



Iris Energy Pty Ltd
C/- Pinter Partners
Suite 11, 330 Wattle Street
ULTIMO NSW 2007

Reply to:

Our reference: 1051586969934
Contact officer: Katrina Mancini
Phone: (08) 9268 0274
Fax: 1300 136 452

ABN: 60 629 842 799

26 September 2019

We are notifying you of your private ruling

Authorisation number: 1051586969934
Authorising officer: Miranda MacRae

Dear Matthew

On 6 September 2019, you applied for a private ruling relating to Early Stage Innovation Company.

Please find:

- below your private ruling and the reasons for our decision
- attached fact sheets giving information about private rulings including how to have the decision reviewed by objecting, and
- attached an edited version of your ruling that we will publish on our website.

You have:

- 60 days (longer in some cases) to object to the private ruling if you disagree with it and have not had an assessment for the relevant period, and
- 28 days to comment on the edited version.

More information is included in the *Private rulings and Information for Early Stage Investors* fact sheets.

Notice of private ruling

This ruling applies to:

Client name: Iris Energy Pty Ltd
ABN: 60 629 842 799

Question

Does Iris Energy Pty Ltd (Iris) meet the criteria of an Early Stage Innovation Company (ESIC) under subsection 360-40(1) of the *Income Tax Assessment Act 1997* (ITAA 1997)?

Answer

Yes

This ruling applies for the following period:

The year ending 30 June 2020

The scheme commences on:

1 July 2019

Relevant facts and circumstances

This ruling is based on the facts stated in the description of the scheme that is set out below. If your circumstances are materially different from these facts, this ruling has no effect and you cannot rely on it. The fact sheet has more information about relying on your private ruling.

1. Iris was incorporated in Australia on 6 November 2018 and its equity interests are not listed for quotation in the official list of any stock exchange
2. In the previous year i.e. the year ended 30 June 2019 Iris has expenses of \$35122.
3. In the previous income year, i.e. the year ended 30 June 2019 Iris has assessable income of \$8254.
4. On 26 August 2019 Iris received a private ruling for the year ended 30 June 2019 (authorisation number for that ruling was **1051572170832**) that they were an ESIC on the basis that they passed the principles based test in respect of the load shaping system (LSS) being developed.
5. The details of this development were included in paragraphs 3 to 19 of the 'Relevant facts and circumstances' of the year ended 30 June 2019 ruling.
6. Since the ruling issued Iris has continued to develop their LSS and has progressed the following steps towards commercialisation:
 - testing trials for its pilot operation in New York state by leveraging an existing hosting facilities infrastructure to demonstrate the economics, build a track record of raising capital, integrate and manage the end-to-end process of Bitcoin mining as well as provide a pilot project that can conduct demand response testing and develop the appropriate systems and processes
 - further discussions to establish both collocated pilot and full scale projects and ongoing partnership arrangements for load shaping opportunities in Australia
 - continued progress towards the first commissioned Australian pilot site to be established in 2020
 - continuing to develop contracts with potential customers to increase direct revenue generation

Information provided

7. You have provided information in a number of documents and phone conversations in relation to Iris's LSS, including:
 - a. your original private ruling application dated 1 June 2019.
 - b. our phone conversations with Matthew Pinter in respect of original ruling application..
 - c. supplementary information provided in respect of original ruling application.
 - d. your new private ruling application dated 6 September 2019
 - e. supplementary information provided on 19 September 2019.
8. We have referred to the relevant information within these documents and conversations in applying the relevant tests to your circumstances.

Relevant legislative provisions

Income Tax Assessment Act 1997 Subdivision 360-A

Income Tax Assessment Act 1997 section 360-40

For more information

If you issue qualifying ESIC shares to investors during the year, you will need to complete and lodge an early stage Innovation Company report by 31 July 2018. As the report is available online, you may submit this report at any time after you issue qualifying shares and you can lodge multiple reports per year.

You can access the report by logging into the Business Portal, selecting 'online forms' in the left hand menu, and 'Early stage innovation company report' from the forms listed.

Alternatively, your tax agent can access and lodge the report via the tax agent portal. The form can be found in the 'Client forms' list in the left hand menu.

For more information, see: **What do you need to report to us?**

If you have any questions, please phone 13 28 69 between 8.00am and 5.00pm, Monday to Friday, and ask for Katrina Mancini on extension 80274, or call direct on (08) 9268 0274.

