

***TD 2007/5 - Income tax: does a tangible depreciating asset start to decline in value under section 40-60 of the Income Tax Assessment Act 1997 from when it is acquired if the asset is acquired for the sole purpose of using it in a business that has not commenced to be carried on?***

 This cover sheet is provided for information only. It does not form part of *TD 2007/5 - Income tax: does a tangible depreciating asset start to decline in value under section 40-60 of the Income Tax Assessment Act 1997 from when it is acquired if the asset is acquired for the sole purpose of using it in a business that has not commenced to be carried on?*

 This Ruling has been reviewed as part of a project to review public rulings. The ATO view expressed in this Ruling is current as of 8 January 2018.



## Taxation Determination

Income tax: does a tangible depreciating asset start to decline in value under section 40-60 of the *Income Tax Assessment Act 1997* from when it is acquired if the asset is acquired for the sole purpose of using it in a business that has not commenced to be carried on?



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**ⓘ This publication provides you with the following level of protection:**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*. A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes. If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

### Ruling

1. No. A tangible depreciating asset that is acquired for the sole purpose of using it in a business that has not commenced to be carried on does not start to decline in value under section 40-60 of the *Income Tax Assessment Act 1997*<sup>1</sup> from when the asset is acquired.
2. For a holder of a depreciating asset, the asset starts to decline in value under section 40-60 from when the holder first uses it, or has it installed ready for use, for any purpose.
3. Holding a tangible depreciating asset in anticipation of using it in a business that has not commenced to be carried on does not constitute a use, or being installed ready for use, that would cause the asset to decline in value under section 40-60.

<sup>1</sup> Unless otherwise stated, all legislative references are to the *Income Tax Assessment Act 1997*.

## **Example**

4. *The taxpayer proposed to carry on a business of fishing. For this sole purpose, the taxpayer purchased a fishing boat designed specifically for the type of fishing they proposed to carry on. After purchasing the boat, the taxpayer fell ill with the result that they did not commence to carry on the fishing business until three months after purchasing the boat. During this three month period, the fishing boat remained in storage at a marina.*

5. *Until the taxpayer commenced their fishing business, the fishing boat was neither used nor installed ready for use for any purpose and, therefore, did not decline in value under section 40-60.*

## **Date of effect**

6. This Determination applies from 1 July 2001. However, the Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

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**Commissioner of Taxation**

21 March 2007

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## Appendix 1 – Explanation

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**1** *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

### Explanation

7. Section 40-25 provides a deduction to a holder of a depreciating asset of an amount equal to the decline in value of the asset for the income year as worked out under Division 40.

8. A depreciating asset starts to decline in value from when its start time occurs (subsection 40-60(1)). For a holder of a depreciating asset, the start time of the asset is when the holder first uses the asset, or has it installed ready for use, for any purpose (subsection 40-60(2)).

### Use

9. Justice Taylor in *Council of the City of Newcastle v. Royal Newcastle Hospital* (1956) 96 CLR 493 at 515 states that the 'word "used" is ....a word of wide import and its meaning in any particular case will depend to a great extent upon the context in which it is employed' and 'the purpose for which it has been acquired or created'. The Macquarie Dictionary (revised 3rd edition) relevantly defines 'use' to mean 'to employ for some purpose; put into service; turn to account' and 'to operate or put into effect'.

10. In the context of Division 40, the use of a depreciating asset requires employment of the asset in such a way that it can reasonably be expected to decline in value over the time it is so employed (see definition of 'depreciating asset' in subsection 40-30(1)).

11. For a tangible depreciating asset, an actual use or employment of the asset is required to start its decline in value under section 40-60. Depending on the nature of the depreciating asset, this actual use or employment may be active (for example, physical use by the holder) or passive (for example, the holder allowing others to physically use).

12. The start time for a depreciating asset which is acquired for use in a proposed business would typically arise when the asset is first used in the business. Where the business has not commenced to be carried on and there is no other purpose for which the asset is used, the asset has not been used and, therefore, has not commenced to decline in value under section 40-60.

***Installed ready for use***

13. The phrase 'installed ready for use' is defined in subsection 995-1(1) and requires not only that the relevant thing be installed ready for use but also that it be 'held in reserve'. This latter phrase was also used in the former depreciation provisions that Division 40 replaced (namely, section 54 of the *Income Tax Assessment Act 1936* and Division 42). The meaning of 'held in reserve' was considered in relation to the application of former section 54 in *AAT Case 5877* (1990) 21 ATR 3411; *Case X46* 90 ATC 378. There it was said that things 'held in reserve' must be held for future use in an existing income producing operation and that the concept of holding in reserve was not 'so wide as to embrace income producing operations which may be undertaken at some future time' (at 381). The Tax Office considers that the meaning of the words 'held in reserve' as explained in *Case X46* is equally applicable for the purposes of section 40-60.

14. Where a tangible depreciating asset is held for the sole purpose of using it in a business that has not commenced to be carried on, the asset is not 'held in reserve' and, therefore, not 'installed ready for use' under section 40-60. It follows that the asset has not started to decline in value under section 40-60.

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## References

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*Previous draft:*

Not previously issued as a draft

- ITAA 1997 40-30(1)

- ITAA 1997 40-60

- ITAA 1997 40-60(1)

*Related Rulings/Determinations:*

TR 2006/10

- ITAA 1997 40-60(2)

- ITAA 1997 Div 42

- ITAA 1997 995-1(1)

- TAA 1953

*Previous Rulings/Determinations:*

TD 95/52

*Case references:*

- AAT Case 5877 (1990) 21 ATR 3411, Case X46 90 ATC 378

- Council of the City of Newcastle v. Royal Newcastle Hospital (1956) 96 CLR 493

*Subject references:*

- capital allowances
- depreciating assets
- decline in value
- start time

*Other references:*- The Macquarie Dictionary, 2001, rev. 3<sup>rd</sup> edn, The Macquarie Library Pty Ltd, NSW*Legislative references:*

- ITAA 1936 54

- ITAA 1997 Div 40

- ITAA 1997 40-25

## ATO references

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