

EXPOSURE DRAFT

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Inserts for  
**Treasury Laws Amendment Bill 2026:  
Minimum tax on discretionary trusts—  
roll-over relief**

| Commencement information |                                                                                                              |              |
|--------------------------|--------------------------------------------------------------------------------------------------------------|--------------|
| Column 1                 | Column 2                                                                                                     | Column 3     |
| Provisions               | Commencement                                                                                                 | Date/Details |
| 1. Schedule [#]          | The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent. |              |
| 2.                       |                                                                                                              |              |
| 3.                       |                                                                                                              |              |

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## Schedule [#]—Minimum tax on discretionary trusts—roll-over relief

### *Income Tax (Transitional Provisions) Act 1997*

#### 1 At the end of Division 126

Add:

#### Subdivision 126-C—Restructures of minimum tax trusts

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#### 126-425 Object of this Subdivision

Following the introduction of a minimum tax on minimum tax trusts, the object of this Subdivision is to provide transitional relief for a 3-year period to facilitate flexibility for trustees of such trusts to restructure the trust, and the way the trust's assets are held, while disregarding tax gains and losses that would otherwise arise.

Note: For the minimum tax on minimum tax trusts see sections 101AA to 101AG of the *Income Tax Assessment Act 1936*.

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## 126-430 When a roll-over is available

- (1) A roll-over under this Subdivision is available in relation to an asset that, under a transaction, the trustee of a minimum tax trust (the *transferor*) transfers to another entity (the *transferee*) if:
- (a) the transaction is, or is part of, a restructure of the minimum tax trust that transfers all of the relevant trust assets out of that discretion-based trust structure; and
  - (b) the transfer of the asset under the transaction occurs during the period starting on 1 July 2027 and ending on 30 June 2030 (the *transitional relief period*); and
  - (c) the transferor and the transferee chose, in accordance with section 126-431, to apply a roll-over under this Subdivision in relation to the assets transferred under the transaction; and
  - (d) the notification requirement in section 126-432 is satisfied (if applicable) in relation to the income year in which the asset is transferred; and
  - (e) the continuity requirements in section 126-440 are satisfied in relation to the transaction; and
  - (f) the transferor and the transferee meet the residency requirement in section 126-445 for an entity.
- (2) However, a roll-over under this Subdivision is not available if the transferee is an exempt entity, a complying superannuation entity or a trustee of a minimum tax trust.

*No roll-over relief available unless all relevant assets transferred*

- (3) Despite subsection (1), a roll-over is *not* available under this Subdivision in relation to the asset if, at the end of the transitional relief period, the transferor has not transferred to the transferee all of the assets held by the transferor in the transferor's capacity as trustee of the minimum tax trust (excluding any assets referred to in subsection (4)).
- (4) The following assets are excluded from the requirement in subsection (3):
- (a) any asset not capable of being transferred;
  - (b) any CGT asset used to generate assessable income from carrying on a primary production business;
  - (c) any asset reasonably required to discharge liabilities properly incurred by the transferor as trustee of the minimum tax trust,

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including tax liabilities and amounts payable to the transferor under rights of indemnity or reimbursement;

- (d) if the minimum tax trust is intended to be wound up as a result of the restructure—any asset reasonably required to pay such costs and expenses as part of the costs of the winding up;
- (e) any asset that cost \$1,000 or less at the time it was acquired by the minimum tax trust.

*No roll-over relief available if discretionary outcomes retained*

- (5) Despite subsection (1), a roll-over is *not* available under this Subdivision in relation to the asset if, during the period:
- (a) starting on the day of the last transfer of an asset of the trust required to avoid a roll-over becoming unavailable because of subsection (3); and
- (b) ending at the end of 4 income years after the income year in which that last transfer occurs;
- there are material discretionary elements affecting the rights or interests of members of the transferee entity.
- (6) For the purposes of subsection (5), matters suggesting there are no material discretionary elements include the following:
- (a) the members of the entity have clearly defined specific and enforceable rights or interests:
- (i) to all of the income and capital of the entity; or
- (ii) in relation to the governance of the entity;
- whether or not the rights or interests 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 rights or interests;
- (ii) issue new rights or interests for one or more members;
- (iii) issue new rights or interests in the entity;
- (iv) deal with administrative matters;
- the powers cannot be exercised to significantly vary existing rights or interests, or to significantly affect the value of the rights or interests of existing members of the entity;
- (c) a power to vary the entity's constituent documents establishing the entity that can only be exercised:
- (i) through a process requiring the consent of all members;
- or

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(ii) in a way that cannot adversely affect the rights or interests of members;

(d) a matter determined under paragraph (8)(a).

