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Dear Richard

Minimum tax on discretionary trusts

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) welcomes the opportunity to make a submission to Treasury's consultation on the Minimum tax on discretionary trusts, released on 8 July 2026.

An estimated 350,000 Australian small businesses use discretionary trusts for ordinary commercial reasons, as its structure offers the flexibility to help with business continuity through managing the peaks and troughs of business cycles, as well as supporting asset protection and succession planning.

Discretionary trust structures enable small businesses to better manage cash flow volatility, retain earnings for reinvestment or future business needs, and protect assets from commercial risk. This is particularly relevant in higher-risk ventures such as property development, start-ups and project-based enterprises involving multiple investors, and businesses exposed to seasonal patterns (agriculture, tourism and hospitality industries), as a discretionary trust can help separate and protect business and family assets if projects do not proceed as planned or become insolvent. Requiring these businesses to move to alternative structures may therefore have implications that extend beyond taxation and affect established risk management, financing and governance arrangements.

The ASBFEO supports policy reforms that improve tax system integrity, fairness and sustainability. We note the policy objective of introducing a minimum tax on discretionary trusts is to better align the tax rate on trust income with tax rates paid by workers, a reform that will have a significant impact on small businesses who use discretionary trusts. Implementation should therefore be designed in a way that achieves the policy objective at least cost and with minimal disruption, through requirements that are clear, simple and proportionate, and which minimise transition costs.

In this context, we encourage the Government to consider submissions that propose alternative approaches that achieve the intended policy outcomes while reducing the need for, and costs associated with, business restructures. Professional accounting bodies, legal organisations and financial sector stakeholders may be well placed to provide practical insights into alternative options that preserve the integrity of the policy objectives while minimising the unintended impacts on small businesses.

In considering options, the Government should also take account of the capacity constraints currently facing the accounting profession, including ongoing skills shortages and workforce pressures. Should the proposed reforms result in a substantial increase in demand for restructuring advice, compliance support and implementation assistance, these existing constraints may be further strained. This could increase costs, extend implementation timeframes and reduce small business access to timely professional advice during the transition period.

Our submission focuses on the practical impact of restructuring for a small business using a discretionary trust, which includes restructuring and transition costs, state and territory tax liabilities, and practical tax collection and enforcement. It highlights where we consider there has been an underestimation of the costs where a small business chooses to restructure to a company, fixed trust or other business structure in response to the measure.

Summary of ASBFEO's position

Issue	Small business implication	Suggested design response
Scope and policy objective	Small business need clarity on when the minimum tax applies, when or whether a restructure is necessary or optional.	Keep the scope clear and targeted; provide practical examples and guidance early.
Direct restructuring costs	Advisory, legal, accounting, valuation, registration and implement costs can be fixed or lumpy, making them harder for small business to absorb, in addition to current uncertainty.	Ensure rollover relief is simple, accessible and not dependent on overly prescriptive restructure pathways.
Financing, contract and employment	Changing legal entity may require new lending assessments, asset valuations, contract novation, licence transfers, and employment contract changes.	Recognise implementation costs in policy design and allow sufficient transition time, with appropriate support mechanism.
State and territory taxes/stamp duty	Commonwealth's roll over relief may not address state stamp duty, transfer duty or registration costs triggered by asset transfers.	Coordinate with states and territories and consider whether complementary relief or guidance is required.
Administration and collection	Trustee-level tax payment and beneficiary notification requirements may add compliance costs, particularly where trust taxable income is finalised close to lodgement time.	Align payment, notification and reporting with existing lodgement cycles and minimise bespoke reporting.

Key issue: restructuring costs are likely to be significant and underestimated

It is important to recognise that business restructuring incurs costs that extend well beyond Commonwealth income tax consequences, including legal, financing, contractual, employment, registration and state tax.

Restructuring costs will vary, depending on the business structure, size and risk. Some trusts may face relatively limited costs where there are few assets, liabilities or contractual arrangements involved, while others may face substantial costs where the trust holds business assets, real property, financing arrangements, licences, employment obligations or operational structure.

