



Australian Government
The Treasury



Minimum tax on discretionary trusts

Consultation Paper

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Consultation Process

Request for feedback and comments

The Government is introducing a 30 per cent minimum tax on discretionary trusts from 1 July 2028.

This paper outlines key aspects of the change including the proposed transitional approaches. This includes rollover relief, treatment of excess franking credits, and collection mechanisms as part of its implementation of the minimum tax.

Interested parties from all sectors are invited to comment on policy topics and implementation considerations relevant to these topics and as raised in this paper. While submissions may be lodged electronically or by post, electronic lodgement is preferred.

All information (including name and address details) contained in formal submissions will be made available to the public on the Australian Treasury website, unless it is indicated that you would like all or part of your submission to remain confidential. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain confidential should provide this information marked in a separate document.

A request made under the *Freedom of Information Act 1982* for a submission marked 'confidential' to be made available will be determined in accordance with that Act.

View Treasury's [Submission Guidelines](#) for further information.

Closing date for submissions: 31 July 2026

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The principles outlined in this paper have not received Government approval and are not yet law. As a consequence, this paper is merely a guide as to how the principles might operate.

Minimum tax on discretionary trusts

Introduction

In the 2026-27 Budget, the Government announced that it will introduce a 30 per cent minimum tax on discretionary trusts from 1 July 2028, to better align the tax rate on trust income with the tax rates paid by workers.

Discretionary trusts allow lower tax rates to be achieved through ‘income splitting’, whereby trustees of discretionary trusts allocate all or part of their income to beneficiaries who have a lower marginal tax rate, arrangements that are not available to most workers. These arrangements can result in high-income and high-wealth taxpayers who structure their affairs using discretionary trusts, paying less tax relative to salary and wage earners on similar income levels, or paying similar tax relative to salary and wage earners on lower income levels. This reduces the progressivity of the tax system.

The underlying basis on which trusts are taxed will remain unchanged. The trustee of a discretionary trust will continue to determine the share of trust income that beneficiaries are entitled to each year. Beneficiaries will continue to be responsible for including trust distributions in their income tax returns. They will continue to be assessed on their share of trust’s taxable (net) income, in proportion to their entitlement to the income of the trust.¹

However, the trustee will now pay a minimum 30 per cent tax on the taxable income of the trust. Amounts already taxed in the hands of the trustee will generally not be affected by the tax. If no beneficiary is made entitled to trust income, the highest marginal rate plus the Medicare levy will continue to generally apply to the income in the hands of the trustee.

Less than 15 per cent of all active small businesses operate through a discretionary trust structure, and more than 90 per cent of all active small businesses in any given year will not be affected by these changes.

The Government will provide expanded rollover relief to assist businesses and others to restructure out of discretionary trusts to other types of entities, for example a company or a fixed trust, without capital gains and other immediate income tax consequences applying. The relief will be available for a period of three years commencing from 1 July 2027.

Businesses that choose to restructure into a company will be able to retain income at the corporate rate, but companies cannot access the capital gains tax discount or indexation. Companies do benefit from access to dividend imputation and a lower 25 per cent corporate tax rate where their aggregated annual turnover is less than \$50 million and no more than 80 per cent of their assessable income has passive sources. Companies also provide simpler ways to access debt financing and to introduce new equity.

Overview of the minimum tax

Scope of the minimum tax

The minimum tax will only apply to discretionary trusts, which provide greater tax planning opportunities than other types of trusts.

¹ Throughout this consultation paper, ‘taxable income’ is used to described ‘net income of the trust estate’ as defined in section 95 of *the Income Tax Assessment Act 1936* (ITAA 1936).



The current tax framework defines discretionary trusts by exclusion – as any trust that is not a fixed trust.² The concept of a fixed trust, grounded on equitable principles and trust law jurisprudence, relies on beneficiaries having ‘vested and indefeasible’ interests. That is, guaranteed entitlements that cannot be taken away.

As part of the development of the minimum tax, consideration will be given to how to appropriately define a discretionary trust. Since the 2026-27 Budget announcement, some stakeholders have provided feedback that relying on the existing definition of fixed trusts may result in the scope of discretionary trusts for minimum tax purposes being broader than intended. Feedback is sought on appropriate treatment of cases such as modern commercial trusts, where trustees typically retain powers to change entitlements, add beneficiaries, or amend trust deeds, whether or not those powers are exercised.

