

PRODUCT RULING – BR PRD 19/02

This is a product ruling made under s 91F of the Tax Administration Act 1994.

Name of the person who applied for the Ruling

This Ruling has been applied for by Electricity Ashburton Limited trading as EA Networks.

Taxation Laws

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

This Ruling applies in respect of s CD 1.

The Arrangement to which this Ruling applies

The Arrangement is:

- the payment of Consumer Discounts under the Consumer Discount Policy by Electricity Ashburton Limited (EA Networks) to electricity supply retailers (Retailers) that contract with EA Networks to use its electricity distribution network to supply electricity to consumers (Users); and
- the passing on of these Consumer Discounts by Retailers to all eligible Users.

Further details of the Arrangement are set out in the numbered paragraphs below.

EA Networks' structure and shareholding arrangements

1. EA Networks owns and operates an electricity distribution network (Distribution Network) in mid Canterbury. EA Networks contracts to provide line function services to Retailers that wish to use the Distribution Network to supply electricity to Users.
2. EA Networks operates as a stand-alone co-operative company (Electricity Ashburton Limited, trading as EA Networks). EA Networks has two types of shares: rebate shares and deferred shares (non-rebate shares). Over 30,000,000 shares are issued.
3. The deferred shares (totalling 28,750,000) are owned solely by the Ashburton District Council and have no rights to dividends, rebates or discount payments.

4. EA Networks' website contains the following relevant information about the ownership and structure of EA Networks (<https://www.eanetworks.co.nz/about-us/ownership/> accessed 8 January 2019):

Ownership and Structure

EA Networks is the trading name of Electricity Ashburton Limited, a co-operative network business based in Mid Canterbury. The business incorporates an asset management function (the Network Division) and a contracting function (the Field Services Division).

There are 30,069,100 shares issued in Electricity Ashburton Limited. The Ashburton District Council holds 28,750,000 of these shares in a non-rebate/non-voting form. The consumers/shareholders connected to the local electricity distribution system hold 1,278,200 rebate shares at 100 shares per consumer. All consumers/shareholders obtain a discount based on the line charges paid to the company.

Consumers/Shareholders

All new electricity consumers are initially a shareholder in the co-operative company. Almost every new consumer chooses to retain their shareholding and only a handful of existing consumers are not shareholders. Each shareholder (consumer) has one vote to elect a shareholder committee member, irrespective of the size/scale of their electrical connection(s).
...

Rebate shares

5. Rebate shares are offered to anyone connected to EA Networks' electricity lines network and who directly or indirectly pays for the use of the network (the User). Each User is entitled to hold 100 rebate shares, having a nominal value of \$1.00 each. A User is entitled to hold only one parcel of rebate shares per connection. All rebate shares rank equally for voting.
6. The Constitution of EA Networks dated 2012 (Constitution) contains the following relevant definitions:

"Holder", *"Shareholder"* and *"Member"* means a holder of Rebate Shares or any other class of Equity Securities issued by the Company.

"Minimum Holding" means a Minimum Holding of Rebate Shares to be held by a Shareholder to give an entitlement to Rebates such Minimum Holding being determined from time to time by the Board pursuant to clause 7.2.

"Rebate" means a distribution by the Company by way of cash, assets or other consideration to a User.

"Rebate Shares" means shares issued to a User which entitles that User (but not an Energy Trader) to a rebate in respect of Services.

"Services" means the direct or indirect provision of the right to use lines and equipment associated with lines owned by the Company for the conveyance of electricity.

"User" means a person who is connected to the electricity lines owned and operated within the District by the Company and who directly, or indirectly through an electricity supply business, pays the charges for the use of those lines by being:

- (a) an end-customer who is liable for the payment of electricity conveyed to that customer over those lines or for services in relation to those lines; or
- (b) an end-customer of any electricity supply business that is liable for payment for services in relation to those lines;

AND EXCLUDES

- (c) an Energy Trader; and
- (d) A person who is connected to such lines for a short or temporary period

7. The Constitution defines “rebate” to mean a distribution by EA Networks by way of cash, assets or other consideration to a “User”. A “User” is defined as a person who is connected to the electricity lines owned and operated by EA Networks and who directly, or indirectly through a Retailer, pays the charges for the use of those lines by being:

- (a) an end-customer who is liable for the payment of electricity conveyed to that customer over those lines or for services in relation to those lines; or
- (b) an end-customer of any Retailer that is liable for payment for services in relation to those lines.

