


CR 2025/56 - Engenco Limited - employee share scheme - disposal of shares under an off-market takeover

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Status: **legally binding**

Class Ruling

Engenco Limited – employee share scheme – disposal of shares under an off-market takeover

❶ Relying on this Ruling

This publication is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for employees of Engenco Limited (Engenco) and its subsidiaries (as defined in section 46 of the *Corporations Act 2001*) (collectively, the Engenco Group) who participated in the Engenco Employee Share Purchase Plan (Plan) to acquire ordinary shares in Engenco (ESPP Shares) which were subsequently disposed of pursuant to an off-market takeover by Elph Investments Pty Ltd (Elph Investments).
2. Details of this scheme are set out in paragraphs 8 to 24 of this Ruling.
3. All legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - acquired ESPP Shares on 26 September 2022, 21 September 2023 or 19 September 2024 (Relevant ESPP Shares), which you held at all times until the date you disposed of your Relevant ESPP Shares pursuant to the takeover
 - were entitled to reduce the amount included in your assessable income in accordance with section 83A-35 (with the exception of the condition in subsection 83A-45(4) – minimum holding period) when you acquired the Relevant ESPP Shares
 - were employed by the Engenco Group at all times from the date you acquired the Relevant ESPP Shares, and

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- were a 'resident of Australia' (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*) on the date you disposed of your Relevant ESPP Shares pursuant to the takeover.

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 8 to 244 of this Ruling.

Note: Division 230 will not apply to individuals unless they have made an election for it to apply.

When this Ruling applies

6. This Ruling applies from 1 July 2022 to 30 June 2026.

Ruling

Minimum holding period

7. The Commissioner will allow the minimum holding period to end at the earlier time being when Elph Investments acquired the Engenco shares (including the Relevant ESPP Shares) under the takeover offer which was completed on 1 August 2025 (paragraph 83A-45(5)(a)).

Scheme

8. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Relevant entities

Engenco Limited

9. Engenco is a 'resident of Australia' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* and was a publicly listed company on the Australian Securities Exchange until it was delisted on 2 July 2025.

10. Engenco is an engineering company that provides a range of products and solutions for the transportation sector.

Elph Investments Pty Ltd

11. Elph Investments is a proprietary limited company incorporated in Tasmania, Australia on 31 August 2007. It operates as an investment vehicle within the Elphinstone Group. The Elphinstone group is principally focused on Caterpillar product distribution and support, manufacturing, technology, materials handling, rail and resources.

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Engenco Employee Share Purchase Plan

12. Engenco established and operated the Plan as an employee share scheme for eligible employees of the Engenco Group in accordance with the Employee Share Purchase Plan Rules.

13. The Relevant ESPP Shares were subject to a restriction period where you could not dispose of the Relevant ESPP Shares until the earlier of:

- 3 years from the date the Relevant ESPP Shares were granted to you, or
- when you ceased employment with the Engenco Group.

14. The Relevant ESPP Shares were granted to you through a salary sacrifice arrangement with the purchase price set at a 5% discount to the market price. Payment of up to \$1,000, being 95% of the value of the Relevant ESPP Shares, was deducted from your pre-tax salary over the relevant financial year.

15. The Relevant ESPP Shares were fully vested when granted to you and could not be forfeited.

16. Before 20 June 2025, the board of Engenco had not exercised its discretion to waive or diminish the 3-year disposal restriction period for your Relevant ESPP Shares. On 20 June 2025, the disposal restriction was lifted to enable you to sell your Relevant ESPP Shares.

17. No ESPP Shares have been granted under the Plan since 19 September 2024.

Off-market takeover offer

18. On 7 March 2025, Elph Investments announced its intention to make an off-market takeover offer to acquire all of the ordinary shares in Engenco.

19. On 28 April 2025, Engenco received an off-market takeover offer under Chapter 6 of the *Corporations Act 2001* from Elph Investments to acquire all of the ordinary shares in Engenco (including the Relevant ESPP Shares) for \$0.305 cash consideration per Engenco share. The offer was subject to the satisfaction of certain conditions and was increased by Elph Investments to \$0.31 cash consideration per Engenco share on 4 June 2025.

20. The shareholders (including holders of the Relevant ESPP Shares) of Engenco could either accept or reject the offer during the offer period.

21. On 18 June 2025, all offer conditions were satisfied and the takeover offer became unconditional.

22. On 20 June 2025, Elph Investments announced it would compulsorily acquire the remaining shares in Engenco.

23. By 1 August 2025, Elph Investments had acquired 100% of the Engenco shares.

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Other matters

24. Engenco did not enter into any formal discussions with Elph Investments or any other entities concerning a takeover or some other acquisition of all of its shares at any time prior to the final tranche of the Relevant ESPP Shares.

Commissioner of Taxation

3 September 2025

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 83A-35
- ITAA 1997 83A-45(4)
- ITAA 1997 83A-45(5)(a)
- ITAA 1997 Div 230
- Corporations Act 2001 46
- Corporations Act 2001 Ch 6

ATO references

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