31 July 2026

Treasury
Email: mintaxtrusts@treasury.gov.au

Submitted via Treasury portal

Dear Treasury,

Treasury Consultation – Minimum tax on discretionary trusts

The Financial Advice Association of Australia[1] (FAAA) welcomes the opportunity to provide feedback to Treasury on the consultation paper on minimum tax on discretionary trusts.

The FAAA appreciates the Government's objective to address tax minimisation through income splitting arrangements, however we are concerned about the potential broader consequences of this reform. We have received strong feedback from our members expressing concern about these changes, both with respect to the impact that it will have on their clients, and the impacts on them directly, as many use a discretionary trust structure for their own businesses.

We have reviewed this consultation paper in the context of the Budget 2026/27 tax explainer on a minimum tax on discretionary trusts.

We have seven key recommendations, further outlined below:

- Consider better alternatives to a complete disallowance of tax credits for corporate beneficiaries. (For example, allowing corporate beneficiaries to benefit from tax credits in a similar way to other beneficiaries).
- Extend the exemptions available to farmers, to other businesses where intergenerational transfer of control is best facilitated via a discretionary trust.
- Extend the rollover relief transition period from three years to five years.
- Enable an exemption from the minimum tax to those entities that are in the process of restructuring during the transition period.
- Federal Government to coordinate with State Governments to provide stamp duty relief as part of the rollover relief arrangements.
- Greater flexibility to be provided in the rollover relief arrangements.
- Other alternatives to be considered to obtain the tax outcome policy objectives.

[1] The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. FAAA advocates for the interests of financial advisers and their clients across the country.

Intent of measure

The consultation paper provides little detail on the reason for this tax reform, other than the high level suggestion that this will better align the tax rate on trust income with the tax rates paid by workers. Neither does the paper provide an assessment of the impact that this reform will have on the various cohorts of taxpayers who will be impacted, or explain why increasing the effective rate of tax on corporate beneficiaries of trusts to at least 55% is necessary or justified.

We understand that the primary reason for this reform is to reduce the level of tax minimisation that discretionary trusts allow, however there does not seem to have been sufficient consultation on seeking alternative solutions to address this issue.

There are already a range of measures in place to prevent people from avoiding tax, including with respect to the penalty rates of tax that apply to unearned income of minors. With the exception of those in vulnerable circumstances and the beneficiaries of testamentary trusts, the tax rates for minors are prohibitive. Even with the application of the 30% minimum tax rate, there is no reason to allocate routine discretionary trust income to minors. We expect that in cases other than unearned income of minors, there are alternative options to better prevent inappropriate tax minimisation.

Whilst this is framed as a 30% minimum tax rate, the fact that the tax offset cannot be used to reduce the Medicare levy, will mean that the minimum tax rate for many will actually be 32%. This is illustrated in the examples on pages 6 and 13/14 of the Consultation paper. What stands out however is the 60% tax rate in the corporate beneficiary example on page 7. This alone will work to ensure that there are no further distributions from discretionary trusts to corporate beneficiaries after the commencement of this tax reform. We recommend that the Government consider an alternative less extreme solution for dealing with corporate beneficiaries, as they may continue to be necessary in some situations.

Small business impact

Page 2 of the consultation paper makes the point that only 15% of all active small businesses operate through a discretionary trust structure. The paper does not confirm the number of impacted small businesses, however the Budget 2026/27 tax explainer indicates that around 350,000 active small business entities will need to make decisions as to whether to retain the discretionary trust structure or transition to another structure. This is a significant number of businesses that will be impacted.

For many businesses, this reform effectively forces them to transition to a company structure, as the minimum trust tax of 30% is significantly more than the small business tax rate of 25%.

Our members have pointed out that discretionary trusts are used for many reasons other than tax, and that this reform will materially impact the other reasons for holding business assets through a discretionary trust, including the following:

- Asset protection,
- Succession planning,
- Family ownership arrangements, and
- Business continuity.

Many affected small businesses will be forced to actively consider making a change, which will be a costly and time-consuming exercise for many of them. Converting discretionary interests into fixed company shareholdings may materially alter control, succession, asset protection and economic entitlements. These consequences can be difficult and costly to reverse and may not be adequately addressed through rollover relief alone.

Some may seek to find alternative solutions to avoid the need to restructure, including choosing to employ the beneficiaries within the business as a means to avoid the application of the minimum tax on any distributions to them.

Some of the strongest feedback from our members is with respect to the transition issues and the rollover relief. Given the high level of uncertainty, the significant implications of these changes, and the large numbers of small businesses affected, many of our members are strongly of the view that three years is not enough for this transition period. We address the issues with the transition arrangements further below.

FAAA Feedback

Who will this reform impact the most?

