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29 October 2026

Committee Secretary
Senate Standing Committees on Economics
PO Box 6100, Parliament House, Canberra ACT 2600
By email: economics.sen@aph.gov.au

Dear Committee Secretary

Minimum tax on discretionary trusts - submission on the Bills introduced on 14 October 2026

A. Introduction

1. This submission responds to the inquiry of the Senate Economics Legislation Committee (the **Committee**) into the Treasury Laws Amendment (Tax Reform No. 3) Bill 2026 (the **Bill**) and the Income Tax Rates Amendment (Minimum Tax on Discretionary Trusts) Bill 2026 (the **Rates Bill**), which the Senate referred to the Committee on 15 October 2026. Schedule 1 to the Bill and the Rates Bill would impose a 30 per cent minimum tax on the net income of discretionary trusts from 1 July 2028 (the **Minimum Tax**).
2. Norton & Quay Tax Law (the **Firm**) is a specialist tax law firm in Sydney. The Firm acts for private groups, businesses, families and their professional advisers. A substantial part of its practice concerns dealing with trusts, including the administration, restructuring and taxation of trusts. This submission was prepared by Arda Ahmed, the Firm's Principal. It is **not** confidential and may be published.
3. The Firm asks the Committee to **recommend** that the Senate:
 - (a) remove Schedules 1 to 3 from the Bill; and
 - (b) reject the Rates Bill.
4. In *summary*:
 - (a) the Minimum Tax collects from an individual **only** where the **individual's own tax is less than 30 per cent** of what the trust gives that individual. It *primarily* affects people such as:
 - (i) the retired parent;
 - (ii) the carer;
 - (iii) the adult child with a disability; and
 - (iv) the couple in the first year of a business, **not** the high earner whose own tax is already above that level (section C);
 - (b) the high earner pays nothing more, so what is left of the Government's case is

exploitation of the tax system, which s 100A, Division 6AA, s 99A and Part IVA of the *Income Tax Assessment Act 1936* (Cth) (the **ITAA 1936**) already deal with and tax (section D);

(c) the *proposed* roll-over is:

(i) **punitive** to those trusts with carried-forward tax losses, which cannot be transferred, or with more than one branch of a family to provide for, because the trust's assets must go to a single entity; and

(ii) one that leaves the State and Territory duty in place,

so a family trust that holds land is left with the election. A trustee who *honours* its duties and responds to a change in the family's circumstances (such as a parent's diagnosis of dementia, a child's serious illness or the birth of a grandchild) loses the election. Its reward for doing so is tax at the top marginal rate plus the Medicare levy on all of the trust's net income for that year (section E); and

(d) a company beneficiary is taxed again on income on which the trustee has paid the Minimum Tax. Much of the regime is left to ministerial instruments and future legislation (section F).

B. The Firm's earlier submissions

5. *Previously*, the Firm has made two submissions to Treasury on the minimum tax on discretionary trusts:

(a) on 31 July 2026, on the consultation paper of 8 July 2026, [NQ July Submission](#); and

(b) on 18 September 2026, on the exposure draft legislation of 3 September 2026, [NQ September Submission](#) (the **September Submission**).

6. **Both submissions concluded that the minimum tax should be withdrawn.** That remains the Firm's position as the Bill does **not** address the central issues raised in either submission. This submission does **not** repeat them and refers to them where they are relevant.

C. It taxes the carer NOT the high earner

7. Among individuals, the Minimum Tax bears most heavily, as a share of income, on the beneficiaries with the least income and leaves untouched the high earner whose own tax already exceeds 30 per cent of the trust income, as section C of the September Submission explains. *Unfortunately*, the Bill does **not** change that outcome. That is a matter of real regret, because those who will bear it are the least able to do so.

8. The trustee pays 30 per cent of the trust's net income. Each individual beneficiary gets an offset for their share, but the offset is lost to the extent that it exceeds the beneficiary's own tax. It **cannot** be refunded, carried forward or used against the Medicare levy.¹

9. The Minimum Tax *therefore* collects from an individual **only where their own tax is less than 30 per cent** of what the trust gives them.

