

18 September 2026

Treasury

Submitted via Treasury portal

Dear Treasury,

Minimum tax on discretionary trusts

The Financial Advice Association Australia (FAAA) welcomes the opportunity to provide feedback to Treasury on the exposure draft legislation for the minimum tax on discretionary trusts. The FAAA represents financial advice professionals and advocates for the interests of financial advisers and their clients. The proposed reforms are of significant importance to our members, both because financial advisers support clients who may be affected by the changes and because many financial advice practices operate through, or are owned via, discretionary trust structures.

This submission has been informed by the FAAA holding a consultation meeting with Treasury on 16 September 2026. We thank Treasury for its time, engagement and willingness to provide clarifications on a number of issues raised during the meeting. Those discussions have been valuable in informing our understanding of the proposed measures and refining the recommendations set out in this submission. Where Treasury has confirmed policy intent that is not yet reflected in the exposure draft legislation or explanatory memoranda, this submission seeks legislative or explanatory certainty. Where Treasury has identified an integrity or design rationale, we have taken that into account and framed our recommendations accordingly.

We acknowledge that the exposure draft package responds to some of the concerns raised in our submission of 31 July 2026, including through: the introduction of the Excluded Election Trust (EET) pathway, a broader statutory definition of "fixed trust", further details on the transitional roll-over mechanism, and the exclusion of testamentary trusts and certain categories of income from the minimum tax. These changes improve the framework and provide taxpayers with additional options for managing the impact of the reforms. However, significant concerns remain. Trustees are still required to consider making major and largely irreversible structural decisions before the full regime is settled, with further legislation, administrative requirements and guidance yet to be released. The EET and transitional roll-over pathways contain rigidities that may produce disproportionately negative outcomes for taxpayers affected by genuine mistakes, ordinary commercial events, family and succession changes, or circumstances beyond their control. Important practical issues remain unresolved, including State and Territory stamp duty consequences, the treatment of beneficiaries under the EET regime, the operation of the roll over provisions, and the potentially substantial compliance and professional advice costs associated with understanding, implementing and maintaining the new arrangements.

The FAAA supports appropriately targeted integrity measures but considers that further refinement of the package is necessary before the legislation is enacted. Accordingly, this submission focuses on three key themes: addressing areas of uncertainty that are likely to increase complexity and necessitate

additional professional advice and compliance costs for affected taxpayers; improving flexibility and proportionality within the EET and transitional roll-over regimes; and providing greater certainty through legislative amendment and comprehensive guidance and worked examples. Our analysis and recommendations are set out below.

1. Outstanding issues affecting pathway selection

1.1 Uncertainty in the regime design creates unnecessary complexity and cost

Trustees of discretionary trusts will need to assess three materially different pathways: remaining within the minimum tax regime, choosing the EET model, or restructuring under the transitional roll-over option. However, paragraph 1.85 of the minimum tax explanatory memorandum (EM) confirms that further legislation is expected to address residency, CGT, international taxation, administrative and reporting requirements, and integrity considerations. As a result, taxpayers and their advisers are being asked to evaluate the costs, benefits and risks of each pathway without a complete understanding of how the broader framework will operate in practice. This is likely to increase complexity, require additional professional advice, and result in significant unnecessary implementation and compliance costs.

This uncertainty is particularly significant, given that discretionary trusts are commonly used for a range of non-tax purposes. Members have highlighted the importance of these structures for asset protection, succession planning, family ownership arrangements and business continuity. The practical implications of the reforms therefore extend beyond taxation outcomes, making it important that taxpayers have sufficient certainty regarding the operation of the regime before incurring the costs associated with restructuring, implementation or ongoing compliance.

Recommendation 1: Complete the minimum tax framework before commencement, and defer key implementation deadlines until taxpayers and their advisers have sufficient certainty about how the regime will operate. This would reduce unnecessary complexity and compliance and advice costs, while helping taxpayers make informed decisions about whether restructuring, electing into the EET regime or remaining within the minimum tax framework is appropriate.

We also recommend additional exclusions, safe harbours or modifications that recognise the legitimate non-tax purposes of discretionary trusts, including asset protection, succession planning, family ownership arrangements and business continuity, to reduce the need for unnecessary restructuring.

