

EXPOSURE DRAFT

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Inserts for
Treasury Laws Amendment Bill 2026:
Minimum tax on discretionary trusts

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1.		
2. Schedule 1	At the same time as the <i>Income Tax Rates Amendment (Minimum Tax on Discretionary Trusts) Act 2026</i> commences. However, the provisions do not commence at all if that Act does not commence.	
3.		

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Schedule 1—Minimum tax on discretionary trusts

Part 1—Amendments

Income Tax Assessment Act 1936

1 Subsection 6(1)

Insert:

minimum tax income has the meaning given by section 101AC.

minimum tax trust has the meaning given by section 101AB.

2 Subsection 95(1)

Insert:

deductible gift recipient has the same meaning as in the *Income Tax Assessment Act 1997*.

registered charity has the same meaning as in the *Income Tax Assessment Act 1997*.

tax offset has the same meaning as in the *Income Tax Assessment Act 1997*.

3 Subsection 98A(2) (before the note)

Insert:

Note 1: A deduction under paragraph (a) may be reduced if the beneficiary is also entitled to a tax offset under section 101AF (see section 101AG).

4 Subsection 98A(2) (note)

Omit “Note”, substitute “Note 2”.

5 Subsection 98B(3) (before the note)

Insert:

Note 1: The deduction may be reduced if the beneficiary is also entitled to a tax offset under section 101AF (see section 101AG).

6 Subsection 98B(3) (note)

Omit “Note”, substitute “Note 2”.

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7 At the end of subsection 99D(1)

Add:

Note: The refund may be reduced if the beneficiary is also entitled to a tax offset under section 101AF (see section 101AG).

8 At the end of subsection 100(2)

Add:

Note: The deduction may be reduced if the beneficiary is also entitled to a tax offset under section 101AF (see section 101AG).

9 After section 101

Insert:

101AA Minimum tax trusts—trustees must pay a minimum amount of tax

If:

- (a) a trust estate has net income for a year of income; and
 - (b) the trust estate is a minimum tax trust at the end of the year of income; and
 - (c) the trustee is not assessed and is not liable under subsection 99A(4) or (4B) to pay tax on the net income;
- the trustee of the trust estate is to be assessed and is liable to pay tax in respect of so much of the net income as is minimum tax income.

101AB Minimum tax trusts—meaning of *minimum tax trust*

- (1) A *minimum tax trust* is a trust estate that is none of the following:
 - (a) a fixed trust (within the meaning of section 272-65 in Schedule 2F);
 - (b) a special disability trust;
 - (c) the trust estate of a deceased person;
 - (d) a complying superannuation entity (within the meaning of the *Income Tax Assessment Act 1997*);
 - (e) a trust estate of a kind determined under subsection (2).
- (2) The Minister may, by legislative instrument, determine that trust estates of a specified kind are not minimum tax trusts if the Minister is satisfied that:

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- (a) trust estates of that kind are of a similar nature to those covered by paragraph (1)(a), (b), (c) or (d) or by an earlier determination under this subsection; or
 - (b) trust estates of that kind do not have a sufficient economic connection to Australia; or
 - (c) trust estates of that kind, or their trustees, have statutory functions under an Australian law (within the meaning of the *Income Tax Assessment Act 1997*).

101AC Minimum tax trusts—meaning of *minimum tax income*

For a trust estate that is a minimum tax trust at the end of a year of income, the trust estate's *minimum tax income* for the year of income is so much of the trust estate's net income for the year of income as is not excluded by section 101AD or 101AE.

101AD Minimum tax trusts—meaning of *minimum tax income*: excludes income from testamentary trusts

- (1) This section excludes from being *minimum tax income* any net income of a trust estate for a year of income that is derived from particular assessable income of the trust estate if:
 - (a) the trust estate is established as a result of a will, codicil, order or intestacy as described in paragraph 102AG(2)(a); and
 - (b) the assessable income concerned:
 - (i) is of a kind covered by subsection 102AG(2AA) that is derived to benefit a beneficiary of the trust estate from property; or
 - (ii) is otherwise derived to benefit a beneficiary of the trust estate from property transferred, before 7.30 pm by legal time in the Australian Capital Territory on 12 May 2026, to the trustee; and
 - (c) if the trust estate is established on or after 1 July 2028—the beneficiary referred to in paragraph (b) of this subsection is:
 - (i) an individual; or
 - (ii) an exempt entity.

