BCA
Business Council of Australia

Minimum Tax on Discretionary Trusts

Submission to Senate Economics Committee

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This report addresses key issues highlighted by the BCA, including:





1. Executive summary

The Business Council of Australia (**BCA**) thanks the Senate Economics Legislation Committee (**the Committee**) for the opportunity to make a submission on the *Treasury Laws Amendment (Tax Reform No. 3) Bill 2026* (**the Bill**). The BCA's submission focuses on the sections of the Bill that implement the minimum 30 per cent tax on discretionary trusts and make related changes.

The BCA represents over 120 of Australia's largest employers. We develop and advocate for policy that raises living standards for all Australians.

The BCA's key concerns with the proposed changes are that they:

- Increase Australia's already uncompetitive business tax burden.
- Impose double tax on trust distributions to companies, with effective tax rates potentially up to 77 per cent.
- Do not provide adequate exemptions for trusts held by listed companies and commonly used for investment.
- Add substantial complexity and compliance costs, including restructuring costs.
- Involve inadequate consultation for legislation of this complexity.
- Create uncertainty by having a dozen ministerial rule making powers.

Australia has an urgent task to lift productivity, grow real wages and improve living standards, but the proposed 30 per cent minimum tax on trusts will run counter to these goals. The proposal will increase the tax burden in Australia by more than $4 billion per year. The tax increase comes in the context of weak levels of business investment, an uncompetitively high tax burden on investment and business, and recent decisions to impose increased taxes on business.

The minimum tax legislation will also increase tax complexity, compliance costs and uncertainty, including for commercial trust structures that do not facilitate income splitting. The Government's implementation cost estimate of $939 million appears far too low because it relies on an unrealistic, assumed cost for professional advice of $91 per hour. The legislation also relies on 12 rule making powers to give effect to the overall policy. This means that stakeholders and the Parliament are unable to understand the full implications of the proposed changes.

Given the ongoing concerns with the measure overall and the continuous changes to the policy, the BCA recommends the proposed trust minimum tax should not proceed.

If the Bill nevertheless proceeds, several important issues should be addressed.

The Bill contains the deliberate double taxation of distributions from minimum tax trusts to listed or widely held companies. This is a punitive tax policy by design, and the BCA sees no justification for an effective tax rate that could approach 77 per cent. Distributions to listed or widely held companies do not facilitate the income splitting or tax deferral targeted by the measure.

The Bill should expressly exclude managed investment trusts and trusts wholly owned by specified institutional investors to avoid unnecessary uncertainty and adverse effects on investment. It should also limit ministerial discretions and minimise the need for restructures that could attract stamp duty. Important exclusions should be specified in primary legislation to provide greater certainty and parliamentary scrutiny.

The Committee should seek a clearer explanation of why the corporate offset and withholding tax alternatives have not been adopted. It should also request an extension to the Inquiry. The complexity of the Bill and substantial changes since earlier consultation require sufficient time to identify unintended consequences and reduce the risk of further corrective amendments.

2. Key recommendations

Recommendation 1.

The BCA recommends the trust minimum tax should not proceed.

Recommendation 2.

The BCA recommends the Inquiry request Treasury to reconcile its implementation cost estimates with CPA Australia's estimates, which appear to use more realistic cost assumptions.

Recommendation 3.

The BCA recommends the Senate Inquiry request an extension so that all stakeholders have considerably more time to review the complete package of changes, including the legislative instruments.

Recommendation 4.

The BCA recommends:

- the Committee request Treasury explain why the legislation as introduced retains the deliberate and punitive double taxation of distributions to listed or widely held companies when it is unwarranted and unnecessary to achieve the goals of the legislation; and
- the Bill be amended so that the double tax element does not apply to listed or widely held companies.

Recommendation 5.

The BCA recommends the Committee request Treasury:

- explain why the approach taken in the Bill is preferred to the withholding tax alternative;
- provide details of the analysis it undertook to reach this conclusion, including any differences in compliance costs and revenue impact; and
- explain why it is better for Australia to take the approach in the Bill when other similar countries impose a withholding tax.

Recommendation 6.

The BCA recommends the legislation expressly include an exemption for Managed Investment Trusts (MITs) and trusts where all the units or interests in the trust are held directly or indirectly by any or all of the following: widely held fixed trusts; listed trusts; listed public companies; or complying superannuation funds.

Recommendation 7.

The BCA recommends the ministerial discretions be limited, with as much detail as possible specified in legislation, including, where possible, an exclusion for trusts without a sufficient connection to Australia.

Recommendation 8.

The BCA recommends:

- the legislation minimise the need for trusts to restructure, to limit the impact of state and territory stamp duties. This includes providing more exemptions in legislation as recommended above; and
- the Committee urge states to remove any remaining stamp duty liability on trusts that need to restructure because of the minimum tax.

Recommendation 9.

The Bill should be amended so it explicitly requires a fully independent and transparent post-implementation review within three years of commencement to assess the compliance costs of the legislation and its effectiveness and efficiency in meeting stated objectives. This review should be brought forward in the event of relevant major developments.

