Your year-end tax planning manual for FY21

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THINKING AHEAD

Year-end tax planning issues and actions

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Advisors   Accountants   Auditors

The purpose of this manual is to help you with your year-end tax planning for the financial year of 2020/21.

We outline the key issues and recommend actions to help you and your business get where you want to be.

Please contact your local Bentleys advisor for assistance.

1. Introduction

2021 has been one of the most unusual years in terms of new announcements. Non business-as-usual after-tax outcomes will be expected for most taxpayers.

You need to plan properly to mitigate tax impacts on the year-end results. You need to understand strategies which are timing only and which create permanent tax savings. Things like asset write-offs generally just bring forward future deductions for a cashflow benefit rather than a permanent benefit. The SME company tax rate reducing by one per cent next year creates a potential permanent tax saving on company earnings deferred to next year.

The strategies below are based on an entity reducing their taxable income to reduce their tax payable in the current year (which may increase tax payable in future). There may be situations where this is not desirable due to tax losses or income expectations in future years.

Your Bentleys advisor can help you step through the different opportunities, how they should be implemented in your group, and the future tax cashflow consequences from adopting the strategies.

The top-10 year-end planning issues that we recommend you pay particular attention to are:

Year-end issue	Action
1. Asset write-off and asset registers	Maximise deductions through temporary asset write-offs.
2. Prepayment for <$50m turnover businesses	Consider prepaying expenses to defer income.
3. Trust distributions and company dividends	Ensure trust distributions and dividend payments are tax effective given COVID impacts.
4. Employee superannuation and incentive arrangements	Manage increase in Super Guarantee rate to 10 per cent, pay year-end super and lock-in employee incentive payments.
5. Unrealised losses	Consider transactions to realise unrealised losses on assets and foreign exchange.
6. Personal service income	Review personal service income distributions with group in line with new ATO guidance.
7. Losses and company loss carry-back	Ensure losses are available and company loss carry-back can be accessed.
8. Research and development	Ensure adjustments to R&D claim for JobKeeper and associate expenditure are considered.
9. Non-deductibility of 'non-ABN' payments	Ensure ABNs have been received for contractors paid.
10. Company tax rate change and differential	Consider whether lower company tax rate can be accessed.

In this document, we set out these and other suitable responses to key tax planning issues for FY2020/21, for your consideration.

It's important that SME businesses plan properly to mitigate tax impacts on the year-end results.

You need to understand strategies which are timing only and which create permanent tax savings.

2.1 Actions that should occur before 30 June 2021

2.1.1 Asset acquisitions

Depreciating asset acquisitions which are installed ready for use (generally delivered rather than merely ordered) prior to 30 June 2021 may be fully deductible in this financial year under asset write-off concessions. Certain agri assets (e.g. fodder storage) may be deducted before they are installed. The recent Federal Budget extended the full expensing provisions until 30 June 2023.

We have attached asset flowcharts in the Appendix to this document to help you work out your deduction entitlement.

You should acquire assets in the right entities to achieve the best tax advantage. There are several points to consider:

- If you are a small business (<$10m turnover) you will likely get an automatic tax deduction for the balance of all your undeducted depreciating assets on hand. You are not able to choose not to have this tax deduction. You will need to factor this into your tax calculations and year-end planning strategies;
- Where you incur a loss from the asset write-off in a trust, in may impact the ability to distribute franking credits from the trust. You may need to consider a strategy to distribute additional income or dividends to the trust to use up the loss and be able to distribute the franking credits;
- Where you incur a loss from the asset write-off in a company you may be able to access the loss carry-back to get a refund of prior year company tax.

2.1.2 Expense prepayments

The threshold for deducting 'business' prepayments has now increased to businesses with an aggregated turnover less than $50m. Therefore, where you prepay up to 12 months in advance for annual expenses (e.g. insurance, loan interest) before 30 June 2021 you may get a full tax deduction.

Where the business exceeds $50m turnover, there may be certain prepayment opportunities available where properly structured (e.g. prepaying rural products for an agri operation[1]).

2.1.3 Bad debt write-offs

A debt will generally need to be considered 'bad' before it can be written-off and deducted. You need to document that you have taken action to recover the debt to conclude it is reasonable the debt will not be recovered prior to 30 June 2021. You generally don't need to have commenced legal actions. Therefore, COVID-19 creditor protections will generally not impact the assessment of whether the debt is bad.

Where you are not able to show evidence of recovery, it may be possible to determine that the debt was doubtful when raised such that the income should not have been accrued. This will depend on the circumstances of each case.

You may also request a refund of GST paid on the debt on the June BAS.

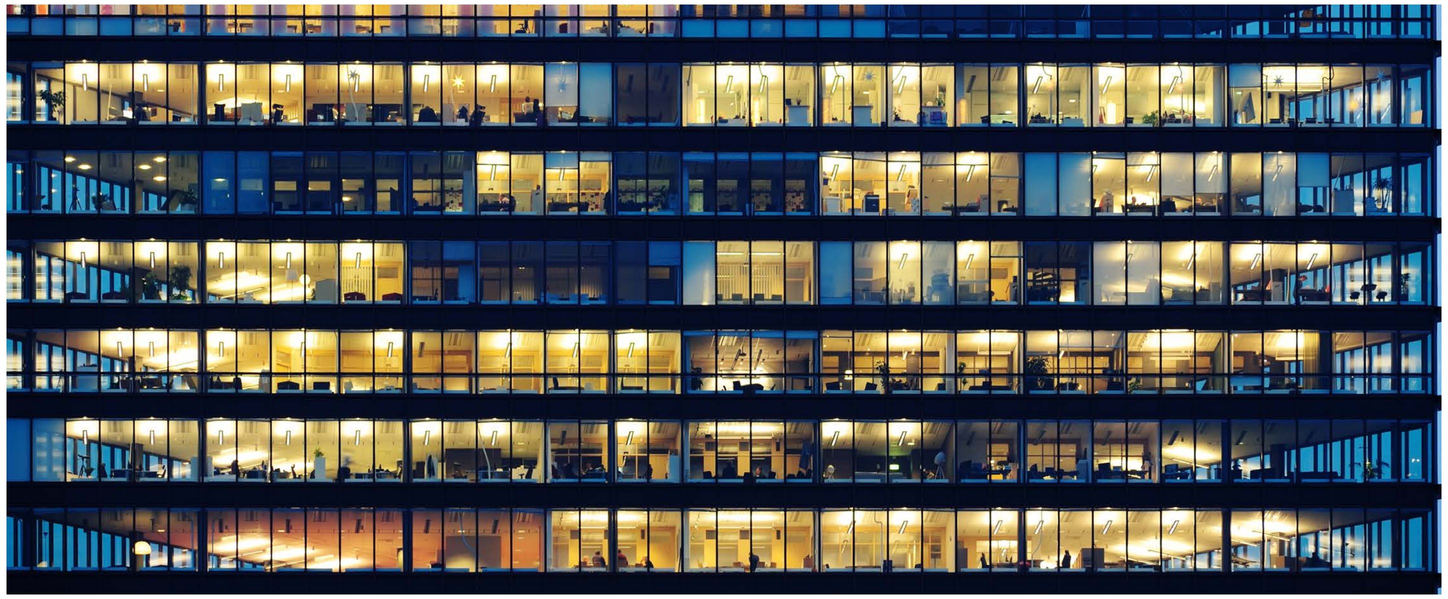
2.1.4 Trust resolutions

Each trust deed will be different in its requirements for making a resolution. However, generally a trustee must have at least considered and resolved to distribute income to particular beneficiaries prior to 30 June 2021 for the distributions to be effective. This may be documented at a later date in accordance with the trust deed.

Best practice is to document a trustee resolution prior to 30 June 2021. Distributions don't need to be paid in cash to be effective.

Issues to consider in making effective trust resolutions include:

- You should plan to make sure that trust distributions are determined in a tax-effective manner.
- Children who have turned 18 prior to 30 June 2021 may receive a higher distribution without penalty tax rates applying;
- Certain special needs children may be entitled to receive a higher distribution without penalty rates applying;



- Use streaming provisions to stream franked dividends and capital gains to entities which will benefit from these types of income;
- It may be effective to distribute income to entities with tax losses (subject to managing specific anti-avoidance provisions).