Exclusions

The minimum tax will not apply to other types of trusts, such as fixed trusts, widely held trusts, complying superannuation funds, special disability trusts, deceased estates and charitable trusts.

Some types of income, such as primary production income, will also be excluded from the minimum tax. Primary production income is a longstanding concept in the tax law and broadly covers income from carrying on a farming or agricultural business, including cultivating plants, maintaining animals and fishing. The minimum tax on discretionary trusts is not intended to modify the existing primary production concessions, including the current treatment of Farm Management Deposits and Australian Carbon Credit Unit related income.

Some of the other exclusions require more detailed consideration. These exclusions relate to testamentary trusts, certain income relating to vulnerable minors, and amounts to which non-resident withholding tax applies. The treatment of income tax-exempt entities is also discussed below.

Testamentary Trusts

Testamentary trusts are trusts that are set up under a will and can be used to protect assets of the deceased estate. They can also continue for many years, unlike deceased estates where the assets are only held temporarily while the estate is under administration.

Minors are generally subject to penalty tax rates in relation to distributions from inter vivos (created during the settlor’s lifetime) trusts to support tax integrity. However, testamentary trust distributions are subject to adult marginal tax rates, meaning minors receiving these distributions can benefit from the tax-free threshold.

While the assets in a testamentary trust are generally transferred from the deceased estate, unrelated assets can also be injected into the trust. In 2019, the then-Government introduced an integrity measure to ensure that minors are only assessed at adult marginal tax rates on testamentary trust distributions if the income is related to and accumulated from assets of the deceased estate.³ Consequently, testamentary trust distributions to minor beneficiaries, where the income is from injected assets unrelated to the deceased estate, are subject to penalty tax rates.

² Section 272-5 of Schedule 2F, ITAA 1936. See also section 102UC(4), ITAA 1936.

³ Section 102AG(2AA), ITAA 1936.



As announced on 18 June 2026, income from all types of discretionary testamentary trusts will be exempt from the minimum tax provided they are established for genuine testamentary purposes. These include:

- that income will need to come from assets of the deceased estate, with income from assets injected after Budget night, 7.30pm AEST on 12 May 2026 unrelated to the deceased estate subject to the minimum tax; and
- that the trust can only benefit individuals and income tax-exempt entities where the trust is established on or after 1 July 2028.

Fixed testamentary trusts are also excluded from the minimum tax.

Vulnerable minors

The current tax rates for minors that receive trust distributions depend on the characteristics of the minor, the type of income, and the type of trust.

Generally, the rules in Division 6AA of ITAA 1936 apply to tax beneficiaries who are minors at the highest marginal rate, plus Medicare levy, on amounts over \$416 to support tax integrity. These higher rates apply unless the minor beneficiary is an 'excepted person', or the income is 'excepted income'. For example, minors that have a disability, or are a double orphan, can access adult marginal tax rates on all trust distributions.⁴ Amounts arising from personal injury, workers compensation and criminal injuries received by all minors through all trust distributions are also subject to adult marginal tax rates.⁵ Testamentary trust distributions received by minors are not subject to penalty tax rates only if the income is related to, and accumulated from, assets of the deceased estate.⁶

The minimum tax will not apply to certain income relating to vulnerable minors. Excluded income for vulnerable minors is intended to be generally consistent with the existing rules, discussed above, to ensure that distributions of certain trust income to certain minors is not taxed at the highest rate, including in situations where the income relates to disability, injury and orphans. For example:

- investment income from loss of parental support, personal injury, workers compensation, criminal injuries, life insurance, and benefits from certain funds on death or family breakdown within the scope of section 102AG of the ITAA 1936; and
- income from assets of the deceased estate.

Certain income distributed to foreign residents

There are special rules for how particular amounts of assessable trust income are taxed to foreign resident beneficiaries, such as dividends, interest and royalties. Broadly, these income types are subject to withholding taxes and are treated separately to other trust income.

Australia currently has double tax agreements with more than 40 jurisdictions. These agreements are intended to control the way income is taxed in situations with overlapping tax jurisdictions, thereby reducing or preventing double taxation and double non-taxation. Many jurisdictions may have agreed tax rates on dividends, interest and royalties lower than 30 per cent.