Note: This exclusion only covers assessable income from trusts established and administered for genuine testamentary purposes (see subsections (2) and (3)).

- (2) Despite subsection (1), that subsection does not exclude net income of the trust estate if the net income was derived directly or

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indirectly under or as a result of a scheme that was entered into or carried out for the purpose, or for purposes that include the purpose, of causing subsection (1) to exclude the net income.

(3) Despite subsection (1), that subsection does not exclude net income of the trust estate if the Commissioner is satisfied, having regard to the circumstances in which property is transferred to the trustee and any other relevant matters, that:

(a) the net income is derived from property; and

(b) the property, or property from which the property is ultimately derived (the *original property*), became property of the trustee as a result of a scheme; and

(c) the scheme was entered into or carried out for the purpose, or for purposes that include the purpose, of:

(i) causing the property, or the original property, to form part of the trust estate; and

(ii) causing subsection (1) to exclude the net income.

(4) In determining whether subsection (2) or (3) applies, disregard a purpose that is merely incidental.

(5) In this section:

scheme has the same meaning as in the *Income Tax Assessment Act 1997*.

101AE Minimum tax trusts—meaning of *minimum tax income*: other kinds of excluded income

(1) This section excludes each of the following from being *minimum tax income* of a trust estate for a year of income:

(a) taxable primary production income (within the meaning of the *Income Tax Assessment Act 1997*);

(b) a beneficiary's share of the net income of the trust estate if:

(i) the beneficiary is an individual who is less than 18 years of age on the last day of the year of income; and

(ii) one or more of paragraphs 102AC(2)(c) to (g) (about vulnerable children) applies for the beneficiary for the year of income;

(c) if a beneficiary of the trust estate is an individual who is less than 18 years of age on the last day of the year of income—so much of the beneficiary's share of the net income of the

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- 1 trust estate as is derived as described in
2 paragraph 102AG(2)(c);
- 3 (d) a beneficiary's share of the net income of the trust estate if:
4 (i) the beneficiary is a registered charity, or a deductible
5 gift recipient, on the last day of the year of income; and
6 (ii) the conditions determined under paragraph (2)(a) are
7 met;
- 8 (e) if:
9 (i) a beneficiary of the trust estate is an exempt entity, but
10 neither a registered charity nor a deductible gift
11 recipient, on the last day of the year of income; and
12 (ii) the conditions determined under paragraph (2)(a) are
13 met;
- 14 so much of the beneficiary's share of the net income of the
15 trust estate as meets the conditions determined under
16 paragraph (2)(b);
- 17 (f) so much of a beneficiary's share of the net income of the
18 trust estate as is a payment that:
19 (i) is to a non-resident; and
20 (ii) is a withholding payment (within the meaning of the
21 *Income Tax Assessment Act 1997*);
- 22 (g) a part of the net income of the trust estate on which the
23 trustee is to be assessed and is liable under
24 subsection 99A(4A) or (4C) to pay tax.
- 25 (2) The Minister may by legislative instrument:
26 (a) determine conditions to be met for the purposes of
27 subparagraph (1)(d)(ii) or (e)(ii); or
28 (b) determine conditions to be met for working out how much of
29 the shares of the net income of trust estates is not to be
30 minimum tax income as the result of paragraph (1)(e).
- 31 (3) For the purposes of (but without limiting subsection (2)):
32 (a) a determination under paragraph (2)(a) may determine:
33 (i) conditions to be met by or in relation to specified kinds
34 of beneficiaries, trustees or trust estates; and
35 (ii) conditions in the form of requirements, processes or
36 integrity rules relating to paragraph (1)(d) or (e); and
37 (iii) conditions requiring specified kinds of trustees to notify
38 the Commissioner in the approved form of specified
39 details relating to paragraph (1)(d) or (e); and
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- (b) a determination under paragraph (2)(b) may determine:
- (i) a cap, or a method for working out a cap, on the total amount of the net income of specified kinds of trust estates that can be excluded by paragraph (1)(e) from being minimum tax income for a year of income; and
 - (ii) a method for applying such a cap to work out the portion of the shares of specified kinds of beneficiaries of specified kinds of trust that is to be excluded by paragraph (1)(e) from being minimum tax income for a year of income.

