Submission on the proposed minimum tax on discretionary trusts

Grant Thornton Australia Ltd

31 July 2026

Contents

Introduction		1
1.	Why minimum rate?	2
2.	More effective taxing point	3
3.	Trust losses	4
4.	Corporate beneficiaries	8
5.	Restructuring obstacles	10
6.	Other restructuring matters	12
7.	*Bendel* decision	14
8.	Scope of trusts	16
9.	Symptom vs cause	19
10.	Conclusion	20

Introduction

Grant Thornton Australia Limited
Level 43 Central Park
152-158 St Georges Terrace
Perth WA 6000
PO Box 7757
Cloisters Square
Perth WA 6850

T +61 8 9480 2000

31 July 2026

Assistant Secretary
Individuals and Indirect Tax and Superannuation Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: mintaxtrusts@treasury.gov.au

Dear Assistant Secretary

Grant Thornton Australia welcomes the opportunity to make a submission to the proposed minimum tax on discretionary trusts.

This proposal is significant in that it would have far-reaching consequences for privately held businesses, wealth and other interests. Accordingly, a number of matters warrant attention.

Please contact me if you have any queries or would like to discuss anything in our submission.

Your sincerely

David Montani
National Head of Technical Tax – Private Enterprise

david.montani@au.gt.com

1. Why minimum rate?

The proposals announced in the 2026-27 Federal Budget include a fundamental and far-reaching change to our tax and transfer system: establishing a minimum tax rate.

Progressive taxation has been a feature of our tax system for generations. Both the capital gains tax and trust changes include applying a minimum tax rate. This is a fundamental change, the impact of which could be extensive, both in increased complexity and giving rise to unintended adverse outcomes.

Such fundamental changes should not be implemented without extensive consultation to appraise the broad impact, as it will impact all aspects of our society.

The present proposal involves increased risks of discriminatory and distortive outcomes due to it applying on a selective basis to a type of assessable income (capital gains) and a type of entity (discretionary trusts).

Submissions on a recent example of a different proposed fundamental change, to impose tax on unrealised gains of super funds, highlighted how shifts in such core elements can go awry. The resulting detailed consultation was effective to deliver policy objectives with a more effective and better targeted approach.

The prospects of any such consultation succeeding would be enhanced if the policy behind these proposals was better explained. In light of the long history of having policy settings support the investment of risky capital, a stated policy goal "…to better align the tax rate on trust income with the tax rates paid by workers" lacks substance and relevance.

Even if establishing a minimum tax rate was a desirable policy objective, we question why 30% is an appropriate rate given the stated goal. The substantial benefits available from our transfer system are skewed to workers, thus meaning that the effective tax rate of many workers is less than that figure.

Recommendation

We recommend that separate and extensive consultation be conducted to explore the policy goal, whether imposing a minimum tax rate is effective to achieve the real policy objectives and, if so, what the appropriate minimum rate should be.

And before making any changes to the taxation of trusts, we do not regard it as acceptable in any way to increase the complexity of dealing with trusts without the full repeal of Schedule 2F ITAA36 and replacement with a fit-for-purpose replacement. Submissions by professional bodies well address this.

Please note that the remainder of this submission responds to the matters raised in the Consultation Paper without accepting that it presents a valid approach.

2. More effective taxing point

We understand the intent of subjecting the net income of a discretionary trust to a minimum 30% tax impost, imposed on the trustee (pg 5). However, the proposed structure is unnecessarily complex, and contains punitive outcomes that are unreasonable.

Recommendation

If a valid approach in concept, we recommend that the minimum tax impost be structured as follows:

- It is imposed at an individual beneficiary level – and individuals only;
- It is calculated as a “top-up” tax between the beneficiary’s marginal rate and 30%, if their marginal rate is less than 30%.

The above is essentially the same mechanism as that used for the 30% minimum tax impost on the post-1 July 2027 component of a net capital gain.

