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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INCOME TAX RATES AMENDMENT (MINIMUM TAX ON DISCRETIONARY
TRUSTS) BILL 2026

TREASURY LAWS AMENDMENT (TAX REFORM NO. 4) BILL 2026:
MINIMUM TAX ON DISCRETIONARY TRUSTS

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

<i>Abbreviation</i>	<i>Definition</i>
AMIT	attribution managed investment trust
ATO	Australian Taxation Office
Bill	<i>Treasury Laws Amendment (Tax Reform No. 4) Bill 2026</i>
CCIV	corporate collective investment vehicle
DGR	deductible gift recipient
Imposition Bill	<i>Income Tax Rates Amendment (Minimum Tax on Discretionary Trusts) Bill 2026</i>
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
MIT	managed investment trust
Rates Act	<i>Income Tax Rates Act 1986</i>
TAA 1953	<i>Taxation Administration Act 1953</i>

Chapter 1: Minimum tax on discretionary trusts

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Outline of chapter

- 1.1 Schedule 1 to the Bill and the Imposition Bill amend the income tax law to establish a minimum tax that will apply to the net income of discretionary trusts from 1 July 2028. The tax will be payable by the trustee, as the trustee controls distributions, with non-corporate beneficiaries able to claim a non-refundable tax offset for the tax payable by the trustee in respect of their share of trust income. The tax will better align the tax rate on trust income with the tax rates paid by workers.

Context of amendments

- 1.2 In the 2026–27 Budget, the Government announced that, from 1 July 2028, a 30 per cent minimum tax would apply to the income of certain discretionary trusts in the hands of the trustee. This chapter refers to such a trust as a minimum tax trust.
- 1.3 A discretionary trust is a trust under which the beneficiaries do not have fixed entitlements to the income and capital of the trust. Often, discretionary trusts allow trustees to determine which beneficiaries receive trust income or capital and the amount each beneficiary receives. This flexibility can allow trust income to be distributed to beneficiaries subject to lower marginal tax rates.
- 1.4 This flexibility is not available to individuals without a trust, including workers who pay tax on wages at marginal rates. Numerous reviews of the tax system over the past 50-years have raised concerns that different structures used to hold assets or earn an income can result in different tax outcomes for people with similar levels of income and may reduce the progressivity of the personal income tax system.
- 1.5 Some stakeholders have provided feedback that relying on the existing definition of fixed trust may result in the scope of discretionary trusts for minimum tax purposes being broader than intended. In light of this feedback, an expanded, codified definition of fixed trust will be adopted to help ensure that a range of modern commercial trusts, which are not intended to be captured by the minimum tax, are excluded. This definition will apply across the whole tax law and address longstanding concerns with the definition of fixed trust in the law.
- 1.6 Small businesses and others affected by the minimum tax will have the option to restructure under the rollover relief or elect to be treated as a non-discretionary trust, which are covered in separate exposure draft legislation.

Summary of new law

- 1.7 Schedule 1 and the Imposition Bill introduce a minimum tax of 30 per cent on the net income of discretionary trusts for income years commencing on or after 1 July 2028.
- 1.8 The tax will be payable by the trustee for the trust. As the tax is a minimum tax, to the extent the trustee is already subject to tax on some or all of this income, the amendments apply to ‘top up’ the tax payable by the trustee to ensure a rate of at least 30 per cent applies to relevant trust net income.

- 1.9 The minimum tax will apply to discretionary trusts. It will not apply to fixed trusts, widely held trusts, AMITs, complying superannuation entities or charitable trusts. That is because those types of trusts are either not discretionary trusts, or are subject to separate regulatory and taxation arrangements, which the minimum tax is not intended to change.
- 1.10 The minimum tax will not apply to certain types of income. Primary production income, certain income relating to vulnerable minors, certain income relating to charitable and not-for-profit beneficiaries, amounts to which non-resident withholding tax applies, and income from testamentary trusts which are established for genuine testamentary purposes will be excluded from the minimum tax.
- 1.11 The definition of fixed trust in the income tax law is also amended to ensure the minimum tax applies as intended. The new fixed trust definition will ensure that a trust can be considered a fixed trust for income tax law if there are no material discretionary elements effecting the entitlements or rights of the trust's beneficiaries.