1.2 State and Territory stamp duty remains unresolved

The Treasury fact sheet states that the EET model "would not require a restructure and is not expected to result in State and Territory stamp duties", but the roll-over EM confirms that the roll-over does not itself affect liabilities under 'other laws'. For the many trustees who will practically need to restructure, the transitional roll-over does nothing to address the State and Territory stamp duty consequences, which had been identified as a critical cost driver in our 31 July 2026 submission. We understand from our 16 September 2026 consultation meeting with Treasury that this remains a live issue. We strongly encourage Treasury to prioritise urgent engagement with the States and Territories on this point.

Recommendation 2: The Government should not finalise the package until it has meaningfully engaged with State and Territory Governments on the stamp duty consequences of restructuring under this measure, with the outcomes of that engagement made public and reflected in the final materials.

2. Worked examples and guidance

The exposure draft legislation, explanatory memoranda and supporting materials contain a number of concepts that will be unfamiliar to many trustees and advisers, and which may have significant consequences for pathway selection, restructuring decisions and beneficiary outcomes. Comprehensive worked examples are critical to ensuring the rules can be understood and applied consistently, however there is a distinct lack of examples in the explanatory memoranda and supporting materials.

Throughout this submission we identify a range of provisions where additional examples would materially improve certainty. In our view, Treasury and the ATO should publish detailed guidance and worked examples before taxpayers are required to make pathway elections or restructuring decisions. Worked examples would be particularly valuable in the following areas:

- the operation of the EET revocation rules, including the treatment of minor and unintentional errors, the application of paragraph 1.67 of the electable regime EM, and how beneficiaries who have already received distributions are treated;
- permissible variations to EET nominations and the treatment of common family, succession and life events;
- pathway selection and the circumstances in which a trustee may be better suited to the minimum tax, EET or roll-over pathways;
- the meaning and application of "material discretionary elements", including employee remuneration arrangements, employee share schemes, option schemes and similar common commercial practices; and
- the operation of the non-refundable offset for beneficiaries across different income levels and circumstances.

Recommendation 3: Before taxpayers are required to make pathway elections or restructuring decisions, Treasury and the ATO should publish comprehensive worked examples and practical guidance covering the key decision points, integrity provisions and common real-world scenarios arising under the minimum tax, EET and roll-over regimes.

3. Electable regime for discretionary trusts (EET)

We welcome the introduction of the EET model as an alternative to restructuring and acknowledge that it responds in part to concerns raised in our 31 July 2026 submission. Our 16 September 2026 consultation meeting with Treasury clarified the intent behind several design features. However, that intent is not clearly reflected in the legislation or explanatory materials, and important issues remain unresolved. Legislative amendments are needed to provide certainty and avoid disproportionate outcomes for trustees affected by genuine errors or changing circumstances.

3.1 Revocation consequences for innocent mistakes

Under paragraph 1.7 of the electable regime EM, if in any income year the trustee does not confer present entitlements strictly in accordance with the nomination, the election is automatically revoked; the beneficiaries made presently entitled are treated as not being presently entitled; the trustee is assessed on all of the net income of the trust in the revocation year at the top marginal rate plus the Medicare levy; and the trust is subject to the minimum tax in future years. Paragraph 1.67 extends the "not presently entitled" treatment beyond nominated beneficiaries to any other beneficiary made presently entitled in that income year.

At the 16 September 2026 consultation meeting, Treasury indicated that it is not the policy intent for a minor, unintentional error to result in automatic revocation. The process of defining that boundary and translating it into legislative provisions remains a work in progress between Treasury and the ATO. While we welcome that clarification, as currently drafted, the legislation does not distinguish between deliberate manipulation and innocent error. There is no materiality tolerance, no genuine-mistake defence, no correction period and no express Commissioner discretion to preserve the election where an inconsistency is inadvertent error arises from circumstances beyond the trustee's control (such as trustee illness, incapacity or hospitalisation).

Correction is also practically difficult in the year of a mistake. If distributions have already been paid to beneficiaries and included in their assessable income, recovering those funds or reversing the beneficiaries' tax positions within the current-year framework is unlikely to be practicable. Other parts of the tax system allow taxpayers to amend assessments where a mistake has been made, and the Commissioner has established remedial and discretionary powers to deal with inadvertent errors.