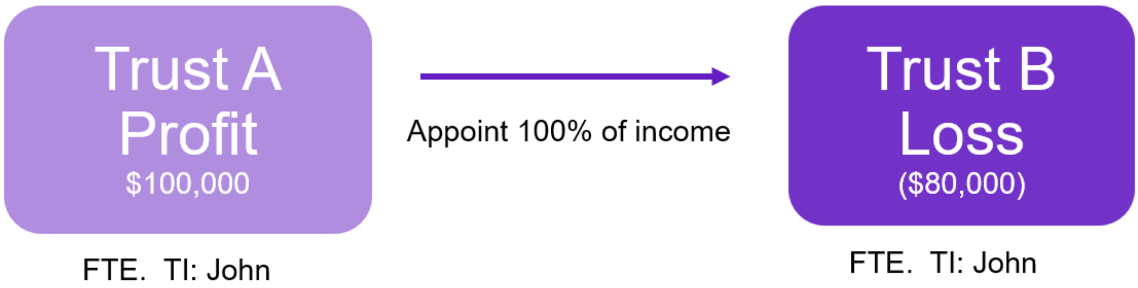
It is simpler to administer, as it is enlivened from an individual’s tax return disclosing a share of a discretionary trust’s net income.

3. Trust losses

Schedule 2F of the *Income Tax Assessment Act 1936* (ITAA36) contains a series of integrity measures relating to trusts deducting prior years' losses and current-year deductions.

Current law

Here is a common scenario:



Both trusts are controlled by John and his family. The above might reflect a different business being operated through each trust. It is commercial prudence to use separate entities, for reasons of risk management, public identity and others – that is, not for any tax reasons. This is no different to a corporate group that operates different businesses through separate subsidiary companies. It is fair and appropriate to view the above as one economic unit.

Trust A and Trust B both have made a Family Trust Election (FTE), and both nominating John as the test individual. Thus, Trust A and Trust B each are a member of the other's "family group" under Schedule 2F. In short, the law recognises that the above is one economic unit and thus does not prevent Trust B from deducting the loss against the income Trust A appointed to it.

In the above scenario, where Trust B appoints its income to a beneficiary as is customary, the outcome presently would be:

Trust B	$
Income from Trust A	100,000
Loss for year	(80,000)
Taxable income	20,000
Beneficiary's tax at 47%	9,400

The rationale of the proposed reform, in which Trust B deducts its loss against the income from Trust A appointed to it, suggests that such an approach is tax avoidance.

It is not.

The outcome is wholly sensible, both commercially and tax technically, and reflects the express policy intent of Division 6 in Part III, and Schedule 2F ITAA36. It commonly reflects the reality that Trust A and its stakeholders will have funded Trust B’s losses. In other words, it is within both the letter and the spirit of the law and is commercially sound.

Alternatively, the above scenario , if not tax avoidance, may be suggested as being a “complex tax planning arrangement involving chains of discretionary trusts”.

Again, it is not.

Although there is a chain of (two) trusts, and it might be considered tax planning, it certainly is not a “complex” tax planning arrangement. It is in fact very rudimentary and, as noted, wholly commercial and the expressly intended outcome under taxation law.

Note that the businesses in each trust could have been conducted through a single trust, in which case the matters discussed here would not arise. However, as explained above, the use of separate trusts is wholly for commercial reasons.

To give some additional perspective, in a tax consolidated corporate group, a loss in one company is offset against a profit in another company in the same group. Small-to-medium businesses no longer being able to do the same puts them at a disadvantage compared to larger corporate groups.

Proposal

From 1 July 2028, the minimum trust tax as proposed will undermine the policy design of Schedule 2F, which – quite appropriately – is to enable trusts within a family group via FTEs with the same test individual to effectively group income and losses together.

Trust A will have incurred $30,000 of trustee tax. Further, Trust B will incur $6,000 of trustee tax ($20,000 x 30%).

Trust B will be entitled to a credit for the $30,000 trustee tax paid by Trust A. However, all that will do is reduce Trust B’s own $6,000 trustee tax liability to nil. Trust B will pass a tax offset of $6,000 to the individual beneficiary, and the excess of $24,000 is wasted. Thus, the individual beneficiary will be liable for the 47% tax and Medicare levy on the $20,000 income appointment from Trust B – $9,400 – less the $6,000 offset, leaving the balance of $3,400 payable.

