FINANCIAL ADVICE ASSOCIATION AUSTRALIA

21 August 2026

The Treasury
Langton Crescent
Parkes ACT 2600

Online submission: consult.treasury.gov.au/c2026-792170

Dear Treasury,

Consultation - Capital Gains Tax and Negative Gearing - Tranche 2 Legislation

The Financial Advice Association of Australia[1] (FAAA) welcomes the opportunity to make a submission to Treasury on the exposure draft legislation/instruments and explanatory materials for the four exposure drafts released as part of this consultation, covering negative gearing exceptions (tranche 2), new residential dwellings, CGT adjustments (tranche 2), and the CGT apportioning method.

Our members help empower Australians to build a better financial future, and a material part of that work involves advising clients on the tax consequences of holding, transferring and disposing of residential property and other investments. This advice can include addressing the tax consequences of holding and transferring property as a result of death, relationship breakdown or preparing for retirement. We have therefore focused our review on the practical operation of the draft laws.

We have set out our detailed analysis and suggestions below.

1. Negative Gearing (Tranche 2)

1.1 Government Amendment GN148 - Acknowledging the response to the 'widow's tax' issue

In our 9 June 2026 submission to the Senate Economics Committee on the first tranche of the negative gearing and CGT reforms, the FAAA raised concerns about the treatment of jointly held residential property for a surviving spouse who acquires an ownership interest in a residential dwelling on the death of their spouse, or where a residential property is transferred to them as a result of a divorce settlement. It became evident that they would have been ineligible for continuing negative gearing or retaining new residential dwelling treatment on the proportion of the property that was transferred to them. This is because they would be considered to have acquired their interest after the announcement time. Effectively, they would lose access to negative gearing and the CGT discount at the very moment they

[1] *The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. Its members provide advice to Australians on retirement planning, investment, superannuation, insurance and, frequently, the tax and structuring consequences of holding and disposing of property and other capital assets.*

are grieving the loss of their partner or the end of their marriage. This outcome was recognised by Senator David Pocock during the Senate Economics Committee hearing on 16 June 2026.

Since this consultation opened, we understand the entirety of the negative gearing (tranche 2) exposure draft, including the provisions addressing the issue widely referred to as the 'widow's tax', has now been legislated. Government Amendment GN148 inserted new sections 26-156 to 26-159 of the ITAA 1997, together with the related amendments to section 26-155, in materially the same terms as this exposure draft, as part of the Treasury Laws Amendment (Tax Reform No. 2) Bill 2026, which was passed by both Houses on 19 August 2026. We are pleased that the proposed new sections directly resolve the widow's tax issue. A surviving spouse who acquires their late spouse's interest, either as a surviving joint tenant or as a beneficiary of the estate, can now retain the deceased's negative gearing and new residential dwelling treatment. We thank the Government for engaging constructively with the concerns raised in our June submission, and for acting swiftly on them in this exposure draft and through the legislation passed this week. This is a meaningful and welcome outcome for grieving families and those coming to terms with the end of their relationship.

We also welcome the extension of this provision to other people who own property with another person, either as a joint tenant with someone who dies or as a tenant in common who receives this property by way of inheritance. We further welcome that these amendments stand for both the purposes of the retention of the ability to negatively gear the residential property and also for the purposes of retaining access to the 50% discount on capital gains.

2. New Residential Dwellings

2.1 Granny flats and secondary dwellings

The exposure draft material confirms that a granny flat without a separate legal title takes on the tax characteristics of its host dwelling, and cannot independently qualify as a new residential dwelling. We understand the rationale for proposing that a separate legal interest in the dwelling must exist and for it to be able to be acquired by another entity. However, we note this sits uneasily alongside the significant incentives many state and territory governments are offering for secondary dwellings as a fast, lower-cost way to add to rental supply. **We recommend that the Government allow new residential dwelling treatment for genuinely separate, income-producing secondary dwellings, even where not separately titled.**

2.2 Subdivisions: a disincentive to genuine density building

The worked example at page 6 of the New Residential Dwellings explanatory material (the 'Koh' example) illustrates that where an owner subdivides an established block purchased after the announcement date and constructs a second dwelling, only the new dwelling receives new residential dwelling status - the original, untouched dwelling would be ineligible, even though the owner has genuinely added to housing supply and even though the second dwelling could not exist without the subdivision of the first. We query whether this is the intended outcome for what is one of the most common forms of small-scale 'gentle density' investment, and whether it may discourage exactly the kind of subdivision activity that other levels of government are actively trying to encourage to increase housing supply. We also raise the potential complication where there may be substantial modifications to the existing dwelling as well as the addition of new dwellings. We believe that it is quite likely that circumstances will exist where it is much more difficult to define what is existing and what is new. **We recommend consideration of a threshold, above which the entire property would be treated as a new residential dwelling.** Such an approach may better reflect the economic reality of significant redevelopment projects and reduce complexity where substantial improvements and new construction are undertaken as part of a single integrated development.

