



Income Tax (Effective Life of Depreciating Assets) Amendment Determination 2016 (No 1)

Explanatory Statement

General outline of Instrument

1. The authority for making an effective life determination is provided by subsection 40-100(1) of the *Income Tax Assessment Act 1997* (ITAA 1997).
2. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
3. The proposed *Income Tax (Effective Life of Depreciating Assets) Amendment Determination 2016* (No 1) will be a legislative instrument for the purposes of the *Legislation Act 2003*.

Date of effect

4. This instrument applies from 1 July 2016.

What this instrument is about

5. The instrument provides taxpayers in specific industries and for specific assets with effective lives as a basis to calculate the decline in value (depreciation) of an asset for income tax purposes.

What the effect of this instrument is

6. Compliance cost impact: Minor. The instrument will affect only a small proportion of businesses and confirms existing practice. There is no ongoing compliance cost impacts and minimal implementation impacts. However, affected taxpayers will nonetheless need to be aware of and learn about the changes.
7. The instrument provides taxpayers with a choice under the ITAA 1997, when measuring the decline in value (depreciation) of an asset. A taxpayer can either use an effective life determined by the Commissioner, or work out (self-assess) their own effective life of an asset in accordance with section 40-105 of the ITAA 1997.

8. Effective lives determined by the Commissioner provide what is referred to as a 'safe harbour' for taxpayers, as it provides certainty to taxpayers that these lives will be accepted by the Commissioner.

Background

9. The policy of effective life depreciation came into effect on 1 July 1991. On 21 September 1999, accelerated depreciation was removed.
10. As part of that policy, the Government also endorsed the Review of Business Taxation's recommendation that the Commissioner institute an ongoing revision of the effective life schedule (Recommendation 8.5 of *A Tax System Redesigned*).
11. As a result, the ATO has been undertaking a comprehensive review of the Commissioner's determinations of effective life. In doing so, the Commissioner consults with a number of key stakeholders, including users of the assets, industry associations, manufacturers and suppliers of the assets and, when necessary, industry consultants.
12. This review is the most comprehensive ever undertaken in terms of the information gathered and the consideration given to different factors.
13. Taxation Ruling 2016/1 explains the factors the Commissioner takes into account when making effective life determinations. Those factors include commercial and technical obsolescence; to the extent it is predictable. The review is not focusing on the physical life of assets to the exclusion of economic influences on effective life.
14. Ultimately, the Commissioner's determinations must satisfy the question of how long the depreciating asset can be used by any entity for a specified purpose, which includes, among others, a taxable purpose.
15. The new determinations of effective life do not represent any change in policy. They represent proper administration of the law.
16. The new determinations have been arrived at by a proper process. An independent review panel has confirmed that sufficient consultation was undertaken.

Consultation

17. Notifications of the various reviews being conducted are listed on the ATO website with an invitation to participate in the reviews.
18. Draft effective lives are also published along with requests for feedback, and these drafts are also sent to key stakeholders, including industry participants and associations, for comment. After considering the feedback, final effective lives are published in Taxation Ruling 2016/1 on the ATO website.
19. A review panel including representatives from the Corporate Tax Association and Chartered Accountants Australia and New Zealand is involved in reviewing the proposed effective lives. An Assistant Commissioner from the ATO is also on the review panel and is responsible for signing the legislative instrument. The involvement of review panel members ensures that a full consultative process has been carried out with key stakeholders when conducting effective life reviews.

20. The final effective lives are also sent to all taxpayers that participated in the review, and the determination is published on the ATO website.

Previous Rulings/Determinations:

- TR 2000/18
- TR 2006/5
- TR 2006/15
- TR 2007/3
- TR 2008/4
- TR 2009/4
- TR 2010/2
- TR 2011/2
- TR 2012/2
- TR 2013/4
- TR 2014/4
- TR 2015/2

Subject references:

- capped lives
- determination of effective life
- decline in value
- depreciating assets
- depreciation
- effective life
- effective life determination

Legislative references:

- *Income Tax (Effective life of Depreciating Assets) Determination 2001*
- ITAA 1997 Div 40
- ITAA 1997 subsection 40-70(1)
- ITAA 1997 subsection 40-72(1)
- ITAA 1997 subsection 40-75(1)
- ITAA 1997 section 40-95
- ITAA 1997 section 40-100
- ITAA 1997 subsection 40-100(5)
- ITAA 1997 paragraph 40-100(6)(b)
- ITAA 1997 section 40-105
- ITAA 1997 section 40-110
- *Taxation Administration Act 1953* Div 358 to Schedule 1
- *Taxation Laws Amendment Act (No. 4) 2002*
- *Legislation Act 2003*

Other References

- Recommendation 8.5 of *The Review of Business Taxation Report: A Tax System Redesigned*

Statement of Compatibility with Human Rights

This statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Legislative Instrument provides taxpayers with a choice under the ITAA 1997, when measuring the decline in value (depreciation) of an asset, because a taxpayer can either use an effective life determined by the Commissioner, or work out (self-assess) their own effective life of an asset in accordance with section 40-105 of the ITAA 1997.

Effective lives determined by the Commissioner provide what is referred to as a 'safe harbour' for taxpayers, as it provides certainty to taxpayers that these lives will be accepted by the Commissioner

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms. The Instrument provides taxpayers in specific industries and for specific assets with effective lives as a basis to calculate the decline in value (depreciation) of an asset for income tax purposes.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.