Whilst the framing of this reform might suggest that this change will impact the wealthy the most, in reality it is our view that this will actually have a greater impact on lower and middle income beneficiaries in particular circumstances, especially where the non-refundable tax offset cannot be fully used or cannot reduce the Medicare levy. Those who are already on higher incomes or who receive the most as a result of trust distributions are likely to be paying higher marginal tax rates and will be able to take advantage of the non-refundable tax credits. The impact is likely to be felt most by the following:

- Stay at home parents,
- Retirees,
- University students,
- Younger workers,
- Individuals temporarily out of work due to illness or caring responsibilities.

Exemptions

We welcome the Government's subsequent decision to provide an exemption for discretionary testamentary trusts. We acknowledge the specific circumstances that apply with farming businesses and the importance of protecting vulnerable minors. We also recognise that international treaties limit what the Government can do with respect to discretionary trust distributions to foreign residents. We also recognise the potential for detriment to income tax-exempt entities, that should rightly be addressed.

We do however argue that there are other small and medium sized businesses that demonstrate similar attributes to those groups which have been exempted. We recognise the fact that it is common for farms to be passed from one generation to the next and that succession planning is often best facilitated by a discretionary trust. However, there are also other businesses where it is common for control of the business to transition from one generation to the next. For example, it is not uncommon for a financial advice business to be transferred to a son or daughter. We therefore argue that there should be further extension of the exemptions to other cohorts where it can be demonstrated that the non-tax related reasons for using discretionary trusts have material benefits to the business owners which justify the retention of the discretionary trust structure.

Rollover Considerations

The predominant feedback that we have received on the proposed transition arrangements is that three years is not enough time to enable impacted trusts to transition to a new structure. This is because a discretionary trust is not simply a tax management structure. With respect to the issues raised above, such as asset protection and business succession, these matters will take very careful consideration before implementing, and many cannot be easily achieved in a corporate structure. For example, if the goal is to facilitate the transition of the asset to the next generation of the family, the forced allocation of a fixed ownership share to multiple parties at a single point in time will have material ongoing implications. The allocation of fixed ownership interests to family members who are not (or not yet) capable of running the business could have a substantially negative impact upon the business.

Although the rollover is proposed to be available for three years from 1 July 2027, only the first year falls before the commencement of the minimum tax. Businesses undertaking complex restructures may therefore face the new tax while still considering or implementing their transition. We recommend that the rollover relief remain available for at least five years from 1 July 2027 and that Treasury considers transitional protection for restructures demonstrably underway but not completed by the expiry date.

Another key point of feedback that we have received is that whilst the proposed rollover relief will provide protection from direct income tax consequences, including capital gains tax, it will not address stamp duty, which for certain businesses could be very costly. We ask the Government to coordinate the provision of stamp duty relief with State Governments. There are also likely to be other significant costs, including tax advice, legal advice, additional costs of running a company and the significant administrative effort involved in such a restructure. There will be broad implications that require work and could have additional consequences. For example, the legal business name would need to change on all contracts, bank accounts, insurance policies, service provider accounts etc. This will involve a lot of effort and cost on the part of the business to arrange, which for some could even impact their viability.

We also argue that the rollover relief that is being offered is too restrictive in some cases. A family that has two streams of business activity that is owned through the one discretionary trust, may wish to choose to roll-over the business to two separate companies. This could be as a result of two different groups of family members working in each business, with little reason to retain a combined ownership structure. We also note the statement on page 9 that “there are a number of circumstances where relief would be denied”. This would be a disastrous outcome for a family business that had spent many months and thousands of dollars developing a restructure plan, only to have it denied and the time and effort wasted.

As this reform will force many businesses to restructure and for some the decisions will have significant complexity, we would recommend that the timeframe be extended to five years, that more flexibility is offered and that businesses get relief from the minimum tax until 1 July 2032.

What alternative reforms are possible?

The concerns set out above, force us to consider whether there are other solutions to better address the tax outcomes that this reform is designed to prohibit. There are other important reasons why businesses might wish to retain a discretionary trust structure. We ask whether there are further options to close what might be considered to be tax gaps, in order to avoid the need for this reform being progressed in this manner. We are open to a range of actions being taken to address genuine tax gaps, however in our view, the reasons for taking the minimum tax on discretionary trusts approach has not been adequately consulted on or demonstrated to be appropriate.

Conclusion

The FAAA welcomes the opportunity to provide feedback to Treasury on the minimum tax on discretionary trusts. We have sought to highlight the potential significant implications of this proposal and long running unintended consequences that will likely emerge for many thousands of businesses in the future.

If you have any questions about our submission, please do not hesitate to contact me on (02) 9220 4500 or sarah.abood@faaa.au.

Yours sincerely,

Sarah Abood
Chief Executive Officer
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