



New Business Tax System (Capital Allowances) Act 2001

No. 76, 2001



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**An Act to implement the New Business Tax System
by amending the law relating to taxation, and for
related purposes**

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New Business Tax System (Capital Allowances) Act 2001

No. 76, 2001

An Act to implement the New Business Tax System by amending the law relating to taxation, and for related purposes

[Assented to 30 June 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *New Business Tax System (Capital Allowances) Act 2001*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Schedule 2 is taken to have commenced on 1 July 2000.

(3) Schedule 3 is taken to have commenced on 9 May 2001.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Capital Allowances

Income Tax Assessment Act 1997

1 Divisions 40, 41 and 42

Repeal the Divisions, substitute:

Division 40—Capital allowances

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Guide to Division 40

40-1 What this Division is about

You can deduct an amount equal to the decline in value of a *depreciating asset* (an asset that has a limited effective life and that is reasonably expected to decline in value over the time it is used) that you hold.

That decline is generally measured by reference to the effective life of the asset.

You can also deduct amounts for certain other capital expenditure.

40-10 Simplified outline of this Division

The key concepts about depreciating assets and certain other capital expenditure are outlined below (in *bold italics*).

| Simplified outline of this Division | | |
|--|--|-------------------|
| Item | Major topic | Provisions |
| | <i>Subordinate topics</i> Rules | |
| 1 | Rules about depreciating assets | |
| 1.1 | <p><i>Core provisions</i></p> <p><i>Depreciating assets</i> are assets with a limited effective life that are reasonably expected to decline in value. Broadly, the <i>effective life</i> of a depreciating asset is the period it can be used to produce income. The <i>decline in value</i> is based on the cost and effective life of the depreciating asset, not its actual change in value. It begins at <i>start time</i>, when you begin to use the asset (or when you have it installed ready for use). It continues while you use the asset (or have it installed). Usually, the owner of a depreciating asset <i>holds</i> the asset and can therefore claim deductions for its decline in value. Sometimes the economic owner will be different to the legal owner and the economic owner will be the holder.</p> | Subdivision 40-B |
| 1.2 | <p><i>Cost</i></p> <p>The <i>cost</i> of a depreciating asset includes both:</p> <ul style="list-style-type: none"> • expenses you incur to start holding the asset; and • additional expenses that contribute to its present condition and location (e.g. improvements). | Subdivision 40-C |
| 1.3 | <p><i>Balancing adjustments</i></p> <p>When you stop holding a depreciating asset you may have to include an amount in your assessable income, or deduct an amount under a <i>balancing adjustment</i>. The adjustment reconciles the decline with the actual change in value.</p> | Subdivision 40-D |

Simplified outline of this Division

| Item | Major topic <i>Subordinate topics</i> Rules | Provisions |
|-------------|--|-------------------|
| 1.4 | <i>Low-value and software development pools</i> Low-cost assets and assets depreciated to a low value may be placed in a low value pool , which is treated as a single depreciating asset. You can also pool in-house software expenditure in a software development pool . | Subdivision 40-E |
| 1.5 | <i>Primary production depreciating assets</i> You can deduct amounts for capital expenditure on: <ul style="list-style-type: none"> • water facilities over 3 income years; or • horticultural plants over a period that relates to the effective life of the plant; or • grapevines over usually 4 years. | Subdivision 40-F |
| 2 | Rules about other capital expenditure | |
| 2.1 | <i>Capital expenditure of primary producers and other landholders</i> You can deduct amounts for capital expenditure on: <ul style="list-style-type: none"> • landcare operations immediately; or • electricity and telephone lines over 10 income years. | Subdivision 40-G |
| 2.2 | <i>Capital expenditure that is immediately deductible</i> You can get an immediate deduction for certain capital expenditure on: <ul style="list-style-type: none"> • exploration or prospecting; and • rehabilitation of mine and quarry sites; and • paying petroleum taxes; and • environmental protection activities. | Subdivision 40-H |
| 2.3 | <i>Capital expenditure that is deductible over time</i> You can deduct amounts for certain capital expenditure associated with projects you carry on. You deduct the amount over the life of the project using a project pool . You can also deduct amounts for certain business related costs over 5 years. | Subdivision 40-I |

Subdivision 40-A—Objects of Division

Table of sections

40-15 Objects of Division

40-15 Objects of Division

The objects of this Division are:

- (a) to allow you to deduct the *cost of a *depreciating asset; and
- (b) to spread the deduction over a period that reflects the time for which the asset can be used to obtain benefits; and
- (c) to provide deductions for certain other capital expenditure that is not otherwise deductible.

Note: This Division does not apply to some depreciating assets: see section 40-45.

Subdivision 40-B—Core provisions

Guide to Subdivision 40-B

40-20 What this Subdivision is about

The rules that apply to most depreciating assets are in this Subdivision. It explains:

- what a *depreciating asset* is; and
- when you start deducting amounts for depreciating assets; and
- how to work out your deductions.

It also contains rules for splitting and merging depreciating assets.

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[This is the end of the Guide.]

Operative provisions

40-25 Deducting amounts for depreciating assets

You deduct the decline in value

- (1) You can deduct an amount equal to the decline in value for an income year (as worked out under this Division) of a *depreciating asset that you *held for any time during the year.

Note 1: Sections 40-70 and 40-75 show you how to work out the decline for most depreciating assets. There is a limit on the decline: see subsections 40-70(3) and 40-75(7).

Note 2: STS taxpayers work out the amount they can deduct under Division 328.

Note 3: Generally, only one taxpayer can deduct amounts for a depreciating asset. However, if you and another taxpayer jointly hold the asset, each of you deduct amounts for it: see section 40-35.

Reduction of deduction

- (2) You must reduce your deduction by the part of the asset's decline in value that is attributable to your use of the asset, or your having it *installed ready for use, for a purpose other than a *taxable purpose.

Example: Ben holds a depreciating asset that he uses for private purposes for 30% of his total use in the income year.

If the asset declines by \$1,000 for the year, Ben would have to reduce his deduction by \$300 (30% of \$1,000).

Further reduction: leisure facilities and boats

- (3) You may have to make a further reduction for a *depreciating asset that is a *leisure facility or a boat attributable to your use of it, or your having it *installed ready for use, for a *taxable purpose.
- (4) That reduction is the part of the asset's decline in value that is attributable to your use of the asset, or your having it *installed ready for use, at a time when:
- (a) its use did not constitute a *fringe benefit; or
 - (b) for a *leisure facility—you did not use it or hold it for use as mentioned in paragraph 26-50(3)(b) (about using it in the course of your business or for your employees); or
 - (c) for a boat—you did not use it or hold it for use as mentioned in paragraph 26-50(5)(b), (c) or (d) (about using it mainly for letting on hire, mainly for transporting the public or goods for payment or for a purpose that is essential to the efficient conduct of your business).

Exception: low-value pools

- (5) Subsections (2), (3) and (4) do not apply to *depreciating assets allocated to a low-value pool.

Note: See Subdivision 40-E for low-value pools.

Exception: Use of $\frac{1}{3}$ of actual expenses method for a car

- (6) Subsections (2), (3) and (4) do not apply to a *car for an income year for which you use the "one-third of actual expenses" method.

Instead, you reduce your deduction by $\frac{2}{3}$ of the car's decline in value.

Note: See Division 28 for that method.

Meaning of taxable purpose

(7) A **taxable purpose** is:

- (a) the *purpose of producing assessable income; or
- (b) the purpose of *exploration or prospecting; or
- (c) the purpose of *mining site rehabilitation; or
- (d) *environmental protection activities.

Note: Where you have had a deduction under this Division an amount may be included in your assessable income if the expenditure was financed by limited recourse debt that has terminated: see Division 243.

40-30 What a *depreciating asset* is

(1) A **depreciating asset** is an asset that has a limited *effective life and can reasonably be expected to decline in value over the time it is used, except:

- (a) land; or
- (b) an item of *trading stock; or
- (c) an intangible asset, unless it is mentioned in subsection (2).

(2) These intangible assets are **depreciating assets** if they are not *trading stock:

- (a) *mining, quarrying or prospecting rights;
- (b) *mining, quarrying or prospecting information;
- (c) items of *intellectual property;
- (d) *in-house software;
- (e) *IRUs;
- (f) *spectrum licences;
- (g) *datacasting transmitter licences.

(3) This Division applies to an improvement to land, or a fixture on land, whether the improvement or fixture is removable or not, as if it were an asset separate from the land.

Note 1: Whether such an asset is a depreciating asset depends on whether it falls within the definition in subsection (1).

Note 2: This Division does not apply to capital works for which you can deduct amounts under Division 43: see subsection 40-45(2).

- (4) Whether a particular composite item is itself a *depreciating asset* or whether its components are separate *depreciating assets* is a question of fact and degree which can only be determined in the light of all the circumstances of the particular case.

Example 1: A car is made up of many separate components, but usually the car is a depreciating asset rather than each component.

Example 2: A floating restaurant consists of many separate components (like the ship itself, stoves, fridges, furniture, crockery and cutlery), but usually these components are treated as separate depreciating assets.

- (5) This Division applies to a renewal or extension of a *depreciating asset that is a right as if the renewal or extension were a continuation of the original right.

40-35 Jointly held depreciating assets

- (1) This Division and Division 328 apply to a *depreciating asset (the *underlying asset*) that you *hold, and that is also held by one or more other entities, as if *your interest in* the underlying asset were itself the underlying asset.

Note: Partners do not hold partnership assets: see section 40-40.

- (2) As a result, the decline in value of the underlying asset is not itself taken into account.

Example: Buford Corp owns an office block that it leases to 2 companies, Smokey Pty Ltd and Bandit Pty Ltd. Smokey and Bandit decide to install a fountain in front of the building.

They discuss it with Buford who agrees to pay half the cost (because the fountain won't be removable at the end of the lease). Smokey and Bandit split the rest of the cost between them.

Smokey and Bandit would each hold the asset under item 3 of the table in section 40-40 and Buford would hold it under item 10. They would be joint holders, so each would write-off its *interest* in the fountain.

40-40 Meaning of *hold* a depreciating asset

Use this table to work out who *holds* a *depreciating asset. An entity identified in column 3 of an item in the table as *not holding* a depreciating asset cannot *hold* the asset under another item.

Identifying the holder of a depreciating asset

| Item | This kind of depreciating asset: | Is held by this entity: |
|-------------|--|--|
| 1 | A *luxury car in respect of which a lease has been granted | The lessee (while the lessee has the right to use the car) and <i>not</i> the lessor |
| 2 | A *depreciating asset that is fixed to land subject to a *quasi-ownership right (including any extension or renewal of such a right) where the owner of the right has a right to remove the asset | The owner of the quasi-ownership right (while the right to remove exists) |
| 3 | An improvement to land (whether a fixture or not) subject to a *quasi-ownership right (including any extension or renewal of such a right) made, or itself improved, by any owner of the right for the owner's own use where the owner of the right has no right to remove the asset | The owner of the quasi-ownership right (while it exists) |
| 4 | A *depreciating asset that is subject to a lease where the asset is fixed to land and the lessor has the right to recover the asset | The lessor (while the right to recover exists) |
| 5 | A right that an entity legally owns but which another entity (the <i>economic owner</i>) exercises or has a right to exercise immediately, where the economic owner has a right to become its legal owner and it is reasonable to expect that: (a) the economic owner will become its legal owner; or (b) it will be disposed of at the direction and for the benefit of the economic owner | The economic owner and <i>not</i> the legal owner |

Schedule 1 Capital Allowances

Identifying the holder of a depreciating asset

| Item | This kind of depreciating asset: | Is held by this entity: |
|------|--|--|
| 6 | <p>A *depreciating asset that an entity (the <i>former holder</i>) would, apart from this item, hold under this table (including by another application of this item) where a second entity (also the <i>economic owner</i>):</p> <p>(a) possesses the asset, or has a right as against the former holder to possess the asset immediately; and</p> <p>(b) has a right as against the former holder the exercise of which would make the economic owner the holder under any item of this table; and it is reasonable to expect that the economic owner will become its holder by exercising the right, or that the asset will be disposed of at the direction and for the benefit of the economic owner</p> | The economic owner and <i>not</i> the former holder |
| 7 | A *depreciating asset that is a partnership asset | The partnership and <i>not</i> any particular partner |
| 8 | <p>*Mining, quarrying or prospecting information that an entity has and that is relevant to:</p> <p>(a) * mining operations carried on, or proposed to be carried on by the entity; or</p> <p>(b) a *business carried on by the entity that includes *exploration or prospecting for *minerals or quarry materials obtainable by such operations; whether or not it is generally available</p> | The entity |
| 9 | Other * mining quarrying or prospecting information that an entity has and that is not generally available | The entity |
| 10 | Any *depreciating asset | The owner, or the legal owner if there is both a legal and equitable owner |

Example 1: Power Finance leases a luxury car to Kris who subleases it to Rachael. As lessee, item 1 makes Rachael the holder of the car. Power, as the legal owner, would normally hold the car under item 10.

However, item 1 makes it clear that Power, as lessor, does *not* hold the car. As the lessee, item 1 would normally mean that Kris held the car

but, again, she is also a lessor and so is not the holder (she also doesn't have the right to use the car during the sublease).

Example 2: Sandra sells a packing machine to Jenny under a hire purchase agreement. Jenny holds the machine under item 6 because, although she is not the legal owner until she exercises her option to purchase, she possesses the machine now and can exercise an option to become its legal owner.

Jenny is reasonably expected to exercise that option because the final payment will be well below the expected market value of the machine at the end of the agreement. Sandra, as the machine's legal owner, would normally be its holder under item 10 but item 6 makes it clear that the legal owner is *not* the holder.

Note 1: Some assets may have holders under more than one item in the table.

Note 2: As well as hire purchase agreements, items 5 and 6 cover cases like assets subject to chattel mortgages, sales subject to retention of title clauses and assets subject to bare trusts.

40-45 Assets to which this Division does not apply

Research and development

- (1) This Division does not apply to *plant that you have used or had *installed ready for use exclusively for the purpose of carrying on *research and development activities unless you have elected under subsection 73B(18) of the *Income Tax Assessment Act 1936* that the research and development provisions do not apply to it.

Capital works

- (2) This Division does not apply to capital works for which you can deduct amounts under Division 43, or for which you could deduct amounts under that Division but for expenditure being incurred, or capital works being started, before a particular day.

Note: Section 43-20 lists the capital works to which that Division applies.

IRUs

- (3) This Division does not apply to an *IRU to the extent to which expenditure on the IRU was incurred at or before 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999 (the *IRU time*).

- (4) This Division does not apply to an *IRU over an international telecommunications submarine cable system if the system had been used for telecommunications purposes at or before the IRU time.