⁴ Section 102AC(2), ITAA 1936.

⁵ Section 102AE(2), ITAA 1936.

⁶ Section 102AG(2AA), ITAA 1936.



To ensure Australia's double tax agreements, as well as the multilateral global and domestic tax regimes, continue to operate effectively, distributions to foreign resident beneficiaries of discretionary trusts, to the extent it comprises of dividends, interest and royalties to which foreign resident withholding tax applies, will be excluded from the minimum tax.

Income tax-exempt entities

As noted above, charitable trusts are excluded from the minimum tax. However, discretionary trusts may also distribute to income tax-exempt beneficiaries, such as charities. The minimum tax will be levied at the trustee level and generate a non-refundable tax offset for the tax payable by the trustee, which reduces income tax payable by eligible beneficiaries. However, income tax-exempt beneficiaries, such as registered charities, would not be able to use these offsets as they do not have income tax liability, and the offsets are non-refundable.

Feedback is sought on the treatment of distributions to income tax-exempt entities.

Taxing Point

The minimum tax will be imposed on the trustee, as it is the trustee who determines which beneficiaries are to be made presently entitled to the income of the trust and the beneficiary pays tax based on that entitlement at their marginal tax rate.

From 1 July 2028, the trustee will pay 30 per cent tax on the taxable income of the trust (unless higher rates or exclusions apply). Individuals and other non-corporate beneficiaries will receive a non-refundable tax offset (minimum tax offset) for the tax payable by the trustee, which reduces their income tax payable.

Trustees will be required to calculate, report and pay the minimum tax, as well as notify beneficiaries of their entitlements and associated minimum tax offset.

The treatment of individual, corporate and trustee beneficiaries under the minimum tax is discussed in more detail below.

Individual beneficiaries

Individuals will still be assessed on their share of the discretionary trust's taxable income at their relevant marginal tax rates.

Each beneficiary's minimum tax offset will depend on their share of the trust's taxable income, rather than their share of the trust income. Consistent with other tax offsets, it will not be able to be used to reduce the Medicare levy. The offset will not be able to be refunded or carried forward and so will not be able to be used to the extent it exceeds the taxable income of the individual. This recognises the tax already payable by the trustee, while ensuring the tax payable on that income is not lower than 30 per cent (subject to exclusions).

Treatment of individual beneficiaries

Trust A is a discretionary trust subject to the minimum tax. In 2028-29, Trust A has \$200,000 of trust income. Trust A's taxable income is also \$200,000.

Trust A has multiple beneficiaries that the trustee typically distributes to from year-to-year. However, for 2028-29 the trustee makes only Individual A presently entitled to all of Trust A's income (\$200,000).

The trustee is liable for the 30 per cent minimum tax on Trust A's taxable income (\$200,000). Therefore, the trustee is liable for \$60,000 minimum tax.

Consistent with the current law, because Individual A is presently entitled to all of Trust A's income, Individual A will be assessed on all of Trust A's taxable income (\$200,000).

Individual A will also receive a minimum tax offset to reduce their income tax liability. As Individual A is assessed on 100 per cent of Trust A's taxable income, they will also receive a tax offset equal to 100 per cent of the minimum tax payable by the trustee (\$60,000).

Individual A does not have any other income and is subject to marginal tax rates. Therefore, before the minimum tax offset is applied, Individual A would have a \$55,602 tax liability in 2028-29, and an additional \$4,000 Medicare levy liability. Individual A can then use \$55,602 of their \$60,000 minimum tax offset to reduce (and discharge) their tax liability (excluding the Medicare levy). The remaining \$4,398 of the offset is not refundable (for example, could not be used to extinguish the Medicare levy liability). This means Individual A would only be liable to pay their \$4,000 Medicare levy liability (being 2 per cent of their total taxable income of \$200,000).

Corporate beneficiaries

Around 94 per cent of companies did not receive a distribution from a discretionary trust in 2022-23. The minimum tax will reduce the incentive for trustees to distribute to corporate beneficiaries set up just to receive distributions from discretionary trusts, which can provide greater tax planning opportunities and increase complexity in the tax system.

Corporate beneficiaries will be assessed based on their entitlement to trust income but will not be able to claim a minimum tax offset based on the tax payable by the trustee to reduce their income tax liability.

