TR 2019/4 - Income tax: capital allowances: expenditure incurred by an entity that collects, processes and provides multi-client seismic data

There is a Compendium for this document: **TR 2019/4EC** .

Taxation Ruling

Income tax: capital allowances: expenditure incurred by an entity that collects, processes and provides multi-client seismic data

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This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

Summary – what this Ruling is about

1. This Ruling considers how the capital allowance provisions in Division 40 of the *Income Tax Assessment Act 1997*[1] apply to the expenditure incurred by an entity which collects and processes seismic data licensed on a non-exclusive basis to multiple clients (Data Provider).

2. In particular, this Ruling considers:

- the nature of the expenditure a Data Provider incurs
- whether the seismic data is trading stock
- whether the seismic data is a CGT asset
- whether the seismic data is a depreciating asset that a Data Provider holds
- the effective life of the seismic data, and whether its cost is deductible under subsection 40-80(1)
- whether the expenditure a Data Provider incurs is deductible under subsection 40-730(1)
- circumstances in which balancing adjustment events may occur for the seismic data.

[1] All legislative references are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

Arrangements this Ruling covers

3. This Ruling concerns seismic data providers who carry on a business of providing seismic data to customers in the mining industry.

4. Seismic data is licensed to customers under restrictive terms for an extended period (for example, 10 years). These restrictions preserve the confidentiality of the seismic data, typically until the relevant Government authority publicly releases the data after the statutory period of confidentiality has elapsed.[2]

5. Data licensing fees may be payable upfront or in specified instalments, depending on the contract.

6. Data Providers progressively build up, augment, synergise and leverage their data collection to inform future target areas to survey (or resurvey), or determine whether previously acquired seismic data should be reprocessed.

7. Data Providers rely on the quality of their library of seismic data (together with in-house geological and geophysical expertise) to attract potential customers to license their data rather than a competitor's, or conduct their own survey.

8. Data Providers do not carry on mining operations themselves, and do not intend to carry on such operations.

9. This Ruling does not apply to other providers who, under the terms of the relevant contracts or agreements, provide contract seismic services exclusively to a single client (or a joint venture operator acting on behalf of the joint venture's participants) that directs the scope and extent of the seismic survey and becomes the owner of the seismic data created.

[2] The Explanatory Memorandum to the Offshore Petroleum Bill 2005 noted, in relation to proposed clause 422 of the Bill (about protection of confidentiality of documentary information obtained by the Designated Authority), that '[w]here the Regulations allow release **of the data, they generally impose some period of delay on their public availability. Seismic survey companies, which draw their income from selling survey data to petroleum explorers, are particularly reliant on this period of confidentiality**' (emphasis added). This provision became section 712 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (now repealed). The relevant regulations are in Division 3 of Part 8 of the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011*.

Ruling

10. Expenditure incurred by a Data Provider in collecting and processing multi-client seismic data is capital in nature, and is not deductible under section 8-1.[3] This includes:

- labour costs a provider incurs to create or augment the data
- leave payments covered by paragraphs 26-10(1)(a) or (b), and
- repairs and maintenance.

However, there are some exceptions, listed at paragraph 19 of this Ruling.

11. Seismic data is mining, quarrying or prospecting information (MQPI) as defined in subsection 40-730(8). It is neither trading stock, nor is it a capital gains tax (CGT) asset. It is a depreciating asset as defined in paragraph 40-30(2)(b).

12. For the purposes of identifying 'the depreciating asset', we consider that a Data Provider's entire data library is a composite item which is not itself a depreciating asset. However, it can be dissected into separate, identifiable components, each with commercial or economic value in itself, and is a depreciating asset.[4] Each component has its own attributes relevant to Division 40. These include:

- its start time
- its cost
- the period a Data Provider holds it, and
- whether a balancing adjustment event occurs in relation to it.

There may also be circumstances in which a Data Provider may split one of these components into other components, or merge it with another component.[5]

13. The cost of the data for the purposes of Subdivision 40-C is the expenditure a Data Provider incurs to create it.[6] A Data Provider can deduct the decline in value of the data under subsection 40-25(1) to the extent it holds the data under section 40-40.

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[3] Paragraph 8-1(2)(a); section 70-25 does not exclude the outgoing from being capital because the seismic data is not trading stock.

[4] See subsection 40-30(4).

[5] For the consequences of the split or merge, see sections 40-115 and 40-125 respectively. The cost of the resulting components or component is worked out under sections 40-205 and 40-210 respectively. See Appendix 2 of this Ruling for practical guidance on the issues raised in this paragraph.