Trust resolutions during the COVID period are extremely important to get right due to COVID concessions for exempt income (e.g. cashflow boost) and asset write-offs (reduce 'tax' income compared to 'accounting' income). You may need to amend the deed and/or properly document the minutes to make distributions of these amounts tax effective.

Where an 'income' clause such as the following is in your trust deed it may mean a distribution to a company may not be tax effective and you should review your trust deed to allow more flexibility:

> *'Income' means, in respect of any Accounting Period, the greater of:*
>
> - *The Taxable Income of the Trust Fund for that Accounting Period; and*
> - *The sum of the net income of the Trust Fund determined for that Accounting Period according to generally accepted accounting standards and any Capital Gains.*

2.1.5 Dividend payments

A dividend will generally need to be 'paid' prior to 30 June 2021 to fall within the 30 June 2021 financial year. Given the reduction in the company tax rate, it may mean the franking credit for a dividend paid prior to 30 June 2021 is higher than after that date. You also need to ensure there are sufficient franking credits. COVID tax deferrals and concessions may have diminished the franking account balance or there may not be sufficient profits to pay a dividend[2].

We can assist you to review and document tax effective dividend payments. Dividend payments may impact things like the company loss carry-back. Therefore, you should seek advice in relation to your dividend strategy.

2.1.6 Private company loan compliance

Where you have existing private company loan agreements in place (Division 7A) you will need to ensure that minimum statutory repayments are made prior to 30 June 2021 to avoid adverse tax consequences. There are various methods available to evidence a repayment of a loan which do not necessarily require a cash payment. Please contact your Bentleys advisor to determine the appropriate repayment strategy for your loans.

2.1.7 Employee bonuses

An employer must be definitely committed to pay a bonus to an employee as at 30 June 2021 to be entitled to an income tax deduction. The deduction may be available even though the employer may not have paid the bonus by 30 June 2021 or completed the financials to be able to determine whether the metrics were met. Generally, the bonus calculation should be documented in a contract or director's resolution prior to 30 June 2021 to meet the 'definitely committed' test. The employee will generally only be taxable on the bonus in the year of receipt.

2.1.8 Employee superannuation

Superannuation expenses are generally only deductible where the amount has been paid and received by the superannuation fund prior to 30 June 2021.

Superannuation contributions are generally taxed in the fund at 15%. Where the business taxable income is otherwise reduced or in a loss position such that the business tax rate is low, additional super contributions may not tax effective.

You also need to pay particular attention this year to the Superannuation Guarantee Amnesty (which ended in September 2020). Super guarantee charge payments before this date may be deductible, whereas after this date they may no longer be deductible[3].

2.1.9 Employee super packaging

The superannuation guarantee percentage is increasing to 10% from 1 July 2021. Employers should make sure they review employee contracts to determine whether the employee is remunerated on a superannuation inclusive or exclusive basis and whether the additional cost will be passed on to the employee.

2.1.10 Employee single touch payroll

Closely-held entities will need to adopt Single Touch payroll from 1 July 2021 where not already.

2.1.11 Foreign exchange realisations

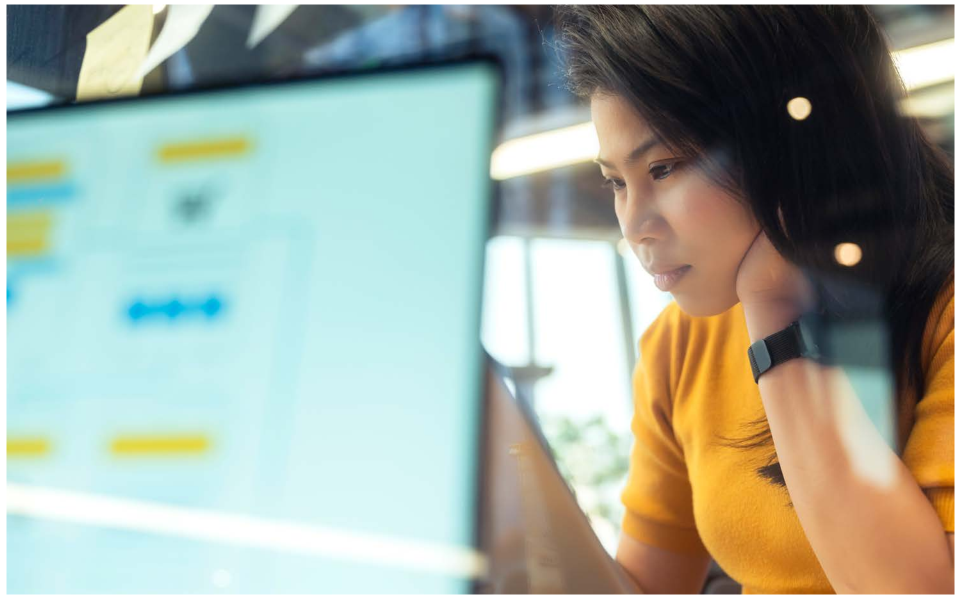
Foreign exchange rates during the COVID period fluctuated greatly with different countries. Generally foreign exchange gains and losses are only taxed when realised. Where you have large unrealised foreign exchange losses (e.g. foreign currency denominated loans or bank accounts) you may need to take action prior to 30 June 2021 to see if an unrealised loss can be realised.

2.1.12 Asset loss realisations

Where you have made capital gains during the year it will be worth considering whether there are realised capital losses which may be brought to account to offset these gains. We note there are various anti-avoidance provisions which impact this strategy so you should seek advice whether the losses are available.

2.1.13 Inter-entity transactions (profit and loss planning)

The tax results of different entities in groups may be very different this year due to the impact of COVID and COVID tax concessions. You should undertake a review prior to 30 June 2021 to determine whether profits and losses in group entities can effectively be offset against each other. The new loss carry-back may also be available. You may need to review inter-entity pricing arrangements and distribution arrangements to ensure the most tax effective result. We can assist with this review.



2.1.14 Personal service income review and strategy

The ATO has recently released updated guidance in relation to the tax treatment of income from personal services. The ATO has set new acceptable 'risk' levels where personal service income is 'alienated' to an entity other than the person who provided the service.

Where you operate in a professional practice business or operation we recommend you review your salary and distribution policies to ensure the risk is mitigated within acceptable ATO levels[4].

2.1.15 PAF contributions and distributions

Where you have established a 'Private Ancillary Fund' for receiving and making deductible donations to manage your business gift programs you should ensure deductible contributions are made prior to 30 June 2021 and minimum mandated levels of donations are made from the fund.

2.1.16 Farm management deposits

Farm Management Deposits (FMDs) may be assessable income when withdrawn. Given tax losses available for assets, now might be the time to consider redeploying FMDs into productive capital investment where the net cost of the withdrawal is tax neutral.

2.2 Actions that should occur shortly after 30 June 2021

2.2.1 Early stage innovation company notifications

Where you operate a start-up innovation company and you have completed a capital raise during the 30 June 2021 financial year you may be able to have your investors access certain tax concessions. You need to make sure you have made the appropriate disclosures electronically with the ATO by 31 July 2021.

