

that would be allowed if the transaction were in the form of a loan. This outcome is contrary to the policy intent underlying the tax treatment of debt transactions (and it may be that the tax avoidance provisions in the Income Tax Act 1994 apply to it).

229. When the Bill was reported back at the Select Committee stage, the following comments were made⁴⁶:

The bill amends the finance lease rules in the Income Tax Act 1994 in response to certain situations in response to a person selling an intangible asset, such as a trademark, and then leasing back the same asset. In such cases, lease payments may, in substance, be partly repayments of loan principal, and it is necessary to amend the law on finance leases to ensure people in such arrangements are not able to claim a deduction for these repayments.

230. It is clear that the focus of these amendments was on arrangements very different from the SaaS arrangements that this guideline is considering. Under the Bill, the payments made by the SaaS customer are not “in substance” repayments of loan principal. In the Commissioner’s view, imposing the finance lease rules on a SaaS arrangement does not mean the tax treatment that results then accords with the economic substance of the transaction, in the way that it does with the targeted sale and leaseback arrangements. Instead, it imposes an economic reality that is different to the legal and economic reality of SaaS arrangements that are the focus of this guidance.
231. This raises an interpretive question as to whether to depart, in this instance, from the ordinary meaning of “licence” for the purposes of the lease definition that applies to the finance leases rules? The meaning of legislation is “ascertained from its text and in light of its purpose and its context”.⁴⁷ The meaning of a provision is the most natural and ordinary meaning of the words in their context and taking into account the purpose of the provision.⁴⁸ However, in *Frucor Beverages Ltd v Rio Beverages Ltd*,⁴⁹ the Court of Appeal departed from the ordinary meaning of the words in s 34 of the Evidence Amendment Act (No 2) 1980, a provision that conferred legal privilege on patent attorneys and their clients. It did so on the basis that the ordinary meaning would give rise to a practical absurdity, and that it was not in accordance with the intention of those that framed the legislation.

232. The court stated:

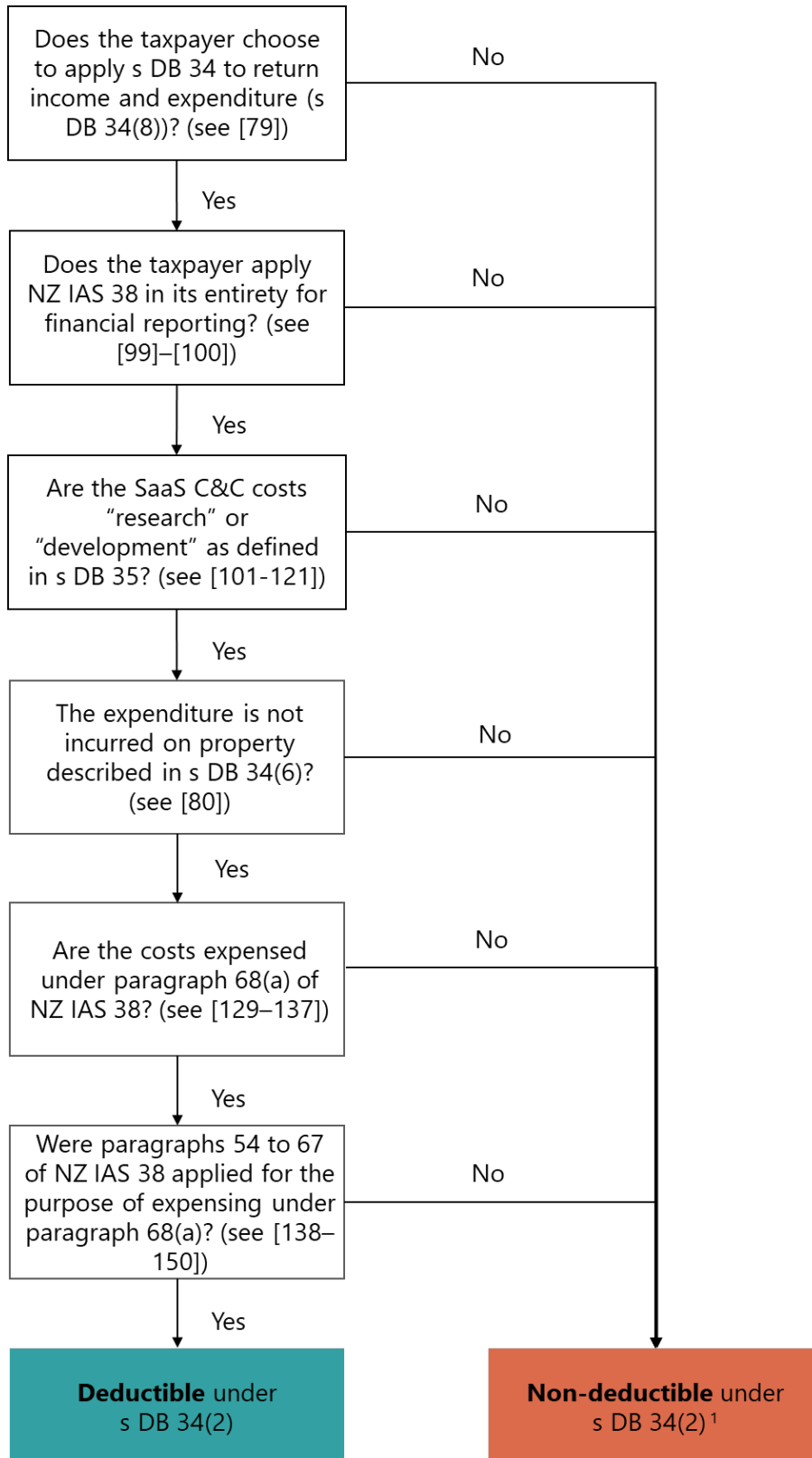
⁴⁶ *Taxation (Annual Rates, Venture Capital and Miscellaneous Provisions) Bill Commentary as reported from the Finance and Expenditure Committee* (Policy Advice Division, Inland Revenue, September 2004) at 14

⁴⁷ Legislation Act 2019, s 10(1).