Films

- (5) This Division does not apply to a *depreciating asset if you or another taxpayer has deducted or can deduct amounts for it under:
- (a) Division 10BA of Part III of the *Income Tax Assessment Act 1936* (about Australian films); or
 - (b) Division 10B of Part III of that Act if the depreciating asset relates to a copyright in an Australian film within the meaning of that Division.

40-50 Assets for which you deduct under another Subdivision

- (1) You cannot deduct an amount for a *depreciating asset under this Subdivision if you or another taxpayer has deducted or can deduct amounts for it under Subdivision 40-F (about primary production depreciating assets) or 40-G (about capital expenditure of primary producers and other landholders).
- (2) You cannot deduct an amount for *in-house software under this Subdivision if you have allocated expenditure on the software to a software development pool under Subdivision 40-E.

40-55 Use of certain car methods

You cannot deduct any amount for the decline in value of a *car for an income year if you use the “cents per kilometre” method, or the “12% of original value” method, for the car for that year.

Note: See Division 28 for those methods.

40-60 When a depreciating asset starts to decline in value

- (1) A *depreciating asset you *hold starts to decline in value from when its *start time occurs.
- (2) The *start time* of a *depreciating asset is when you first use it, or have it *installed ready for use, for any purpose.

Note: Previous use by a transition entity is ignored: see section 58-70.

- (3) However, there is another *start time* for a *depreciating asset you *hold if a *balancing adjustment event referred to in paragraph 40-295(1)(b) occurs for the asset and you start to use the asset again. Its second *start time* is when you start using it again.

40-65 Choice of methods to work out the decline in value

- (1) You have a choice of 2 methods to work out the decline in value of a *depreciating asset. You must choose to use either the *diminishing value method or the *prime cost method.

Note 1: Once you make the choice for an asset, you cannot change it: see section 40-130.

Note 2: For the diminishing value method, see section 40-70. For the prime cost method, see section 40-75.

Note 3: In some cases you do not have to make the choice because you can deduct the asset's cost: see section 40-80.

Exception: asset acquired from associate

- (2) For a *depreciating asset that you acquire from an *associate of yours where the associate has deducted or can deduct an amount for the asset under this Division, you must use the same method that the associate was using.

Note: You can require the associate to tell you which method the associate was using: see section 40-140.

Exception: holder changes but user same or associate of former user

- (3) For a *depreciating asset that you acquire from a former *holder of the asset, you must use the same method that the former holder was using for the asset if:
- (a) the former holder or another entity (each of which is the *former user*) was using the asset at a time before you became the holder; and
 - (b) while you hold the asset, the former user or an *associate of the former user uses the asset.
- (4) However, you must use the *diminishing value method if:
- (a) you do not know, and cannot readily find out, which method the former holder was using; or
 - (b) the former holder did not use a method.

Exception: low-value pools

- (5) You work out the decline in value of a *depreciating asset in a low-value pool under Subdivision 40-E rather than under this Subdivision.

40-70 Diminishing value method

- (1) You work out the decline in value of a *depreciating asset for an income year using the *diminishing value method* in this way:

$$\text{Base value} \times \frac{\text{Days held}}{365} \times \frac{150\%}{\text{Asset's * effective life}}$$

where:

base value is:

- (a) for the income year in which the asset's *start time occurs—its *cost; or
- (b) for a later year—the sum of its *opening adjustable value for that year and any amount included in the second element of its cost for that year.

days held is the number of days you *held the asset in the income year from its *start time, ignoring any days in that year when you did not use the asset, or have it *installed ready for use, for any purpose.

Note: If you recalculate the effective life of a depreciating asset, you use that recalculated life in working out your deduction.

You can choose to recalculate effective life because of changed circumstances: see section 40-110. That section also requires you to recalculate effective life in some cases.

Exception: intangibles

- (2) You cannot use the *diminishing value method to work out the decline in value of:
- (a) *in-house software; or
 - (b) an item of *intellectual property; or
 - (c) a *spectrum licence; or
 - (d) a *datacasting transmitter licence.

Limit on decline

- (3) The decline in value of a *depreciating asset under this section for an income year cannot be more than the amount that is the asset's **base value** in the formula in subsection (1) for that income year.

40-75 Prime cost method

- (1) You work out the decline in value of a *depreciating asset for an income year using the **prime cost method** in this way:
where:

$$\text{Asset's *cost} \times \frac{\text{Days held}}{365} \times \frac{100\%}{\text{Asset's *effective life}}$$

where:

days held has the same meaning as in subsection 40-70(1).

Example: Greg acquires an asset for \$3,500 and first uses it on the 26th day of the income year. If the effective life of the asset is $3\frac{1}{3}$ years, the asset would decline in value in that year by:

$$\$3,500 \times \frac{[365 - 25]}{365} \times \frac{100\%}{3\frac{1}{3}} = \$978$$

The asset's adjustable value at the end of the income year is:

$$\$3,500 - \$978 = \$2,522$$

- (2) However, you must adjust the formula in subsection (1) for an income year (the **change year**):
- for which you recalculate the *depreciating asset's *effective life; or
 - after the year in which the asset's start time occurs and in which an amount is included in the second element of the asset's *cost; or
 - for which the asset's cost or *adjustable value is reduced under section 40-90 (about debt forgiveness); or
 - for which there is roll-over relief under section 40-340 where the transferor referred to in that section was using the *prime cost method; or

(e) for which there is a reduction to the asset's adjustable value under paragraph 40-365(5)(b) (about involuntary disposals) where you are using the prime cost method; or

(f) for which the *opening adjustable value of the asset is modified under subsection 27-80(4), 27-85(3) or 27-90(3).

The adjustments apply for the change year and later years.

Note: For recalculating a depreciating asset's effective life: see section 40-110.

(3) The adjustments are:

(a) instead of the asset's *cost, you use its *opening adjustable value for the change year plus the amounts (if any) included in the second element of its cost for that year; and

(b) instead of the asset's *effective life, you use its *remaining effective life.

(4) The *remaining effective life* of a *depreciating asset is any period of its *effective life that is yet to elapse as at the start of the change year.

Note: Effective life is worked out in years and fractions of years.

(5) You must also adjust the formula in subsection (1) for an intangible *depreciating asset that:

(a) is mentioned in an item in the table in subsection 40-95(7) (except item 5, 7 or 8); and

(b) you acquire from a former *holder of the asset.

The adjustment applies for the income year in which you acquire the asset and later income years.

(6) Instead of the asset's *effective life under the table in subsection 40-95(7), you use the number of years remaining in that effective life as at the start of the income year in which you acquire the asset.

Limit on decline

(7) The decline in value of a *depreciating asset under this section for an income year cannot be more than:

(a) for the income year in which the asset's *start time occurs—its *cost; or

-
- (b) for a later year—the sum of its *opening adjustable value for that year and any amount included in the second element of its cost for that year.

40-80 When you can deduct the asset's cost

Exploration or prospecting

- (1) The decline in value of a *depreciating asset you *hold is the asset's *cost if:
- (a) you first use the asset for *exploration or prospecting for *minerals, or quarry materials, obtainable by *mining operations; and
 - (b) you do not use it for:
 - (i) development drilling for *petroleum; or
 - (ii) operations in the course of working a mining property, quarrying property or petroleum field; and
 - (c) you satisfy one or more of these subparagraphs at the asset's *start time:
 - (i) you carry on *mining operations;
 - (ii) it would be reasonable to conclude you proposed to carry on such operations;
 - (iii) you carry on a *business of, or a business that included, exploration or prospecting for minerals or quarry materials obtainable by such operations, and expenditure on the asset was necessarily incurred in carrying on that business.

Depreciating assets used for certain purposes

- (2) The decline in value of a *depreciating asset you start to *hold in an income year is the asset's *cost if:
- (a) that cost does not exceed \$300; and
 - (b) you use the asset predominantly for the *purpose of producing assessable income that is not income from carrying on a *business; and
 - (c) the asset is not one that is part of a set of assets that you started to hold in that income year where the total cost of the set of assets exceeds \$300; and

- (d) the total cost of the asset and any other identical, or substantially identical, asset that you start to hold in that income year does not exceed \$300.

40-85 Meaning of *adjustable value* and *opening adjustable value* of a depreciating asset

- (1) The *adjustable value* of a *depreciating asset at a particular time is:
 - (a) if you have not yet used it or had it *installed ready for use for any purpose—its *cost; or
 - (b) for a time in the income year in which you first use it, or have it installed ready for use, for any purpose—its cost less its decline in value up to that time; or
 - (c) for a time in a later income year—the sum of its *opening adjustable value for that year and any amount included in the second element of its cost for that year up to that time, less its decline in value for that year up to that time.
- (2) The *opening adjustable value* of a *depreciating asset for an income year is its *adjustable value to you at the end of the previous income year.

Note 1: The opening adjustable value of a depreciating asset is reduced by an amount applied in reduction of deductible expenditure under the debt forgiveness provisions: see section 40-90.

Note 2: The opening adjustable value of a depreciating asset for which a balancing adjustment event occurs because you still hold the asset and you expect not to use it is affected by subsection 40-285(4).

40-90 Debt forgiveness

- (1) This section applies if an amount (the *debt forgiveness amount*) is applied in reduction of deductible expenditure for a *depreciating asset in an income year (within the meaning of Division 245 of Schedule 2C to the *Income Tax Assessment Act 1936*) under section 245-155 of that Schedule.
- (2) The asset's *cost is reduced for that income year by the debt forgiveness amount.
- (3) The asset's *opening adjustable value for that income year is reduced by the debt forgiveness amount if that income year is later than the one in which its *start time occurs.

40-95 Choice of determining effective life

- (1) You must choose either:
 - (a) to use an *effective life determined by the Commissioner for a *depreciating asset under section 40-100; or
 - (b) to work out the effective life of the asset yourself under section 40-105.
- (2) Your choice of an *effective life determined by the Commissioner for a *depreciating asset is limited to one in force as at:
 - (a) the time when you entered into a contract to acquire the asset, you otherwise acquired it or you started to construct it if its *start time occurs within 5 years of that time; or
 - (b) for *plant that you entered into a contract to acquire, you otherwise acquired or you started to construct before 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999—the time when you entered into the contract to acquire it, otherwise acquired it or started to construct it; or
 - (c) otherwise—its *start time.
- (3) You must make the choice for the income year in which the asset's *start time occurs.

Note: For rules about choices: see section 40-130.

Exception: asset acquired from associate

- (4) For a *depreciating asset that you start to *hold where the former holder is an *associate of yours and the associate has deducted or can deduct an amount for the asset under this Division, you must use:
 - (a) if the associate was using the *diminishing value method for the asset—the same *effective life that the associate was using; or
 - (b) if the associate was using the *prime cost method—an effective life equal to any period of the asset's effective life the associate was using that is yet to elapse at the time you started to hold it.

Note: You can require the associate to tell you which effective life the associate was using: see section 40-140.

Exception: holder changes but user same or associate of former user

- (5) For a *depreciating asset that you start to *hold where:
- (a) the former holder or another entity (each of which is the **former user**) was using the asset at a time before you became the holder; and
 - (b) while you hold the asset, the former user or an *associate of the former user uses the asset;
- you must use:
- (c) if the former holder was using the *diminishing value method for the asset—the same *effective life that the former holder was using; or
 - (d) if the former holder was using the *prime cost method—an effective life equal to any period of the asset’s effective life the former holder was using that is yet to elapse at the time you started to hold it.
- (6) However, you must use an *effective life determined by the Commissioner if:
- (a) you do not know, and cannot readily find out, which effective life the former holder was using; or
 - (b) the former holder did not use an effective life.

Exception: intangible depreciating assets

- (7) The **effective life** of an intangible *depreciating asset mentioned in this table is the period applicable to that asset under the table.

Effective life of certain intangible depreciating assets

| Item | For this asset: | The effective life is: |
|-------------|------------------------|-------------------------------|
| 1 | Standard patent | 20 years |
| 2 | Innovation patent | 8 years |
| 3 | Petty patent | 6 years |
| 4 | Registered design | 15 years |

Effective life of certain intangible depreciating assets

| Item | For this asset: | The effective life is: |
|-------------|--|--|
| 5 | Copyright | The shorter of: (a) 25 years from when you acquire the copyright; or (b) the period until the copyright ends |
| 6 | A licence (except one relating to a copyright or *in-house software) | The term of the licence |
| 7 | A licence relating to a copyright | The shorter of: (a) 25 years from when you become the licensee; or (b) the period until the licence ends |
| 8 | *In-house software | 2 ¹ / ₂ years |
| 9 | *Spectrum licence | The term of the licence |
| 10 | *Datacasting transmitter licence | 15 years |

- (8) The *effective life* of an intangible *depreciating asset that is not mentioned in the table in subsection (7) and is not an *IRU (for example, a *mining, quarrying or prospecting right) cannot be longer than the term of the asset as extended by any reasonably assured extension or renewal of that term.
- (9) The *effective life* of an *IRU is the *effective life of the international telecommunications submarine cable over which the IRU is granted.

40-100 Commissioner’s determination of effective life

- (1) The Commissioner may make a written determination specifying the *effective life* of *depreciating assets. The determination may specify conditions for particular depreciating assets.
- (2) A determination may specify a day from which it takes effect for *depreciating assets specified in the determination.
- (3) A determination may operate retrospectively to a day specified in the determination if:

- (a) there was no applicable determination at that day for the *depreciating asset covered by the determination; or
 - (b) the determination specifies a shorter *effective life for the depreciating asset covered by the determination than was previously applicable.
- (4) The Commissioner is to make a determination of the *effective life* of a *depreciating asset by estimating the period (in years, including fractions of years) it can be used by any entity for a *taxable purpose or for the purpose of producing *exempt income:
- (a) assuming it will be subject to wear and tear at a rate that is reasonable for the Commissioner to assume; and
 - (b) assuming it will be maintained in reasonably good order and condition; and
 - (c) having regard to the period within which it is likely to be scrapped, sold for no more than scrap value or abandoned.

40-105 Self-assessing effective life

- (1) You work out the *effective life* of a *depreciating asset yourself by estimating the period (in years, including fractions of years) it can be used by any entity for a *taxable purpose or for the purpose of producing *exempt income:
- (a) having regard to the wear and tear you reasonably expect from your expected circumstances of use; and
 - (b) assuming that it will be maintained in reasonably good order and condition.
- (2) If, in working out that period, you conclude that the asset would be likely to be scrapped, sold for no more than scrap value or abandoned before the end of that period, its *effective life* ends at the earlier time.
- (3) You work out the period in subsection (1) or (2) as from the *start time of the *depreciating asset.

Exception: intangibles

- (4) This section does not apply to an intangible *depreciating asset mentioned in the table in subsection 40-95(7).

40-110 Recalculating effective life

- (1) You may choose to recalculate the *effective life of a *depreciating asset from a later income year if the effective life you have been using is no longer accurate because of changed circumstances relating to the nature of the use of the asset.

