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## Explanatory Statement

### Income Tax (Effective Life of Depreciating Assets) Amendment Determination 2019 (No 1)

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#### 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. This is a legislative instrument for the purposes of the *Legislation Act 2003*.
3. 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

#### Date of effect

4. The instrument applies from 1 July 2019.

#### What is this instrument 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 a depreciating asset for income tax purposes.

#### What is the effect of this instrument

6. Compliance cost impact: Minor. The instrument will affect only a small proportion of businesses and confirms existing practice. There will be no or minimal impacts for both implementation and ongoing compliance costs. The legislative instrument is minor or machinery in nature. However, affected taxpayers will nonetheless need to be aware of, and learn about, the changes.
7. Taxpayers are provided with a choice under the ITAA 1997 when measuring the decline in value (depreciation) of a depreciating asset. A taxpayer can either use an effective life determined by the Commissioner, or work out (self-assess) their own effective life of a depreciating 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 they have certainty these lives will be accepted by the Commissioner.

9. The effective life determinations in the instrument apply on a prospective basis. The effective life determinations with an application date earlier than 1 July 2019 are included in the instrument because there is a need to update the asset description, correct a previous mistake or extend the current industry listing.

## **Background**

10. The policy of effective life depreciation came into effect on 1 July 1991.
11. On 21 September 1999, accelerated depreciation was removed. 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*).
12. As a result, the ATO has been undertaking ongoing annual reviews 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.
13. The reviews are comprehensive in terms of the information gathered and the consideration given to different factors.
14. Taxation Ruling 2019/5 explains the factors the Commissioner takes into account when making effective life determinations. Those factors include commercial and technical obsolescence, to the extent this can be predicted. The review does not focus on the physical life of assets to the exclusion of economic influences on its effective life.
15. Ultimately, the Commissioner's determinations must satisfy the question of how long the depreciating asset can be used by any entity for one or more specified purposes, including a taxable purpose.
16. The new determinations of effective life do not represent any change in policy. They represent proper administration of the law.
17. The new determinations have been arrived at by a proper process. An independent review panel has confirmed that sufficient consultation was undertaken.
18. An Assistant Commissioner from the ATO is responsible for signing the legislative instrument.

## **Consultation:**

19. Notifications of the various reviews being conducted are listed on the ATO website with an invitation to participate in the reviews.
20. Draft effective lives are published along with requests for feedback. 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 2019/5 on the ATO website.

21. A review panel, typically including representatives from the Corporate Tax Association, Chartered Accountants Australia and New Zealand, Australian Finance Industry Association, National Australia Bank Finance and the ATO is involved in reviewing the proposed effective lives. The involvement of review panel members ensures that a full consultative process has been carried out with key stakeholders when conducting effective life reviews.
22. The final effective life determinations are sent to all taxpayers that participated in the review and are also published on the ATO website.

*Legislative references:*

- *Acts Interpretation Act 1901*
- *Human Rights (Parliamentary Scrutiny) Act 2011*
- *Income Tax Assessment Act 1997*
- *Income Tax (Effective Life of Depreciating Assets) Determination 2015*
- *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*.

### **Income Tax (Effective Life of Depreciating Assets) Amendment Determination 2019 (No 1)**

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 when measuring the decline in value (depreciation) of a depreciating asset, because a taxpayer can either use an effective life determined by the Commissioner, or work out (self-assess) their own effective life of a depreciating asset.

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 a depreciating asset for income tax purposes.

#### **Conclusion**

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