3. Context

3.1 Tax increase

The minimum tax on trusts will impose a large tax increase on business, which the BCA does not support. Australia needs to be reducing, not increasing, taxes on business. The Explanatory Memorandum (**EM**) estimates the trust measures will increase tax revenue by $4.33 billion in 2029–30, the first full year of operation. A substantial proportion of this cost will apply to business – the BCA's broad estimate is approximately $920 million in 2029–30.[1]

The income tax burden in Australia is already uncompetitively high and this change will increase it. In 2023–24, Australia's total tax on income, profits and capital gains was second highest in the OECD as a share of total tax revenue and fourth highest in the OECD as a share of GDP. As a share of GDP, this tax revenue is 6.3 percentage points above the OECD average.[2] The trust tax measure will increase these figures.

The 30 per cent rate for the minimum tax aligns with the (top) company tax rate. However, this aligns the minimum tax with an uncompetitively high company rate. The OECD Corporate Tax Statistics for 2026 indicate:

- Australia's company tax revenue as a share of GDP is 5.8 per cent, which is thirteenth highest out of the 135 countries surveyed, and third highest in the OECD.
- Australia's headline company tax rate is 30 per cent, which is tenth highest out of 146 countries surveyed, and fourth highest in the OECD.
- Our effective average corporate tax rate is thirteenth highest out of 105 countries surveyed, and second highest in the OECD.
- Australia's modelled effective marginal corporate tax rate is fifteenth highest out of 105 countries, and third highest in the OECD (marginal tax is the tax rate applying to new investment that just breaks even).

The BCA's Global Investment Competitiveness Index shows Australia ranked 21st out of 42 countries in 2025. Australia's business taxation ranking within that index sits at 38th out of 42.[3]

The minimum tax on trusts exacerbates Australia's uncompetitive business tax settings and comes after other major tax changes that have increased tax on business:

- The Budget announced a separate major tax increase on business through the Capital Gains Tax (CGT) measures. The Budget also had some measures to reduce tax on business, but the net impact of the relevant Budget measures based on BCA estimates is a tax increase.
- The thin capitalisation changes commenced operation in 2023 and 2024. The Government explicitly stated, "The core objective of this policy is to increase revenue".[4] The October 2022 Budget forecast increased tax revenue of $350 million in 2025–26 from the measure.[5]
- The expansion of CGT coverage for foreign residents investing in Australian infrastructure and other land-related assets applied from 1 October 2026. The measure was forecast to increase tax by $1.95 billion over five years from 2025–26.[6]

[1] Based on the trust costing in the EM to the Bill of $4.33 billion for 2029–30; the allocation to business of 21.2 per cent is based on net discretionary trust income from business as a share of total net discretionary trust income, sourced from 2023–24 Taxation Statistics, trusts table 4.
[2] Source: OECD, Revenue Statistics 2025: Australia. Country Note, 9 December 2025.
[3] See: https://www.bca.com.au/bca-global-investment-competitiveness-index/
[4] See p. 7 of Treasury (2023) Impact Analysis: Multinational tax avoidance package.
[5] October 2022 Budget Paper 2, pp 15–16.
[6] See p. 2 of the EM to *Treasury Laws Amendment (Strengthening Accountability for Tax Adviser Misconduct and Other Measures) Bill 2026*.

- Increases in Fringe Benefits Tax on certain salary packaged items provided by businesses which commence on 1 April 2027.[7]

3.2 Investment and economic conditions

The proposed tax increase on business due to the trust minimum tax is effectively a tax on new investment. The timing is problematic because business investment remains near 30-year lows as a share of GDP.[8]

The weakness in investment is one of the reasons why Australia is experiencing poor economic performance. Real wages growth is weak and labour productivity has declined by 0.1 per cent per year, on average, for the past six years. The BCA has noted that Australia is on track to have the worst decade for productivity growth on record.[9]

Real household incomes per person declined by 6.1 per cent between September 2022 and September 2023, the largest decline for any OECD country.[10] In February 2025, the Reserve Bank noted that Australia was experiencing a period described as "among the weakest periods of real income growth since the 1960s" and this had occurred "alongside a period of historically weak productivity outcomes."[11] Despite a recovery, real disposable income per person remains about 4 per cent below its peak in June 2022.[12]

There are no indications that the tax increase on investment and business from the Budget measures on CGT and trusts will address this alarming situation.

Given this, the ongoing concerns with the measure, and the continuous changes to the policy, the BCA considers the proposed trust minimum tax should not proceed.

Recommendation 1.

The BCA recommends the trust minimum tax should not proceed.

3.3 Compliance costs

The EM estimates the trust tax measure has one-off implementation costs of $939 million and ongoing compliance costs of $47.6 million a year. The EM amortises implementation costs over ten years to arrive at average annual costs of $141.5 million. The business share of the costs is 57 per cent, or $81.0 million per year. This estimate effectively acknowledges that the proposal adds to the large and growing compliance costs on Australian business.

However, these cost figures are likely to be large underestimates. The hourly rate used for professional advice is unreasonably low and does not reflect commercial reality, see Section 3.3.1. The estimate in the EM also explicitly excludes the impact of stamp duty, which could be significant, see Section 4.6, does not quantify the costs of complying with ministerial instruments, and does not include the ongoing costs of complying with the Excluded Election Trust (EET) regime (see p. 195).