101AF Minimum tax trusts—tax offset for beneficiaries

- (1) An entity is entitled to a tax offset for a year of income if:
- (a) the entity is a beneficiary of a trust estate; and
 - (b) the trustee is to be assessed and to be liable to pay tax under section 101AA in respect of so much of the net income of the trust estate for the year of income as is minimum tax income; and
 - (c) under this Division, the beneficiary's income for the year of income includes an amount (the *beneficiary's assessable amount*) that is reasonably attributable to that minimum tax income; and
 - (d) the beneficiary is not a body corporate.
- (2) The amount of the entity's tax offset for the income year is equal to 30% of the beneficiary's assessable amount.

Note: The tax offset is not refundable.

101AG Minimum tax trusts—reducing other rebates if minimum tax is payable by the trustee

- (1) A deduction or refund of tax (the *rebate*), to which a beneficiary of a trust estate is entitled under this Division, is reduced if:
- (a) the rebate is:
 - (i) a deduction under paragraph 98A(2)(a) or subsection 98B(3) or 100(2); or
 - (ii) a refund under subsection 99D(1); and
 - (b) the rebate is in respect of tax (the *primary tax*) that the trustee is to be assessed and to be liable to pay:
 - (i) under a provision of this Division other than section 99A or 101AA; and

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(ii) in respect of the whole, or a part, (the *primary income*) of the beneficiary's share of the net income of the trust estate for a year of income; and

(c) the trustee is to be assessed and to be liable to pay tax under section 101AA in respect of so much of the net income of the trust estate for the year of income as is minimum tax income; and

(d) under this Division, the beneficiary's income for the year of income includes an amount (the *common amount*) that is reasonably attributable to so much of that minimum tax income as is also primary income.

Note 1: The beneficiary may be entitled to a tax offset under section 101AF relating to the tax payable by the trustee in respect of the common amount. This section removes any doubling up of rebate and tax offset for the common amount.

Note 2: This section can apply to a beneficiary who is not entitled to a tax offset under section 101AF.

Note 3: The reduction of the rebate does not affect any part of the rebate that is in respect of part of the primary income that is not common income.

Amount by which the rebate is reduced

- (2) If the trustee is to be so assessed and to be so liable to pay the primary tax at a rate that exceeds 30%, the rebate is reduced by the amount equal to 30% of the common income.
- (3) If the trustee is to be so assessed and to be so liable to pay the primary tax at a rate that does not exceed 30%, the rebate is reduced by the amount worked out by applying that rate to the common income.

10 Section 102UW

Repeal the section, substitute:

102UW Application of this Division

- (1) This Division applies if:
- (a) the net income of a trust estate for a year of income exceeds nil; and
 - (b) any of the things mentioned in subsection (2) are taken into account in working out the net income of the trust estate for the year of income.
- (2) The things are as follows:

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- (a) a capital gain, to the extent that an amount of the capital gain remains after applying steps 1 to 6 of the method statement in subsection 102-5(1) of the *Income Tax Assessment Act 1997*;
- (b) a franked distribution, to the extent that:
- (i) if the trust estate is a minimum tax trust at the end of the year of income—the franked distribution does not form part of the trust estate’s minimum tax income; and
 - (ii) an amount of the franked distribution remains after reducing it by deductions directly relevant to it;
- (c) for a franking credit on a franked distribution, either:
- (i) unless subparagraph (ii) applies—all of the franking credit; or
 - (ii) if the trust estate is a minimum tax trust at the end of the year of income—the proportion of the franking credit equal to the proportion of the franked distribution that does not form part of the trust estate’s minimum tax income.

11 Subsections 102UY(2) and (3)

Omit “paragraph 102UW(b)”, substitute “subsection 102UW(2)”.

12 Paragraphs 102UY(4)(a) and (b)

Omit “paragraph 102UW(b)”, substitute “paragraph 102UW(1)(b)”.