[6] If a deduction is available under another provision, section 40-215 reduces the cost under Subdivision 40-C. An example is a contribution a Data Provider makes, as an employer, to a superannuation fund that is deductible under Subdivision 290-B.

14. Subsection 40-80(1) will apply to treat the decline in value of the data as its cost for the purposes of subsection 40-25(1) where the facts establish that the first use of the data by the Data Provider is for exploration or prospecting for minerals, or quarry materials, obtainable by mining operations and quarrying operations. However, where the first use of the data is by providing it to a client under a licensing agreement, subsection 40-80(1) will not apply.

15. Where subsection 40-80(1) does not apply to the data, the decline in value is calculated using an effective life of 15 years, as determined under subsection 40-95(12), using either the diminishing value method or the prime cost method.

16. Subsection 40-730(1) does not apply to allow a Data Provider an immediate deduction for expenditure that is included in the scope of this Ruling, irrespective of whether or not subsection 40-80(1) applies to the data the expenditure was incurred to create.[7]

17. A Data Provider should apportion items of expenditure not wholly attributable to a particular depreciating asset on a fair and reasonable basis.[8]

18. A balancing adjustment event occurs for the data if a Data Provider stops holding it (for example, they sell it).[9] Other circumstances in which a balancing adjustment event might occur are where[10]:

- a Data Provider stops using the data for any purpose, and expect never to use it again[11]
- a Data Provider has not used the data and decides never to use it[12], or
- there is a change in the entity or entities that hold, or have an interest in, the data, involving the formation, change or dissolution of a partnership, provided at least one entity has a continuing interest before and after the change.[13]

Exceptions

19. This Ruling does not deal with the cost of acquiring any mining, quarrying or prospecting rights, which are depreciating assets separate to seismic data.[14] Interest on borrowings to finance the

[7] Subsection 40-730(3).
[8] See *Ronpibon Tin NL v Commissioner of Taxation (Cth)* [1949] HCA 15.
[9] Paragraph 40-295(1)(a).
[10] This list is not exhaustive.
[11] Paragraph 40-295(1)(b).
[12] Paragraph 40-295(1)(c).
[13] Subsection 40-295(2). However, a mere splitting of the data into two or more depreciating assets, or merging it with other depreciating assets, does not give rise to a balancing adjustment event: subsection 40-295(3).
[14] See paragraph 40-30(2)(a); for the definition of 'mining, quarrying or prospecting rights', see subsection 995-1(1).

collection and processing of the data, and expenses incurred to make copies of the data for licensing, are excluded from the scope of this Ruling, to the extent they are revenue expenses.[15]

Example

20. *Big Bang Seismic Co (BBSC), a company incorporated in Australia, carries on a business of collecting and processing offshore seismic data and licensing the data to clients in the oil and gas industry. The areas BBSC surveys may be in vacant acreage or acreage that is held under title.*

21. *BBSC undertakes a seismic survey of an area and processes the survey data. Typical expenses it incurs in carrying out these activities include:*

- *vessel lease*
- *maritime crew hire*
- *support vessel hire*
- *technical and support crew hire*
- *travel costs for crew and subcontractors*
- *fuel, food and consumables*
- *equipment and software hire*
- *data processing costs*
- *costs of external on-board contractors such as medics, environmental supervisors and fishing liaison officers, and*
- *a portion of administration, interest and borrowing expenses.*

22. *BBSC enters into non-exclusive licensing arrangements with multiple clients who wish to evaluate accumulations of oil and gas reserves. BBSC licenses sections of its seismic data for an extended period, typically 25 years, in return for licence fees which may be payable upfront or in specified instalments. BBSC retains ownership of the copyright and other intellectual property in the seismic data and can deal with it in whatever way they wish. The seismic data is proprietary to, and a trade secret of, BBSC. If, during the licence period, a licensee obtains a title (or interest in a title) within the survey area permitting the licensee to extract oil or gas, it must pay BBSC additional fees.*

23. *Licensees may use the licensed seismic data only for their own purposes and benefit, and may not copy, sell or transfer it to third parties, except as BBSC expressly allows. When the licence expires*

[15] See section 40-220 and, in respect of interest expenses, see *Steele v Deputy Commissioner of Taxation* [1999] HCA 7 at [26–35].

or terminates, the licensees must return or destroy any copies of the data in their possession.

