


CR 2022/17 - AusNet Services Ltd - employee share scheme - shares disposed of under scheme of arrangement

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Status: **legally binding**

Class Ruling

AusNet Services Ltd – employee share scheme – shares disposed of under scheme of arrangement

📌 Relying on this Ruling

This publication (excluding appendix) 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 AusNet Services Ltd (AusNet Services) who participated in the AusNet Services General Employee Exempt Share Plan (GEESP) to acquire ordinary shares in AusNet Services (GEESP Shares), which were subsequently disposed of pursuant to the scheme of arrangement on 16 February 2022 (Scheme of Arrangement).
2. Full details of this scheme are set out in paragraphs 7 to 21 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - acquired GEESP Shares on 24 June 2019, 26 June 2020 or 24 June 2021 under the 2019, 2020 or 2021 GEESP offers respectively, which you held at all times until 16 February 2022
 - 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 GEESP Shares, and

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- were employed by AusNet Services or a 'subsidiary' (as defined in the *Corporations Act 2001*) of AusNet Services (collectively referred to as the AusNet Services Group) at all times from the date you acquired the GEESP Shares until 16 February 2022.

When this Ruling applies

5. This Ruling applies from 1 July 2018 to 30 June 2022.

Ruling

6. The Commissioner will allow the minimum holding period to end at the earlier time of 16 February 2022 for the application of Subdivision 83A-B to the GEESP Shares you disposed of under the Scheme of Arrangement (paragraph 83A-45(5)(a)).

Scheme

7. 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

AusNet Services Ltd

8. AusNet Services is a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* and was a public company listed on the Australian Securities Exchange until it was delisted as a result of the Scheme of Arrangement.

9. AusNet Services is an energy delivery service provider in Australia.

Australian Energy Holdings No 4 Pty Ltd

10. Australian Energy Holdings No 4 Pty Ltd (Australian Energy) is a special purpose proprietary limited company and resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*.

11. Australian Energy is controlled by Brookfield Asset Management Inc., a company based in Canada.

AusNet Services General Employee Exempt Share Plan

12. In 2017, AusNet Services established the GEESP as a broad-based employee share plan.

13. The GEESP operated in accordance with the AusNet Services GEESP rules dated 18 June 2015 (the Rules).

14. Under the GEESP, eligible employees elected to salary sacrifice up to \$1,000 per annum and be granted AusNet Services shares equivalent to that value.

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15. The number of GEESP Shares allocated was calculated using the average of the volume-weighted average price of AusNet Services shares on the Australian Securities Exchange over the five trading days from the date that applications for GEESP Shares closed to eligible employees.

16. The GEESP was offered under a non-discriminatory basis to at least 75% of the Australian-resident permanent employees of the AusNet Services Group who had completed more than three years of service.

17. The GEESP Shares were:

- subject to a restriction period where they could not be disposed of until the earliest of
 - three years from the date the GEESP Shares were allocated, or
 - at the time which the employee ceased being employed by the AusNet Services Group, and
- not subject to any vesting conditions; that is, the GEESP Shares could not be forfeited.

Scheme of Arrangement

18. On 31 October 2021, AusNet Services entered into a Scheme Implementation Deed with Australian Energy under which Australian Energy would acquire all of the issued shares in AusNet Services by way of a court ordered Scheme of Arrangement pursuant to Part 5.1 of the *Corporations Act 2001*.

19. On 16 February 2022, Australian Energy acquired all the AusNet Services shares, including the GEESP Shares, pursuant to the Scheme of Arrangement.

20. Pursuant to the Scheme of Arrangement, you received cash consideration of \$2.6025 for each of the GEESP Shares you held.

Other matters

21. AusNet Services did not enter into any formal discussions with any entity concerning a takeover or some other acquisition of all of AusNet Services shares until 30 August 2021.

Commissioner of Taxation

23 February 2022

Status: **not legally binding**

Appendix – Explanation

① *This Explanation 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.*

When the minimum holding period ends

22. One of the conditions which entitled you to reduce the amount included in your assessable income when you acquired the GEESP Shares is to not dispose of those shares within the minimum holding period (sections 83A-35 and 83A-45).

23. The minimum holding period set out in subsections 83A-45(4) and (5) is the earlier of three years from when the GEESP Shares were acquired or when you ceased employment with the AusNet Services Group. However, the Commissioner can allow an earlier period if the Commissioner is satisfied that:

- AusNet Services intended that the requirements as set out in subsection 83A-45(4) would apply to the GEESP Shares during the three years (subparagraph 83A-45(5)(a)(i)), and
- at the earlier time that the Commissioner allows, all AusNet Services shares were disposed of under a particular scheme (subparagraph 83A-45(5)(a)(ii)).

24. The Commissioner is satisfied that the Rules prevented employees from disposing of the GEESP Shares until the earlier of the three-year anniversary of the date the GEESP Shares were acquired or the day after the date they ceased to be employed by the AusNet Services Group.

25. All AusNet Services shares, including the GEESP Shares, were disposed of under the Scheme of Arrangement.

26. Accordingly, the Commissioner is satisfied that the requirements of subparagraphs 83A-45(5)(a)(i) and (ii) are met and will allow the minimum holding period to end at the earlier time of 16 February 2022.

Status: **not legally binding**

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 Subdiv 83A-B

- ITAA 1997 83A-35
- ITAA 1997 83A-45
- ITAA 1997 83A-45(4)
- ITAA 1997 83A-45(5)
- ITAA 1997 83A-45(5)(a)
- ITAA 1997 83A-45(5)(a)(i)
- ITAA 1997 83A-45(5)(a)(ii)
- TAA 1953
- Corporations Act 2001 Pt 5.1

ATO references

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