Fair Trust Reform — Submission to the Australian Treasury and Parliament

Fair Trust Reform

Supplementary Supporting Paper

Consultation on the Proposed Minimum Tax on Discretionary Trusts

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ANONYMOUS SUBMISSION, NO IDENTIFYING DETAILS INCLUDED

This submission is made on an anonymous basis. I consent to the publication of the contents of this submission in full, but request that it be published without any identifying details, including my name and contact information. My identity is known to Treasury solely through the submission portal, for the purpose of correspondence regarding this submission, and should not be disclosed or published.

The Treasury
Trusts Branch
Australian Government Treasury

Re: Supplementary Supporting Paper, Consultation on the Proposed Minimum Tax on Discretionary Trusts

Original submission reference: sbm3e1eac4f290c6a91986c1 | Original submission lodged: 22 July 2026

Dear Treasury

Please accept this paper as a supplementary submission in support of my original submission, lodged with Treasury on 22 July 2026 under reference sbm3e1eac4f290c6a91986c1.

Having given further consideration to Treasury's Consultation Paper, I have prepared this additional paper to expand on several practical, legal and implementation issues that were addressed only briefly in my original submission. It should be read together with, rather than in place of, that submission.

This paper continues to support the Government's objective of protecting the integrity of Australia's taxation system and addressing deliberate tax avoidance through the misuse of discretionary trusts. Its purpose is to demonstrate that these objectives may be achieved more effectively through legislation that is more precisely targeted at the behaviour Treasury has identified.

To that end, the attached paper examines four practical issues that, I respectfully submit, warrant further consideration before the legislation is finalised.

1. Legislative Precision

Treasury's own analysis indicates that private trust wealth is concentrated within a relatively small proportion of discretionary trusts. The paper asks whether this evidence supports a more targeted legislative framework, one that distinguishes higher-risk arrangements from modest, long-established family trusts with a demonstrated history of compliance.

2. Existing Integrity Measures

The paper examines the interaction between the proposed reforms and the existing integrity framework, including section 100A of the Income Tax Assessment Act 1936 (Cth) and the Australian Taxation Office's Practical Compliance Guideline PCG 2022/2. It considers whether these existing anti-avoidance provisions already provide substantial powers to address deliberate tax avoidance, while distinguishing ordinary family dealings from artificial arrangements.

3. Practical Implementation Issues

The paper identifies several practical implementation consequences that may arise for compliant family trusts, including:

- reduced financial capacity for self-funded retirees;
- diminished support for adult children undertaking tertiary education;
- the treatment of non-refundable trustee tax credits; and
- the practical operation of the proposed transition arrangements.

Particular attention is given to the interaction between the proposed Commonwealth restructuring framework and State and Territory transfer duty legislation.

4. The State Stamp Duty Trap

The paper identifies what it describes as the State Stamp Duty Trap. While Treasury has proposed a temporary Commonwealth capital gains tax rollover period to facilitate restructuring, many families holding

commercial property may still face substantial State transfer duty liabilities if restructuring becomes necessary.

This issue may significantly affect the practical accessibility of the proposed transition arrangements and, I submit, warrants further consideration through Commonwealth–State cooperation.

Recommendations

The attached paper concludes with several constructive policy recommendations intended to improve legislative precision without weakening the integrity of the proposed reforms. These include consideration of:

- objective, evidence-based qualifying criteria;
- an appropriate annual trust income threshold;
- recognition of long-established, compliant family trusts;
- preservation of ordinary family dealings consistent with existing ATO guidance; and
- greater coordination between the Commonwealth and the States during the proposed restructuring period.

Declaration of Interest

This supplementary paper reflects my experience as the trustee of a modest family trust, established more than thirty years ago on professional legal and taxation advice. While informed by those circumstances, it is offered as a constructive contribution to Treasury's consultation process and is intended to assist in developing legislation that is effective, proportionate and practical to implement.

Thank you for considering both my original submission and this supplementary paper. Should Treasury require any clarification regarding the matters raised, I would be pleased to provide any further information that may assist.

Yours faithfully,

[Name withheld, anonymous submission]
Victoria, Australia

FAIR TRUST REFORM

A Call for Fairness, Certainty, and Better-Targeted Legislation

Submission to the Australian Department of the Treasury and the Parliament of Australia
Response to Consultation Paper: Minimum Tax on Discretionary Trusts (8 July 2026)

Prepared by: Anonymous submitter (trustee of a long-established family discretionary trust)
Victoria, Australia
July 2026

ANONYMOUS SUBMISSION, NO IDENTIFYING DETAILS INCLUDED

I consent to the publication of the contents of this submission as part of the Australian Treasury's public consultation process, on the basis that it is published anonymously.