Allowing companies access to an offset for the tax payable by the trustee (with no other restrictions) would allow the corporate beneficiary to convert the benefit of the minimum tax offset into refundable franking credits, which could then be passed on and refunded to non-corporate shareholders that are also trust beneficiaries.

Not allowing companies to access the minimum tax offset is the simplest mechanism to prevent the minimum tax being undermined by interposing a company between the trust and the ultimate beneficiary, without changing the imputation system.

Treatment of corporate beneficiaries

Trust A is a discretionary trust subject to the minimum tax. In 2028-29, Trust A has \$100,000 of trust income. Trust A's taxable income is also \$100,000.

Trust A has multiple different beneficiaries that the trustee typically distributes to from year-to-year. However, for 2028-29 the trustee chooses to make only Company A presently entitled to all of Trust A's income (\$100,000).

The trustee is liable for the 30 per cent minimum tax on Trust A's taxable income (\$100,000). Therefore, the trustee is liable for \$30,000 minimum tax.

Consistent with the current law, because Company A is presently entitled to all of Trust A's income, Company A will be assessed on all of Trust A's taxable income (\$100,000). Company A cannot receive a minimum tax offset to reduce their income tax liability based on the minimum tax payable by the trustee.

Company A does not have any other income and is subject to the 30 per cent corporate tax rate. Therefore, Company A will have a \$30,000 tax liability.

As Company A cannot receive a minimum tax offset to reduce its income tax liability for tax payable by the trustee, it is liable to pay \$30,000. Company A can create \$30,000 franking credits after the tax liability is paid to the Australian Taxation Office.

The operation of the imputation system when Company A issues franked distributions to its shareholders remains unchanged.

Trustee beneficiaries

Trustee beneficiaries will continue to include their share of the discretionary trust's taxable income in their assessable incomes. They will also be entitled to a minimum tax offset based on their share of the first trust's taxable income.

Where a beneficiary is itself a discretionary trust subject to the minimum tax, the tax offset must be applied against its own income tax liability (including minimum tax) and consistent with other tax offsets, cannot be used to reduce the Medicare levy. The minimum tax offset is non-refundable and any excess is not refunded, not carried forward nor passed onto further beneficiaries. This maintains a floor on the tax paid on income of discretionary trusts, and discourages complex tax planning arrangements involving chains of discretionary trusts.

Where a trustee beneficiary is not a discretionary trust subject to the minimum tax, the minimum tax offset may be passed on to its own beneficiaries and used by non-corporate beneficiaries eligible for the offset.

Discussion questions

1. How should discretionary trusts be defined to appropriately distinguish them from fixed trusts for the purposes of the minimum tax?
2. What is the appropriate minimum tax treatment for income tax-exempt entities?
3. Are there any other implementation matters not addressed in this paper that should be considered in designing the minimum tax on discretionary trusts?

Specific topics for feedback

This consultation paper seeks feedback on the minimum tax on discretionary trusts, with a particular focus on the following topics to support its implementation:

- new rollover relief for three years from 1 July 2027 to allow groups to restructure businesses and investments from discretionary trusts to other entities without direct consequences under income taxation law, and alternative approaches;
- treatment of excess franking credits; and
- appropriate collection mechanisms to support the minimum tax.

Rollover relief

Rollover relief will be available 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 expanded relief from direct income tax consequences, including capital gains tax, and will be available for three years from 1 July 2027.

The rollover would be based on the existing Small Business Restructure Rollover (SBRR) – particularly its treatment of discretionary trust structures – but would be extended beyond small business entities, and would be available to discretionary trusts regardless of size.

The rollover would not require continuity of identical legal ownership following a restructure. Changes in legal ownership through companies, partnerships or other entities should not, of themselves, prevent access to relief where ultimate economic ownership remains within the same family unit.

The measure is intended to support transition out of discretionary trust structures into arrangements with more fixed and transparent economic outcomes, not a mere change in legal structure.

Feature	Existing SBRR	New rollover
Policy objective	Facilitate genuine restructure rollovers.	Facilitate transition out of discretionary trusts.
Eligible transferors	Small business entities with aggregated turnover of less than \$10 million.	Discretionary trusts within the scope of the minimum tax.
Genuine restructure requirement	Required.	Not required.
Assets covered	Active business assets and revenue assets.	Active business assets and revenue assets, as well as assets used to produce passive income.
Post-restructure outcomes	No specific focus on economic flexibility.	Intended to support more fixed and transparent economic outcomes.