What you need when you phone us

We need to know we're talking to the right person before we can discuss your tax affairs. We'll ask for details only you or someone you've authorised would know.

An authorised person is someone who you've previously told us can act on your behalf. It will help if you quote 'Our reference', which you will find at the top of this letter and have your tax file number or Australian business number handy.

Yours sincerely

Tim Dyce
Deputy Commissioner of Taxation

Per
(Miranda MacRae)

Reasons for Decision

These reasons for decision accompany the *Notice of private ruling* for Iris Energy Pty Ltd.

While these reasons are not part of the private ruling, we provide them to help you to understand how we reached our decision.

All legislative references are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise stated.

Summary

Iris Energy Pty Ltd meets the eligibility requirements of, an ESIC under, subsection 360-40(1).

Detailed reasoning

Qualifying Early Stage Innovation Company

1. Subsection 360-40(1) outlines the criteria required for a company to qualify as an Early Stage Innovation Company (ESIC) at a particular time in an income year. This time is referred to as the test time. The criteria are based on a series of tests to identify if the company is at an early stage of its development and it is developing new or significantly improved innovations to generate an economic return.

‘The early stage test’

2. The early stage test requirements are outlined in detail within paragraphs 360-40(1)(a) to (d).

Incorporation or Registration – paragraph 360-40(1)(a)

3. To meet the requirement in paragraph 360-40(1)(a), at a particular time (the test time) in an income year (the current year) the company must have been either:
 - i. incorporated in Australia within the last three income years (the latest being the current year); or
 - ii. incorporated in Australia within the last six income years (the latest being the current year), and across the last three of those income years the company and its 100% subsidiaries incurred total expenses of \$1 million or less; or
 - iii. registered in the Australian Business Register (ABR) within the last three income years (the latest being the current year).
4. The term ‘current year’ is defined in subsection 360-40(1) with reference to the ‘test time’; the ‘current year’ being the income year in which the company issues shares to the investor.
5. A company that does not meet any of these conditions will not qualify as an ESIC.

Total expenses - paragraph 360-40(1)(b)

6. To meet the requirement in paragraph 360-40(1)(b), the company and its 100% subsidiaries must have incurred total expenses of \$1 million or less in the income year before the current year.

Assessable income - paragraph 360-40(1)(c)

7. To meet the requirement in paragraph 360-40(1)(c), the company and its 100% subsidiaries must have derived total assessable income of \$200,000 or less in the income year before the current year.

No stock exchange listing - paragraph 360-40(1)(d)

8. To meet the requirement in paragraph 360-40(1)(d), the company must not be listed on any stock exchange in Australia or a foreign country.

Innovation tests

9. If the company satisfies the early stage test, the company must also satisfy one of two innovation tests: the objective (100 point) test or the principles-based test.

‘100 point test’ – paragraph 360-40(1)(e) and section 360-45

10. To satisfy the 100 point test the company must obtain at least 100 points by meeting the innovation criteria in the table within section 360-45. The criteria are tested at a time immediately after the relevant shares are issued. If a company satisfies this test it does not need to satisfy the principles-based test.

‘Principles-based test’ – subparagraphs 360-40(1)(e)(i) to (v)

11. To satisfy the principles-based test, the company must meet five requirements in paragraph 360-40(1)(e). This is tested at a time immediately after the relevant new shares are issued to the investor.
12. The company can demonstrate that it meets each requirement through existing documentation such as a business plan, commercialisation strategy, competition analysis or other company documents. The company must be able to show that tangible steps have been or will be taken in relation to each of the requirements.
13. The five requirements of the principles-based test, as outlined in paragraph 360-40(1)(e) are:
- i. the company must be genuinely focused on developing one or more new or significantly improved innovations for commercialisation
 - ii. the business relating to that innovation must have a high growth potential
 - iii. the company must demonstrate that it has the potential to be able to successfully scale up the business relating to the innovation
 - iv. the company must demonstrate that it has the potential to be able to address a broader than local market, including global markets, through that business, and
 - v. the company must demonstrate that it has the potential to be able to have competitive advantages for that business.

Application to your circumstances

Test time

14. For the purposes of this ruling, the test time for determining if Iris is a qualifying ESIC will be a particular date during the income year ending 30 June 2020.

Current year

15. For the purposes of subsection 360-40(1), the current year will be the year ending 30 June 2020 (the 2020 income year). For clarity, in relation to particular requirements within subsection 360-40(1), the income year before the current year will be the year ending 30 June 2019 (the 2019 income year).

