



Taxation Laws Amendment (Software Depreciation) Act 1999

No. 39, 1999



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An Act to amend the law relating to taxation, and for related purposes

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An Act to amend the law relating to taxation, and for related purposes

[Assented to 31 May 1999]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Taxation Laws Amendment (Software Depreciation) Act 1999*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1—Amendments

Income Tax Assessment Act 1936

1 At the end of subsection 124K(2)

Add:

; or (c) expenditure on software (within the meaning of the *Income Tax Assessment Act 1997*).

2 Schedule 2C, subsection 245-140(1) (definition of *table of deductible expenditure*, after table item relating to Cost of plant or articles)

Insert:

Expenditure on software, pooled Subdivision 46-D of the *Income Tax Assessment Act 1997*

3 Schedule 2D, subsection 57-85(3) (after table item 14)

Insert:

14A Software Subdivisions 46-B
and 46-D

Income Tax Assessment Act 1997

4 Section 10-5 (after table item headed “pooled depreciated property”)

Insert:

pooled software
see *software*

5 Section 10-5 (after table item headed “small-medium enterprises”)

Insert:

software
pooled, consideration for disposal of 46-95

6 Section 12-5 (table item headed “depreciation”)

After:

roll-over relief, unpooled property Subdivision 41-A

insert:

software..... Subdivision 46-B

software, pooled Subdivision 46-D

7 Section 12-5 (after table item headed “pooled development funds”)

Insert:

pooled software

see software

8 Section 12-5 (after table item headed “small-medium enterprises”)

Insert:

software

abandoned software..... 46-70

minor expenditure 46-65

pooled software 46-90

Year 2000 software 46-75

see also depreciation

9 Section 20-30 (after table item 1.7)

Insert:

1.7A	Division 42 (as it applies to *software because of Subdivision 46-B)	Expenditure on software
1.7B	Subdivision 46-C	Expenditure on software
1.7C	Subdivision 46-D	Expenditure on software, pooled

10 Section 40-30 (before the table item dealing with Telephone lines)

Insert:

Software	Expenditure on software	Any entity	2 ¹ / ₂ years	Balancing adjustment required	Division 46
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11 Section 41-5 (before the table item dealing with Telephone lines)

Insert:

Software—depreciable (Subdivision 46-B)	Applies as modified by sections 42-275 and 42-280	Applies as modified by section 42-210	Applies without modification
Software—pooled (Subdivision 46-D)	Applies as modified by section 46-105	Applies as modified by section 46-110	Applies without modification
Software—other (Subdivision 46-C)	Does not apply	Does not apply	Does not apply

12 Subsection 41-23(1) (after table item 1.1)

Insert:

1.2	Expenditure on software: pooled	the transferor and transferee jointly elect for it	section 46-100
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13 At the end of section 42-55

Add:

Software

(8) Division 46 has special rules about depreciation of software.

14 Section 43-260

Omit the link note, substitute:

[The next Division is Division 46.]

Division 46—Software

Table of Subdivisions

- 46-A Definitions and scope of Division
- 46-B Depreciation of software
- 46-C Deductions for certain expenditure on software
- 46-D Software pools

Guide to Division 46

46-1 What this Division is about

This Division allows a deduction, over 2¹/₂ years, for capital and non-capital expenditure you incur in acquiring or developing software for your own use.

You may choose to pool such expenditure. This can help you to work out your deductions if it would be hard to attribute your costs to individual projects separately.

The Division also allows an immediate deduction for expenditure on software, incurred before 1 January 2000, to ensure that a computer system attains Year 2000 compliance. Immediate deductions are also allowed for minor expenditure and for expenditure on software that you decide never to use.

[This is the end of the Guide.]

Subdivision 46-A—Definitions and scope of Division

Table of sections

- 46-5 Meaning of *software*
- 46-10 Meaning of *expenditure on software*
- 46-15 Exclusions from scope of Division
- 46-20 Relationship with general deductions

46-5 Meaning of *software*

Software includes a right to use software.

46-10 Meaning of *expenditure on software*

- (1) ***Expenditure on software*** includes expenditure you incur (whether of a capital nature or not):
 - (a) in acquiring *software; or
 - (b) in developing software; or
 - (c) in having another person develop software.
- (2) ***Expenditure on software*** may include salary or wages paid to a person who is involved with the development of the *software.