2.3 Attributing debt in mixed redevelopment scenarios

A related and, in our view, under-addressed issue arises from the outcome described in paragraph 2.2 above. Where a parcel of land ends up with both a continuing (existing) dwelling and one or more genuinely new residential dwellings as per subsection 5(4), both dwellings will typically be funded through a single loan facility, or through refinancing secured against the whole parcel, rather than through entirely separate borrowings for the existing dwelling and the newly constructed dwelling(s). Neither this exposure draft nor the negative gearing (tranche 2) material addresses how interest and other borrowing costs should be apportioned in this situation between a dwelling that qualifies for new residential dwelling treatment and a dwelling that remains subject to loss quarantining.

This is a genuine, practical difficulty for investors and their advisers, who will need a clear and defensible apportionment methodology to correctly claim deductions against the appropriate dwelling. **We recommend that the Government provide specific guidance, ideally with worked examples, on an acceptable methodology for apportioning debt and associated borrowing costs between a new residential dwelling and other dwellings on the same land where those dwellings are funded under a common or refinanced loan facility.**

2.4 The anti-avoidance rule in subsection 5(10)

Subsection 5(10) disregards the effect of a scheme where it is reasonable to conclude that 'a purpose' (not the sole or dominant purpose) of any entity involved was to treat a dwelling as a new residential dwelling to obtain a tax benefit. For advisers assisting clients with legitimate family transactions - for example, a parent transferring land to a family company for a genuine development or restructuring ownership ahead of a bona fide subdivision - this creates real uncertainty. This is because the 'a purpose' threshold is lower than existing general anti-avoidance thresholds, such as those contained within Part IVA of the Income Tax Assessment Act 1936, and there is no formal mechanism for an individual to have their position confirmed in advance. We would argue that a 'tax outcome' is an important consideration in any investment decision and this anti-avoidance rule is creating an unacceptable level of uncertainty. **We recommend that the operation of subsection 5(10) be modified so that it only captures situations where the dominant purpose is to obtain a tax benefit.**

2.5 Exclusions and inclusions in the definition

We note the consistent exclusion of residential dwellings where a certificate of occupancy was issued before the budget announcement, despite the potential applicability of multiple special cases. However a transition rule for stock held by a builder or property developer where the certificate of occupancy was issued before the announcement time, and the property was held by the builder or property developer for the duration of this period, has been included. We welcome the decision to permit stock held by builders/developers to be treated as new dwellings, however question the exclusion of other cases where the certificate of occupancy was issued prior to the announcement, yet the other criteria are met. We do not believe that the Exposure Draft Material adequately explains the rationale for doing this.

3. CGT Adjustments (Tranche 2)

3.1 Cumulative complexity and the cost of advice

The detailed explanation of the new law for this schedule alone spans a chain of gross-up and removal mechanisms, each requiring capital gains to be recalculated to strip out indexation or discount benefits obtained at a different level of a trust or AMIT structure before being re-applied at the level of an underlying individual member.

Example 1.4 in the Explanatory Memorandum - involving a capital gain passing through two tiers of AMITs, with the discount applied, then reversed and grossed up, then indexation applied, then reversed and grossed up again, before a final individual-level choice is made - illustrates the level of calculation and complexity that is now required for what may be a comparatively simple client structure. This complexity will materially increase the time, cost and error risk involved in providing advice on trust and AMIT-held property and other capital assets, at a time when the Government has separately been pursuing reforms to reduce the cost of financial advice. **We ask the Government to commit to comprehensive ATO guidance, worked examples and calculation tools before this measure commences, and to consider a longer lead time before application, to allow the wealth management industry and the tax and advice professions to build the necessary systems and processes.**

We note the discussion in paragraph 1.109 of the explanatory material under the heading Future Amendments where there are numerous other amendments that will be required in further tranches. There is separate discussion of the additional complexities arising as a result of deferred gains and losses in the context of rollovers and the suggestion that these complexities will be addressed in a further tranche of legislation. The fact that there are evidently so many further complexities that have arisen is testament to the significant consequences of these changes and the risk of further complications that might still be yet to be identified. **We recommend that the government outline a timetable for consultation that allows industry to fully consider and provide thoughtful advice on these complex and important changes**.