I request that my name, email address, telephone number, and any other personal identifying details not be published, and that this submission be attributed only as an anonymous contribution. My identity is provided to Treasury solely to enable officials to contact me regarding this submission, should clarification or further discussion be required.

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1. Executive Summary

1.1 Policy Objective

The Australian Government has announced the introduction of a 30 per cent minimum trustee tax on discretionary trusts, effective 1 July 2028, to strengthen the integrity of the tax system and align trust taxation with the rates paid by salary and wage earners. Protecting the national tax base and curbing artificial tax avoidance are legitimate public policy objectives, and this submission does not contest them.

1.2 The Policy Disconnect

Treasury's own distributional analysis confirms that private trust wealth and high-income trust distributions are concentrated within a small tier of high-wealth entities. However, applying an upfront, non-refundable 30 per cent trustee tax uniformly across all non-fixed discretionary trusts creates disproportionate compliance burdens and structural penalties for modest, long-established family trusts operating for genuine self-funded retirement and intergenerational support.

Element	Description
Treasury findings	Fewer than 15 per cent of active small businesses use a discretionary trust structure, and over 90 per cent of active small businesses are unaffected by the proposed measure; trust wealth is concentrated in the top tiers of the distribution.
Proposed mechanism	A blanket 30 per cent trustee tax applied across all non-fixed discretionary trusts, with non-refundable tax offsets trapped at the trustee level.

Table 1: Distributional Policy Disconnect

1.3 Proposed Legislative Refinements

This submission respectfully recommends that Parliament and Treasury refine the draft framework to include the following three measures.

- Objective net income floor, a statutory net trust income threshold of $100,000–$150,000, preserving flow-through taxation for lower-income beneficiaries.
- Intergovernmental restructuring relief, coordinated Commonwealth and State relief addressing State transfer (stamp) duty on real property transferred during restructuring.
- Alignment with existing carve-outs, extending the policy logic already applied to testamentary trusts to long-established, low-risk family investment trusts.

2. Foreword

To the Treasurer and Members of Parliament,

Taxpayers who exploit discretionary trust structures to avoid paying their lawful share of tax should be subject to decisive regulatory and enforcement action. Protecting the integrity and progressivity of Australia's tax base is essential.

However, as Parliament considers the proposals in Treasury's July 2026 Consultation Paper, a crucial question must be asked: have policymakers considered the families who sought professional accounting and legal advice, planned their financial self-sufficiency in good faith, and fully complied with the law?

For more than thirty years, my wife and I followed the model encouraged by successive Australian governments. We accepted commercial risk, built a business, met all tax liabilities, and invested in commercial property through a discretionary trust to fund our own retirement and reduce reliance on the Age Pension.

Today, at seventy years of age, I face a legislative proposal that risks taxing our modest family trust, operating lawfully and transparently, in the same manner as high-wealth tax avoidance schemes.

This submission does not oppose tax integrity. It offers constructive, evidence-based legislative recommendations to achieve policy precision without penalising compliant Australian families.

3. Background and Policy Context

3.1 Policy Precision versus Indiscriminate Taxation

For decades, Australians have arranged their commercial affairs, real property investments, and retirement planning under statutory frameworks enacted by Parliament, and have done so transparently and on the basis of professional advice.

Parliament unquestionably holds the constitutional authority to amend revenue laws. Sound public policy, however, distinguishes between artificial tax avoidance schemes and compliant taxpayers operating within statutory frameworks that Parliament itself established. Table 2 illustrates this distinction.

Feature	Modest Family Trust	High-Wealth Tax Scheme
Portfolio scale	Modest	Substantial
Disclosure	Fully disclosed	Concealed or obscured
Distribution pattern	Standard family dealings	Aggressive income splitting
Structural character	Genuine economic entitlements	Artificial paper entitlements
Overall risk profile	Low	High

Table 2: Policy Risk Comparison

3.2 Treasury's Distributional Findings

Treasury's published distributional analysis confirms two material findings:

1. Finding 1, fewer than 15 per cent of active small businesses operate through a discretionary trust, and over 90 per cent of active small businesses will be unaffected by the measure.

2. Finding 2, private trust wealth and high-income trust distributions are heavily concentrated within high-wealth households.

Because Treasury is able to isolate where tax avoidance risk is concentrated, the legislation should target those high-risk entities rather than impose a blanket trustee tax on low-income family structures. The following sections illustrate this disconnect through a representative case study before turning to the existing integrity framework and the proposed refinements.

4. Case Study: The Impact on Modest Family Investment Structures

4.1 Case Profile

Over thirty years ago, my wife and I established a family discretionary trust. The trust holds four modest commercial retail properties and generates approximately $95,000 in net annual trust income. Every dollar distributed is declared and assessed under existing law. The trust exists to fund self-funded retirement and to support family members through tertiary education.

