

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38. The early retirement scheme to be implemented by Endeavour Energy is an early retirement scheme for the purposes of section 83-180.

39. Accordingly, so much of the payment received by an employee that exceeds the amount that could be reasonable 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.

40. 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.

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**Commissioner of Taxation**

11 April 2012

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## Appendix 1 – Explanation

**①** *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.*

41. Where a scheme satisfies the requirements of subsection 83-180(3), that scheme will be an early retirement scheme.

42. 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 discussed below.

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

43. 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).

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

45. 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**

46. 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).

47. The facts at paragraphs 13 and 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 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).

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

48. The Scheme is proposed to operate for a period from the day 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.

49. The Scheme will be in operation for approximately 20 months. This is considered appropriate due to the circumstances of the restructure and the employees that will be given the option of early retirement under the scheme.

**Other relevant information**

50. 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.

51. 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;
- it is not a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).

52. 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'.

53. From 1 July 2007, 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.

54. 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.

55. The total of the amount received on the termination of employment calculated in accordance with paragraphs 20 to 23 of this ruling may qualify as an early retirement scheme payment.

56. The total payment calculated in accordance with paragraph 55 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 54 to determine the 'tax free' amount of the early retirement scheme payment.

57. The 'tax free' amount will:

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

58. 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**

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

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## References

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*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 payments

*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 960-285
- ITAA 1997 995-1(1)
- TAA 1953
- Copyright Act 1968

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ATO references

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