The Government announced some welcome measures in the recent Budget to reduce business compliance costs, but this policy works in the opposite direction. In addition, there are numerous other policy measures adding to the regulatory burden, including: the unfair trading practices regime, starting July 2027; the supermarkets excessive pricing regime, from July 2026; the new mergers and acquisitions regime, from January 2026; the changes to CGT and negative gearing, from July 2027; the Scams Prevention Framework, from April 2027; changes to the definitions of casual employee and independent contractor, from August 2024; 'same job

[7] Introduced as part of the standard personal tax deduction, which was announced on 13 April 2025 and became law on 26 June 2026. The revenue impact of the FBT change on business is not known.
[8] Total private business investment as a share of GDP.
[9] See: https://www.bca.com.au/our-insights/media-releases/business-council-urges-reform-to-turn-around-australias-productivity-slide/
[10] See: https://www.afr.com/policy/economy/household-income-pain-to-last-until-2027-these-three-charts-prove-it-20240219-p5f5yi
[11] See: https://www.rba.gov.au/publications/smp/2025/feb/box-b-consumption-and-income-since-the-pandemic.html
[12] ABS National Accounts, Table 1.

same pay' orders, from November 2024; the right to disconnect, from August 2024; criminal penalties for 'wage theft', from January 2025; and payday super, from July 2026. Many other measures have added to the regulatory burden on business, with yet more announced or under consideration.[13]

3.3.1 Implementation costs – comparison with other estimates

The EM estimates implementation costs of just under $1 billion, as noted above. CPA Australia's September 2026 submission[14] estimates a much higher cost of $2 billion to $2.8 billion for professional advice alone, before stamp duty, restructuring and implementation costs. This can be largely explained by the differences in the assumed cost of professional time. CPA uses a professional cost of $250 to $350 per hour, compared with the unreasonably low assumption of $91 in the EM. Using the more reasonable assumption about hourly cost, the EM's cost would be $2.6 to $3.6 billion.[15]

The BCA considers Treasury's hourly costs to be unrealistically low. There is no way a business will be able to obtain professional advice for $91 per hour, including overheads, a figure that means the adviser is earning well below $91 per hour. The BCA therefore considers CPA Australia's cost assumptions to be more realistic.

Recommendation 2.

The BCA recommends the Inquiry request Treasury to reconcile its implementation cost estimates with CPA Australia's estimates, which appear to use more realistic cost assumptions.

3.4 Consultation timeframes

The Budget tax changes were portrayed as the most significant and most ambitious tax changes in at least 25 years.[16] Yet the consultation periods available for the key parts of the changes – CGT, negative gearing and trusts – have been extraordinarily short, clearly inadequate for measures of this stated significance and ambition.

The current Bill was introduced to Parliament on 14 October; referred to the Senate Economics Committee on 15 October; submissions were requested by 29 October; and the Committee's scheduled reporting date is 13 November. The timeframe between referral and the due date for submissions is 14 days.

The BCA considers this timeframe to be inadequate for legislation of this complexity. The Government's recommended minimum timeframe for consultation is 30 days for simpler matters and 60 days for more complex issues.[17] The BCA considers these recommended consultation timeframes should apply, at a minimum, to this Inquiry. The Committee also needs adequate time to consider submissions and hold hearings.

There have been numerous changes to the trust minimum tax during the consultation process. Many of these changes were welcome responses to submissions from the BCA and other parties – see Section 4.1. The extent of the changes means stakeholders need to review many parts of the Bill as though for the first time and cannot rely on previous analysis. The changes effectively mean this Inquiry is analogous to a consultation on a new policy.

The short consultation timeframe increases the risk that many issues with the Bill will not be identified and addressed. This is likely to require further changes in the future, increasing taxpayer compliance costs, causing

[13] For discussion of the regulatory burden of the unfair trading practices changes, see Business Council of Australia, submission on the Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026, 29 May 2026, p. 1: https://www.bca.com.au/wp-content/uploads/2026/06/BCA-Submission-CCA-unfair-trading-practices-Bill-2026-WEB.pdf
[14] See: https://www.cpaaustralia.com.au/-/media/project/cpa/corporate/documents/policy-and-advocacy/consultations-and-submissions/taxation/2026/cpa-australia-trust-tax-reform-submission-final-for-lodgement-unsigned.pdf
[15] This scales up the EM cost of $939 million by 250/91.5 and by 350/91.5, the ratios of the CPA cost per hour to the EM's cost per hour for business advice. Adjusting the EM's assumed cost of $41 per hour for individuals would further increase the adjusted figures.
[16] See: https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/speeches/2026-27-budget-speech-parliament-house-canberra and https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/media-releases/12-months-economic-reform
[17] See p. 7 of Best Practice Consultation guidance note.

unintended consequences, and requiring excessive Government and parliamentary time to resolve the issues. All these risks would be much lower with proper consultation timeframes.

Poor consultation and poor policy go hand in hand.