46-15 Exclusions from scope of Division

- (1) This Division does not apply to *expenditure on software if:
 - (a) the *software is, or is part of, *trading stock; or
 - (b) the deduction you can get for the expenditure under some *capital allowance outside this Division is more favourable to you than a deduction you can get under this Division.

Example: You might get an immediate deduction under section 73B of the *Income Tax Assessment Act 1936* (R&D expenditure) or Subdivision 330-A of this Act (exploration and prospecting), either of which might be more favourable to you than writing the expenditure off over 2¹/₂ years under Subdivision B of this Division.

- (2) This Division also does not apply to *expenditure on software if:
 - (a) you can get a deduction for the expenditure under a provision of this Act (including section 8-1) outside this Division; and
 - (b) the *software was acquired or developed other than principally for you to use to perform the functions for which it was acquired or developed.

Example 1: You incur capital expenditure in developing new software to use in controlling your mining operations. You would consider selling other similar businesses a licence to use the software, but this has not influenced your decision to develop it. This Division still applies to the expenditure, even though Division 330 (Mining and quarrying) might otherwise have applied to it, because you developed it *principally* to perform that function in your business; *not* principally as a product to sell to others.

Example 2: You incur expenditure in developing new software principally to sell to the general public, but you also incidentally plan to use the software in your own business. Assuming that the expenditure is also covered by section 8-1 (General deductions), this Division does not apply to it,

because you developed the software *principally* to sell it to the public; *not* principally to use in-house.

- (3) To avoid doubt, expenditure is excluded from the scope of this Division if it is covered by either or both of subsections (1) and (2).

46-20 Relationship with general deductions

You can't deduct expenditure under section 8-1 (general deductions) if (having taken into account the effect of section 46-15) you can deduct it under this Division.

Subdivision 46-B—Depreciation of software

Table of sections

46-25	Depreciating software
46-30	The amount to be depreciated
46-35	Prime cost method to be used
46-40	Effective life
46-45	Depreciation rate
46-50	Additional balancing adjustment event
46-55	Non-arm's length transactions
46-60	Pooling software

46-25 Depreciating software

The provisions of this Act dealing with the depreciation of *plant apply to units of *software on which you incur expenditure as if they were units of plant that you own, but with the modifications set out in this Subdivision.

Example: You own a licence to use a software program. The depreciation provisions apply as if the licence were a unit of plant.

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

46-30 The amount to be depreciated

The references to "its cost to you" in the table in section 42-65 (which is about working out the *cost of plant) are to be read as references to "your *expenditure on software".

46-35 Prime cost method to be used

- (1) The *prime cost method must be used for calculating the deduction.

Note: The prime cost method is set out in section 42-165. The diminishing value method set out in section 42-160 *cannot* be used for software.

- (2) However, subsection 42-165(2) does not apply.

Note: Subsection 42-165(2) allows you to deduct the full cost of a unit of plant if the depreciation rate is 100%.

46-40 Effective life

The *effective life for *software is 2¹/₂ years.

Note 1: Because of this, the effective life of software is not worked out under Subdivision 42-C.

Note 2: If you permanently stop using the software before the end of its effective life, a balancing adjustment may be required: see section 46-50.

Note 3: In any case, you might get an immediate deduction for minor amounts (\$300 or less) of expenditure on software: see section 46-65.

46-45 Depreciation rate

The rate is 40%.

Note: Because of this, the depreciation rate for software is not worked out under Subdivision 42-D.

46-50 Additional balancing adjustment event

- (1) There is an additional *balancing adjustment event for *software. It occurs if, during the *current year, you do not dispose of a unit of software but you:

- (a) permanently cease to use it; and
- (b) permanently cease to have it *installed ready for use; and
- (c) if it is a right to use software (the *underlying software*)—it is reasonable to expect that you will never obtain a subsequent right to use the underlying software.

Note: Balancing adjustment events are dealt with in section 42-30.

- (2) The *termination value in that case is nil unless an item in the termination value table in section 42-205 applies.
- (3) If this *balancing adjustment event occurs, no later event can be a balancing adjustment event for the *software.

46-55 Non-arm's length transactions

Common rule 2 applies to this Subdivision without the modification in section 42-75.

Note: That modification is not needed because this Subdivision already applies to expenditure (rather than cost).