So, the combined Trust A/Trust B economic unit’s net income of $20,000 would bear a total tax impost of $33,400.

That is a punitive outcome for a scenario in which there is no complex tax planning, no tax mischief, and the outcomes are, under the current law, wholly proper, within both the letter and spirit of the law, and the express policy design.

Reality

John and his family would be disadvantaged by either of the choices available:

- Pay the extra annual tax, meaning they would deplete their capital, or
- Re-arrange their affairs to achieve a different outcome. For example, they might transfer Trust B's business to Trust A. But this is merely forcing businesses into a costly restructure to a sub-optimal commercial structure, especially increasing risks, because inaction will result in an impossible-to-survive tax impost.

We note that the consultation paper's claimed intent is to discourage complex tax planning arrangements involving chains of discretionary trusts. And yet, in the above scenario, the proposed changes will in fact *encourage* complex (and not-so-complex) tax planning where currently there is none, because there is no mischief in the first place.

That is rather ironic.

Recommendation

We recommend the following (on the basis our recommendation in section 2 is not adopted):

- No minimum tax liability arises in relation to the income of a trust that has made a FTE that is appointed to another trust that is a member of the appointing trust's family group per Schedule 2F ITAA36.

In the scenario set out, Trust A would not incur the trustee tax on the income appointed to Trust B. (If Trust A had other income appointed to other beneficiaries, the trustee tax applies to that net income.)

The minimum tax proposal would then apply to Trust B. Trust B would incur the 30% trustee tax on its $20,000 of net income, and the beneficiary would have a $6,000 non-refundable tax offset applied against their $9,400 tax liability.

The end result is an ultimate tax impost of 47% on the economic unit's combined net income of $20,000.

We submit that the above outcome is wholly appropriate – and by contrast, the outcomes per the proposal are wholly unreasonable.

Consider 1995 experience

The above discussion is reminiscent of what happened following the announcement of the trust loss rules on 9 May 1995. When the draft legislation for Schedule 2F was released several months later, it quickly became apparent that, in a scenario just like that above, it would not be possible for Trust B to deduct its loss against the income appointment from Trust A.

To their credit, Treasury and the Keating Labor government recognised that that outcome amongst such closely controlled trusts was unreasonable.

Accordingly, Treasury subsequently devised with the FTE concept (and Interposed Entity Elections). This is the key integrity mechanism through which a trust may appropriately deduct a loss (or current-year deductions) against income appointed to it from another trust, recognising that they are a single economic unit.

Accordingly, we implore you to reflect on the example shown by your predecessors at Treasury, and then-Treasurer Ralph Willis in the Keating government, of listening, understanding, and responding in a way that reflected an honourable manifestation of the intentions behind the announced laws.

4. Corporate beneficiaries

It is proposed for corporate beneficiaries to be assessed on their share of trust net income, but will not be entitled to a tax offset from the trustee tax paid. This will result in double taxation.

A corporate beneficiary that pays, for example, 30% tax on its share of the trust's net income, in addition to the 30% trustee tax already paid, means the trust income, to that stage, will bear an effective 60% tax. Upon extracting the remaining 40 cents in the dollar from the company as a franked dividend, a shareholder on the top personal rate of 47% (including Medicare levy) will pay top-up tax of 9.71 cents.

The total effective tax impost on the original trust income will therefore be 69.71%. This will make corporate beneficiaries unviable from 1 July 2028.

We understand the point that allowing a tax offset to a corporate beneficiary for the trustee tax paid would convert the non-refundable trustee tax offset into a refundable franking credit. The consultation paper states that denying a tax offset to a corporate beneficiary is the simplest mechanism to prevent the minimum tax being undermined without changing the imputation system (pg 6).

It's true that it is a simple mechanism. However, the policy design produces an extreme and unfair outcome to corporate beneficiaries and their shareholders which outweighs the intent of the policy. The effective rate is well beyond the "tax rates paid by workers", so the proposal does not achieve the desired alignment in that respect.