3.2 Roll-over interactions unresolved

Paragraphs 1.69-1.71 of the Explanatory Memorandum acknowledge that the interaction between deferred gains and roll-overs, including the relationship breakdown roll-over in Subdivision 126-A and the concession for the transfer of deceased estate assets to a beneficiary, has not been addressed in this tranche, and is 'intended to progress in a future tranche of legislation'. Deceased estate administration and relationship breakdown are two of the most common circumstances in which our members provide advice, and leaving this interaction unresolved creates a real gap in the ability of advisers to give clients complete and reliable advice on the CGT consequences of a roll-over in the period before the next tranche is legislated. **We ask Treasury to prioritise this work and provide an indicative timetable for the relevant future tranche.**

3.3 Testamentary trust minimum tax exemption

We support the exemption of genuine testamentary trusts, deceased estates and special disability trusts from the 30 per cent minimum tax on capital gains. We also support the alignment of the integrity rules with the existing, well-understood concept in paragraph 102AG(2)(a) of the ITAA 1936. This is an important and welcome outcome for grieving families managing deceased estates. We note however, that there are two further integrity rules that apply with respect to testamentary trusts and deceased estates. **It is our view that the discussion on these integrity rules in paragraphs 1.86 and 1.87 would benefit from the inclusion of examples**. Otherwise, we are concerned as to the risk of uncertainty and confusion.

3.3 Complexity for clients with mixed residency status

The pro-rating of CGT discount and indexation outcomes for foreign and temporary residents who spend only part of a testing period as an Australian tax resident is a sound integrity measure. However, it also adds another layer of calculation and complexity, including an alternative indexation factor formula for the many clients our members assist who have worked or lived overseas during their ownership of an asset. **We ask that ATO guidance and calculators specifically address common client scenarios such as an individual returning to Australia after a period of expatriate employment.**

4. CGT Apportioning Method

4.1 A simpler alternative to the compounding growth-rate assumption

We acknowledge that investors are able to obtain an actual market valuation of an asset effective 1 July 2027 as an alternative to using the apportioning method. However, for many retail property investors, a formal valuation will be a costly exercise at a time when valuers are in high demand, which means the default method itself needs to produce a fair result. The apportioning method, as currently designed, assumes an asset grew in value at a constant, compounding rate across its entire ownership period. This assumption rarely matches the cyclical way property values actually move, and it is one that can materially disadvantage a taxpayer, depending on when in the ownership period growth actually occurred.

Our suggestion is that investors instead be permitted to apportion a capital gain or loss on a straight-line basis, by reference to the number of days the asset was held both before and after 1 July 2027. **We suggest that a day-count apportionment method would be simple to explain, easier for taxpayers and advisers to calculate and verify without specialist software, and would not require any assumption about the rate or pattern of an asset's value growth over time**. This would remove a significant source of unpredictability and potential unfairness from the default method. This would not be an unreasonable position to take as part of a fair transition arrangement that takes into account the complexity and cost of these reforms.

4.2 Complexity of the calculation model

Separately, we are concerned at the complexity of the apportioning method itself. On our review, arriving at the apportioned gain requires significant work as reflected in the nine-step calculation process. This level of complexity is disproportionate for a mechanism intended to be a practical, lower-cost alternative to a formal valuation. It is likely that it will in practice increase reliance on professional advice, and therefore cost significantly more, even for taxpayers with comparatively simple, single-property holdings. It is likely to force many to seek a valuation, which will be costly and probably difficult to arrange at the time when there will be a very high demand for valuation services. **We recommend that the Government simplify the underlying calculation model, and provide a plain-English calculator or worksheet well ahead of the 1 July 2027 transition date so that taxpayers and advisers are not left to work through a nine-step process manually.**

4.3 Apportionment examples

We are aware of the subsequent acknowledgement of the mistake in the second apportionment example in the explanatory material on page 7/8, however we also believe that neither of these examples adequately provide a conclusion on the Capital Gains that would apply. In the first example, there is no calculation of the discounted capital gain in the period to 1 July 2027, and no overall total capital gain for the asset. Where people are exposed to a very complex nine step process, we would consider it an absolute minimum to include a total capital gain figure and some form of summary or conclusion. These examples only serve to highlight the incredible level of complexity that this method incorporates and the fact that it will be impossible for everyday Australians to complete this without the need for costly professional tax advice. **We recommend that the apportionment examples be corrected and have additional detail to facilitate understanding.**

Conclusion

The FAAA welcomes the opportunity to provide feedback. We acknowledge the improvements the Government has already made since tranche 1, and we have sought to identify in this submission where further refinement is still needed. We would be happy to provide any further information that you require.

If you have any questions about our feedback, please do not hesitate to contact me on 0484 278 106 or sarah.abood@faaa.au.

Yours sincerely,

Sarah Abood

Chief Executive Officer

Financial Advice Association Australia (FAAA)