Recommendation 4: Give legislative and explanatory effect to Treasury's stated policy intent that a minor unintentional error will not automatically revoke an EET election. Specifically, the legislation should:

- include a materiality tolerance for inconsistent present entitlements, and a genuine-mistake defence;
- provide the Commissioner with discretion to preserve the election where an inconsistency was inadvertent, immaterial, or arose from exceptional circumstances beyond the trustee's reasonable control (including trustee illness or incapacity);
- introduce a defined grace or correction period in which a trustee may remedy an inadvertent inconsistency before automatic revocation, drawing on existing amendment and remedial mechanisms in the tax administration framework;
- address the practical difficulty of correcting distributions already paid to beneficiaries, including by permitting adjustments through the following year's assessment; and
- where revocation is nevertheless required, replace the top marginal rate plus Medicare levy with a proportionate alternative. either the continuation of the pre-revocation EET treatment to the end of the year, or the application of the 30 per cent minimum tax in the revocation year, reserving penalty-rate treatment for arrangements demonstrating deliberate avoidance.

The operation of paragraph 1.67, including which beneficiaries are affected and how their tax positions are impacted, should also be illustrated with worked examples.

3.2 Requirement for aligned income and capital entitlements

Paragraph 1.19 of the electable regime EM requires the proportion of income allocated to a specified beneficiary to be the same as the proportion of capital allocated to that beneficiary. We are concerned that this requirement is unnecessarily restrictive, as family and succession structures commonly rely on differing income and capital entitlements to reflect different needs, contributions and succession objectives. While Treasury explained at the 16 September 2026 consultation meeting that an EET election is not treated as a fixed trust for all income tax purposes and therefore does not receive all of the benefits of a conventional fixed trust, we consider that the integrity objective of the EET model could be achieved by locking in beneficiaries' fixed entitlements at the time the election is made, without requiring income and capital proportions to be identical.

Recommendation 5: Modify the EET eligibility requirements so that beneficiaries may have different fixed proportions of income and capital, provided those proportions are specified in the nomination and collectively total 100 per cent.

3.3 Automatic revocation triggers should be narrowed

Paragraph 1.63 of the electable regime EM automatically revokes the election in a range of circumstances that go well beyond a failure to follow the nomination, including where a trust specified as a beneficiary vests or is wound up, or a company specified as a beneficiary is wound up, deregistered, ceases to be capable of benefiting under the trust, ceases to be an "eligible company", or has a shareholder cease to hold a share for a reason other than an allowable reason.

At the 16 September 2026 consultation meeting, Treasury explained that these triggers are an integrity measure intended to prevent, for example, companies simply being wound up and replaced with new nominated entities. We understand that rationale. However, the same triggers may catch a range of circumstances that raise no integrity concern, including a fundamental restructuring of an underlying business, the principal ceasing to operate the business through illness or retirement, or a related corporate beneficiary becoming insolvent for reasons unrelated to the EET election. Automatic revocation with penalty-rate consequences in these circumstances is disproportionate, particularly where the triggering event could be entirely outside the trustee's control.

Recommendation 6: Narrow the automatic revocation triggers so that events such as insolvency, deregistration, winding up or cessation of a corporate or trust beneficiary do not, of themselves, revoke the election where the event is genuinely outside the trustee's control and where a suitable alternative beneficiary could easily be substituted. Where revocation is nevertheless required, apply proportionate consequences rather than assessing the trustee at the top marginal rate plus the Medicare levy.

3.4 Variation rules - family and succession events

An EET nomination generally cannot be varied. Variation is currently permitted only where a nominated beneficiary passes away or in relationship-breakdown circumstances. At the 16 September 2026 consultation meeting, Treasury explained that the design is intended to remain simple and

straightforward and that allowing beneficiaries to move in and out over time would introduce complexity. While we understand the desire to streamline processes, we believe a small number of pre-determined life event variations would strike an appropriate balance between simplicity and the practical realities faced by families over time. We do not believe that it is reasonable for this regime to cause the risk of significant family disputes in the future as a result of the exclusion of certain family members who may become eligible to be a beneficiary under the trust deed, however, be excluded from receiving income or capital as a result of the EET election.