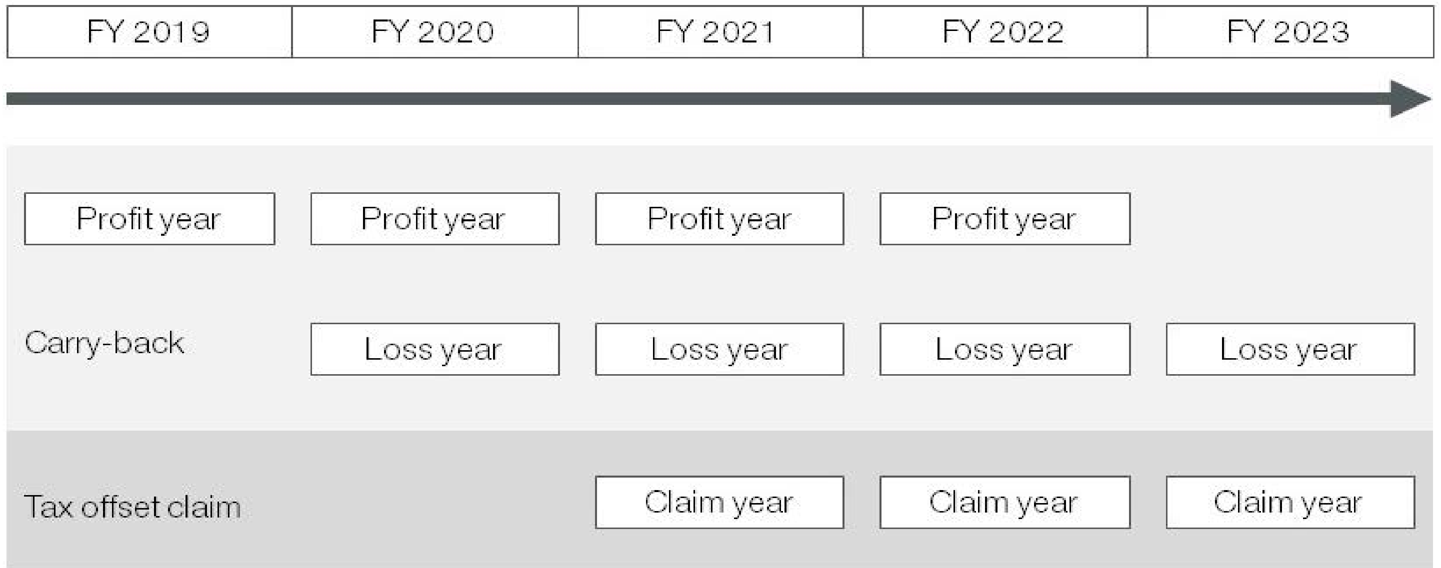
You may also be entitled to Research and Development tax concessions, employee equity concessions and other government funding. We recommend you discuss these with your Bentleys advisor to make sure you are maximising your entitlements for you, your investors and your employees.

2.2.2 New beneficiary TFN notifications

Where you have added new beneficiaries of trusts for the 30 June 2021 you will need to notify the ATO with a TFN declaration by 31 July 2021.

2.2.3 Tax instalment modifications

Where you have completed your tax estimates and you have overpaid tax instalments you should look to vary your final instalment in line with your tax estimates. This should be done by the lodgement date of the June 2021 BAS[5].



2.2.4 Contractor reporting

The ATO requires reporting of payments made to contractors in the following industries:

- Building and construction
- Cleaning services
- Courier services
- Information technology services
- Security, investigation or surveillance services
- Government entities.

The report is due by 28 August 2021[6].

2.3 Other year-end planning points

2.3.1 Stock valuations

There are three different methods for calculating the tax value of stock on hand at year-end:

- Cost
- Market selling value
- Replacement value.

You will generally get the best tax outcomes from choosing the lowest value.

Where stock has become obsolete you may also write-down the value of the stock.

It is therefore important that you do a stocktake at year-end to determine the value of stock on hand from a tax perspective.

Stock which is consumed in the activities (e.g. fuel and oil) is generally deductible when incurred. There are also other costs which may be excluded from the tax value of stock on hand at year-end.

Where you account for work in progress as part of long term construction contracts, there are different tax accounting methods which may provide more favourable after-tax outcomes. We can assist with this review.

2.3.2 Asset write-off choices

A business may choose that the new temporary full expensing rule (Div 40-BB) and 50% Backing business investment rule (Div 40-BA) do not apply for an asset. It may choose to do this where tax losses created may not be able to be used in future or when it could cause an issue with a future sale of a company. A business can also choose not to elect into the small business depreciation rules.

You should talk to your Bentleys advisor to consider which asset choices are appropriate for your business. You can refer to the flow-charts in the Appendix to determine which concessions may apply[7].

2.3.3 Company loss carry-back

The new loss carry-back measures apply to companies to use current year losses to obtain a refund of taxes paid in prior years, as per the diagram above.

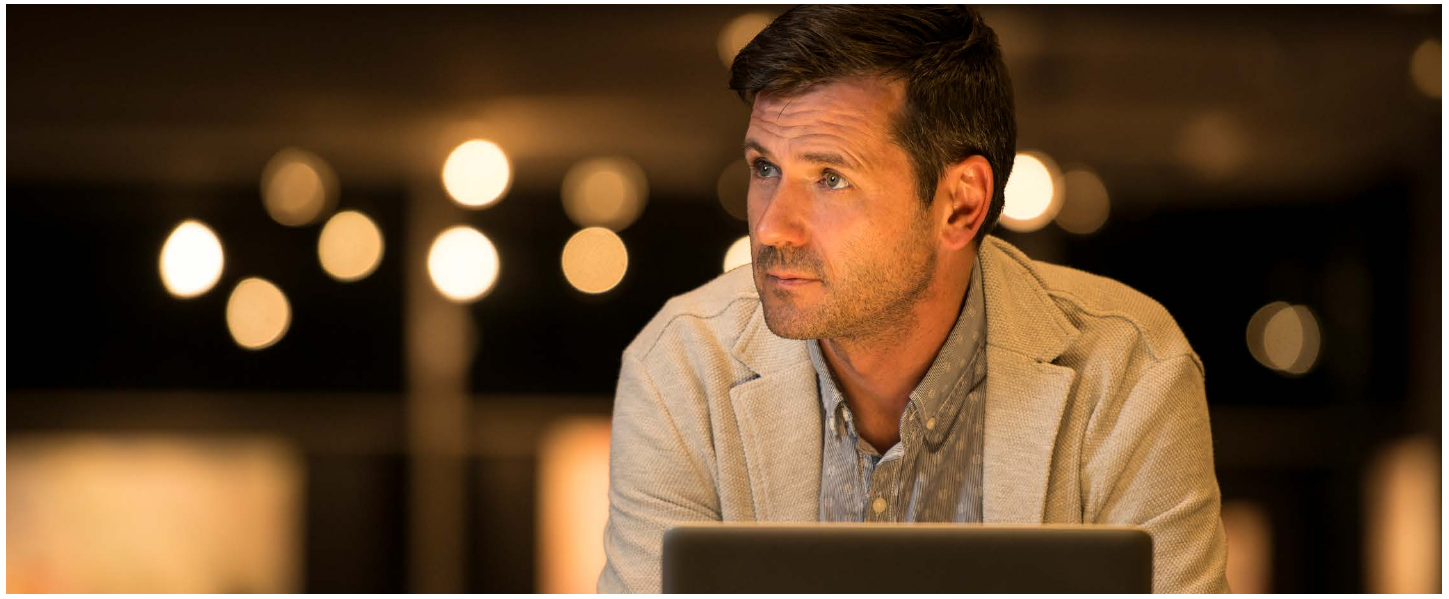
The rules depend on:

- The amount of the tax loss
- The tax rate of the company in the year of making the loss
- The amount of tax paid in the earlier year, and
- The current franking account balance of the company.

Talk to your Bentleys advisor to see if the tax loss carry-back may be available for your company. This may also impact the decision in which entity you acquire new assets to generate tax losses before 30 June 2021.

2.3.4 Vacant land deductions

New provisions denying tax deductions for 'vacant' land held by non-companies commenced in the 2020 financial year. These provisions can impact the deductibility of holding costs of land (e.g. interest) in the pre-development phase. You may be able to structure your arrangements to mitigate the impact of these rules. You should talk to your Bentleys advisor if you incur costs in relation to holding vacant land.



2.3.5 Lease incentives

The new asset write-offs add a new opportunity to structuring lease incentives for tenants. Where you are looking to offer your tenants lease incentives you should discuss how to structure the arrangement to benefit both the landlord and tenant.

2.3.6.COVID revenue deferrals

Commercial property owners may have offered rent deferrals or waivers during the COVID period. You should review whether the tax timing of the income from such arrangements can be deferred. Where you are the tenant you should review whether you can claim a deduction for the amount deferred.

2.3.7 Quantity surveyor reports

Where you acquire new or own existing property you may be able to access increased deductions for prior year capital spend in relation to the property. In particular:

- Building costs incurred by the previous owner may continue to be deductible over a statutory period; and
- Part of your acquisition cost may be attributed to 'depreciable' fitout such as air-conditioners. You may be entitled to access the temporary asset write-offs in relation to these amounts (subject to meeting conditions).

Likewise, where a tenant moves out of your property and leaves a fit-out in place you may potentially be able to access a deduction from demolishing their fitout even where you did not incur the building cost. A Quantity Surveyor can estimate the costs associated with the construction.

2.3.8 Treatment of government grants and concessions

Different COVID concessions have different tax treatments. The Cashflow Boost is specifically non-assessable income[8], as are certain government grants where they have been designated as tax exempt.

