

Article Information

Authors: Megan Bishop, Belinda Spence, Gideon Stein
Service: Corporate & Commercial, Taxation
Sector: Private Clients

Treasury releases consultation paper on 30% minimum tax for discretionary trusts, with major questions still to answer

On 8 July 2026, the Treasury released its much anticipated consultation paper “Minimum tax on discretionary trusts” on the implementation of the 30 per cent minimum tax on discretionary trusts (Consultation Paper), which was announced as part of the 2026-27 Budget. The Treasury consultation paper provides helpful insight into the intended operation of the 30% tax on discretionary trusts, but, in our view, there are a lot of questions still to be determined and a three-week consultation period is unlikely to be long enough to adequately uncover and comprehensively understand the breadth of issues.

Summary

The issues raised and matters covered in the Consultation Paper have implications for many of our clients and taxpayers more broadly. In this Insight, we unpack the specific details of the Consultation Paper and outline some of our views regarding where we still need more guidance from Treasury.

This is the latest in our series of insights on the 2026 tax reform measures. Our earlier articles have covered the [2026 Budget](#), [Unit Trusts after the Federal Budget](#), [Tax reform updates](#), [Bendel – The High Court has spoken](#) and the [ATO’s releases of a Decision Impact Statement on Bendel](#).

The Consultation Paper covers a range of topics including:

- the scope of the minimum tax and exclusions;
- the taxing point and its interaction with individual, corporate and trustee beneficiaries;
- rollover relief;
- the treatment of excess franking credits for trusts;
- collection mechanisms; and
- the implications of the High Court’s decision in *Commissioner of Taxation v Bendel* [2026] HCA 18 (**Bendel**).

The paper raises 17 discussion questions across these topics, signaling that the Government is still working through a number of significant design and implementation issues. Notably, the closing date for submissions is 31 July 2026, giving stakeholders a consultation window of just three weeks to respond to what is a complex and far-reaching set of proposals.

There is a lot to unpack in the Consultation Paper, our overarching observations following our review include:

- **CGT rollover and overlay with state/territory law:** The CGT rollover relief for restructuring out of discretionary trusts to other structures may be viewed as somewhat broader than envisaged on budget night. However, there is an intersect between federal law, trust law and state law which hasn’t yet been resolved in the Consultation Paper. The appeal of the rollover may be diminished if the restructure would otherwise trigger a significant transfer duty liability for taxpayers, particularly those operating in property or energy and resource sectors. Without state and territory government collaboration, taxpayers may be exposing themselves to significant amounts of unnecessary tax. In our view, consideration needs to be given to providing an exemption to exclude such restructures from the scope of transfer duty where they are undertaken in accordance with the proposed CGT rollover.

- **CGT rollover and trust law exposure:** If the transfer duty hurdle can be managed, there is a bigger question of trust law that arises. The trust deed of the discretionary trust needs to be carefully reviewed to ensure the trustee is empowered to undertake the rollover on the terms imposed by the concession. A trust is generally established for a broad beneficiary class and transferring the assets of the trust fund to a company with restricted shareholders may either result in a breach of the trustee's fiduciary duty or trigger a raft of disputes from potential beneficiaries who were left out of getting shares in the transferee company. We've seen recent cases such as *Owies v JJE Nominees Pty Ltd* [2022] VSCA 142, where the exercise of trustee discretion was called into question from displeased beneficiaries. There may be a wave of similar litigation for disgruntled beneficiaries following the implementation of the CGT rollover and very significant financial consequence, greater than the 30% minimum tax, for those that act in breach of their fiduciary duties. If the trust deed is not clear application to the Court could be necessary to achieve restructure for some.
- **Double taxation for corporate beneficiaries:** The Consultation Paper confirms our thoughts after budget night that distributions to corporate beneficiaries will be subject to double tax - at both the trust level and then again at the company level. The Consultation Paper example makes clear the effective tax rate for companies of 42.9% of the after-tax amount they receive for companies that ordinarily have a 30% tax rate. This appears to be an intentional design feature and, in our view, will effectively leave the era of the bucket company behind for those taxpayers who continue to maintain discretionary trust structures post 1 July 2028.
- **Franking credits for companies from trust distributions:** Despite the 42.9% effective tax rate for companies ordinarily having the 30% tax rate, companies will only receive franking credits for the amount paid by the company. That will result in the present formula for franking credits to avoid double taxation not fully compensating in some circumstances.
- **Franking credits for discretionary trusts:** There is an interesting question posed regarding whether excess franking credits of a trust should be refundable or carried forward and utilised in future income years. There are practical considerations at play, if franking credits were carried forward, a trustee would in effect need to maintain a franking credit account and the question remains: would the trustee need to attempt to trace which beneficiary received the distribution to which the franking credits attached and are they required to use those carried forward franking credits only against future income distributed to that beneficiary?
- **Overlay of Bendel:** Given the High Court's recent decision in *Bendel*, the Consultation Paper also addresses the announced but unenacted (**ABUM**) measure from the 2018-19 Budget to bring unpaid present entitlements within the scope of Division 7A. Whilst comments have been requested as to the interplay between this ABUM and the minimum tax, it is unlikely that this change will remain unenacted for much longer.