The BCA and 29 other industry associations wrote to the Treasurer and other Ministers on 16 October 2026 raising growing concerns about inadequate consultation timeframes, arguing:[18]

- genuine and timely consultation is a cornerstone of good policy making and democratic governance;
- consultation done well is a critical step in ensuring good policy design and minimising unintended consequences of policy reform;
- the associations are being asked to review and respond to complex consultations within windows that leave little realistic opportunity for considered input – this runs contrary to the Government's stated principles; and
- standard minimum stakeholder consultation periods should be adopted across all Commonwealth policy initiatives.

3.4.1 Why more time is needed

The Budget changes to CGT and negative gearing illustrate the importance of adequate consultation. These changes were rushed through Parliament, were subsequently amended once, and the current Bill makes further amendments. The EM to the Bill (at 4.179) expressly states further CGT amendments are expected across six categories. There may also be further policy changes in response to ongoing stakeholder concerns – for example, the issues raised on Monday 19 October about the adverse impact of the CGT changes on private equity and venture capital.[19]

The original CGT legislation had an inadequate consultation process, involving no consultation paper, no draft legislation, and a Senate Inquiry where submissions were due 12 days after referral.

Most, possibly all, of the issues with the original CGT and negative gearing measures would have been identified and addressed through a more thorough consultation process. Beyond the issues raised in this submission and previous submissions, a myriad of issues continue to be raised in the context of the proposed reforms, such as the interaction with family trust distribution tax rules and the implications for taxpayers.

Given the experience of the CGT legislation, the BCA is concerned that a rushed parliamentary process for the trust minimum tax will mean numerous issues are raised after the legislation is passed, requiring multiple rounds of amendments. There is no need for this rush. The BCA therefore proposes the Committee extend its Inquiry so that the complete package, including the legislative instruments, can be considered in full and in detail by all stakeholders and Parliament. The changes are due to start operation on 1 July 2028,[20] so an extension and requests for further details are manageable.

Taxpayers want certainty, but rushing the Bill through Parliament is likely to undermine that objective. Inadequate parliamentary consideration may require numerous rounds of amendments, as the CGT example above illustrates. Constantly changing legislation clearly reduces taxpayer certainty.

Recommendation 3.

The BCA recommends the Senate Inquiry request an extension so that all stakeholders have considerably more time to review the complete package of changes, including the legislative instruments.

[18] See: https://www.bca.com.au/reports-submissions/submissions/ministerial-letter-alliance-concerns-regarding-inadequate-consultation-for-complex-legislative-and-regulatory-reform/
[19] See: https://www.afr.com/policy/tax-and-super/shock-47pc-retrospective-change-wipes-out-private-equity-s-tax-break-20261019-p6129t
[20] Rollover relief is due to start on 1 July 2027.

4. Comments on the Bill

4.1 Changes since previous draft

The BCA welcomes the following changes made since the previous draft, which respond to issues raised in our previous submissions:

- Specifically excluding employee share trusts, worker entitlement funds and securitisation trusts;
- Addressing an issue that effectively required trust-deed amendments to have unanimous consent;
- Narrowing the material discretion test so that it is focused on significant discretions relating to beneficiary rights to trust income or capital;
- Allowing more flexibility for the issue and redemption of interests;
- Addressing an issue with ministerial determinations only 'suggesting' a trust has no discretionary elements;
- Expanding exclusions from the minimum tax to cover payments untaxed or exempt from withholding tax by policy design;
- Including both the rollover framework and the excluded election trust (EET) regime in the same legislation; and
- Clarifying in the EM that the election should not risk trust resettlement and stamp duty liability.

4.2 Corporate double tax

While the legislation has responded to many issues raised by the BCA, the Bill retains the deliberate double taxation of distributions from discretionary trusts to companies. Corporate beneficiaries receive no minimum tax offset, while company tax continues to apply (EM at 1.69 and p. 177). This can result in an effective tax rate of 60 per cent, which could be up to 77 per cent for a distribution from a trust through a company to an ultimate beneficiary who is on the top marginal tax rate.[21]

This is punitive by design.

A stated reason for imposing this double taxation is to prevent the minimum tax being avoided by interposing a company (EM at 1.69, Impact Analysis at p. 178, Consultation Paper at p. 6).[22] However, this issue is relevant only for closely held companies. An individual taxpayer would not be able to get a listed or widely held company to facilitate a tax reduction strategy of this type. There is no policy mischief where a distribution is made from a trust to an unrelated corporate entity. No separate explanation has been provided about why this punitive taxation should apply to public or widely held companies.

The Impact Analysis (at p. 184) explicitly states the preferred option with double tax on companies raises more revenue, and (at p. 166) states the preferred option has the "Largest revenue sustainability benefits". Higher revenue does not provide a principled case for applying double taxation, particularly in the context of the tax on business already being very high, as noted in Section 3.1. As at 30 June 2026, investment by corporates into Australian investment funds (most of which would be MITs) was about $144 billion,[23] so the potential impact is large if even a small proportion of these investments is subject to a 'supertax'.