24. *BBSC incorporates the expenditure mentioned in paragraph 21 of this Ruling into the cost of the data for the purposes of Subdivision 40-C. However, the amount of apportioned interest is not of a capital nature, and section 40-220 reduces the cost of the data by that amount. Each element of the cost is also reduced, under section 40-215, by the amount of the section 25-25 deductible borrowing expenses attributable to that element.*

25. *Where BBSC first uses the data by analysing and interpreting the raw data recorded during the survey for the purposes of informing, refining or expanding the survey already in progress, the first use can satisfy the requirements in subsection 40-80(1).*

26. *Where BBSC first uses the data by providing it to a client under a licensing agreement, subsection 40-80(1) is not satisfied. However, BBSC can deduct an amount for the decline in value of the data under subsection 40-25(1), which is calculated using an effective life of 15 years as determined under subsection 40-95(12).*

Date of effect

27. This Ruling applies to years of income commencing both before and after its date of issue.

28. However, paragraphs 15 and 26 of this Ruling do not apply to taxpayers in relation to seismic data that they started to hold:

(a) before 7:30pm AEST on 14 May 2013, or

(b) through exercising a right to acquire the data which right they held continuously since immediately before the 7.30pm AEST on 14 May 2013 and where the terms and conditions for exercising the right (including the consideration given or to be given for the right) were agreed before that time.

29. This Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation
18 September 2019

Appendix 1 – Explanation

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.

Expenditure is of a capital nature

30. Characterising expenditure by a Data Provider as revenue or capital is fundamental to its treatment. Exploration or prospecting[16] expenditure is not automatically capital in nature. Rather, it is a question of fact in each case whether it is capital or revenue.[17]

31. The distinction between capital and revenue corresponds with the distinction between the business entity, structure, or organization set up or established for the earning of profit and the process by which such an organization operates to obtain regular returns by means of regular outlay.[18] To determine the nature of an expense, the whole set of circumstances of the commercial context within which the expenditure is made must be taken into account.[19] This requires 'both a wide survey and an exact scrutiny of the taxpayer's activities'.[20] The answer 'depends on what the expenditure is calculated to effect from a practical and business point of view'.[21]

32. In other words, the character of the expenditure is chiefly determined by the character of the advantage a Data Provider seeks by making it. This is usually 'determined by reference to the nature of the asset acquired or the liability discharged by the making of the expenditure'.[22] Expenditure made once and for all with the intention of creating an asset or an advantage for the enduring benefit of a trade is usually capital in nature.[23]

33. A Data Provider earns income from providing seismic data to customers in the mining industry. This purpose is served by licensing

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[16] The term 'exploration or prospecting' is defined inclusively in subsection 40-730(4) and includes, for mining generally, and for petroleum mining, geophysical surveys.
[17] *Commissioner of Taxation v Ampol Exploration Ltd* [1986] FCA 554. per Lockhart J.
[18] *Sun Newspapers Limited v Federal Commissioner of Taxation* [1938] HCA 73, per Dixon J.
[19] *BP Australia Ltd v Commissioner of Taxation (Cth)* (1965) 112 CLR 386 at [397]; *AusNet Transmission Group Pty Ltd v Federal Commissioner of Taxation* [2015] HCA 25 at [74].
[20] *Western Gold Mines v Commissioner of Taxation (WA)* [1938] HCA 5, per Dixon and Evatt JJ.
[21] *Hallstroms Pty Ltd v Federal Commissioner of Taxation* [1946] HCA 34, per Dixon J.
[22] *GP International Pipecoaters Pty Ltd v Commissioner of Taxation* (Cth) [1990] HCA 25 at [13], per Brennan, Dawson, Toohey, Gaudron and McHugh JJ. See also *Colonial Mutual Life Assurance Society Ltd v Commissioner of Taxation (Cth)* [1953] HCA 68, per Fullagar J.
[23] *British Insulated and Helsby Cables Ltd v Atherton* [1926] AC 205 at 213 to 214, per Viscount Cave. Note that the converse is not necessarily the case – see *John Fairfax and Sons Pty Ltd v Commissioner of Taxation (Cth)* [1959] HCA 4, per Dixon CJ.

the data to customers for lengthy periods under restrictive terms rather than selling it to them for them to do with it as they will. It is a competitive advantage for a Data Provider to build up, maintain, protect and continually augment a library of seismic data that can be exploited for both it and its customers' benefit.

34. From a practical and business point of view, the expenditure is incurred to create or add to such a library. The data is an asset of value, as it is protected by licensing agreements, including the non-disclosure clauses, and it is used to derive income in the form of licence fees.