Other grants may only be assessable at a later time or when conditions attached to the grant are met. We can assist you to review the treatment of grants with your income tax compliance.

2.3.9 Deductible accruals

Expenses will generally be deductible when you are 'definitely committed' to the outgoing rather than when you receive or pay an invoice for the work. You should pay close attention to:

- COVID payment deferrals offered by commercial clients (e.g. landlords)
- Loan interest accruals
- Statutory cost deferrals offered during the COVID period (e.g. payroll and land tax), and
- Where work has been completed but not yet invoiced to you.

These costs may be deductible in the year of accrual.

2.3.10 Travelling employees

The ATO has recently released updated guidance on the tax treatment of costs incurred by travelling employees. This is particularly relevant for workers who may be considered Living Away From Home rather than travelling. COVID travel restrictions may also have had an impact on this assessment. It is also relevant for workers who live long-distances from their workplaces.

We recommend you pay particular attention to your employee travel related costs to ensure the correct classifications and tax treatments are adopted[8].

2.3.11 Withholding taxes - cash economy

Effective from the start of the 2020 financial year, costs are no longer deductible where withholding tax requirements have not been met. A key area where this may occur is where you have paid consultants who have not quoted you their ABN. In these cases you may have a withholding tax obligation. If you did not comply with this obligation you are unable to claim an income tax deduction for the expense.

2.3.12 Employee v contractor

The ATO continues to challenge the treatment of employees v contractors. In particular, whether superannuation guarantee amounts and on-costs are payable on contractor payments.

You should ensure your systems and processes for determining the classification is appropriate.

2.3.13 Company tax rate / change

The Base Rate Entity company tax rate is reducing to 25% for the FY2022 financial year. There are several ongoing planning points in relation to the lower company tax rate:

- Determining whether the company is under the $50m aggregated turnover test and able to access the lower company tax rate
- Determining the character of income within company groups as 'active' or 'passive' and which tax rate applies. For example, income of an internal asset leasing entity is likely passive
- Managing trust distributions to companies to ensure the 80% passive income test is not breached, and
- Quarantining frankable profits at the 30% tax rate.

We can assist you with strategies to help access the lower company tax rate and, where possible, preserve entitlement to pay dividends to shareholders at the higher franking rate[10].

2.3.14 Financial reporting

The COVID tax concessions may represent a significant departure from normal accounting practice. In particular, it may not be normal accounting practice to write-off all valuable depreciating asset purchases even though the tax rules may allow this treatment.

You should consider the users of your financial reports and whether there needs to be a departure from 'tax' prepared financial statements where it may potentially mislead a user of the report. This may occur where:

- All fixed assets have been written-off as accounting expenses
- COVID deferrals or other provisions are not properly accrued in the financials, and/or
- Deferred tax liabilities for asset write-offs are not reflected in the financials.

You should discuss the scope of the financial accounts preparation with your Bentleys advisor and the degree to which normal accounting principles and standards need to be adopted for this financial year-end for the users of your financial statements.

The preparation of your financial statements may also impact other tax issues such as:

- Whether the company is able to declare a dividend out of available profits, or
- Whether the company has a 'distributable surplus' under the private company loan rules.

2.3.15 Revenue v capital treatment of receipts

You may achieve significant tax advantages from classifying a receipt as 'capital' rather than 'revenue'. Where you have received amounts outside the ordinary course of your business (e.g. from asset sales) you should discuss with us the appropriate treatment and whether there is a benefit from forming a view the amount is capital. An example is certain mining compensation receipts received by agricultural land owners. In the right circumstances these may be non-taxable reductions in the cost of the land[11].

2.3.16 SA land tax nominations

Where you have pre-16 October 2019 South Australian property in a Discretionary Trust you have until 30 June 2022 to nominate a designated beneficiary.

Where you have an increased land tax liability from the new SA land tax changes you may be eligible for transitional relief.

Bentleys can assist you with this land tax review to ensure you are not paying more land tax than necessary[12] .

2.4 2021 housekeeping and documentation issues

2.4.1 Tax asset registers

The new temporary asset write-offs and the interaction with future transactions means that you need to clearly identify on the tax asset register the specific provision you are using to depreciate or write-off the asset. In particular, it is important to identify whether:

- The small business depreciation and write-off provisions in Division 328-D
- The ordinary depreciation rules
- The Instant Asset Write-off in section 40-82, or
- The temporary asset write-offs in Division 40-BA and 40-BB have been applied to each asset.

The flowcharts in the Appendix can assist with this review. You should also ensure that your procedures for adding new assets are reviewed to ensure the correct information is entered by your accounting staff.

2.4.2 Reportable tax positions

Companies with business income of $250m or more, or with business income of at least $25m and part of a group with total business income of $250m or more, are required to prepare a reportable tax positions schedule for the year ended 30 June 2021 This schedule requires a more detailed review in relation to prior period tax positions adopted to be able to correctly answer the questions.

We can assist with this review and in preparing the schedule[13].

2.4.3 Research and development

Documentation and records that support your self-assessment of R&D activity eligibility is not only fundamental to program compliance but now central to a new R&D Tax Incentive Application form for the 2020/21 year and beyond.

R&D claimants also need to be aware that the Jobkeeper funded portion of R&D wages and salaries will not be eligible for an R&D offset.

As the end of financial year approaches, R&D claimants need to ensure that transactions between associated entities are constructively paid in the current year in order for the R&D offset to be received in that year or the benefit will be carried forward.

Please contact our R&D advisors if you have any questions as to how to optimise R&D benefits whilst maintaining program compliance.

2.4.4 Trust deeds and trust compliance

Various State tax measures and changes to vesting conditions for trusts and changes to income streaming provisions mean that existing trust deeds may become out of date. Where you have trusts in your group you should ensure:

- The class of beneficiaries is broad enough to capture all desired distributions within the group
- The vesting date of the trust has not passed or is not due soon and you are aware when it will occur
- The vesting date of the trust is not inconsistent with other trusts in the group such that it impacts intra-group distributions
- The income definition is sufficiently flexible to define income in line with tax concepts or other amounts to ensure distributions are tax effective
- The trusts achieve asset protection and estate planning objectives of the group
- Family trust elections have been reviewed and made where necessary
- Where the trust owns properties in certain States (e.g. NSW) the deed is drafted appropriately to avoid higher tax state tax charges relating to non-residents, and
- Proper minutes of meetings for trustee resolutions are retained with tax documentation.

It is good governance practice to have a rolling review of trust and corporate compliance documentation (e.g. every three years) to ensure currency of the documentation.

2.4.5 Tax governance / ATO review preparation

The ATO is currently undertaken their 'Next 5000 reviews' relating to higher wealth groups (>$50m). This may also be extended to lower wealth groups. The aim is to get broad coverage across this client population. Higher Wealth groups can expect a review over the next couple of years. There are several critical items you need to have in place as part of this review:

- A current group structure diagram with up to date corporate and owner information
- Documentation relating to tax risks within your group and the processes and procedures in place to manage and communicate tax risk. We strongly recommend as part of each annual compliance engagement you undertake with us we provide you with a written communication in relation to the material tax positions the group adopts in each year and our assessment of the risk of the positions. This will form a key part of your governance documentation, and
- Consideration of, and documentation relating to, each key risk area the ATO has identified in relation to private groups[14].

We recommend, if you are within the target group for this review, you consider engaging your Bentleys advisor to prepare additional documentation as part of the 2021 compliance preparation. This should be in

line with ATO expectations of a Next 5000 review to ensure you are ready to respond quickly.

We generally find that clients who are well prepared and respond quickly and in detail to an ATO request will move faster to finalisation without a costly detailed review.

2.4.6 Aggregated turnover testing

Many of the tax concessions available are based on a common definition of group 'aggregated turnover'. Entities which are 'connected' (generally >40% common ownership) or 'affiliated'(general control relationship) with the business entity can be included. This can include income of overseas entities. The relevant thresholds where aggregated turnover is relevant are: $2m, $10m, $50m, $100m, $500m, $1bn or $5bn. An entity is under a threshold where it meets any of the following:

- Aggregated turnover in the prior year is under the threshold,
- Aggregated turnover for the current year is likely to be under the threshold and was not over the threshold in each of the two prior years, or
- Aggregated turnover for the current year is under the threshold (worked out at the end of that year).

Therefore, this is a rolling test which needs to be continually monitored[15].