Transitioning to more fixed and transparent economic outcomes

The transferee must be an entity that is not a discretionary trust within the scope of the minimum tax. Therefore, the transferee can be a company, fixed trust, individual, or one of the listed entities that are in a partnership. Consistent with the SBRR, the transferee cannot be a complying superannuation fund or an income tax exempt entity.

The rollover is not intended to facilitate the continuation of substantially equivalent discretionary distribution outcomes through alternative legal structures.

Broadly, having fixed economic outcomes indicates the economic entitlements are sufficiently predetermined and stable, rather than capable of being redirected year-to-year. Having transparent outcomes suggests the allocation mechanics are set based on the legal rights attaching to the interests, rather than dependent on a broad discretion.

Relief is also not intended to apply where assets are transferred into a company structure with multiple classes of shares that permit dividends or capital returns to be directed between participants on a discretionary basis. For example, the rollover could be restricted to companies with a single class of ordinary shares (or classes with materially equivalent distribution and capital rights).

There are a number of circumstances where relief would be denied. This could include where there are changes in the membership of the transferee company within a certain period, other than equity injections from, or sales to, genuine third parties.

Relief could also be denied where assets are transferred into a partnership or a comparable arrangement under which income, gains or capital can be allocated or distributed between participants on a discretionary or otherwise non-fixed basis. Such arrangements would substantially preserve the ability to redirect economic benefits between participants following restructure.

No genuine restructure requirement

The rollover would not require the restructure to be a 'genuine restructure' of an ongoing business, as is currently required to access the SBRR. This is because the new rollover is intended to be available to small businesses and others that wish to restructure out of discretionary trusts so that they are not subject to the minimum tax on discretionary trusts.

All assets

The rollover would apply to all trust assets capable of being transferred, including assets earning passive income. This is broader than the SBRR, which only applies to CGT assets, trading stock, revenue assets and depreciating assets, used in carrying on a business.

The rollover would require all, or essentially all, of the trust's assets to be transferred to the new structure. Allowing trustees to selectively choose which assets to transfer could allow a trust to retain assets in a way that entrenches intergenerational equity issues – by preserving existing concessional treatment at the expense of future trusts. A nominal (very small or token value) asset may be left in the trust to avoid the rollover indirectly requiring the trust to be wound up. Whether a trust should wind up will remain a matter for the trustee and relevant stakeholders having regard to the trust deed.

Ultimate economic ownership

The SBRR currently allows family discretionary trusts to pass the ultimate economic ownership test if the ownership before and after the transfer is attributable to members in the family group. However, requiring discretionary trusts to make a family trust election, like with the SBRR, to satisfy the ultimate economic ownership test would be problematic, as these elections are generally irrevocable and have ongoing tax consequences.⁷

The new rollover could instead use a new statutory family unit, deeming the ultimate economic ownership test to be passed where the economic interests in the transferee entity are held by members of the same family unit as those who controlled the transferor discretionary trust.

This new statutory family unit would be distinct from the existing definition of family group in the trust loss rules in the ITAA 1936. It could include individual family members, as well as other entities where individual family members satisfy a 'clearly defined rights test' and there are 'no material discretionary elements' to all of the income and capital.

For example, a rollover from a discretionary trust controlled by a trustee who is a spouse, to a company owned by both spouses, could be deemed to satisfy the ultimate economic ownership test, as the economic interests remain within the same family unit. However, a rollover into a company that is owned by another discretionary trust, where no family members have any clearly defined rights, would not satisfy the ultimate economic ownership test.

Residency requirement

The rollover would retain the existing SBRR integrity rules, which include the requirement that the transferor and transferee must be Australian residents.

Family trust distributions tax

The rollover would also be designed to ensure that Family Trust Distributions Tax (FTDT) does not arise on restructuring out of a discretionary trust into a new entity.

FTDT arises where a trust or entity that has made a family trust election and/or an interposed entity election makes a distribution outside the family group of the individual or individuals specified in the election(s). Distribution is broadly defined to include transfers of property where the value of the property transferred exceeds the amount or value of consideration given in return.