8. Clause 7 of the Constitution refers to rebates and minimum holdings. Clause 7.1 of the Constitution restricts the Board to only be able to issue Rebates to “Holders of Rebate Shares”, being a subset of “Users”, as explained below. Clause 7.1 relevantly states:

7 REBATE AND MINIMUM HOLDINGS

7.1 The Board shall determine from time to time the Rebates payable (if any) to Holders of Rebate Shares. The Board may also establish differential Rebates so that different levels of rebate are paid in accordance with any one or more of the following criteria: -

- 7.1.1 According to various numbers of units of energy consumed; or
- 7.1.2 Based on different levels of usage of the network of the Company; or
- 7.1.3 Based on different tariff classifications and pricing structures; or
- 7.1.4 Different levels of Services provided; or
- 7.1.5 Different capacity ratings; or

On such other basis as is determined from time to time by the Board.

...

9. Clause 5.1 of the Constitution refers to rebate shares and states:

5.1 Rebate Shares. The Board shall give to every User the right to apply for and hold such number of Rebate Shares as shall be a Minimum Holding PROVIDED THAT no Energy Trader shall be entitled to apply for or be issued any Rebate Shares. To give effect to such provision the Board may: -

- 5.1.1 Provide that the amount payable for the said Rebate Shares shall be either paid in cash or deducted from Rebates payable to that User; or
- 5.1.2 Permit that User to pay the amount payable in respect of those Rebate Shares over such period or period as the Board considers appropriate.

No User shall be required to hold any more Rebate Shares than any other User. The Company shall not issue and/or shall not approve the transfer of Rebate Shares which would result in any User holding less than a Minimum Holding. The Council shall be entitled to hold a Minimum Holding notwithstanding it holds the Deferred Shares.

10. The “Disclosure Document for Public Offering of Rebate Shares in Electricity Ashburton Limited (trading as EA Networks)” (dated 29 March 2017) (the Offer) sets out, in cl 4, the key terms of the offer:

Issuer	Electricity Ashburton Limited [EAL]
Description of Rebate Shares being offered	The Rebates Shares are only available to persons who become connected to a network owned by EAL or obtain services from EAL. 100 Rebate Shares is the number of shares issued to each shareholder. All of those shares rank equally for voting.
Consideration/Price for Shares	Each Rebate Share is offered for \$1.00 each. 100 Rebate Shares must be applied for. No moneys are payable on application and the shares are paid up from moneys or payments which shareholders receive arising from the shares held in EAL. Until fully paid up there is a liability for the \$100. Those distributions can be a dividend, rebate or discount declared by EAL.
Opening Date	The offer opens on 29 March 2017. There is no closing date for this offer as it remains open to all persons who become connected to the EAL network.
Number of Shares Offered	The total number of shares offered cannot be determined as this depends on the number of persons connecting to the network. All shareholders holding rebate shares are restricted to 100 Rebate Shares. The Ashburton District Council holds shares so the Rebate Shares represented approximately 5% of the total shares on issue. Each person (which includes individuals, companies and other legal entities) connected to the EAL network can apply for 100 Rebate Shares which are issued for \$1.00 each.
Distributions	EAL makes distributions from time to time to shareholders. These may be paid in cash or in the form of a rebate or other payment for the benefit of shareholders. Surplus cashflow may also be credited to all persons connected to the network including shareholders. EAL determines the method by which it makes distributions of any type to shareholders and how it pays or credits that distribution.
Surrender/Transfer of Shares	Shares are not transferrable except with Board approval. This only occurs in limited circumstances. On a shareholder ceasing to enter into direct or indirect (through an energy retailer) transactions with EAL the Rebate Shares held are surrendered by EAL at the lesser of \$1.00 per share or the amount paid up on those shares.
Fees or charges payable	There is no liability to pay further charges or make additional payments on the shares being offered.