35. Further, it is an asset from which an enduring benefit is derived, as evidenced by the length of the licensing agreement terms negotiated. That benefit is not restricted to the licence fees derived during the period of the licence (which, subject to any uplift clauses triggered at a later point, may substantially or wholly be derived during the first few years of that period). The collection of data creates proprietary intellectual property (comprising insights, knowledge and know-how) that is a principal source of competitive advantage, and may inform future survey activity. The use and disclosure restrictions under the licence agreements contribute to protecting this advantage until the data becomes generally available under law. The data is important to a Data Provider's business and is an inextricable part of the 'structure or organization set up or established for the earning of profit'.

36. There is an alternative view that the expenditure is not capital in nature, which is informed by the recurrent nature of the expenditure, and the fact that in many licence agreements the revenue is front-loaded (for example, the licence fees may be paid on delivery of the data).

37. However, the data is a capital asset, and on balance we consider the expenditure on creating and adding to it is capital in nature. This includes any labour costs associated with these activities.[24] Therefore, the expenditure is not deductible under section 8-1 because of paragraph 8-1(2)(a).

Seismic data is not trading stock

38. Under section 70-25, outgoings connected with acquiring trading stock are not capital in nature. Subsection 70-10(1) relevantly defines 'trading stock' to include anything produced, manufactured or acquired that is held for the purposes of manufacture, sale or exchange in the ordinary course of a business.

[24] See *Goodman Fielder Wattie Ltd v Federal Commissioner of Taxation* [1991] FCA 264 and *Commissioner of Taxation v Star City Pty Limited* [2009] FCAFC 19. Further, this view is consistent with paragraph 1.28 of the Explanatory Memorandum to the Tax and Superannuation Laws Amendment (2014 Measures No. 3) Bill 2014.

39. This definition 'presupposes that the person by whom [goods] are produced, manufactured, acquired or purchased is or will be engaged in trade in those goods'.[25] The terms 'sale' and 'exchange' in the expression 'sale or exchange in the ordinary course of a business' refer to trading activity in which ownership of the thing traded passes.

40. By contrast, copyright and other intellectual property in the seismic data is owned by and proprietary to a Data Provider and is a trade secret. A Data Provider does not 'trade' in the seismic data created by passing ownership of it to clients. Therefore, it is not trading stock.[26]

41. Accordingly, section 70-25 does not preclude the expenditure from being capital in nature. Consequently, the expenditure is neither deductible under section 8-1, nor excluded from the cost of the data under section 40-215.

Seismic data is not a CGT asset

42. Subsection 108-5(1) defines a CGT asset as 'any kind of property or a legal or equitable right that is not property'. Taxation Determination TD 2000/33 *Income tax: capital gains: is know-how a CGT asset?* states that know-how is knowledge or information which is not a CGT asset because it is neither a form of property nor a legal or equitable right.

43. The same is true of the seismic data.[27]

Seismic data is a depreciating asset

44. The decline in value for a depreciating asset held during the year is deductible.[28] Relevantly, MQPI that is not trading stock is a depreciating asset.[29]

45. The seismic data collected and processed is geological, geophysical or technical information that relates to, or is likely to help in determining, the presence, absence or extent of deposits of minerals in an area. It is therefore MQPI as defined.[30] Since it is not trading stock, the seismic data is a depreciating asset.

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[25] *John v Commissioner of Taxation (Cth)* [1989] HCA 5.
[26] Subsection 70-10(2) merely restricts what is trading stock and does not change this conclusion.
[27] See also *Federal Commissioner of Taxation v United Aircraft Corporation* [1943] HCA 50; *Brent v Commissioner of Taxation (Cth)* [1971] HCA 48.
[28] Subsection 40-25(1).
[29] MQPI is one of several categories of intangible assets that are expressly included by subsection 40-30(2) as depreciating assets if they are not trading stock. All other intangible assets are excluded from the definition of 'depreciating asset' under subsection 40-30(1).
[30] The definition is in subsection 40-730(8). The meaning of 'minerals' used in that definition is extended by subsection 40-730(5) to include 'petroleum', itself a term defined in subsection 40-730(6).

When a Data Provider 'holds' the seismic data

46. The table in section 40-40 sets out who holds a depreciating asset. Table items 8 and 9 deal with who holds MQPI. Table item 8 applies to MQPI that an entity has, whether or not it is generally available, that is relevant to:

- mining and quarrying operations carried on, or proposed to be carried on, by the entity, or
- a business carried on by the entity that includes exploration or prospecting for minerals or quarry materials obtainable by such operations.

Table item 9 applies to other MQPI that an entity has that is not generally available.

47. Once a Data Provider has conducted a seismic survey of an area, it has the relevant MQPI through possession, ownership and use of the data. Table item 8 can apply to the MQPI because the type of business mentioned in that item is consistent with the business carried on by Data Providers.[31] Table item 9 can also apply where table item 8 does not apply and the MQPI is not generally available.