⁷ Chiefly, where FTDT could arise where distributions are made outside a defined concept of a family group.



Some discretionary trusts may have an existing family trust election and/or interposed entity election(s), meaning transfers of property by a transferor entity could potentially attract the application of FTDT if the transferee entity is not a member of the specified individual(s) family group(s). The rollover would ensure that FTDT does not arise in this situation.

Alternative approaches

Stakeholders have also raised other ideas as an alternative to rollover relief. For example, allowing existing discretionary trusts to make an irrevocable election to enter into a taxation regime with the effect that the trust would be treated, and taxed, as a fixed trust, for all income tax purposes.

Feedback is sought on other approaches, including how they could work in practice and appropriate integrity measures, and any associated issues such as interactions with trust law and trustees' obligations.

Discussion questions

4. Are the proposed rollover relief arrangements appropriate?
5. Are existing integrity rules sufficient to address arrangements that substantially preserve discretionary economic outcomes through alternative legal structures?
6. Is it appropriate that the rollover is designed to prevent FTDT from applying where a discretionary trust with an existing family trust election and/or interposed entity election(s) transfers property to an entity that is not a member of the family group?
7. Are there any other matters that should be considered in finalising the design of the rollover relief?
8. Are there other approaches that could reduce the need for upfront restructuring? What practical or legal considerations would arise in implementing these approaches, including their interaction with trust law and trustees' obligations?

Treatment of excess franking credits

To ensure the use of refundable franking credits does not undermine the minimum tax, trustees that receive franked dividends will be required to use their franking credits to offset their income tax liabilities. This is consistent with the current arrangements in circumstances where a trust is assessed and liable for tax, such as where a trustee retains trust income.

Excess franking credits may arise where a trustee offsets its income tax liability, including any minimum tax liability, and franking credits remain. This could arise in occasions where franking credits available to the trust exceed the income tax liability of the trustee.

The Government is considering two options for the treatment of excess franking credits for trustees: refunding excess franking credits to the trustee, or allowing excess franking credits to be carried forward to reduce the trustee's future income tax liabilities.

Whether excess franking credits are refunded or carried forward, the trustee would receive the benefit in the form of a tax offset, consistent with the existing refundable or carry forward tax offsets, such as the tax offset for individuals in receipt of franking credits. Tax offsets are not assessable income, subject to appropriate integrity rules. Whether the amount of the benefit the trustee receives from the tax offset for its franking credits forms part of the trust income, or how it is treated for trust law purposes, will depend on the terms of the trust deed.

Feedback is sought on the implications of each approach.

Refunding excess franking credits to the trustee

Refunding excess franking credits to the trustee would preserve their refundable character.⁸ However, differing treatment between excess franking credits and the excess minimum tax offset may add complexity.

Carrying forward excess franking credits

Allowing trustees to carry forward excess franking credits would mean they could be used to offset future trust income tax liabilities.

This option could increase compliance obligations as trustees would be required to maintain franking credit carried forward balances and related records. Additional integrity rules may also be required to ensure that the benefit of any carried forward franking credits remains appropriately linked to the beneficiaries whose distributions were subject to the minimum tax. For example, rules may be needed to prevent new beneficiaries from accessing any indirect benefit of excess franking credits carried forward before their involvement in the trust.

Consideration could also be given to limiting the carry forward, including through time-based restrictions or a cap on the amount of credits that may be carried forward.

⁸ Excess franking credits are not refundable to the trustee where the trustee is liable to be assessed under section 98 (trusts with foreign beneficiaries, or beneficiaries under a legal disability) or section 99A (trust retains income) of the ITAA 1936. Excess franking credits may however be available to trustees liable to be assessed under section 99 (deceased estates not fully administered) of the ITAA 1936, for example in relation to certain deceased estates under section 67-25(1B) of the ITAA 1997.

Cameo: Different treatments of excess franking credits

Trust E is a discretionary trust subject to the minimum tax. In 2028-29, Trust E:

- receives a \$70,000 distribution from Trust D, plus \$30,000 minimum tax credits in total;
- receives a \$70,000 fully franked dividend from Company C, with \$30,000 franking credits attached; and
- incurs \$50,000 in general expenses.

