



# ***CR 2013/97 - Income tax: Essential Energy's Network Business Mix and Match Program***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *15 January 2014*



## Class Ruling

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

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### **❶ 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.

**[Note:** This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

## 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 whom this scheme applies is all employees of Essential Energy, shown at paragraph 16, who receive a payment under the scheme described in paragraphs 10 to 37 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 37 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 11 December 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 this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

## Previous Rulings

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8. A previous ruling issued to Essential Energy under class ruling CR 2013/53.

## Scheme

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

10. Essential Energy is seeking the Commissioner's approval to implement an early retirement scheme in accordance with section 83-180.

11. The scheme will be titled 'Essential Energy's Network Business Mix and Match Program,' referred to as the Scheme.

12. Essential Energy is a New South Wales (NSW) state-owned corporation, responsible for building, operating and maintaining Australia's largest electricity network delivering essential services to homes and businesses across NSW and parts of southern Queensland and northern Victoria via an electricity network which it owns.

13. Essential 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 Essential Energy's customers have increased by 72% over a four year period. Essential 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 Essential Energy (in March 2011). This resulted in increased overheads being borne solely by Essential Energy's network business.
- (d) In addition there has been a large reduction in capital works resulting in excess resources across a number of technical areas.

14. An initial review indicates that a range of functions in the organisation, across varying workforce categories, can be efficiently and effectively operated with streamlined practices requiring fewer employees.

15. 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. Essential Energy intends to offer a program to allow eligible staff to voluntarily leave the organisation.

16. The class of employees to whom the Scheme applies is all permanent full-time and part-time employees who are employed under the Essential Energy's Enterprise Agreement 2011 or Essential Energy Far West Electricity Enterprise Agreement 2011, or their

successors; and Essential Energy individual employment agreements/contracts, occupying positions that are suited to be backfilled by reform-affected employees. Reform-affected employees are employees whose roles are no longer required or employees who are appointed to roles which are identified as excess to organisational requirements. 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.

17. 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.
- employees who have participated in either the Graduates', Apprentices', Trainee Engineering Officers', or Cadets' Development Programs since 1 January 2013.

18. All eligible employees are employed under:

- (a) Essential Energy Enterprise Agreement 2011 (or successor).
- (b) Essential Energy Far West Electricity Enterprise Agreement 2011 (or successor).
- (c) Essential Energy Contract of Employment.
- (d) Essential Energy Employment Agreement (note, Fixed Term, Essential Energy was formerly Country Energy).
- (e) Essential Energy Executive Employment Agreement (note, Fixed Term, Essential Energy was formerly Country Energy).
- (f) Australian Inland Contract of Employment (note, Australian Inland became Country Energy, then Essential Energy).

19. Following approval of the Scheme, eligible employees will be invited to submit their expression of interest to voluntarily participate in the Scheme. The Scheme will be open until 31 December 2015 and roles will be advertised on an on-going basis.

20. Within six weeks of expressing an interest or 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 in identical roles have expressed an interest in leaving but there are not as many matching employees available to backfill roles, then the employee who first expressed an interest will be made an offer to terminate employment and receive the package.

23. All employees who accept the 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:

**Essential Energy Enterprise Agreement 2011:**

The separation payment \* will be:

- (a) four weeks' notice payment (five for those over 45 years of age) plus
- (b) an early acceptance payment, if accepted within two weeks of written offer:
  - (i) less than one year's service - two weeks' payment
  - (ii) one year and less than two years' service – four weeks' payment
  - (iii) two years and less than three years' service- six weeks' payment
  - (iv) three years or more – eight weeks' payment
- (c) two weeks for each completed year of service.

\*The total separation payment is capped at a maximum of 52 weeks.

**Essential Energy Far West Electricity Enterprise Agreement 2013:**

The separation payment will be:

- (a) **Service between 1 year and 13 years:**
  - (i) Four (4) weeks' notice or payment in lieu, plus an additional one (1) week's notice or pay in lieu for employees aged 45 years and over with five (5) or more years of completed service.
  - (ii) Severance pay for each completed year of service at the rate of three (3) weeks per year of continuous service up to a maximum of thirty nine (39) weeks, with pro-rata payments for incomplete years of service to be on a quarterly basis.

- (iii) an additional acceptance payment, if a severance offer is accepted within two (2) weeks of written offer:
- Less than one (1) year service – 2 weeks' payment
  - One (1) year and less than two (2) years – 4 weeks' payment
  - Two (2) years and less than three (3) years – 6 weeks' payment
  - Three (3) years or more – 8 weeks' payment

**(b) Service between 14 years and 17 years**

- (i) Fifty two (52) weeks with pro-rata payments for incomplete years of service to be on a quarterly basis.