(7) For the purposes of subsection (5) and despite subsection (6), if a matter determined under paragraph (8)(b) applies to an entity then there are one or more material discretionary elements affecting the rights or interests of the entity's members.

(8) The Minister may, by legislative instrument:

(a) determine matters that suggest there are no material discretionary elements affecting the rights or interests of the members of a specified kind of entity; or

(b) determine matters that mean there are one or more material discretionary elements affecting the rights or interests of the members of a specified kind of entity.

## *Extended period for amendment of assessments*

(9) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment of an entity by the Commissioner if all of the following apply:

(a) the assessment is of:

(i) the transferor; or

(ii) a beneficiary of the minimum tax trust; or

(iii) the transferee; or

(iv) a member of the transferee;

(b) the assessment is for an income year in which an asset is transferred under a transaction to which a choice by the transferor and transferee under paragraph (1)(c) applies;

(c) the Commissioner amends the assessment within 4 years after the day on which the Commissioner gives notice of the assessment to the entity;

(d) the amendment of the assessment is connected to the availability or otherwise of a roll-over under this Subdivision in relation to the asset.

## **126-431 Choosing roll-over relief**

### *Transferors*

(1) The choice by the transferor under paragraph 126-430(1)(c) must:

(a) be made in the approved form; and

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- 1 (b) specify the entity that is to be the transferee for the assets of  
2 the minimum tax trust in relation to the restructure; and  
3 (c) be given to the Commissioner by the earlier of:  
4 (i) the day the transferor lodges the transferor's income tax  
5 return for the income year in which the first asset  
6 transfer of the restructure occurs; and  
7 (ii) the day on which that income tax return is due to be  
8 lodged;  
9 or within such further time as the Commissioner allows.
- 10 (2) The choice cannot be revoked.
- 11 (3) The choice cannot be made if the transferor, as trustee of the  
12 minimum tax trust, has already made an excluded election trust  
13 election (within the meaning of the *Income Tax Assessment Act*  
14 *1936*) in relation to the trust.
- 15 (4) The transferor cannot make more than one choice under  
16 subsection (1) in relation to the minimum tax trust.

## 17 *Transferees*

- 18 (5) The choice by the transferee under paragraph 126-430(1)(c) must:  
19 (a) be made in the approved form; and  
20 (b) in the case of a transferee that is a partnership—be made by  
21 each partner of the partnership to whom an asset is  
22 transferred under the restructure; and  
23 (c) be given to the Commissioner by the earlier of:  
24 (i) the day the transferee lodges the transferee's income tax  
25 return for the income year in which the first asset  
26 transfer of the restructure occurs; and  
27 (ii) the day on which that income tax return is due to be  
28 lodged;  
29 or within such further time as the Commissioner allows.
- 30 (6) The choice cannot be revoked.

## 31 **126-432 Notifying the Commissioner of progress of restructure**

- 32 (1) The requirement for the purposes of paragraph 126-430(1)(d) is  
33 that, if the asset is transferred in any income year (the *later income*  
34 *year*) after the income year in which the first asset transfer of the  
35 restructure occurred, the transferor must have notified the  
36 Commissioner that the restructure is in progress.
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(2) The notice must be:

- (a) in the approved form; and
- (b) given to the Commissioner no later than the day the income tax return for the minimum tax trust for the later income year is lodged.

## **126-433 Notifying the Commissioner if restructure not completed or roll-over condition not met**

(1) If:

- (a) the transferor and transferee make a choice for roll-over relief under this Subdivision to apply in relation to a restructure of a minimum tax trust; and
- (b) either or both of the following apply:
  - (i) the transferor does not transfer all of the relevant assets of the trust required to avoid a roll-over becoming unavailable because of subsection 126-430(3);
  - (ii) the transferor or transferee fails to satisfy any other condition of a roll-over being available under this Subdivision in relation to the restructure;

the transferor and transferee must each notify the Commissioner.