Note that large corporate groups will continue to pay 30% tax and reinvest profits after tax at 70 cents in the dollar, again putting small-to-medium businesses at a disadvantage compared to their larger competitors.

If the true motive is in fact to prevent undermining the minimum tax, the paper itself contains a clue to a better mechanism that would healthily serve that intent – change the imputation system.

Recommendations

In place of denying a tax offset to a corporate beneficiary for the trustee tax paid, we recommend the following:

- A corporate beneficiary is allowed a tax offset.
- To the extent the company's tax liability is paid via the offset, the franking credit arising is recorded in a separate franking account – say, the "Trustee tax franking account".
- Where a franking credit allocated to a dividend paid by the company is debited to the Trustee tax franking account, it is a non-refundable franking credit. (Where paid to another company, the franking credit goes to the recipient company's Trustee tax franking account.)
- There may be rules to prescribe when the Trustee tax franking account must be debited in priority to the normal franking account.

Companies having more than one franking account is not new – there were franking accounts A, B and C in the late 1990s and early 2000s. We believe the task of drafting legislation to implement our recommendation would be at the relatively lesser complicated end of the spectrum.

The above would result in the integrity of the trustee tax paid remaining intact, as it would manifest in a non-refundable franking credit.

Conclusion

We have demonstrated that preventing undermining the minimum trustee tax is achievable per above, and thus exposes the proposed denial mechanism as unnecessary and wholly unreasonable.

5. Restructuring obstacles

The proposed expanded scope of CGT roll-over is noted. However, any CGT roll-over is ineffective if other restructure costs or obstacles make restructuring unviable. That is the case here due to the impost of transfer duty at the state/territory level.

Transfer duty

All state/territory jurisdictions impose transfer duty on the transfer of residential land, and same again for commercial real property except South Australia. Further, Queensland and Western Australia still impose transfer duty on the transfer of non-real property business assets (goodwill, plant & equipment, intellectual property, etc).

Some state/territory jurisdictions perhaps foresee a windfall in transfer duty revenue from restructures. However, this would be nothing more than an opportunist legal confiscation of private wealth. Further, such prospects of revenue windfalls are fanciful in any case. At around an average of 4%-5% of asset value, such a transfer duty impost would severely damage many small-to-medium businesses, most of whom could not even fund the cost in the first place. Thus, many will determine that staying with their existing trust structure, and reinvesting profits at a rate as low as 53 cents in the dollar, is the lesser of two evils.

The above might appear to benefit federal revenue. However, that is a mirage. In many cases, it's merely a timing difference. Further, the lower profit reinvestment rate will be a drag on investment and business growth, dampening tax revenue, and which also filters through to lower employment.

If there is a genuine intent to facilitate restructuring away from trusts, you must engage with your state/territory counterparts on this matter.

It has been demonstrated that a transfer duty roll-over so businesses and real property in a trust can move to a company or other new home, without needing to duplicate much legislative infrastructure, is achievable. This is through leveraging off the existing ring-fencing and integrity measures contained in the CGT roll-overs. Further, such a roll-over would cost the states/territories virtually no revenue.

The response so far from the state and territory governments – mainly silence – is not encouraging. The WA Treasurer's office has stated that they essentially have no interest in this matter.

From 1 July 2028, thousands of small-to-medium businesses and private groups will be placed in an impossible position, having to choose between the following:

1. Stay with their existing discretionary trust structure and incur double-taxation or a business growth-stunting reduced profit reinvestment rate as low as 53 cents in the dollar; or
2. Transfer to a new structure, incurring a crippling transfer duty cost.

In other words, businesses must choose between two options which both will inflict existential risk onto many small-to-medium businesses.

Both options will cause damage to many businesses, and by extension, employment. It would be unconscionable for a state/territory government to allow businesses and private groups to face this future.

It would also undermine the success of your own stated intentions.

Recommendations

- Engage with your state/territory counterparts to educate them on the above and encourage them to provide transfer duty relief that complement this policy;

- Legislate to provide for an immediate deduction (where otherwise not arising) for costs relating to restructuring, such as any transfer duty, legal costs, advisory costs, etc.