Feature	Details
Asset structure	Four commercial retail properties
Net annual income	Approximately $95,000

Feature	Details
Operating history	Exceeds 30 years
Primary purpose	Self-funded retirement and tertiary education support
Compliance history	Full lodgement and payment compliance

Table 3: Case Study Summary

The trust's net annual income supports two categories of beneficiary need, set out in Table 4.

Purpose	Supported Needs
Self-funded retirement	Household living costs; medical and health expenses; property maintenance
Support for future generations	Tertiary education costs; books and equipment; basic living support

Table 4: Application of Trust Income

4.2 Tax Mechanics Impact

Under the proposed 30 per cent minimum tax, the trustee would be required to pay $28,500 in tax upfront ($95,000 × 30%). Non-corporate beneficiaries would receive a non-refundable, non-carriable tax offset in respect of that amount.

- Self-funded retiree beneficiaries. For retirees in lower marginal tax brackets, unused offsets cannot be refunded or carried forward. This traps tax credits at the trustee level and directly reduces the net income available for daily living and medical expenses.
- Student beneficiaries. For adult children undertaking tertiary education with zero or low taxable income, non-refundable credits cannot offset tax liabilities they do not owe. This removes the flow-through tax treatment on which such arrangements have historically relied and increases financial pressure on students.

5. Safeguards, Anti-Avoidance, and Judicial Precedents

5.1 Australia's Existing Integrity Framework

Discretionary trusts already operate within a detailed regulatory framework enforced by the Australian Taxation Office (ATO):

- Section 100A of the Income Tax Assessment Act 1936 (Cth) nullifies reimbursement agreements under which trust entitlements are allocated to lower-rate beneficiaries while the associated economic benefit is retained elsewhere.
- Part IVA of the Income Tax Assessment Act 1936 (Cth) is the general anti-avoidance rule, empowering the Commissioner of Taxation to cancel tax benefits obtained from schemes entered into for the dominant purpose of securing a tax advantage.
- Practical Compliance Guideline PCG 2022/2 categorises trust distributions into risk zones and explicitly classifies standard family dealings as low-risk 'Green Zone' arrangements.

5.2 Primary Judicial Authorities: Guardian AIT and Bendel

The boundaries of trust taxation and the ATO's administrative power have been defined by two key decisions.

Anti-avoidance and reimbursement agreements, Commissioner of Taxation v Guardian AIT Pty Ltd [2023] FCAFC 3

Guardian AIT is the leading authority on the application of section 100A and Part IVA to trust distributions made to corporate beneficiaries ('bucket companies'). The Full Federal Court established that:

- section 100A requires a reimbursement agreement to exist at or before the time trust income is appointed, and advisor recommendations do not, without more, constitute such an agreement absent a mutual understanding between the parties at the time of distribution; and
- Part IVA applies where multi-step circular distributions, for example, a distribution from trust to bucket company and back again via a franked dividend, have the dominant purpose of securing a tax benefit.

Guardian AIT demonstrates that the ATO already possesses the statutory tools required to dismantle artificial trust-based tax schemes.

Division 7A and statutory interpretation, Commissioner of Taxation v Bendel [2026] HCA 18

On 10 June 2026, the High Court held, by majority, that an unpaid present entitlement (UPE) owed to a corporate beneficiary does not constitute a 'loan' for the purposes of section 109D of Division 7A. Bendel was a statutory interpretation case concerning Division 7A; it was not a tax evasion or anti-avoidance case. Its significance for this submission lies in what it reveals about the limits of administrative guidance: the ATO's prior administrative position, as reflected in Taxation Determination TD 2022/11, had extended beyond what the statute supported. Bendel accordingly underscores the need for Parliament to draft trust legislation with statutory clarity, rather than leaving key thresholds, such as the net income floor proposed in section 7 below, to broad administrative discretion.

6. The State Stamp Duty Restructuring Trap

6.1 The Transition Disconnect

Treasury's Consultation Paper proposes a three-year Federal capital gains tax (CGT) rollover relief window, from 1 July 2027 to 30 June 2030, to facilitate restructuring out of discretionary trusts into corporate or fixed-trust entities.

However, transferring real property out of a discretionary trust and into a new entity triggers State transfer duty (stamp duty) under State revenue legislation. Federal rollover relief therefore does not, of itself, remove the principal financial barrier to restructuring for trusts holding real property, as illustrated in Table 5.