2.4.7 Private company loans

The private company loan rules are complex to administer in private groups and require careful consideration and documentation of:

- Compliant loans under written loan agreements
- Effective repayment of loans, and
- Analysis of flow-on issues with group distributions.

We recommend each year you prepare appropriate minutes to evidence group transactions to manage possible private company loan exposures. Non-compliance with these rules can expose a business to additional taxes of up to 29% on wealth transferred from group companies.

2.4.8 JobKeeper documentation

The JobKeeper measures were implemented by the government and businesses very quickly and relied on an assessment of:

- Compliance with a 'reduction in turnover' test, and
- Assessment of eligible employees.

The ATO has been increasing its compliance activities in relation to erroneous JobKeeper claims and has highlighted lack of documentation as a key issue, particularly with the benefit of hindsight. This is also a key focus in a due diligence review as part of a possible sale.

We recommend businesses which have previously claimed JobKeeper take time for this year to undertake an internal due diligence review of their initial claims to make sure appropriate documentation is retained. This will assist with a future ATO review or sale due diligence review.

2.4.9 Personal service income / contractor documentation

The ATO has renewed its focus on entities which might be subject to personal service income treatment. This treatment may have the effect of mandating that income earned by an entity is taxed to an individual at a higher marginal tax rate. An effective strategy to mitigate against the risk of these rules applying is to ensure that contractors are rewarded in compliance with the 'independent contractor' test[16]. This applies equally for services provided between related parties.

We can help you put in place agreements which document compliance with this test.

2.4.10 Employee share plans

Effective remuneration strategies for key employees can include sharing in the equity of the business. It is critical that these types of arrangements are properly documented in compliance with the tax rules to be effective for the company and the employee. This may also require making sure that tax compliant valuations are retained. In particular:

- Start-up concession: The start-up concession allows an employee to only be taxed on future realisation of the equity provided under the CGT provisions. Certain valuation concessions and requirements apply to this scheme;
- Deferred concession: An employee share scheme needs to have certain requirements to enable an employee to defer taxation until future realisation;
- Loan scheme: Employees made be offered loans to acquire equity which are paid down through future equity returns. These loans need to be properly documented to comply with tax and FBT requirements.

2.4.11 Inter-entity agreements / minutes

The 2021 year-end may require a closer emphasis on related party transactions to offset profits and losses in different group entities. These transactions will need to be properly documented and reasonable to ensure they remain tax effective.

2.4.12 Not-for-profit tax exemption

Announcements in the 2021 budget will make it even more critical for not-for-profit entities to assess their compliance with income tax exempt status from year-to-year. The ATO has released a Self-Governance Checklist to help with this process.

2.5 International issues

2.5.1 Withholding taxes

The nature of contracting arrangements with overseas parties may have changed as a result of COVID. It is important that you review the terms of cross-border agreements to ensure that withholding tax obligations are met.

Payments may be non-deductible where withholding tax requirements have not been met. The ATO is also looking at structures which seek to avoid withholding taxes[17].

2.5.2 Anti-hybrid rules

The anti-hybrid rules are a complex set of new legislation which seek to align the tax treatment of income and expenses in Australia with the tax treatment overseas. It does this by denying a tax deduction or including an amount as assessable where there is a mismatch overseas. This could occur in the following types of scenarios, for example:

- Interest on a loan from a related overseas party is taxed at a low tax rate in the overseas jurisdiction
- A US holding entity 'ticks-the-box' on an Australian entity to treat it as a flow-through such that inter-entity transactions are not taxed in the US
- An expense paid overseas relates to a separate hybrid arrangement an overseas related party has with another related party.

"You cannot be certain of the tax treatment in Australia of amounts paid overseas, unless you have a detailed understanding of the worldwide group and the tax treatment in the overseas jurisdiction."

Therefore, you cannot be certain of the tax treatment in Australia of amounts paid overseas, unless you have a detailed understanding of the worldwide group and the tax treatment in the overseas jurisdiction. The ATO has set out a set of minimum information requirements it expects taxpayers to keep to ensure compliance with these rules[18].

2.5.3 Transfer pricing

Offshore related party transactions must comply with Australian and overseas transfer pricing requirements to be tax effective. The ATO and overseas jurisdictions have certain safe harbors and documentation concessions which make this easier for SME entities to comply with the rules.

The COVID period affected many existing related party arrangements and it may be necessary to review and document this impact. For example, if an overseas operation was adversely impacted and generated a large loss, in may be possible to transfer price some of this loss to the Australian operation, where they should have borne the financial risk of this loss. Likewise, the ATO does not accept that government funding (e.g. Jobkeeper) can merely be passed on overseas as a pricing adjustment[19].

We can assist you to ensure that your transactions continue to be compliant with transfer pricing rules and you fit within existing concessions.

2.5.4 Thin capitalisation

The thin capitalisation rules limit the amount of deductible debt which can be maintained in an Australian 'global' group. There is a general threshold of $2m interest at which the rules apply. However, where the rules apply, COVID impacts on group balance sheets may impact thin capitalisation safe harbors. Therefore, this is a critical year to review your thin capitalisation position to ensure debt deductions are not impacted.

2.5.5 Permanent establishment

Travel restrictions for employees may impact whether a permanent establishment of an entity existing in Australia or overseas. This may create a taxable presence of the company here or overseas. You should review this as part of this year-end.

2.5.6 Offshore compliance

Most countries introduced COVID related concessions. You should make sure these have been correctly applied overseas and there are no flow-on consequences for the Australian operation.

2.5.7 Non-resident employees

Where a business has non-resident employees located in Australia for extended periods due to COVID, it may mean there are tax obligations (PAYG, super, payroll tax, etc). You should make sure that these employees are identified and compliance has been managed[20].

2.5.8 Foreign tax offsets

The ATO has released further guidance in relation to eligibility for foreign tax offsets in Australia. Foreign taxes on capital gains, in particular, may be impacted[21]. There are a number of considerations in determining whether overseas taxes are eligible for credit in Australia.

We can assist you with this review.

COVID had a significant impact on our ability to travel. The ATO is looking closely at travel expenses, particularly where employees may be living away from home rather than travelling on work. This should be a focus for this year-end.

3.1 Actions that should occur before 30 June 2021

3.1.1 Superannuation contributions

Superannuation contributions need to be received by the fund before 30 June 2021 to be deductible. The concessional (deductible) limit for superannuation is generally $25,000. The fund will need to be notified of the deduction and the individual should receive confirmation and retain this with their tax records.

3.1.2 Asset realisations - contract date

Where an individual has made taxable capital gains it may be tax effective to consider whether unrealised capital losses can be realised. Capital gains and losses are generally brought to account when sale contracts are signed rather than when transactions settle.

3.1.3 Donations

Donations to deductible gift recipients may be deductible where paid and receipted prior to 30 June 2021.

3.1.4 Prepayments

Individuals may claim an immediate deduction for prepayments not exceeding 12 months.

3.1.5 Asset write-offs

Individuals not carrying on a business (e.g. employees) are not entitled to the instant asset write-off or temporary full expensing measures. Employees are limited to expensing assets costing less than $300. Where employees wish to access the full expensing measure for larger purchases (e.g. work vehicles) they may need to consider acquiring assets in related business entities or packaging with an employer.

3.2 Other planning issues

3.2.1 Varying PAYG instalments

Consider varying the 4th quarter PAYG instalment in line with tax estimates where forecast tax is lower than instalments.

3.2.2 Working from home deductions

Consider whether the ATO short-cut 80c per hour method or the normal 52c per hour with actual expenses for related home office equipment and internet costs will result in a better home office claim. There should be an expectation that home office claims will be higher during the COVID period where you were working from home[22].

3.2.3 Treatment of COVID related receipts

Ensure receipts for early release of super are not included as assessable income and the treatment of other COVID related receipts is correct[23].

3.2.4 Vehicles and log books

Patterns of travel during the COVID period may not be reflective of normal use. Make sure vehicle log books properly reflect business-as-usual travel arrangements and adjustments are appropriately made for the COVID period.

3.2.5 Travel expenses

COVID had a large impact on the ability to travel. The ATO is looking closely at travel expenses, particularly where employees may be living away from home rather than travelling on work. This should be a focus for this year-end.

3.2.6 Private health insurance

Acquiring a compliant private health policy may mitigate future Medicare levy surcharge amounts. It is important to check the amount of rebate claimed through the fund and whether a catch-up payment may be necessary on the income tax return.