Example: Some examples of changes in circumstances that may result in your recalculating the effective life of a depreciating asset are:

- your use of the asset turns out to be more or less rigorous than you expected (or was anticipated by the Commissioner's determination);
- there is a downturn in demand for the goods or services the asset is used to produce that will result in the asset being scrapped;
- legislation prevents the asset's continued use;
- changes in technology make the asset redundant.

- (2) You must recalculate a *depreciating asset's *effective life from a later income year if:

(a) you:

- (i) self-assessed its effective life; or
- (ii) are using an effective life worked out under section 40-100 (about the Commissioner's determination) and the *prime cost method; or
- (iii) are using an effective life because of subsection 40-95(4) or (5); and

(b) its *cost is increased in that year by at least 10%.

Note 1: You may conclude that the effective life is the same.

Note 2: For the elements of the cost of a depreciating asset, see Subdivision 40-C.

Example 1: Paul purchases a photocopier and self-assesses its effective life at 6 years. In a later year he incurs expenditure to increase the quality of the reproductions it makes. He recalculates its effective life, but concludes that it remains the same.

Example 2: Fiona also purchases a photocopier and self-assesses its effective life at 6 years. In a later year she incurs expenditure to incorporate a more robust paper handling system. She recalculates its effective life, and concludes that it is increased to 7 years.

- (3) You must recalculate a *depreciating asset's *effective life for the income year in which you started to *hold it if:

(a) you are using an effective life because of subsection 40-95(4) or (5); and

- (b) the asset's *cost is increased after you started to hold it in that year by at least 10%.
- (4) A recalculation under this section must be done using section 40-105 (about self-assessing effective life).

Exception: intangibles

- (5) This section does not apply to an intangible *depreciating asset mentioned in the table in subsection 40-95(7).

40-115 Splitting a depreciating asset

- (1) If a *depreciating asset you *hold is split into 2 or more assets, this Division applies as if you had stopped holding the original asset and started holding the assets into which it is split.

Note 1: For the cost of the split assets, see section 40-205.

Note 2: A balancing adjustment event does not occur just because you split a depreciating asset: see section 40-295.

- (2) If you stop *holding part of a *depreciating asset, this Division applies as if, just before you stopped holding that part, you had split the original asset into the part you stopped holding and the rest of the original asset. (The rest of the original asset is then taken to be a different asset from the original asset.)

Example: Bronwyn sells Tim a part interest in a depreciating asset she owns. They become joint holders under section 40-35. She is taken to have split the underlying asset into the interest she retains and the interest Tim buys. She now holds an interest (a new depreciating asset) in the underlying asset and is taken to have stopped holding the interest sold.

- (3) If you grant or assign an interest in an item of *intellectual property, subsection (2) applies to you as if you had stopped *holding part of the item.

40-120 Replacement spectrum licences

- (1) If:
 - (a) some (but not all) of a *spectrum licence you *hold is assigned or resumed; and
 - (b) your original licence is replaced by one or more other spectrum licences (possibly including a modified version of your original licence); and

- (c) the replacement licences together cover exactly the same rights as were covered by your original licence just after the assignment or resumption;

this Division applies as if your original licence (as it existed just after the assignment or resumption) had been split into the replacement licences.

Example: MGP Communications Ltd buys a spectrum licence on 1 July 2003 for \$5 million. The licence specifies areas A, B, C and D. The company assigns the spectrum relating to area C. Area C represents 20% of the market value of the overall licence. \$1m of the adjustable value is allocated to it and \$4m is allocated to the remaining licence.

The Australian Communication Authority adjusts the licence to specify only areas A and B, and issues a new licence specifying area D.

Area D represents 25% of the market value of the spectrum remaining in the licence. The adjustable value of the new licence is therefore \$1m and the adjustable value of the original (modified) licence is \$3m.

- (2) If a *spectrum licence you *hold is replaced by 2 or more spectrum licences (possibly including a modified version of your original licence) that together cover exactly the same rights as your original licence, this Division applies as if the original licence had been split into the replacement licences.

40-125 Merging depreciating assets

If a *depreciating asset or assets that you *hold is or are merged into another depreciating asset, this Division applies as if you had stopped holding the original asset or assets and started holding the merged asset.

Note 1: For the cost of the merged asset, see section 40-210.

Note 2: A balancing adjustment event does not occur just because you merge depreciating assets: see section 40-295.

40-130 Choices

- (1) A choice you can make under this Division about a *depreciating asset must be made:
- (a) by the day you lodge your *income tax return for the income year to which the choice relates; or
 - (b) within a further time allowed by the Commissioner.

- (2) Your choice, once made, applies to that income year and all later income years.

Exception: recalculating effective life

- (3) However, subsection (2) does not apply to a choice to recalculate the *effective life of a *depreciating asset under section 40-110.

40-135 Certain anti-avoidance provisions

These anti-avoidance provisions:

- (a) section 51AD (Deductions not allowable in respect of property under certain leveraged arrangements) of the *Income Tax Assessment Act 1936*;
- (b) Division 16D (Certain arrangements relating to the use of property) of Part III of that Act;

apply to your deductions under this Division for a *depreciating asset you *hold as if you were the owner of the asset instead of any other person.

40-140 Getting tax information from associates

- (1) If you acquire a *depreciating asset from an *associate of yours where the associate has deducted or can deduct an amount for the asset under this Division, you may give the associate a written notice requiring the associate to tell you:
- (a) the method the associate was using to work out the decline in value of the asset; and
 - (b) the *effective life the associate was using.
- (2) The notice must:
- (a) be given within 60 days of your acquiring the asset; and
 - (b) specify a period of at least 60 days within which the information must be given; and
 - (c) set out the effect of subsection (3).

Note: Subsections (4) and (5) explain how this subsection operates if the associate is a partnership.

Requirement to comply with notice

- (3) The *associate must not intentionally refuse or fail to comply with the notice.

Penalty: 10 penalty units.

Giving the notice to a partnership

- (4) If the *associate is a partnership:
 - (a) you may give it to the partnership by giving it to any of the partners (this does not limit how else you can give it); and
 - (b) the obligation to comply with the notice is imposed on each of the partners (not on the partnership), but may be discharged by any of them.
- (5) A partner must not intentionally refuse or fail to comply with that obligation, unless another partner has already complied with it.

Penalty: 10 penalty units.

Limits on giving a notice

- (6) Only one notice can be given in relation to the same *depreciating asset.

40-145 Application of *Criminal Code*

The *Criminal Code* applies to all offences in this Division.

Subdivision 40-C—Cost

Guide to Subdivision 40-C

40-170 What this Subdivision is about

Your cost of a depreciating asset is a component in working out the amounts you can deduct for it.

There are 2 elements of the cost of a depreciating asset. This Subdivision shows you how to work out those elements.

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40-175 Cost

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[This is the end of the Guide.]

Operative provisions

40-175 Cost

The *cost* of a *depreciating asset you *hold consists of 2 elements.

40-180 First element of cost

- (1) The first element is worked out as at the time when you began to *hold the *depreciating asset (except for a case to which item 3 or 4 of the table in subsection (2) applies). It is:
 - (a) if an item in that table applies—the amount specified in that item; or
 - (b) otherwise—the amount you are taken to have paid to hold the asset under section 40-185.

Note: The first element of the cost may be modified by a later provision in this Subdivision.

- (2) If more than one item in this table covers the asset, apply the last item that covers it.

| First element of the <i>cost</i> of a depreciating asset | | |
|---|--|--|
| Item | In this case: | The <i>cost</i> is: |
| 1 | A *depreciating asset you *hold is split into 2 or more assets | For each of the assets into which it is split, the amount worked out under section 40-205 |
| 2 | A *depreciating asset or assets that you *hold is or are merged into another depreciating asset | For the other asset, the amount worked out under section 40-210 |
| 3 | A *balancing adjustment event happens to a *depreciating asset you *hold because you stop using it for any purpose expecting never to use it again, and you continue to hold it | The *termination value of the asset at the time of the event |
| 4 | A *balancing adjustment event happens to a *depreciating asset you *hold but have not used because you expect never to use it, and you continue to hold it | The *termination value of the asset at the time of the event |
| 5 | There is roll-over relief under section 40-340 for a *balancing adjustment event happening to a *depreciating asset | The *adjustable value of the asset to the transferor just before the balancing adjustment event occurred |
| 6 | A partnership asset that was *held, just before it became a partnership asset, by one or more partners (whether or not any other entity was a joint holder) or a partnership asset to which subsection 40-295(2) applies | The *market value of the asset when the partnership started to hold it or when the change referred to in subsection 40-295(2) occurred |
| 7 | You are the legal owner of a *depreciating asset that is hired under a *hire purchase agreement and you start *holding it because the entity to whom it is hired does not become the legal owner | The *market value of the asset when you started to hold it |
| 8 | You started to *hold the asset under an *arrangement and: (a) there is at least one other party to the arrangement with whom you did not deal at *arm's length; and (b) apart from this item, the first element of the asset's cost would exceed its *market value | The market value of the asset when you started to hold it |

Schedule 1 Capital Allowances

| First element of the <i>cost</i> of a depreciating asset | | |
|---|---|---|
| Item | In this case: | The <i>cost</i> is: |
| 9 | You started to *hold the asset under an *arrangement that was private or domestic in nature to you (for example, a gift) | The *market value of the asset when you started to hold it |
| 10 | The Minister for Finance has determined a cost for you under section 49A, 49B, 50A, 50B, 51A or 51B of the <i>Airports (Transitional) Act 1996</i> | The cost so determined |
| 11 | To which Division 58 (which deals with assets previously owned by an *exempt entity) applies | The amount applicable under subsections 58-70(3) and (5) |
| 12 | A *balancing adjustment event happens to a *depreciating asset because a person dies and the asset devolves to you as the person's *legal personal representative | The asset's *adjustable value at the time of death |
| 13 | You started to *hold a *depreciating asset because it *passed to you as the beneficiary or a joint tenant | The *market value of the asset when you started to hold it reduced by any *capital gain that was disregarded under section 128-10 or subsection 128-15(3), whether by the deceased or by the *legal personal representative |

40-185 Amount you are taken to have paid to hold a depreciating asset or to receive a benefit

- (1) This Division applies to you as if you had paid, to *hold a *depreciating asset or for an economic benefit for such an asset, the greater of these amounts:
- the sum of the amounts that would have been included in your assessable income because you started to hold the asset or received the benefit, or because you gave something to start holding the asset or receive the benefit, if you ignored the value of anything you gave that reduced the amount actually included; or

(b) the sum of the applicable amounts set out in this table for holding the asset or receiving the benefit.

Example: Gold Medals Ltd manufactures some medals for a local sporting association's annual meeting in return for a die cut stamping machine. The medals have a market value of \$20,000. The machine has an arm's length value of \$100,000 but Gold Medals has to contribute \$75,000 towards acquiring it from the association. Gold Medals will have to include:

$$\left(\$100,000 - \$75,000 \right) = \$25,000$$

in its assessable income because of section 21A of the *Income Tax Assessment Act 1936*.

The first element of the machine's cost will be the greater of:

- the amount it paid (\$75,000) plus the market value of the non-cash benefits it provided (\$20,000), which comes to \$95,000; and
- the amount that was assessable income from receiving the machine (\$25,000) plus the amount by which that assessable income was reduced because of the payment Gold Medals made (\$75,000), which comes to \$100,000.

So, in this case, the first element of the machine's cost to Gold Medals is \$100,000.

Amount you are taken to have paid to hold a depreciating asset or to receive a benefit

| Item | In this case: | The amount is: |
|-------------|--|--|
| 1 | You pay an amount | The amount |
| 2 | You incur or increase a liability to pay an amount | The amount of the liability or increase when you incurred or increased it |
| 3 | All or part of a liability to pay an amount owed to you by another entity is terminated | The amount of the liability or part when it is terminated |
| 4 | You provide a *non-cash benefit | The *market value of the non-cash benefit when it is provided |
| 5 | You incur or increase a liability to provide a *non-cash benefit | The *market value of the non-cash benefit or the increase when you incurred or increased the liability |
| 6 | All or part of a liability to provide a *non-cash benefit (except the *depreciating asset) owed to you by another entity is terminated | The *market value of the non-cash benefit when the liability is terminated |

Schedule 1 Capital Allowances

Note: Item 1 includes not only amounts actually paid but also amounts taken to have been paid. Examples include the price of the notional purchase made when trading stock is converted to a depreciating asset under section 70-110, the cost of an asset held under a hire purchase arrangement under section 240-25 and a lessor's deemed purchase price when a luxury car lease is terminated under subsection 42A-105(3) of Schedule 2E to the *Income Tax Assessment Act 1936*.

- (2) In applying the table in subsection (1) to a liability of yours to pay an amount or provide a *non-cash benefit, don't count any part of the liability you have already satisfied.

40-190 Second element of cost

- (1) The second element is worked out after you start to *hold the *depreciating asset.
- (2) The second element is the amount you are taken to have paid under section 40-185 for each economic benefit that has contributed to bringing the asset to its present condition and location from time to time since you started to *hold the asset.

Example: Andrew adds a new tray and canopy to his ute. The materials and labour that go into the addition are economic benefits that Andrew received and that contribute to the ute's present condition.

The payments he makes for those economic benefits are included in the second element of the ute's cost.

Note: The second element of the cost may be modified by a later provision in this Subdivision.

- (3) However, the second element is worked out using this table if an item in it applies. Use the last applicable item.

Second element of the cost of a depreciating asset

| Item | In this case: | The second element of cost is: |
|-------------|---|--|
| 1 | You received the benefit under an *arrangement and: (a) there is at least one other party to the arrangement with whom you did not deal at *arm's length; and (b) apart from this item, the second element of cost for the benefit would exceed its *market value | The market value of the benefit when you received it |

Second element of the *cost* of a depreciating asset

| Item | In this case: | The second element of <i>cost</i> is: |
|-------------|--|---|
| 2 | You received the benefit under an *arrangement that was private or domestic in nature to you | The *market value of the benefit when you received it |

40-195 Apportionment of cost

If you pay an amount for 2 or more things that include at least one *depreciating asset, or that include a contribution to bringing a depreciating asset to its present condition and location, you take into account as part of its *cost only that part of what you paid that is reasonably attributable to the asset.

Example: Ian buys 3 assets (one depreciating asset and 2 other assets) under the one transaction. He pays \$30,000 for the 3 assets. \$25,000 of that amount is reasonably attributable to the depreciating asset.

The first element of the depreciating asset's *cost* is \$25,000.

40-200 Exclusion from cost

The *cost of a *depreciating asset that is not *plant does not include any amount that was incurred:

- (a) before 1 July 2001; or
- (b) under a contract entered into before that day.

40-205 Cost of a split depreciating asset

If you split a *depreciating asset into separate assets as mentioned in section 40-115, the first element of the *cost* of each of the separate assets is a reasonable proportion of the sum of these amounts:

- (a) the *adjustable value of the original asset just before it was split; and
- (b) the amount you are taken to have paid under section 40-185 for any economic benefit involved in splitting the original asset.

