

CR 2015/74 - Income tax: the 'Powerlink Voluntary Early Retirement Scheme 2015-2017'

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 This document has changed over time. This is a consolidated version of the ruling which was published on *2 December 2015*



Class Ruling

Income tax: the 'Powerlink Voluntary Early Retirement Scheme 2015-2017'

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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.

[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 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 whom this scheme applies is those employees of Queensland Electricity Transmission Corporation Limited shown at paragraph 17, who receive a payment under the scheme described in paragraphs 9 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 the Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described under the heading *Scheme*.

6. If the scheme actually carried out is materially different from the scheme that is described in the Ruling, then:

- The Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
- the Ruling may be withdrawn or modified.

Date of effect

7. The Ruling applies from 23 September 2015 to 23 September 2017. The Ruling continues to apply after 23 September 2017 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, the 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

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

9. Queensland Electricity Transmission Corporation Limited, trading as Powerlink Queensland (Powerlink), is seeking the Commissioner's approval to implement an early retirement scheme (ERS) in accordance with section 83-180 of the ITAA 1997.

10. The scheme will be titled '*Powerlink Voluntary Early Retirement Scheme 2015-2017*', hereafter referred to as the Scheme.

11. Powerlink is a State Government Owned Corporation in Queensland, which owns, develops, operates and maintains the high voltage electricity transmission network.

12. Powerlink expects over the 5 year forecast period that it will experience significant challenges unless the organisation significantly decreases the size of its workforce. The key challenges are:

- A forecast decrease in regulated capital and operating expenditure, primarily driven by flattening electricity demand
- An ongoing focus on operating efficiencies through the regulatory framework overseen by the Australian Energy Regulator (AER), and
- Completion of current non-regulated work with no new investments committed for implementation at this time.

13. The purpose of the Scheme is to rationalise and reorganise Powerlink's operations and reduce by voluntary means the size of Powerlink's workforce. By offering the Scheme, Powerlink will be able to reduce the size of its workforce which will ensure:

- Profitability is not impacted by surplus staff costs that can no longer be capitalised against a project
- It meets its responsibility to provide appropriate financial returns to the Queensland Government, and
- A commitment to put downward pressure of electricity prices is delivered.

14. Employees who occupy a position that is determined to be no longer required by Powerlink will hereafter be referred to as a 'reform-affected employee'.

15. When Powerlink has determined that a position is no longer required, they will inform the employee(s) occupying that position that they are considered to be a reform-affected employee.

16. Reform-affected employees will be able to voluntarily terminate their employment under the applicable redundancy provisions in their enterprise agreement.

17. The class of employees to whom the Scheme applies to is all full time and part-time employees who occupy a position that can be backfilled by a reform-affected employee.

18. The following employees are specifically excluded from the class and are not eligible to apply under the Scheme. They are:

- casual employees
- employees engaged on temporary or fixed term contracts
- employees on probation
- employees who are engaged as apprentices or through trainee programs, and
- employees who have resigned prior to expressions of interest date or accepted another pre-retirement agreement.

19. Employees employed under the *Working at Powerlink Agreement 2015* or the *Powerlink Managers Enterprise Agreement 2014* or subsequently approved equivalent agreements will receive the following payment under the Scheme:

- three weeks' full-time pay per full-time equivalent year of service and a proportionate amount for an incomplete year of service paid at the employee's substantive appointed level on termination of employment. The minimum severance payment is 4 weeks' pay and the maximum is 75 week's
- for employees who have at least one year but less than seven years' service, an additional payment equal to 1.3 weeks for each year of continuous service and a proportionate amount for an incomplete year of service, and
- employees will receive 6 months' notice of termination or an Early Separation Incentive Payment of 13 weeks at the employees' current weekly rate of pay at the time of termination.

20. Employees employed under an Alternative Working Arrangement (Contract) under the *Working at Powerlink Agreement 2015* or *Powerlink Managers Enterprise Agreement 2014* or subsequently approved equivalent agreements will receive the following payment under the Scheme:

- three weeks' full-time pay per full-time equivalent year of service and a proportionate amount for an incomplete year of service paid at the employee's substantive appointed level on termination of employment. The minimum severance payment is 26 weeks' pay and the maximum is 75 week's
- for employees who have at least one year but less than seven years' service, an additional payment equal to 1.3 weeks for each year of continuous service and a proportionate amount for an incomplete year of service, and
- employees will receive 5 weeks' notice or payment in lieu of notice.