All assets

The consultation paper states that the expanded CGT roll-over relief will be available only where all assets of a trust are transferred. The cited reason for this (pg 10) is unclear – we do not understand the purported concern.

Aside from the above, a requirement that a trust transfer *all* its assets is unreasonably inflexible and could be cost prohibitive. We return to the comparison with a tax consolidated corporate group. Such corporate groups can selectively transfer assets between member companies with no income tax consequences (and, it must be noted, for which many jurisdictions provide an exemption from transfer duty). And yet, private groups will not be afforded such a luxury. This requirement is also unnecessary, as income earned by the trust will be subject to the minimum 30% tax in any case.

Imposing this new tax, but allowing a wider CGT roll-over, only to then make the roll-over commercially unappealing is contradictory. Even the existing Subdivision 122-A CGT roll-over for transferring assets from a trust to a company does not require this, allowing the transfer of individually selected assets.

Recommendation

- Allow trusts to selectively transfer assets to a new structure under the expanded CGT roll-over.

6. Other restructuring matters

The consultation paper envisages offering roll-over relief for restructuring into different structures. However, the matters noted in section 5 conflict with the 2026 Budget's messaging about reducing red tape to 'unlock productivity and economic dynamism'.[1]

With the apparent concern being on the discretionary aspect of discretionary trusts, alternative approaches should be considered that do not require any restructuring, given restructuring involves families making difficult choices about how to allocate their wealth for the long term, and incur significant costs in the process:

Taxation of trusts as such

- Various proposals to tax trusts as entities in their own right have been considered over the years
- Consultation should reassess whether such proposals could better achieve policy objectives
- It is noted that the trusts component of the entity taxation regime proposed in 1999 failed largely due to the "profits first rule" element. A proposal without limiting access to capital may be effective

Beneficiary Tax Nomination Election

- Rather than restructure, trustees could instead have the option of nominating which individuals, or class of individuals, will be used as the basis for assessing a trust's income and in what percentages
- These percentages could be "locked in" for a substantial period, eg 7 years
- Changes to be permitted after key events, eg death and divorce
- The trustee could be assessed on the income in a similar manner as occurs currently for a beneficiary under a legal disability, with a credit being available for the nominated persons in their own returns
- The tax liability could apply in this way irrespective of how trust income is actually allocated. In this way, the tax could apply in a fixed way, but the trustee could continue to apply its income subject to trust deed discretions which would enable the broader purpose of the trust to be achieved, including benefiting discretionary objects

[1] Budget 2026-27 Whole-of-Government Regulator Reform Agenda (https://budget.gov.au/content/factsheets/download/factsheet-regulatory-reform.pdf)

Recommendations

- Re-consider trust taxation proposals
- Provide alternative to a costly and potentially fraught restructure by permitting trustees to nominate beneficiaries upon which trust tax will be assessed

7. *Bendel* decision

The *Bendel* decision[2] resolved that, in the circumstances at hand, an unpaid present entitlement (UPE) owing by a trust to a company is not a "loan" by the company to the trust for the purposes of Division 7A ITAA36. However, many consequential matters remain that require attention.

Anecdotally, since 2010, almost all taxpayers have dealt with UPEs with corporate beneficiaries in accordance with the Commissioner of Taxation's (Commissioner) view that they were loans under Division 7A. That includes UPEs arising up to the 2023-24 income year, which, under the Commissioner's view, came within the meaning of a loan in the 2024-25 income year. They were then converted to actual loans under complying loan agreements before the lodgement day for 2024-25 returns, the latest date of which was 15 May 2026.

Despite the *Bendel* decision, which found the Commissioner's view to be wrong, the above UPEs-converted-to-loans are now actual loans, and that cannot be undone. Thus, they will continue to be dealt with under Division 7A until that process completes.

This means that it is largely UPEs with companies arising in the 2024-25 and 2025-26 income years that are currently open as to how they will be dealt with (and future years).

