



# ***CR 2016/26 - Income tax: the 'Ergon Energy Early Retirement Scheme 2016'***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *6 July 2016*



## Class Ruling

### Income tax: the 'Ergon Energy Early Retirement Scheme 2016'

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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.

**[Note:** This is a consolidated version of this document. Refer to the Legal Database (<https://www.ato.gov.au/law>) 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 Ergon Energy Corporation Limited (Ergon) shown at

paragraph 14, subject to paragraph 16, who receive a payment under paragraph 18 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 under the heading *Scheme*.
5. If the scheme actually carried out is materially different from the scheme that is described in this 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

6. This Ruling applies from 11 May 2016 to 31 May 2018. The Ruling continues to apply after 31 May 2018 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

7. Ergon is seeking the Commissioner's approval to implement an early retirement scheme in accordance with section 83-180.
8. The scheme will be titled the '***Ergon Energy Early Retirement Scheme 2016***', hereafter referred to as '**the Scheme**'.
9. Ergon is a Government-owned corporation and supplies electricity within regional Queensland to over 720,000 customers, across an operating area of over one million square kilometres.
10. Ergon is regulated by the Australian Energy Regulator (AER), Australia's independent electricity pricing regulator. After considering Ergon's regulatory submissions, the AER released a final determination in October 2015 for the regulatory period from 1 July 2015 to 30 June 2020, resulting in:
  - 19% reduction in total expected revenue
  - 10% reduction in total expenditure
  - 4.6% reduction in operational expenditure, and
  - 12.9% in capital expenditure.

11. Ergon is currently undergoing major organisational reform as a result of the AER determination. To deliver the necessary expenditure and revenue reductions, Ergon will consider a range of efficiency and workforce reduction strategies to meet the revised program of works over the regulatory period.

12. Ergon's broader work force resourcing strategy will include a review of its organisational structures in order to reduce headcount in accordance with revised operational requirements and operating budgets.

13. The purpose of the Scheme is to reduce Ergon's work force in line with its funding cuts by providing an incentive to employees who meet the eligibility criteria to retire early.

14. The class of employees to whom the Scheme applies is all Ergon's permanent full-time and part-time employees who occupy a position that is to be backfilled by a '*reform-affected employee*'.

15. A '*reform-affected employee*' is an employee who occupies or who has occupied a position that is determined to be no longer required by Ergon, or whose position can be backfilled by a '*reform-affected employee*' (as defined in this paragraph).

16. The following employees are specifically excluded from participating in the Scheme:

- casual employees
- employees engaged on temporary or fixed term contracts
- employees with less than six months continuous service
- employees aged 65 and over at the date of retirement
- employees engaged in a probation period
- employees who are engaged as apprentices or trainees under a traineeship, and
- employees who have given their notice of resignation prior to the expressions of interest (EOI) to retire under the Scheme being called for.

17. The Scheme will operate on a staggered timeframe basis as follows:

- eligible employees will be invited to submit an EOI to participate in the Scheme.
- eligible employees who submit an EOI will be notified of the outcome.
- eligible employees who receive an approved offer to retire under the Scheme will receive an indicative payout figure and will be advised of their termination date.

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- eligible employees who receive an approved offer to retire under the Scheme will have two weeks to accept the offer.
- all eligible employees who accept the offer to retire under the Scheme will terminate their employment within eight weeks from the date of the approval notice but not later than 31 May 2018.

18. All eligible employees who retire under the Scheme will receive the following payment:

- three weeks at the Base rate of pay per year of service, together with a proportionate amount for an incomplete year of service. The minimum payment will be four weeks, and the maximum payment will be 75 weeks. If an employee is working, or has worked a period of part-time employment or job share arrangement, the payment will be calculated on a pro-rata basis to include the period of part-time employment or job share arrangement.
- an Early Separation Incentive Payment (ESIP) of 13 weeks will be paid where an employee terminates their employment within 14 calendar days of accepting an approved offer under the Scheme, or such further period as offered by Ergon where required for operational requirements (but not longer than six additional weeks). The ESIP will be calculated at the Base rate of pay.
- an additional payment of \$15,000 for all employees that accept an offer under the scheme within seven days and terminate employment on or before 30 June 2016 or such further date as offered by Ergon where necessary for operational requirements.