3.2.7 Rental property depreciation

Building costs of a rental property and depreciation on new assets may be additional non-cash costs you can claim against your rental property. You may need to engage with a quantity surveyor to assess the amount of eligible costs.

3.2.8 Rental property expenses - interest

The ATO, through its rental property program, has been looking closely at the tax treatment of interest on loans. In particular, it is focussing on arrangements which seek to inflate 'deductible' interest and reduce 'non-deductible' interest through structuring of loan facility arrangements[24].

We can assist you to review and properly implement and document deductibility of interest on your rental property loans.

3.2.9 Rental property expenses - no ABN

The ATO, through its rental property program, has been looking at payments which property owners make to entities who do not provide their ABN. New rules introduced for the 2020 financial year mean that where a supplier does not provide an ABN and the property owner does not withhold tax, no deduction will be available for the outgoing. This could include 'cash-in-hand' repair work on a rental property.

New rules introduced for the 2020 financial year mean that, where a supplier does not provide an ABN and the property owner does not withhold tax, no deduction will be available for the outgoing.

4. References

1. Australian Taxation Office, Product Ruling PR 2020/12 'Income Tax: taxation consequences for a customer entering into a Rural Prepayment Program with Elders Rural Services Australia Ltd' (9 December 2020)
2. For example, PBR: frankable distribution from reserve (external website)
3. Related links (external websites):
   - PSLA 2020/D1: Remission of additional SG charge
   - Super guarantee amnesty
4. PCG 2021/D2: Allocation of firm profits ATO compliance approach (external website)
5. Varying PAYG instalments (external website)
6. ATO reminder for businesses which pay contractors and need to lodge taxable payments annual report (external website)
7. Related examples (external website):
   - PBR: instant asset write-off
8. Tax consequences of cashflow boost (external website)
9. Related documents (external websites):
   - Taxation ruling TR 2021/1: deductibility of employee transport expenses
   - Draft taxation ruling TR 2021/D1: accommodation, food and drink expenses and allowances
   - Draft Practical Compliance Guideline PCG 2021/D1
10. Company tax rate change (external website)
11. For example, PBR: Mining compensation payment (external website)
12. Related links (external websites):
    - SA Land Tax guides
    - SA Land Tax transitional fund
13. RTP schedule expansion to large private companies (external website)
14. Risk areas for HWIs (external website)
15. Related document: JobKeeper payments and aggregated turnover (external website)
16. TR 2021-D2: Personal services income and businesses (external website)
17. Offshore entities interposed to avoid interest withholding tax: ATO Taxpayer Alert (external website)
18. Related documents (external websites):
    - Integrity rule Law Companion Ruling finalised
    - PCG 2021/D3: Imported hybrid mismatch rule
19. Transfer pricing arrangements and JobKeeper payments
20. Related document: Notice of data-matching program (external website)
21. TD 2020/7: Capital gains not included in FITO limit (external website)
22. Related document: PCG 2020/3 COVID-19 and working from home (external website)
23. Related document: Exclude COVID-19 ERS payments reminder (external website)
24. Related document: PBR Interest deductibility on linked offset account (external website)

5. Appendix: Asset flowcharts

Asset write-off flowcharts
For the years ended 30 June 2020, 2021, 2022 & 2023 Financial Years

Bentleys
THINKING AHEAD

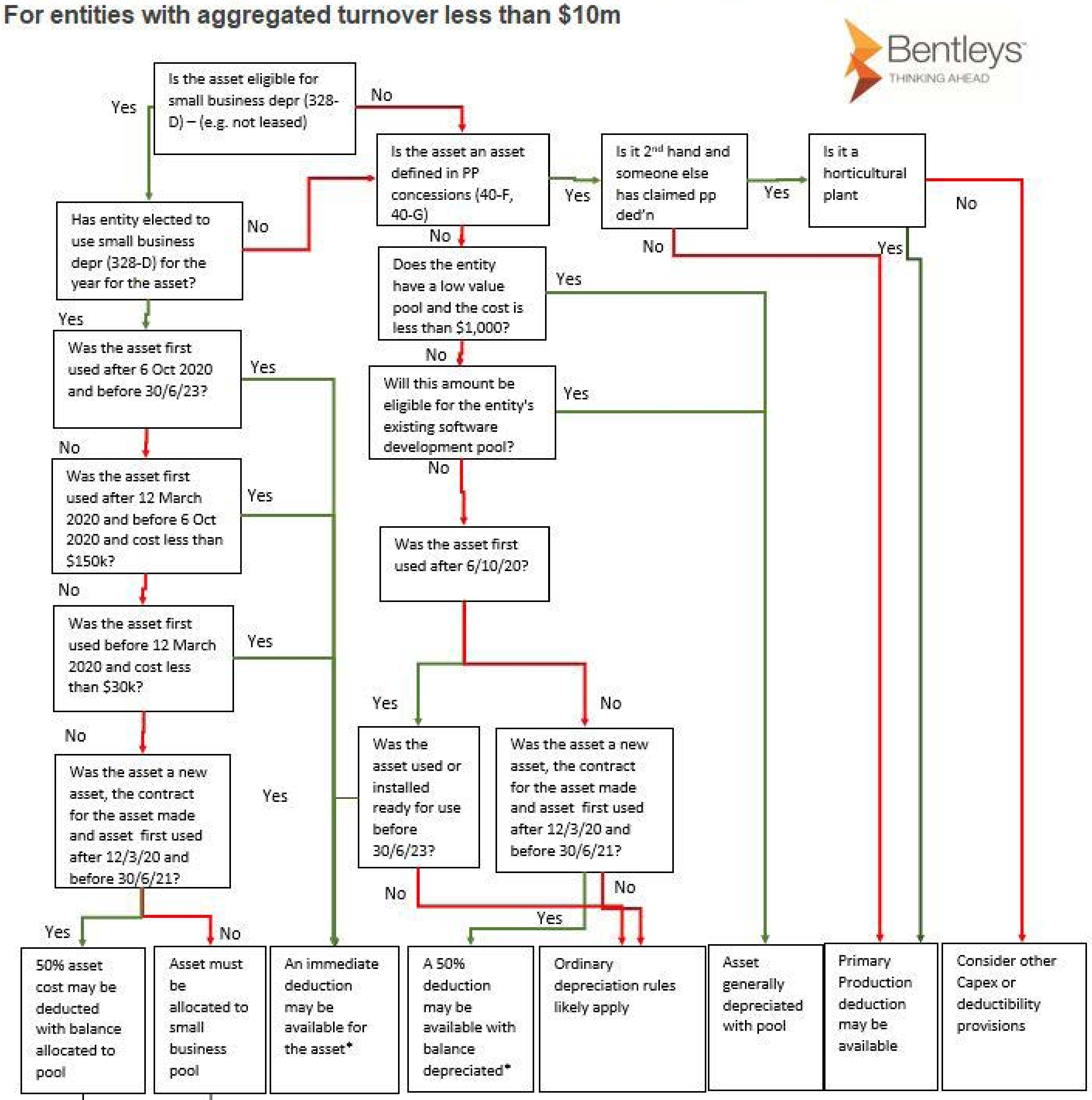
The purpose of the attached flow-charts is to assist with determining whether an asset may be written-off under the new government incentives.

Before you use the flowcharts you need to understand key concepts:

Aggregated turnover	Aggregated turnover is defined in Division 328-C ITAA1997. It includes 3 alternative tests (you only need to pass one): 1 Turnover in prior year is less than the relevant threshold 2 Estimated current year turnover is less than the relevant threhold (and turnover 3 Your actual current year turnover is less than the relevant threshold Turnover includes 'connected' and 'affiliated' entities (including overseas) *The relevant threshold is $10m, $50m, $500m or $5bn as applicable
Leased assets	Assets which are held by a small business entity and leased to another entity are
Depreciating asset	A depreciating asset is defined in Division 40 ITAA1997. Primary producers can have a larger range of included assets (section 45) Capital works items (Division 43 ITAA1997) are excluded (generally structural items like In some cases structural items may be depreciable (see for example Port of Portland case)
Hold an asset	The entity must 'hold' a depreciating asset as set out in s40-40 ITAA1997 The holder can be different from the legal entity who owns the asset Be careful with leasing financial arrangements
Carry on a business	To access asset write-offs the entity must carry on a business. The flowcharts should only be used where the entity is carrying on a business. A limited $300 deduction can apply for non-businesses Leasing property can, in certain cases, be carrying on a business The post-6 October 2020 asset write-off (40-BB) and 50% write-off concession (40-BA) state the asset must be used in Australia
Use of an asset	Many of the concessions apply depending on the date of first 'use'. This includes where an asset is installed ready for use.
Contract date	Some concessions depend on contract date. This can also be when you start to construct or hold the asset in some other way.
2nd element cost	The post-6 October 2020 asset write-off (40-BB) can apply to second element costs of an existing asset as though they were a new asset acquired and used after that date.