Detailed explanation of new law

A new minimum tax

- 1.12 A minimum 30 per cent income tax on the net income of discretionary trusts for an income year on or after 1 July 2028 is introduced by amendments to and new provisions in the ITAA 1936 and amendments to the Rates Act.
[Schedule 1, item 9, sections 101AA to 101AE of the ITAA 1936]
- 1.13 The Bill defines the terms 'minimum tax income' and 'minimum tax trust' to define the income of the trust estate and the types of trusts that the minimum tax applies to.
[Schedule 1, items 1, 9, and 20, sections 6, 101AB and 101AC of the ITAA 1936, and subsection 995-1(1) of the ITAA 1997]

Liability to pay the minimum tax

- 1.14 The trustee of a minimum tax trust is to be assessed and is liable to pay the minimum tax if the trust estate has net income for the income year. The trustee is not required to pay minimum tax if there are no beneficiaries made presently entitled to any income of the trust, since the trustee will already be liable to pay income tax on the net income of the trust under section 99A(4) or (4B) of the ITAA 1936 at a rate greater than 30 per cent.
[Schedule 1, item 9, section 101AA of the ITAA 1936]

- 1.15 Trustees will be required to give certain notifications to beneficiaries. Rules around notification, collection and other matters relating to the administration of the tax will be dealt with in subsequent legislation.

Minimum tax trusts

- 1.16 A minimum tax trust is a trust that is not any of the following:

- a fixed trust;
- a special disability trust;
- the trust estate of a deceased person;
- a complying superannuation entity;
- a trust of a kind determined in a legislative instrument.

[Schedule 1, item 9, subsection 101AB(1) of the ITAA 1936]

- 1.17 The purpose of creating a new definition of minimum tax trust is to ensure that the minimum tax will only apply to the types of discretionary trusts intended to be covered, since there are some types of trusts that are covered by other tax and regulatory arrangements.
- 1.18 If a trust is treated as a fixed trust for income tax purposes, it will be excluded from the application of the minimum tax. This is because fixed trusts are trusts where beneficiaries have fixed entitlements to the income and capital of the trust. This is different to discretionary trusts, which characteristically allow a trustee to exercise discretion in determining who benefits under the trust and therefore have flexibility to allocate all or part of the income to beneficiaries who have a lower marginal tax rate. See further below for a discussion of the new definition of ‘fixed trust’.
- 1.19 Special disability trusts are a specific type of trust within the meaning of the *Social Security Act 1991* or the *Veterans’ Entitlements Act 1986*. These trusts are subject to a distinct regulatory regime, and are not intended to be covered by the minimum tax.
- 1.20 The estate of a deceased person is treated as a trust for income tax purposes and is not intended to be covered by the minimum tax. This exclusion covers assets of a deceased estate that are held while the deceased estate is under administration. It is distinct from a testamentary trust, which is discussed in the section below in relation to income that is excluded from the minimum tax.
- 1.21 Complying superannuation entities, which include complying superannuation funds (including self-managed superannuation funds), complying approved deposit funds and pooled superannuation trusts, are excluded as they are not intended to be subject to the minimum tax. Complying superannuation entities

are a distinct type of entity for the purposes of the tax law and subject to distinct regulatory and taxation regimes.

1.22 There are other types of trusts that are not minimum tax trusts due to the operation of the law. As they are already excluded by operation of law, it is not necessary to list them in the minimum tax trust exclusion provision. These include:

- widely held trusts, MITS and AMITS, which are trusts used in commercial settings, are not ‘closely held’ trusts, and would generally be expected to meet the definition of fixed trust, which is being amended to provide greater clarity around how it applies to trusts with no material discretionary elements;
- CCIVs and CCIV sub-funds are intended to be excluded, as they are deemed to be trusts and are taxed as an AMIT if they meet the relevant eligibility criteria;
- exempt entities, such as charitable trusts, since their tax exempt status means that they are not required to pay income tax so the minimum tax will not apply;
- bare trusts, such as solicitor and accountant trust accounts, which are expected to come within the new definition of fixed trust, since the trustee’s role is limited to distributing property in accordance with the client’s instructions;
- employee share trusts and worker entitlement funds, which would generally meet the definition of fixed trust, since distribution to beneficiaries is based on rules and entitlements under the scheme, rather than an absolute discretion of the trustee.