Example: Barry owns a spectrum licence that covers 3 areas: Area A, area B and area C. The licence has an adjustable value of \$160,000. He sells area A to Chris, and his costs of splitting are \$10,000. Barry is taken to have split the licence into 2 assets.

On the basis of their relative market values, Barry apportions \$170,000 to area A (that he disposed of) and to the licence he still holds for areas B and C.

40-210 Cost of merged depreciating assets

If a *depreciating asset or assets that you *hold is or are merged into another depreciating asset as mentioned in section 40-125, the first element of the *cost* of the merged asset is a reasonable proportion of the sum of:

- (a) the *adjustable value or adjustable values of the original asset or assets just before the merger; and
- (b) the amount you are taken to have paid under section 40-185 for any economic benefit involved in merging the original asset or assets.

40-215 Adjustment: double deduction

- (1) Each element of the *cost of a *depreciating asset is reduced by any portion of that element of cost that you have deducted or can deduct, or that has been or will be taken into account in working out an amount you can deduct, other than under this Division.
- (2) Subsection (1) does not apply to deductions for:
 - (a) research and development plant expenditure (section 73B of the *Income Tax Assessment Act 1936*); or
 - (b) development and investment allowances (Subdivisions B and BA of Division 3 of Part III of that Act); or
 - (c) drought investment allowance (Part XII of that Act).

40-220 Cost reduced by amounts not of a capital nature

The *cost of a *depreciating asset is reduced by any portion of it that consists of an amount that is not of a capital nature.

40-225 Adjustment: acquiring a car at a discount

- (1) You must increase the first element of the *cost* of a *car designed mainly for carrying passengers you acquire at a discount if:
 - (a) it is reasonable to conclude that any portion (the *discount portion*) of the discount is referable to you or another entity selling another asset for less than its *market value; and

-
- (b) you, or another entity, has deducted or can deduct an amount for the other asset for any income year; and
 - (c) the sum of the cost of the car and the discount portion exceeds the *car limit for the *financial year in which you first use the car for any purpose.
- (2) The first element of the *cost* of the *car is increased by the discount portion.
 - (3) This section does not apply to a *car that is excluded from the *car limit by subsection 40-230(2).

40-230 Adjustment: car limit

- (1) The first element of the *cost* of a *car designed mainly for carrying passengers (after applying section 40-225) is reduced to the *car limit for the *financial year in which you started to *hold it if its cost exceeds that limit.
- (2) However, the *car limit does not apply to a *car:
 - (a) fitted out for transporting disabled people in wheelchairs for profit; or
 - (b) whose first element of *cost exceeds that limit only because of modifications made to enable an individual with a disability to use it for a *taxable purpose.
- (3) The *car limit* for the 2000-01 *financial year is \$55,134. The limit is indexed annually.

Note: Subdivision 960-M shows you how to index amounts.

Subdivision 40-D—Balancing adjustments

Guide to Subdivision 40-D

40-280 What this Subdivision is about

You may have to make an adjustment to your taxable income if you stop holding a depreciating asset.

The adjustment is generally based on the difference between the actual value of the asset when you stop holding it and its adjustable value.

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[This is the end of the Guide.]

Operative provisions

40-285 Balancing adjustments

- (1) An amount is included in your assessable income if:
 - (a) a *balancing adjustment event occurs for a *depreciating asset you *held and:
 - (i) whose decline in value you worked out under Subdivision 40-B; or
 - (ii) whose decline in value you would have worked out under that Subdivision if you had used the asset; and
 - (b) the asset's *termination value is more than its *adjustable value just before the event occurred.

The amount included is the difference between those amounts, and it is included for the income year in which the balancing adjustment event occurred.

Note 1: The most common balancing adjustment event is where you sell the depreciating asset.

Note 2: There is a different calculation if you had used different car expense methods for a car: see section 40-370.

(2) You can deduct an amount if:

(a) a *balancing adjustment event occurs for a *depreciating asset you *held and:

(i) whose decline in value you worked out under Subdivision 40-B; or

(ii) whose decline in value you would have worked out under that Subdivision if you had used the asset; and

(b) the asset's *termination value is less than its *adjustable value just before the event occurred.

The amount you can deduct is the difference between those amounts, and you can deduct it for the income year in which the balancing adjustment event occurred.

Note: There is a different calculation if you had used different car expense methods for a car: see section 40-370.

(3) The *adjustable value of a *depreciating asset you *hold after this section applies to it is then zero.

(4) However, subsection (3) does not apply to a *depreciating asset for which you have a *cost under item 3 or 4 of the table in subsection 40-180(2). Instead, the asset's *opening adjustable value for the income year (the *later year*) after the one in which the *balancing adjustment event occurred is that cost plus any amounts included in the second element of that cost after the event occurred and before the start of the later year.

Note: Those items deal with a case where a balancing adjustment event happens because you still hold an asset you expected not to use.

40-290 Reduction for non-taxable use

(1) You must reduce the amount (the *balancing adjustment amount*) included in your assessable income, or the amount you can deduct, under section 40-285 for a *depreciating asset if your deductions for the asset have been reduced under section 40-25.

(2) The reduction is:

$$\frac{\text{Sum of reductions}}{\text{Total decline}} \times \text{Balancing adjustment amount}$$

where:

sum of reductions is the sum of:

- (a) the reductions in your deductions for the asset under section 40-25; and
- (b) if there has been roll-over relief for the asset under section 40-340—the reductions in deductions for the asset for the transferor or an earlier successive transferor under section 40-25; and
- (c) if you *hold the asset as the *legal personal representative of an individual—the reductions in deductions for the asset for the individual under section 40-25.

total decline is the sum of:

- (a) the decline in value of the *depreciating asset since you started to *hold it; and
 - (b) if there has been roll-over relief for the asset under section 40-340—the decline in value of the asset for the transferor or an earlier successive transferor; and
 - (c) if you *hold the asset as the *legal personal representative of an individual—the decline in value of the asset for the individual.
- (3) You must further reduce the amount included in your assessable income, or the amount you can deduct, under section 40-285 for a *depreciating asset (the **current asset**) if:
- (a) the asset's *cost (for you) was worked out under section 40-205 (Cost of a split depreciating asset) or 40-210 (Cost of merged depreciating assets); and
 - (b) you used the depreciating asset from which the current asset was split, or a depreciating asset that was merged into the current asset, or had it *installed ready for use, for a purpose other than a *taxable purpose.
- (4) The further reduction is such amount as is reasonable having regard to the extent of the use referred to in paragraph (3)(b).

Exception: mining, quarrying or prospecting information

- (5) This section does not apply to *mining, quarrying or prospecting information.

40-295 Meaning of *balancing adjustment event*

- (1) A ***balancing adjustment event*** occurs for a *depreciating asset if:
- (a) you stop *holding the asset; or
 - (b) you stop using it, or having it *installed ready for use, for any purpose and you expect never to use it, or have it installed ready for use, again; or
 - (c) you have not used it and:
 - (i) if you have had it installed ready for use—you stop having it so installed; and
 - (ii) you decide never to use it.

Note: A balancing adjustment event occurs under paragraph 40-295(1)(a) when you start holding a depreciating asset as trading stock.

- (2) A ***balancing adjustment event*** occurs for a *depreciating asset if:
- (a) for any reason, a change occurs in the *holding of, or in the interests of entities in, the asset; and
 - (b) the entity or one of the entities that held the asset before the change has an interest in it after the change; and
 - (c) the asset was a partnership asset before the change or becomes one as a result of the change.
- (3) However, a ***balancing adjustment event*** does not occur for a *depreciating asset merely because you split it into 2 or more depreciating assets or you merge it with one or more other depreciating assets.

Note: A balancing adjustment event will occur if you stop holding part of a depreciating asset.

40-300 Meaning of *termination value*

- (1) The ***termination value*** of a *depreciating asset is worked out as at the time when the *balancing adjustment event occurs. It is:
- (a) if an item in the table in subsection (2) applies—the amount specified in that item; or

Schedule 1 Capital Allowances

(b) otherwise—the amount you are taken to have received under section 40-305 for the asset.

(2) If more than one item applies, use the value under the last applicable item.

Termination value table

| Item | For this balancing adjustment event: | The termination value is: |
|-------------|--|---|
| 1 | You stop using a *depreciating asset, or having it *installed ready for use, for any purpose and you expect never to use it again even though you still *hold it | The *market value of the asset when you stopped using it or having it *installed ready for use |
| 2 | You decide never to use a *depreciating asset that you have not used even though you still *hold it | The *market value of the asset when you make the decision |
| 3 | You stop using *in-house software for any purpose and you expect never to use it again even though you still *hold it | Zero |
| 4 | You decide never to use *in-house software that you have not used even though you still *hold it | Zero |
| 5 | One or more partners stop holding a *depreciating asset when it becomes a partnership asset or a *balancing adjustment event referred to in subsection 40-295(2) occurs | The *market value of the asset when the partnership started to *hold it or when the balancing adjustment event occurred |
| 6 | You stop *holding a *depreciating asset under an *arrangement and: (a) there is at least one other party to the arrangement with whom you did not deal at *arm's length; and (b) apart from this item, the *termination value would be less than its *market value | The market value of the asset just before you stopped holding it |
| 7 | You stop *holding a *depreciating asset under an *arrangement that was private or domestic in nature to you (for example, a gift) | The *market value of the asset just before you stopped *holding it |

Termination value table

| Item | For this balancing adjustment event: | The termination value is: |
|-------------|--|---|
| 8 | A *depreciating asset is lost or destroyed | The amount or value received or receivable under an insurance policy or otherwise for the loss or destruction |
| 9 | You stop *holding a *depreciating asset because you die and the asset starts being held by the *legal personal representative | The *adjustable value of the asset when you die |
| 10 | You stop *holding a *depreciating asset because it *passes directly to a beneficiary or joint tenant when you die | The *market value of the asset just before you die |
| 11 | A *depreciating asset for which the Minister for Finance has determined an amount for you under section 52A of the <i>Airports (Transitional) Act 1996</i> | The amount so determined |

40-305 Amount you are taken to have received under a balancing adjustment event

- (1) This Division applies to you as if you had received, under a *balancing adjustment event, the greater of these amounts:
- the sum of the amounts you have deducted or can deduct, or has been or will be taken into account in working out an amount you can deduct because of the balancing adjustment event and any amount by which the amount so deductible was reduced because of a case described in the table in this subsection; and
 - the sum of the applicable amounts set out in that table:

Amount you are taken to have received under a balancing adjustment event

| Item | In this case: | The amount is: |
|-------------|---|---|
| 1 | You receive an amount | The amount |
| 2 | You terminate all or part of a liability to pay an amount | The amount of the liability or part when you terminate it |

Schedule 1 Capital Allowances

Amount you are taken to have received under a balancing adjustment event

| Item | In this case: | The amount is: |
|------|--|---|
| 3 | You are granted a right to receive an amount or an amount to which you are entitled is increased | The amount of the right or increase when it is granted or increased |
| 4 | You receive a *non-cash benefit | The *market value of the non-cash benefit when it is received |
| 5 | You terminate all or part of a liability to provide a *non-cash benefit | The *market value of the non-cash benefit or reduction in the non-cash benefit when the liability or part is terminated |
| 6 | You are granted a right to receive a *non-cash benefit or you become entitled to an increased non-cash benefit | The *market value of the non-cash benefit, or the increase, when it is granted or increased |

Note: Item 1 includes not only amounts actually received but also amounts taken to have been received. Examples include the price of the notional sale made when a depreciating asset is converted to trading stock under section 70-30, the consideration for an asset held under a hire purchase arrangement under section 240-25 and a lessee's deemed consideration when a luxury car lease is terminated under subsection 42A-105(3) of Schedule 2E to the *Income Tax Assessment Act 1936*.

- (2) In applying the table in subsection (1) to a right you have to receive an amount or a *non-cash benefit, don't count any part of the right that has already been satisfied.

40-310 Apportionment of termination value

If you receive an amount for 2 or more things that include a *balancing adjustment event occurring for a *depreciating asset, you take into account as its *termination value only that part of what you received that is reasonably attributable to the asset.

40-315 Expenses of balancing adjustment event

- (1) The *termination value of a *depreciating asset is reduced by your expenses that you have not deducted and cannot deduct that are reasonably attributable to the *balancing adjustment event occurring for that asset.

- (2) Subsection (1) does not apply to a *balancing adjustment event referred to in item 6 or 11 of the table in subsection 40-300(2).

40-320 Car to which section 40-225 applies

You must increase the *termination value of a *car the *cost of which was increased under section 40-225 by the discount portion for the car referred to in that section.

40-325 Adjustment: car limit

The *termination value* of a *car the *cost of which was worked out by applying section 40-230 (Car limit) is the amount worked out under subsection 40-300(1) multiplied by the fraction:

$$\frac{CL + \text{Amounts included in the second element of the *car's *cost}}{\text{Total cost of the car (ignoring the *car limit)}}$$

where:

CL is the *car limit for the *car for the *financial year in which you first used it for any purpose.

40-335 Deduction for in-house software where you will never use it

- (1) You can deduct expenditure you incurred on *in-house software if:
- (a) you incurred the expenditure with the intention of using the software for a *taxable purpose; and
 - (b) the expenditure relates to a unit of software that you have not used or had *installed ready for use; and
 - (c) the expenditure is not allocated to a software development pool (see Subdivision 40-E); and
 - (d) in the *current year, you have decided that you will never use the software, or have it installed ready for use.
- (2) The amount that you can deduct in the *current year is:
- (a) the total of your expenditure on the *in-house software in the current year and any previous income year; *less*
 - (b) any amount of consideration you derive in relation to the software or any part of it (but no more than the total in paragraph (a));

but only to the extent that, when you incurred the expenditure, you intended to use the software, or have it *installed ready for use, for a *taxable purpose.

Example: Shannon has abandoned a software project that she was working on. She could not deduct expenditure on the project for the current year or any previous income year under any other provision. Shannon can deduct it under this section, to the extent that she intended to use it, or have it installed ready for use, for a taxable purpose.

Note: If an amount of the expenditure is recouped, the amount may be included in her assessable income: see Subdivision 20-A.

40-340 Roll-over relief

Automatic roll-over relief

- (1) There is roll-over relief if:
- (a) there is a *balancing adjustment event because an entity (the **transferor**) disposes of a *depreciating asset in an income year to another entity (the **transferee**); and
 - (b) the disposal involves a *CGT event; and
 - (c) the conditions in an item in this table are satisfied.