As reflected in the High Court's decision, Parliament inserted provisions to deal with this situation: Subdivision EA and its predecessors. Subdivision EA has been in operation since 2002 and has been a highly effective mechanism in capturing the potential tax leakage between trusts, corporate beneficiaries, and the related individual taxpayers. So, where a UPE exists with a company, dealings with the trust are already captured by Division 7A. That is where it should end.

The Commissioner has expressed controversial views that section 100A might also apply in this situation, with the absurd result that the trustee will be taxed at 47% on the extent of the UPE and the shareholders or their associates dealing with the trust paying more tax on the value of those dealings.

And so, the solution put to taxpayers by the Commissioner to mitigate the application of section 100A is to convert UPEs with companies into loans, even though that is now not required.

Presently, there is time to consider this matter. However, due to the uncertainty faced by taxpayers on account of the differing positions taken by the High Court and the Commissioner, it would be beneficial for all involved to reach a solution on this matter sooner rather than later.

Taking account of the above, if any legislation needs to change, it is section 100A to enable Subdivision EA to continue operating as intended.

---

[2] *FCT v Bendel* [2026] HCA 18

Recommendations

- Parliament legislate to prevent section 100A applying to a UPE;
- Failing the above, Parliament legislate to include a UPE within the meaning of a loan in Division 7A;
- For consistency, the above applies only to UPEs with a trust that are subject to the minimum tax (if introduced);
- Applicable UPEs become a loan in the income year following the one in which the entitlement arose;
- The change applies to UPEs arising in income years beginning on or after Royal Assent is given to the applicable legislation.

The above limits the “retrospective” effect of the change.

8. Scope of trusts

The consultation paper appropriately notes that relying on the definition of fixed trust in Schedule 2F ITAA36 to draw the line on the application of the minimum tax would cause a too-broad application.

The definition of fixed trust contains requirements that are very strict, in particular over the concept of interests being indefeasible. This makes it an extremely exclusive category of trust.

There are many trusts which certainly are not a discretionary trust in the ordinary sense of that term, but neither do they satisfy the highly strict requirements to be a fixed trust. These typically are unit trusts, where unitholders have defined entitlements to the income and capital of the trust, but nonetheless the slightest anomaly in the trust deed can cause failure of the absolute requirement of "indefeasible".

Many trusts self-assessing as a fixed trust rely on the Commissioner's power in subsection 272-5(3) in Schedule 2F to treat interests as fixed, and the guidance in Practical Compliance Guideline PCG 2016/16.

The Commissioner's guidance in PCG 2016/16 sets out a set of "safe harbour" conditions for several categories of trusts to be regarded as fixed.[3] The category of "Other trusts" lists a series of practical conditions.

Recommendation

Draw the line on the application of the minimum tax by excluding trusts which satisfy the following conditions, which are based on the Commissioner's guidance above:

- The trust has a trust instrument;
- All beneficial interests in the income and capital of the trust are vested;
- All beneficial interests effectively have the same rights to receive the income and capital of the trust. However, where more than one class of interests exists, the rights to income and capital between classes are defined, and all beneficial interests within a class effectively have the same rights to receive the income and capital entitlement of that class;
- All beneficial interests in the income and capital of the trust, or that of a class, where there is more than once class, can be expressed as a percentage of the total income and capital of the trust;
- No beneficial interest in the income or capital of the trust is capable of being defeated, partly or wholly, by the exercise of an unfettered power of appointment of income or capital by the trustee alone. Alternatively, where any such power exists, it has never been exercised.

[3] Attachment B, paragraph 54.

The purpose of the last part in the last bullet point is to alleviate applicable trusts from having to have the trust deed amended. A unit trust, for example, might satisfy the first four points, but the deed contains such a power referred to in the last bullet point. This power might never have been used, and there is no intention to. Accordingly, such a trust will not require amending its deed.

Testamentary trust carve-out

The consultation paper proposes an exclusion for testamentary trusts but this is very limited where the trust is established after 1 July 2028. It is proposed that such trusts only benefit from the exclusion if they can only benefit individuals and income tax-exempt entities. This is unnecessarily restrictive, especially where Wills have already been drafted and capacity issues prevent any changes to be made to existing Wills and the like.