1.23 The Minister may determine by legislative instrument other kinds of trusts that are not minimum tax trusts. The Minister must be satisfied of one or more of the following:

- that trusts of that kind are of a similar nature to those trusts specified to not be minimum tax trusts in section 101AB(1);
- that trust estates of that kind do not have a sufficient economic connection to Australia; or
- that trusts estates of that kind, or their trustees, have statutory functions under Australian law.

[Schedule 1, item 9, subsection 101AB(2) of the ITAA 936]

1.24 The power to determine kinds of trusts that are not minimum tax trusts is intended to ensure that there is a mechanism to clarify the kinds of trusts exempt from the definition of minimum tax trust in limited circumstances where this is consistent with the policy intent. In particular, it may be

appropriate to determine that kinds of trusts are not minimum tax trusts where there is no economic connection to Australia, for example, where a foreign resident trust has no ultimate Australian resident beneficiaries and no Australian sourced income or assets. Trusts may also be used as a mechanism under certain statutory schemes and have specific statutory functions, and it would not be appropriate for them to be treated as minimum tax trusts where they operate according to specific regulatory requirements. Determinations made using the legislative instrument making power may cover very specific matters, or contain significant detail, and are of a nature that is more appropriate to include in subordinate legislation.

- 1.25 A determination made under the legislative instrument power would be subject to disallowance and sunseting in accordance with the provisions of the *Legislation Act 2003* and will therefore be subject to appropriate parliamentary scrutiny.

Minimum tax income

- 1.26 Minimum tax income uses the existing concept of the net income of the trust estate, and is defined by exclusion. The minimum tax will not apply to the share of the net income of the trust if it is income of the following types:

- taxable primary production income;
- a share of net income of the trust that corresponds to a minor's proportionate share of income of the trust estate and that meets certain conditions;
- a share of the net income of the trust that corresponds to a registered charity's, DGR's or exempt entity's proportionate share of income of the trust estate and that meets certain conditions;
- amounts to which non-resident withholding tax applies; and
- income of a testamentary trust that meets certain conditions.

[Schedule 1, item 9, sections 101AC, 101AD and 101AE of the ITAA 1936]

- 1.27 Net income referable to beneficiaries' attributable capital gains are also excluded from minimum tax income where the provisions above apply.

Primary production income

- 1.28 Primary production income has the meaning given in the ITAA 1997. Broadly, it refers to income generated from carrying on a primary production business, including farming or agricultural business, including cultivating plants, maintaining animals and fishing. It is excluded because it is a type of income that is subject to specific taxation arrangements and concessional treatment.

The minimum tax is not intended to change those existing arrangements.
[Schedule 1, item 9, paragraph 101AE(1)(a) of the ITAA 1936]

Minor beneficiary

- 1.29 Where a beneficiary is a minor and presently entitled to a share of income of a discretionary trust, the corresponding share of net income will not attract the minimum tax, where certain conditions are met. That excluded income will continue to be taxed in accordance with the existing provisions under Division 6 of Part III of the ITAA 1936.
- 1.30 The exemption applies to a beneficiary who is less than 18 years of age on the last day of the relevant income year, and who meets one or more of the relevant criteria in paragraphs 102AC(2)(c) to (g) of the ITAA 1936, or the income is of a kind covered by paragraphs 102AG(2)(c) of the ITAA 1936. This covers minors who are disabled, in receipt of a carer allowance or disability support pension, or double orphan pension. It also applies to income to which a minor is presently entitled if that income derives from property transferred to the trustee by way of compensation or damages payments, workers compensation, life insurance or superannuation death benefit proceeds or as a result of family breakdown for the benefit of the minor beneficiary. This will cover, for example, child maintenance trusts that are established to provide support to minors following family breakdowns.
[Schedule 1, item 9, paragraphs 101AE(1)(b) and (c) of the ITAA 1936]

