


# ***CR 2013/88 - Income tax: Endeavour Energy's Network Business Mix and Match Program***

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## Class Ruling

# Income tax: Endeavour Energy's Network Business Mix and Match Program

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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 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 employees to whom this scheme applies is all employees of Endeavour Energy, shown at paragraph 15, who receive a payment under the scheme described in paragraphs 9 to 40 of this Ruling.

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## 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 40 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.

## Date of effect

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7. This Ruling applies from 13 November 2013 to 31 December 2015. The Ruling continues to apply after 31 December 2015 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 the 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 (ERS) in accordance with section 83-180.
10. The scheme will be titled 'Endeavour Energy's Network Business Mix and Match Program' referred to as the Scheme.
11. Endeavour Energy is a New South Wales (NSW) state-owned corporation, responsible for the safe and reliable supply of electricity to households and businesses across Sydney's Greater West, Blue Mountains, Southern Highlands and the Illawarra via an electricity network which it owns.

12. Endeavour Energy is currently undergoing a period of substantial organisational reform, which has been prompted by a number of significant factors, including (but not limited to):

- (a) Delivery of the NSW Government Network Reform Program announced on 18 March 2012. Electricity distributors are required to deliver more than \$400 million in savings to help fund low income rebates for households by reducing costs, reducing duplication and achieving efficiency savings. Restructuring to achieve a common structure across three NSW distribution businesses is an essential part of delivering the NSW government's policy announcement, and this will involve job number reductions, resulting in some employees requiring redeployment.
- (b) Electricity prices for Endeavour Energy's customers have increased by 62% over a four year period. Endeavour Energy's aim is to limit any future network price increases to CPI or below for the next six years. This can only be achieved for its customers through better cost control, efficiency savings and restructuring.
- (c) The sale of the retail business previously owned by Endeavour Energy (in March 2011). This resulted in increased overheads being borne solely by Endeavour Energy's network business.

13. An initial review indicates that a range of functions in the organisation can be efficiently and effectively operated with streamlined practices requiring fewer employees.

14. The purpose of 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. Endeavour Energy intends to offer a program to allow eligible staff to voluntarily leave the organisation.

15. The class of employees to whom the Scheme applies is all Endeavour Energy's permanent full-time and part-time employees occupying positions that are suited to being backfilled by organisational change-affected employees. 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. The following employees are specifically excluded from the class and **not** eligible to apply under the Scheme. They are:

- casual employees.
- employees on short-term fixed contracts of up to two years.

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- employees who have participated in either the Graduates', Apprentices', Trainee Engineering Officers', or Cadets' Development Programs since 1 January 2012.
- employees who were appointed to permanent positions through the Mix and Match program referred to in the ATO Class Ruling CR 2012/24.

17. Endeavour Energy will be seeking expressions of interest from eligible employees who wish to voluntarily leave the organisation under the Scheme.

18. As the program will be implemented on a rolling basis, there will be staggered timeframes for expressions of interest and offers being made to employees within each workforce category. Furthermore, as the workforce categories are broad, implementation within each workforce category may be similarly staggered. Each expression of interest period will be open for no more than three months.

19. Those employees within the class whose roles could be successfully backfilled by reform-affected employees or employees who are appointed to roles which are identified as excess to organisational requirements will be eligible to express an interest to leave under the Mix and Match program.

20. Within six weeks of either expressing an interest or the closure of the expression of interest period, indicative payout figures will be provided to those eligible employees who initially expressed an interest.

21. A detailed recruitment process will then proceed to confirm relevant matches, after which offers will be made to relevant staff.

22. In the case where two or more employees with identical roles have expressed an interest in leaving but there are not as many matching employees available to backfill the roles, then the employee who first confirmed his or her expression of interest after reviewing indicative payout figures will be permitted to depart under the scheme.

23. All employees who accept an offer to retire under the Scheme will terminate employment and receive the payment within 12 months of the offer being made. However, the actual date of termination will be negotiated with each individual employee based on their operational requirements but no later than 31 December 2015.

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

Employed on or prior to 27 July 1996:

- (a) For full-time EBA-covered staff who commenced employment on or prior to 27 July 1996 with up to 19 years of completed service, the payment would be comprised of the following:

- two weeks' severance pay for each completed year of service;
  - one weeks' maturing / experience allowance for each completed year of service;
  - eight weeks' Mix and Match Payment; and
  - four weeks' pay in lieu of notice (five weeks if 45 years of age or older).
- (b) For full-time EBA-covered staff who commenced employment on or prior to 27 July 1996 with 20 years or more of completed service, the payment would be comprised of the following:
- two weeks' severance pay for each completed year of service;
  - two weeks' maturing / experience allowance for each completed year of service;
  - eight weeks' Mix and Match Payment; and
  - four weeks' pay in lieu of notice (five weeks if 45 years of age or older).

Employed after 27 July 1996:

For full-time EBA-covered staff who commenced employment after 27 July 1996 the following formula is standard regardless of years of service:

- two weeks' severance pay for each completed year of service;
- eight weeks' Mix and Match Payment; and
- four weeks' pay in lieu of notice (five weeks if over 45 years or older with two or more years of service).

Employees on individual contracts of employment:

Contract employees that commenced employment on or prior to 27 July 1996 with up to 19 years of completed service would receive one week maturing/experience allowance for each completed year of service.

Contract employees that commenced employment on or prior to 27 July 1996 with 20 or more years of completed service would receive two weeks' maturing / experience allowance for each completed year of service.