This punitive approach is unwarranted and unnecessary. The BCA's previously expressed concerns over this approach remain unaddressed. The EET regime does not fix this issue. There are no principled reasons to require trusts to go through the complexity and uncertainty of using the EET regime to avoid punitive taxation – the

[21] See: https://mccullough.com.au/2026/05/25/federal-budget-2026-tax-developments-financial-advisors/ and https://thenightly.com.au/politics/tax-expert-warns-discretionary-trusts-face-77-per-cent-tax-bill-under-labors-proposal-c-23040737

[22] Interposing a company would allow a distribution subject to the minimum tax to be converted to a refundable franking credit, which could effectively eliminate the impact of the minimum tax. The EM (at 1.69) also notes corporate beneficiaries can be used to defer tax.

[23] ABS Australian National Accounts: Finance and Wealth, tables 10, 16, 17, 20, 21 and 26. Sum of holdings in financial and non-financial investment funds and (where available) money market funds.

punitive tax should not be applied in the first place. As noted by the BCA and others, the EET regime is difficult to qualify for and there is (yet) more punitive taxation if the restrictive EET rules are breached.

The BCA recommends this double taxation be removed. The alternatives discussed in Section 4.3 below could also address this issue.

Recommendation 4.

The BCA recommends:

- the Committee request Treasury explain why the legislation as introduced retains the deliberate and punitive double taxation of distributions to listed or widely held companies when it is unwarranted and unnecessary to achieve the goals of the legislation; and
- the Bill be amended so that the double tax element does not apply to listed or widely held companies.

4.3 Alternative approaches

4.3.1 Corporate offset alternative

The Impact Analysis (at p. 178) discusses Option 3, under which corporate beneficiaries would receive a tax offset that would be separately tracked through subsequent distributions to shareholders. This option would remove the double taxation of companies discussed above. It does not include the EET or rollover relief components (see p. 178) – it is unclear why these two components are omitted.

The Government rejected Option 3, stating the preferred Option 2 – retaining double taxation – better addresses income splitting and corporate tax deferral, while delivering stronger fairness and revenue outcomes (EM at pp. 187–188).

The EM estimates the alternative Option 3 would cost $602 million to implement, well below the preferred option's implementation costs of $939 million. The EM implies the higher implementation costs of the preferred option are more than offset by lower ongoing costs of $47.6 million a year, compared with $97.0 million per year for Option 3 (see EM, Tables 2 and 4, pp. 197 and 200). However, the implementation costs are likely to be well above the Treasury estimates, as noted in Section 3.3.

Compliance costs therefore do not establish a clear preference for one option over another. In this context, the BCA cannot see why the approach with punitive taxation of companies is retained.

4.3.2 Withholding tax alternative

There is an alternative model, not separately considered by the Impact Analysis, involving a withholding tax on distributions that have the character of discretionary distributions, rather than the Government's proposal involving trustee-level taxation. This withholding tax alternative was considered or proposed by the Corporate Tax Association (CTA), Pitcher Partners and CPA Australia, which argued:

- a withholding tax is simpler – the trustee-level tax in the Bill is more complex than necessary to achieve the policy objectives;
- the mechanism for a withholding tax already exists;
- the withholding tax alternative may reduce the need to use rollover relief;
- a withholding tax has fewer consequential interactions (Pitcher Partners); and
- the withholding tax alternative is more consistent with other jurisdictions (CTA submission).

As this approach was not considered in the Impact Analysis, the BCA considers the Committee should seek a specific explanation of how the Government assessed this proposal and why it was rejected.

Recommendation 5.

The BCA recommends the Committee request Treasury:

- explain why the approach taken in the Bill is preferred to the withholding tax alternative;
- provide details of the analysis it undertook to reach this conclusion, including any differences in compliance costs and revenue impact; and
- explain why it is better for Australia to take the approach in the Bill when other similar countries impose a withholding tax.

4.4 Legislative exclusions

The Bill does not address the BCA's recommendations for specific legislative exclusions for the two categories of trust discussed below.

4.4.1 Managed Investment Trusts

Most managed investment in Australia occurs through Managed Investment Trusts (**MITs**). The EM (at 1.11) indicates that the minimum tax will not apply to "most" widely held trusts and MITs and states (at 1.26) that widely held trusts such as MITs "would be expected" to escape the minimum tax. These statements are not definitive and clearly leave open the potential for some MITs to be subject to the minimum tax. For example, a MIT might be subject to the minimum tax if it permits substantial trustee discretion because it is used by a small number of underlying investors (the eligibility rules for MITs allow a MIT not to be widely held in certain circumstances[24]).

In addition, a MIT that currently escapes the minimum tax could be brought into its net in the future, and even a small risk of this occurring could deter many investors today. The BCA considers the statements in the EM do not provide an adequate degree of certainty for MITs.

There is no reasonable case for MITs to face the risk of the minimum tax. The MIT eligibility rules mean they need to be either widely held or held by entities that are themselves widely held, such as superannuation funds.[25] In addition, the MIT eligibility rules[26] count relatives as one entity, and this effectively prevents a family group from using the MIT rules to avoid the minimum tax. These rules mean MITs are unable to facilitate the personal income splitting or deferral targeted by the minimum tax. Despite this, a trust that meets the MIT eligibility rules is not directly excluded from the minimum tax.