Registered charity or deductible gift recipient beneficiary

- 1.31 Where the beneficiary presently entitled to income of a trust is a registered charity or DGR, the corresponding share of net income of the trust is excluded from the minimum tax income. ‘Deductible gift recipient’ and ‘registered charity’ both have the same meaning as in the ITAA 1997.
[Schedule 1, items 2 and 9, subsection 95(1) and paragraph 101AE(1)(d) of the ITAA 1936]
- 1.32 The Minister may determine conditions relating to the registered charity and DGR exemption by legislative instrument. This may include things such as forms and process steps, which is necessary to ensure the integrity of this provision. For example, the conditions may include requirements for the trustee to confirm that the beneficiary is a registered charity or DGR.
[Schedule 1, item 9, subsections 101AE(2) and (3) of the ITAA 1936]

Exempt entity beneficiary

- 1.33 Where the beneficiary presently entitled to trust income is an income tax exempt entity, other than a registered charity or DGR, the corresponding share of the net income of the trust is excluded from the minimum tax income. Income tax exempt entities include community organisations such as sporting

clubs.

[Schedule 1, item 9, paragraph 101AE(1)(e) of the ITAA 1936]

- 1.34 The Minister may determine conditions relating to the exempt entity exemption by legislative instrument. This may include things such as forms and process steps, which is necessary to ensure the integrity of this provision. It may also include a cap, or method for working out a cap, on the amount that may be excluded from the minimum tax income under these provisions.

[Schedule 1, item 9, subsections 101AE(2) and (3) of the ITAA 1936]

Withholding payment to non-resident

- 1.35 A share of net income to which a non-resident is presently entitled is not subject to the minimum tax if it is a withholding payment. Broadly, dividends, interest and royalties are income types subject to withholding taxes and are treated separately to other trust income. Franking credits attached to a withholding payment are also excluded from minimum tax income. These payments are subject to separate regulatory and taxation treatment, and the minimum tax will not apply, because they are already subject to appropriate levels of taxation in accordance with Australia's double tax agreements and multilateral global and domestic tax regimes.

[Schedule 1, item 9, paragraph 101AE(1)(f) of the ITAA 1936]

Income from testamentary trusts

- 1.36 The net income of a trust estate that is a discretionary testamentary trust will be exempt from the minimum tax provided the trust is established for genuine testamentary purposes. A testamentary trust is established as a result of a will, codicil, intestacy or order of a court, and consists of assets from the deceased person's estate transferred to the trust. It also covers accumulation of income or capital from such property, including, for example, if an asset is sold and replaced with another asset as part of a normal arms-length transaction.

[Schedule 1, item 9, section 101AD of the ITAA 1936]

- 1.37 Income from property injected after Budget night, 7.30 pm by legal time in the Australian Capital Territory on 12 May 2026, unrelated to the deceased estate will be subject to the minimum tax. This is an important integrity rule to avoid other assets being injected into a testamentary trust to avoid the minimum tax.
- 1.38 A further limitation on the exemption for net income of testamentary trusts will apply if the trust estate is established on or after 1 July 2028. From that date onwards, the net income of a discretionary testamentary trust will only be excluded from the minimum tax if the beneficiaries of the trust are individuals or exempt entities. This means that if the testamentary trust has beneficiaries that are corporate entities or other trusts, the net income of the trust will be subject to the minimum tax. This is a further integrity provision to ensure that the exclusion only covers income from testamentary trusts established and

administered to provide benefits to individuals and charitable or other income tax exempt entities.

- 1.39 If the Commissioner is satisfied, having regard to the circumstances in which property is transferred to the trustee and any other relevant matters, that the income was derived directly or indirectly under or as a result of a scheme that was entered into or carried out for the purpose of avoiding the minimum tax, the income is not excluded. This is an integrity provision to prevent testamentary trusts from being used as a tax planning vehicle to make distributions to corporate beneficiaries or other trusts.

[Schedule 1, item 9, subsections 101AD(2)-(5) of the ITAA 1936]

Rate of minimum tax

- 1.40 The Imposition Bill makes amendments to the Rates Act to set the rate of tax payable where a trustee is to be assessed and liable to pay tax under the new section 101AA of the ITAA 1936.

- 1.41 New section 12AB of the Rates Act sets out how to work out the rate of tax payable by a trustee on so much of the net income of the trust estate for a year of income as is minimum tax income.