Early stage test

Incorporation or Registration – paragraph 360-40(1)(a)

16. As 'Iris was incorporated 6 November 2018, which is within the last 3 income years, subparagraph 360-40(1)(a)(i) is satisfied.

Total expenses – paragraph 360-40(1)(b)

17. As Iris had expenses of \$1 million or less in the prior income year, paragraph 360-40(1)(b) is satisfied.

Assessable income – paragraph 360-40(1)(c)

18. As Iris's assessable income for the prior income year is \$200,000 or less, paragraph 360-40(1)(c) is satisfied.

No stock exchange listing – paragraph 360-40(1)(d)

19. As Iris is privately owned and is not listed on any stock exchange in Australia or a foreign country, subparagraph 360-40(1)(d) is satisfied.

Conclusion on early stage test

20. Iris will satisfy the early stage test for the entire 2020 income year, as each of the requirements within paragraphs 360-40(1)(a) to (d) have been satisfied.

Principles based test

21. In the ruling dated 26 August 2019 we concluded that Iris passed the principles based test in respect of LSS they are developing. While the LSS is still being 'developed' they will continue to satisfy the principle bases test.
22. Iris provided an outline of the progress made since the ruling for the year ended 30 June 2019 issued and details of how long they think it will take to fully develop their LSS..
23. Therefore Iris meets the eligibility criteria of an ESIC under section 360-40 for the period commencing 1 July 2019 until the earlier of 30 June 2020 or the date when the LSS has been fully developed and are ready for use, whichever occurs earlier.

Edited version of your private ruling

Authorisation Number: 1051586969934

This edited version of your ruling will be published on the *ATO Legal database* after 28 days from the issue date of the ruling. The attached private rulings fact sheet has more information.

Please check this edited version to be sure there are no details remaining that you think may allow you to be identified. If you have any concerns, you will find our contact details in the fact sheet.

Ruling Subject: Early Stage Innovation Company

Question

Does The Company meet the criteria of an Early Stage Innovation Company (ESIC) under subsection 360-40(1) of the *Income Tax Assessment Act 1997* (ITAA 1997)?

Answer

Yes

This ruling applies for the following period:

Year ending 30 June 2020

The scheme commences on:

1 July 2019

Relevant facts and circumstances

1. The Company was incorporated on Date X. Its equity interests are not listed for quotation in the official list of any stock exchange.
2. In the previous income year The Company had expenses of \$X and assessable income of \$X.
3. The Company is developing a product and information that details its development was provided.
4. The company is developing new technology in its addressable market.
5. In a ruling for a previous period the company qualified as and ESIC at relevant test time. The basis for the decision was that the company satisfied the principles based test in respect of the innovation being developed.

Relevant legislative provisions

Income Tax Assessment Act 1997 Subdivision 360-A
Income Tax Assessment Act 1997 Section 360-40

Reasons for decision

All legislative references are to the ITAA 1997 unless otherwise indicated.

Question 1:

Summary

The company meets the eligibility requirements of an ESIC under subsection 360-40(1).

Detailed reasoning

Qualifying Early Stage Innovation Company

24. Subsection 360-40(1) outlines the criteria required for a company to qualify as an Early Stage Innovation Company (ESIC) at a particular time in an income year. This time is referred to as the test time. The criteria are based on a series of tests to identify if the company is at an early stage of its development and it is developing new or significantly improved innovations to generate an economic return.

‘The early stage test’

25. The early stage test requirements are outlined in detail within paragraphs 360-40(1)(a) to (d).

Incorporation or Registration – paragraph 360-40(1)(a)

26. To meet the requirement in paragraph 360-40(1)(a), at a particular time (the test time) in an income year (the current year) the company must have been either:

- iv. incorporated in Australia within the last three income years (the latest being the current year); or
- v. incorporated in Australia within the last six income years (the latest being the current year), and across the last three of those income years the company and its 100% subsidiaries incurred total expenses of \$1 million or less; or
- vi. registered in the Australian Business Register (ABR) within the last three income years (the latest being the current year)

27. The term ‘current year’ is defined in subsection 360-40(1) with reference to the ‘test time’; the ‘current year’ being the income year in which the company issues shares to the investor.

28. A company that does not meet any of these conditions will not qualify as an ESIC.

Total expenses - paragraph 360-40(1)(b)

29. To meet the requirement in paragraph 360-40(1)(b), the company and its 100% subsidiaries must have incurred total expenses of \$1 million or less in the income year before the current year.