The scale of MIT investment makes this uncertainty significant. Managed Investment Schemes (MISs), a category that significantly overlaps with MITs, have approximately $2.9 trillion in assets.[27] This indicates the extent of the potential problem if this population is at risk of the minimum tax when it should not be.

Uncertainty or potentially higher taxes could have several adverse effects on MITs and their investors:

- Retirement savings could be adversely affected, as superannuation funds have substantial investments in MITs. Investment by larger superannuation funds into wholesale trusts (the trusts most likely to be affected by this measure) was $718.8 billion as at June 2026.[28]

[24] For example, a MIT could source investments from a small number of life insurance companies, super funds or MITs. See details here: https://www.ato.gov.au/businesses-and-organisations/trusts/specific-rules-for-some-trusts/managed-investment-trusts/managed-investment-trusts-overview/eligibility-requirements

[25] See: https://www.ato.gov.au/businesses-and-organisations/trusts/specific-rules-for-some-trusts/managed-investment-trusts/managed-investment-trusts-overview/eligibility-requirements

[26] See subsection 275-20(7) of the *Income Tax Assessment Act 1997*.

[27] See p. 8 of Treasury (2026) Consultation on proposals to improve regulatory visibility of the managed investment scheme sector through enhanced data collection.

[28] See APRA, Quarterly Superannuation Industry Publication, June 2026, Table 9b.

- Investment in key sectors, including housing, infrastructure and energy, could be reduced. Investment through MITs provides important capital pools to achieve Government targets in these sectors.
- Investment in venture capital and private equity could be reduced.
- Individuals investing through MITs could be subject to a tax increase merely because they invest through a MIT.
- Funds could incur substantial implementation costs in complying with the new minimum tax or converting to alternative structures such as the Corporate Collective Investment Vehicle.
- Uncertainty, compliance costs and additional tax could reduce the competitiveness and size of the funds management industry for no legitimate public policy reason.

Applying additional tax merely because an investment is held through a MIT would threaten a foundational principle of the taxation of collective investment vehicles (**CIVs**): investors in CIVs should broadly be taxed as if they held the underlying investment directly. This principle, also known as tax neutrality or flow-through taxation, is widely accepted:

- In 2008, the then Assistant Treasurer stated this policy principle for trust CIVs: "The tax treatment for trust beneficiaries who derive income from the trust should largely replicate the tax treatment for taxpayers as if they had derived the income directly".[29]
- The Australian Government in 2010 stated the tax "outcomes for investors in a CIV should be broadly consistent with the tax outcomes of direct investment".[30]
- The Regulation Impact Statement on legislation implementing the Corporate Collective Investment Vehicle in 2021 stated "Investors place a high-value on flow-through taxation."[31]
- The OECD commentary on the Pillar 2 rules (the global minimum tax) specifically recommends an exemption for many CIVs in order "to protect their status as tax neutral investment vehicles".[32]

The BCA therefore recommends the legislation expressly exclude MITs from the minimum tax, and this exemption should be provided in primary legislation – rather than in a ministerial determination – for reasons given in Section 4.5 below.[33]

If this recommendation is not adopted, the Government should explain the residual tax revenue risk that justifies exposing MITs to the minimum tax.

4.4.2 Exemption for trusts wholly owned by specified investors

The BCA considers the minimum tax should not apply to trusts with interests that are exclusively held by widely held fixed trusts, superannuation funds, listed trusts, and listed public companies. These categories of trusts are not able to be used for the personal income splitting opportunities targeted by the minimum tax measure.

There is also no need for these types of trusts to face uncertainty about whether they are subject to the minimum tax. The uncertainty would serve no policy purpose, adding compliance and administrative costs while deterring investment in the trust. It would also deter the use of efficient investment structures for no tax policy benefit.

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[29] See: https://webarchive.nla.gov.au/awa/20080720112012/http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/010.htm&pageID=003&min=ceb&Year=&DocType=0

[30] https://taxboard.gov.au/consultation/taxation-treatment-of-collective-investment-vehicles

[31] Page 372 of the Explanatory Memorandum to the *Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021*.

[32] Paragraph 42 of OECD (2026) Consolidated Commentary to the Global Anti-Base Erosion Model Rules.

[33] Attribution MITs should be excluded under current law from the minimum tax measure because attribution MITs are currently deemed to be fixed trusts; see: https://www.ato.gov.au/businesses-and-organisations/trusts/specific-rules-for-some-trusts/managed-investment-trusts/managed-investment-trusts-overview/attribution-managed-investment-trusts/becoming-an-attribution-managed-investment-trust-amit

As noted above, superannuation funds held $718.8 billion in wholesale trusts as at June 2026; in addition, company investment in investment funds was $144 billion as at June 2026, as noted in Section 4.2. There are therefore considerable potential benefits from reducing this uncertainty.

The BCA recommends there should be an exemption from the minimum tax for the types of trusts outlined above, and this exemption should be provided in primary legislation – rather than in a ministerial determination – for reasons given in Section 4.5 below.

Recommendation 6.

The BCA recommends the legislation expressly include an exemption for Managed Investment Trusts (MITs) and trusts where all the units or interests in the trust are held directly or indirectly by any or all of the following: widely held fixed trusts; listed trusts; listed public companies; or complying superannuation funds.