Recommendation

- The exclusion should extend to testamentary trusts generally, subject to the other proposed limitation that the exclusion apply to income arising from assets of the deceased estate.

Special purpose discretionary trusts

The proposed tax appears to apply to income allocated by certain special purpose discretionary trusts to support particular categories of persons (say within indigenous communities or the financial support of children in family law matters). Exclusions proposed for distributions to income tax-exempt entities will not assist, thus potentially exposing parties to a higher rate of tax.

Recommendation

- The exclusions should be expanded to cover special purpose discretionary trusts that have a broad community purpose.
- Clarify whether the minimum tax will apply to child maintenance trusts.

Professional firm trust accounts

Lawyers, accountants, real estate agents and so on typically have regulated and audited trust accounts as part of administering client monies. These trusts might earn a small amount of income, but it would not serve the policy purpose for these trusts to be subjected to the minimum tax.

Recommendation

- Provide a carve-out that will exclude these types of trusts from the minimum trust tax.

De minimis threshold

Where a trust derives a relatively small amount of income, the administrative costs of complying with the minimum tax may well outweigh any additional revenue. Accordingly, a de minimis net income threshold would exclude trusts where, in a year of income, the trust's net income is below the threshold.

Recommendation

- Have a de minimis threshold of net income, whereby a trust is not subject to the minimum tax for an income year where its net income for that year is below the threshold.
- The threshold might be, say, $30,000.

9. Symptom vs cause

The minimum tax on discretionary trusts is essentially treating symptoms instead of the underlying cause. The underlying cause is our well-known over-reliance on income tax (and under-reliance on less economically damaging taxes such as the GST). That manifests in excessive use of trusts in income tax planning, relative to all the non-tax reasons for their existence – ie, the symptom.

It's clear that the intent of the minimum tax on discretionary trusts is to reduce the extent of use of trusts in tax planning – which is thus attacking the symptom.

If the underlying cause of Australia's unbalanced tax mix were addressed, trusts would feature less in tax planning and there would be much less use of corporate beneficiaries. The reason for that is that there would be much less need in the first place for the kind of tax planning trusts are used for. And the reason for *that* is that the income tax pool would be smaller – replaced by trust-users paying more GST (which they cannot escape) – and so there would be much less benefit available from income splitting or arbitrage between higher and lower income tax rates.

Let's assume a minimum tax on trust income is sound in principle. If the underlying cause were addressed, it could be done much better, and without any need for the punitive elements.

And as for the tax rate, where did the 30% rate come from? It's derived from our headline company tax rate and personal income tax rates – all of which are too high due to our over-reliance on income tax.

Accordingly, the 30% rate has been determined from a flawed benchmark. If we had genuine tax-mix reform, existing tax rates would be lower (balanced with paying more GST, accompanied, of course, by the usual shielding measures for low-income earners), leading to a lower trust tax rate.

Recommendation

Undertake genuine, holistic tax reform, including the ultimate ideal of tax-mix reform. This would address the many underlying causes of disfunction in our tax system, from which the symptoms would greatly diminish. There would then be no need for this misdirected attention to those symptoms.

Recommended reading

- *Mixed Fortunes: A History of Tax Reform in Australia*, by Paul Tilley.
- *Tax Wars: The bluster, bulldust and bedlam behind Australia's tax reform gridlock*, by David Montani.

10. Conclusion

The ostensible purpose of the minimum tax on discretionary trusts is exactly that. However, the consultation paper includes a number of policy design features that will cause anomalies and inappropriate outcomes, resulting in a punitive tax impost where there is no tax mischief, and in fact where structures and practices are wholly within the letter and spirit of the current law.

Further, those design features would, ironically, fuel tax planning activity in response, due to many businesses being unable to restructure, forcing them into sub-optimal use of existing structures as the lesser of two evils. This will cause a drag on business growth and investment, hindering employment and overall wealth improvement.

We hope that you take on board this feedback so that the final form of the minimum tax on discretionary trusts achieves the abovementioned ostensible purpose.