Contract employees who have signed version 13.1 Endeavour Energy Management Contracts would be paid their maturing allowances according to Schedule 1 of their contracts. The amounts of the maturing allowance payments for these employees would be specific to their individual circumstances.

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Employees on an earlier (and still active) version of the employment contract, which contains a different period of time to be used for the calculation of the separation payment, will receive the amount as set out in that contract.

25. Part-time employees would receive a pro-rated voluntary separation package based on the above.
26. In addition, all employees terminating employment under the Scheme will receive their statutory entitlements however they do not form part of the payment made under the Scheme.
27. The maximum number of packages available for retiring employees under the Scheme is limited. Endeavour Energy reserves the right to refrain from allowing one employee, or up to 40% of safety-critical employees, whichever of the two numbers is higher, from each of its organisation units to depart under the Scheme.
28. There is no minimum number of employees required to retire under the Scheme.
29. It is proposed the Scheme will be implemented from 13 November 2013 to 31 December 2015.
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. The retirement of employees who receive a payment under the Scheme will occur before they turn 65 years of age.
33. For payments made to eligible employees who have reached age 65 or over, the payment will not be eligible for the tax-free base limits under the Scheme. These payments will be concessionaly taxed as an employment termination payment (ETP) up to the ETP cap.
34. Payments made under the Scheme will be at arm's length.
35. There is no agreement in place between the employee and Endeavour Energy, or between Endeavour Energy and another person to employ an employee after retirement under the Scheme.
36. The Scheme payments will not be made in lieu of superannuation benefits.
37. Participation in the Scheme is entirely voluntary.
38. If an employee chooses not to participate, his or her employment shall continue with no change.
39. All eligible employees are employed under enterprise agreements and employment contracts as follows:
  - (a) Endeavour Energy Enterprise Agreement 2012.

- (b) Integral Energy Managers/Specialists Workplace Arrangement 2005.
- (c) Endeavour Energy Management Contract Version 13.1.
- (d) Endeavour Energy Evergreen Contract (note, Endeavour Energy was formerly Integral Energy).
- (e) Endeavour Energy Fixed Term Contract (note, Endeavour Energy was formerly Integral Energy).

40. The composition of the particular workforce categories is as follows:

<b>Category</b>	<b>For Example</b>
<b>Electrical trades</b> – may require employees to be electrically trade qualified	<ul style="list-style-type: none"> <li>• Distribution Workers</li> <li>• Technologists</li> <li>• Qualified Field Officers</li> </ul>
<b>Field Support</b> – field roles either unqualified or have a non-electrical qualification	<ul style="list-style-type: none"> <li>• Electricity workers</li> <li>• Unqualified Field Officers</li> <li>• Tree trimmers</li> <li>• Project Assistants</li> <li>• Non-electrical trades</li> <li>• Security Co-ordinators</li> </ul>
<b>Project management / Field Supervision/ Engineers/ Engineering Officers/ Management and Other Professionals</b> – may require qualification level of an Advanced Diploma and above	<ul style="list-style-type: none"> <li>• Regional Project Managers</li> <li>• Operations Managers</li> <li>• Engineers and Engineering Officers</li> <li>• Information Technology / Human Resources / Accounting etc.</li> </ul>
<b>Administration / Office</b> – may comprise of administration or office employees that are either unqualified or require a qualification that is below that of an Advanced Diploma	<ul style="list-style-type: none"> <li>• Branch Assistants</li> <li>• Administration Officers</li> <li>• Accounts Officers</li> <li>• Depot Administrators</li> <li>• Business Support Officers</li> </ul>

## **Ruling**

41. The early retirement scheme to be implemented by Endeavour Energy 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 the voluntary termination of his or her employment at the time of the retirement will be an early retirement scheme payment.

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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**

13 November 2013

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## **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.*

44. Where a scheme satisfies the requirements of section 83-180 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 now considered.

### ***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 15 of this Ruling.

48. The Commissioner considers that this is an appropriate class of persons to whom the scheme will 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).

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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***

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. Paragraphs 11 to 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 considered that 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***

51. The Scheme is proposed to operate for a period commencing from *the date after the Commissioner's approval to* 31 December 2015. 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.

52. The Scheme will be in operation for approximately 26 months. This is considered appropriate due to the circumstances of the reorganisation and the employees that will be given the option of early retirement under the Scheme.

***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 the retirement 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; and
- 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 proposed 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.

58. The total of the amount received on termination of employment calculated in accordance with paragraphs 24 and 25 of this ruling may qualify as an early retirement scheme payment.

59. The total payment calculated in accordance with paragraph 58 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 57 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 where the payment is received no later than 12 months after termination of employment and will be split into tax free and taxable components. The tax-free component of an employment termination payment (ETP) includes the pre-July 83 segment of the payment. The tax free component is not assessable income and is not exempt income.

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62. Payments made under the ERS in excess of the tax-free limit will be concessional tax up to the ETP cap of \$180,000 for the 2013-14 income year and will continue to have access to the full benefit of an ETP tax offset under subsection 82-10(3).

63. The ETP cap is reduced by ETPs received earlier in the year or by ETPs received in an earlier year relating to the same termination.

**Appendix 2 – Detailed contents list**

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

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**References**

- Previous draft:*
- Not previously issued as a draft
- Related Rulings/Determinations:*
- TR 2006/10; CR 2012/24
- Subject references:*
- early retirement
  - employment termination
  - redundancy or early retirement scheme payment
- Legislative references:*
- ITAA 1997
  - ITAA 1997 82-10(3)

- 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 995-1(1)
- TAA 1953
- Copyright Act 1968

## ATO references

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