

The End of the Traditional Family Trust? What Australia's Proposed Tax Reforms Mean for Family Wealth

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For decades, the discretionary family trust has been a cornerstone of Australian wealth creation, business ownership and succession planning.

Its appeal has been straightforward - flexibility over income distributions, asset protection, succession planning and opportunities to manage tax across generations.

That position could be about to change.

The Federal Government's proposed "minimum tax" reforms as announced in the 2026 Federal Budget represent a significant shift in the way discretionary trusts may be taxed. The changes could fundamentally alter the economics of many existing family trust structures, particularly those relying on income splitting and corporate beneficiaries.

For families, business owners and professional advisers, the question is becoming increasingly important: does the traditional discretionary family trust remain the right structure for the next generation of wealth?

What is being proposed?

The minimum tax reforms, as contained in the *Treasury Laws Amendment (Tax Reform No. 3) Bill 2026* (the **Bill**) that is currently being considered by Parliament, contains three key elements:

- a new 30% minimum tax on discretionary trust income, subject to specified exceptions.
- transitional roll-over relief to facilitate restructuring existing trusts into alternative ownership structures.
- an Electable Excluded Trust (**EET**) regime, allowing eligible trusts to retain their excluded status by adopting fixed beneficiary entitlements.

The underlying policy objective is clear: reduce the tax benefits associated with discretionary income splitting and encourage greater use of fixed ownership structures.

The proposed 30% minimum tax

The centrepiece of the reforms as set out in the Bill is a minimum tax equal to 30% of a trust's net income.

Under the proposed regime:

- The trustee pays a minimum 30% tax.
- Beneficiaries continue to include their share of trust distributions from the trust in their assessable income.
- Only individual beneficiaries receive a non-refundable tax offset for their share of the minimum tax already paid (a "**minimum tax offset**").

The practical effect is that discretionary trust income will generally bear a minimum effective tax rate of 30%, regardless of the marginal tax rates of the beneficiaries receiving distributions.

This represents a substantial change for families that have traditionally distributed income to non-working adult children, retirees or other beneficiaries on lower marginal tax rates.

The implications for bucket companies are particularly significant. Many family groups distribute income to corporate beneficiaries, allowing profits to be retained and reinvested at the corporate rate.

Under the proposed regime however, a discretionary trust arrangement becomes considerably less attractive because corporate beneficiaries will not receive the minimum tax offset available to individual beneficiaries.

Certain categories of income remain outside the minimum tax calculation, including:

- primary production income;
- certain income distributed to vulnerable minors;
- income distributed to charities and exempt not-for-profits;
- income already subject to withholding tax; and
- certain testamentary trust income.

These exclusions will be important when assessing the ongoing role of discretionary trusts across different family and business circumstances.

A three-year opportunity to restructure

Recognising that many existing structures may need to change, the Bill includes a transitional roll-over regime from 1 July 2027 to 30 June 2030.

During this period, eligible discretionary trusts may transfer assets to alternative structures, including companies, partnerships, fixed trusts and individuals, without triggering immediate income tax or capital gains tax consequences. Existing tax attributes, including cost bases and acquisition dates, would generally transfer to the replacement entity.

The roll-over relief is subject to a number of integrity measures, including:

- substantial continuity of ownership;
- restrictions on arrangements that effectively recreate the economic characteristics of discretionary trusts;
- scrutiny of arrangements involving dividend streaming, alphabet shares and similar discretionary rights; and
- a four-year clawback mechanism where relevant conditions are breached.

The availability of rollover relief could create a significant planning opportunity. However, the choice of replacement structure will require careful consideration of other tax consequences (such as transfer duty on dutiable property), ownership arrangements, asset protection and succession objectives.

For families holding substantial investment portfolios or business assets, the decisions made during this period could have consequences extending well beyond the commencement of the new tax regime.

Electable Excluded Trusts: Preserving the trust, changing the ownership

For families wishing to retain their existing trust structure, the proposed Electable Excluded Trust (EET) regime provides another pathway.

An existing discretionary trust may elect into the EET regime and remain outside the minimum tax rules. Under the proposed arrangements, the trustee must nominate beneficiaries and fixed income and capital entitlements totalling 100%. Once established, those entitlements become largely permanent, subject only to limited exceptions such as death or family law settlements.

In practical terms, this represents a fundamental shift in the nature of the discretionary trust. The flexibility to distribute income and capital between different family members becomes substantially restricted. The economic ownership of the trust is effectively converted into a fixed entitlement structure.

For some families, this may be an acceptable compromise that allows them to retain the existing trust and avoid the minimum tax.