[Imposition Bill, schedule 1, item 2, section 12AB of the Rates Act]

- 1.42 For this purpose, ‘minimum tax income’ has the same meaning as in the amended ITAA 1936.

[Imposition Bill, schedule 1, item 1, subsection 3(1) of the Rates Act]

- 1.43 The rate of minimum tax depends on whether, under other provisions of the Rates Act, tax is payable on the minimum tax income. It operates so that if no tax is currently payable by the trustee, or tax is payable by the trustee at a rate less than 30 per cent, a top up amount of tax will apply to ensure that the minimum tax income is subject to the minimum tax at a rate of at least 30 per cent. As discussed further below, there are also provisions to ensure that any rebates or deductions that a beneficiary is entitled to in respect of tax paid by the trustee on their share of trust income do not result in less the 30 per cent minimum tax being paid on that share of minimum tax income.

[Imposition Bill, schedule 1, item 2, subsection 12AB(2) of the Rates Act]

- 1.44 The method for working out the applicable rates are:

- to the extent that tax is payable by the trustee on that minimum tax income at a rate that falls short of 30 per cent, the rate of minimum tax is equal to that shortfall;
- to the extent that tax is payable by the trustee on that minimum tax income at a rate that is equal to or exceeds 30 per cent, the rate of minimum tax is nil; and

- to the extent that no tax is payable by the trustee on that minimum tax income, the rate is 30 per cent.
- 1.45 This ensures that the minimum tax will take priority over any existing income tax rule that would result in a lower tax liability for the trustee on minimum tax income. As outlined in the note to section 12AB, the rate of tax payable on minimum tax income may be a composite rate, made up of different rates set under different provisions of the Rates Act. The provision works so that other rates of tax will apply as they currently do, and if the income is an amount of minimum tax income, section 12AB applies a top up rate, so that the minimum tax income is subject to at least a total rate of 30 per cent.
[Imposition Bill, schedule 1, items 2 and 3, subsection 28(2) and the note to section 12AB of the Rates Act]
- 1.46 For example, where section 98 of the ITAA 1936 applies, the rate in respect of that part of that net income is the rate that would be payable under Part I of Schedule 7 of the Rates Act if one individual were liable to be assessed and to pay tax on that income as his or her taxable income. Schedule 7 imposes different rates on different parts of income, giving effect to marginal rates of tax. The Imposition Bill's amendments mean that the rate of minimum tax payable on any dollar of that income is equal to the shortfall between the rate imposed on that dollar but for the minimum tax, and 30 per cent.
- 1.47 Amendments are also made to section 28 of the Rates Act to ensure the correct rate of minimum tax is imposed where paragraph 98(3)(b) or subsection 98(4) of the ITAA 1936 applies.
[Imposition Bill, schedule 1, item 3, section 28 of the Rates Act]
- 1.48 Subsection 98(3)(b) applies in respect of certain beneficiaries that are non-resident companies, to include in their assessable income their portion of the net income of the trust when they were a resident or that is Australian-sourced income. As the rate that would apply to some companies may be lower than 30 per cent, the Bill ensures that the minimum tax of 30 per cent will apply where new section 101AA applies. Where the company is already subject to a rate of tax of 30 per cent, the Bill provides the rate of minimum tax is nil.
- 1.49 Subsection 98(4) applies to assess certain trustees where a beneficiary of the trust (other than a beneficiary covered by subsection 97(3) is, as a beneficiary, also a trustee of another trust at least one trustee of which is a non-resident. The amendments set the rate of minimum tax at nil, as the highest marginal rate under Part II of Schedule 7 already applies.

Tax offset for beneficiaries

- 1.50 A non-corporate beneficiary of a minimum tax trust will be entitled to a non-refundable tax offset if they are presently entitled to a share of the income of

the trust estate and the minimum tax is payable by the trustee on their share of the trust's net income. The offset will not be available to beneficiaries that are corporate entities. This ensures that beneficiaries are not subject to double taxation where the trustee has also been subject to minimum tax on the beneficiary's share of the minimum trust income, while ensuring the effect of minimum tax cannot be negated by distributing income via a corporate or income tax exempt entity.