⁴⁸ JF Burrow and RI Carter, *Statute Law in New Zealand* (6th ed, LexisNexis, Wellington, 2021) at 288.

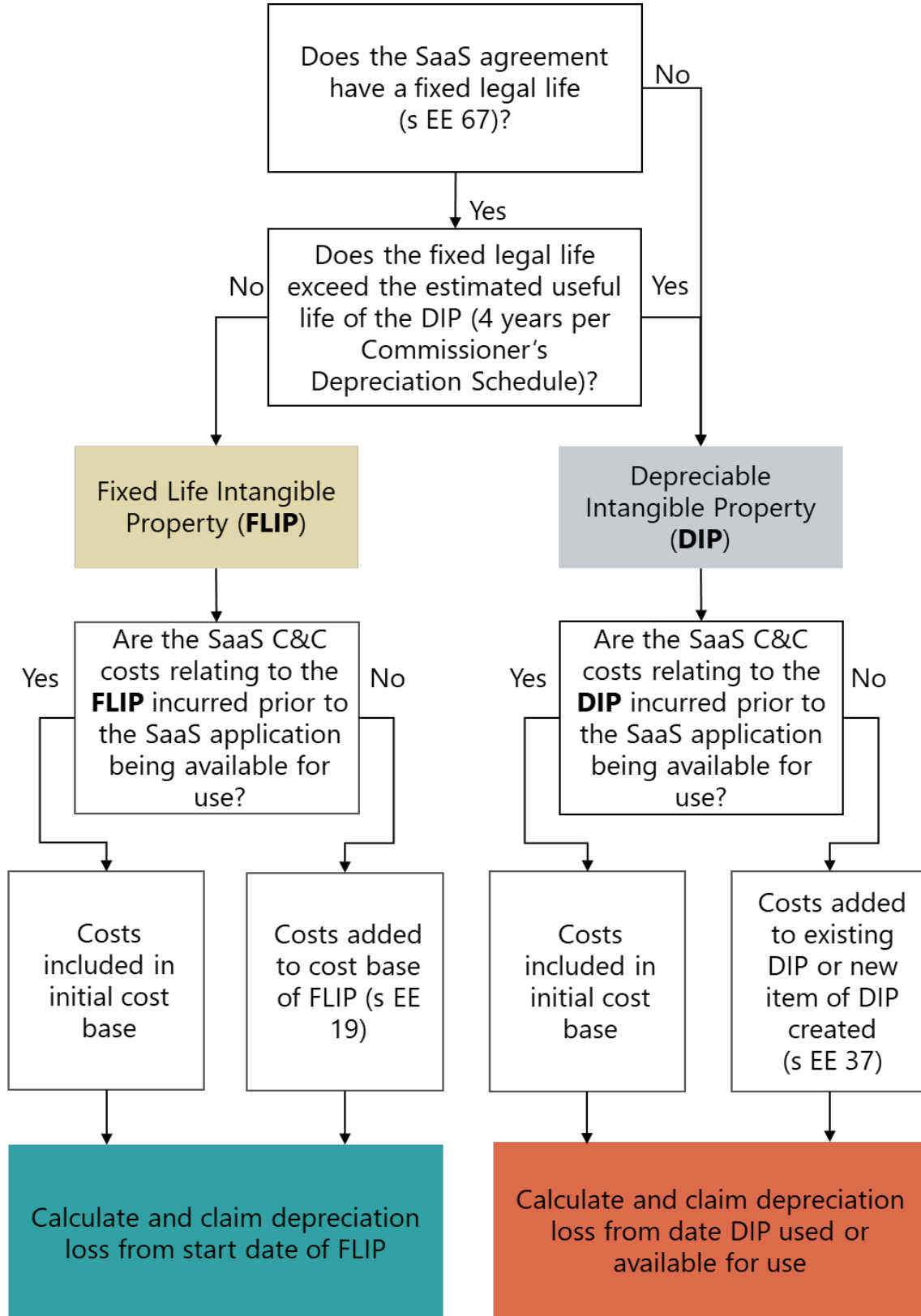
⁴⁹ *Frucor Beverages Ltd v Rio Beverages Ltd* [2001] 2 NZLR 604 (CA).

Figure | Hoahoa 2 Research and development expenditure (s DB 34(2))



¹ refer to Figure 1 and Figure 3 to determine the tax treatment

Figure | Hoahoa 3 Depreciable Intangible Property



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About this document | Mō tēnei tuhinga

Interpretation Guidelines are issued by the Tax Counsel Office. While they set out the Commissioner's considered views, Interpretation Guidelines are not binding on the Commissioner. However, taxpayers can generally rely on them in determining their tax affairs. See further [Status of Commissioner's advice](#) (December 2012). It is important to note that a general similarity between a taxpayer's circumstances in an Interpretation Guideline will not necessarily lead to the same tax result. Each case must be considered on its own facts.