CGT roll-overs that qualify transferor for relief

| Item | Type of CGT roll-over | Conditions |
|------|--|--|
| 1 | Disposal of asset to wholly-owned company | The transferor is able to choose a roll-over under Subdivision 122-A for the *CGT event. |
| 2 | Disposal of asset by partnership to wholly-owned company | The transferor is a partnership, the property is partnership property and the partners are able to choose a roll-over under Subdivision 122-B for the disposal by the partners of the *CGT assets consisting of their interests in the property. |
| 3 | Marriage breakdown | There is a roll-over under Subdivision 126-A for the *CGT event. |
| 4 | Disposal of asset to another member of the same wholly-owned group | The transferor is able to choose a roll-over under Subdivision 126-B for the *CGT event. |

Note: Section 40-345 sets out what the relief is.

-
- (2) In applying an item in the table in subsection (1), disregard the following so far as they relate to the *depreciating asset you disposed of:
- (a) an exemption in Division 118 (which contains the general exemptions from CGT); and
 - (b) subsection 122-25(3) (which excludes certain assets from roll-over relief under Subdivision 122-A).

Choosing roll-over relief

- (3) There is also roll-over relief if:
- (a) there is a *balancing adjustment event for a *depreciating asset because of subsection 40-295(2) (about a change in the holding of, or in interests in, the asset); and
 - (b) the entity or entities that *held the asset before the change (also the *transferor*) and the entity or entities that have an interest in the asset after the change (also the *transferee*) jointly choose the roll-over relief.

Example: The change could be a variation in the constitution of a partnership or in the interests of the partners.

Note: Section 40-345 sets out what the relief is.

- (4) The choice must:
- (a) be in writing; and
 - (b) contain enough information about the transferor's holding of the property for the transferee to work out how this Division applies to the transferee's holding of the *depreciating asset; and
 - (c) be made within 6 months after the end of the transferee's income year in which the *balancing adjustment event occurred, or within a longer period allowed by the Commissioner.
- (5) If a person dies before the end of the time allowed for jointly choosing roll-over relief, the trustee of the person's estate may be a party to the choice.
- (6) The transferor must keep the choice or a copy of it for 5 years after the *balancing adjustment event occurred.

Penalty: 30 penalty units.

- (7) The transferee must keep the choice or a copy of it until the end of 5 years after the next *balancing adjustment event occurs for the *depreciating asset.

Penalty: 30 penalty units.

Exception: Subdivision 170-D applies

- (8) There can be no roll-over relief if Subdivision 170-D (about transactions by a company that is a member of a linked group) applies to the disposal of the *depreciating asset or the change in interests in it.

40-345 What the roll-over relief is

- (1) Section 40-285 does not apply to the *balancing adjustment event for the transferor.
- (2) The transferee can deduct the decline in value of the *depreciating asset using the same method and *effective life (or *remaining effective life if that method is the *prime cost method) that the transferor was using.

40-350 Additional consequences

- (1) For the purposes of Division 45:
- (a) if the transferor, or a partnership of which the transferor was a member, leased the *depreciating asset to another entity for most of the time that the transferor or partnership *held the asset, the transferee is taken also to have done so; and
 - (b) if the transferor, or a partnership of which the transferor was a member, leased the asset to another entity for a period on or after 22 February 1999, the transferee is taken also to have done so; and
 - (c) if the main *business of the transferor, or a partnership of which the transferor was a member, was to lease assets, the main business of the transferee is taken also to have been to lease assets.
- (2) However, subsection (1) does not apply to roll-over relief under subsection 40-340(3) if the sum of the amounts specified in paragraph 45-5(1)(e) or 45-10(1)(f), or subsection 45-5(4) or

45-10(4), is at least equal to the market value of the *plant or interest concerned.

40-360 Notice to allow transferee to work out how this Division applies

- (1) This section applies if there is roll-over relief because of subsection 40-340(1).
- (2) The transferor must give the transferee a notice containing enough information about the transferor's *holding of the property for the transferee to work out how this Division applies to the transferee's holding of the *depreciating asset.
- (3) The transferor must give the notice within 6 months after the end of the transferee's income year in which the *balancing adjustment event occurred, or within a longer period allowed by the Commissioner.
- (4) The transferee must keep the notice until the end of 5 years after the earlier of these events:
 - (a) the transferee disposes of the property;
 - (b) the property is lost or destroyed.

Penalty: 30 penalty units.

40-365 Involuntary disposals

- (1) You may exclude some or all of an amount that has been included in your assessable income for a *depreciating asset (the *original asset*) as a result of a *balancing adjustment event to the extent that you choose to treat it as an amount to be applied under subsection (5) for one or more replacement assets.
- (2) You can only make this choice if you stop *holding the asset because:
 - (a) the original asset is lost or destroyed; or
 - (b) the original asset is compulsorily acquired by an *Australian government agency; or
 - (c) you dispose of the original asset to an Australian government agency after a notice was served on you by or on behalf of the agency:

- (i) inviting you to negotiate with the agency with a view to the agency acquiring it by agreement; and
 - (ii) informing you that, if the negotiations are unsuccessful, it will be compulsorily acquired by the agency.
- (3) You can only make this choice for a replacement asset if you incur the expenditure on the replacement asset, or you start to *hold it:
 - (a) no earlier than one year, or within a further period the Commissioner allows, before the *balancing adjustment event occurred; and
 - (b) no later than one year, or within a further period the Commissioner allows, after the end of the income year in which the balancing adjustment event occurred.
- (4) You can only make this choice for a replacement asset if:
 - (a) at the end of the income year in which you incurred the expenditure on the asset, or you started to *hold it, you used it, or had it *installed ready for use, wholly for a *taxable purpose; and
 - (b) you can deduct an amount for it.
- (5) The amount covered by the choice is applied in reduction of:
 - (a) for the income year in which the replacement asset's *start time occurs—its *cost; or
 - (b) for a later year—the sum of its *opening adjustable value for that year and any amount included in the second element of its cost for that year.
- (6) If you are making the choice for 2 or more replacement assets, you apportion the amount covered by the choice between those items in proportion to their *cost.

40-370 Balancing adjustments where there has been use of different car expense methods

- (1) An amount is included in your assessable income or you can deduct an amount under this section instead of section 40-285 if:
 - (a) a *balancing adjustment event occurs for a *car you *held; and
 - (b) you have deducted or can deduct an amount for the decline in value of the car for an income year under this Division; and

(c) you chose:

- (i) the “cents per kilometre” method in Subdivision 28-C;
or
- (ii) the “12% of original value” method in
Subdivision 28-D;

for deducting your car expenses for the car for one or more other income years.

Note 1: This means if you have only used the “log book” method or the “one-third of actual expenses” method since you began using the car, you calculate the assessable amount or deductible amount under section 40-285.

Note 2: Also, if you have only used the “cents per kilometre” method or the “12% of original value” method since you began using the car, no amount is assessable or deductible under this section or section 40-285.

(2) Work out the amount you include in your assessable income or the amount you can deduct in this way:

Method statement

Step 1. Subtract the *car’s *adjustable value just before the *balancing adjustment event occurred from the car’s *termination value.

Step 2. Reduce the step 1 amount by the part of the *car’s decline in value that is attributable to your using the car, or having it *installed ready for use, for purposes other than *taxable purposes. You do this by applying the formula in subsection 40-290(2).

Step 3. Multiply the step 2 amount by the total number of days for which you deducted the decline in value of the *car under this Division.

Step 4. Divide the step 3 amount by the total number of days you *held the *car.

Step 5. The step 4 amount is a deduction if it is negative or it is included in your assessable income if it is positive.

- (3) In working out the *adjustable value for the income years for which you chose the “cents per kilometre method” or the “12% of original value” method, you are to assume the decline in value was calculated under this Division on the same basis as those income years when those methods did not apply.
- (4) In working out the reduction in step 2 for the income years for which you chose the “cents per kilometre method” or the “12% of original value” method, you must assume that:
 - (a) you had not chosen either of those methods for the *car; and
 - (b) Division 28 (car expenses) had not applied to the car; and
 - (c) you used the car for *taxable purposes:
 - (i) to the extent of 20% if you used the “cents per kilometre” method; or
 - (ii) to the extent of one-third if you used the “12% of original value” method.

Subdivision 40-E—Low-value and software development pools

Guide to Subdivision 40-E

40-420 What this Subdivision is about

You may choose to work out the decline in value of low-cost assets (assets costing less than \$1,000) and certain other depreciating assets through a low-value pool.

You may also choose to deduct amounts for expenditure you incur on in-house software through a software development pool.

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40-460 Your assessable income includes consideration for pooled software

[This is the end of the Guide.]

Operative provisions

40-425 Allocating assets to a low-value pool

- (1) You may choose to allocate a *low cost asset you *hold to a low-value pool for the income year in which you start to use it, or have it *installed ready for use, for a *taxable purpose.
- (2) A **low-cost asset** is a *depreciating asset, except a *horticultural plant (including a grapevine) whose *cost as at the end of the income year in which you start to use it, or have it *installed ready for use, for a *taxable purpose is less than \$1,000.
- (3) You may also choose to allocate a *low-value asset to a low-value pool.
- (4) You cannot allocate a *depreciating asset to a low-value pool if:
 - (a) its *cost does not exceed \$300; and
 - (b) you use the asset predominantly for the *purpose of producing assessable income that is not income from carrying on a *business; and
 - (c) the asset is not part of a set of assets that you started to hold in that income year where the total cost of the set of assets exceeds \$300; and
 - (d) the total cost of the asset and any other identical, or substantially identical, asset that you start to hold in that income year does not exceed \$300.
- (5) A **low-value asset** is a *depreciating asset, except a *horticultural plant (including a grapevine), you *hold:
 - (a) if you have deducted or can deduct amounts for it under this Division for a previous income year—for which you used the *diminishing value method; and
 - (b) that has an *opening adjustable value for the current year of less than \$1,000 (worked out using the diminishing value method); and
 - (c) that is not a *low-cost asset.

- (6) A *depreciating asset:
- (a) to which Division 58 (about assets previously owned by an exempt entity) applied for an entity sale situation; and
 - (b) for which you used the *diminishing value method; and
 - (c) whose *adjustable value as at the end of the income year before the *current year is less than \$1,000;
- is also a *low-value asset*.

Exception: STS

- (7) You cannot allocate a *depreciating asset to a low-value pool if you deduct amounts for it under Subdivision 328-D (about capital allowances for STS taxpayers).

40-430 Rules for assets in low-value pools

- (1) Once you have made a choice to allocate a *low-cost asset to a low-value pool for an income year, you must allocate all low-cost assets you start to *hold in that income year or a later one to the pool.

Note 1: This rule does not apply to low-value assets.

Note 2: If you are an STS taxpayer for the income year, you must deduct amounts for your depreciating assets under Subdivision 328-D unless deductions for particular assets are specifically excluded by that Subdivision.

- (3) Once you allocate any *depreciating asset to a low-value pool, it must remain in the pool.

40-435 Private or exempt use of assets

When you allocate a *depreciating asset to a low-value pool, you must make a reasonable estimate of the percentage (the *taxable use percentage*) of your use of the asset (including any past use) that will be for a *taxable purpose over:

- (a) for a *low-cost asset—its *effective life; or
- (b) for a *low-value asset—any period of its effective life that is yet to elapse at the start of the income year for which you allocate it to the pool.

40-440 How you work out the decline in value of assets in low-value pools

- (1) You work out the decline in value of *depreciating assets in a low-value pool for an income year in this way:

- Step 1.* Work out the amount obtained by taking 18³/₄% of the taxable use percentage of the *cost of each *low-cost asset you allocated to the pool for that year. Add those amounts.
- Step 2.* Add to the step 1 amount 18³/₄% of the taxable use percentage of any amounts included in the second element of the *cost for that year of:
- (a) assets allocated to the pool for an earlier income year; and
 - (b) *low-value assets allocated to the pool for the *current year.
- Step 3.* Add to the step 2 amount 37¹/₂% of the sum of:
- (a) the *closing pool balance for the previous income year; and
 - (b) the taxable use percentage of the *opening adjustable values of *low-value assets, at the start of the income year, that you allocated to the pool for that year.
- Step 4.* The result is the decline in value of the *depreciating assets in the pool.

- (2) The ***closing pool balance*** of a low-value pool for an income year is the sum of:
- (a) the *closing pool balance of the pool for the previous income year; and
 - (b) the taxable use percentage of the *costs of *low-cost assets you allocated to the pool for that year; and

- (c) the taxable use percentage of the *opening adjustable values of any *low-value assets you allocated to the pool for that year as at the start of that year; and
- (d) the taxable use percentage of any amounts included in the second element of the cost for the income year of:
 - (i) assets allocated to the pool for an earlier income year; and
 - (ii) low-value assets allocated to the pool for the *current year;

less the decline in value of the *depreciating assets in the pool worked out under subsection (1).

Note: The closing pool balance may be reduced under section 40-445 if a balancing adjustment event happens.

40-445 Balancing adjustment events

- (1) If a *balancing adjustment event happens to a *depreciating asset in a low-value pool in an income year, the *closing pool balance for that year is reduced (but not below zero) by the taxable use percentage of the asset's *termination value.
- (2) If the sum of the *termination values, or the part of it, applicable under subsection (1) exceeds the *closing pool balance of the pool for that year, the excess is included in your assessable income.

40-450 Software development pools

- (1) You may choose to allocate amounts of expenditure you incur on *in-house software in an income year to a software development pool if it is expenditure on developing, or having another entity develop, computer software.

Note: You cannot allocate expenditure on in-house software to a software development pool if it is expenditure on acquiring computer software or a right to use computer software.

- (2) Once you choose to create a software development pool for an income year, any amounts of the kind referred to in subsection (1) you incur after the pool is created (whether in that income year or a later one) must be allocated to a software development pool.

- (3) However, an amount of expenditure on *in-house software can only be allocated to a software development pool if you intend to use the software solely for a *taxable purpose.
- (4) You must create a separate software development pool for each income year for which you incur amounts of the kind referred to in subsection (1).

40-455 How to work out your deduction

For all the expenditure on *in-house software in a software development pool that was incurred in a particular income year (*Year 1*), you get deductions in successive income years as follows:

| Deductions allowed for software development pool | |
|---|---|
| Income year | Amount of expenditure you can deduct for that year |
| Year 1 | Nil |
| Year 2 | 40% |
| Year 3 | 40% |
| Year 4 | 20% |

40-460 Your assessable income includes consideration for pooled software

- (1) If expenditure on *in-house software is (or was) in your software development pool, your assessable income includes any amount you derive as consideration in relation to the software.
- (2) However, subsection (1) does not apply if subsection 40-340(3) (roll-over relief) applies to the change.

Subdivision 40-F—Primary production depreciating assets

Guide to Subdivision 40-F

40-510 What this Subdivision is about

You can deduct amounts for capital expenditure on depreciating assets that are water facilities, horticultural plants or grapevines.

The amount you can deduct is equal to the asset's decline in value during an income year (as measured under this Subdivision).

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[This is the end of the Guide.]