4.5 Ministerial discretions

The Bill contains 12 distinct ministerial rule making powers, compared with 10 in the exposure draft. Appendix B provides a detailed list. CPA Australia has stated five of the discretions can work to the disadvantage of taxpayers, up from four discretions in the exposure draft.[34]

The Budget changes to CGT and negative gearing, when first introduced to Parliament, included a ministerial discretion over the definition of 'new home', but this was removed by parliamentary amendment following concerns from many stakeholders.

Including more rules in primary legislation, rather than leaving them to ministerial discretion, would offer many benefits:

- Greater certainty for taxpayers, as legislation is potentially changed less frequently than regulations.[35]
- Taxpayers can make irrevocable elections (such as to use rollover relief) with greater certainty. Numerous ministerial discretions mean taxpayers must plan for and make major irreversible elections with inadequate information. The consequences of getting the choice wrong can be most serious – in the case of this Bill, punitive taxation and a lost opportunity to use the alternative option.
- A much greater level of parliamentary scrutiny. The number of disallowable instruments potentially before Parliament can be large, and the instruments can be complex, so the ability of Parliament to meaningfully review individual instruments is reduced.[36]
- Parliament can amend or split Bills, or defer their consideration. Broadly, by contrast, legislative instruments cannot be amended, and consideration cannot be deferred beyond tight statutory deadlines.
- Lower risk of excessive use of ministerial discretion, beyond Parliament's intent. The existing approach, for example, might allow a future Government to greatly expand the exemption from the tax by legislative instrument alone.
- Compliance and administrative costs can be lower because the necessary rules are in one place (the primary legislation) rather than two or more (legislation plus regulations).

The Bill already includes several specific exemptions from the minimum tax, and this list has expanded since the draft to include employee share trusts. Consistent with this, the BCA recommends more detail, including further exemptions, be moved into the primary legislation from regulations.

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[34] Source: https://www.cpaaustralia.com.au/about-cpa-australia/media/media-releases/improved-trust-tax-bill-still-not-ready

[35] The ease of changing regulations is sometimes cited as an advantage because it enables flexibility and responsiveness. However, this can operate in both directions, with the flexibility also facilitating excessive use of ministerial discretion as noted in the main text.

[36] The 2024 Annual Report of the Senate Standing Committee for the Scrutiny of Delegated Legislation stated the Committee reviewed 1,607 instruments in 2023 and about 1,276 in 2024. The Senate disallowable instruments list as at 16 November 2026 has 11 pages.

The EM (at 1.30) also contemplates the use of the ministerial discretion to provide an exclusion for trusts without a sufficient connection to Australia. Given this exclusion is already identified and specific, it would be preferable for it to be included in the legislation.

Recommendation 7.

The BCA recommends the ministerial discretions be limited, with as much detail as possible specified in legislation, including, where possible, an exclusion for trusts without a sufficient connection to Australia.

4.6 State and territory stamp duty

The trust tax legislation could force the restructuring of many trusts, which could result in large state and territory stamp duty liabilities. There are several possible restructuring scenarios: the trust could convert to a fixed trust; the trust could convert to a different type of entity, such as a company or partnership; or the trust could elect to use the Excluded Election Trust (**EET**) regime.

Stamp duty could easily apply in the first two scenarios, which involve a conversion or rollover. By contrast, the stamp duty risk is lower for the EET regime. The EM explains (at paras. 3.13, 3.23, 3.27 and 3.53) that using the EET regime should not require a trust deed amendment, should not restrict trustee discretions and should not require resettlement that would trigger stamp duty. The Treasurer also stated the EET regime "would not require a restructure and is not expected to result in state and territory stamp duties".[37]

Stamp duty is therefore less of a concern for the EET regime and more of a concern for conversions or rollovers.

In this context, the New South Wales Government has announced it will act, if re-elected, to remove stamp duty from the initial election into the EET regime.[38] The Western Australian Government has stated entering the EET regime "would not give rise to duty implications", although this is an interpretation of existing legislation rather than a promise of change – the WA Government also stated it is "not currently considering any changes to transfer duty in response to Commonwealth changes".[39] Queensland publicly resisted providing stamp duty relief.[40] The Victorian Government announced on 27 October that, if re-elected, it will legislate a stamp duty moratorium for three years on eligible discretionary trusts restructuring into alternative arrangements.[41]

This Victorian announcement is significantly broader than the NSW announcement, which only provides stamp duty relief relating to elections into the EET regime. No other jurisdiction has, at the time of writing, announced relief for conversions and rollovers, which present the much greater concern. This could mean major costs for businesses forced to restructure because of the minimum tax. CPA Australia estimates restructuring costs, including duty, of $9,536–$23,436. The Impact Analysis expressly excludes state and territory duties from regulatory-cost estimates (EM, pp. 182 and 190).

The BCA urges the states to take a more coordinated and helpful approach to addressing this issue.

Nevertheless, the Federal Parliament cannot assume the states will address these issues. This means the minimum tax regime should be designed to avoid, as much as possible, any state stamp duty impact.

This includes addressing the most problematic elements of the regime, as discussed earlier in this submission: the corporate double tax and the narrowness of the specific legislated exemptions.