[Schedule 1, item 9, section 101AF of the ITAA 1936]

- 1.51 The offset is available in respect of the same income year for which the trustee is to be assessed and liable to pay the minimum tax. It is expected that the trustee will provide beneficiaries with details of the amount of minimum tax that is payable by the trustee in respect of their share of trust income, so that this can be included by the beneficiary's income tax return. Matters relating to notification and administration of the minimum tax are intended to be included in future legislation.
- 1.52 The amount of the offset is calculated with reference to so much of the beneficiary's income as is reasonably attributable to minimum tax income. A beneficiary may have a share of trust income that is not minimum tax income (for example, a share of the trust's primary production income). Similarly, the beneficiary may be entitled to a share of trust income for which tax is payable under other provisions as well as the minimum tax. The intention is that the offset will apply in relation to the portion of the beneficiary's income that is minimum tax income ('the beneficiary's assessable amount').
- 1.53 The amount of the offset will be equal to 30 per cent of the beneficiary's assessable amount. This will ensure that the beneficiary's offset should be the same as the minimum tax payable by the trustee on that minimum tax income, regardless of whether any other provision applies or imposes tax on that part of the beneficiary's income.
- 1.54 Where a beneficiary is itself a minimum tax trust, the trustee beneficiary may apply the non-refundable tax offset against its own income tax liability (including any minimum tax liability), with beneficiaries of the trustee beneficiary becoming entitled to a corresponding non-refundable tax offset based on the minimum tax paid at that level.
- 1.55 Consequential amendments to the ITAA 1997 incorporate this tax offset into the income tax law. These amendments include inserting a reference to 'non-corporate beneficiary in a minimum tax trust' into the lists of tax offsets in section 13-1, signposting section 101AD of the ITAA 1936.

[Schedule 1, item 14, section 13-1 of the ITAA 1997]

- 1.56 Corporate beneficiaries (including corporations that receive a distribution as a partner in a partnership) will not be entitled to this tax offset and will continue to be assessed based on the trust income to which they are presently entitled. Trusts can distribute to corporate beneficiaries that have access to corporate tax

rates and franking credits, and which can be used to defer tax for underlying shareholders, who are often also trust beneficiaries. This approach ensures the effect of minimum tax cannot be negated by distributed income via a corporate beneficiary.

- 1.57 Income tax exempt entities such as charities and DGRs are also not eligible for the tax offset, since income to which they are presently entitled is carved out of minimum tax income. Further, since they are exempt entities, the tax offset would be of little practical benefit.

Reduction of other rebates beneficiaries

- 1.58 Several provisions of the current law provide deductions or refunds of tax to beneficiaries. To ensure beneficiaries do not receive deductions or refunds in addition to the minimum tax offset that has the outcome of providing an overall rebate or offset greater than 30 per cent on any amount that is minimum tax income, the existing deductions or rebates are reduced.

[Schedule 1, item 9, section 101AG of the ITAA 1936]

- 1.59 The new section 101AG applies where the rebate is a deduction under either paragraph 98A(2)(a), subsection 98B(3) or subsection 100(2), or a refund under subsection 99D(1). These provisions apply where the trustee is, under current law, assessed and liable to pay tax (defined as the ‘primary tax’) on behalf of the beneficiary, so the amount of tax paid by the trustee needs to be accounted for by reducing the beneficiary’s assessable income.
- 1.60 In effect, the amount of the reduction is based on the overlap (defined as the ‘common income’) between so much of the beneficiary’s assessable income:
- in respect of which the primary tax is payable; and
 - is an amount of minimum tax income that is also part of the beneficiary’s income.
- 1.61 The rebate is reduced by:
- if the trustee is assessed and liable to pay tax at a rate less than 30 per cent, the common income multiplied by that rate (with the minimum tax offset adding an additional offset equal to 30 per cent of the common income); or
 - if the trustee is assessed and liable to pay more than 30 per cent primary tax, 30 per cent of the common income (with the minimum tax offset providing for an amount equal to this reduction).
- 1.62 This ensures that the amount of the rebate is capped at the amount by which it exceeds the 30 per cent minimum tax.