46-60 Pooling software

*Software cannot be pooled under Subdivision 42-L (but some *expenditure on software can be pooled under Subdivision 46-D).

Subdivision 46-C—Deductions for certain expenditure on software

Table of sections

46-65	Deductions for minor amounts of expenditure on software
46-70	Deductions for expenditure on software that you will never use
46-75	Deductions for expenditure on software related to Year 2000

46-65 Deductions for minor amounts of expenditure on software

You can deduct *expenditure on software that you incur, to the extent that you use the *software, or have it *installed ready for use, for the *purpose of producing assessable income, if:

- (a) the expenditure does not exceed \$300; and
- (b) the expenditure relates to a unit of software and the total cost to you of the software does not exceed \$300; and
- (c) the total cost to you of that unit of software, and any other identical, or substantially identical, units of software that you acquire in the *current year does not exceed \$300.

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

46-70 Deductions for expenditure on software that you will never use

- (1) You can deduct *expenditure on software if:
 - (a) you incurred the expenditure with the intention of using the *software for the *purpose of producing assessable income; and
 - (b) the expenditure relates to a unit of software that you have not used or had *installed ready for use; and
 - (c) in the *current year, you have decided that you will never use the software, or have it *installed ready for use; and
 - (d) the expenditure is not in your *software pool (see Subdivision 46-D).

- (2) The amount that you can deduct in the *current year is:
 - (a) the total of your *expenditure on the 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 the *purpose of producing assessable income.

Example: You have abandoned a software project that you were working on. You could not deduct expenditure on the project for the current year or any previous income year under any other provision. You can deduct it under this section, to the extent that you intended to use it, or have it installed ready for use, for the purpose of producing assessable income.

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

46-75 Deductions for expenditure on software related to Year 2000

- (1) You can deduct *expenditure on software incurred before 1 January 2000 if the principal purpose of the expenditure is to ensure that an existing computer system attains Year 2000 compliance.
- (2) If that is not the principal purpose, you can deduct the expenditure to the extent that it is the purpose of the expenditure.

- (3) But in any case, a deduction is only allowed under this section to the extent that, when you incur the expenditure, you intend to use the *software, or have it *installed ready for use, for the *purpose of producing assessable income.

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

Subdivision 46-D—Software pools

Table of sections

46-80	Creating a software pool
46-85	What expenditure goes into the software pool?
46-90	Calculating deductions for pooled expenditure on software
46-95	Your assessable income includes consideration for pooled software
46-100	Application of Division 41 Common rules
46-105	Modifications of Common rule 1
46-110	Modification of Common rule 2

46-80 Creating a software pool

- (1) You may choose to create a *software pool* by recording in writing the first income year for which *expenditure on software is to go into it.
- (2) Once made, the choice cannot be revoked.

Note: There is a limited exception to this for the 1999-2000 income year: see item 24 of Schedule 1 to the *Taxation Laws Amendment (Software Depreciation) Act 1999*.

46-85 What expenditure goes into the software pool?

*Expenditure on software goes into the *software pool if, and only if:

- (a) you incur it in developing *software, or in having another person develop software; and
- (b) you incur it in the income year for which the choice is made or any later income year; and
- (c) you intend to use the software, or have it *installed ready for use, wholly for the purpose of producing assessable income; and

- (d) the expenditure would not otherwise be deductible under section 46-65 (minor amounts) or section 46-75 (Year 2000 compliance).

46-90 Calculating deductions for pooled expenditure on software

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

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

- (2) These deductions are instead of any deductions you could otherwise get for the expenditure under Subdivision 46-B or section 46-70.

46-95 Your assessable income includes consideration for pooled software

- (1) If *expenditure on software is (or was) in your *software pool, your assessable income includes any amount you derive as consideration in relation to the *software.
- (2) However, subsection (1) does not apply if Common rule 1 (roll-over relief) applies to the change (see section 46-100).

46-100 Application of Division 41 Common rules

- (1) Common rule 1 applies to this Subdivision as set out in section 41-15, but only if the transferor and the transferee jointly elect for it to apply.

Note: For the conditions relating to the election, see section 41-55.

- (2) Common rule 1 also applies to this Subdivision if:
- (a) for any reason, a change occurs in the ownership of, or in the interests of entities in, *software that is in a *software pool; and
 - (b) the entity or one of the entities that owned the software before the change has an interest in it after the change; and
 - (c) the owners of the software before the change (the *transferor*) and the owners of the software after the change (the *transferee*) jointly elect for the Common rule to apply.