19. Employees terminating their employment under the Scheme will receive their accrued unused annual and long service leave entitlements, including an amount for long service leave calculated on a pro rata basis for employees that have not yet reached the long service leave qualifying period. However, these entitlements will not form part of the payment under the Scheme.

20. Any employee who terminates their employment other than under the Scheme, will not be entitled to receive the Scheme payment.

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

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

23. Payments made to eligible employees who have reached age 65 or over will not be eligible for the tax-free base limits under the Scheme.
24. Payments made under the Scheme will be at arm's length.
25. There is no agreement in place between any eligible employee and Ergon, or between Ergon and another person to employ the eligible employee after retirement under the Scheme.
26. Participation in the Scheme is entirely voluntary.

## **Ruling**

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27. The '***Ergon Energy Early Retirement Scheme 2016***' is an early retirement scheme for the purposes of section 83-180.
28. Accordingly, so much of the payment received by an eligible 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.
29. 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**

11 May 2016

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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.***

30. A scheme will be an early retirement scheme if it satisfies the requirements of subsections 83-180(3) or (4).

31. 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**

32. 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).

33. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 14, subject to paragraph 16, of this Ruling.

34. The Commissioner considers that this is an appropriate class of persons for the Scheme to be offered to. 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**

35. 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).

36. Paragraphs 9 to 14 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. 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).

37. Accordingly, the second condition for approval has been met.

**The scheme must be approved by the Commissioner prior to its implementation**

38. The Scheme is proposed to operate for a period from 12 May 2016 to 31 May 2018. 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.

39. The Scheme will be in operation for approximately 24 months. This is considered appropriate due to the circumstances of the re-organisation.

40. As all the conditions for approval under subsection 83-180(3) have been met, consideration of subsection 83-180(4) is not required.

**Other relevant information**

41. 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 their employment at the time of termination is an early retirement scheme payment.

42. 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)

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- 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)).

43. 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'*.

44. 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.

45. 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. 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.

46. For the 2016-17 income year, the base amount is \$9,936 and the service amount is \$4,969.

47. For the 2017-18 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 2017-18 income year indexed amounts.

48. The total of the amount received on the termination of employment calculated in accordance with paragraph 18 of this Ruling may qualify as an early retirement scheme payment.

49. The total payment calculated in accordance with paragraph 18 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraphs 45, 46 and paragraph 47 of this Ruling to determine the tax-free amount of the early retirement scheme payment.

50. The tax-free amount will:
- not be an employment termination payment (ETP), and
  - not be able to be rolled-over into a superannuation fund.
51. Any payment in excess of this limit will be an ETP and will be split into tax-free and taxable components. The tax-free component of an ETP includes the pre-July 83 segment of the payment. The tax-free component is not assessable income and is not exempt income.
52. 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**

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

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## References

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<i>Previous draft:</i>	- ITAA 1997 83-180(1)
Not previously issued as a draft	- ITAA 1997 83-180(2)
	- ITAA 1997 83-180(3)
<i>Related Rulings/Determinations:</i>	- ITAA 1997 83-180(3)(a)
TR 2006/10	- ITAA 1997 83-180(3)(b)
	- ITAA 1997 83-180(3)(c)
<i>Legislative references:</i>	- ITAA 1997 83-180(5)
- ITAA 1997	- ITAA 1997 83-180(6)
- ITAA 1997 82-135	- ITAA 1997 960-285
- ITAA 1997 82-135(e)	- ITAA 1997 995-1(1)
- ITAA 1997 83-170	- TAA 1953
- ITAA 1997 83-180	

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### ATO references

NO: 1-7OSWZQT  
ISSN: 2205-5517  
ATOlaw topic: Income tax ~~ Assessable income ~~ Employment related  
~~ Employment termination payments - early retirement  
scheme

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