



# ***CR 2013/50 - Income tax: Ausgrid - Early Retirement Scheme***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *3 July 2013*



## Class Ruling

### Income tax: Ausgrid – Early Retirement Scheme

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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

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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 indicated.

#### **Class of entities**

3. The class of entities to which this Ruling applies is those employees of Ausgrid, shown at paragraph 18, who receive a payment under the scheme described in paragraphs 10 to 41 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 10 to 41 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.

## Date of effect

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6. This Ruling applies from 3 July 2013 to 31 December 2014. The Ruling continues to apply after 31 December 2014 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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7. The following description of the scheme is based on information provided by the applicant.
8. Ausgrid is seeking the Commissioner's approval to implement an early retirement scheme in accordance with section 83-180.
9. The scheme will be titled 'TSA Mix and Match Program' referred to as the Scheme.
10. Ausgrid is a New South Wales (NSW) state-owned energy corporation, responsible for the safe and reliable supply of electricity in households and businesses across Sydney, the Central Coast and Hunter Region via an electricity network.
11. The sale of Ausgrid's retail business assets and brand to TRUenergy (now known as EnergyAustralia) was part of the NSW Government's energy reform process. Prior to the sale, Ausgrid provided network services and sold electricity on a retail basis to customers.
12. The sale of the retail business assets did not involve the transfer of Ausgrid's employees.

13. The NSW Government established, in advance of the sale, a range of entitlements in order to support the future employment of the affected employees. Entitlements for employees covered by the Ausgrid Agreement 2010 (the Agreement) include guaranteed employment for five years from the date of the sale.

14. Ausgrid is currently supplying EnergyAustralia with services whilst it sets up its systems to cater for the acquired Ausgrid business. This arrangement is known as a Transitional Services Arrangement (TSA) and this arrangement is expected to end in the first quarter of the 2014 calendar year. At this time the employees working on the TSA will become surplus to Ausgrid's needs, as their roles will become redundant.

15. 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 Ausgrid as per the entitlements arranged by the NSW Government. A large majority of the employees affected by the retail sale have indicated their interest to be redeployed into other roles within Ausgrid.

16. 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. Ausgrid intends to offer a program to allow some non-retail administrative staff to voluntarily leave the organisation so as to create vacant positions for a number of retail employees to fill when they become surplus at the end of the TSA.

17. The class of employees to whom the Scheme applies is all permanent network line of business employees covered by the Ausgrid Agreement 2010, performing administrative-based roles, that are in the Admin/Clerical Pay Grade and are in positions that can be backfilled by employees of the 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.

18. Eligible employees whose roles can be successfully backfilled by retail employees will be eligible to express an interest to leave via the program.

19. All eligible employees under the Scheme will receive a voluntary separation payment (VSP) as follows:

- (a) Four weeks' notice of termination or a maximum of four weeks' pay in lieu (plus one further week if the employee is over 45 and has completed two years of continuous service with Ausgrid) plus
- (b) Severance pay at the rate of three weeks per year of continuous service plus
- (c) An incentive payment, if the acceptance is received within two weeks of the formal offer being made:
  - Less than one year's service – two weeks' pay
  - One year and less than two years' service – four weeks' pay
  - Two years and less than three years' service – six weeks' pay
  - Three years' service and over – eight weeks' pay

20. Part-time employees will receive a pro-rated VSP based on the above formula.

21. In addition, all employees terminated under the Scheme will receive their statutory entitlements, however they do not form part of the VSP made under the Scheme. These may include:

- annual leave loading in respect of all annual leave payable that accrued prior to 20 February 1993; plus
- all accrued untaken award benefits at the date of termination, namely:
  - annual leave
  - long service leave (if five years' service completed)
  - preserved sick leave
  - supplementary superannuation benefits (if 20 years' service completed).

22. At or prior to the point of formal offer, the eligible employee will be provided a statement of their VSP and payout entitlements.

23. The maximum number of packages available for retiring employees under the scheme is limited.

24. There is no minimum number of employees required to retire under the Scheme.

25. The number of VSPs available for administrative staff will be limited within each office to retire under the Scheme.

26. In the case where two or more non-retail employees with identical roles who have expressed an interest in leaving but there are not as many matching retail employees available to backfill the roles, then the employee who first submitted their acceptance of the offer will receive the VSP.
27. The number of positions at Ausgrid will be reduced by the number of employees who accept offers under the Scheme.
28. All eligible employees are employed under the Ausgrid Agreement 2010.
29. Following approval of the Scheme, all eligible employees within the class will have until 30 June 2014 to express an interest in the Scheme.
30. All employees who accept the offer to retire under the Scheme will terminate employment and receive the VSP by 31 December 2014. The actual date of termination will be negotiated with each individual employee based on their operational requirements but no later than 31 December 2014.
31. It is proposed the scheme will be implemented from the date after the Commissioner's approval to 31 December 2014.
32. The VSP 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 employment other than under the proposed Scheme, will not be entitled to receive the payment.
34. The retirement of employees who receive a VSP 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 VSPs 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. Employment termination payments cannot be rolled over into a superannuation fund.
37. Payments made under the scheme will be at arm's length.
38. There is no agreement in place between the employee and Ausgrid, or between Ausgrid and another person to employ any employee after retirement under the scheme.
39. The Scheme payments will not be made in lieu of superannuation benefits.
40. Participation in the Scheme is entirely voluntary.

## Ruling

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

42. 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.

43. 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**

3 July 2013

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## **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.*

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

45. 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***

46. 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).

47. The class of employees to whom early retirement will be offered is set out in paragraph 18 of this Ruling.

48. 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***

49. 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).

50. The facts at paragraphs 11 to 17 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***

51. The Scheme is proposed to operate for a period from (*the date after the Commissioner's approval*) to 31 December 2014. The approval provided by this class ruling has been granted prior to implementation therefore for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

52. The Scheme will be in operation for approximately 18 months. This is considered appropriate due to the circumstances of the restructure.

**Other relevant information**

53. 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.

54. 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 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)).

55. 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'.

56. 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.

57. For the 2013-14 income year, the tax free amount is limited to \$9,246 (base amount) plus \$4,624 (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.

58. The total of the amount received on the termination of employment calculated in accordance with paragraphs 20 and 21 of this ruling may qualify as an early retirement scheme payment.

59. The total payment calculated in accordance with paragraph 59 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 58 of this ruling to determine the 'tax free' amount of the early retirement scheme payment.

60. The 'tax free' amount will:

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

61. 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**

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

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## References

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- Previous draft:*
- ITAA 1997 83-170
- Not previously issued as a draft
- ITAA 1997 83-180
  - ITAA 1997 83-180(1)
- Related Rulings/Determinations:*
- TR 2006/10
- 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)
- Subject references:*
- early retirement
  - employment termination
  - redundancy or early retirement scheme payments
- ITAA 1997 83-180(5)
  - ITAA 1997 83-180(6)
  - ITAA 1997 960-285
  - ITAA 1997 995-1(1)
  - TAA 1953
- Legislative references:*
- ITAA 1997
  - ITAA 1997 82-135
  - ITAA 1997 82-135(e)
  - Copyright Act 1968
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### ATO references

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