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Inserts for
Treasury Laws Amendment Bill 2026:
minimum tax on discretionary
trusts - electable regime

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

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Schedule 1—Electable regime for discretionary trusts

Income Tax Assessment Act 1936

1 Subsection 6(1)

Insert:

complying superannuation entity has the same meaning as in the *Income Tax Assessment Act 1997*.

EET election (short for *excluded election trust election*) has the meaning given by subsection 102UYB(1).

EET nomination (short for *excluded election trust nomination*) has the meaning given by subsections 102UYB(2) and (3), as may be varied under section 102UYE.

eligible company has the meaning given by subsection 102UYC(1).

excluded election trust has the meaning given by section 102UYA.

excluded election trust election: see *EET election*.

excluded election trust nomination: see *EET nomination*.

member, in relation to a company, has the same meaning as in the *Income Tax Assessment Act 1997*.

2 After Division 6E of Part III

Insert:

Division 6F—Treatment of excluded election trusts

102UYA Excluded election trust

A minimum tax trust is an *excluded election trust* at any time when an EET election in respect of the trust is in force.

Note 1: In order to be eligible for an election, the trust must be in existence on 1 July 2028 (see paragraph 102UYB(4)(a)).

Note 2: See section 102UYH for when an election is in force.

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102UYB EET election and EET nomination

Nature of election

- (1) Subject to this section, the trustee of a minimum tax trust may make an election (the **EET election**) that the trust is an excluded election trust.

Nomination to accompany election and specify certain information

- (2) If the trustee makes an EET election in respect of the trust, a nomination (the **EET nomination**) specifying the following information must accompany the election:
- (a) each beneficiary to whom the trustee may confer a present entitlement to a share of both the income and capital of the trust for each year of income;
 - (b) for each beneficiary specified under paragraph (a), the following for each year of income:
 - (i) the beneficiary's share of the income of the trust;
 - (ii) the beneficiary's share of the capital of the trust, which must equal the share specified in subparagraph (i);
 - (c) the total of each share specified under paragraph (b), which may be conferred by the trustee to beneficiaries for each year of income, must equal 100% of the income and capital of the trust.
- (3) An entity must not be specified as a beneficiary in an EET nomination in respect of a trust if the entity:
- (a) unless section 102UYE (about variations) applies to the entity, was not an entity capable (whether by the exercise of a power of appointment or otherwise) of benefitting under the trust on 1 July 2028; or
 - (b) is:
 - (i) a complying superannuation entity; or
 - (ii) a partnership; or
 - (iii) a company unless it is an eligible company.

When an election can be made and requirement to notify the Commissioner

- (4) The trustee of a trust may make an EET election in respect of the trust if:
- (a) the trust is in existence on 1 July 2028; and

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- (b) the election is made during the period:
- (i) starting on 1 July 2028; and
 - (ii) ending on the last day of the first year of income of the trust that commences on or after 1 July 2028; and
- (c) notice of the election, and the accompanying nomination, is given in accordance with subsection (5).

- (5) The trustee must notify the Commissioner of the EET election, and an EET nomination that accompanies that election, in the approved form no later than the earlier of:
- (a) the due date for lodgment of the trust's return of income for the year of income in which the election is made; and
 - (b) the date of lodgment of the trust's return of income for that year of income.

Trustee may only make one election and has not chosen to apply a roll-over

- (6) The trustee may not make an EET election in respect of a trust if:
- (a) the trustee has previously made an EET election in respect of the trust that has been revoked; or
 - (b) a roll-over under Subdivision 126-C of the *Income Tax (Transitional Provisions) Act 1997* applies in respect of the assets of the trust.

Note: Subdivision 126-C of the *Income Tax (Transitional Provisions) Act 1997* provides a transitional option for minimum tax trusts to restructure in response to the introduction of a minimum tax on those trusts and apply roll-over relief to assets transferred as part of that restructure.

102UYC Eligible company

- (1) A company is an ***eligible company*** if there are no material discretionary elements affecting the rights or interests of the company's members.
- (2) For the purposes of subsection (1), matters suggesting there are no such material discretionary elements include the following:
- (a) the members have clearly defined, specific and enforceable rights and interests:
 - (i) to all of the income and capital of the company; or
 - (ii) in relation to the governance of the company;

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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 company;

(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 company;

(c) a power to vary the constituent documents of the company that can only be exercised:

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

or

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

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

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

(4) 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 company; 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 company.

102UYD Effect of an EET election

Taken not to be a minimum tax trust and related matters

(1) At any time an EET election in respect of a trust is in force, and an EET nomination accompanies that election:

(a) the trust is taken not to be a minimum tax trust for the purposes of this Act; and

(b) for the purposes of Division 6, section 95A applies in relation to capital of the trust in the same way as it applies to income of the trust.

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Note: Paragraph (b) extends the operation of section 95A so that any deeming of present entitlement in respect of income of the trust under that section also applies to capital of the trust.

Trustee may act in accordance with EET nomination

- (2) If the trustee decides the EET election in respect of a trust is to be in force for a year of income, the trustee must confer present entitlements to shares of the income and capital of the trust in accordance with the EET nomination.

Note: If the trustee decides not to act in accordance with the EET nomination as described in this subsection, this would result in an automatic revocation of the EET election (see paragraph 102UYF(2)(a)), meaning that the trust will again be a minimum tax trust for the purposes of this Act.

102UYE Varying an EET nomination

Nominations generally cannot be varied

- (1) Subject to this section, an EET nomination that accompanies an EET election cannot be varied.