Paragraph 1.47 of the electable regime EM permits reallocation of a deceased beneficiary's share only to "existing specified individual beneficiaries or other individuals who are capable of benefiting under the trust deed", and only where those individuals are beneficiaries of the deceased individual's estate. At the 16 September 2026 consultation meeting, Treasury invited us to raise the common scenario in which a deceased beneficiary leaves their estate in the first instance to their spouse rather than directly to their children. On the current drafting, those children who would ordinarily be expected to succeed to the family interest may be unable to be substituted as EET beneficiaries because they are not immediate beneficiaries in the will, notwithstanding that the spouse's testamentary intentions would eventually see the interest pass to them.

The variation rules should also accommodate a small number of other predictable life events that are readily verifiable and do not raise integrity concerns, including:

- the birth or adoption of a child, and the introduction of stepchildren following remarriage, where locking in fixed proportions before later-born children exist may effectively exclude those children from participation despite being within the intended family class;
- a beneficiary acquiring a disability, incapacity or serious health support need;
- a beneficiary entering bankruptcy or serious financial vulnerability; and
- court orders or legal obligations affecting trust property or beneficiary interests.

Recommendation 7: Broaden the EET variation rules to accommodate a tightly defined set of significant life and succession events, with appropriate integrity safeguards. Specifically:

- amend paragraph 1.47 so that a deceased beneficiary's share can be reallocated to the deceased's children or other descendants who are objects of the trust where the deceased has left their estate to a spouse or another person, without requiring the children to be named in the will or to be direct beneficiaries of the will;
- allow later born or adopted children and stepchildren of nominated beneficiaries to be included in the nomination on a proportionate basis, without affecting EET status; and
- give the Commissioner discretion to approve variations arising from other genuine and unforeseen family, succession or incapacity circumstances where the variation is not motivated by tax avoidance and all relevant income and capital remain subject to the nomination.

3.5 The one-year election window is too short

Under paragraph 1.5 of the electable regime EM, only a trust in existence on 1 July 2028 may elect into the EET regime, and only during the 2028-29 income year. Only one election can be made and, once revoked, it cannot be reinstated or remade. At the 16 September 2026 consultation meeting, Treasury invited us to highlight this issue in our submission and indicated that a key rationale for the restriction is to avoid trustees alternating between regimes to obtain more favourable outcomes. We are concerned that trustees cannot make an election after experiencing the practical operation of the regime, cannot defer while family or business circumstances become clearer, and cannot elect later if further guidance materially alters the consequences of the choice. Those constraints are particularly acute, given that the transitional roll-over runs across multiple years and that further legislation is expected on residency, CGT, international taxation, administration and integrity.

Recommendation 8: Extend the EET election window so that a trust in existence on 1 July 2028 may make an EET election in any of the first three income years commencing on or after that date. Entry may be conditioned on a one-off election and on the trustee not having accessed the roll-over. The Commissioner should also have discretion to accept a late election where the failure to elect within the initial period was caused by exceptional circumstances (death, health incapacity etc.) or incomplete government guidance.

3.6 Limited pathway switching after entering the EET regime

Paragraph 1.17 of the electable regime EM and the corresponding roll-over EM confirm that trustees must choose either the EET model or the roll-over pathway, and that once an EET election is made, access to roll-over relief is permanently unavailable, even if no assets have been transferred. Treasury noted at the 16 September 2026 consultation that allowing trustees to move from the EET model to the roll-over pathway could create integrity risks by enabling opportunistic switching. We accept those concerns. However, the current permanent lock-out can produce disproportionate outcomes where a trustee has made a genuine, good-faith decision to enter the EET regime and later determines, through practical experience or changing family, business or succession circumstances, that the roll-over pathway would be more appropriate. In many such cases, the trustee is not seeking an inappropriate tax advantage but is reassessing an earlier decision in light of experience and evolving circumstances. The current rule does not adequately distinguish between opportunistic switching and legitimate changes in circumstances.