This results in:

- trust income of \$90,000 (\$70,000 + \$70,000 - \$50,000) consistent with the deed;⁹ and
- taxable income of \$150,000 (\$100,000 taxable income of Trust D plus \$70,000 franked dividends and \$30,000 of franking credits from Company C less \$50,000 general expenses).

Trust E has multiple beneficiaries that the trustee typically distributes to from year-to-year. However, for 2028-29 the trustee chooses to only make Individual F presently entitled to all the trust income of \$90,000. This means Individual F has a proportionate share of \$150,000 of Trust E's taxable income.

Tax outcomes:

- The trustee has a minimum tax liability of \$45,000 (30 per cent of \$150,000) in respect of its distribution to Individual F, which generates a minimum tax offset of this amount.
- The beneficiary, Individual F, who was made entitled to the income of the trustee will be entitled to a minimum tax offset totalling \$45,000 (based on the proportion of the taxable income of the trust included in the assessable income of the beneficiary).

Use of offsets/credits:

- The trustee of Trust E uses its \$30,000 minimum tax offsets from Trust D and \$15,000 franking credits from Company C to completely discharge its income tax liability.
- After applying those offsets and credits, \$15,000 franking credits remain unused.

Option 1: Refunding excess franking credits

The \$15,000 franking credits would be refunded to the trustee.

Individual F has no other income, will be assessed on \$150,000 and liable to pay tax of \$36,302 excluding the Medicare levy and before the application of any other tax offsets. After applying the minimum tax offset of \$45,000 from Trust E, Individual F pays no additional tax, other than the Medicare levy of \$3,000.

The total tax outcome across Company C, Trust D, Trust E and Individual F is \$48,000 over \$150,000 taxable income.

This is comprised of:

- \$30,000 company tax from Company C which gives rise to franking credits
- \$30,000 of minimum tax from Trust D which gives rise to minimum tax offsets
- \$0 minimum tax from Trust E which is offset against minimum tax offsets from Trust D
- Less \$15,000 in franking credits refunded to Trust E
- As well as \$3,000 of Medicare levy paid by Individual F.

This results in an average tax rate of 30 per cent minimum tax plus Medicare levy.

Option 2: Carrying forward excess franking credits

The \$15,000 franking credits would not be refunded and instead would be carried forward by the trustee to reduce future income tax liabilities, subject to integrity rules.

Individual F's position is the same as Option 1, no additional tax, other than the Medicare levy.

The total long run tax outcome across Company C, Trust D, Trust E and Individual F may be as low as \$48,000 over \$150,000 taxable income.

Similar to Option 1, this results in an average tax rate as low as 30 per cent minimum tax plus Medicare levy, but can be higher.

Discussion questions

9. Having regard to tax system integrity, compliance costs and administrative simplicity, should excess franking credits be refundable to the trustee? Why or why not?
10. What compliance costs or tracing requirements may arise under a carry-forward model? Could existing integrity rules adequately address these matters?
11. Are there any other matters that should be considered when finalising the treatment of excess franking credits?

⁹ Assumes the trust deed does not define trust income, or that trust income is ordinary income. Consistent with *Commissioner of Taxation v Bamford*; *Bamford v Commissioner of Taxation* [2010] HCA 10, *Federal Commissioner of Taxation v Thomas* [2018] HCA 2018 and Draft Taxation Ruling TR 2012/D1, trust income for Division 6 ITAA 1936 purposes excludes notional amounts that do not form part of the trust's distributable income.

Collection mechanisms

To ensure the minimum tax is successfully implemented, systems and processes will need to be updated to ensure appropriate mechanisms are in place to collect the minimum tax.

Existing framework

Currently, trustees must lodge the trust's income tax return by the date assigned by the Australian Taxation Office (ATO), which generally falls between late October and mid-May depending on whether a tax agent is used and the trust's lodgement history.

Trustees may make beneficiaries presently entitled to trust income up to 30 June each year. Where *all* trust income is dealt this way, the trustee generally does not incur an income tax liability.

Beneficiaries then include their share of the trust's taxable income in their own tax returns and pay tax at their marginal rates. They must lodge and pay by their individual ATO due dates.

In practice, the full tax consequences of a beneficiary's entitlement are often not fully known until closer to the trust's lodgement date. It is at this point when the trustee (or their accountant or tax agent) calculates the trust's taxable income, determines each beneficiary's share, and issues distribution statements (if applicable), all as part of the ATO lodgement process.