¹ Proposed ss 101AA and 101AG of the ITAA 1936; Treasury, [Minimum tax on discretionary trusts](#) (Consultation Paper, 8 July 2026) (the **Consultation Paper**) 5; [Explanatory Memorandum](#) to the Bill and the Rates Bill (the **EM**) Examples 1.3 and 1.4 (a beneficiary loses \$412 of a \$720 offset).



10. An individual's average tax rate does not reach 30 per cent until a taxable income of \$229,320.² For a beneficiary whose **only** income comes from the trust, the less that beneficiary has, the larger the share of it that is lost, up to 30 per cent. A beneficiary who lives on \$30,000 a year from the trust loses almost a quarter of it.
11. Those beneficiaries are the very people a family trust exists to provide for. Where the trust income is the beneficiary's only income and a couple shares it equally, four of the examples in section C of the September Submission produce the following results:

Beneficiary	Trust income	Tax today	Minimum Tax	Lost
Retired couple living on family investments	\$80,000	\$6,104	\$24,000	\$17,896
Carer of a parent with dementia	\$40,000	\$3,052	\$12,000	\$8,948
Adult child with a disability	\$30,000	\$1,652	\$9,000	\$7,348
Couple in the first year of a business	\$60,000	\$3,304	\$18,000	\$14,696

12. A couple who earned the same \$60,000 in wages, \$30,000 each, would pay \$3,304 (5.5 per cent). The couple in the trust pays 30 per cent.
13. To its credit, the Bill *excludes* the income of certain vulnerable minors and of special disability trusts.³
14. The relief ends there as the Bill makes **no** such exclusion for the carer, the retired parent or the adult with a disability who is **not** supported through a special disability trust, *although* their need is **no** less.
15. On 14 October 2026, the Treasurer told the House that a 30 per cent minimum tax "*aligns with the marginal tax rate for workers on incomes between \$45,000 and \$135,000*".⁴
16. *Respectfully*, a worker in that range does **not** pay 30 per cent of their income. A worker pays 30 per cent only on each dollar above \$45,000 and less on each dollar below it. The Minimum Tax takes 30 per cent of every dollar of trust income. A beneficiary whose only income is trust income anywhere in that range therefore bears exactly \$9,748 more than a worker on the same income. Treasury's analysis of distributional impacts considers households, trusts with more than \$1 million of income, businesses and gender. It does **not** consider the low-income beneficiaries who will bear the tax.⁵

D. The law already deals with abuse

17. The Government's case is that trusts let high-income and high-wealth people pay *less* tax than wage earners on similar incomes.⁶
18. **The high earner the Government describes pays nothing more** because that beneficiary's own tax already exceeds 30 per cent of the trust income. Furthermore, a company beneficiary already pays tax on that income at 25 or 30 per cent.
19. What remains is *exploitation* of the tax system, which the law already deals with and taxes.

² On the 2028-29 rates applied in the EM examples: nil to \$18,200, 14 per cent to \$45,000, 30 per cent to \$135,000, 37 per cent to \$190,000 and 45 per cent above. The figures in this section exclude the Medicare levy and other offsets.

³ Proposed ss 101AE(1)(b) and (c) and 101AB(1)(b) of the ITAA 1936.

⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 14 October 2026, 13 (Jim Chalmers, Treasurer) (proof).

⁵ EM Attachment 1 (the **Impact Analysis**) 185-186.

⁶ Consultation Paper 2.



More specifically:

- (a) Income given to a beneficiary on paper while someone else keeps it, outside ordinary family or commercial dealing, has been taxed at the top rate under s 100A since 1979.
 - (b) Division 6AA taxes trust income appointed to minors at the top rate, with limited exceptions.
 - (c) Section 99A taxes retained income at 45 per cent and Part IVA catches schemes entered into for the dominant purpose of a tax benefit.
20. The Commissioner of Taxation (the **Commissioner**) uses these laws frequently.⁷
 21. Section B of the September Submission explains why the mischief the Government describes is already dealt with.
 22. Treasury's answer is that the existing integrity measures "*primarily operate at the beneficiary level, are difficult to enforce at scale and do not effectively address the trustee-level incentive*".⁸ That is an argument for enforcing the law, **not** for taxing the families the law leaves alone.
 23. Treasury's own model shows who will pay. It assumes that 70 to 90 per cent of the business trusts and 75 to 95 per cent of the non-business trusts it says have "*high advice requirements*" will elect out of the Minimum Tax and that the rest will restructure.
 24. The affected trusts that stay in and pay are counted in its "*low advice*" group, which includes trust users that "*may not have a regular adviser*".⁹ In other words, the planner leaves and the carer pays.
 25. **The Minimum Tax will be borne by the families with the least advice, not by those who can pay to plan around it.**