48. Once the MQPI is no longer held under table items 8 or 9 in section 40-40, a balancing adjustment event occurs for that data under paragraph 40-295(1)(a).[32]

Effective life of seismic data

49. The effective life of MQPI that an entity holds will be relevant for working out its decline in value unless the conditions in subsection 40-80(1) are satisfied in relation to the MQPI (see paragraphs 52 to 55 of this Ruling).

50. Where an entity has MQPI and is not engaged in mining and quarrying operations, the MQPI does not relate to an actual or proposed mine, petroleum field or quarry. In that circumstance, the effective life of the MQPI is 15 years.[33] The entity cannot self-assess the effective life of the MQPI.[34]

51. As a Data Provider is not engaged in mining and quarrying operations, the effective life of a depreciating asset it holds that is seismic data is 15 years. Where subsection 40-80(1) does not apply, this effective life must be used when calculating the decline in value

[31] See also paragraphs 3 to 9 of this Ruling.
[32] See paragraph 18 of this Ruling for other circumstances in which a balancing adjustment event occurs for the data. See also paragraphs 65 to 67 of this Ruling for where a balancing adjustment event occurs because you stop using a data component for any purpose and expect never to use it again.
[33] Subsection 40-95(12).
[34] Paragraph 40-105(4)(c).

of the data for the relevant income year under whichever method it chooses.[35]

Subsection 40-80(1) may apply to the seismic data

52. If an entity meets all relevant conditions in paragraphs 40-80(1)(a) to (e)[36], the deduction for the decline in value of a depreciating asset it holds is the asset's cost.[37]

53. Paragraph 40-80(1)(a) requires the first use of the asset to be for 'exploration or prospecting for minerals or quarry materials, obtainable by mining or quarrying operations'. Determining what is the first use is a question of fact. Where the first use of the MQPI is by providing it to a client under a licensing agreement, the requirement in paragraph 40-80(1)(a) is not satisfied. However, that requirement is met where the first use of the MQPI is analysing it to inform further exploration.

54. Subparagraphs 40-80(1)(c)(i) and (ii) do not apply to a Data Provider because it does not carry on, or propose to carry on, mining operations.

55. The Commissioner considers the business undertaken by a Data Provider covered by this Ruling is a business of the kind described in subparagraph 40-80(1)(c)(iii), and the expenditure incurred to create the data is necessarily incurred in carrying on that business. The Data Providers are in the business of developing a body of knowledge which they utilise on their own account for exploring for petroleum obtainable by mining operations. This can be distinguished from entities who are not undertaking exploration or prospecting on their own account and are merely contracted to provide a service.

No deduction under subsection 40-730(1)

56. Subsection 40-730(1) allows expenditure incurred in an income year on exploration or prospecting for minerals, or quarry materials, obtainable by mining and quarrying operations, to be deducted. This is subject to conditions which are for all practical purposes identical to those set out in paragraph 40-80(1)(c). As a Data Provider will satisfy the condition in subparagraph 40-80(1)(c)(iii), it will also satisfy the corresponding condition in paragraph 40-730(1)(c).

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[35] You make the choice under section 40-65 between the diminishing value method (see section 40-70 or 40-72) or the prime cost method (see section 40-75).

[36] Paragraphs 40-80(1)(b) and (d) are not relevant in the context of this arrangement. You do not need to satisfy paragraph 40-80(1)(e) for seismic data you started to hold in either of the circumstances listed in paragraph 28 of this Ruling. See also paragraph 58 of this Ruling.

[37] Under subsection 40-25(1).

57. However, subsection 40-730(3) does not allow a deduction for expenditure under subsection 40-730(1) to the extent it forms part of the cost of a depreciating asset. Expenditure incurred in collecting and processing seismic data forms part of the cost of a depreciating asset (see paragraph 13 of this Ruling), so is not deductible under subsection 40-730(1).

Date of effect and amendments to treatment of effective life of mining, quarrying or prospecting information

58. The limitations on the retrospective effect of this Ruling correspond with the application provisions in item 16 of Schedule 1 to the *Tax and Superannuation Laws Amendment (2014 Measures No. 3) Act 2014* (the Amendment Act). Section 3 and Schedule 1 of the Amendment Act introduced a number of amendments to Division 40. These included amendments to section 40-80 (including the introduction of paragraphs (1)(d) and (e) and subsection (1AA)) and to sections 40-95, 40-105 and 40-110 (the rules for choosing, self-assessing and recalculating the effective life of depreciating assets respectively) and in particular, the introduction of subsection 40-95(12) and paragraph 40-105(4)(c) dealing with MQPI.