11. Users are entitled to purchase rebate shares (based on the existence of their connection) should they choose to exercise this right. There is no obligation on a User to purchase rebate shares. A small proportion (less than 1%) of EA Networks' Users are not shareholders as they have not exercised their right to purchase rebate shares.

12. Clause 10 of the Constitution refers to payment of dividends and rebates and relevantly states:

10 PAYMENT OF DIVIDENDS AND REBATES

10.1 Power to Pay a Dividend and Rebate: The Board may pay a Rebate or Dividend to any shareholder or other persons entitled thereto. Rebates and Dividends shall be paid in accordance with the provisions of this Constitution or the terms of issue of the Securities then on issue. Rebates shall be given as discounts to holders of Rebate Shares (on the same basis as set out in clause 7.1) and may be paid in such manner as the Directors shall determine.

10.2 Persons to whom Dividend/Rebate payable: A Dividend or Rebate shall be paid to the person or persons who are the registered holder or holders of the Shares in respect of which the Dividend or Rebate is authorised at the time of the authorisation of the Dividend and Rebate (or at the time when the Dividend and Rebate is authorised to be made).

10.3 Dividend and Rebates to joint holders: If several persons are registered as joint holders of any Shares, and such persons are entitled to receive distributions in respect of the Shares, any one of them may give effectual receipts for any Dividend and Rebate in respect of the Share.

10.4 Manner of payment: A Dividend and a Rebate payable in cash may be paid in any manner (whether by direct credit or otherwise) directed by the person entitled to it. A Rebate may also be satisfied by crediting the account with the Company of the User entitled to that Rebate. Payment may be made by cheque sent by post:

10.4.1 to the registered address of the Shareholder or person entitled thereto; or

10.4.2 In the case joint holders to any one of the joint holders at his or her registered address; or

10.4.3 To such persons and to such address as the Shareholder or person entitled or such joint holder as the case may be, may direct;

And the Company shall not be responsible for any loss arising from such mode of transmission.

10.6 Deductions from distribution: The Directors may deduct from any Dividend and Rebate payable to any Shareholder entitled to receive Dividends or Rebates all such sums of money as may be due from him or her to the Company on account of any or all of the following:

10.6.1 Calls, instalments, any debt, or liability to the Company or any Related Company; and

10.6.2 Debts, liabilities or obligations in respect of which the Company has a lien over specific Shares in respect of which the distribution is made; and

10.6.3 Such amounts as the Company may be called upon to pay under any legislative enactment in respect of the Shares of a deceased or other Shareholder;

10.6.4 Any payment required to increase the Rebate Shares held by that Holder to a Minimum Holding.

13. Clause 10 of the Constitution provides that EA Networks may make payments of rebates (as defined in the Constitution) to a User.

Pricing and payment of discounts

14. Each month EA Networks charges a distribution fee to the Retailers for using the Distribution Network. The Retailers then recover this fee from the Users through

separate contractual arrangements. A User is defined to mean a person who is connected to the electricity lines owned and operated by EA Networks and may include non-holders of rebate shares.

15. EA Networks' document "Pricing Methodology Electricity Distribution Network" (effective from 1 April 2018), states (at p 29):

Non-standard contracts

EA Networks does not have any customer or group of customers on non-standard contracts. All end users are contracted (ultimately) to the network via our standard UoSA [Use of System Agreement] that we have with each Retailer operating on our network.

16. EA Networks has advised that, as a commercially-driven arrangement, EA Networks pays a differential consumer discount to all Users under its policy relating to the payment of discounts related to its electricity distribution business, based on certain eligibility criteria (Consumer Discount).
17. The "Statement of Corporate Intent 2018-19" for EA Networks states (on p 22) that, traditionally, EA Networks has made an annual deferred discount to all consumers (being the commercially-driven Consumer Discount as opposed to the term "Deferred Discount" as defined in the Constitution). The total amount of discounts EA Networks paid to Users in the past five financial years is shown in Table 1.