(2) The notice must be:

- (a) in the approved form; and
  - (b) given to the Commissioner by the earlier of:
    - (i) the day the transferor or transferee (as the case requires) lodges their income tax return for the income year in which the relevant event in subparagraph (1)(b)(i) or (ii) occurs; or
    - (ii) the day on which that income tax return is due to be lodged;
- or within such further time as the Commissioner allows.

## **126-440 Continuity requirements**

### *Family trusts*

- (1) For the purposes of paragraph 126-430(1)(e), if the minimum tax trust of which the transferor is trustee is a family trust, the continuity requirements for the transaction are:
  - (a) if the transferee is an entity other than an individual—every individual who, just after the transaction takes effect, has a

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direct or indirect interest in the transferee must, just before the transaction took effect, have been:

- (i) a beneficiary under the family trust; and
- (ii) a member of the family group (within the meaning of Schedule 2F to the *Income Tax Assessment Act 1936*) relating to the family trust; and
- (b) if the transferee is an individual—the transferee must, just before the transaction took effect, have been a beneficiary and member as described in subparagraphs (a)(i) and (ii) in relation to the family trust.

## *Other trusts*

- (2) For the purposes of paragraph 126-430(1)(e), if the minimum tax trust of which the transferor is trustee is *not* a family trust, the continuity requirements for the transaction are the requirements determined under subsection (3).
- (3) The Minister may, by legislative instrument, determine requirements for the purposes of subsection (2).
- (4) To avoid doubt, if no determination of requirements under subsection (3) is in force, subsection (2) does not apply.

## **126-445 Residency requirement**

For the purposes of paragraph 126-430(1)(f), the residency requirement for an entity is that:

- (a) if the entity is an individual or a company—the entity is an Australian resident; or
- (b) if the entity is a trust—it is a resident trust for CGT purposes; or
- (c) if the entity is a partnership (other than a corporate limited partnership)—each partner to whom an asset is transferred is an Australian resident; or
- (d) if the entity is a corporate limited partnership—it is, under section 94T of the *Income Tax Assessment Act 1936*, a resident for the purposes of the income tax law.

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## 126-450 Minimum tax trust restructure transfers not to affect income tax positions

- (1) Except as provided by this Subdivision, a transfer of an asset has no direct consequences under the income tax law if:
  - (a) the transfer occurs under a transaction in relation to which section 126-430 applies; and
  - (b) a roll-over under this Subdivision is available under that section in relation to the asset.
- (2) To avoid doubt, this section does not affect the application of the income tax law in relation to:
  - (a) anything that happens in relation to the asset that does not directly relate to the transfer; or
  - (b) the ownership of the asset at any time.

## 126-451 Minimum tax trust restructure transfers not to result in family trust distribution tax

A transfer of an asset does not result in any family trust distribution tax under sections 271-15 to 271-30 of Schedule 2F to the *Income Tax Assessment Act 1936* if:

- (a) the transfer occurs under a transaction in relation to which section 126-430 applies; and
- (b) a roll-over under this Subdivision is available under that section in relation to the asset.

## 126-455 Effect of minimum tax trust restructures on transferred cost of assets

- (1) The income tax law applies to an entity in relation to the transfer of an asset by the entity, or to the entity, as if the transfer takes place for the asset's roll-over cost if:
  - (a) the transfer occurs under a transaction in relation to which section 126-430 applies; and
  - (b) a roll-over under this Subdivision is available under that section in relation to the asset.
- (2) The asset's ***roll-over cost*** is whichever of the following amounts is applicable in relation to the transfer:
  - (a) in relation to the application of subsection (1) to the asset as a CGT asset (other than trading stock, a revenue asset or a

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depreciating asset)—the transferor’s cost base for the asset just before the transfer takes effect;

(b) in relation to the application of subsection (1) to the asset as trading stock—the amount equal to:

(i) the cost of the item for the transferor; or

(ii) if the transferor held the item as trading stock at the start of the income year—the value of the item for the transferor then;

(c) in relation to the application of subsection (1) to the asset as a revenue asset—the amount that would give rise to the transferor not making a profit or a loss on the transfer;

(d) in relation to the application of subsection (1) to the asset as a depreciating asset—the adjustable value of the asset just before the transfer takes effect.

