July 2025

Ministerial Decision No. 173 of 2025 – Depreciation Adjustments for Investment Properties Held at Fair Value under IAS 40

Tax Aert

Before MD 173 : The Position Pre - 2025

Before Ministerial Decision 173 of 2025, the positions on Investment Properties was as follows:

Depreciation Claim

- Not permitted for investment properties measured at fair value under IAS 40 if realisation basis was adopted.

Taxable Gains/Losses

- **Taxpayers applying fair value without electing the realisation basis**: Taxed annually on unrealised gains/losses.
- **Taxpayers electing the realisation basis:** Gains/losses deferred until disposal but still no depreciation deduction during the holding period.

Cash Flow Impact

- Burdensome in both cases for Investment Properties:
  - Without realisation basis: tax liabilities arose even on unrealised gains.
  - With realisation basis: no depreciation deduction despite deferral of gains.

Comparison with Historical Cost

- Historical cost users could claim depreciation annually and were taxed only upon disposal

Summary :

Before MD 173 of 2025, taxpayers opting for realisation basis for the Investment Properties held at Fair Value were disadvantaged as they could not claim depreciation on fair-valued properties during the holding period, unlike historical cost users who claimed depreciation and deferred gains until disposal

The Change :
Post MD 173 of 2025 Framework

After the Ministerial Decision, the changes to the framework are as follows:

Introduction of elective depreciation regime	Eligible taxpayers on accrual basis, applying the realisation basis under Article 20(3), may now claim depreciation on fair-valued investment properties.
Depreciation Rate	Lower of 4% of original cost or tax written – down value at start of the relevant tax period.
Election Requirement	Irrevocable election, applicable uniformly across all qualifying fair-valued properties.
Scope	Only IAS 40 investment properties: buildings for rental income/capital appreciation (excludes land).
Timing	Election to be be made In first tax period after 01-01-2025 if Investment property is held already; else in the year in which First Investment Property is held; for SBR cases in the year in which SBR is not opted

No election = Permanent Forfeiture.

Summary of MD 173 : Current Framework and Key Mechanics

Substantive provisions, framed practically :

Eligibility & Mechanism	•Taxpayers on accrual basis + elected realisation basis under Article 20(3) CT Law. •Allows depreciation deduction for properties held at fair value.
Depreciation Computation	•Deduction = lower of 4% of original cost or tax written-down value, prorated as required.
Uniform Application	•Election applies to all investment properties held at fair value — **no selective application permitted**. •Election is **irrevocable** once made
Interaction with Transfers	•**Intra-group transfers (Articles 26 & 27):** depreciation continuity required; transferee adopts transferor's depreciation base. •**Tax Group transfers (Article 42):** alignment ensured within consolidated groups.
Claw – back Adjustments	•Depreciation previously claimed must be **added back upon realisation events**: ✓Sale, derecognition, cessation, accounting policy change, exempt status election. ✓Applies fully or proportionately for partial realisations.
Anti-abuse rule/GAAR overlay	The FTA has discretion to **disallow depreciation where intra-group or related-party transfers lack commercial substance**, ensuring proper economic alignment.

Comparative Analysis

Aspect	Pre-2025 Fair Value (No Realisation Basis)	Pre-2025 Fair Value (With Realisation Basis	Post-2025 Fair Value (With Realisation Basis)	Historical Cost Users
Depreciation	❌ Not Allowed	❌ Not Allowed	✅ 4%/WDV deductible	✅ Normal depreciation deductible
Tax on Gains	Taxed Annually on unrealised	Taxed on disposal only	Taxed on disposal only	Taxed on disposal only
Cash Flow Impact	🔴 Heavy Burden	🟠 Moderate (no depreciation relief)	🟠 Reduced Burden	🟢 Predictable smooth
Deferred Tax Effects	Volatile	Limited volatility	**Temporary timing differences**	Stable deferred tax profile
Claw-back on disposal	N/A	N/A	Full claw-back applies	Standard disposal adjustment
Comparative Burden	🔴 Highest	🟠 Moderate	🟠 Moderate (relief provided)	🟢 Lowest, Stable

Practical Considerations for Tax, Finance Teams & CFO's

Action Points:

Asset Register Discipline

Maintain comprehensive records:

- Acquisition cost
- Holding period
- Prior depreciation claims
- Fair value designation

Election Compliance

Ensure timely, irrevocable election is made for the first eligible tax return starting from 1 Jan 2025.

Group Restructuring Readiness

Document commercial rationale for intra-group and related-party transfers to withstand FTA scrutiny under GAAR principles.

Deferred Tax Forecasting

Incorporate timing differences into deferred tax planning, critical for IFRS preparers

Tax Group Strategy

Coordinate elections and depreciation continuity under Article 42 where entities belong to a Tax Group

Key Takeaway

Ministerial Decision Ministerial Decision No. 173 of 2025 offers a significant opportunity to align the tax treatment of fair-valued investment properties with that of historical cost users, resolving a longstanding inequity.

- Real estate entities holding IAS 40 properties at fair value should immediately evaluate eligibility, prepare documentation, and make timely elections to avail this benefit while managing claw-back triggers and restructuring impacts.

- Historical cost users remain unaffected and continue to enjoy stable and predictable treatment.

- This development marks a significant step towards parity in the tax treatment of investment properties, but it introduces complexities that demand proactive planning.

- The anti-abuse rule embedded in MD 173 highlights the FTA's continued focus on economic substance and the integrity of group restructurings. Taxpayers must be prepared to justify their transactions from a commercial perspective, supported by robust documentation and valuation logic.

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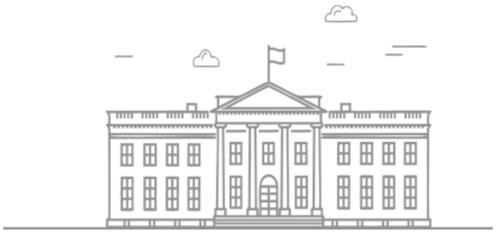

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