Urban Taskforce
AUSTRALIA

29 October 2026

Committee Secretary
Economics Legislation Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

economics.sen@aph.gov.au

Dear Committee Secretary

Treasury Laws Amendment (Tax Reform No. 3) Bill 2026 and Income Tax Rates Amendment (Minimum Tax on Discretionary Trusts) Bill 2026

I write to make a submission in relation to the *Treasury Laws Amendment (Tax Reform No. 3) Bill 2026* and *Income Tax Rates Amendment (Minimum Tax on Discretionary Trusts) Bill 2026*.

Urban Taskforce Australia is a not-for-profit peak industry organisation representing Australia's most prominent property developers and equity financiers. Our membership is made up of many of the largest property investors, developers and builders across the nation, with a focus on the industry in NSW.

I attach to this letter Urban Taskforce Australia's submission of 31 July 2026 to the Federal Treasury on the consultation paper relating to the proposed minimum tax on discretionary trusts. I also attach Urban Taskforce's submission of 18 September 2026 to the Federal Treasury on the exposure draft legislation.

As we have noted in both our prior submissions, while the idea behind the proposed legislation appears to be to prevent high-income and high-wealth taxpayers from using discretionary trusts to minimise tax through income splitting, there will be significant (and we presume unintended) consequences from this decision for small and medium sized businesses using trusts for legitimate economic activities, particularly in the property construction sector, in which trusts allow property developers to manage and offset their losses on projects against other revenue, as shareholders are permitted to do with shares.

Residential development is an inherently risky business. Delays are common, and with inflations and interest rates as high as they are, particularly in the construction sector, they are very expensive.

This often requires land intended for development to be held in a discretionary trust so that it is ringfenced from other projects, as a way of reducing risk.

Australia is facing a housing supply and affordability crisis, fuelled in part by rapidly declining project feasibility. The consequences of this taxation measure could ultimately be to drive smaller and family-owned property developers out of the market, reducing housing supply and driving up housing costs.

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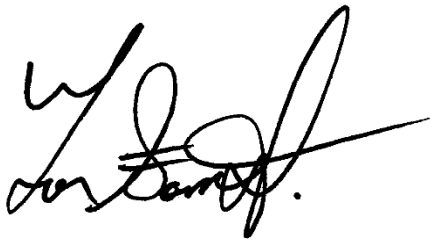
Should you wish to discuss any aspect of this submission further, please call our Economist and Planning Analyst, William Hughes, on 0418 286 530 or via email will@urbantaskforce.com.au

Yours sincerely



Tom Forrest

Chief Executive Officer

Urban Taskforce
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31 July 2026

Ms Laura Berger-Thomson
Assistant Secretary
Individuals and Indirect Tax and Superannuation Division
The Treasury
Langton Crescent
PARKES ACT 2600

Sent to: mintaxtrusts@treasury.gov.au

Dear Ms Berger-Thomson

Minimum Tax on Discretionary Trusts

I write in response to the Consultation Paper on Minimum Tax on Discretionary Trusts.

Urban Taskforce Australia understands that the Federal Government intends to impose a 30 per cent minimum tax on discretionary trusts from 1 July, 2028. This is extremely concerning.

While the idea behind this proposal appears to be to prevent high-income and high-wealth taxpayers from using discretionary trusts to minimise tax through income splitting, there will be unintended consequences from this decision for small businesses using trusts for legitimate economic activities.

This includes our sector, in which trusts allow property developers to manage and offset their losses on projects against other revenue, as shareholders are permitted to do with shares.

Residential development is an inherently risky business. Delays are common, especially during the construction phase, and can be very expensive.

This often requires land intended for development to be held in a discretionary trust so that it is ringfenced from other projects, as a way of reducing risk.

Australia is facing a housing supply and affordability crisis, fuelled in part by rapidly declining project feasibility. The consequences of this taxation measure could ultimately be to drive smaller and family-owned property developers out of the market, reducing housing supply and driving up housing costs.

Urban Taskforce provides some specific comments below.

Scope

The consultation paper does not define discretionary trusts.

Instead, it refers to the existing income tax framework, under which a discretionary trust is effectively classified as any trust that is not a fixed trust. "Fixed trust" is defined in Schedule 2F to the *Income Tax Assessment Act 1936*.