Assessable income - paragraph 360-40(1)(c)

30. To meet the requirement in paragraph 360-40(1)(c), the company and its 100% subsidiaries must have derived total assessable income of \$200,000 or less in the income year before the current year.

No stock exchange listing - paragraph 360-40(1)(d)

31. To meet the requirement in paragraph 360-40(1)(d), the company must not be listed on any stock exchange in Australia or a foreign country.

Innovation tests

32. If the company satisfies the early stage test, the company must also satisfy one of two innovation tests: the objective (100 point) test or the principles-based test.

‘Principles-based test’ – subparagraphs 360-40(1)(e)(i) to (v)

33. To satisfy the principles-based test, the company must meet five requirements in paragraph 360-40(1)(e). This is tested at a time immediately after the relevant new shares are issued to the investor.
34. The company can demonstrate that it meets each requirement through existing documentation such as a business plan, commercialisation strategy, competition analysis or other company documents. The company must be able to show that tangible steps have been or will be taken in relation to each of the requirements.
35. The five requirements of the principles-based test, as outlined in paragraph 360-40(1)(e) are:
- vi. the company must be genuinely focused on developing one or more new or significantly improved innovations for commercialisation
 - vii. the business relating to that innovation must have a high growth potential
 - viii. the company must demonstrate that it has the potential to be able to successfully scale up the business relating to the innovation
 - ix. the company must demonstrate that it has the potential to be able to address a broader than local market, including global markets, through that business, and
 - x. the company must demonstrate that it has the potential to be able to have competitive advantages for that business

Developing new or significantly improved innovations for commercialisation

36. For the purposes of Subdivision 360-A, the Explanatory Memorandum to the Tax Laws Amendment (Tax Incentives for Innovation) Bill 2016 (‘EM’) provides the following at paragraph 1.76 in relation to the definition of innovation:

“Implicit in the definition of innovation is the requirement that the company is developing a new or significantly improved type of innovation such as a product, process, service, marketing or organisational method. This list of various types of innovations provides flexibility for innovation companies and is adaptable to current and future innovations. The Oslo Manual, published by the Organisation for Economic Co-operation and Development (OECD) provides a description of these different types of innovations...”¹

37. The innovation being developed by the company must either be new or significantly improved for an applicable addressable market. The company’s addressable market is the revenue opportunity or market demand arising from the innovation or the related business. The addressable market must be objective and realistic.
38. Improvements must be significant in nature to meet this requirement. Customising existing products or minor changes resulting from software updates, pricing strategies or seasonal changes are examples of improvements that would not be considered significant.
39. The OECD Oslo Manual defines innovations as significant changes, with the intention of distinguishing significant changes from routine minor changes. However, it is important to recognise that an innovation can also consist of a series of smaller incremental changes that together constitute a significant change.²
40. In discussing services innovation activity, paragraph 111 of the OECD Oslo Manual states,
- “Innovation activity in services also tends to be a continuous process, consisting of a series of incremental changes in products and processes. This may occasionally

¹ See Explanatory Memorandum to the Tax Laws Amendment (Tax Incentives for Innovation) Bill 2016, paragraph 1.76.

² OECD Oslo Manual, paragraph 124 and paragraph 151.

complicate the identification of innovations in services in terms of single events, i.e. as the implementation of a significant change in products, processes or other methods.”

41. The OECD Oslo Manual, in relation to defining innovative services, states at paragraph 161 that “innovations in services can include significant improvements in how they are provided (for example, in terms of their efficiency or speed), the addition of new functions or characteristics to existing services, or the introduction of entirely new services.”
42. The company must be genuinely focused on developing the innovation for a commercial purpose in order to generate economic value and revenue for the company. This requirement draws the distinction between simply having an idea and commercialising an idea.
43. ‘Commercialisation’ includes a range of activities that involve the implementation or sale of a new or significantly improved innovation that will directly lead to the generation of economic value for the company.

High growth potential

44. The company must be able to demonstrate that it has the potential for high growth within a broad addressable market. This refers to the company’s ability to rapidly expand its business. Companies that are limited to supplying local customers will not meet this requirement.

Scalability

45. The company must be able to demonstrate that it has the potential to successfully scale up the business. The company must have operating leverage, where as it increases its market share or enters into new markets, its existing revenues can be multiplied with a reduced or minimal increase in operating costs per unit.