- 1.63 Consequential amendments insert notes to signpost the interaction between existing rebate and deduction provisions and the minimum tax offset.
[Schedule 1, items 3 to 8, subsections 98A(2), 98B(3), 99D(1) and 100(2) of the ITAA 1936]

Franking credits

- 1.64 Trustees that receive franked dividends will be required to use franking credits when paying the minimum tax. This is consistent with existing arrangements that apply when a trust is required to pay income tax. Consequential amendments are made to the ITAA 1997 to achieve this outcome.
[Schedule 1, items 16 to 18, sections 207-45 and 207-50 of the ITAA 1997]
- 1.65 This approach ensures that any trustee that is subject to the minimum tax does not allow their franked distribution to ‘flow-through’ to the beneficiaries. Instead, the trustee will be the recipient of a franked distribution. The franking credit on the distribution will be included in the trustee’s assessable income, for the purposes of the minimum tax and net income under section 95, and the trustee will be entitled to a tax offset equal to the value of the franking credit that must be used when calculating the minimum tax. As the trustee will be liable to pay the minimum tax, they will also be able to use relevant tax offsets (in this case, franking credits) to reduce the tax liability.
[Schedule 1, items 17 and 18, section 207-50 of the ITAA 1997]
- 1.66 If a trustee has excess franking credits left over (after using franking credits to pay the minimum tax), the trustee is entitled to a refund of the amount of the excess franking credits. This is achieved by the operation of section 67-25 of the ITAA 1936. Subsection 67-25(1B) has been amended to ensure that trustees who are subject to the minimum tax but also subject to tax under section 98 or 99A of the ITAA 1936 still receive the refundable tax offset in relation to franking credits associated with their minimum tax income.
[Schedule 1, item 15, subsection 67-25(1B) of the ITAA 1997]

Example 1.1

A minimum tax trust receives a fully franked dividend of \$70, attached to it is a \$30 franking credit.

The trustee includes \$100 in its assessable income and is liable for minimum tax of \$30.

The trustee uses the \$30 franking credit tax offset to reduce that liability to nil.

As the trustee is liable for the minimum tax, the franking credit is used by the trustee and is not available to beneficiaries. Instead, a

non-corporate beneficiary can claim a \$30 non-refundable offset against its income tax liability.

- 1.67 Amounts that would previously have flowed indirectly through trusts to beneficiaries for the purposes of Division 207 will now be retained at the trust level. This has implications for the way that the net income of the trust is determined under Divisions 6 and 6E of Part III of the ITAA 1997 and section 207-37 of the ITAA 1997.
- 1.68 In particular, Division 6E had the effect of excluding franked distributions and franking credits from the net income of the trust under Division 6 when included in beneficiaries' assessable income under section 97 of the ITAA 1936 or assessed to the trustee in respect of beneficiaries under section 98 of the ITAA 1936. These amounts were then added into the income of the beneficiaries to which they flowed indirectly in specific ways under the rules in section 207-37 and elsewhere in Division 207.
- 1.69 These rules will no longer operate as intended as franked distributions forming part of the minimum tax income will no longer flow indirectly to beneficiaries.
- 1.70 To address this, consequential amendments to Division 6E ensure that it will no longer exclude franked distributions and franking credits to the extent the distributions would form part of the minimum tax income of the trust and the franking credits relate to franked distributions that would form part of the minimum tax income of the trust.
[Schedule 1, items 10, 11 and 12, section 102UW, subsections 102UY(2) and (3) and paragraphs 102UY(4)(a) and (b)]

New definition of 'fixed trust'

- 1.71 Since the 2026-27 Budget announcement, some stakeholders have provided feedback that relying on the existing definition of fixed trust may result in the scope of discretionary trusts for minimum tax purposes being broader than intended.
- 1.72 The Bill repeals the definition of fixed trust in section 272-65 of Schedule 2F to the ITAA 1936, and introduces a new definition.
[Schedule 1, items 1 and 193, section 272-65 in Schedule 2F to the ITAA 1936 and subsection 995-1(1) of the ITAA 1997]
- 1.73 A trust is a fixed trust if:
- the trust's beneficiaries have fixed entitlements to all of the income and capital of the trust; or
 - there are no material discretionary elements affecting the entitlements or rights of the trust's beneficiaries.