E. The way out fines the trustee for doing its duty

26. For a family trust that holds land, the roll-over is **not** a cost neutral way out. State and Territory duties "*continue to apply according to their ordinary operation*".
27. The NSW Government has promised relief **only** for the election and **only** if it is re-elected in March 2027.
28. Queensland has left open whether duty applies to the election.
29. The roll-over also requires the trust's assets to go to a single entity and leaves its carried-forward tax losses behind.¹⁰
30. That only leaves the trustee with the choice of the election to become an excluded election trust. It can be made once, **only** in the trust's first income year from 1 July 2028 and only by a trust that existed on that date. The nominated shares are then frozen, save on the passing of a nominee or the breakdown of a relationship between two nominees. This means that a grandchild born after 1 July 2028 can be added only if a nominee passes away and the

⁷ ITAA 1936 s 100A, inserted by the *Income Tax Assessment Amendment Act 1979* (Cth) (No 12 of 1979); *BBlood Enterprises Pty Ltd v Commissioner of Taxation* [2022] FCA 1112, affirmed in *B&F Investments Pty Ltd as trustee for the Illuka Park Trust v Commissioner of Taxation* [2023] FCAFC 89; *Commissioner of Taxation v Guardian AIT Pty Ltd ATF Australian Investment Trust* [2023] FCAFC 3 (Part IVA).

⁸ Impact Analysis 175.

⁹ Impact Analysis 192 (Table 1 and the text that follows) and 194-195.

¹⁰ EM 2.70; NSW Government, "*Delivering certainty for New South Wales businesses*" (Media Release, 15 October 2026); Parliamentary Library, *Bills Digest* No 24 of 2026-27 (22 October 2026) 20; proposed ss 126-905(1)(a), (3) and (4)(a) and 126-910(1)(b) of the *Income Tax (Transitional Provisions) Act 1997* (Cth); EM 2.24 and 2.31.



grandchild is a beneficiary of that nominee's estate.¹¹

31. A trustee must give **real** and **genuine consideration** to its beneficiaries' circumstances each time it exercises its discretion and cannot bind itself in advance.
32. The EM says the trustee continues to have "*unrestricted capacity*" to decide who benefits. It then says the Commissioner's power to save an election is "*not intended to extend*" to a trustee that departs from the nomination "*in the proper exercise of their fiduciary duties*".¹²
33. Section E of the September Submission explains why a trustee acting in accordance with its duties **cannot** operate the election.
34. A trustee who responds properly to a beneficiary's illness, a lost job or a new grandchild therefore loses the election. In that year the trustee pays tax at the top marginal rate plus the Medicare levy on all of the trust's net income. Every year after, it pays the Minimum Tax.¹³
35. **The Bill fines a trustee for obeying the law of trusts.**
36. No trustee can promise to break that law for the rest of the trust's life and **no Parliament should ask it to.**

F. It taxes twice and it is not finished

37. A company beneficiary gets no offset. The same dollar is taxed at 30 per cent in the trustee's hands and at 25 or 30 per cent again in the company's. The 30 per cent paid by the trustee on that dollar is never credited to anyone.
38. For a family business that keeps its profits in a company to fund its growth, that is a penalty on reinvestment.
39. Treasury considered an offset for every beneficiary and rejected it.¹⁴
40. **The double tax is deliberate.**
41. On the Firm's reading, the Bill also *denies* the trustee its own franking credits. A trustee receives a franking offset only where the franked distribution flows indirectly to it under s 207-50(4) of the *Income Tax Assessment Act 1997* (Cth) (the ITAA 1997), which requires that the trustee is liable to be assessed under s 98, 99 or 99A of the ITAA 1936 or would be so liable but for another provision. The Bill adds s 101AA to s 207-45(c) but does not amend s 207-50(4), while the beneficiaries lose their franking offsets on the same income. Note 1 to proposed s 207-45(2) and the EM assume the opposite.¹⁵
42. Where a discretionary trust distributes to a fixed or electing trust, the offset stops there: "*any subsequent beneficiaries would not be entitled to the minimum tax offset*". The Consultation Paper said that the offset "*may be passed on to its own beneficiaries*".¹⁶
43. Twelve rules that decide who is in and who is out are left to ministerial instruments.¹⁷ None has been released. Collection, notification of beneficiaries, residency, capital gains tax and integrity

¹¹ Proposed ss 102UYC(3)(a), (5) and (7) and 102UYF of the ITAA 1936.

