FINANCIAL ADVICE ASSOCIATION AUSTRALIA

11 November 2026

The Treasury
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Senate Standing Committees on Economics
PO Box 6100 Parliament House
Canberra ACT 2600

Via email:

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Dear Treasury and Committee Secretary,

Alternative proposal: Protecting genuine small businesses from the minimum tax on discretionary trusts

The Financial Advice Association Australia (FAAA) supports the Government's objective of addressing inappropriate income splitting and tax minimisation by higher income individuals through discretionary trusts. However, the proposed minimum tax should be better targeted so that genuine small businesses are not unnecessarily captured and forced to reconsider otherwise legitimate business structures.

The FAAA has engaged extensively on this reform, including through our submission of 31 July 2026, direct consultation with Treasury on 16 September 2026, and further submissions on 18 September 2026 and 26 October 2026 (to the Senate Economics Legislation Committee). Since then, we have consulted further with our members on the practical implications of the proposed measure and potential alternative approaches. This proposal has been developed through that consultation.

The message from our members is the overwhelming concern about the complexity of this reform, the importance of the decision that needs to be made, the cost of the advice required to make this decision and the excessive impact on the structure that is so often used by small businesses for protection and succession planning purposes. None of the options available allow for these important purposes.

Proposed Alternative

The FAAA recommends that the Government exempt small businesses from the minimum tax regime and use the existing small business entity framework as the basis to exclude genuine, active small-business income from the proposed 30 per cent minimum tax.

Under this approach, the minimum tax would not apply to income derived from carrying on a business where the discretionary trust:

- carries on a business, rather than simply holding passive investments;
- has aggregated turnover of less than $10 million under the existing small business entity test, including the existing rules for connected entities and affiliates;
- receives the exclusion only for income attributable to the active conduct of that business, meaning passive investment income and unrelated gains would remain within the minimum tax regime; and
- remains subject to existing integrity and anti-avoidance provisions.

This would not provide a blanket exemption for discretionary trusts below $10 million. The key distinction would be whether the trust is genuinely carrying on a business and whether the relevant income is attributable to that business. A discretionary trust principally holding investment assets would therefore not qualify merely because it falls below the small business turnover threshold.

Importantly, using the existing small business entity framework would avoid creating another bespoke tax test. The existing aggregation rules for connected entities and affiliates would also limit the ability of larger businesses to fragment their operations across multiple entities simply to remain below the threshold. This approach would preserve the Government's ability to apply the minimum tax to larger businesses and passive wealth structures. It would also reduce the necessity for genuine small businesses to restructure simply because they operate through a discretionary trust, avoiding the substantial legal, accounting, transaction and other costs that Treasury's analysis recognises is likely to arise from such restructuring.

This is also broadly consistent with the small-business concerns raised by the Council of Small Business Organisations Australia (COSBOA), which argues that the reform should target the conduct giving rise to the integrity concern rather than discretionary trusts as a class. COSBOA similarly supports protection for small businesses below the $10 million aggregated-turnover threshold if the measure proceeds.

Transition where a business exceeds the $10 million threshold

Where a business qualifies for the exemption at the start of an income year, the FAAA recommends that the exemption continue to apply for that income year, even if the business subsequently exceeds the $10 million turnover threshold. From the following income year, the business should have the option to elect into the EET regime or access appropriate rollover relief to transition to an alternative structure, without triggering an immediate tax liability solely as a result of that restructuring. This would provide a clear and orderly transition for businesses that grow beyond the $10 million threshold, rather than forcing them to make a decision in the currently proposed timeframe for accessing the relief, simply due to an assumption that revenue will eventually grow to a point that

exceeds the small business revenue threshold test. This approach would also ensure that business growth does not itself create an unnecessary tax impediment or force an immediate restructure.

Commencement

The FAAA recommends commencement from 1 July 2029, rather than 1 July 2028. This would allow the Government's related capital gains tax reforms to settle before discretionary trusts and their advisers are required to implement another significant tax change. We are aware of serious concerns with respect to the capacity of the accounting and broader business advice sectors being able to support their clients in the implementation of all of this reform in such a short period of time.

Conclusion

The FAAA considers this alternative would provide a more targeted approach to achieving the Government's integrity objective while avoiding unnecessary disruption for genuine small businesses. By drawing on the existing small business entity framework, limiting the exclusion to active business income, and providing an appropriate transition pathway where a business subsequently exceeds the $10 million threshold, the proposal would retain appropriate integrity safeguards while reducing complexity, restructuring incentives, and compliance costs.

Exempting genuine small businesses from this reform will avoid what would have been a huge disruption to the critically important small business sector and enable them to remain focussed on growing their businesses, employing more Australians and increasing the overall economy for the benefit of all Australians.

We encourage Treasury and the Senate Economics Legislation Committee to consider this approach as part of the final design of the measure.

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

Yours sincerely,



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