**(c) Service of 18 years plus**

- (i) Three (3) weeks per year of continuous service, with pro-rata payments for incomplete years of service to be on a quarterly basis.

**Calculation of payments for part-time employees:**

Part-time employees will receive a pro-rated voluntary separation payment based on the above formula.

**Employees on individual agreements/contracts of employment:**

The calculation of a VSP for an employee on an individual employment agreement/contract will be in accordance with the amount as set out in that agreement/contract. Apart from any accrued entitlements and the VSP, no further 'additional payments' will be made.

25. In addition, all employees terminated under the Scheme will receive their statutory entitlements however they do not form part of the payment made under the Scheme.

26. Participation in the Scheme is entirely voluntary. If the employee chooses not to participate, his or her employment shall continue with no change.

27. The composition of the particular workforce categories (or subsets) is as follows:

Category	For example
<b>Trades</b> – requires employees to be electrically trade qualified	<ul style="list-style-type: none"> <li>• Line workers</li> <li>• Electrical Technicians (including Zone Subs)</li> </ul>

Category	For example
	<ul style="list-style-type: none"> <li>• Crew Coordinators</li> <li>• Network Operators</li> <li>• Resource Supervisors</li> <li>• Senior Resource Supervisors</li> <li>• Apprentice Tradespeople</li> </ul>
<b>Non Trade</b> – comprises field roles that are either unqualified or have a non-electrical qualification	<ul style="list-style-type: none"> <li>• Asset Inspectors</li> <li>• Electrical Workers</li> <li>• Meter Readers</li> <li>• Plant Operators</li> <li>• Vegetation Control Officers</li> <li>• Warehouse Workers</li> </ul>
<b>Technical</b> – requires employees to possess a qualification that is at the level of Certificate IV up to Advanced Diploma and above	<ul style="list-style-type: none"> <li>• Design Project Managers</li> <li>• Engineering Officers</li> <li>• IS Application Managers</li> <li>• Network Operators</li> <li>• Planning Protection Connection Officers</li> </ul>
<b>Professional Specialist</b> – requires employees to possess a qualification that is at the tertiary level	<ul style="list-style-type: none"> <li>• Accountants</li> <li>• Electrical Engineers</li> <li>• Lawyers</li> <li>• Business Analysts</li> <li>• Human Resource Managers</li> <li>• Senior Workplace Relation Managers</li> <li>• Regional Health Coordinators</li> </ul>
<b>Administration</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>• Network Billing Officers</li> <li>• Payroll Officers</li> <li>• Personal Assistants</li> <li>• Project Officers</li> <li>• Work Schedulers</li> </ul>

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

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

30. Essential Energy reserves the right to refrain from allowing an employee, or up to 40% of safety-critical employees, whichever of the two numbers is higher, from each of its organisational units to depart under the Scheme.

31. It is proposed the Scheme will be implemented from *the date after the Commissioner's approval* to 31 December 2015.

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

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

34. For payments made to eligible employees who have reached age 65 or over the payment will not be an early retirement scheme payment and will not be eligible for the tax free base limits under the Scheme.

35. Payments made under the Scheme will be at arm's length.

36. There is no agreement in place between the employee and Essential Energy, or between Essential Energy and another person to employ an employee after retirement under the Scheme.

37. The Scheme payments will not be made in lieu of superannuation benefits.

## Ruling

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38. The early retirement scheme to be implemented by Essential 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 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.

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.

## 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.*

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

### ***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 16 (and subject to the exclusions set out in paragraph 17) of this Ruling.

45. 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).

### ***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. Paragraphs 13 to 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 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***

48. The Scheme is proposed to operate 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.

49. The Scheme will be in operation for approximately 24 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***

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 the retirement 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 83-180(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)).

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. 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 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 six months, eight months or even eleven months do not count as a whole year for the purposes of this calculation.

55. For employees who are under the age of 65 years, the total of the amount received on termination of employment, calculated in accordance with paragraph 24 of this ruling, may qualify as an early retirement scheme payment.

56. The total payment being made to an eligible employee under the age of 65 years and 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 of this ruling 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 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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59. Payments made under the early retirement scheme in excess of the tax-free limit will be concessionally taxed 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).

60. 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**

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

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## References

### *Previous draft:*

Not previously issued as a draft

- ITAA 1997 82-10(3).
- ITAA 1997 82-135
- ITAA 1997 82-135(e)

### *Related Rulings/Determinations:*

TR 2006/10; CR 2013/53

- ITAA 1997 83-170
- ITAA 1997 83-180
- ITAA 1997 83-180(1)
- ITAA 1997 83-180(2)
- ITAA 1997 83-180(3)

### *Subject references:*

- early retirement
- employment termination
- employment termination payment
- redundancy or early retirement scheme payment

- 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

### *Legislative references:*

- ITAA 1997

### ATO references

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