

Top 10 General Year End Tax Issues

In the lead up to year end, taxpayers should consider a range of general tax issues relevant for year-end planning purposes. Here are our Top 10 general matters to consider:

1. **Franking and dividends** – franking account balance at year end, franking deficit tax, benchmark franking rule, frankable v unfrankable distributions (including distributions funded by raising equity capital or debt), share capital tainting, dividend declaration and payment timing, eligibility to pay dividends tested on a stand-alone basis for the relevant company, and dividend statement disclosures.
2. **Funding & financing** – thin capitalisation position, debt deduction creation rules, TOFA (including elections, documentation), commercial debt forgiveness opportunities and outcomes, cross border related party financing documentation, bad debts write off.
3. **Losses** – current year loss utilisation including consideration of continuity of ownership test (“COT”) and business continuity test (“BCT”); transferred losses in consolidated groups and updates to available fractions for capital injections and non-arm’s length transactions; realisation of capital losses to offset current year capital gains.
4. **Family groups / private companies** – Division 7A loan maintenance for existing and new loans; year-end trust resolutions/minutes; trust distributions and tax treatment of UPEs; small business concessions (capital allowances, CGT).
5. **PAYG** – tax liability forecast and June 2025 quarter or May / June 2025 month PAYG instalment variation.
6. **Capital Allowances** – capex expenditure (fixed asset) reviews including appropriate tax treatment and classification; identification of disposed / scrapped assets; capital v revenue expenditure including repairs v improvements; instant asset write off for small businesses; review of effective lives and depreciation methods; tax treatment of software as a service.
7. **Rental properties** – review of immediately deductible expenses and capital allowances; genuinely available for rent, holidays homes and private use and apportionment; CGT implications of selling a rental property; renovations and QS reports; record keeping.
8. **Timing of Income and Deductions** – review major income and expenditure items for timing of assessability and deductibility respectively (e.g. contract income for work in progress, accruals, employee bonus provisions, bad debts).
9. **Trusts** – ensure trustee resolutions/determinations are made before year end; confirm tax profile of trusts (MIT / AMIT eligibility; MIT start up concessions); satisfying trust loss and debt deduction rules; review distributions from foreign trusts.
10. **International Tax** – hybrid mismatch rules, CFC identification and calculations, calculations for foreign hybrid limited partnerships or companies, international related party transactions and transfer pricing, exempt foreign distributions or gains for companies, Significant Global Entity / Country-by-Country Reporting Entity status.

Deputy Commissioner Louise Clarke discusses *Bendel* decision

On 19 February 2025, the Full Federal Court in [Commissioner of Taxation v Bendel \[2025\] FCAFC 15](#) found that unpaid present entitlements (“UPEs”) owed by a trustee to a corporate beneficiary are not “loans” for the purposes of Division 7A, displacing the Commissioner’s long-standing position in [TD 2022/11](#).

The ATO’s Private Wealth Client Experience Deputy Commissioner, Louise Clarke, has shared her thoughts on common questions from private companies and their advisers regarding the *Commissioner of Taxation v Bendel [2025] FCAFC 15* case decision and court process. Taxpayers are strongly encouraged to review the ATO’s [Interim Decision Impact Statement](#), and to seek advice about their individual circumstances.

Key points from the ATO are summarised below:

- The ATO has sought special leave to appeal the *Bendel* decision to the High Court and does not intend to revise its current views relating to private company entitlements to trust income until the appeal process is exhausted.
- It is anticipated that the High Court will decide to grant special leave to appeal in the next few months. If the High Court decides to hear the ATO's appeal, the whole process can take some time. However, if the High Court chooses not to hear the ATO's appeal, the ATO will publish, as a priority and almost immediately, practical guidance for taxpayers by updating its Decision Impact Statement. It will also, over the course of weeks and months, review and update relevant ATO guidance products.
- No blanket extension of time will be granted for affected companies to lodge their tax returns pending the High Court's decision about the ATO's special leave application.
- Where a deemed dividend has arisen due to a group arranging their affairs in reliance on the views expressed by the Full Federal Court, no blanket exercise of the discretion in section 109RB will be granted to disregard any deemed dividends if the Commissioner is ultimately successful in the High Court.
- Where a UPE is not converted into a complying Division 7A loan, taxpayers face the prospect that other integrity provisions may apply to their arrangement (depending on the particular facts), for example Subdivision EA and section 100A. This is regardless of the outcome of the Commissioner's special leave application and any possible appeal.
- If a taxpayer has been following the ATO guidance and if they continue to do so, then they will have certainty regardless of the outcome of the High Court proceedings. That is, they will not be facing the prospects of a deemed dividend or potential application of other integrity provisions.

[Deputy Commissioner Louise Clarke discusses Bendel decision | Australian Taxation Office](#) (accessed 28 April 2025)

2025 Federal Election

Earlier editions of OTP's Tax News & Insights flyer have summarised the tax and superannuation related policies of both the Australian Labor Party and the Liberal-National Coalition.

Since the last edition, the Liberal-National Coalition has also announced the following small business tax incentives should it be successfully elected in the upcoming federal election.

- "Entrepreneurship Accelerator" – will support newly incorporated businesses with, for the first 3 years of their operation, a tapered tax offset starting at 75% of their first \$100,000 of taxable income, and 50% for their second \$100,000 of income in their first year of operation.
- "Tech Booster" – for its first 2 years of government, the Coalition will also provide a tax deduction of \$2,000 for eligible technology investments of \$4,000 or more for small businesses.
- "Growing Small and Family Businesses" - the Coalition will make changes to the concessional tax treatment for early-stage investors in innovative start-ups under Subdivision 360-A of the ITAA 1997. The Coalition will double the early-stage venture capital cap to \$100 million and lift the venture capital cap to \$500 million. From July 2026, both limits will be indexed in line with the consumer price index.

Source: [Dutton, Ley, Taylor - Media Release - Coalition's Plan to get Small Business Back on Track - Peter Dutton MP - Federal Member for Dickson](#) (19 April 2025, accessed 29 April 2025); [Our Plan for Small and Family Business - Liberal Party of Australia](#) (accessed 29 April 2025)

Contact

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