Note: For the conditions relating to the election, see section 41-55.

- (3) The reasons for the change occurring include:
- (a) the formation of dissolution of a partnership; and
 - (b) a variation in the constitution of a partnership, or in the interests of the partners.
- (4) The following Common rules also apply to this Subdivision:
- (a) Common rule 2 (non-arm's length transactions);
 - (b) Common rule 3 (anti-avoidance—ownership).
- (5) However, Common rules 1 and 2 are modified as set out in the following sections.

46-105 Modifications of Common rule 1

- (1) The following provisions of Common rule 1 do not apply for the purposes of this Subdivision:
- (a) section 41-25;
 - (b) section 41-40.

Note: Those sections are irrelevant because they are about balancing adjustments, which are not required under this Subdivision.

- (2) Section 41-30 can apply to expenditure in respect of which you get a deduction under this Subdivision even if it is not *capital expenditure.
- (3) Section 41-30 applies to an entitlement to a deduction under this Subdivision only so far as the entitlement relates to the particular *software that the Common rule applies to (because of section 41-15 or subsection 46-100(2)).
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46-110 Modification of Common rule 2

Paragraph 41-65(2)(c) can apply to expenditure in respect of which you get a deduction under this Subdivision even if it is not *capital expenditure.

[The next Part is Part 2-15.]

15 After paragraph 373-10(2)(b)

Insert:

; or (c) the expenditure is *expenditure on software.

16 At the end of subsection 373-10(2)

Add:

Note 4: Software is covered by Division 46.

17 At the end of section 373-60

Add:

- (5) A balancing adjustment is not required if the expenditure is *expenditure on software.

Note: In that case, see Division 46.

18 Subsection 995-1(1)

Insert:

expenditure on software has the meaning given by section 46-10.

19 Subsection 995-1(1)

Insert:

software has the meaning given by section 46-5.

20 Subsection 995-1(1)

Insert:

software pool has the meaning given by section 46-80.

21 Application

The amendments made by this Schedule apply to expenditure on software after 10 am by legal time in the Australian Capital Territory on 11 May 1998.

22 Transitional—projects commenced before 11 May 1998

You can deduct expenditure on software that you incur before 1 July 1999 and that you could otherwise deduct under Subdivision 46-B or 46-D of the *Income Tax Assessment Act 1997* if, at or before 10 am by legal time in the Australian Capital Territory on 11 May 1998:

- (a) you entered into a contract to acquire the software; or
- (b) you commenced the development of the software for your own use; or
- (c) you commissioned another entity to develop the software for your own use;

to the extent that you use, or intend to use, the software for the purpose of producing assessable income.

Note: Under this item you can deduct the expenditure for the year in which you incur it, instead of having to write it off gradually under Subdivision 46-B or 46-D.

23 Transitional—backdating software pool to 11 May 1998

When making a choice under section 46-80 of the *Income Tax Assessment Act 1997* for the first income year beginning after 11 May 1998, you may elect that the choice be treated as also applying to any expenditure on software incurred after 10 am by legal time in the Australian Capital Territory on 11 May 1998 but before that income year begins.

Note 1: You will get section 46-90 deductions for that expenditure one year earlier than any deductions you will get for expenditure incurred in that later income year. This is because the timing of section 46-90 deductions depends on the income year in which you incurred the expenditure (not on when you made the choice).

Note 2: If it were not for this item, the choice could not apply to expenditure incurred before the beginning of the income year in which the choice is made: see paragraph 46-85(b).

24 Transitional—revoking software pool choice

- (1) When lodging your return for the second income year beginning after 11 May 1998, you may revoke a previous choice that you made to create a software pool under section 46-80 of the *Income Tax Assessment Act 1997*.

- (2) You may do so whether or not you also made an election under item 23 of this Schedule when you made that choice.
 - (3) If you revoke the choice, no expenditure on software for that second income year or any later income year goes into your software pool. But any expenditure from before that second income year remains in your software pool unaffected by the revocation.
 - (4) You can never revoke the revocation, or make a fresh choice under section 46-80.
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*[Minister's second reading speech made in—
House of Representatives on 11 February 1999
Senate on 22 March 1999]*

(7/99)