For others, particularly those with complex family arrangements, changing succession objectives or significant intergenerational wealth transfer plans, the loss of flexibility may be a considerable disadvantage.

Trustees considering an EET election should begin reviewing beneficiary arrangements well before 1 July 2028, as the election effectively converts discretionary economic ownership into a fixed ownership structure.

What are the options for families?

If the reforms become law in their proposed form, many families are likely to consider one of three pathways.

Option 1: Retain the discretionary trust

This preserves the existing flexibility around income distributions, asset protection and succession planning, but the trust would generally become subject to the proposed 30% minimum tax.

For some families, retaining flexibility may be more valuable than the benefits available through restructuring.

Option 2: Restructure into a Company or Fixed Trust

This may provide greater tax certainty and allow the family to move away from the proposed minimum tax regime.

The transitional roll-over relief may allow restructuring without immediate tax leakage, provided the relevant eligibility requirements are satisfied. The trade-off is that companies and fixed trusts generally provide less flexibility in how economic ownership and entitlements can be allocated.

Any restructuring would also require careful consideration of state taxes, particularly transfer duty, where trust assets include real property.

Option 3: Elect into the EET Regime

This allows an eligible trust to remain in existence and avoid the minimum tax by adopting fixed beneficiary entitlements.

It may provide a practical middle ground for families that wish to retain their existing structure while accepting a more permanent ownership arrangement.

The key consideration is whether the family is comfortable committing to fixed economic entitlements over the longer term.

Are there other alternatives?

The three pathways above are not necessarily the full extent of the planning opportunities available.

Some families may prefer a broader group-structure approach. This can involve combining companies and trusts to manage the tax impact of the reforms while preserving asset protection benefits.

Others may choose to use companies as their primary investment vehicle, with shares held directly by family members. However, careful attention will be required when designing share ownership arrangements, particularly where different classes of shares or discretionary economic rights could raise anti-avoidance concerns.

The most appropriate structure will depend on the family's existing assets, business interests, ownership objectives and succession plans.

There is unlikely to be a single solution that works equally well for every family.

Broader implications for wealth creation and succession planning

The proposed reforms could have consequences well beyond the taxation of discretionary trusts. They may encourage families to reconsider their entire approach to wealth creation, investment ownership and intergenerational planning.

For instance, some areas deserving particular attention include:

- **Primary production**: The continued use of discretionary trusts for primary production activities;
- **Superannuation**: A renewed focus on using superannuation as a tax-effective long-term wealth accumulation vehicle (subject to Division 296);
- **Estate planning**: greater appreciation for the use of testamentary trusts and special disability trusts in estate planning, which remain exempt from the proposed minimum tax regime;
- **Investment bonds**: investment bonds as an alternative wealth accumulation investment vehicle outside of superannuation and outside of the discretionary trust;
- **Corporate structures**: greater use of corporate and other fixed structures within family groups; and
- **Philanthropy**: philanthropic and gift planning (as trust income distributed to charities and tax exempt not-for-profits are not subject to the minimum tax) including the use of Private Ancillary Funds.

Importantly, these decisions should be considered together.

The structure used to accumulate wealth today can have a significant impact on the ability to protect, distribute and transfer that wealth in the future.

A change in trust taxation may therefore be an appropriate trigger for a broader review of family estate plans, business succession arrangements and intergenerational wealth transfer strategies.

Preparing for change

Although the minimum tax remains in bill form and is still being considered by Parliament and may be amended before enactment, they represent a significant potential change to Australia's family wealth landscape.

As of the date of this article, the Senate Economics Legislation Committee recently released its report on the Bill, which recommended that the Bill be passed by Parliament. This brings the Bill that much closer to becoming law.

In its current form, the minimum tax regime is proposed to commence from 1 July 2028, while the restructuring roll-over period would run from 1 July 2027 to 30 June 2030.

This creates an important planning window for families and business owners to understand their existing structures, evaluate the alternatives and determine whether restructuring is appropriate. For many families, this review will extend beyond the tax treatment of a single trust. It may involve considering how wealth is held across family members and entities, how income and capital are distributed, how future generations will benefit, and whether existing structures remain appropriate for long-term succession objectives.

We recommend taking a whole-of-family approach to this process. A proactive review with your professional advisers can help identify potential tax exposures, structural limitations and opportunities to improve the way family wealth is managed and transferred.

If you would like assistance assessing how the proposed minimum tax reforms may affect existing structures, family wealth, business interests or succession planning arrangements, please contact our team to arrange a discussion.