Operative provisions

40-515 Water facilities, grapevines and horticultural plants

- (1) You can deduct an amount equal to the decline in value for an income year (as worked out under this Subdivision) of a *depreciating asset that is one of these:
- (a) a *water facility;
 - (b) a *horticultural plant;
 - (c) a grapevine.

Note 1: Sections 40-540, 40-545 and 40-550 show you how to work out the decline.

Note 2: Generally, only one taxpayer can deduct amounts for a depreciating asset. However, if you and another taxpayer jointly hold the asset, each of you deduct amounts for it: see section 40-35.

Conditions

- (2) However, the applicable condition in section 40-525 must be satisfied for the *depreciating asset.

Limit on deduction

- (3) You cannot deduct more in total than the amount of capital expenditure incurred on the *depreciating asset.

Reduction of deduction: water facilities

- (4) You must reduce your deduction for a *water facility for an income year by the part of the facility's decline in value that is attributable to the period (if any) in the income year when it was:
- (a) not wholly used in carrying on a *primary production business on land in Australia; or
 - (b) not wholly used for a *taxable purpose.

40-520 Meaning of *water facility* and *horticultural plant*

- (1) A ***water facility*** is *plant or a structural improvement, or an alteration, addition or extension to plant or a structural improvement, that is primarily and principally for the purpose of conserving or conveying water.

Example: Examples of a water facility include a dam, tank, tank stand, bore, well, irrigation channel, pipe, pump, water tower and windmill.

- (2) A ***horticultural plant*** is a live plant or fungus that is cultivated or propagated for any of its products or parts.

40-525 Conditions*Water facilities*

- (1) The capital expenditure you incurred on the construction, manufacture, installation or acquisition of the *water facility must have been incurred primarily and principally for the purpose of conserving or conveying water for use in a *primary production business that you conduct on land in Australia.

Horticultural plants

- (2) One of the conditions in this table must be satisfied:
-

Schedule 1 Capital Allowances

Conditions relating to horticultural plants

Item Condition

- 1 You own the *horticultural plant and any holder of a lease, lesser interest or licence relating to the land does not carry on a *business of *horticulture on the land
- 2 The *horticultural plant is attached to land you hold under a lease, or a *quasi-ownership right granted by an *exempt Australian government agency or an *exempt foreign government agency, and:
- (a) the lease or quasi-ownership right enables you to carry on a *business of *horticulture on the land; and
 - (b) any holder of a lesser interest or licence relating to the land does not carry on a *business of *horticulture on the land.
- 3 You:
- (a) hold a licence relating to the land to which the *horticultural plant is attached; and
 - (b) carry on a *business of *horticulture on the land as a result of holding the licence.
-

Grapevines

- (3) One of the conditions in this table must be satisfied:

Conditions relating to grapevines

Item Condition

- 1 You own the grapevine
- 2 The grapevine:
- (a) is attached to land you hold under a *quasi-ownership right granted by an *exempt Australian government agency or an *exempt foreign government agency, and:
 - (b) was planted by you or by a previous holder of the land under the quasi-ownership right; and
 - (c) is used in a *primary production business
-

40-530 When a water facility, horticultural plant or grapevine starts to decline in value

A *water facility, *horticultural plant or grapevine starts to decline in value in the income year worked out using this table:

| Start of decline in value | | |
|----------------------------------|------------------------|---|
| Item | This asset: | Starts to decline in value in: |
| 1 | A *water facility | the income year in which you first incur expenditure on the facility |
| 2 | A *horticultural plant | (a) if you are the first entity to satisfy a condition in subsection 40-525(2) for the plant—the income year in which the first commercial season starts; or (b) if not—the later of the income year in which you first satisfied that condition and the income year in which the first commercial season starts |
| 3 | A grapevine | the income year when you first used it in a *primary production business for the *purpose of producing assessable income |

40-535 Meaning of *horticulture* and *commercial horticulture*

- (1) **Horticulture** includes:
- propagation and cultivation of a *horticultural plant in any environment (whether natural or artificial); and
 - propagation and cultivation of seeds, bulbs, spores and similar things; and
 - propagation and cultivation of fungi.
- (2) Use for **commercial horticulture** means use for the *purpose of producing assessable income in a *business of *horticulture.

40-540 How you work out the decline in value for water facilities

You work out the decline in value of a *water facility for an income year in this way for the income year in which you incurred the expenditure and the 2 following years:

$$\text{Expenditure} \times 33\frac{1}{3}\%$$

where:

expenditure is the amount of capital expenditure you incurred on the construction, manufacture, installation or acquisition of the *water facility.

40-545 How you work out the decline in value for horticultural plants

- (1) The decline in value of a *horticultural plant for the income year in which it starts to decline in value is all of the capital expenditure attributable to the establishment of the plant if its *effective life is less than 3 years.
- (2) You work out the decline in value for an income year of a *horticultural plant whose *effective life is 3 years or more in this way:

$$\text{Establishment expenditure} \times \frac{\text{Write-off days in income year}}{365} \times \text{Write-off rate}$$

where:

establishment expenditure is the amount of capital expenditure incurred that is attributable to the establishment of the *horticultural plant.

write-off days in income year is the number of days in the income year on which you satisfied a condition in subsection 40-525(2) for the plant and either used it for *commercial horticulture or held it ready for that use.

write-off rate is the rate shown in this table for the *horticultural plant according to its *effective life.

| Write-off rate for horticultural plant | | |
|---|--|-------------------------------|
| Item | Effective life of: | The write-off rate is: |
| 1 | 3 to fewer than 5 years | 40% |
| 2 | 5 to fewer than 6 ² / ₃ years | 27% |
| 3 | 6 ² / ₃ to fewer than 10 years | 20% |
| 4 | 10 to fewer than 13 years | 17% |
| 5 | 13 to fewer than 30 years | 13% |

Write-off rate for horticultural plant

| Item | Effective life of: | The write-off rate is: |
|------|--------------------|------------------------|
| 6 | 30 years or more | 7% |

Limit on write-off days

- (3) Disregard your use of the *horticultural plant on a day outside the period that:
- starts when the plant *can* first be used for *commercial horticulture; and
 - extends for the time shown in this table (depending on the plant's *effective life).

Period after which you cannot count use of horticultural plant

| Item | Effective life: | Time limit: |
|------|--|-----------------------|
| 1 | 3 to fewer than 5 years | 2 years and 183 days |
| 2 | 5 to fewer than 6 ² / ₃ years | 3 years and 257 days |
| 3 | 6 ² / ₃ to fewer than 10 years | 5 years |
| 4 | 10 to fewer than 13 years | 5 years and 323 days |
| 5 | 13 to fewer than 30 years | 7 years and 253 days |
| 6 | 30 years or more | 14 years and 105 days |

40-550 How you work out the decline in value for grapevines

- (1) You work out the decline in value of a grapevine in this way:

$$\text{Establishment expenditure} \times \frac{\text{Write-off days in income year}}{365} \times 25\%$$

where:

establishment expenditure is the amount of capital expenditure incurred that is attributable to the establishment of the grapevine.

write-off days in income year is the number of days in the income year on which you satisfied a condition in subsection 40-525(3) for

the grapevine and used it in a *primary production business for the *purpose of producing assessable income.

No deduction for period more than 4 years after grapevine established

- (2) Disregard your use of the grapevine on a day that is more than 4 years after the grapevine was established.

Note: That 4-year period will be spread over 5 income years, unless the grapevine is established on the first day of an income year.

Exception where you work out decline under section 40-545

- (3) You cannot work out the decline in value of a grapevine under this section if you work out its decline in value under section 40-545 (about horticultural plants).

40-555 Amounts you cannot deduct

Water facilities

- (1) You cannot deduct an amount for any income year for capital expenditure on the acquisition of a *water facility if any person has deducted or can deduct an amount under this Subdivision for any income year for earlier capital expenditure on:
- (a) the construction or manufacture of the facility; or
 - (b) a previous acquisition of the facility.
- (2) A *water facility and an alteration, addition or extension to that facility are not the same water facility for the purposes of subsection (1).

Horticultural plants and grapevines

- (3) In working out your deduction under this Subdivision for a *horticultural plant or a grapevine, disregard expenditure incurred:
- (a) in draining swamp or low-lying land; or
 - (b) in clearing land.

40-560 Non-arm's length transactions

If you incurred capital expenditure under an *arrangement and:

- (a) there is at least one other party to the arrangement with whom you did not deal at *arm's length; and
- (b) apart from this section, the amount of the expenditure would be more than the *market value of what it was for;
- the amount of expenditure you take into account under this Subdivision is that market value.

40-565 Extra deduction for destruction of a horticultural plant or grapevine

- (1) You can deduct the amount worked out under subsection (2) for a *horticultural plant or a grapevine for an income year if:
- (a) for a horticultural plant—its *effective life is 3 years or more and it is destroyed during the income year while you own it and use it for *commercial horticulture; or
- (b) for a grapevine—it is destroyed at any time up to 4 years after the day it was established.
- (2) Work out your deduction as follows:

Method statement

Step 1. Work out the total of the amounts you could have deducted under this Subdivision for the *horticultural plant or grapevine for the period:

- (a) starting when the plant could first be used for *commercial horticulture or when the grapevine was established; and
- (b) ending when it was destroyed;

assuming that, during that period, you satisfied a condition in section 40-525 for the plant or grapevine and used it for commercial horticulture (for a plant) or in a *primary production business for the *purpose of producing assessable income (for a grapevine).

Step 2. Subtract from the capital expenditure that is attributable to the establishment of the *horticultural plant or grapevine:

- (a) the result from step 1; and

(b) any amount you received (under an insurance policy or otherwise) for the destruction.

The remaining amount (if any) is your deduction under subsection (1).

- (3) This deduction is in addition to any deduction for the income year under section 40-545 or 40-550.

40-570 How this Subdivision applies to partners and partnerships

- (1) This section applies to allocate expenditure to you for the purposes of this Subdivision if you were a partner in a partnership when it incurred capital expenditure during an income year.
- (2) For the purposes of this Subdivision, you are taken to have incurred during that income year:
- (a) the amount of the expenditure that the partners agreed you should bear; or
 - (b) if there was no such agreement—the proportion of the expenditure equal to the proportion of your individual interest in the net income or partnership loss of the partnership for that income year.
- (3) Disregard this Subdivision when working out the net income or partnership loss of the partnership under section 90 of the *Income Tax Assessment Act 1936*.

40-575 Getting tax information if you acquire a horticultural plant or grapevine

- (1) If you begin to satisfy a condition in section 40-525 for a *horticultural plant or a grapevine, you may give the last entity (if any) that satisfied such a condition for the plant or grapevine a written notice requiring the entity to give you any or all of the following information:
- (a) the amount of establishment expenditure for the plant or grapevine;
 - (b) for a horticultural plant—its *effective life and the day on which it could first be used for *commercial horticulture;
 - (c) for a grapevine—the day on which it was established.

- (2) The notice must:
- (a) be given within 60 days of your beginning to satisfy that condition; and
 - (b) specify a period of at least 60 days within which the information must be given; and
 - (c) set out the effect of subsection (3).

Note: Subsections (4) and (5) explain how this subsection operates if the last owner is a partnership.

Requirement to comply with notice

- (3) The entity to whom the notice is given must not intentionally refuse or fail to comply with the notice.

Penalty: 10 penalty units.

Giving the notice to a partnership

- (4) If the entity to whom the notice is given is a partnership:
- (a) you may give it to the partnership by giving it to any of the partners (this does not limit how else you can give it); and
 - (b) the obligation to comply with the notice is imposed on each of the partners (not on the partnership), but may be discharged by any of them.

- (5) A partner must not intentionally refuse or fail to comply with that obligation, unless another partner has already complied with it.

Penalty: 10 penalty units.

Limits on giving a notice

- (6) Only one notice can be given in relation to the same *horticultural plant or grapevine.

Subdivision 40-G—Capital expenditure of primary producers and other landholders

Guide to Subdivision 40-G

40-625 What this Subdivision is about

You can deduct amounts for capital expenditure you incur:

- on landcare operations; or
- on electricity connections or telephone lines.

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Operative provisions

40-630 Landcare operations

- (1) You can deduct capital expenditure you incur at a time in an income year on a *landcare operation for:
 - (a) land in Australia you use at the time for carrying on a *primary production business; or

- (b) rural land in Australia you use at the time for carrying on a *business for a *taxable purpose from the use of that land (except a business of *mining operations).

Exception: plant

- (2) However, you cannot deduct an amount under this Subdivision for capital expenditure on *plant, except:
- (a) a fence erected for a purpose described in paragraph 40-635(1)(a) or (b); or
 - (b) a dam or structural improvement (except a fence) covered by paragraph (1)(c), (d), (e) or (f) of the definition of *plant* in section 45-40.

Reduction of deduction

- (3) You must reduce your deduction by a reasonable amount to reflect your use of the land in the income year after the time when you incurred the expenditure for a purpose other than the purpose of carrying on:
- (a) a *primary production business; or
 - (b) a *business for the *purpose of producing assessable income from the use of rural land (except a business of *mining operations).

40-635 Meaning of *landcare operation*

- (1) *Landcare operation* for land means:
- (a) erecting a fence to separate different land classes on the land in accordance with an *approved management plan for the land; or
 - (b) erecting a fence on the land primarily and principally for the purpose of excluding animals from an area affected by land degradation:
 - (i) to prevent or limit extension or worsening of land degradation in the area; and
 - (ii) to help reclaim the area; or
 - (c) constructing a levee or a similar improvement on the land; or
 - (d) constructing drainage works on the land primarily and principally for the purpose of controlling salinity or assisting in drainage control; or

- (e) an operation primarily and principally for the purpose of:
 - (i) eradicating or exterminating from the land animals that are pests; or
 - (ii) eradicating, exterminating or destroying plant growth detrimental to the land; or
 - (iii) preventing or fighting land degradation (except by erecting fences on the land); or
 - (f) an extension, alteration or addition to an asset described in paragraph (a), (b), (c) or (d) or an extension of an operation described in paragraph (e).
- (2) Paragraph (1)(d) does not apply to an operation draining swamp or low-lying land.

40-640 Meaning of *approved management plan*

An *approved management plan* for *land is a plan that:

- (a) shows the different classes within the land and the location of any fencing needed to separate any of the land classes to prevent land degradation; and
- (b) describes the kind of fencing and how it will prevent land degradation; and
- (c) has been prepared by, or approved in writing as a suitable plan for the land by:
 - (i) an officer of an *Australian government agency responsible for land conservation who has authority to do so; or
 - (ii) an individual who was at the time approved as a farm consultant under this Subdivision.

40-645 Electricity and telephone lines

- (1) You can deduct amounts for capital expenditure you incur on *connecting power to land or upgrading the connection if, when you incur the expenditure:
- (a) you have an interest in the land or are a share-farmer carrying on a *business on the land; and
 - (b) you or another entity intends to use some or all of the electricity to be supplied as a result of the expenditure in carrying on a business on the land for a *taxable purpose at a

time when you have an interest in the land or are a share-farmer carrying on a business on the land.