For this latter group, ASBFEO is concerned that the practical and economic costs of restructuring have been materially underestimated. The relevant policy question is whether the proposed transition settings are sufficient to make any commercially necessary restructure feasible for economic reasons to small business owners.

While Treasury's proposed rollover relief may remove or defer Commonwealth income tax consequences, it does not eliminate the substantial legal, commercial and administrative complexity associated with unwinding long-established discretionary trust arrangements and transitioning to alternative structures.

For many small businesses, changing from a long-established discretionary trust structure to another legal entity and structure would involve considerably more than a simple change in tax treatment. The process would require extensive legal, tax, accounting and commercial analysis to determine the most appropriate restructuring approach and to identify the consequences of transferring business activities, assets and liabilities. These advisory and compliance costs alone are likely to be substantial. Retrieving documents necessary to meet the restructuring requirements are costly in term of time, mental health and well-being. The practical cost of restructuring is also likely to have been underestimated.

Examples of restructuring costs

- Legal and tax advice - reviewing the trust deed, trustee powers, tax consequences and whether a restructure is legally available and commercially appropriate.
- New entity and governance documents - establishing a company, fixed trust or other entity and preparing governance documents, shareholder arrangements or trust instruments.
- Lending and security - a change in legal entity may require a new loan assessment, lender consent, revised security documents, updated guarantees and asset valuation.
- Asset transfers and registrations - transferring or re-registering business assets, land, plant and equipment, intellectual property, licences, permits, ABN/GST/PAYG registrations and banking arrangements.
- Contracts and insurance - reviewing, assigning or novating customer, supplier, lease, finance, insurance and service contracts where third-party consent is required.
- Employment and payroll - updating employment contracts, payroll systems, workplace policies and records where the employing entity changes.

- Succession and estate planning - reviewing family succession, asset protection and governance arrangements that may have been developed around the existing trust structure over many years, if not decades.

These examples should be treated as categories of potential cost rather than as a claim that every affected trust will incur each cost. The impact will depend on the type of assets held, the business' financing position, the number of contracts and employees, and whether any state or territory relief is available.

These costs extend well beyond professional fees. They consume management time, years of record keeping and documents, divert working capital from productive investment, divert business owner focus from running the business, disrupt normal business operations and create uncertainty for business owner and employees, upstream and downstream supply chains, customers and financiers.

For some small businesses, the proposal may create a practical choice between incurring significant restructuring costs to access the 25 per cent small business company tax rate or remaining in a discretionary trust structure and facing a higher effective tax rate of 30 per cent. This may reduce the feasibility of maintaining existing business structures, even where they continue to serve legitimate commercial purposes.

Evidence base and small business impact

The impact extends beyond professional advisory fees. Many family businesses have developed their asset protection, succession planning and governance arrangements around discretionary trust structures over several decades. Restructuring may require fundamental changes to these arrangements, potentially compromising carefully established protections designed to separate family wealth from business risk. As Treasury's consultation paper recognises, discretionary trusts are commonly used for reasons extending beyond taxation, including flexibility and family succession planning.[1]

Particular concern arises where businesses hold both active trading operations and strategic assets, such as commercial property, within the same trust structure. If eligibility for rollover relief requires the transfer of all assets, businesses may be forced to dismantle arrangements that were deliberately established to manage risk and support intergenerational succession. This creates additional complexity and may expose business owners to commercial and financing risks that did not previously exist.

The costs associated with restructuring are likely to be especially significant for small businesses because they are largely fixed costs. Unlike large corporations, small and family businesses have limited capacity to absorb major legal, accounting and implementation expenses. Management time spent coordinating advisers, financiers and regulatory approvals is time diverted away from operating the business, serving customers and generating revenue. The result is not only a direct cost but also a loss of productivity and business capacity.

[1] Australian Government Treasury, *30 Per Cent Minimum Tax on Discretionary Trusts – Consultation Paper*, Commonwealth of Australia, July 2026.
Australian Small Business and Family Enterprise Ombudsman, *Inquiry into Small Business Insolvency Practices*, 2024.