The flowchart outcomes are intended as general guide only. There will be specific cases which are not addressed by the flowchart and may require further research.

Depreciating Asset flow-chart - 30 June 2020, 2021, 2022, 2023 financial years
For entities with aggregated turnover less than $10m



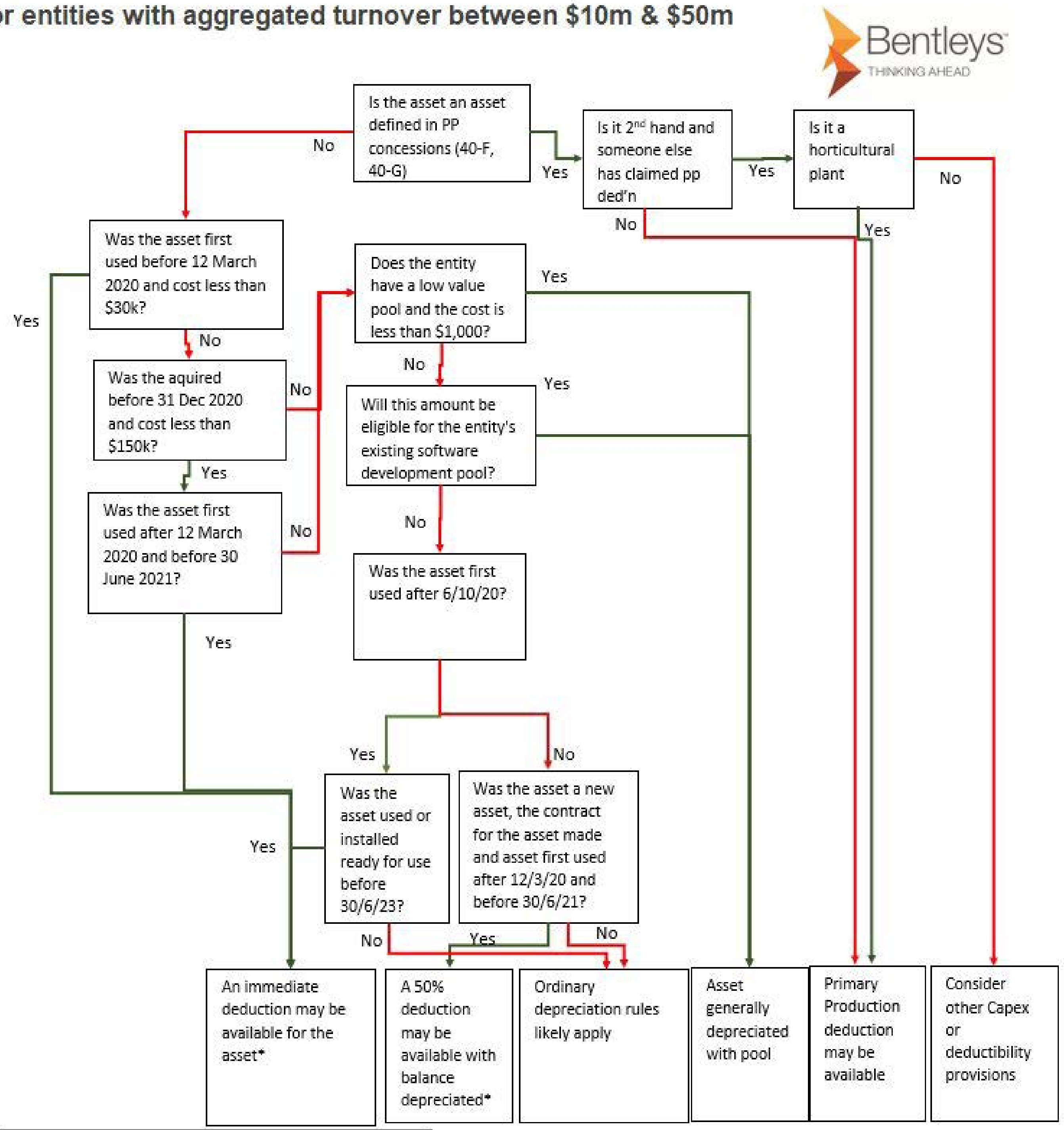
The balance of the small business pool may be deductible as at 30 June 2021, 2022 or 2023 (or 30 June 2020 if less than $150k)

Note: Disclaimer

The purpose of this flow chart is intended to be viewed as a general guide and should not be relied upon as advice. The additional complexities and nuances of these provisions have been left out to illustrate how these provisions generally apply and interact with one another. If you have any questions or would like some assistance please get in touch with a member from the tax team at Bentleys SA. The flowchart has been updated based on government announcements which have not yet been legislated.

* A choice may be made not to apply Division 40BA or 40BB asset write-offs (but not IAWO)

Depreciating Asset flow-chart - 30 June 2020, 2021, 2022, 2023 financial years
For entities with aggregated turnover between $10m & $50m

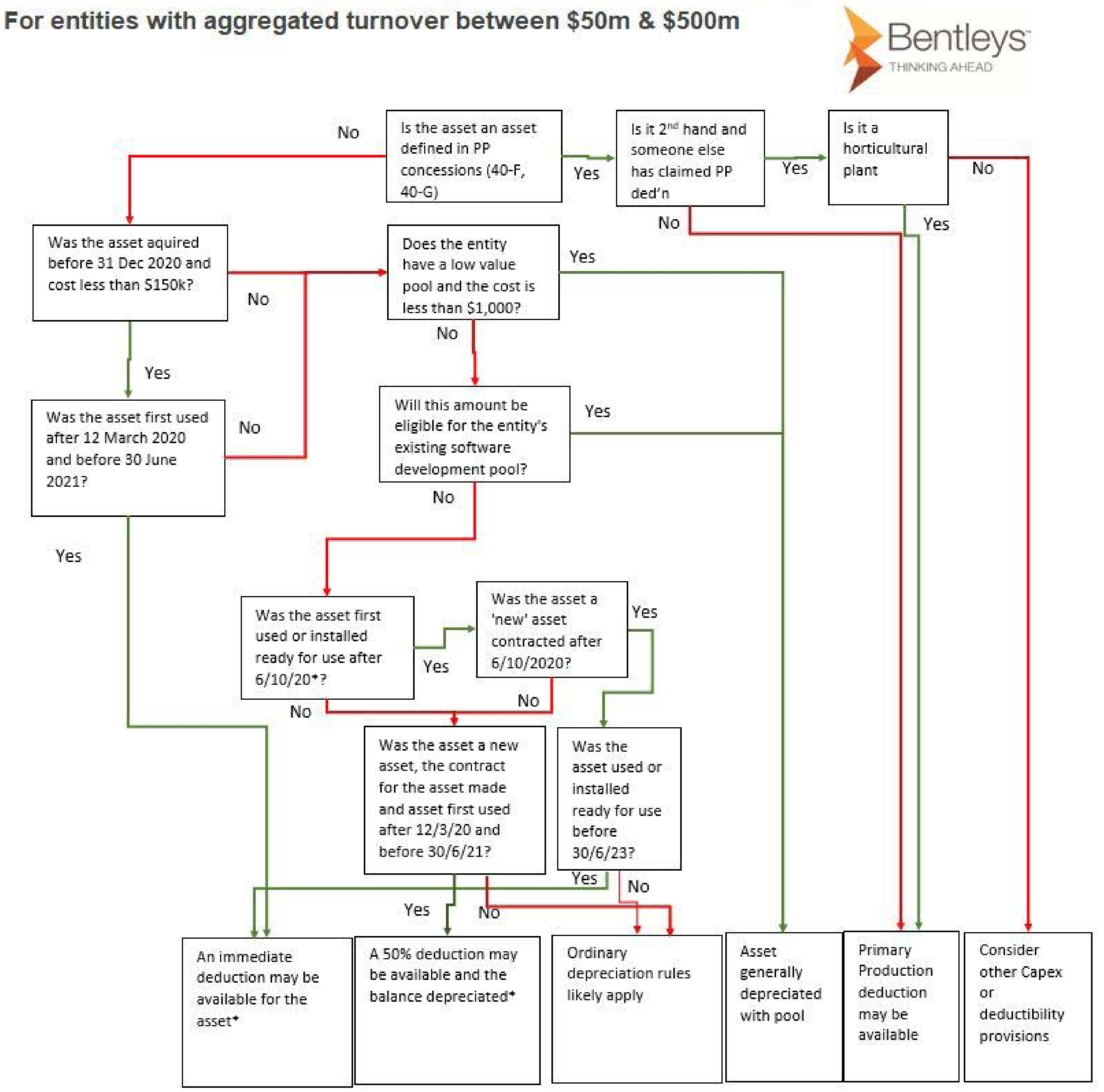


The balance of any existing small business pool may be deductible as at 30 June 2021, 2022 or 2023 (or 30 June 2020 if less than $150k)