The consultation paper notes stakeholder feedback, which indicates the risks of not providing a clear definition.

Put simply, reliance on definitions applying to other forms of trust could result in the scope of discretionary trusts for minimum tax purposes being broader than intended.

Urban Taskforce agrees with this viewpoint.

The definition of a fixed trust in Schedule 2F was developed for the purpose of the trust loss rules and is not well suited to determining the scope of a minimum tax measure directed at income splitting. Applying that definition here risks capturing trusts that are not intended to be the target of the proposed reform.

The consultation paper proposes excluding certain categories of non-fixed trusts from the minimum tax, including:

- widely held trusts;
- complying superannuation funds;
- special disability trusts;
- deceased estates;
- charitable trusts; and
- certain testamentary trusts,

as well as trust income:

- from primary production;
- relating to vulnerable minors; and
- subject to foreign resident withholding tax.

We strongly agree with the proposal to extend exclusions to other trust structures that are not used for, or directed at, income splitting, but that may still be captured unintentionally under existing definitions.

These include managed investment funds, commercial pooling trusts, and other collective investment vehicles. These arrangements also serve legitimate commercial, investment or employee remuneration purposes and do not raise the policy concerns the minimum tax is intended to address.

Unless there is a carve out for these arrangements, which include legitimate property development activities, the end result will be fewer houses being built.

Recommendation 1: That exclusions should be extended to other trust structures that are not used for, or directed at, income splitting but rather serve legitimate commercial, investment or employee remuneration purposes.

These include managed investment funds, commercial pooling trusts, and other collective investment vehicles.

Application of the minimum tax

The consultation paper states that the minimum tax will be payable by the trustee of a discretionary trust and will give rise to a non-refundable tax offset.

Beneficiaries will continue to be assessed on their respective shares of the trust's net income, consistent with the existing legislation. Individual beneficiaries and certain other eligible beneficiaries will be entitled to a share of the tax offset corresponding to their share of the trust's net income.

The consultation paper proposes that the tax offset will not be refundable, and that it cannot be carried forward or applied against a beneficiary's Medicare levy liability. It is claimed that this treatment is consistent with other non-refundable tax offsets.

That is not correct in all cases. Certain non-refundable tax offsets, including the foreign income tax offset, may be applied to reduce Medicare levy liability, and there is no clear policy reason to treat the minimum tax offset differently.

The consultation paper also proposes that corporate beneficiaries will not be entitled to the minimum tax offset. Clearly, this would produce particularly adverse outcomes where trust income is distributed to a corporate beneficiary.

In such circumstances, the income would:

- first be subject to the 30% minimum tax at the trustee level; and
- then be taxed again in the hands of the corporate beneficiary.

This would result in an effective minimum tax rate of 60%.

If the corporate beneficiary subsequently distributes those profits to its shareholders as franked dividends, that effective tax rate on the trust income would approach 70%, depending on the shareholder's marginal tax rate.

This denial of a tax offset to corporate beneficiaries is justified on the basis that allowing companies unrestricted access to an offset would enable it to be converted into refundable franking credits that could ultimately benefit individual shareholders.

Denying the offset to corporate beneficiaries is seen as the simplest way to prevent the minimum tax being undermined by interposing a company between the trust and the ultimate beneficiary, while still avoiding changes to the imputation system.

Urban Taskforce believes this results in a blunt instrument with extraordinarily punitive outcomes. While simplicity is an important design principle, it should not come at the expense of fairness or tax neutrality.

Imposing effective tax rates of up to 70% on ordinary commercial structures that have long been recognised and accepted under tax law is a disproportionate response to the identified policy concern.

If the policy objective is to prevent the conversion of the minimum tax into refundable franking credits, more targeted alternatives are available. For example, corporate beneficiaries could be allowed a corresponding tax offset that generates franking credits which are themselves non-refundable or are otherwise subject to integrity rules that prevent inappropriate refunds. Such an approach would address the identified concern without imposing multiple layers of tax on the same income.

A similar issue arises where one discretionary trust distributes income to another. Under the proposal, the trustee of the second trust, in its capacity as a beneficiary of the first trust, may apply the tax offset against its own tax liability, including any minimum tax payable in respect of its own trust income. However, that trustee cannot pass the offset through to the beneficiaries of the second trust. Consequently, where the trustee subsequently distributes the income to an individual beneficiary, the combined effective tax rate on the trust income may be as high as 77%.