21. The Scheme will operate by seeking expressions of interest from all employees, apart from those excluded at paragraph 18, who wish to voluntarily leave the organisation under the Scheme.

22. The interest period is open for the duration of the Scheme. The Scheme will reduce workforce numbers in a 'step' manner to minimise disruption rather than a slow ongoing process across the business.

23. Employees who express interest will be provided with an indicative payout figure.

24. A reform-affected employee who does not terminate their employment will be considered for backfilling the position of an employee who expresses interest in the Scheme.
25. Employees will be eligible to participate in the Scheme if their position is backfilled by a reform-affected employee.
26. Employees who apply for the Scheme will be made an offer within 2 weeks of becoming eligible to participate.
27. Eligible employees who accept the offer to retire under the Scheme will receive payment and terminate employment at a time mutually agreed by Powerlink and the eligible employee but no later than 23 September 2017.
28. There are no maximum or minimum packages available under the Scheme.
29. Payments made under the Scheme to employees who have not yet reached 65 years at the date of termination will be processed as an early retirement scheme payment.
30. Payments made to employees who are 65 years or older at the date of termination will not be eligible for tax-free base limits under the early retirement scheme. These payments will be concessional taxed as employment termination payments (ETPs) up to the ETP cap amount.
31. Employees who are terminated under the Scheme will receive their accrued unused annual and long service leave entitlements. However, these payments will not form part of the payment under the Scheme.
32. Any employee who terminates employment other than under the proposed Scheme, will not be entitled to receive a payment under the Scheme.
33. Participation in the Scheme would be entirely voluntary. Powerlink's Enterprise Agreement contains a 'no forced redundancies' clause, meaning that employees that do not wish to participate in the Scheme will have security of tenure for the life of the current agreement.
34. The payment made under the Scheme is in excess of any superannuation and any other benefits to which the employee would otherwise be entitled.
35. The payment made under the Scheme will not be made in lieu of superannuation benefits.
36. Payments made under the Scheme will be at arm's length.
37. There is no agreement in place between the class of employees identified and Powerlink, or between Powerlink and another person to employ any employee after retirement under the Scheme.

Ruling

38. The early retirement scheme to be implemented by Powerlink 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 their 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.

Commissioner of Taxation

23 September 2015

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. A scheme will be an early retirement scheme if it satisfies the requirements of subsection 83 180(3).

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 under the Scheme is set out in paragraph 17 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. Paragraphs 11 to 13 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 work force of the employer.

48. The Scheme will be in operation for approximately two years. This is considered appropriate due to the circumstances of the re-organisation.

49. 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

50. The Scheme is proposed to operate for a period from 23 September 2015 to 23 September 2017. 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.

Other relevant information

51. 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.

52. 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 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)).

53. 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'.

54. In accordance with section 83-170, 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.

55. For the 2015-16 income year, the tax-free amount is limited to \$9,780 (base amount) plus \$4,891 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. For the 2016-17 income year, the base amount and the service amount is yet to be determined at the publication of this Ruling. Therefore, employees should check the ATO website for the 2016-17 income year indexed amounts. 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.

56. The total of the amount received on the termination of employment calculated in accordance with paragraph 19 or 20 of this Ruling may qualify as an early retirement scheme payment.

57. The total payment calculated in accordance with paragraph 19 or 20 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 55 of this Ruling to determine the 'tax free' amount of the early retirement scheme payment.

58. The 'tax-free' amount will:

- not be an employment termination payment (ETP), and
- not be able to be rolled-over into a superannuation fund.

59. Any payment in excess of this limit will be an ETP 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 includes the pre-July 83 segment of the payment. The tax free component is not assessable income and is not exempt income.

60. The taxable component of the ETP will be taxed at various rates depending on the person's age. It should be noted that the 'whole of income' cap does not apply to any part of the early retirement scheme payment.

Appendix 2 – Detailed contents list

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

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References

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

ATO references

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