¹² *Karger v Paul* [1984] VR 161, 163-164; *Owies v JJE Nominees Pty Ltd* [2022] VSCA 142, [85] and [98]; *Dagenmont Pty Ltd v Lugton* [2007] QSC 272, [16]; EM 3.27 and 3.94.

¹³ Proposed ss 102UYG(2)(b) and 102UYI(2) and (3) of the ITAA 1936; EM 3.10 and 3.101.

¹⁴ Proposed s 101AG(1)(d)(i) of the ITAA 1936; EM Example 1.5; Impact Analysis 177 and, for Option 3, 178, 183-184 and 187.

¹⁵ ITAA 1997 s 207-50(4)(b) and s 207-55, table item 3; proposed s 207-45(2) of the ITAA 1997; EM 1.78 and Example 1.6.

¹⁶ EM 1.67; Consultation Paper 7.

¹⁷ ITAA 1936 ss 101AB(2), 101AE(2)(a) and (b) and 102UYD(4)(a) and (b) and Sch 2F s 272-65(5)(a) to (d); *Income Tax (Transitional Provisions) Act 1997* (Cth) ss 126-925(4) and 126-935(4)(a) and (b), all as proposed.



rules are left to future legislation.

- 44. Treasury calls the risk that the Australian Taxation Office's collection mechanisms will **not** be ready in time "*minor*".
- 45. The revenue estimate fell from \$4.5 billion to \$4.3 billion and the EM does not say why.¹⁸
- 46. The Bill does **not** say when a testamentary trust is "*established*", so a family making a will today **cannot** know whether the new rules will apply to it.¹⁹
- 47. On 29 October 2026, the House voted down a call to fix this.²⁰

G. Conclusion

- 48. A trust is one of the oldest ways the law gives one person to provide for another.
- 49. It is how a family looks after the parent who can no longer work, the child who never will and the business that cannot yet pay wages.
- 50. The Minimum Tax charges those people 30 cents in the dollar for being provided for and it leaves the high earner untouched, leaves the real exploitation of the system to laws that already catch it and *instead* fines the trustee who does its duty.
- 51. Budget Paper No 2 says that the Minimum Tax will "*help fund new tax cuts for workers*".²¹ **It is a revenue measure and should be debated as one.** It takes from families the money with which they provide for the retired parent, the carer and the adult child with a disability. **What a family can no longer provide, the public purse may be asked to provide instead.** That is self-defeating.
- 52. If the Government needs revenue, the Firm strongly recommends that it restrain its own spending, which could also help to ease inflationary pressure as well. **However**, it should not tax those least able to pay to fund its expenditure.
- 53. **It taxes the carer, not the high earner.**
- 54. The Firm asks the Committee to **recommend** that the Senate **remove Schedules 1 to 3** from the Bill and **reject the Rates Bill**.
- 55. Please do **not** hesitate to contact the Firm or Arda Ahmed for further information.

Yours sincerely



Arda Ahmed

Principal

Norton & Quay Tax Law

¹⁸ EM page 1 and paragraphs 1.17, 1.64, 1.100, 2.110 and 3.103; Impact Analysis 180 and 188; [Budget Paper No 2](#), 2026-27, 22.

¹⁹ Proposed s 101AD(1)(c) of the ITAA 1936; compare EM 1.36 and 1.38.

²⁰ House of Representatives, Division No 309, 29 October 2026: the amendment moved by Ms Chaney to the second reading amendment, which noted that the Bill does not say when a testamentary trust is established and called on the Government to amend it, was negatived 9 to 114.

²¹ Budget Paper No 2, 2026-27, 22.

