


# ***CR 2012/108 - Income tax: Energy Delivery Early Retirement Scheme***

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## Class Ruling

### Income tax: Energy Delivery Early Retirement Scheme

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#### **① 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 entities to which this Ruling applies is those employees of Energex Limited (Energex), shown at paragraph 19, who receive a payment under the scheme described in paragraphs 9 to 34 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 9 to 34 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.

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## Date of effect

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7. This Ruling applies from 28 November 2012 to 30 June 2013. The Ruling continues to apply after 30 June 2013 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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8. The following description of the scheme is based on information provided by the applicant.

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

10. The scheme will be titled the 'Energy Delivery Early Retirement Scheme', referred to as the Scheme.

11. Energex is a Queensland Government Owned Corporation. The core business of Energex is the management of a safe and reliable electricity distribution for South East Queensland.

12. Energex has found that it is facing significant challenges in the current business environment. These challenges include:

- (a) Changing regulatory, shareholder and customer expectations;
- (b) Achievement of more cost effective services through an assessment of workforce capability and operational staffing;
- (c) Maintenance of operational performance and standards particularly in safety, security, reliability and availability; and
- (d) Transition into the 2015-2020 regulatory control period.

13. In light of these changes, the organisation must act proactively to mitigate the impacts of these events by rationalising and reorganising its business operations. As part of the rationalisation and reorganisation, Energex is planning to:

- (a) Revise skill sets required for its employees;
- (b) Improve technologies used; and
- (c) Address the challenge of an aging workforce that is currently working in physically demanding and high risk roles.

14. The Scheme is related solely to the Energy Delivery Division in Energex and its field service employees.

15. Field service employees are required to undertake high risk and physically challenging duties on a daily basis. Their role ensures the safe and reliable distribution of energy which is of paramount importance. Therefore it is important that these workers are 'fit for work' and able to respond to work requirements.

16. The requirements and skill sets of field service employees will be revised to ensure the organisation has the flexibility to respond to shifts in the program of work, which may be facilitated through engagement of employees with dual trades, and an increased technological complexity.

17. The proposed scheme is expected to provide many of the older field service workers the opportunity to voluntarily leave the organisation. This will rejuvenate the workforce and create employment opportunities for appropriately skilled and qualified workers such as apprentices who have the required skills necessary for future service delivery requirements.

18. The purpose of implementing the Scheme is to specifically focus on target groups within the workforce where roles and permanent positions are being rationalised and reorganised within the employer's operations and to adequately respond to safety concerns resulting from its aging workforce and changing business needs. As part of the rationalisation and reorganisation process, Energex will be changing the way it delivers its services. This will directly impact the field service employees as their roles, as they are currently designed, will change.

19. The class of employees to whom the Scheme applies is all permanent employees working in the Energy Delivery Division of Energex in the Field Services North and South Group, who are over 55 years of age, and working within the following technical trade areas as specified below:

- (a) Power Worker;
- (b) Electrical Linesman;
- (c) Electrical Live Line at Boonah;
- (d) Electrical Joiner;
- (e) Electrical Fitter Mechanic / Electrical Fitter Mechanic Linesperson; and
- (f) Advanced Connections Officer at Caboolture and Esk.

20. All eligible employees are employed under the *Energex Union Collective Agreement 2011*.

21. Employees within the following groups from the Field Services are excluded from participating in the Scheme. They are:

- (a) Customer Service Technicians;
- (b) Borer Lifter Operator Power Workers at Gatton and Beaudesert;
- (c) Employees working in Transmission other than Power Workers;
- (d) Electrical Fitter Mechanics at South Coast in Rapids;
- (e) Field Construction Officers;
- (f) Pole Mounted Plan Officers;
- (g) SCADA and telecommunications Officers;
- (h) Network Performance Officers; and
- (i) Any other employee who is not included within the eligible class.

22. The maximum number of packages available under the Scheme is limited.

23. All eligible employees under the Scheme will be offered a lump sum payment as follows:

- (a) A severance payment of 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 four weeks' pay and the maximum is 75 weeks; and
- (b) For employees who have at least one year but less than ten years service, an additional ex-gratia payment equal to 1.3 weeks for each year of continuous service and a proportionate amount for an incomplete year of service.

24. All employees terminated under the Scheme will receive their accrued annual leave and unused long service leave entitlements in accordance with the relevant enterprise agreement. However, they do not form part of the payment made under the Scheme.

25. Participation in the Scheme is entirely voluntary.

26. Where the number of employees seeking access to the Scheme exceeds the number of packages available in each technical trade area, priority will be given to the oldest employees within each area.

27. Following approval of the Scheme, applications to participate in the Scheme will close four weeks (20 business days) from the commencement date of the Scheme (the Closing Date). All eligible employees must lodge their application in writing and express an interest in the Scheme prior to the Closing Date.

28. Offers will be made progressively to eligible employees within two weeks (10 business days) of the Closing Date of the application process.

29. All employees who accept the offer to retire under the Scheme will terminate employment and receive the payment from the date after the Commissioner's approval through to 30 June 2013. The actual date of termination will be negotiated between the employer and the employee based on their operational requirements in each group but no later than 30 June 2013.

30. It is proposed the Scheme will be implemented from the date after the Commissioner's approval to 30 June 2013.

31. There is no minimum number of staff Energex requires to retire under the Scheme in order to fully implement the rationalisation and reorganisation of the workforce.

32. The payments made under the Scheme will be at arm's-length.

33. The payments made under the Scheme do not include any payment in lieu of superannuation benefits.

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

## Ruling

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

36. Accordingly, so much of the payment received by an employee that exceeds the amount that could be 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.

37. 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**

28 November 2012

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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.*

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

39. 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**

40. 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).

41. The class of employees to whom early retirement will be offered is set out in paragraph 19 of this Ruling subject to the exclusions set out in paragraph 21.

42. 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**

43. 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).



44. The facts at paragraphs 9 to 18 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**

45. The Scheme is proposed to operate for a period from *(the date after the Commissioner's approval)* to 30 June 2013. 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.

46. The Scheme will be in operation for approximately 6 months. This is considered appropriate due to the circumstances of the restructure and the employees that will be given the option of early retirement under the Scheme.

## **Other relevant information**

47. 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.

48. 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 83-130(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)).

49. 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'.

50. 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.

51. For the 2012-13 income year, the tax free amount is limited to \$8,806 (base amount) plus \$4,404 (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.

52. The total of the amount received on the termination of employment calculated in accordance with paragraph 23 of this ruling may qualify as an early retirement scheme payment.

53. The total payment calculated in accordance with paragraph 52 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 51 of this ruling to determine the 'tax free' amount of the early retirement scheme payment.

54. The 'tax free' amount will:

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

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

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*Subject references:*

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

*Legislative references:*

- ITAA 1997
- 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 960-285
  - ITAA 1997 995-1(1)
  - TAA 1953
  - Copyright Act 1968
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ATO references

NO: 1-4C9TP13

ISSN: 1445-2014

ATOlaw topic: Income Tax ~~ Assessable income ~~ employment termination payments - early retirement scheme