Appendix 2 – Compliance approach

This Appendix sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow the advice in this Appendix in good faith and consistently with the Ruling section, the Commissioner will administer the law in accordance with this approach.

Identifying the asset

59. In practically applying Division 40 to seismic data that a Data Provider (you) licenses to multiple clients, you need to determine the exact depreciating asset that is being considered. For example, when working out the start time for the data under section 40-60, what it is used for at that time for the purposes of paragraph 40-80(1)(a), or determining if a balancing adjustment event happens to the data under section 40-295, it is essential to know what data is under consideration. You need to determine this considering the practicalities of your industry.

60. As an illustration: if you are an offshore Data Provider, it would not be practicable to consider your entire data library, perhaps covering thousands of square kilometres of seabed, as a single undifferentiated depreciating asset. Practically, the library would consist of a number of components (data components), each one a separate depreciating asset, with its own first and second element of cost, start time, adjustable value and other attributes relevant for Division 40 purposes.

61. As a starting point, all of the data you collect in a particular survey can be treated as a single depreciating asset because it provides a coherent package of information. However, it may be appropriate, or even necessary, in practice, to break it down further. Generally, you would be granted a permit to survey a particular set of blocks, each block being all or part of a graticular section.[38]

62. You would then use your best efforts to license the data from the surveyed blocks to interested parties. Depending on the practicalities of this process, a single data component might consist of

[38] The terminology may vary by jurisdiction. Onshore in Western Australia (for example), a graticular section is an area bounded by lines of latitude and longitude one minute apart, and a block is a graticular section that is wholly within the state or otherwise that part of a graticular section that is within the state (see section 56C of the *Mining Act 1978* (WA)). In Queensland, a block is an area bounded by lines of latitude and longitude five minutes apart, each being divided into 25 sub-blocks one minute of latitude by one minute of longitude (see section 126 of the *Mineral Resources Act 1989* (Qld)). Offshore in Commonwealth waters, a graticular section is an area bounded by lines of latitude and longitude five minutes apart, and a block is a graticular section that is wholly or partly within an offshore area (see section 33 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*).

the survey data from an individual block or a combination of two or more blocks.

63. We accept any such delineation of the data that makes practical sense in your circumstances, having regard to your natural systems.[39] We expect you to be consistent in your approach.

Timing and the asset's use

64. The start time of each data component is when you first 'use' it.[40] In practice, you may first use the data component from a survey before completing the geophysical processing and imaging phase. Usually, after this phase is complete you would package the data component into the form in which it will be provided to a clients under a licensing agreement. Meanwhile, you may undertake pre-processing of the raw seismic data from the field tapes. At various points during this process, geologists and geophysicists may begin to review the resultant dataset to understand what new exploration information has been revealed and to assess the potential for hydrocarbon indicators. If this is factually the case, then this would be the point at which you first use the data component.

65. A balancing adjustment event occurs for a data component in any of the circumstances mentioned in paragraph 18 of this Ruling. Here we examine more closely the circumstance in which you stop using the data component for any purpose and expect never to use it again.

66. As paragraphs 35 and 64 of this Ruling acknowledge, business use of the data component may not be confined to licensing it to clients. Therefore, the point at which you stop using it for licensing may or may not be determinative that you have stopped using it for any purpose. For example, you may continue to (or subsequently) use it to establish analogies with data sets collected in different surveys in different locations to throw light on the prospectivity of an area then of interest.

67. Strictly speaking, the data component stops being used **for licensing** at the earliest time there is no longer a licence agreement that covers it. However, if the relevant licence agreements do not contain uplift clauses that may be triggered at any time during the licence period, we accept an approach that treats the data component as no longer being used for licensing at the earliest point when it becomes clear that it is no longer generating any licence revenue. If, at this time, you expect never to license the data component again, or otherwise use it for any purpose, you can treat this as a balancing adjustment event.

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[39] For example, the accounting, project budgeting and cost management systems typically used might be able to handle the delineation of the data on a block-by-block basis for the purposes of Division 40. This fact would be further supported if it is demonstrable that commercial licensing decisions are also made on a block-by-block basis.

[40] Subsection 40-60(2).

68. To provide evidence for the balancing adjustment being triggered at this time, refer to the governance processes, policies and procedures of your business – for example, an evidence-based decision by the board of directors or relevant personnel about the prospects and viability of any future licensing or other use of the data component.

