

# ***TD 2019/1W - Income tax: what constitutes 'use' (and potentially first use) of a mining, quarrying or prospecting right, that is a depreciating asset, for the purposes of subsection 40-80(1) of the Income Tax Assessment Act 1997 ?***

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! There is a Compendium for this document: **TD 2019/1EC** .

! This document has changed over time. This is a consolidated version of the ruling which was published on *1 February 2023*



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# Notice of Withdrawal

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## Taxation Determination

Income tax: what constitutes ‘use’ (and potentially first use) of a mining, quarrying or prospecting right, that is a depreciating asset, for the purposes of subsection 40-80(1) of the *Income Tax Assessment Act 1997*?

Taxation Determination TD 2019/1 is withdrawn with effect from 2 February 2023.

1. TD 2019/1 explains what constitutes ‘use’ of a mining, quarrying or prospecting right (MQPR), that is a depreciating asset, for the purposes of subsection 40-80(1) of the *Income Tax Assessment Act 1997*. The Commissioner ruled that you ‘first use’ an MQPR when you do something that the MQPR permits or authorises and that merely holding an MQPR does not constitute a ‘use’ of it.
2. This Determination is inconsistent with the decision by the Full Federal Court in *Commissioner of Taxation v Shell Energy Holdings Australia Limited* [2022] FCAFC 2, where it was held that the ‘first use’ of an MQPR corresponded with when the MQPR was taken to be held by the taxpayer.
3. The Commissioner considers that the decision of the Full Federal Court provides certainty in relation to what constitutes ‘use’ of an MQPR and no new ruling is required.
4. The Determination does not apply to schemes entered into after its withdrawal.

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**Commissioner of Taxation**

1 February 2023

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ATO references

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