

HD LAW4704 NOTES

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This is to be used as a guide only, you should take your own notes, read the textbook and legislation for a better understanding of the unit

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Capital Allowances

Capital Expenditure is not deductible under s 8-1, but is under certain specific deduction provisions.

Deduction for Depreciation

s 40-25(1) allows deduction of an amount equal to the 'decline in value' for an income year of a 'depreciating asset' held for any time during the year:

- Only to the extent it is attributable to use of asset/having it installed ready for use, for a 'taxable purpose' (s 40-25(2))
 - o A taxable purpose includes purpose of producing assessable income (s 40-25(7))

Depreciating Asset (s 40-30)

Depreciating asset = an asset with limited effective life and can reasonably be expected to decline in value over the time it is used (s 40-30(1), except:

- Land, trading stock, intangible asset (with exceptions in s 40-30(2))

Decline in Value (s 40-60)

Decline in value begins from when its 'start time' occurs (s 40-60(1), which is when it is first used, or is installed ready for use, for any purpose (s 40-60(2) (note deduction only when taxable purpose though)

There are 2 choices in how to calculate the decline in value (s 40-65), but cannot be changed after (s 40-130), either:

- **Diminishing value method** (s 40-70)
 - o Base value x (days held/365) x (150%*/effective life)
 - If asset was held after 10/5/06, change to 200% (s 40-72(1))
 - **Base value** = its cost (only in the year of its 'start time'), or its 'opening adjustable value' for the year + 2nd element of cost for the year (s 40-190)
 - Opening adjustable value (s 40-85(2)) = adjustable value at end of previous income year, which would take into account the cost, sum of 2nd element of cost, and decline in value up to that time (s 40-85(1))
 - **Days held** = no. of days asset was held in the income year from its start time, ignoring days in that year when you did not use the asset, or have it installed for use, for any purpose.
 - **Effective life** (s 40-95) = can choose either to use effective life determined by the Commissioner under s 40-100, or work out yourself under s 40-105:
 - Estimate period the asset can be used for taxable purpose, producing exempt income or NANEI etc (s 40-105(1A), having regard to the wear and tear you reasonably expect from circumstances of use, assuming asset will be maintained in reasonably good order and condition (s 40-105(1B)).
 - If entity concludes it's likely to scrap/abandon the asset before the end of the period, then the effective life is deemed to end at that earlier time (s 40-105(2)).
 - This may be recalculated if not accurate anymore (s 40-110).
 - For some intangible assets (ie. patents), effective life in s 40-95(7).

Dividends & Returns of Capital

Companies

Companies also pay tax on its taxable income, but at a flat rate of 30% (ITRA s 23), unless they are a base rate entity (27.5% for 18/19 -> 19/20, dropping to 26% then 25% in 20/21 and 21/22 year- note question).

A entity is a base rate entity if (ITRA s 23AA):

- No more than 80% of its assessable income is 'base rate entity passive income'
 - o s 23AB(1)- includes dividends, franking credit, interest, rent, net capital gain etc.
- Its aggregated turnover for the year of income is less than 50m

Dividends

What is a dividend?

All sections in ITAA36.

Definition (s 6-1) = distribution made by a company to its shareholders, in money/property, and any amount credited by a company to any of its shareholders as shareholders. It does not include:

- Where the company debits its share capital account, or
 - o ie. Share buy-backs, return of capital (see below).
- Redemption/cancellation of redeemable preference shares (p. 1277)

Deemed dividends (by the Commissioner):

- If a private company pays an excessive amount of remuneration or retiring allowances (s 109)
 - o Note this is not a frankable distribution (ITAA97 s 202-45)
- When private company:
 - o Pays an amount to a shareholder/associate of shareholder (s 109C(1)(a))
 - o Makes a loan to a shareholder that is not fully repaid by lodgement day (ie. due date for lodgement of tax return) (s 109D)
 - o Forgives a debt owed by a shareholder/associate of shareholder (s 109F)
 - o Note exclusions (p. 739 tb) such as payments of genuine debts, loans to other companies

Taxation of Dividends (s 44)

s 44(1)- Assessable income of a shareholder in a company (resident or not) includes:

- If resident shareholder, dividends paid to it that is out of profits derived from any source (a)
- If non-resident shareholder, dividends paid to it that is out of profits derived from sources in Australia (b)
 - o In effect only applies to non-resident company paying to non-residents (see below)
 - o For resident company paying non-resident, have to withhold tax and the entirety (excl. withheld tax) is NANEI, then consider whether they are eligible for gross up still.
- This section also does not apply to a dividend dealt with in another provision (such as s 128B)
- Note this is the actual amount received, the franking credits are added later.