



# Budget 2026–27

## Minimum tax on discretionary trusts

The Government is improving the fairness of the tax system by introducing a 30 per cent minimum tax on discretionary trusts. Expanded rollover relief will be available for small business and others to support restructuring out of discretionary trusts.

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The Government is introducing a 30 per cent minimum tax on discretionary trusts from 1 July 2028.

The tax will be paid by the trustee as it is the trustee who controls distributions. Beneficiaries will still need to declare their trust income in their tax returns, but beneficiaries, other than corporate beneficiaries, will receive non-refundable credits for the tax payable by the trustee.

The introduction of a 30 per cent minimum rate will mean a fairer rate of tax paid on discretionary trust income, better aligning the tax rate on trust income with the tax rates paid by workers.

#### Growing use of discretionary trusts is increasingly unsustainable

Since 2001–02, the number of discretionary trusts in Australia has doubled, exceeding the growth in companies (which have grown by 70 per cent).

Australia now has over one million trusts, of which around 840,000 (80 per cent) are discretionary trusts.

In 2022–23, discretionary trusts distributed \$142.4 billion in income to other entities, with average annual growth in income of 7.8 per cent since 2011–12.

The majority of trust income flows to the top earning 10 per cent of families and approximately 90 per cent of total private trust wealth is held by the wealthiest 10 per cent of households (those with net worth above around \$2.3 million).

#### Better aligning the tax rate on trust income with the tax rate paid by workers

Trusts, including discretionary trusts, can assist with asset protection and succession planning. However, discretionary trusts also allow lower tax rates to be achieved through ‘income splitting’, where trustees of discretionary trusts allocate all or part of their income to others who have a lower marginal tax rate, while often retaining the income. Treasury analysis shows that in 2022–23, on average, families with discretionary trusts faced an average tax rate around 4 percentage points lower compared with families with similar incomes who do not use a trust.

This flexibility is not available to individuals without a trust, including workers who pay tax on wages at marginal rates. Numerous reviews of the tax system over the past 50-years have raised concerns that different structures used to hold assets or earn an income can result in different tax outcomes for people with similar levels of income (see Table 1).

Introducing a 30 per cent minimum tax brings the tax outcome on income earned in a discretionary trust closer to that of wage and salary earners who pay a 30 per cent marginal rate on incomes between \$45,001 and \$135,000. This improves the fairness and sustainability of the tax system.

**Table 1: Tax reviews raising discretionary trust concerns**

Review	Key concerns
Asprey Report (1975)	Income splitting through trusts undermines tax integrity.
Review of Business Taxation (1999)	Inconsistent tax treatment between trusts, companies and other entities.
Australia’s Future Tax System (2009)	Trusts remain a source of tax avoidance and complexity.
Re:think (2015)	Discretionary trusts offer tax advantages to individuals who share the income from savings.

## How it works

Trustees currently pay tax on any income that is retained in the trust, as well as paying tax on behalf of particular beneficiaries (including children). The trustee determines which beneficiaries are to be made presently entitled to the income of the trust and the beneficiary pays tax based on that entitlement at their marginal tax rate.

Under these changes, the trustee of a discretionary trust will continue to determine the trust income that beneficiaries are entitled to each year, and beneficiaries will continue to be responsible for including trust distributions in their income tax returns.

However, the trustee will now pay 30 per cent tax on the taxable income of the trust (unless higher rates apply). Individuals and other non-corporate beneficiaries will receive non-refundable tax credits for the tax payable by the trustee, which reduces their income tax payable. This recognises the tax already paid, while ensuring the tax paid on that income is not lower than 30 per cent.

Trustees will be required to calculate, report and pay the minimum tax, as well as to notify beneficiaries of their entitlements and associated tax credits. The mechanism for collecting the minimum tax will be subject to consultation, but is expected to be consistent with established collection mechanisms.

To ensure the use of refundable franking credits does not undermine the minimum tax:

- trustees that receive franked dividends will be required to use their franking credits to pay the minimum tax; and
- corporate beneficiaries will not receive non-refundable credits for tax payable by the trustee, to avoid them converting these to refundable franking credits to avoid the minimum tax.

Key aspects of the changes will be finalised following consultation with stakeholders. As well as the mechanism for collecting the minimum tax, stakeholder views will also be sought on how the trustee uses franking credits that exceed the minimum tax liability, and on the rollover relief provided to support restructuring.

## Rollover relief

Rollover relief will be available to assist small businesses and others that wish to restructure out of a discretionary trust into other arrangements, such as a company or a fixed trust.

This will provide expanded relief from income tax consequences, including capital gains tax, for those who choose to restructure, and will be available for three years from 1 July 2027.

From 1 January 2027, the Australian Small Business and Family Enterprise Ombudsman will be available to assist small businesses to understand the options available to them and where they can get further advice. Specific arrangements will be put in place by the Australian Securities and Investments Commission to support small businesses that wish to incorporate.

## Exclusions

The minimum tax will not apply to other types of trusts such as fixed and widely held trusts, complying superannuation funds, special disability trusts, deceased estates and charitable trusts.

Some types of income such as primary production income, certain income relating to vulnerable minors, amounts to which non-resident withholding tax applies, and income from assets of testamentary trusts existing at announcement will also be excluded.

## Policy impact

### Trustees and individuals

All trustees of discretionary trusts in scope will be required to pay the minimum tax, but where a trust is already distributing to non-corporate beneficiaries with a tax rate of 30 per cent or higher there will be no overall increase in tax paid.

Around half of discretionary trusts are not expected to be affected in any given year. Those that are affected may restructure into a company or fixed trust structure not subject to the minimum tax, or make different decisions about the distribution of income to beneficiaries to reduce their tax liability.