[37] See: https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/media-releases/exposure-draft-legislation-minimum-tax-discretionary
[38] See: https://www.nsw.gov.au/ministerial-releases/delivering-certainty-for-nsw-businesses
[39] See: https://www.parliament.wa.gov.au/hansard/daily/uh/2026-10-15/29
[40] See: https://www.theaustralian.com.au/nation/premier-david-crisafulli-attacks-federal-tax-changes-as-queensland-refuses-stamp-duty-relief/news-story/d8ea7a7c47695a148d7396a391b076b4
[41] See: https://www.viclabor.org.au/news/labor-is-backing-business-delivering-surpluses

Recommendation 8.

The BCA recommends:

- the legislation minimise the need for trusts to restructure, to limit the impact of state and territory stamp duties. This includes providing more exemptions in legislation as recommended above; and
- the Committee urge states to remove any remaining stamp duty liability on trusts that need to restructure because of the minimum tax.

4.7 Post-implementation review

The Bill does not require a post-implementation review of the changes. The Office of Impact Analysis has argued such a review should be undertaken "for all policy changes that have a substantial or widespread impact on the economy."[42] The changes contained in the Bill readily meet this benchmark given their impact on revenue and compliance costs. Therefore, the Bill should explicitly require a fully independent and transparent post-implementation review within three years of commencement. This review should be brought forward in the event of an unexpected economic downturn or other relevant major developments.

The EM states Treasury and the ATO will monitor the impact of the measure, and "the Government will consider the timing for an evaluation in the future" (EM at p. 189). This broad statement does not suffice for changes of this magnitude.

Recommendation 9.

The Bill should be amended so it explicitly requires a fully independent and transparent post-implementation review within three years of commencement to assess the compliance costs of the legislation and its effectiveness and efficiency in meeting stated objectives. This review should be brought forward in the event of relevant major developments.

[42] Office of Impact Analysis, *Post-implementation Review*, July 2024. https://oia.pmc.gov.au/sites/default/files/2024-08/post-implementation-reviews.pdf

Appendix A

Timeframes for recent significant consultations

Selected major consultations in 2026 affecting business. The timeframes below are expressed in calendar days; the number of business days would be lower.

Issue	Time for consultation (calendar days)
Non-compete clauses and other restraints – draft legislation	25 days
Minimum tax on discretionary trusts – exposure draft legislation	15 days
Capital Gains Tax and negative gearing – tranche 2 legislation	17 days
Minimum tax on discretionary trusts – consultation paper	23 days
Capital gains tax reforms – arrangements for innovative start-ups	22 days
Instant tax deduction – exposure draft (this included important changes to FBT impacting business)	11 days
Strengthening the foreign resident capital gains tax regime – draft legislation	14 days
Review of the amended Unfair Contract Terms protections	21 days
Unfair trading practices – exposure draft	14 days
Innovative Business CGT Concession – draft legislation	17 days
Better targeting the Research and Development Tax Incentive – draft legislation	17 days

Appendix B

List of proposed powers to make legislative instruments

The following 12 substantive ministerial rule-making limbs appear in Schedules 1–3. Multiple limbs may be exercised in one instrument. References are to provisions inserted or substituted by the Bill. Legislative references, unless otherwise specified, are to the *Income Tax Assessment Act 1936*, including amendments made by the Bill.

- Additional classes of trusts excluded from minimum tax, subject to statutory criteria — s 101AB(2).
- Conditions for the registered charity/DGR and exempt-entity income exclusions — s 101AE(2)(a). This was added since the exposure draft.
- Conditions governing the amount covered by the exempt-entity income exclusion, including a cap or cap methodology — s 101AE(2)(b), read with s 101AE(3).
- Fixed trusts: matters suggesting the absence of relevant material discretionary elements — Schedule 2F, s 272-65(5)(c).
- Fixed trusts: matters conclusively establishing the presence of relevant material discretionary elements — Schedule 2F, s 272-65(5)(b). This was added since the exposure draft.
- Fixed trusts: matters suggesting the presence of relevant material discretionary elements — Schedule 2F, s 272-65(5)(d).
- Fixed trusts: matters conclusively establishing the absence of relevant material discretionary elements — Schedule 2F, s 272-65(5)(a).
- EET corporate beneficiaries: matters suggesting the absence of relevant material discretionary elements — s 102UYD(4)(a).

- EET corporate beneficiaries: matters conclusively establishing the presence of relevant material discretionary elements — s 102UYD(4)(b).
- Rollover continuity requirements for non-family trusts and specified cases involving a genuine misunderstanding of a family trust election — ITAA 1997 transitional provisions, s 126-925(4), read with subsections (2), (3) and (5).
- Rollover transferees: matters suggesting the absence of relevant material discretionary elements — ITAA 1997 transitional provisions, s 126-935(4)(a).
- Rollover transferees: matters conclusively establishing the presence of relevant material discretionary elements — ITAA 1997 transitional provisions, s 126-935(4)(b).

BCA

Business Council of Australia

BUSINESS COUNCIL OF AUSTRALIA
GPO Box 1472
Melbourne 3001
T 03 8664 2664
www.bca.com.au

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