Table 1: Discounts EA Networks paid to Users, 2014–2018

Year ended	Amount excluding GST
31 March 2014	\$4,198,280.97
31 March 2015	\$4,497,785.34
31 March 2016	\$3,473,247.30
31 March 2017	\$2,782,033.11
31 March 2018	\$2,858,083.39

Consumer Discount Policy

18. On 4 September 2018, EA Networks decided in principle to adopt the revised and updated version of its policy relating to the payment of discounts related to its electricity distribution business (the Consumer Discount Policy). A copy of the Consumer Discount Policy was provided to Inland Revenue as part of the ruling application on 15 November 2018. EA Networks will formally approve the Consumer Discount Policy before 1 April 2019. The Consumer Discount Policy will apply from the 1 April 2019 financial year.
19. The Consumer Discount Policy will not be amended during the period of the Ruling and will be adhered to for the period of the Ruling.
20. Under the Consumer Discount Policy, as part of the annual budgeting process, directors of EA Networks will decide the pool (if any) to be paid as a discount (Consumer Discount Pool) and the associated payment date. The directors'

decision will be made before the start of the financial year to which the budget relates, which, for the avoidance of doubt, will be before 1 April each year. The payment date will be within the last quarter of the financial year to which the budget relates.

21. Under the Consumer Discount Policy, the principles that directors will consider when setting the size of the Consumer Discount Pool will include:
 - current and ongoing capital investment requirements;
 - operational requirements; and
 - borrowing/debt repayments, taking into account intergenerational fairness.
22. Under the Consumer Discount Policy, when setting the size of the Consumer Discount Pool, directors will decide on the allocation methodology to determine how much each User will be entitled to (Allocation Methodology). The Allocation Methodology will apply a fixed allocation formula and will be able to demonstrate a relationship between electricity distribution charges revenue received in the relevant budgeted year and the discount allocated to Users.
23. The Allocation Methodology will provide that a User's entitlement to be paid a discount from the Consumer Discount Pool will be in relation to their actual network usage or share of distribution charges paid during the measurement period stipulated in the Allocation Methodology. The entire amount of the Consumer Discount Pool will be allocated back to Users each year.
24. EA Networks will publicly announce the Consumer Discount Pool and the Allocation Methodology in advance of the commencement of the financial year to which it relates, by publishing all relevant information on its corporate website before 1 April each year.
25. The following is a draft of the announcement of the Consumer Discount Pool that will be published on EA Networks' website for the financial year ended 31 March 2020 (supplied to Inland Revenue on 18 January 2019):

EA networks annual consumer discount pool has been set at \$XXX. It is EA networks intention to pay and allocate the consumer discount pool in accordance with the "Consumer Discount Methodology for the financial year ended 31 March 2020". The methodology is available on EA network website www.eanetworks.co.nz.

26. The following is a draft of the Allocation Methodology for the financial year ended 31 March 2020 (supplied to Inland Revenue on 19 February 2019):

EA Networks Consumer Discount Methodology

For the financial year ended 31 March 2020

Introduction

EA networks (the trading name of Electricity Ashburton Limited) is a consumer cooperative which has a policy of allocating a consumer discount to consumers connected to its network. This document describes the methodology used to make that allocation.

To qualify for the consumer discount, consumers must be connected to the network at 5.00 pm on the last working day of February 2020.

The first \$100 of consumer discount ever paid to a consumer who is a shareholder of EA Networks will be used to purchase shares in EA Networks after which the consumer discount

generally appears as a credit on consumers' April or May monthly accounts from their electricity retailer(s).

For any questions on the consumer discount please contact EA networks (03) 3079800 or email inquiry@eanetworks.co.nz

The consumer discount will be paid in accordance with the requirements of the Inland Revenue Department Building Ruling XXXX.

For completeness we note that the consumer discount calculated and paid under this methodology is separate to any form of payment provided for in EA Networks' constitution. Payments made under this methodology are not made in relation to any shareholding relationship and are made only due to the relationship between EA Networks' and its' end electricity consumers.

Paid to all consumers

The consumer discount will be paid to all qualifying consumers regardless if the[y] own or do not own shares in the company.