Recommendation 9: Permit a limited, one-time pathway switch from the EET model to the transitional roll-over model subject to targeted safeguards that respond to Treasury's opportunistic behaviour concern. Switching could, for example, be conditional on:

- the trustee not having derived a net tax benefit from being within the EET regime compared to the minimum tax environment in the intervening years (or an equivalent recoupment mechanism);
- the switch being made within the transitional roll-over period; and

- Commissioner approval, where the switch is genuinely responsive to changed family or business circumstances, the emergence of a previously unrecognised factor, or a better understanding of how the regime operates in practice and is not motivated by tax avoidance.

4. Transitional roll-over relief

We welcome the introduction of the transitional roll-over relief. However, the current three-year window and the single-transferee, all-assets structure remain inadequate for the complexity of the decisions and restructures required.

4.1 Extend the transitional period to five years

The roll-over relief runs for three years from 1 July 2027, but the minimum tax commences from the 2028–29 income year. As a result, only a restructure completed in the 2027–28 income year is guaranteed to avoid minimum tax exposure. If the required assets are not transferred by 30 June 2030, the roll-over relief is not available for any transferred assets, with the Commissioner able to amend assessments to reverse relief previously claimed. As recommended in our 31 July 2026 submission, a full five-year transition period from 1 July 2027 to 1 July 2032 would provide greater certainty, reduce the risk of rushed and potentially irreversible structural decisions, and better accommodate legitimate delays outside the parties' control.

Recommendation 10: Extend the transitional roll-over period to five years, running from 1 July 2027 to 1 July 2032. Protect a trust from the minimum tax where it has validly chosen the roll-over option and can demonstrate that the restructure is genuinely in progress and being implemented within the permitted period. Give the Commissioner discretion to extend the completion deadline where the restructure has been delayed due to business cessation, insolvency, the death, illness or incapacity of the trustee or principal, or other circumstances beyond the parties' reasonable control.

4.2 Roll-over structure and flexibility

At the 16 September 2026 consultation meeting, Treasury confirmed that the roll-over model is structured as a single-transferee, all-assets restructure, with continuity of ownership required, and that assets cannot be split between multiple individuals or entities. Treasury also noted that a general law partnership can be a transferee under the roll-over, so a restructure can be effected into a partnership with multiple partners, provided continuity of ownership is maintained. That option is helpful in some cases, but a partnership will not be suitable for many family business restructures because of asset protection, liability, licensing, financing and succession considerations.

The following rigidities in the scheme's design continue to concern our members and we believe warrant reconsideration.

- **Single transferee.** The requirement for a single transferee unnecessarily restricts legitimate business and succession restructures. Permitting transfers to multiple individuals is consistent with the Government's objective of reducing tax minimisation opportunities, as assets are moved out of a discretionary trust and into the hands of individuals, eliminating the trustee

discretion that can facilitate tax planning. For example, a trust may wish to transfer different assets or business interests to multiple adult beneficiaries while maintaining continuity of underlying ownership.

Separately, transfers to multiple companies would accommodate common business structures, including family businesses, where different business operations, asset pools or business divisions are held in separate entities for commercial, financing, asset protection or succession purposes. Integrity concerns in either case could be addressed by requiring each transferee to independently satisfy the residency and no material discretionary element requirements, while maintaining continuity of ownership across the transferees collectively. This would better facilitate genuine business and succession restructures without undermining the policy intent of the regime.

- **Primary production cash reserves.** Under the exposure draft, CGT assets used to derive income from carrying on a primary production business are not required to be transferred. It is less clear whether genuine cash reserves held as part of a primary production business, such as drought contingency funds, can be retained within the primary production carve-out, and whether interest earned on those reserves is treated as primary production income or subject to the minimum tax. If such reserves cannot practically be retained, primary producers may be discouraged from maintaining cash buffers needed to manage seasonal volatility, drought, floods, disease outbreaks and commodity price fluctuations.
- **All-assets requirement.** The all-assets requirement, combined with the Commissioner's four-year clawback and extended amendment power, produces a retrospective cliff. A single asset overlooked, incorrectly classified as non-transferable, or not transferred by the deadline, can jeopardise relief for the entire restructure. This is disproportionate to the nature of the error and may operate unduly harshly where omissions arise from innocent mistakes, administrative oversight or circumstances outside the taxpayer's control, rather than any attempt to circumvent the regime.