Below, we examine some of the more detailed aspects of the Consultation Paper.

Rollover relief

The Consultation Paper proposes expanded rollover relief to assist taxpayers wishing to restructure out of a discretionary trust into other arrangements, such as a company or a fixed trust, without capital gains and other immediate income tax consequences applying. The relief will be available for three years from 1 July 2027.

The proposed rollover is based on the existing Small Business Restructure Rollover (**SBRR**) but is significantly broader in scope than what many have envisaged. Unlike the SBRR, the new rollover would:

- extend beyond small business entities and would be available to discretionary trusts regardless of size, removing the existing \$10 million aggregated turnover threshold.
- not require the restructure to be a "genuine restructure" of an ongoing business - expanding access to all discretionary trusts within the scope of the 30% minimum tax.
- apply to all trust assets capable of being transferred, including assets earning passive income, which is broader than the SBRR which only applies to CGT assets, trading stock, revenue assets and depreciating assets used in carrying on a
- not require continuity of identical legal ownership following a restructuring, provided ultimate economic ownership remains within the same 'family unit' (a new definition which is broader than the existing 'family group' definition used for trust loss and family trust election provisions).

There are some exemptions that need to be worked through by taxpayers looking to implement the rollover:

- The transferee must be an entity that is not a discretionary trust within the scope of the minimum tax, meaning the transferee must be a company, fixed trust, individual, or one of the listed entities in a partnership.
- Where assets are transferred into a company structure, the company must have a single class of ordinary shares. Relief will be denied where multiple classes of shares exist which permit dividends or capital returns to be directed between participants on a discretionary basis.
- The company cannot be owned by another discretionary trust, where no family members have any clearly defined

rights. This effectively prevents the transferee company from being owned by a discretionary trust at the time of the rollover.

- All assets of the discretionary trust must be transferred to the transferee entity – you can't pick and choose which assets get transferred. The trustee is permitted to retain a nominal asset amount to prevent the trust from being required to wind up following completion of the rollover.
- Where there are changes in the membership of the transferee company, other than equity injections or sales to genuine third parties, within a set time period the rollover will be denied. The time period has not been announced.

The 30 per cent minimum tax

Under the proposed framework, from 1 July 2028, the trustee of a discretionary trust will pay 30 per cent tax on the taxable income of the trust, and individual and other non-corporate beneficiaries will receive a non-refundable tax offset (minimum tax offset) for the tax payable by the trustee. The underlying basis on which trusts are taxed will remain unchanged, with beneficiaries continuing to be assessed on their share of the trust's taxable income in proportion to their entitlement to the income of the trust.

Three aspects of the proposed framework are worth highlighting.

Franking credits refund or carry forward?