Allocation of consumer discount to consumers

Each consumer's share of the consumer discount pool is calculated:

$$A/B * C .$$

Where:

A: EA networks charges to qualifying consumer for the measurement period.

B: The sum of all qualifying consumer charges for the measurement period.

C: The value of the consumer discount pool, set at XXX for XXXX.

The measurement period runs from 1 March 2019 to 29 February 2020.

27. The announcement of the Consumer Discount Pool and the Allocation Methodology will be made before EA Networks issues invoices to Retailers for any distribution charges in respect of the financial year to which the Consumer Discount relates.
28. The Consumer Discount Pool and Allocation Methodology will also be notified in the Statement of Corporate Intent and the Distribution Pricing for the financial year to which it relates.
29. The value of the Consumer Discount Pool announced by EA Networks will not be altered during the applicable income year.
30. To be eligible to receive payment of the Consumer Discount under the Consumer Discount Policy a User must remain a User (as defined in the Constitution) connected to the Distribution Network at 5 pm on the last working day of February of the financial year to which the discount relates. The amount of the discount paid to an eligible User under the Consumer Discount Policy will be based on the User's network usage or share of distribution charges paid within that financial year for electricity supplied to them through EA Networks' Distribution Network in accordance with the Allocation Methodology.
31. Historically, EA Networks has paid out Consumer Discounts to all eligible Users connected to its network (whether they are rebate shareholders or not). Under the Consumer Discount Policy there is no requirement that Users are holders of

rebate shares in order to receive the discount. For the avoidance of doubt, under the Consumer Discount Policy, EA Networks will pay discounts to all eligible Users whether they are holders of rebate shares or not, and Retailers will pass on these discounts to all eligible Users whether they are holders of rebate shares or not.

32. The Consumer Discount that is paid under the Consumer Discount Policy is a discount provided to Users based on their electricity consumption. The discount is a commercial discount based on transactions with Users (regardless of their shareholding status) and is entirely separate from any deferred discounts and rebates to shareholders as provided for in the Constitution. For the avoidance of doubt, this Ruling does not consider or rule on the application of the taxation laws to any payments by EA Networks of any deferred discounts, rebates or dividends other than the Consumer Discount paid under the Consumer Discount Policy.
33. At the end of each financial year, EA Networks will contract with Retailers to receive payment of, and pass on to the eligible Users as instructed, the discount calculated in accordance with the Allocation Methodology that EA Networks announced at the beginning of the related income year under the Consumer Discount Policy.
34. The Allocation Methodology provides that the first \$100 of the Consumer Discount ever paid to a User who is a shareholder of EA Networks will be used to purchase rebate shares in EA Networks (as provided for in the Offer) after which the discount will generally appear as a credit on Users' April or May monthly accounts from their Retailer. For practical administrative purposes, EA Networks calls for the share cost at the same time it makes payment of the discount amount owing to the User under the Consumer Discount Policy to reduce the volume of transactions occurring. To keep the transaction volume at a minimum, EA Networks calls for payment of shares only to the extent that the User has a discount owing to them, to a maximum of \$100 (that is, the shares' total value). The User's lines usage has to have been high enough to produce a discount in excess of the \$100 and, if not, EA Networks will only call annually for payment that matches the discount, until the full \$100 has been called.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

- a) The Consumer Discount Pool and the Allocation Methodology are communicated publicly on EA Networks' website before 1 April of the financial year in which the Consumer Discount will be given.
- b) The Consumer Discount is allocated to Users based on a pre-determined Allocation Methodology based on their usage or share of distribution charges in the financial year in which the discount will be given.

How the Taxation Law applies to the Applicant and the Arrangement

Subject in all respects to any condition stated above, the Taxation Law applies to the Applicant and the Arrangement as follows:

- a) A Consumer Discount paid under the Consumer Discount Policy by EA Networks to a User will not amount to a taxable dividend in the hands of the User under s CD 1.

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 1 April 2019 and ending on 31 March 2024.

This Ruling is signed by me on the 26th day of March 2019.

Howard Davis
Director (Taxpayer Rulings)