Importantly, the proposed rollover relief does not address state and territory taxes that may arise from transferring assets between entities. Depending on the jurisdiction and asset type, businesses may incur stamp duty, registration charges or other transaction costs as a direct consequence of complying with the new framework. These costs can be substantial and, in some cases, may outweigh the intended benefits of the Commonwealth transition relief.

These small businesses impact, therefore, should be assessed in a measured way. Treasury's policy objective is directed at integrity and income-splitting concerns, and ASBFEO does not suggest that all discretionary trusts are affected in the same way. The concern is narrower for affected small businesses that decide a restructure is necessary or commercially prudent, transition costs can be significant upfront and difficult to absorb.

This issue is consistent with broader evidence that regulatory and transaction costs can affect how businesses adapt to policy change, particularly where fixed compliance costs fall more heavily on smaller firms.[2] It is also consistent with ASBFEO's broader small business evidence base, which has identified cash flow and operating cost pressures as ongoing challenges for small and family businesses.[3]

For this reason, ASBFEO suggests that Treasury assess the transition framework by asking whether an affected small business can practically navigate the restructure without disproportionate advisory costs, financing disruption, state tax costs or operational interruptions.

<u>**Unresolved state and territory tax liabilities**</u>

ASBFEO welcomes the proposed three-year CGT rollover relief as an important mechanism to facilitate transition to the new regime. However, the effectiveness of this relief may be constrained where businesses incur state and territory taxes as part of restructuring activities. For many small and family businesses, particularly those that hold commercial property, land or other significant assets within discretionary trust structures, transferring assets to an alternative entity may give rise to stamp duty, transfer duty and other state-based transaction costs.

While the proposed Commonwealth relief may remove or defer federal income tax consequences, it does not address these broader restructuring costs. As a result, businesses undertaking restructures for compliance purposes may incur significant transaction costs despite no substantive change occurring in the underlying economic ownership, business activity or productive capacity of the enterprise.

This interaction may reduce the effectiveness of the transition framework and influence the feasibility of restructuring for some businesses. The Productivity Commission has consistently observed that transaction and compliance costs can be a substantial barrier to business adaptation and restructuring, particularly for smaller firms with limited financial and administrative capacity.[4]

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[2] Productivity Commission, *Advancing Prosperity: Productivity Inquiry Report*, Commonwealth of Australia, 2023.

[3] Australian Small Business and Family Enterprise Ombudsman, Small Business Pulse Survey, latest edition; Australian Small Business and Family Enterprise Ombudsman, Inquiry into Small Business Insolvency Practices, Commonwealth of Australia, 2024.

[4] Australian Government Treasury, *30 Per Cent Minimum Tax on Discretionary Trusts – Consultation Paper*, July 2026.

Similarly, ASBFEO's research highlights that cash flow constraints and rising operating costs remain key pressures facing small businesses, making large one-off restructuring expenses particularly challenging.[5]

ASBFEO therefore encourages Treasury to further consider the interaction between Commonwealth transition relief and state-based taxes, and to explore opportunities for coordination with state and territory governments. A transition framework that minimises unnecessary transaction costs will better support genuine commercial restructures and improve the practical accessibility of the proposed relief measures.

Practical tax collection and enforcement

Treasury has sought feedback on collection mechanisms and additional safeguards, including arrangements involving corporate trustees and beneficiary notification requirements. Potential collection mechanisms such as PAYG-style withholding, expanded recovery powers and increased director liability may improve collection certainty but would introduce significant complexity for small businesses.

These approaches could create cash-flow pressures for small businesses with seasonal or uneven income, increase administrative burden, and weaken existing asset protection arrangements relied upon by family enterprises. A post-year-end assessment model aligned with existing company tax lodgement processes would provide a more proportionate, lower-cost and commercially workable approach to tax collection.

If you require further information, please do not hesitate to contact the Advocacy Team via email at advocacy@asbfeo.gov.au.

Yours sincerely

Lynda McAlary-Smith

Australian Small Business and Family Enterprise Ombudsman

[5] Australian Small Business and Family Enterprise Ombudsman, Small Business Pulse Survey, latest edition. Productivity Commission, *Advancing Prosperity: Productivity Inquiry Report*, Commonwealth of Australia, 2023.