Stage	Effect
Federal CGT exemption offered (2027–2030)	Removes the Federal capital gains tax barrier to restructuring
Restructure undertaken	Real property is transferred from the discretionary trust to a new entity
State stamp duty triggered	State transfer duty becomes payable on the transferred real property, independent of the Federal exemption

Table 5: Federal Relief and State Tax Implications

6.2 Financial Impact of Restructuring Friction

Metric	Value
Commercial real estate portfolio value	$2,500,000
Estimated State transfer (stamp) duty	Approximately $130,000 (see Note 1)
Net annual trust income	$95,000
Duty burden relative to annual income	Approximately 1.4 years of gross income

Table 6: Financial Impact of Restructuring Friction

Note 1, Methodology and State calculations. The $130,000 estimate reflects the average transfer duty payable on a $2,500,000 commercial property portfolio across three eastern seaboard jurisdictions: Victoria (general duty of $142,500 under section 28 of the Duties Act 2000 (Vic)); New South Wales (general duty of $117,140 under section 32 of the Duties Act 1997 (NSW)); and Queensland (transfer duty of $132,025 under section 24 of the Duties Act 2001 (Qld)). The resulting three-state average is $130,555.

Without coordinated State transfer duty relief, Federal CGT relief remains ineffective for trusts holding real property, creating a significant capital lock-in effect that undermines the policy intent of the restructuring window.

7. Policy Recommendations

To preserve fairness while achieving the Government's tax integrity objectives, this submission recommends that Parliament incorporate the following three amendments.

7.1 Recommendation 1, Objective Net Income Floor ($100,000–$150,000)

Parliament should introduce a statutory net trust income threshold, in the range of $100,000 to $150,000, below which compliant family trusts retain flow-through tax assessment.

This threshold is proposed as an explicit policy recommendation, supported by the following considerations.

1. Administrative efficiency, the floor would eliminate compliance costs for a substantial number of low-risk trusts where the net revenue gain to the Commonwealth from taxing them at the trustee level is negligible.

2. Proportionality, it would direct tax compliance resources toward the high-wealth entities in which distributional wealth is concentrated, consistent with Treasury's own findings.

3. Regulatory burden, it would avoid forcing small family groups into complex and costly corporate restructures where the underlying arrangements present low integrity risk.

4. Retirement self-sufficiency, it would protect modest self-funded retirees who rely on trust distributions to meet daily living costs.

5. Support for young people, it would prevent the effective transfer of educational support costs onto student debt, by preserving flow-through treatment for low-income student beneficiaries.

6. Tax integrity, trusts with net income exceeding the floor would remain subject to the full 30 per cent minimum tax framework, preserving the measure's integrity objective for high-wealth structures.

7.2 Recommendation 2, Legislative Alignment with the Testamentary Trust Exemption

Treasury's Consultation Paper confirms that discretionary testamentary trusts established under a will for genuine testamentary purposes are exempt from the minimum tax. The rationale for that exemption — that testamentary trusts serve genuine family support purposes rather than aggressive tax avoidance — applies with equal force to long-established, compliant family investment trusts of the kind described in this submission. Extending this policy logic through the net income floor proposed in section 7.1 would ensure consistent treatment across comparable family arrangements.

7.3 Recommendation 3, Intergovernmental Restructuring Relief

The Commonwealth Government should work through National Cabinet to coordinate State and Territory revenue office exemptions from transfer (stamp) duty, applicable where a family trust restructures during the Federal rollover relief window described in section 6.1. Such coordination would ensure that Federal CGT relief achieves its intended effect for trusts holding real property.

8. Conclusion

Parliament has a legitimate mandate to address tax avoidance and to protect the national revenue base, and this submission does not dispute that mandate. Effective public policy, however, requires legislative precision as well as legislative intent.

Applying an upfront 30 per cent minimum trustee tax without an income floor risks penalising compliant, long-established family trusts alongside the high-wealth arrangements the measure is intended to address. By adopting a net income floor of $100,000–$150,000, coordinating State stamp duty relief, and aligning the treatment of long-established family investment trusts with the existing testamentary trust carve-out, Parliament can achieve its integrity objectives while maintaining fairness for Australian families who have planned their retirement and family support in good faith and in full compliance with the law.

References

1. Australian Government Treasury (2026) Consultation Paper: Minimum Tax on Discretionary Trusts, Commonwealth of Australia, Canberra, 8 July.

2. Income Tax Assessment Act 1936 (Cth), ss 95, 100A; Pt IVA; Divs 6, 6AA, 7A (s 109D).

3. Commissioner of Taxation v Guardian AIT Pty Ltd [2023] FCAFC 3.

4. Commissioner of Taxation v Bendel [2026] HCA 18.

5. Australian Taxation Office (2022) Practical Compliance Guideline PCG 2022/2: Section 100A reimbursement agreements, ATO, Canberra.

6. Duties Act 2000 (Vic) s 28; Duties Act 1997 (NSW) s 32; Duties Act 2001 (Qld) s 24.