- (2) You can also deduct amounts for capital expenditure you incur on a telephone line on or extending to land if, when you incurred the expenditure:
 - (a) a *primary production business was carried on the land; and
 - (b) you had an interest in the land or you were a share-farmer carrying on a primary production business on the land.
- (3) The amount you can deduct is 10% of the expenditure:
 - (a) for the income year in which you incur it; and
 - (b) for each of the next 9 income years.

Note 1: Various provisions may reduce the amount you can deduct or stop you deducting. For example, see:

- Division 26 of this Act (limiting deductions generally); and
- section 40-650 of this Act (specifying expenditure you cannot deduct under this Subdivision); and
- Division 245 of Schedule 2C to the *Income Tax Assessment Act 1936* (which may affect your entitlement to a deduction if your debts are forgiven).

Note 2: If you recoup an amount of the expenditure, the amount will be included in your assessable income. See Subdivision 20-A.

40-650 Amounts you cannot deduct under this Subdivision

- (1) You cannot deduct amounts for capital expenditure you incur on *connecting power to land or upgrading the connection if, during the 12 months after electricity is first supplied to the land as a result of the expenditure, no electricity supplied as a result of the expenditure is used in carrying on a *business on the land for a *taxable purpose.
- (2) If you deducted an amount for any income year under this Subdivision for the expenditure, your assessment for that income year may be amended under section 170 of the *Income Tax Assessment Act 1936* to disallow the deduction.
- (3) You cannot deduct an amount for capital expenditure you incur on *connecting power to land or upgrading the connection for:
 - (a) expenditure in providing water, light or power for use on, access to or communication with the site of *mining operations; or

- (b) a contribution to the cost of providing water, light or power for those operations.
- (4) You cannot deduct an amount for any income year for your capital expenditure on a part of a telephone line if:
 - (a) any entity has deducted, or can deduct, an amount for any income year for the cost of that part under a provision of this Act (except this Subdivision); or
 - (b) the cost of that part has been, or must be, taken into account in working out:
 - (i) the amount of any entity's deduction (including a deduction for a *depreciating asset) for any income year under a provision of this Act (except this Subdivision); or
 - (ii) the net income, or partnership loss, of a partnership under section 90 of the *Income Tax Assessment Act 1936*.
- (5) However, you can deduct an amount under this Subdivision for your expenditure on a part of a telephone line even if:
 - (a) an entity that worked on installing that part has deducted, or can deduct, an amount relating to that part for any income year under this Act (except this Subdivision); or
 - (b) the cost of that part has been, or must be, taken into account:
 - (i) in working out the amount of such an entity's deduction for any income year under a provision of this Act (except this Subdivision); or
 - (ii) under section 90 of the *Income Tax Assessment Act 1936* in working out the net income, or partnership loss, of a partnership that worked on installing that part.
- (6) Subsection (5) has effect whether the entity did the work itself or through one or more employees or *agents.
- (7) If you can deduct, or have deducted, an amount for any income year under section 40-645 for your expenditure:
 - (a) an entity cannot deduct an amount for any income year under a provision of this Act (except this Subdivision) for the expenditure; and

-
- (b) the expenditure cannot be taken into account to work out the amount of an entity's deduction for any income year under a provision of this Act (except this Subdivision).
- (8) Subsection (7) also applies in working out the net income, or partnership loss, of a partnership under section 90 of the *Income Tax Assessment Act 1936*.

40-655 Meaning of *connecting power to land or upgrading the connection and metering point*

- (1) Each of these operations is *connecting power to land or upgrading the connection*:
- (a) connecting a mains electricity cable to a *metering point on the land (whether or not the point from which the cable is connected is on the land);
 - (b) providing or installing equipment designed to measure the amount of electricity supplied through a mains electricity cable to a metering point on the land;
 - (c) providing or installing equipment for use directly in connection with the supply of electricity through a mains electricity cable to a metering point on the land;
 - (d) work to increase the amount of electricity that can be supplied through a mains electricity cable to a metering point on the land;
 - (e) work to modify or replace equipment designed to measure the amount of electricity supplied through a mains electricity cable to a metering point on the land, if the modification or replacement results from increasing the amount of electricity supplied to the land;
 - (f) work to modify or replace equipment for use directly in connection with the supply of electricity through a mains electricity cable to the land, if the modification or replacement results from increasing the amount of electricity supplied to the land;
 - (g) work carried out as a result of a contribution to the cost of a project consisting of the connection of mains electricity facilities to that land and other land.
- (2) However, an operation described in subsection (1) done in the course of replacing or relocating mains electricity cable or

equipment is *connecting power to land or upgrading the connection* only if done to increase the amount of electricity that can be supplied to a *metering point on the land.

- (3) A *metering point* on land is a point where consumption of electricity supplied to the land through a mains electricity cable is measured.

40-660 Non-arm's length transactions

If you incurred capital expenditure under an *arrangement and:

- (a) there is at least one other party to the arrangement with whom you did not deal at *arm's length; and
 - (b) apart from this section, the amount of the expenditure would be more than the *market value of what it was for;
- the amount of expenditure you take into account under this Subdivision is that market value.

40-665 How this Subdivision applies to partners and partnerships

- (1) This section applies to allocate expenditure to you for the purposes of this Subdivision if you were a partner in a partnership when it incurred capital expenditure during an income year.
- (2) For the purposes of this Subdivision, you are taken to have incurred during that income year:
 - (a) the amount of the expenditure that the partners agreed you should bear; or
 - (b) if there was no such agreement—the proportion of the expenditure equal to the proportion of your individual interest in the net income or partnership loss of the partnership for that income year.
- (3) Disregard this section when working out the net income or partnership loss of the partnership under section 90 of the *Income Tax Assessment Act 1936*.

40-670 Approval of persons as farm consultants

- (1) A person may be approved in writing as a farm consultant by:
 - (a) the Secretary of the Department of Agriculture, Fisheries and Forestry; or
-

- (b) an officer of that Department who has been authorised in writing by that Secretary to approve persons as farm consultants.

Note: This subsection also allows the approval of an individual as a farm consultant to be revoked. See subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) The following matters must be taken into account when deciding whether to approve a person as a farm consultant:
- (a) the person's qualifications, experience and knowledge relating to *land conservation and farm management;
 - (b) the person's standing in the professional community;
 - (c) any other relevant matters.

40-675 Review of decisions relating to approvals

A person may apply to the *AAT for review of a decision (as defined in the *Administrative Appeals Tribunal Act 1975*):

- (a) to refuse to approve the person as a farm consultant; or
- (b) to revoke the approval of the person as a farm consultant.

Subdivision 40-H—Capital expenditure that is immediately deductible

Guide to Subdivision 40-H

40-725 What this Subdivision is about

You get an immediate deduction for certain capital expenditure on:

- exploration or prospecting; and
- rehabilitation of mining or quarrying sites; and
- paying petroleum resource rent tax; and
- environmental protection activities.

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- 40-735 Deduction for expenditure on mining site rehabilitation
- 40-740 Meaning of *ancillary activities* and *mining building site*
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[This is the end of the Guide.]

Operative provisions

40-730 Deduction for expenditure on exploration or prospecting

- (1) You can deduct expenditure you incur in an income year on *exploration or prospecting for *minerals, or quarry materials, obtainable by *mining operations if, for that expenditure, you satisfy one or more of these paragraphs:
 - (a) you carried on mining operations;
 - (b) it would be reasonable to conclude you proposed to carry on such operations;
 - (c) you carried on a *business of, or a business that included, exploration or prospecting for minerals or quarry materials obtainable by such operations, and the expenditure was necessarily incurred in carrying on that business.
- (2) However, you cannot deduct expenditure under subsection (1) if it is expenditure on:
 - (a) development drilling for *petroleum; or
 - (b) operations in the course of working a mining property, quarrying property or petroleum field.
- (3) Also, you cannot deduct expenditure under subsection (1) to the extent that it forms part of the *cost of a *depreciating asset.
- (4) ***Exploration or prospecting*** includes:
 - (a) for mining in general, and quarrying:
 - (i) geological mapping, geophysical surveys, systematic search for areas containing *minerals (except

- (a) relates to the presence, absence or extent of deposits of *minerals or quarry materials in an area; or
- (b) is likely to help in determining the presence, absence or extent of such deposits in an area.

40-735 Deduction for expenditure on mining site rehabilitation

- (1) You can deduct for an income year expenditure you incur in that year to the extent it is on *mining site rehabilitation of:
 - (a) a site on which you:
 - (i) carried on *mining operations; or
 - (ii) conducted *exploration or prospecting; or
 - (iii) conducted *ancillary mining activities; or
 - (b) a *mining building site.

Note: If an amount of the expenditure is recouped, the amount may be included in your assessable income: see Subdivision 20-A.

- (2) However, a provision of this Act (except Division 8 (which is about deductions)) that expressly prevents or restricts the operation of that Division applies in the same way to this section.
- (3) However, you cannot deduct expenditure under subsection (1) to the extent that it forms part of the *cost of a *depreciating asset.
- (4) **Mining site rehabilitation** is an act of restoring or rehabilitating a site or part of a site to, or to a reasonable approximation of, the condition it was in before *mining operations, *exploration or prospecting or *ancillary mining activities were first started on the site, whether by you or by someone else.
- (5) *Partly* restoring or rehabilitating such a site counts as **mining site rehabilitation** (even if you had no intention of completing the work).
- (6) For a *mining building site, the time when *ancillary mining activities were first started on the site is the earliest time when the buildings, improvements or *depreciating assets concerned were located on the site.

40-740 Meaning of *ancillary mining activities* and *mining building site*

- (1) Any of the following are *ancillary mining activities*:
- (a) preparing a site for you to carry on *mining operations;
 - (b) providing water, light or power for, access to, or communications with, a site on which you carry on, or will carry on, mining operations;
 - (c) *minerals treatment of *minerals or minerals treatment of quarry materials, obtained by you in carrying on mining operations;
 - (d) storing (whether before or after minerals treatment) such minerals, petroleum or quarry materials in relation to the operation of a *depreciating asset for use primarily and principally in treating such minerals or quarry materials;
 - (e) liquefying natural gas obtained from mining operations you carry on.
- (2) A *mining building site* is a site, or a part of a site, where there are *depreciating assets that are or were necessary for you to carry on *mining operations. However, a *mining building site* does not include anything covered by the definition of *housing and welfare*.

40-745 No deduction for certain expenditure

Expenditure on these things is not deductible under section 40-735:

- (a) acquiring land or an interest in land or a right, power or privilege to do with land;
- (b) a bond or security, however described, for performing *mining site rehabilitation;
- (c) *housing and welfare.

40-750 Deduction for payments of petroleum resource rent tax

- (1) You can deduct a payment of *petroleum resource rent tax, or an *instalment of petroleum resource rent tax, that you make in an income year.

Note: If an amount of the expenditure is recouped, the amount may be included in your assessable income: see Subdivision 20-A.

- (2) You cannot deduct under subsection (1) a payment that you make under paragraph 99(c) of the *Petroleum Resource Rent Tax Assessment Act 1987*.
- (3) These amounts are included in your assessable income for the income year in which they are refunded, credited, paid or applied:
 - (a) an amount the Commissioner pays you in total or partial discharge of a debt of the kind referred to in subsection 47(1) of the *Petroleum Resource Rent Tax Assessment Act 1987*; or
 - (b) an amount the Commissioner applies under subsection 47(2) of the *Petroleum Resource Rent Tax Assessment Act 1987* in total or partial discharge of a liability you have.

40-755 Environmental protection activities

- (1) You can deduct expenditure you incur in an income year for the sole or dominant purpose of carrying on *environmental protection activities.
- (2) ***Environmental protection activities*** are any of the following activities that are carried on by or for you:
 - (a) preventing, fighting or remedying:
 - (i) pollution resulting, or likely to result, from *your earning activity; or
 - (ii) pollution of or from the site of your earning activity; or
 - (iii) pollution of or from a site where an entity was carrying on any *business that you have acquired and carry on substantially unchanged as your earning activity;
 - (b) treating, cleaning up, removing or storing:
 - (i) waste resulting, or likely to result, from your earning activity; or
 - (ii) waste that is on or from the site of *your earning activity; or
 - (iii) waste that is on or from a site where an entity was carrying on any business that you have acquired and carry on substantially unchanged as your earning activity.

No other activities are environmental protection activities.

- (3) ***Your earning activity*** is an activity you carried on, carry on, or propose to carry on:

-
- (a) for the *purpose of producing assessable income for an income year (except a *net capital gain); or
 - (b) for the purpose of *exploration or prospecting; or
 - (c) for the purpose of *mining site rehabilitation; or
 - (d) for purposes that include one or more of those purposes.
- (4) If *your earning activity is:
- (a) leasing a site you own; or
 - (b) granting a right to use a site you own or control; or
 - (c) a similar activity involving a site;
- that site is taken to be the site of your earning activity.

Note: This means you can deduct your expenditure on environmental protection activities relating to the site, even if the pollution or waste is caused by another entity that uses the site.

40-760 Limits on deductions from environmental protection activities

Expenditure you cannot deduct

- (1) You cannot deduct an amount under section 40-755 for an income year for:
- (a) expenditure for acquiring land; or
 - (b) capital expenditure for constructing a building, structure or structural improvement; or
 - (c) capital expenditure for constructing an extension, alteration or improvement to a building, structure or structural improvement; or
 - (d) a bond or security (however described) for performing *environmental protection activities; or
 - (e) expenditure to the extent that you can deduct an amount for it under a provision of this Act outside this Subdivision.
- Note: You may be able to deduct expenditure described in paragraph (1)(b) or (c) under Division 43 (which deals with capital works).
- (2) In particular, you cannot deduct under section 40-755 expenditure to the extent that you incur it on carrying out an activity for environmental impact assessment of your project.

- (3) However, a provision of this Act (except Division 8 (which is about deductions)) that expressly prevents or restricts the operation of that Division applies in the same way to section 40-755.

40-765 Non-arm's length transactions

If you incurred capital expenditure under an *arrangement and:

- (a) there is at least one other party to the arrangement with whom you did not deal at *arm's length; and
- (b) apart from this section, the amount of the expenditure would be more than the *market value of what it was for;

the amount of expenditure you take into account under this Subdivision is that market value.

Subdivision 40-I—Capital expenditure that is deductible over time

Guide to Subdivision 40-I

40-825 What this Subdivision is about

You can deduct amounts for certain capital expenditure associated with projects you carry on. You deduct the amounts over the life of the project using a pool.

You can also deduct amounts for certain business related costs. You deduct these amounts over 5 years.

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[This is the end of the Guide.]