More than 95 per cent of individual taxfilers will not be affected by these changes in any given year. Around 810,000 adults, or 5 per cent of individual taxfilers, received distributions from discretionary trusts in 2022–23, plus 120,000 non-filers, who are predominantly minors.

Since the financial benefit of income splitting goes to the primary earner in most cases, the minimum tax will primarily align the tax rates of the high-income primary earner more closely to wage and salary earners on similar incomes.

## Small businesses

Around 350,000 active small businesses (less than 15 per cent of all active small businesses) operate through a discretionary trust structure. Of these, 40 per cent (140,000) are not expected to pay additional tax or need to restructure in any given year. As a result, more than 90 per cent of all small businesses in any given year will not be affected by these changes.

Small businesses sometimes use trust structures for tax reasons, despite the drawbacks of trusts for running a business. For example, trusts do not provide a simple way to retain earnings and have more difficulties accessing debt financing or attracting equity finance.

Small businesses will be able to reduce the impact of the minimum tax by employing beneficiaries working in the business, rather than paying them a trust distribution. Payments of salary or wages to employees will not attract the minimum tax.

Alternatively, small businesses could choose to restructure their operations, for example into a company or a fixed trust.

Rollover relief will facilitate restructuring by ensuring there are no income tax consequences, including capital gains tax, for those that wish to move out of discretionary trust structures.

Small businesses that choose to restructure into a company will benefit from access to dividend imputation and a lower 25 per cent corporate tax rate where their aggregated annual turnover is less than \$50 million and no more than 80 per cent of their assessable income is passive income. Companies also provide simpler ways to retain earnings, to access debt financing and to introduce new equity.

Restructuring into a fixed trust will allow a business to retain the benefits of a trust structure while providing beneficiaries with more certain entitlements.

## Corporate beneficiaries

Trusts can distribute to corporate beneficiaries that have access to corporate tax rates and franking credits, and which can be used to defer tax for underlying shareholders, who are often also trust beneficiaries.

Under the minimum tax, corporate beneficiaries will be assessed based on the trust income to which they are entitled, without being able to claim credits for tax payable by the trustee. This will ensure the minimum tax cannot be avoided by cycling income through a 'bucket' company.

Around 94 per cent of companies did not receive a distribution from a discretionary trust in 2022–23. Australian Taxation Office data indicates that of the 80,000 companies receiving distributions, 83 per cent did not have evidence of business activity, suggesting they operate primarily for tax purposes.

The introduction of the minimum tax will reduce the incentive for trustees to distribute to corporate beneficiaries set up just to receive trust distributions from discretionary trusts. This will discourage the use of structures that add complexity to the tax system and compliance costs for taxpayers.

## International comparisons

Australia has a high use of trusts compared with jurisdictions with similar tax systems.

In 2022–23, there were more than one million trusts in Australia, or around 40 trusts per 1,000 people. By comparison, the UK is estimated to have around 2 trusts per 1,000 people, and the US around 9 trusts per 1,000 people. New Zealand has higher use of trusts, estimated at around 44 trusts per 1,000 people.

While different jurisdictions use different tax structures for different purposes, the combination of the high use of trusts in Australia, and the availability of the discretionary trust structure to more flexibly tax income at marginal rates, presents challenges for the fairness and sustainability of the tax system.

### **Cameo – using a discretionary trust can result in a lower rate of tax compared to an ordinary worker**

Ying is a youth worker earning \$80,000 in 2028–29. Ying will pay \$15,602 in tax, with a marginal rate of 30 per cent (plus Medicare levy) and an average tax rate of 19.5 per cent.

Steven earns \$200,000 of income from investments through a family discretionary trust. Steven as trustee is able to split the taxable income of \$200,000 among his family members. Steven chooses to make himself and each of his three family members, who have no other income, entitled to \$50,000 of the trust's income. In total, Steven's family pays \$24,008 tax, an average tax rate of around 12 per cent.

If Steven had not used a discretionary trust to split his income with his family, he would have paid \$59,602 in tax. By using a discretionary trust, Steven has reduced his tax liability by \$35,594 and achieved a tax rate significantly lower than Ying.

### **Cameo – comparison to equivalent wage income**

In 2028–29, Angela has \$200,000 in wage income, equal to Steven's \$200,000 in investment income in the example above.

Angela receives her income as a salary and will pay \$59,352 in tax, an average tax rate of around 30 per cent.

With a minimum tax in place, Steven's trust would pay 30 per cent tax on the \$200,000 of investment income, regardless of how this income was distributed. This would bring the total tax paid on Steven's income to around the amount of tax paid by Angela.

### **Cameo – comparison of tax outcomes of different business structures**

In 2028–29, Kurt and Loretta each earn \$300,000 operating small businesses.

Loretta provides her services through a company. Loretta pays herself a salary as an employee of \$100,000 and retains the remaining income in the company to build the business. The company pays the small business rate of 25 per cent on this profit. Overall, \$72,002 of tax will be paid.

Kurt provides his services through a family discretionary trust with himself as the trustee. The trust pays Kurt a salary of \$100,000 as an employee and has remaining taxable income of \$200,000. Kurt makes four of his extended family members, who have no other income, each entitled to \$50,000, while retaining the money in the trust to build the business. In total, Kurt's family will pay \$42,010 in tax.

With a minimum tax in place, the trust would pay 30 per cent tax on the \$200,000 of income not paid as wages, regardless of how this income was distributed. Overall, \$86,002 of tax will be paid if Kurt does not change the distributions made to his family members. Kurt would pay less tax operating through a company than a trust, once the minimum tax is in place, by accessing the small business tax rate.