Changes to Taxation of Discretionary Trusts

Federal

The Australian Government's recent announcement to impose a 30 per cent minimum tax rate on distributions from discretionary trusts has created significant uncertainty and concern among many small businesses that are affected by the proposed changes.

Hundreds of thousands of small businesses have operated through discretionary trust structures for years, with these arrangements forming an integral part of their broader business, asset and succession planning. Discretionary trusts are commonly used for legitimate commercial purposes, including asset protection, risk management, business continuity, succession planning and the separation of operating and investment assets.

Impacted small businesses are now left confronted with a choice between two significant costs: either retain their existing trust structure and face significantly higher taxation, which MEA understands could be as high as 70 per cent in some circumstances,[1] or undertake a costly and disruptive restructuring of their business.

Neither option is without significant consequence. Accepting a higher tax burden directly reduces the funds available to a small business owner to reinvest in their business, employ staff, purchase equipment, manage cash flow and grow their operations. Conversely, restructuring an established business is far from a simple administrative exercise and can itself impose substantial upfront costs.

Depending on the circumstances of the business, restructuring can require legal and accounting advice, the establishment of new entities, changes to tax and business registrations, the transfer of existing assets, stamp duty liabilities, changes to contractor licensing arrangements and updates to contracts, business names, websites, signage and other marketing materials. In some cases updated training may also be required for the new entity to obtain a contractor licence. The costs associated with professional advice and implementation can be substantial in money and time,

[1] "Federal Budget 2026-27: Minimum tax on discretionary trusts" *Pitcher Partners* [12 may 2026] < Federal Budget 2026–27: Minimum tax on discretionary trusts - Pitcher Partners>

while the transfer of existing assets can create additional significant costs, including stamp duty. One member has suggested costs for professional services and lost billable hours will range in the tens of thousands of dollars.

The financial impact is also not limited to the direct cost of professional services. Small business owners must divert their own time and resources away from operating their businesses to manage the legal, accounting, regulatory and administrative requirements associated with restructuring. This can result in lost billable hours, delayed projects, reduced productivity and other flow-on costs at a time when the business would otherwise be focused on generating revenue, employing workers and investing in growth.

MEA is concerned that the proposed taxation reforms have not adequately considered the full cost of implementation for small businesses which threaten their ongoing viability. These are not costs that increase the productive capacity of a business; rather, they are costs incurred simply to change an existing structure in response to an unexpected change in government policy.

Policy Solutions Sought

It essential that the Government's approach to taxing discretionary trusts recognises the disproportionate impact these changes have on small businesses and provide a practical pathway that avoids unnecessary taxation, restructuring costs and administrative burden. We outline solutions below.

1. Exempt Small Businesses

Small businesses with an annual turnover of less than $2 million should be exempt from the proposed 30 per cent minimum taxation requirement.

This would align with the small business Existing Capital Gains Tax (CGT) concessions which recognise the distinct circumstances of small businesses and provide specific exemptions including an annual turnover of less than $2 million.

Similarly exempting eligible discretionary trusts would reasonably extend this exemption in recognising the circumstances of genuine operating businesses and avoid imposing significant additional taxation and restructuring costs on small businesses using these structures for legitimate commercial purposes. It would also remove the need for affected businesses to undertake costly and administratively burdensome restructuring solely to comply with the new taxation arrangements.

2. Reduce the Minimum Taxation Rate for Small Businesses

The existing Corporate Income Tax (CIT) rate for small businesses is 25 per cent.[2] The proposed changes would create an inherent inequity in the taxation of small businesses, with those operating through discretionary trusts subject to a higher rate of taxation solely because of their business structure. This represents an unexpected and unjustified distinction between otherwise comparable small businesses. At most, distributions from eligible small businesses operating through discretionary trusts should therefore be taxed at no more than 25 per cent.[3]

Aligning the minimum trust taxation rate with the applicable CIT would provide greater neutrality between business structures and reduce the risk that small businesses are effectively penalised for having previously adopted a discretionary trust for legitimate commercial purposes. It would also reduce the pressure on businesses to undertake costly restructuring solely to avoid a tax disadvantage created by the new arrangements.

3. Remove Stamp Duty Costs Associated with Restructuring

The Federal Government should work with State and Territory Governments to exempt stamp duty on transfers of assets undertaken solely as a consequence of the taxation reform. A business should not be required to incur thousands of dollars in stamp duty simply because a response to a change in Federal taxation policy.

Achieving this may require the Federal Government to provide an appropriate incentive or funding mechanism for State and Territory Governments to implement the necessary concessions. This is particularly important given concerns that State and Territory Treasurers may be reluctant to absorb the costs associated with addressing the consequences of a Federal taxation policy change.

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[2] Australian Taxation Office "Tax rates 2025-26" *Australian Government* [24 June 2026] < Tax rates 2025–26 | Australian Taxation Office>

[3] MEA has a broader policy position that the CIT rate for small businesses should be reduced to 20 per cent. MEA therefore supports a corresponding reduction in the minimum tax rate applying to discretionary trust distributions. For the purposes of this policy paper, however, the current 25 per cent corporate income tax rate is used as the relevant benchmark.

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4. Provide Financial Assistance to Offset Restructuring Costs

Given the significant costs associated with transitioning away from existing structures, which the majority of small businesses would not have anticipated or budgeted for in the near future, the Government should provide financial assistance to offset the reasonable costs of restructuring. While MEA acknowledges the roll-over relief available during the transition period, for many businesses this does not provide sufficient time to accumulate the funds required to meet the substantial costs of restructuring.

Financial assistance should include reasonable costs associated with:

- lawyers and legal advisers;
- accountants and taxation professionals;
- business and restructuring consultants;
- establishment of new entities and associated registrations;
- contractor licensing changes; and
- regulatory and administrative fees.

Providing this assistance would reduce the financial burden of restructuring and give affected small businesses a greater capacity to maintain viability, continue operating profitably and invest in their businesses rather than diverting funds to meet compliance and restructuring costs.

5. Grandfather Existing Businesses

An alternative and arguably simpler and fairer option is to grandfather existing businesses from the new minimum taxation requirements.

Businesses that established their structures under the existing taxation rules applying at the time should not be required to incur significant costs to restructure solely as a consequence of a subsequent change in government policy. If necessary, Government could consider tying this in with our proposed 25% CIT above. Eligibility for grandfathering could be subject to an appropriate annual turnover threshold to ensure the measure is targeted.

Grandfathering would provide greater certainty to existing businesses, protect legitimate commercial arrangements and avoid imposing significant retrospective costs on businesses that have acted in accordance with the law.

Conclusion

Taxation system objective should not come at the expense of legitimate small businesses that have structured and operated their businesses in accordance with the taxation rules applying at the time.

The proposed changes fundamentally alter the taxation consequences of an established business structure and, in doing so, have the potential to create significant financial and administrative consequences for affected small businesses. Importantly, these consequences extend well beyond the tax liability itself, with businesses potentially required to incur substantial costs simply to transition away from a structure that was previously lawful and commercially appropriate.

The Government should therefore ensure the final policy settings are proportionate to the problem they are seeking to address and do not inadvertently penalise genuine operating businesses. Small businesses should have certainty that legitimate commercial decisions made under the prevailing taxation framework will not subsequently leave them facing significant and unforeseen costs.

MEA considers that protecting this certainty and ensuring equitable treatment across business structures should be central to the final design of the reforms.

For more information, or to further discuss the matters raised in this paper, please reach out to our advocacy team via email: advocacy@mea.asn.au