Operative provisions

40-830 Project pools

- (1) You can allocate *project amounts to a project pool.
- (2) You can deduct amounts for *project amounts that are allocated to the project pool.
- (3) You calculate your deduction for an income year for a project pool in this way:

$$\frac{\text{Pool value} \times 150\%}{\text{DV project pool life}}$$

where:

DV project pool life is:

- (a) the *project life of the project; or
- (b) if its project life has been recalculated—its most recently recalculated project life.

pool value is:

- (a) for the first income year that a *project amount is allocated to the pool—the sum of the project amounts allocated to the pool for that year; or
 - (b) for a later income year—the sum of the pool's *closing pool value for the previous income year and any project amounts allocated to the pool for the later year.
- (4) If, in an income year, you abandon, sell or otherwise dispose of a project for which you have a project pool, you can deduct for that year the sum of the pool's *closing pool value for the previous income year and any *project amounts allocated to the pool for the income year.
 - (5) Your assessable income for that income year includes any amount you receive for the abandonment, sale or other disposal.

- (6) Your assessable income for an income year includes other capital amounts that you derive in that year in relation to a *project amount allocated to your project pool or in relation to something on which the project amount is expended.
- (7) The ***closing pool value*** of a project pool for an income year is:
 - (a) for the first income year that a *project amount is allocated to the pool—the sum of the project amounts allocated to the pool for that year less the amount you could deduct for the pool for that year (apart from section 40-835); or
 - (b) for a later income year—the sum of the pool’s *closing pool value for the previous income year and any project amounts allocated to the pool for the later year less the amount you could deduct for the pool for the later year (apart from section 40-835).
- (8) Your deduction for an income year cannot be more than the amount of the component “pool value” in the formula in subsection (3) for that year.

40-835 Reduction of deduction

You must reduce your deduction under section 40-830 for an income year by a reasonable amount for the extent (if any) to which the project operates in the year for purposes other than *taxable purposes.

40-840 Meaning of *project amount*

- (1) An amount of *mining capital expenditure or *transport capital expenditure you incur is a ***project amount*** if:
 - (a) it does not form part of the *cost of a *depreciating asset you *hold or held; and
 - (b) you cannot deduct it under a provision of this Act outside this Subdivision; and
 - (c) it is directly connected with:
 - (i) for mining capital expenditure—carrying on the *mining operations in relation to which the expenditure is incurred; or

-
- (ii) for transport capital expenditure—carrying on the *business in relation to which the expenditure is incurred.
- (2) Another amount of capital expenditure you incur is also a **project amount** so far as:
- (a) it does not form part of the *cost of a *depreciating asset you *hold or held; and
 - (b) you cannot deduct it under a provision of this Act outside this Subdivision; and
 - (c) it is directly connected with a project you carry on or propose to carry on for a *taxable purpose; and
 - (d) it is one of these:
 - (i) an amount paid to create or upgrade community infrastructure for a community associated with the project; or
 - (ii) an amount incurred for site preparation costs for depreciating assets (except, for *horticultural plants including grapevines, in draining swamp or low-lying land or in clearing land); or
 - (iii) an amount incurred for feasibility studies for the project; or
 - (iv) an amount incurred for environmental assessments for the project; or
 - (v) an amount incurred to obtain information associated with the project; or
 - (vi) an amount incurred in seeking to obtain a right to *intellectual property; or
 - (vii) an amount incurred for ornamental trees or shrubs.

40-845 Project life

You work out the **project life** of a project by estimating how long (in years, including fractions of years) it will be from when the project starts to operate until it stops operating.

40-855 When you start to deduct amounts for a project pool

You start to deduct amounts for a project pool for the first income year when the project starts to operate.

40-860 Meaning of *mining capital expenditure*

- (1) ***Mining capital expenditure*** is capital expenditure you incur:
 - (a) in carrying on *mining operations; or
 - (b) in preparing a site for those operations; or
 - (c) on buildings or other improvements necessary for you to carry on those operations; or
 - (d) in providing, or in contributing to the cost of providing:
 - (i) water, light or power for use on the site of those operations; or
 - (ii) access to, or communications with, the site of those operations; or
 - (e) on buildings for use directly in connection with operating or maintaining *plant that is primarily and principally for *treating *minerals, or quarry materials, that you obtain by carrying on such operations; or
 - (f) on buildings or other improvements for use directly in connection with storing minerals or quarry materials or to facilitate *minerals treatment of them (whether the storage happens before or after the treatment).

- (2) Capital expenditure you incur on *housing and welfare in carrying on *mining operations (except quarrying operations) is also ***mining capital expenditure***, but only if:
 - (a) for residential accommodation—the accommodation is provided by you, on or adjacent to a site where you carry on those operations, for the use of:
 - (i) your employees, or someone else’s employees, who are employed or engaged in those operations, or in operations of yours that are connected with those operations; or
 - (ii) dependants of such employees; or
 - (b) for health, education, recreation or other similar facilities, or facilities for meals—the facilities:
 - (i) are on or adjacent to a site where you carry on those operations, and are principally for the benefit of the employees or dependants covered by paragraph (a); and
 - (ii) are not run for profit by any person, except in the case of facilities for meals (which may be run for profit); or

-
- (c) in the case of works, including works for providing water, light, power, access or communications—the works are carried out directly in connection with the accommodation or facilities covered by this section.
- (3) However, expenditure on these is *not mining capital expenditure*:
- (a) railway lines, roads, pipelines or other facilities, for use wholly or partly for transporting *minerals or quarry materials, or their products, other than facilities used for transport wholly within the site of *mining operations you carry on;
 - (b) works carried out in connection with, or buildings or other improvements constructed or acquired for use in connection with, establishing, operating or using a port facility or other facility for ships;
 - (c) an office building that is not at or adjacent to the site of mining operations you carry on;
 - (d) *housing and welfare in relation to quarrying operations.

40-865 Meaning of *transport capital expenditure*

- (1) *Transport capital expenditure* is capital expenditure you incur, in carrying on a *business for a *taxable purpose, on:
 - (a) a *transport facility; or
 - (b) obtaining a right to construct or install a transport facility, or part of one, on land owned or leased by another entity or in an adjacent area within the meaning of section 6AA of the *Income Tax Assessment Act 1936*; or
 - (c) paying compensation for any damage or loss caused by constructing or installing a transport facility or part of one; or
 - (d) earthworks, bridges, tunnels or cuttings that are necessary for a transport facility.
- (2) *Transport capital expenditure* also includes capital expenditure you incur, in carrying on a *business for a *taxable purpose, by way of contribution to:
 - (a) someone else's capital expenditure on a *transport facility or on anything else covered by a paragraph of subsection (1); or
 - (b) an *exempt Australian government agency's capital expenditure on railway rolling-stock.

- (3) **Transport capital expenditure** does *not* include expenditure on:
- (a) road vehicles or ships; or
 - (b) railway rolling-stock; or
 - (c) a thing covered by the definition of **housing and welfare**; or
 - (d) works for providing water, light or power, in connection with a port facility or other facility for ships;
- and does not include expenditure by way of contribution to that expenditure (except expenditure by way of contribution to an *exempt Australian government agency's capital expenditure on railway rolling-stock).

40-870 Meaning of *transport facility*

- (1) A **transport facility** is a railway, a road, a pipe-line, a port facility or other facility for ships, or another facility, that is used primarily and principally for transport of:
- (a) *minerals or quarry materials obtained by any entity in carrying on *mining operations; or
 - (b) *processed minerals produced from minerals or quarry materials.
- (2) However, a facility used for these is not a **transport facility**:
- (a) transport wholly within the site of *mining operations;
 - (b) transport of *petroleum:
 - (i) that has been treated at a refinery; or
 - (ii) that forms part of a system of reticulation to consumers; or
 - (iii) to a particular consumer or consumers.

40-875 Meaning of *processed minerals and minerals treatment*

- (1) **Processed minerals** are any of the following:
- (a) materials resulting from *minerals treatment of *minerals or quarry materials (except *petroleum);
 - (b) materials resulting from sintering or calcining;
 - (c) pellets or other agglomerated forms of iron;
 - (d) alumina and blister copper.
- (2) **Minerals treatment** means:

-
- (a) cleaning, leaching, crushing, grinding, breaking, screening, grading or sizing; or
 - (b) concentration by a gravity, magnetic, electrostatic or flotation process; or
 - (c) any other treatment:
 - (i) that is applied to *minerals, or to quarry materials, before that concentration; or
 - (ii) for a mineral or materials not requiring that concentration, that would, if the mineral or materials had required concentration, have been applied before the concentration;

but does not include:

- (d) sintering or calcining; or
- (e) producing alumina, or pellets or other agglomerated forms of iron, or processing connected with such production.

40-880 Business related costs

- (1) You can deduct amounts for capital expenditure you incur that is one of these:
 - (a) expenditure to establish a *business;
 - (b) expenditure to convert your business structure to a different structure;
 - (c) expenditure to raise equity for your business;
 - (d) expenditure to defend your business against a takeover;
 - (e) costs to your business of unsuccessfully attempting a takeover;
 - (f) costs of liquidating a company that carried on a business and of which you are a shareholder;
 - (g) costs to stop carrying on a business;to the extent that the business is or was carried on for a *taxable purpose.
- (2) The amount you can deduct is 20% of the expenditure:
 - (a) for the income year in which you incur it; and
 - (b) for each of the next 4 income years.
- (3) However, you cannot deduct anything under this section for an amount of capital expenditure you incur to the extent that:

- (a) it forms part of the *cost of a *depreciating asset that you *hold; or
- (b) you can deduct an amount for it under a provision of this Act outside this section; or
- (c) it forms part of the cost of land.

40-885 Non-arm's length transactions

If you incurred capital expenditure, or received an amount, under an *arrangement and:

- (a) there is at least one other party to the arrangement with whom you did not deal at *arm's length; and
- (b) apart from this section:
 - (i) the amount of the expenditure would be more than the *market value of what it was for; or
 - (ii) the amount you received would be less than the market value of what it was for;

the amount of expenditure, or the amount received, you take into account under this Subdivision is that market value.

2 Application

The amendments made by this Schedule apply to:

- (a) depreciating assets:
 - (i) you start to hold under a contract entered into after 30 June 2001; or
 - (ii) you constructed where the construction started after that day; or
 - (iii) you start to hold in some other way after that day; and
- (b) expenditure that does not form part of the cost of a depreciating asset incurred after that day.

Schedule 2—Effective life and low-cost plant

Income Tax Assessment Act 1997

1 At the end of section 42-100

Add:

- (3) Your choice of an *effective life specified by the Commissioner for *plant is limited to one in force as at:
- (a) the time when you entered into a contract to acquire the plant, you otherwise acquired it or you started to construct it if you first used it, or had it *installed ready for use, for any purpose within 5 years of that time; or
 - (b) for plant that you entered into a contract to acquire, you otherwise acquired or you started to construct before 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999—the time when you entered into the contract to acquire it, otherwise acquired it or started to construct it; or
 - (c) otherwise—when you first used it, or had it installed ready for use, for any purpose.

2 Subsection 42-167(2)

Repeal the subsection, substitute:

- (2) Despite sections 42-160 and 42-165, your deduction is the *plant's cost for the income year in which you became its owner or *quasi-owner (regardless of when you acquired or constructed it) if that cost does not exceed \$300 and:
- (a) you are a *small business taxpayer for that income year; or
 - (b) each of these subparagraphs applies:
 - (i) you use the plant predominantly for the *purpose of producing assessable income that is not income from carrying on a *business; and
 - (ii) the plant is not part of a set of assets of which you became the owner or quasi-owner in that income year where the total cost of the set of assets exceeds \$300; and

- (iii) the total cost of the plant and any other identical, or substantially identical, item of plant of which you became the owner or quasi-owner in that income year does not exceed \$300.

3 At the end of section 42-460

Add:

- (6) You cannot allocate *plant to a *low-value pool if:
 - (a) its *cost does not exceed \$300; and
 - (b) you use the plant predominantly for the *purpose of producing assessable income that is not income from carrying on a *business; and
 - (c) the plant is not part of a set of assets of which you became the owner or *quasi-owner in that income year where the total cost of the set of assets exceeds \$300; and
 - (d) the total cost of the plant and any other identical, or substantially identical, item of plant of which you became the owner or quasi-owner in that income year does not exceed \$300.

4 Application

The amendments made by this Schedule apply to assessments for the income year in which 1 July 2000 occurs, and for later income years.

Schedule 3—Second-hand plant

Income Tax Assessment Act 1997

1 At the end of section 42-25

Add:

Exception: plant acquired from associate

- (4) For *plant that you acquire from an *associate of yours where the associate has deducted or can deduct an amount for the plant under this Division, you must use the same method the associate was using.

Exception: owner changes but user same or associate of former user

- (5) For *plant that you acquire from a former owner or *quasi-owner of the plant, you must use the same method that the former owner or quasi-owner was using for the plant if:
- (a) the former owner or quasi-owner or another entity (each of which is the **former user**) was using the plant at a time before you became its owner or quasi-owner; and
 - (b) while you are the owner or quasi-owner of the plant, the former user or an *associate of the former user uses the plant.
- (6) However, you must use the *diminishing value method if:
- (a) you do not know, and cannot readily find out, which method the former owner or *quasi-owner was using; or
 - (b) the former owner or quasi-owner did not use a method.

2 At the end of section 42-100

Add:

Exception: plant acquired from associate

- (4) For *plant that you acquire from an *associate of yours where the associate has deducted or can deduct an amount for the plant under this Division, you must use:

- (a) if the associate was using the *diminishing value method—the *effective life that the associate was using; or
- (b) if the associate was using the *prime cost method—an effective life equal to any period of the asset's effective life the associate was using that is yet to elapse at the time of acquisition.

Exception: owner changes but user same or associate of former user

- (5) For *plant that you acquire from a former owner or *quasi-owner of the plant where:
 - (a) the former owner or quasi-owner or another entity (each of which is the **former user**) was using the plant at a time before you became its owner or quasi-owner; and
 - (b) while you are the owner or quasi-owner of the plant, the former user or an *associate of the former user uses the plant; you must use:
 - (c) if the associate was using the *diminishing value method—the same *effective life that the former owner or quasi-owner was using; or
 - (d) if the former owner or quasi-owner was using the *prime cost method—an effective life equal to any period of the asset's effective life the former owner or quasi-owner was using that is yet to elapse at the time of acquisition.
- (6) However, you must use an *effective life determined by the Commissioner if:
 - (a) you do not know, and cannot readily find out, which effective life the former owner or *quasi-owner was using; or
 - (b) the former owner or quasi-owner did not use an effective life.

3 Application

The amendments made by this Schedule apply to plant:

- (a) you start to own or be the quasi-owner of under a contract entered into at or after 10 am, by legal time in the Australian Capital Territory, on 9 May 2001; or
- (b) you constructed where the construction started at or after that time; or

(c) you start to own or be the quasi-owner of in some other way at or after that time.

*[Minister's second reading speech made in—
House of Representatives on 24 May 2001
Senate on 26 June 2001]*

(63/01)