Recommendation 11: Redesign the roll-over model to accommodate legitimate business and succession restructures without compromising the integrity objective. Specifically:

- permit multiple transferees within a single restructure where each transferee independently satisfies the residency and no-material-discretionary-element requirements, and continuity of ownership is maintained across the aggregate of transferees;
- clarify whether cash reserves and interest earned on those reserves held for genuine business needs in primary production businesses conducted through trusts may be retained within the primary production carve-out; and
- introduce a materiality threshold and Commissioner discretion for the all-assets requirement, so that inadvertent omissions or delays beyond the parties' reasonable control do not unwind an otherwise compliant restructure. Relief should be denied only in relation to the affected asset, rather than the entire restructure, and a defined period should be provided to rectify any deficiency.

4.3 Four-year clawback and Commissioner amendment power

The roll-over EM confirms that the Commissioner may amend the assessments of the transferor, a beneficiary of the minimum tax trust, the transferee, or a member of the transferee for four years after the day of the assessment notice where the amendment is connected to the availability of the roll-over. The four-year material-discretionary-elements clawback runs from the day of the last transfer required to satisfy the all-assets requirement. Combined with the retrospective loss of relief if the all-assets requirement is not met by the end of the transitional period, this creates an unusually long and open-ended exposure.

In practice, many transferee entities will choose to operate ordinary commercial remuneration arrangements, including discretionary employee bonuses, employee share or option schemes, performance rights, or share issues to employees who are also existing shareholders (and former trust beneficiaries). It is unclear whether these arrangements could be viewed as introducing a material discretionary element and thereby trigger the clawback.

Recommendation 12: Clarify, with worked examples, whether employee share and option schemes, discretionary employee bonuses and similar performance-based remuneration in the transferee are intended to constitute material discretionary elements. Narrow the Commissioner's extended amendment power so that it does not extend to beneficiaries or members unless there is a specific integrity concern that cannot be addressed by amendment powers against the transferor and transferee.

5. Beneficiary outcomes

5.1 Non-refundable offset

The exposure draft provides non-corporate beneficiaries with a non-refundable tax offset equal to 30 per cent of their assessable amount attributable to minimum tax income where the trust remains within the minimum tax regime. While intended to recognise the minimum tax paid by the trustee on that income, the offset can only reduce an existing tax liability and cannot be refunded. As previously noted in the FAAA's 31 July 2026 submission, beneficiaries with little or no tax liability, including retirees, stay-at-home parents, students, younger workers and individuals temporarily out of the workforce due to illness or caring responsibilities, may be unable to fully utilise the offset. High income beneficiaries or those in receipt of large trust distributions are much less likely to be impacted. Consequently, the practical incidence of the minimum tax is likely to fall disproportionately on lower and middle-income beneficiaries.

Recommendation 13: Treasury should examine whether the non-refundable character of the offset produces outcomes beyond the stated 30 per cent objective, particularly for beneficiaries whose tax liability is insufficient to absorb the offset and publish worked examples covering beneficiaries with different taxable incomes and circumstances.

5.2 Minor beneficiary outcomes

The explanatory materials do not fully address the interaction between the minimum tax regime and the existing tax treatment of minor beneficiaries. We have concerns about years in which trust income is materially higher than expected and distributions are made to beneficiaries under 18 years of age. In

those circumstances, beneficiaries may become subject to the existing higher tax rates that apply to certain unearned income of minors (as much as 66%). This concern is particularly acute where families have historically distributed modest amounts to children but experience an unexpectedly strong investment or business year.

Recommendation 14: Treasury should examine the interaction between the minimum tax regime and the existing taxation of minor beneficiaries and publish worked examples covering distributions to beneficiaries under 18 years of age across a range of income levels and trust circumstances. We further recommend a means to exclude these minor beneficiaries from excessive distributions in these circumstances.

5.3 Corporate beneficiary outcomes

Our members continue to provide feedback that the denial of a tax credit for corporate beneficiaries is an unjustified element of this reform. They continue to believe that the effective tax rate that results from this proposal is unreasonable and unnecessary.