## **126-456 Effect of minimum tax trust restructures—depreciating assets**

If section 126-455 applies in relation to the transfer of a depreciating asset under a transaction:

(a) paragraph 40-340(1)(c) of the *Income Tax Assessment Act 1997* is taken to be satisfied for the purposes of section 40-340 of that Act applying to the transfer; and

(b) paragraph 328-243(1A)(c) of that Act (as affected by subsection 40-340(2) of that Act) is taken to be satisfied for the purposes of subsection 328-243(1A) of that Act applying to the transfer.

Note 1: Section 40-340 of the *Income Tax Assessment Act 1997* provides for roll-over relief in relation to a disposal of a depreciating asset in certain circumstances.

Note 2: Subsection 328-243(1A) of that Act applies the roll-over relief available under subsection 40-340(1) of that Act to small business assets.

## **126-465 New membership interests as consideration for transfer of assets**

(1) If:

(a) section 126-455 applies in relation to the transfer of an asset under a transaction; and

(b) the transaction provides for membership interests to be issued; and

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- 1 (c) the membership interests constitute all or part of the  
2 consideration provided for the transfer of assets (*transferred*  
3 *assets*) under the transaction;  
4 then:  
5 (d) the first element of the membership interests' cost base is the  
6 sum of:  
7 (i) the roll-over costs of the transferred assets that are not  
8 depreciating assets; and  
9 (ii) the adjustable values of the transferred assets that are  
10 depreciating assets;  
11 (less any liabilities that a transferee of any of the transferred  
12 assets undertakes to discharge in respect of the transferred  
13 assets) divided by the number of membership interests; and  
14 (e) the first element of the membership interests' reduced cost  
15 base is worked out similarly.
- 16 (2) However, if the membership interests constituted only a part of the  
17 total consideration provided for the transfer of the transferred  
18 assets, reduce accordingly the amounts worked out under  
19 paragraphs (1)(d) and (e).

## 126-470 Membership interests affected by transfers of assets

- 21 If:  
22 (a) section 126-455 applies in relation to the transfer of an asset  
23 under a transaction; and  
24 (b) an entity holds, either directly or indirectly:  
25 (i) a membership interest in the transferor or a transferee;  
26 or  
27 (ii) a membership interest that was issued as provided for  
28 by the transaction;  
29 disregard a capital loss from a CGT event that arises in relation to  
30 the membership interest after the transaction takes effect, except to  
31 the extent that the entity can demonstrate that the loss is  
32 attributable to a matter other than the transaction.

## 126-475 Restructures involving assets already subject to small business roll-over

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34  
35 (1) If:
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(a) section 126-455 applies in relation to the transfer of an asset (the *transferred asset*) of the transferor to one or more transferees; and

(b) the transferor has previously chosen a small business roll-over under Subdivision 152-E of the *Income Tax Assessment Act 1997* for a CGT event that happened in relation to a CGT asset for which the transferred asset is a replacement asset (within the meaning of sections 104-185, 104-190, 104-197 and 104-198 of that Act);

sections 104-185, 104-190, 104-197 and 104-198 of that Act apply to each transferee (to the extent of the transferee's interest in the asset) as if the transferee, and not the transferor, made that choice.

Note: Sections 104-185, 104-190, 104-197 and 104-198 of the *Income Tax Assessment Act 1997* provide for capital gains to arise under CGT events J2, J5 and J6, after the choice of a small business roll-over under Subdivision 152-E has deferred the making of a capital gain.

(2) However, if a transferee is a partnership, subsection (1) applies as if:

- (a) the words "to each transferee (to the extent of the transferee's interest in the asset) as if the transferee" were omitted; and
- (b) the words "to each partner of the partnership (to the extent of the partner's interest in the asset) as if the partner" were substituted.

## **126-480 Continuing time periods for assets transferred under the roll-over**

If section 126-450 or 126-455 applies in relation to the transfer of an asset to the transferee, then paragraphs 152-105(b) and (c) and 152-110(1)(b) and (c) of the *Income Tax Assessment Act 1997* (the 15-year and significant individual rules) apply as if:

- (a) the transferee had acquired the asset when the transferor acquired it; or
- (b) in a case where, for the purposes of applying those paragraphs, the time when the transferor acquired the asset was provided for by this section—the transferee had acquired the asset at that time.