Australian Government

Minimum tax on discretionary trusts

Exposure draft legislation explainer

The Government has released draft legislation to implement the core components of the 30 per cent minimum tax on discretionary trusts announced in the 2026-27 Budget.

This will deliver a fairer tax system and help fund tax cuts for workers, by better aligning the tax rate on trust income with tax rates paid by workers.

The Government has been clear that a range of trusts will be excluded from the minimum tax including charitable trusts, special disability trusts and complying superannuation entities, as well as primary production income and certain income relating to vulnerable minors. Deceased estates and all discretionary testamentary trusts established for genuine testamentary purposes will also be excluded.

More than 95 per cent of individual taxfilers and more than 90 per cent of Australia's 2.7 million active small businesses will not be affected by these changes in any given year.

The draft legislation takes into account stakeholder feedback received in response to the consultation paper released in July 2026.

Election option

As an alternative to restructuring, discretionary trusts that are in existence at 1 July 2028 will be able to elect into a new regime for tax purposes. These trusts will be able to choose to make fixed distributions to pre-nominated beneficiaries, and not have the minimum tax apply as a result.

Trustees will be able to nominate individuals and entities that are capable of benefiting under the trust at 1 July 2028, including eligible companies and trusts, with no limit on the number of beneficiaries that can be nominated. This means, for example, a trust could nominate to distribute future income to an eligible company with this income taxed only as income of the company in future.

The election would not require a restructure and is not expected to result in state and territory stamp duties.

Nominated beneficiaries can only be added or changed later where a nominated beneficiary passes away or there is a family breakdown.

The election will be in place until it is revoked by the trustee, or is automatically revoked. An election will be automatically revoked where the trustee makes distributions inconsistent with the election.

Upon revocation, the trustee will be subject to the highest marginal tax rate plus Medicare levy in that income year, with the minimum tax applying to subsequent income years.

Support for charitable giving

Charitable trusts and all distributions from trusts to registered charities and deductible gift recipients will be excluded from the minimum tax. The exclusion also extends to distributions to other income tax-exempt entities, like sporting clubs, up to a reasonable cap to be finalised following consultation.

Based on identified distributions to relevant beneficiaries, distributions from discretionary trusts to charities and deductible gift recipients are estimated to account for less than 5 per cent of total charitable donations and bequests in 2024. The exemptions in the draft legislation are intended to ensure there is no disincentive for these distributions to continue.

A new definition of fixed trust

The Government has made it clear that fixed trusts and widely held trusts will be excluded from the minimum tax on discretionary trusts.

To support this, a new fixed trust definition will be introduced, which applies more broadly for tax purposes. It will ensure that a trust can be considered a fixed trust if there are no material discretionary elements.

The new definition will ensure that trusts such as bare trusts, managed investment trusts and other widely held trusts are not captured by the minimum tax.

Roll-over relief

Roll-over relief will be available for three years from 1 July 2027 to assist taxpayers that wish to restructure out of a discretionary trust into other arrangements, such as a company or a fixed trust.

This will provide relief from income tax consequences, including capital gains tax for those that choose to restructure.

The rollover relief is designed for a full restructuring out of a discretionary trust, with a targeted exception for primary production assets given primary production income is excluded from the minimum tax.

Around 350,000 active small businesses (less than 15 per cent of all active small businesses) operated through a discretionary trust structure in 2022-23. Of these, around 40 per cent (140,000 small businesses) are not expected to pay additional tax or need to restructure in any given year. Those affected will be supported if they choose to restructure or elect into a more fixed and transparent structure and be excluded from the minimum tax.

The Australian Small Business and Family Enterprise Ombudsman will be available to assist small businesses to understand the options available to them and where they can get further advice. Specific arrangements will be put in place by the Australian Securities and Investments Commission to support small businesses that wish to incorporate.

Refunds for excess franking credits

After the trustee has offset its income tax liabilities, they will be able to obtain refunds for franking credits that remain and relate to income subject to the minimum tax. The tax treatment of corporation distributions flowing through trusts that do not relate to income subject to the minimum tax will be unaffected.

Have your say

Submissions on the exposure draft materials are open until 18 September 2026 and can be made via the Treasury consultation hub.

Consistent with other significant tax reforms, the Government will continue to finalise implementation of these changes in further tranches of legislation, including administrative and integrity arrangements as necessary.