69. We expect you to demonstrate that you have considered contemporaneous and corroborative bases. These should include, but are not limited to, a combination of the following:

- the currency and quality of the data component's content
- any comparative advantage that you have in producing the data component
- the level and results (if known) of activities (whether seismic or drilling) being undertaken in surrounding blocks or areas of interest
- results of recent marketing efforts for the data component and feedback from potential target customers
- geological assessment and recommendation by experts of the ongoing utility and commercial viability of the data (the experts must have the necessary experience and credentials, but may be internal or external to your business)
- cost-benefit analysis, including the assessment of business case, budget allocations and returns on investment, of any potential further licensing prospects or the ongoing marketing or reprocessing of the data
- consideration of the impact of recent and current or upcoming government acreage release trends, including publications of geoscience data, information and advice provided by governments and associated authorities on mineral resources and resource potential in a relevant area, and
- consideration of applicable industry trends, including recent known title and acreage bids, awards or gazettals, work programs and other dealings and transactions.

We will generally not seek to disturb outcomes supported by contemporaneous documentation and evidence of this kind.

70. Where you have previously triggered a balancing adjustment for a data component because you stopped using it, expecting never to use it again, but you later reprocess, sell or license it, you start using it again. When this happens, there is a second start time for the

data component.[41] From that point, you will need to account for the Division 40 consequences, including resetting its cost and adjustable value[42], and recognising a further gain or loss when another balancing adjustment event occurs.

Splitting and merging data

71. If at any time it becomes practically necessary to split a data component you hold, Division 40 applies as if you had stopped holding the original data component, and started holding the split data components.[43] Splitting a data component does not in itself give rise to a balancing adjustment event.[44] If you stop holding part of a data component, Division 40 applies as if, just before you stopped holding that part, you had split the original data component into the part you stopped holding and the rest of the original data component. These are both now treated as different assets from the original data component.[45] The cost of the data components arising from the split is worked out under section 40-205.

72. Similarly, if at any time it becomes practically necessary to merge a data component with another, Division 40 applies as if you had stopped holding the original data components and started holding the merged one.[46] As with splitting, the merging does not in itself give rise to a balancing adjustment event.[47] The cost of the merged data component is worked out under section 40-210.

73. To substantiate the splitting or merging of data components, you can similarly apply the principles in paragraphs 68 and 69 of this Ruling to the data components you need to split or merge.

Reprocessing a data component

74. If you reprocess a data component, you must consider whether this gives rise to a new data component (depreciating asset) or an improvement to the original data component. In the latter case, the cost of the improvement forms part of the second element of the cost of the existing data component.[48]

75. The question is one of fact and degree. If the reprocessing accomplishes only minor enhancements to the value and utility of the data component, no new data component comes into being. If, on the other hand, the reprocessing significantly enhances its value and utility, for example by revealing a high degree of prospectivity that

[41] Subsection 40-60(3), paragraph 40-295(1)(b).
[42] Subsection 40-285(4) and subsection 40-180(2), table items 3 and 4.
[43] Subsection 40-115(1).
[44] Subsection 40-295(3).
[45] Subsection 40-115(2).
[46] Section 40-125.
[47] Subsection 40-295(3).
[48] See section 40-190.

was not previously apparent, then this would suggest the creation of a new depreciating asset.[49]

Resurveying an area

76. Similarly, if you resurvey an area you have already surveyed, you must consider whether the new survey gives rise to a new data component (depreciating asset) for the area, or an improvement to the data component you already hold for the area. In the latter case, the cost of the improvement forms part of the second element of the cost of the existing data component.[50]

77. The question is one of fact and degree. In the case of a resurvey that accomplishes only minor improvements in the quality of data or coverage, or that reveals little or no change in the survey area or the survey findings, no new data component comes into being. On the other hand, a new data component is created where you undertake a resurvey that employs newer technology resulting in one or more of:

- a substantial improvement in the quality or quantity of the data
- the acquisition of completely new data, or
- the revelation of substantial changes in the area since the previous survey.

An example is a new three-dimensional survey that replaces an earlier two-dimensional survey.

Record keeping

78. You should produce and maintain contemporaneous records and documentation on each data component in your library, as for any other depreciating asset. The documentation should include:

- what the asset is
- when you started to hold it, or started to hold it again (if applicable)
- when you ceased to hold it (if applicable)

[49] Indicia of improvements can be further gleaned from paragraphs 44 to 54 of Taxation Ruling TR 97/23 *Income tax: deductions for repairs*, though will necessarily need to be adapted to the context and characteristics of seismic data and the seismic industry.