- 1.74 The new definition draws upon existing ATO guidance and ‘safe harbour’ provisions and focuses on whether the beneficiaries of the trust have fixed entitlements to all of the income and capital of the trust, with no material discretionary elements affecting those entitlements or rights. The definition is intended to clarify that just because a trustee has some residual discretion under the trust deed or by operation of law, the trust can still be considered a fixed trust if there are no material discretionary elements that affect the beneficiaries’ entitlements or rights.
- 1.75 The definition sets out a non-exhaustive list of matters that may suggest that there are no material discretionary elements.
- 1.76 A trust is likely to be a fixed trust where beneficiaries have clearly defined and specific and enforceable entitlements or rights to all of the income and capital of the trust, or in relation to the governance of the trust, whether or not these entitlements or rights are subject to rules, so long as none of the rules are discretionary. For example, an employee share scheme may have rules in relation to the entitlements of beneficiaries. If those rules are not discretionary, but apply clearly defined rights and entitlements, this would suggest the scheme is a fixed trust. By contrast, a trust will not be fixed if a trustee or another person can exercise a discretionary power to change who is entitled to the trust income or capital or to vary the extent of those entitlements.
- 1.77 If there are powers to do things such as vary entitlements or rights, issue new entitlements or rights, issue new interests or deal with administrative matters, providing those powers cannot be used to significantly vary existing entitlements or rights or significantly affect the value of the interests of existing beneficiaries, this will also suggest that a trust is a fixed trust. For example, in many commercial trusts, such as managed investment trusts, it may be possible for the trustee to add new members or issue new units in the trust. Providing this does not confer a discretion and vary existing entitlements or rights of existing beneficiaries, this would likely constitute a fixed trust. The reference to ‘significantly vary’ and ‘significantly affect’ in relation to existing beneficiaries is intended to convey that minor or consequential impacts of adding new beneficiaries or units into a trust is not, of itself, considered to impact the rights and entitlements of existing beneficiaries.
- 1.78 Where there is a power to vary the instrument establishing the trust, if it can only be varied through a process requiring consent of all beneficiaries or in a way that cannot adversely affect the rights or entitlements of beneficiaries, this may also suggest that the trust is a fixed trust.
- 1.79 The new definition includes a power to determine matters that suggest there are no material discretionary elements by legislative instrument. The Minister may also determine by legislative instrument matters that mean there are one or more discretionary elements affecting the rights or entitlements of

beneficiaries. This will enable further guidance and clarification to be provided should this be necessary based on practical experience with the new definition.

- 1.80 It is appropriate and necessary to include the legislative instrument making power, since trusts are used in a wide range of circumstances, and it is a complex area of the law. If there is uncertainty or unintended outcomes in relation to the application of the definition of fixed trust to a particular circumstance, it is important that trustees and their beneficiaries can be provided with certainty. This can be achieved by, where necessary, using the legislative instrument making power to determine if a type of trust is or is not intended to be treated as fixed trust for income tax law purposes. It is consistent with the hierarchy of laws that the primary law contains a principles-based definition, and if necessary, more specific matters can be clarified through subordinate legislation. The legislative instruments would be subject to disallowance and sunseting in accordance with the *Legislation Act 2003*, which will provide appropriate mechanism for Parliamentary scrutiny.

Commencement, application, and transitional provisions

- 1.81 The Imposition Bill commences on the first 1 January, 1 April, 1 July or 1 October to occur after the day the Bill receives Royal Assent.
- 1.82 Schedule 1 to the Bill commences immediately after the commencement of the Imposition Bill. This ensures that these provisions do not commence if the tax to which they relate is not imposed.
- 1.83 The amendments apply in relation to assessments for the income year that includes 1 July 2028 and for later income years.

Future amendments

- 1.84 These amendments establish the minimum tax on discretionary trusts, amending the income tax law to introduce the minimum tax and set out the core rules that will govern its operation.
- 1.85 Further amendments in future legislation are expected to address interactions of the minimum tax with particular areas of the tax law, including the rules relating to residency, capital gains tax, international taxation, administrative and reporting requirements, and to address integrity considerations.
- 1.86 Beyond these planned additions, the Government will introduce additional targeted integrity rules if required should evidence arise of avoidance or abuse

in the context of the minimum tax or in related frameworks in the tax law, such as further anti-streaming rules for corporate distributions.