Broader than local market

46. The company must be able to demonstrate that it has the potential to address a market that is broader than a local city, area or region. The company does not need to have a serviceable market at a national, multinational or global scale at the test time. However, it does need to show that the business is capable of addressing a market that is broader than a local market and that the business can be adapted to a broader scale in the future.

Competitive advantages

47. The company must be able to demonstrate that it has the potential to have competitive advantages, such as a cost or differential advantage over its competitors which are sustainable for the business as it expands. The company can analyse what competitors in the market offer, and consider whether the company has a differentiating advantage that would allow it to outperform these competitors.

Application to your circumstances

Test time

48. For the purposes of this ruling, the test time for determining if The Company is a qualifying ESIC will be a particular date during the income year ending 30 June 2020.

Current year

49. For the purposes of subsection 360-40(1), the current year will be the year ending 30 June 2020 (the 2020 income year). For clarity, in relation to particular requirements within subsection 360-40(1), the income year before the current year will be the year ending 30 June 2019 (the 2019 income year).

Early stage test

Incorporation or Registration – paragraph 360-40(1)(a)

50. As the Company was incorporated within the last 3 income years, subparagraph 360-40(1)(a)(i) is satisfied.

Total expenses – paragraph 360-40(1)(b)

51. As the Company had expenses of \$1 million or less in the prior income year, paragraph 360-40(1)(b) is satisfied.

Assessable income – paragraph 360-40(1)(c)

52. As the Company's assessable income for the prior income year is \$200,000 or less paragraph 360-40(1)(c) is satisfied.

No stock exchange listing – paragraph 360-40(1)(d)

53. As the Company is not listed on any stock exchange in Australia or a foreign country, subparagraph 360-40(1)(d) is satisfied.

Conclusion on early stage test

54. The Company will satisfy the early stage test for the entire 2020 income year, as each of the requirements within paragraphs 360-40(1)(a) to (d) have been satisfied.

Principles based test

Developing new or significantly improved innovations for commercialisation – subparagraph 360-40(1)(e)(i)

55. According to the Company its product will be the first of its kind available in its selected market.

Genuinely focussed on developing for commercialisation – subparagraph 360-40(1)(e)(i)

56. The Company is testing the prototype and will soon move to production.

57. Details of the commercialisation strategy were provided.

Conclusion on subparagraph 360-40(1)(e)(i)

58. The Company is genuinely focussed on developing its product for a commercial purpose. The product will be a new product when compared to what is currently available in the target market.

59. Therefore, subparagraph 360-40(1)(e)(i) will be satisfied for the time period from 1 July 2019 until 30 June 2020. Once the product has been fully developed and moves into production, the Company will no longer be 'developing' it for commercialisation and subparagraph 360-40(1)(e)(i) will no longer be satisfied.

High growth potential – subparagraph 360-40(1)(e)(ii)

60. The Company provided details of its predicted growth and based on that information subparagraph 360-40(1)(e)(ii) will be satisfied.

Scalability – subparagraph 360-40(1)(e)(iii)

61. The Company's business model provided illustrates the increased income. The information provided also shows that the Company has the potential to successfully scale up its business. Therefore, subparagraph 360-40(1)(e)(iii) will be satisfied.

Broader than local market- subparagraph 360-40(1)(e)(iv)

62. The Company has demonstrated the potential to address a broader market than just the local market. Therefore, subparagraph 360-40(1)(e)(iv) will be satisfied.

Competitive advantages – subparagraph 360-40(1)(e)(v)

63. The Company has the first mover advantage and has demonstrated the potential for it to have competitive advantages within the target market, satisfying subparagraph 360-40(1)(e)(v).

Conclusion on principles test

64. The Company satisfies the principles based test as it satisfies the requirements within subparagraphs 360-40(1)(e)(i) to (v) for the period commencing 1 July 2019 until 30 June 2020.

Conclusion

65. The Company meets the eligibility criteria of an ESIC under section 360-40 for the period commencing 1 July 2019 until 30 June 2020.

Disclaimer

You cannot rely on the rulings in the *Register of private binding rulings* in your tax affairs. You can only rely on a private ruling that we have given to you or to someone acting on your behalf.

The *Register of private binding rulings* is a public record of private rulings issued by the ATO. The register is an historical record of rulings, and we do not update it to reflect changes in the law or our policies.

The rulings in the register have been edited and may not contain all the factual details relevant to each decision. Do not use the register to predict ATO policy or decisions.