Note: Disclaimer
The purpose of this flow chart is intended to be viewed as a general guide and should not be relied upon as advice. The additional complexities and nuances of these provisions have been left out to illustrate how these provisions generally apply and interact with one another. If you have any questions or would like some assistance please get in touch with a member from the tax team at Bentleys SA. The flowchart has been updated based on government announcements which have not yet been legislated.

* A choice may be made not to apply Division 40BA or 40BB asset write-offs (but not IAWO)

Depreciating Asset flow-chart - 30 June 2020, 2021, 2022, 2023 financial years
For entities with aggregated turnover between $50m & $500m

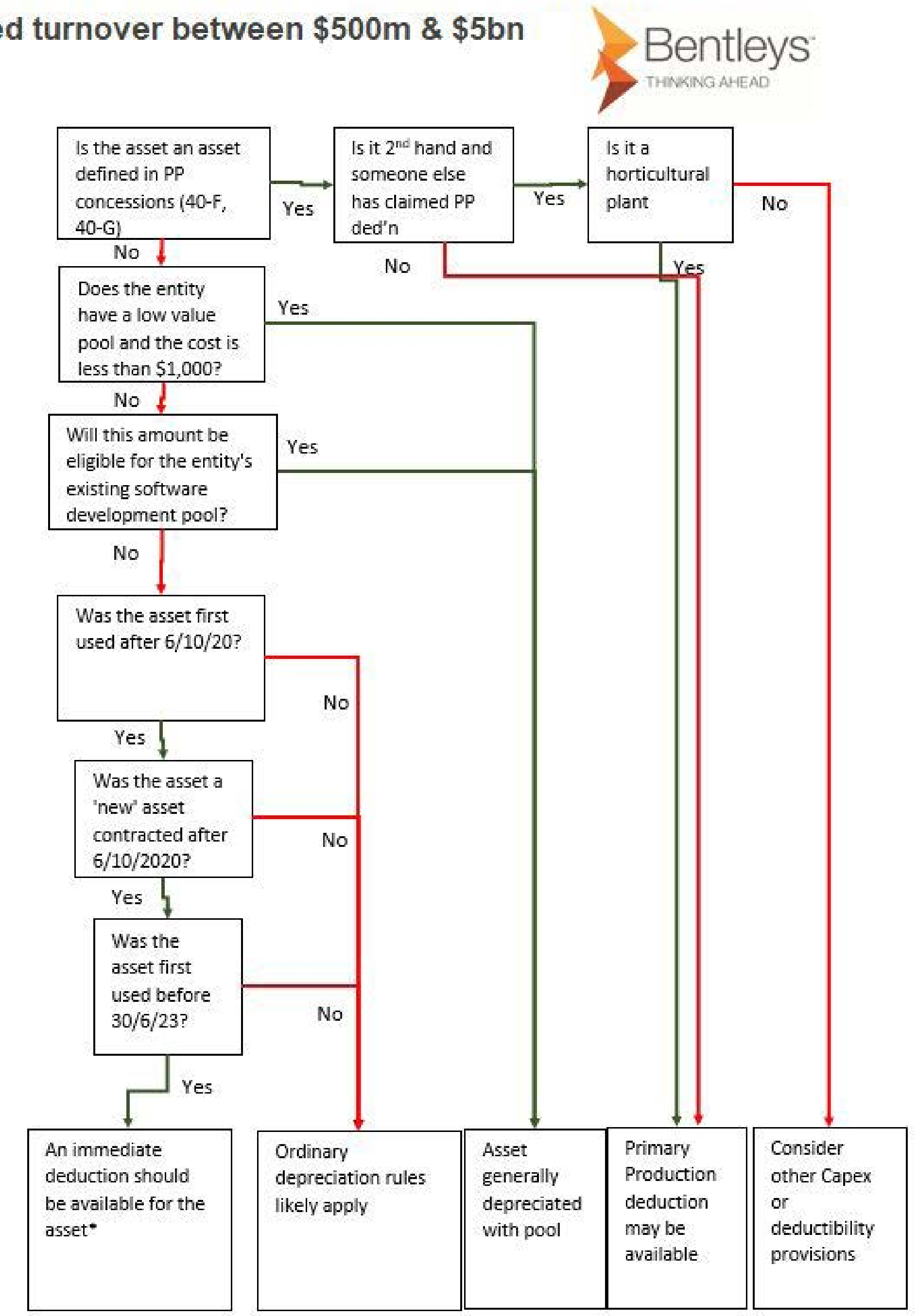


The balance of any existing small business pool may be deductible as at 30 June 2021, 2022 or 2023 (or 30 June 2020 if less than $150k)

Note: Disclaimer
The purpose of this flow chart is intended to be viewed as a general guide and should not be relied upon as advice. The additional complexities and nuances of these provisions have been left out to illustrate how these provisions generally apply and interact with one another. If you have any questions or would like some assistance please get in touch with a member from the tax team at Bentleys SA. The flowchart has been updated based on government announcements which have not yet been legislated.

* A choice may be made not to apply Division 40BA or 40BB asset write-offs (but not IAWO)

Depreciating Asset flow-chart - 30 June 2020, 2021, 2022, 2023 financial years
For entities with aggregated turnover between $500m & $5bn



The balance of any existing small business pool may be deductible as at 30 June 2021, 2022 or 2023 (or 30 June 2020 if less than $150k)

Note: Disclaimer
The purpose of this flow chart is intended to be viewed as a general guide and should not be relied upon as advice. The additional complexities and nuances of these provisions have been left out to illustrate how these provisions generally apply and interact with one another. If you have any questions or would like some assistance please get in touch with a member from the tax team at Bentleys SA. The flowchart has been updated based on government announcements which have not yet been legislated.

* A choice may be made not to apply Division 40BB asset write-off

6. Your tax experts

Bentleys is a network of advisory and accounting firms, with over 700 talented staff delivering solutions from 18 locations across Australia, New Zealand and China. We work with aspirational businesses and entrepreneurial people to help them achieve their objectives and get where they want to be.

We take this opportunity to introduce you to some of our tax, R&D incentives, and business advisory specialists.

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7. Disclaimer

Our tax comments are based on current taxation law as at the date of this document is provided. You will appreciate that the tax law is frequently being changed, both prospectively and retrospectively. A number of key tax reform measures have been implemented, a number of other key reforms have been deferred and the status of some key reforms remains unclear at this stage.

Unless special arrangements are made, this document will not be updated to take account of subsequent changes to the tax legislation, case law, rulings and determinations issued by the Australian Commissioner of Taxation or other practices of taxation authorities. It is your responsibility to take advice if you are to rely on our advice at a later date.

The income tax law includes various anti-avoidance provisions including a general anti-avoidance provision. We do not warrant or make any assertions that the ATO will not seek to apply these provisions to a tax planning strategy you implement. All strategies must be based on commercial reality and have regard to the various anti-avoidance provisions which might apply. We are unable to give any guarantee that our interpretation will ultimately be sustained in the event of challenge by the Australian Commissioner of Taxation.

The comments in this report are general in nature only and do not constitute advice based on your particular circumstances. Accordingly, neither the firm nor any member or employee of the firm undertakes responsibility in any way whatsoever to any other person or company for anyone seeking to rely on the comments in this report as advice.