13 Section 272-65 of Schedule 2F

Repeal the section, substitute:

272-65 Fixed trust

- (1) A trust is a *fixed trust* if:
- (a) the trust’s beneficiaries have fixed entitlements to all of the income and capital of the trust; or
 - (b) there are no material discretionary elements affecting the entitlements or rights of the trust’s beneficiaries.
- (2) For the purposes of paragraph (1)(b), matters suggesting there are no such material discretionary elements include the following:
- (a) the beneficiaries have clearly defined specific and enforceable entitlements or rights:
 - (i) to all of the income and capital of the trust; or
 - (ii) in relation to the governance of the trust;

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whether or not the entitlements or rights are subject to rules,
so long as none of the rules are discretionary;

(b) if there are powers to do any of the following:

(i) vary such entitlements or rights;

(ii) issue new entitlements or rights for one or more
beneficiaries;

(iii) issue new interests in the trust;

(iv) classify payments received by the trust as income or
capital;

(v) deal with administrative matters;

the powers cannot be exercised to significantly vary existing
entitlements or rights, or to significantly affect the value of
the interests of existing beneficiaries of the trust;

(c) a power to vary the instrument establishing the trust that can
only be exercised:

(i) through a process requiring the consent of all
beneficiaries; or

(ii) in a way that cannot adversely affect the entitlements or
rights of beneficiaries;

(d) a matter determined under paragraph (4)(a).

Note: It follows that the existence of anything contrary to any of the above
paragraphs suggests that the trust is not a fixed trust.

(3) For the purposes of paragraph (1)(b) and despite subsection (2), if a
matter determined under paragraph (4)(b) applies to a trust then
there are one or more material discretionary elements affecting the
entitlements or rights of the trust's beneficiaries.

(4) The Minister may by legislative instrument:

(a) determine matters that suggest there are no material
discretionary elements affecting the entitlements or rights of
the beneficiaries of a specified kind of trust; or

(b) determine matters that mean there are one or more material
discretionary elements affecting the entitlements or rights of
the beneficiaries of a specified kind of trust.

Income Tax Assessment Act 1997

14 Section 13-1 (table item headed "trusts")

After:

beneficiary in a foreign trust **98B**

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insert:

non-corporate beneficiary in a minimum tax trust 101AF

15 Subsection 67-25(1B)

Repeal the subsection, substitute:

(1B) If:

- (a) the trustee of a trust to whom a *franked distribution *flows indirectly under subsection 207-50(4) is entitled to a *tax offset under Division 207 for an income year because of the distribution; and
 - (b) the trustee is liable to be assessed under section 98 or 99A of the *Income Tax Assessment Act 1936* on a share of, or all or a part of, the trust's *net income for the income year; and
 - (c) the trust is a *minimum tax trust at the end of the income year; and
 - (d) the proportion of the franked distribution that does not form part of the trust's *minimum tax income is greater than nil;
- then an equivalent proportion of the tax offset is not subject to the refundable tax offset rules.

16 Paragraph 207-45(c)

Omit “or 99A”, substitute “, 99A or 101AA”.

17 Subsection 207-50(3)

Omit “A *franked distribution”, substitute “So much of a *franked distribution as is covered by subsection (3A)”.

18 After subsection 207-50(3)

Insert:

(3A) This subsection covers:

- (a) if the trust is not a *minimum tax trust at any time during the income year—all of the *franked distribution; or
- (b) if the trust is a minimum tax trust at any time during the income year—any part of the franked distribution not forming part of the trust's *minimum tax income for the income year.

19 Subsection 995-1(1) (definition of *fixed trust*)

Repeal the definition, substitute:

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fixed trust has the same meaning as in section 272-65 of
Schedule 2F to the *Income Tax Assessment Act 1936*.

Note: AMITs are treated as fixed trusts (see section 276-55).

20 Subsection 995-1(1)

Insert:

minimum tax income has the same meaning as in the *Income Tax
Assessment Act 1936*.

minimum tax trust has the same meaning as in the *Income Tax
Assessment Act 1936*.

1 **Part 2—Application of amendments**

2 **21 Application of amendments**

3 The amendments made by Part 1 of this Schedule apply in relation to
4 assessments for income years starting on or after 1 July 2028.