[50] See section 40-190. For indicia of improvements, refer to paragraphs 44 to 54 of TR 97/23, adapted as appropriate. If the new survey results in the creation of more than one new data component, or the improvement of more than one existing data component, the costs of the survey will need to be apportioned across the first or second elements (respectively) of the costs of the data components. See also paragraph 17 of this Ruling.

- when its start time was, or when another start time occurs (if applicable)
- its cost, including the first and second elements
- what method you used to work out the decline in value of the asset
- the details of any balancing adjustment events that happened to the asset
- the evidence supporting the matters canvassed at paragraphs 68 and 69 of this Ruling, and
- the details of any split or merger and what asset or assets resulted, along with the requisite cost adjustments.

Appendix 3 – Detailed contents list

79. The following is a detailed contents list for this Ruling:

References

Previous draft:

TR 2017/D11

Related Rulings/Determinations:

TD 2000/33; TR 97/23;
TR 2006/10

Legislative references:

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- ITAA 1997 40-30(2)
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- ITAA 1997 40-30(2)(b)
- ITAA 1997 40-30(4)
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- ITAA 1997 40-60(2)
- ITAA 1997 40-60(3)
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- ITAA 1997 40-70
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- ITAA 1997 40-75
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- ITAA 1997 40-80(1)
- ITAA 1997 40-80(1)(a)
- ITAA 1997 40-80(1)(b)
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- ITAA 1997 40-80(1)(d)
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- ITAA 1997 40-95
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- ITAA 1997 40-115
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- ITAA 1997 40-295(3)
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- ITAA 1997 40-730(4)
- ITAA 1997 40-730(5)
- ITAA 1997 40-730(6)
- ITAA 1997 40-730(8)
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- Mineral Resources Act 1989 (Qld) 126
- Mining Act 1978 (WA) 56C
- Offshore Petroleum and Greenhouse Gas Storage Act 2006
- Offshore Petroleum and Greenhouse Gas Storage Act 2006 33
- Offshore Petroleum and Greenhouse Gas Storage Act 2006 former 712
- Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011 Div 3 Pt 8
- Tax and Superannuation Laws Amendment (2014 Measures No. 3) Act 2014

Cases relied on:

- AusNet Transmission Group Pty Ltd v Federal Commissioner of Taxation [2015] HCA 25; (2015) 255 CLR 439; 2015 ATC 20-521; 99 ATR 816
- Brent v Commissioner of Taxation (Cth) [1971] HCA 48;

(1971) 125 CLR 418; 71 ATC 4195; 2 ATR 563
- BP Australia Ltd v Commissioner of Taxation (Cth) (1965) 112 CLR 386; [1966] AC 224; 44 ATC 312
- British Insulated and Helsby Cables Ltd v Atherton [1926] AC 205
- Colonial Mutual Life Assurance Society Ltd v Commissioner of Taxation (Cth) [1953] HCA 68; (1953) 89 CLR 428
- Commissioner of Taxation v Ampol Exploration Ltd [1986] FCA 554; (1986) 13 FCR 545; 86 ATC 4859
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- Goodman Fielder Wattie Ltd v Commissioner of Taxation [1991] FCA 264; (1991) 29 FCR 376; 91 ATC 4438; (1991) 22 ATR 26
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- Ronpibon Tin NL v Commissioner of Taxation (Cth) [1949] HCA 15; (1949) 78 CLR 47
- Steele v Deputy Commissioner of Taxation [1999] HCA 7; (1999) 197 CLR 459; 99 ATC 4242; (1999) 41 ATR 139
- Sun Newspapers Limited v Federal Commissioner of Taxation [1938] HCA 73; (1938) 61 CLR 337
- Western Gold Mines v Commissioner of Taxation (WA) [1938] HCA 5; (1938) 59 CLR 729

Other references:

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ATO references

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ATOlaw topic:	Income tax ~~ Capital allowances ~~ Depreciation ~~ Cost of depreciating assets Income tax ~~ Capital allowances ~~ Depreciation ~~ Decline in value calculation Income tax ~~ Capital allowances ~~ Depreciation ~~ Effective life of a depreciating asset Income tax ~~ Capital allowances ~~ Depreciation ~~ Holder of a depreciating asset Income tax ~~ Capital allowances ~~ Depreciation ~~

What is a depreciating asset?
Income tax ~~ Capital allowances ~~ Immediately deductible expenditure
Income tax ~~ Deductions ~~ Exploration – section 40-80 / section 40-730
Income tax ~~ Deductions ~~ General deductions – section 8-1 ~~ Capital vs revenue expenditure
Income tax ~~ Deductions ~~ Trading stock