Variation—death of beneficiary

- (2) The trustee of an excluded election trust may, in respect of a year of income, vary the EET nomination so that one or more new individuals are specified for the purposes of subsection 102UYB(2) if:
- (a) an individual specified as a beneficiary under that subsection dies during the year of income; and
 - (b) each new individual is a beneficiary of the deceased individual's estate and either:
 - (i) is a beneficiary already specified in the EET nomination; or
 - (ii) is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust; and
 - (c) the variation specifies each new individual as a beneficiary under paragraph 102UYB(2)(a) and specifies the information required under paragraph 102UYB(2)(b) for each new individual; and
 - (d) the nomination, if varied, satisfies the requirement in paragraph 102UYB(2)(c); and

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- (e) notice of the variation is given to the Commissioner in the approved form during the period within which the trustee is required to give to the Commissioner the trust's return of income for the year of income in which the deceased individual dies.

Variation—relationship breakdown

- (3) The trustee of an excluded election trust may, in respect of a year of income, vary the EET nomination so that either or both of the following apply:
- (a) an individual specified in the nomination has a different share of the income and capital of the trust to what is specified in the nomination;
 - (b) an individual specified in the nomination ceases to be specified in the nomination as a beneficiary of the trust.
- (4) A variation of an EET nomination under subsection (3) can only be made if:
- (a) one of the following:
 - (i) an order;
 - (ii) an agreement;
 - (iii) an award;of a kind mentioned in paragraphs 126-5(1)(a) to (f) of the *Income Tax Assessment Act 1997* involves 2 individuals who are beneficiaries specified in the EET nomination; and
 - (b) as a result of the order, agreement or award:
 - (i) if paragraph (3)(a) applies—each of the 2 beneficiaries has a different share of the income and capital of the trust to what is specified in the nomination; or
 - (ii) if paragraph (3)(b) applies—one of the 2 individuals ceases to be an individual capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust; and
 - (c) the nomination, if so varied, satisfies the requirements in paragraphs 102UYB(2)(b) and (c); and
 - (d) notice of the variation is given to the Commissioner in the approved form during the period within which the trustee is required to give to the Commissioner the trust's return of income for the year of income in which the trustee decides or is required to give effect to the order, agreement or award.
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102UYF Revoking an EET election

How to revoke an EET election and requirement to notify the Commissioner

- (1) The trustee of an excluded election trust may revoke an EET election in respect of the trust if:
- (a) the trustee decides to do so before the end of a year of income for any future year of income; and
 - (b) notice of the revocation is given to the Commissioner in the approved form no later than the earlier of:
 - (i) the due date for lodgment of the trust's return of income for the year of income in which the trustee decides to revoke the election; and
 - (ii) the date of lodgment of the trust's return of income for that year of income.

When an EET election is automatically revoked

- (2) An EET election in respect of an excluded election trust is automatically revoked if:
- (a) the trustee of the trust decides not to confer present entitlements in accordance with subsection 102UYD(2); or
 - (b) a trust is specified as a beneficiary under an EET nomination accompanying the EET election and the trust vests in accordance with the trust deed or the trust estate is wound up; or
 - (c) a company is specified as a beneficiary under an EET nomination accompanying the EET election, and the company:
 - (i) is wound up; or
 - (ii) is deregistered; or
 - (iii) is no longer capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust; or
 - (iv) is no longer an eligible company; or
 - (d) all of the following apply:
 - (i) a company is specified as a beneficiary under an EET nomination accompanying the EET election;
 - (ii) at the time the company is specified as a beneficiary under the EET nomination, an entity (within the meaning of section 960-100 of the *Income Tax*

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Assessment Act 1997) is the shareholder of a share in the company;

- (iii) the entity ceases to be the shareholder of that share for a reason other than a reason (an ***allowable reason***) set out in subsection (3).

- (3) Each of the following is an allowable reason:

(a) the entity is an individual and the individual dies;

(b) the entity is an individual and one of the following:

(i) an order;

(ii) an agreement;

(iii) an award;

of a kind mentioned in paragraphs 126-5(1)(a) to (f) of the *Income Tax Assessment Act 1997* involves the individual and, as a result of the order, agreement or award, the individual ceases to be the shareholder of that share.

102UYG Effect of an EET election being revoked

- (1) This section applies if an EET election in respect of an excluded election trust is revoked under section 102UYF in a year of income.

- (2) Any accompanying EET nomination is taken to be revoked at the same time.

- (3) If, apart from this section, a beneficiary of the trust is presently entitled to either or both of the following (the ***relevant share***) in respect of the year of income:

(a) a share of the income of the trust;

(b) a share of the capital of the trust;

then, for the purposes of this Act, the beneficiary, is taken not to be, and taken never to have been, presently entitled to the relevant share in respect of the year of income.

- (4) Division 6 applies in relation to the trust and the year of income as if:

(a) subsections 99A(2) to (3A) were not enacted; and

(b) the trust estate were a resident trust estate.

Note: For the year of income an EET election is revoked, any present entitlements of a share of income or capital of the trust conferred by the trustee of a trust are deemed not to be effective. Those shares are

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therefore assessable in respect of the trustee of the trust as
undistributed trust income under Division 6.

102UYH When an EET election is in force

- (1) An EET election, in respect of a trust, is in force:
- (a) if it is not revoked—at all times after the start of the year of income in which the trustee made the election; or
 - (b) if it is revoked under subsection 102UYF(1)—at all times during the period:
 - (i) starting at the start of the year of income in which the trustee made the election; and
 - (ii) ending at the end of the year of income in which the trustee of the trust decides to revoke the election; or
 - (c) if it is automatically revoked under subsection 102UYF(2)—at all times during the period:
 - (i) starting at the start of the year of income in which the trustee made the election; and
 - (ii) ending at the end of the year of income immediately before the year of income in which the election is so revoked.
- (2) Any accompanying EET nomination is taken to be in force at all times that the EET election is in force.