A quirk of the proposed framework relates to the treatment of excess franking credits. Where a trustee receives franked dividends, the franking credits must first be used to offset the trustee's income tax liabilities, including the minimum tax liability. Where franking credits exceed the trustee's income tax liability, the Government is considering two options: refunding the excess franking credits to the trustee or allowing them to be carried forward to reduce the trustee's future income tax liabilities. Whether a trust will be entitled to a refund or only a carry forward of excess franking credits it receives from a company is still up in the air, and the Consultation Paper invites feedback on the implications of each approach.

Foreign resident beneficiaries carved out

The Consultation Paper confirms that distributions to foreign resident beneficiaries of discretionary trusts, to the extent they comprise dividends, interest and royalties to which foreign resident withholding tax applies, will be excluded from the minimum tax. This exclusion is designed to ensure that Australia's double tax agreements, as well as the multilateral global and domestic tax regimes, continue to operate effectively. Given that many jurisdictions have agreed tax rates on dividends, interest and royalties lower than 30 per cent under those agreements, this carve-out provides important clarity for trusts with cross-border distribution arrangements.

Effectively more than double taxation for corporate beneficiaries with no concession in sight

Perhaps the most striking aspect of the Consultation Paper is the treatment of corporate beneficiaries. Corporate beneficiaries will be assessed based on their entitlement to trust income but will not be able to claim a minimum tax offset based on the tax payable by the trustee to reduce their income tax liability. This means a corporate beneficiary which pays 30 per cent corporate tax on its share of the trust's taxable income, would pay that in addition to the 30 per cent minimum tax already paid by the trustee on that same income, with no offset or credit to avoid what is effectively double taxation.

On \$100,000 of taxable income this would trigger a \$60,000 tax bill – \$30,000 at the trust level and then \$30,000 at the company level.

But at the Company level the effective tax rate is greater than 30% – it is 42.9% for a corporate entity to which a 30% tax rate ordinarily applies on the amount actually received. That arises from the 30% minimum tax at trust level meaning that the maximum amount the trust is entitled to actually receive is really \$70,000 (being the \$100,000 less trustee tax of \$30,000). Yet the company pays \$30,000 on that \$70,000. Consequently, the effective tax rate is 42.9% calculated as \$30,000 divided by \$70,000.

The Government's rationale is that allowing companies access to the offset would enable the corporate beneficiary to convert the benefit of the minimum tax offset into refundable franking credits, which could then be passed on and refunded to non-corporate shareholders that are also trust beneficiaries, thereby undermining the minimum tax. The Consultation Paper states that not allowing companies to access the minimum tax offset is "the simplest mechanism" to prevent this outcome "without changing the imputation system". In our opinion the mechanism chosen is far from simple. Indeed, that 42.9% effective rate will in turn result in the formula for gross up for franking credits also breaking down and not appropriately compensating for distributions received from trusts unless also amended.

There does not appear to be any concession or relief contemplated for distributions to corporate beneficiaries. Rather, this

appears to be an intentional design feature of the regime.

Meaning of fixed trust not finalised

One threshold issue that remains unresolved is what exactly constitutes a “fixed trust” versus “discretionary trust” for the purposes of the minimum tax. The current tax framework defines discretionary trusts by exclusion, as any trust that is not a fixed trust, with the concept of a fixed trust relying on beneficiaries having “vested and indefeasible” interests.

However, after stakeholder feedback, the Treasury acknowledges that relying on the existing definition of fixed trusts may result in the scope of discretionary trusts being broader than intended. The Consultation Paper seeks feedback on the appropriate treatment of cases such as modern commercial trusts, where trustees typically retain powers to change entitlements, add beneficiaries, or amend trust deeds, whether or not those powers are exercised. This is a significant open question, as the breadth of the definition will determine which trusts are caught by the minimum tax and which are not.

Looking ahead

The Consultation Paper represents an important step in the design and implementation of the minimum tax on discretionary trusts, but with a three-week consultation window and 17 discussion questions spanning rollover relief, franking credits, collection mechanisms and the implications after *Bendel*, there is so much to cover in a short period.

We will continue to monitor developments and provide updates as the legislation progresses. In the meantime, please reach out if you would like to discuss how any of these proposals may impact you or your business.

***Disclaimer:** This publication is for general information only and is not legal advice. You should seek specific legal advice for your own circumstances.*