Recommendation 15: Treasury should reconsider the inability for corporate beneficiaries of minimum tax trusts to receive access to a tax offset for the tax paid by the trust.

6. New definition of "fixed trust"

We welcome the broader statutory definition of "fixed trust". However, two concerns arise:

- **Breadth of "material discretionary elements".** The definition applies more broadly than the minimum tax and may affect the treatment of trusts under other tax provisions. It is unclear whether trustee or employer discretion in employee remuneration, performance bonuses or incentive arrangements could be viewed as a material discretionary element affecting beneficiaries' rights or interests, particularly where family members are both trust beneficiaries and employees.
- **Interaction across the tax law.** Any broadening of the definition can be expected to affect other provisions relying on fixed-trust status. These implications may not be immediately obvious.

Recommendation 16: Before enactment, provide greater clarity on the operation of the new fixed-trust definition, including its interaction with existing tax provisions and its application to common commercial trust structures. Publish worked examples covering employer discretion in remuneration and typical commercial and family arrangements, and provide clear guidance for taxpayers to resolve uncertainty about trust classification.

7. Business succession

We support the primary production carve-out, but the same succession concerns apply to other family businesses that transition between generations. The EET model responds only partially, and only by requiring fixed proportions of income and capital that remove much of the flexibility that supports gradual succession. Likewise, the roll-over option fixes ownership at the time of restructure and may require

decisions about future ownership and control earlier than would otherwise be appropriate (for example, while children are minors). We note Treasury's clarification at the 16 September 2026 consultation meeting that paragraph 1.21 of the electable regime EM leaves the trustee's underlying trust-law discretion intact. However, the income-tax consequences and irreversible nature of departing from the EET nomination will practically constrain how a trustee can exercise that discretion for succession purposes.

Recommendation 17: Consider whether a targeted succession concession could be introduced for family businesses that continue to use discretionary trust structures for genuine succession planning or business continuity purposes, subject to appropriate integrity safeguards.

8. Compliance and implementation costs

The proposed reforms will impose substantial implementation and ongoing compliance costs on discretionary trust users and their advisers. These costs extend beyond tax liabilities and include obtaining specialist legal, tax and accounting advice, modelling alternative pathway outcomes, amending trust arrangements, restructuring ownership and business operations, updating governance and record keeping processes, and monitoring ongoing compliance with the EET model and transitional roll over requirements. For many small businesses and family enterprises, the complexity of the regime will require significant professional assistance before an informed decision can be made. This burden is amplified by the fact that important aspects of the regime remain subject to further legislation, administrative requirements and guidance. As a result, taxpayers and advisers may incur substantial costs in assessing options and implementing changes, only to revisit those decisions as the framework develops.

The FAAA is also concerned about the broader costs of educating taxpayers and advisers about the operation of the new regime. Effective implementation will depend upon clear and accessible guidance that enables trustees to understand their obligations and make informed choices between the available pathways. Given the scale of the proposed changes and the need for taxpayers and advisers to develop new knowledge and capabilities within relatively short timeframes, education and support will be critical to successful implementation. Government-funded education initiatives delivered through professional associations and industry bodies could play an important role in managing this transition, helping advisers and taxpayers understand the new requirements and reducing the risk of inadvertent non-compliance.

Recommendation 18: Treasury and the ATO should publish comprehensive guidance, worked examples and practical implementation materials before taxpayers are required to make pathway elections or restructuring decisions. The Government should also support a targeted education and change management program, including funding for professional associations and industry bodies to educate their members to assist taxpayers and advisers in understanding the operation of the new regime and the choices available under the minimum tax, EET and transitional roll over pathways.

Conclusion

The FAAA appreciates Treasury's engagement throughout this consultation process, including the opportunity to meet on 16 September 2026 to discuss the exposure draft. The exposure draft represents an improvement on the original proposal. However, greater flexibility, clearer guidance and more

proportionate outcomes would improve the operation of the regime without undermining its integrity objectives. We encourage Treasury to address these issues before the legislation is finalised.

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

Yours sincerely,



Sarah Abood
Chief Executive Officer
Financial Advice Association Australia (FAAA)