



Explanatory Statement

Income Tax (Effective Life of Depreciating Assets) Amendment Determination 2020

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. This instrument corrects the previous legislative instrument, FRL number, F2019L00833, *Income Tax (Effective Life of Depreciating Assets) Amendment Determination 2019 (No 1)*, registered 17 June 2019 (the previous instrument).
4. 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

5. The instrument commences on 1 July 2019.
6. The retrospective commencement date is necessary to correct entries in the previous instrument. This will ensure that affected taxpayers can continue to apply the effective life determined by the Commissioner for these particular depreciating assets in the same way as they did in earlier years. The retrospective commencement date does not disadvantage a taxpayer or impose a liability on a taxpayer.

What is this instrument about

7. This instrument restores the previous description of certain depreciating assets in the oil and gas industry after feedback was received by the Commissioner from industry.

What is the effect of this instrument

8. Compliance cost impact: Minor. The instrument will affect only a small number of businesses in the oil and gas industry and confirms existing practice. The legislative instrument is minor or machinery in nature. Therefore there will be no or minimal impacts for both implementation and ongoing compliance costs.

9. 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 their own effective life of a depreciating asset in accordance with section 40-105 of the ITAA 1997.
10. Effective lives determined by the Commissioner provide what is referred to as a 'safe harbour' for taxpayers as they have certainty that these lives will be accepted by the Commissioner.

Background

11. The policy of effective life depreciation came into effect on 1 July 1991.
12. 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*).
13. 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.
14. The reviews are comprehensive in terms of the information gathered and the consideration given to different factors.
15. Taxation Ruling TR 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.
16. 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.
17. The ATO also undertakes continuous improvement to the instrument. A change was made in the previous instrument to substitute the description of:
 - A. 'floating production storage and offloading (FPSO) vessels' with 'self-propelled floating production storage and offloading (FPSO) ships', and
 - B. 'floating storage and offloading (FSO) vessels' with 'self-propelled floating storage and offloading (FSO) ships'within the category of depreciating assets listed in the mining industry (oil and gas extraction).
18. These changes were only intended to provide a clearer description of these depreciating assets. However, for some types of oil and gas assets, the ATO's determination of effective life is capped by statute. To access this capped life

taxpayers must choose to use the effective life determined by the Commissioner that is in force at the time of their choice.

19. Upon release of *Income Tax (Effective Life of Depreciating Assets) Amendment Determination 2019 (No 1)*, the ATO received industry feedback that the change in wording meant that the taxpayer (and other taxpayers in the industry) may be unable to use the statutory capped life available in section 40-102 of the ITAA 1997 for non-self-propelled FPSO and FSO vessels coming online in the future.
20. This instrument restores the original wording for the description of these depreciating assets to rectify the issue raised.
21. The amendments do not represent any change in policy. They reflect correct administration of the law.

Consultation

22. When the Commissioner makes a legislative instrument that includes new effective life determinations, a significant consultation process is undertaken. This typically includes publication of notifications of the various reviews being conducted on the ATO website with an invitation to participate in the reviews; publication of draft effective lives along with requests for feedback; and sending the draft to key stakeholders, including industry participants and associations, for comment. An independent Review Panel is also involved to ensure that appropriate level of consultations has been carried out.
23. However, consultation for the amendments in this instrument is not considered necessary. These particular amendments will have little or no impact on the oil and gas extraction industry as taxpayers will be able to rely on the longstanding wording that has been extensively consulted on in the past. The amendments provide certainty for the taxpayers who have relied on the original wording in the determination in previous years.
24. The amendments are not expected to have any revenue impact. They allow taxpayers to apply the effective life determined by the Commissioner for these particular depreciating assets in the same way as they did previously.
25. The ATO has an open and ongoing consultation process in relation to the Commissioner's determinations of effective life. Taxpayers can raise matters with the ATO at any time regarding the effective life determinations.

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 (F2015L00798)*
- *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 2020

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.

This instrument restores the previous wording of certain depreciating assets in the oil and gas industry after feedback was received by the Commissioner that changes to *Income Tax (Effective Life of Depreciating Assets) Amendment Determination 2019 (No 1)* had unintended consequences.

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.