Notification by trustees

As trustees of discretionary trusts determine beneficiary entitlements and administer trust affairs, they play a central role in supporting the operation of the minimum tax. Under the minimum tax, the trustee will be required to notify beneficiaries of their entitlements and associated non-refundable tax offset to assist beneficiaries in completing their income tax returns, leveraging existing trustee notification and reporting requirements.

Collection from trustees

Under trust law, trustees are personally liable for the debts of the trusts they administer. For tax purposes, trustees are also personally liable for tax debts assessed to them on behalf of a trust.¹⁰ Trustees have rights of indemnity from trust assets.

The minimum tax on discretionary trusts will be paid by the trustee, as it is the trustee who controls distributions. This will reallocate the primary tax burden to a smaller number of entities, supporting visibility over debts and entitlements.

To ensure the minimum tax is paid by trustees, it may be necessary to implement complementary changes to address known challenges with collecting tax from trustees, particularly corporate trustees that do not own substantial assets of their own. These include:

- providing the Commissioner of Taxation a similar right of reimbursement from trust assets.
- making directors of corporate trustees jointly and severally liable to pay the minimum tax, as well as empowering the Commissioner of Taxation to issue notices facilitating collection where the trustee fails to pay.
- adopting mechanisms for earlier collection at the trustee level (such as pay as you go (PAYG) instalments).

¹⁰ See section 254 of the ITAA 1936 which contains collection and recovery mechanisms applicable to trustees and agents, including personal liability in certain circumstances and the trustee's rights of indemnity from trust assets.

Discussion questions

12. What additional safeguards, administrative modifications, or beneficiary notification requirements should be considered to support the effective operation and collection of the minimum tax, particularly for arrangements involving corporate trustees?
13. What notification arrangements would be most effective for trustees and beneficiaries to give effect to the minimum tax in a way that minimises compliance costs?
14. Are the complementary collection mechanisms for trustees and corporate trustees proportionate to support the effective collection of the minimum tax?
15. Are there any other matters that should be considered in the design of the collection mechanisms?

High Court decision in the *Bendel* case

On 10 June 2026, the High Court handed down its decision in *Commissioner of Taxation v Bendel* [2026] HCA 18 (*Bendel*). The case concerned a corporate beneficiary's entitlement to income from a discretionary trust. Broadly, the majority of the High Court ruled that a corporate beneficiary's unpaid present entitlement (UPE) to trust income was not a 'loan' for the purposes of the Division 7A.

Division 7A treats certain payments, loans or other benefits by a private company to its shareholder or associates as unfranked (deemed) dividends, unless the amount is repaid or placed on a complying loan agreement. The decision is contrary to the ATO's longstanding administrative position.¹¹

There is an announced but unenacted measure (ABUM) from the 2018-19 Budget to bring UPEs within Division 7A, *Tax Integrity – clarifying the operation of the Division 7A integrity rule*.¹² A measure contained in the July 2020 Economic and Fiscal Update, *Revised Start Dates for Tax and Superannuation Measures* revised the start date for this ABUM to income years from Royal Assent. The Government is seeking feedback on how to implement this measure.

While the matters considered in the case predate the minimum tax on discretionary trusts, given the range of trust and private arrangements it may affect, stakeholders are invited to provide views on any interactions between the treatment of UPEs of a corporate beneficiary and the minimum tax that may be relevant.

Discussion questions

16. What, if any, consequential interactions arise between the minimum tax on discretionary trusts and the revised 2018-19 Budget measure?
17. Are there any other issues or implications as a result of the High Court's decision in *Bendel* that should be considered as part of the design and implementation of the revised 2018-19 Budget measure?

¹¹ Taxation Ruling TR 2010/3W *Income tax: Division 7A loans: trust entitlements*; Taxation Determination TD 2022/11 *Income tax: Division 7A: when will an unpaid present entitlement or amount held on sub-trust become the provision of 'financial accommodation'?*

¹² In 2018-19 Budget, the then Government announced that unpaid present entitlements would come within the scope of Division 7A of ITAA 1936 from 1 July 2019. This would apply where the unpaid present entitlement had not been paid as of the start date.