



23 December 2021

Corporate Tax Branch

Corporate and International Taxation Division

Treasury

By email to: intangibledepreciation@treasury.gov.au

Dear Sir/Madam,

Draft Exposure draft legislation – Intangible asset depreciation

On behalf of the Institute of Public Accountants I submit our comments on the Draft legislation *Intangible asset depreciation*.

As part of the Government's Digital Economy Strategy, in May 2021 the Government announced amendments to be made to the tax law which would allow taxpayers to choose whether to self-assess the effective life of eligible of depreciating assets or to continue to use the tax effective life set by the statute.

We therefore welcome the opportunity to provide feedback and make the following comments for consideration in developing the legislation.

The National Innovation and Science Agenda Report in 2015 highlighted innovation as critical to improving Australia's competitiveness. As part of this report, it recommended many new initiatives with the aim of aligning our tax system and business laws with a culture of entrepreneurship and innovation. One of the then new initiatives identified in the report was the removal of the rules that limit depreciation deductions for some intangible assets (like patents) to a statutory life, and instead allow them to be depreciated over their economic life, as occurs for other capital assets.



A Bill to enact the change was included in *Tax and Superannuation Laws Amendment (2016 National Innovation and Science Agenda) Bill 2016: Intangible asset depreciation*. This Bill lapsed however, as stated above, in the 2021-22 Budget, the Government announced the Digital Economy Strategy, which outlines actions and policies the Government is taking to grow Australia's future as a modern and leading digital economy by 2030. The Strategy includes measures to empower businesses to grow investment in digital technologies, one of which is to allow taxpayers to self-assess the effective life of certain intangible depreciating assets. It is pleasing that the Government has once again introduced a Bill, namely *Treasury Laws Amendment (Measures for Consultation) Bill 2021: Intangible asset depreciation*, to bring this initiative to fruition which is now the subject of this consultation. This builds on other initiatives the Government have recently introduced to improve the competitiveness of our digital economy namely, improvements to the Employee Share Scheme regime and the introduction of a Patent Box for certain sectors.

The IPA is supportive of businesses being able to self-assess the depreciable life of intangible assets. The current rules do not adequately reflect the fast-changing pace of technology, leaving businesses claiming deductions years after assets cease to be of any value. Our tax system should be designed to incentivise and reward innovation and not act as a drag. The measure applies to all businesses that use/develop intangible depreciating assets, rather than only to small business. Allowing businesses to self-assess the effective life of their intangible depreciating assets is more consistent with the treatment for tangible assets. Unlike tangible depreciating assets, taxpayers do not currently have the option of self-assessing the effective life of intangibles and thereby increasing their depreciation deductions. Some industries are facing technological advances that are rapidly replacing products well before some of the lengthy effective lives currently hardwired in the

legislation. This is a welcome amendment to the law particularly as intangibles are making up an increasing share of business investments.

The pace of change, supercharged by new and emerging technologies, has never been so great, nor so disruptive. The Internet is also disrupting traditional jobs, businesses and industries in a manner that would have been unimaginable just a few decades ago.

The Internet is breaking down barriers to entry and presenting an enormous platform for innovation. Although the Internet exposes more local businesses to new sources of competition, it also means that a larger and far wealthier global market has become accessible to Australia.

For Australia to be a leading digital economy, we need to ensure that our tax settings do not inhibit the accelerated digitalisation of the economy. COVID-19 has accelerated the need for businesses to adapt to a digitalising world. Forcing taxpayers to adopt statutory effective depreciable life is inflexible and can rob taxpayers from increasing depreciation deductions and the resulting cashflow benefits.

In a general sense, allowing businesses to self-assess, better aligns with accounting standards. For example, para 88 of AASB 138 *Intangible Assets* allows an entity to assess whether the useful life of an intangible asset is finite or infinite and, if finite, the length of, or number of production or similar units constituting, that useful life.

Intangible assets can represent an important and valuable portion of the overall assets base, particularly for mid-size businesses. Self-assessed effective life allows depreciation of these assets to enable businesses to recoup some of the cost of acquisition and use, over the life of the assets in the form of tax deductions.

Currently, the effective life of most intangible depreciating assets is prescribed in s. 40.95(7) of the *Income Tax Assessment Act 1997*. An extract from the relevant table is below:

Item	Asset	Effective life in years
1	Standard patent	20
2	Innovative patent	8
3	Petty patent	6
4	Registered design	15
5	Copyright (except copyright in a film)	The shorter of 25 years from when you acquire it or 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 (except copyright in a film)	The shorter of 25 years from when you become the licensee or the period until the licence ends
8	In-house software	5

Source: s. 40.95(7) of the *Income Tax Assessment Act 1997*

Taxpayers are already familiar with the concept of determining the effective life of tangible assets and take into account the following factors when doing so:

- the physical life of the asset;

- engineering information;
- the manufacturer's specifications;
- past experience with similar assets;
- the past experience of other users of similar assets;
- the level of repairs and maintenance commonly adopted by users of the asset;
- retention periods; and
- scrapping or abandonment practices.

Similar methodology can be used for intangible assets with no change in the start date, as the effective life of the asset is measured from the time the asset begins to be used for a taxable purpose or to produce exempt income or non-assessable, non-exempt income.

Some specific comments for consideration are:

- We recommend that the explanatory memorandum be amended to explain the reason for the delayed start date for the introduction of the measure, namely that the new rules will apply from 1 July 2023 (after the temporary full expensing measures cease).
- Similarly, the explanatory memorandum also does not adequately consider the interaction of the simplified depreciation rules in conjunction with unlimited instant asset threshold and full expensing on the current capital allowance tax treatment for intangibles. Both these temporary measures can effectively generate an immediate deduction for most taxpayers for capital items including many intangibles until 30 June 2023. When the instant asset threshold is reinstated back to \$1,000 and full expensing ends on 30 June 2023, then our tax rules will revert to limiting deductions for intangibles as a result of the statutory effective life rules. The explanatory memorandum should detail and explain the current temporary tax measures impact on the treatment for intangibles. This can be inserted into the existing table titled "Comparison of key features of new law and current law" or by way of a footnote. The following details should be included:

- For eligible temporary full expensing (TFE) taxpayers, it covers types of intangible assets included in the proposed measure;
- State that for small businesses (SB) that have chosen to be in the simplified depreciation regime they must apply TFE;
- For SB where the asset cost is less than the instant asset write-off, the threshold could be fully expensed with only a few exclusions, such as software allocated to a software development pool; and
- Future treatment for entities that have chosen to be in the simplified depreciation regime claiming depreciation on intangibles.

For Australia to become a leading digital economy we need to align our tax system and business laws with a culture of entrepreneurship and innovation. Our current statutory effective life rules for intangibles lacks flexibility and is no longer fit for purpose.



If you would like to discuss our comments, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tony Greco', is positioned above the printed name.

Tony Greco

General Manager, Technical Policy

Institute of Public Accountants

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