



THE TAX INSTITUTE

THE MARK OF EXPERTISE

20 April 2016

Mr Tom Reid
Division Head, Law Design Practice
The Treasury
Langton Crescent
PARKES ACT 2600

By email: lawdesign@treasury.gov.au

Dear Mr Reid,

National Innovation and Science Agenda – Intangible Asset Depreciation

The Tax Institute welcomes the opportunity to make a submission to the Treasury in relation to the *Tax and Superannuation Laws Amendment (2016 National Innovation and Science Agenda) Bill 2016: Intangible asset depreciation Exposure Draft (Exposure Draft)*.

The Tax Institute is supportive of the measure contained in the Exposure Draft as it affords the choice to holders of intangible assets between applying the statutory effective life to depreciate intangible assets or to self-assess the effective life.

Set out below are our comments aimed at clarifying how the amendments contained in the Exposure Draft are to operate.

i) *What it means to 'abandon' an intangible asset for the purpose of the capital allowances regime*

Section 40-105 of the *Income Tax Assessment Act 1997* (Cth) (**1997 Act**) sets out the conditions that apply when self-assessing the effective life of a depreciating asset for the purpose of the capital allowances regime.

In accordance with section 40-105(2), in determining the effective life of an asset, a taxpayer may consider when that asset is likely to be scrapped, or sold for no more than scrap value or abandoned earlier than the effective life estimated under section 40-105(1A). For section 40-105(2) to apply meaningfully in the context of intangible assets, it would be useful if the provision could include a definition of 'scrapped' or

'abandoned' for intangible assets¹. We suggest this definition² should refer to the circumstances in which the taxpayer is no longer using the intangible asset for a purpose set out in section 40-105(1A), even though the rights associated with the intangible asset (for example in the case of copyright or a patent) have not necessarily expired.

It would also be useful if an accompanying explanation (including examples) could be included in the Explanatory Memorandum.

Alternatively, at the very least, a note explaining the circumstances in which an intangible asset may be regarded as 'scrapped' or 'abandoned' should be included in the legislation following section 40-105(2).

ii) Explanatory Memorandum

We suggest the third bullet point in paragraph 1.13 of the Explanatory Memorandum (which begins 'the rate of wear and tear..') be deleted. In our view, this is not a relevant factor for a taxpayer that owns intangible assets to consider as we do not believe intangible assets are able to be subject to wear and tear. This concept more readily applies to tangible assets.

If you would like to discuss any of the above, please contact either me or Tax Counsel, Stephanie Caredes, on 02 8223 0059.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Arthur Athanasiou', with a stylized flourish at the end.

Arthur Athanasiou
President

¹ Either in the subsection or in the Dictionary in Division 995 of the 1997 Act.

² Any definition should reflect contemporary commercial reality.