While the paper opines that this treatment maintains a floor on the tax paid on discretionary trust income and discourages complex tax planning involving chains of discretionary trusts, it is difficult to reconcile such a view with the operation of the proposal.

As has been shown above, the intended minimum tax rate is 30%, yet the proposed rules could produce effective tax rates of up to 77%, and that is only using examples involving two discretionary trusts. The problem grows if more trusts are involved.

The proposed treatment therefore extends well beyond what is necessary to achieve the stated policy objective.

A discretionary trust beneficiary should be permitted to pass the tax offset through to its own beneficiaries in the same manner as the underlying trust income. This would preserve the intended 30% minimum tax while avoiding excessive and unintended multiple taxation of the same income.

Recommendation 2: That a comprehensive review be undertaken of the proposed taxation arrangements within discretionary trusts to avoid the excessive and unintended multiple taxation of the same income.

Rollover relief

The consultation paper proposes rollover relief to facilitate restructures out of discretionary trusts for a period of three years, commencing on 1 July, 2027. This rollover would be based on the existing small business restructure rollover (SBRR) in Subdivision 328-G of the *Income Tax Assessment Act 1997*, with modifications to reflect the broader policy objective of allowing all taxpayers to restructure out of discretionary trusts.

Most of the proposed modifications relax the existing eligibility requirements of the SBRR, but the proposal introduces an additional condition requiring all, or essentially all, of a trust's assets to be transferred under the rollover.

The consultation paper explains that this requirement is intended to prevent trustees from selectively transferring assets while retaining others in a discretionary trust, stating that:

> "*Allowing trustees to selectively choose which assets to transfer could allow a trust to retain assets in a way that entrenches intergenerational equity issues – by preserving existing concessional treatment at the expense of future trusts*."

The reference to "existing concessional treatment" is difficult to reconcile with the proposed reform.

Once the minimum tax commences, it will apply equally to existing and newly established discretionary trusts, so it is unclear what concession is being preserved by allowing a trust to retain particular assets.

In any event, the proposed requirement would not adequately accommodate circumstances in which transferring particular assets is neither legally nor commercially feasible. For example:

- transferring an asset may require the consent of a third party, such as a financier, joint venture participant, or contractual counterparty;

- that consent may be refused or granted only on unacceptable terms;
- other assets may be subject to contractual, regulatory, or legal restrictions that prevent or materially impede a transfer; and
- transferring particular assets may give rise to significant costs, including state or territory transfer duty, refinancing costs, or other expenses that make the transfer commercially impracticable.

If the requirement to transfer all, or essentially all, of a trust's assets is retained, an exception should apply where the transfer of particular assets is prohibited, impracticable, or commercially unreasonable because of contractual, legal, or regulatory restrictions, or because it would impose material transaction costs.

Recommendation 3: If the requirement to transfer all, or essentially all, of a trust's assets is retained, an exception should apply if the transfer of particular assets is prohibited, impracticable, or commercially unreasonable.

Transfer of tax attributes

Discretionary trusts that qualify for the proposed rollover relief should be permitted to transfer their accumulated tax losses and other relevant tax attributes to the replacement entity.

Where a restructure qualifies for rollover relief, there is no clear policy basis for denying the continuity of tax losses and other tax attributes.

Eligibility for the rollover will be contingent on the restructure satisfying the prescribed conditions, including the requirement that there be no material change in the underlying economic ownership of the relevant assets.

Preventing the transfer of accumulated tax losses and other tax attributes would undermine the objective of providing tax-neutral rollover relief. It would result in the permanent loss of genuine economic value and create a significant disincentive for trusts with accumulated losses or other valuable tax attributes to transition to alternative ownership structures.

Accordingly, the rollover should provide for the transfer of tax losses and other relevant tax attributes to the replacement entity.

As residential development is inherently risky, it is critical that developers be able to transfer accumulated tax losses between entities or at least allow discretionary trust income and losses to be grouped.

Conclusion

Urban Taskforce Australia is very concerned that the proposed tax on discretionary trusts will drive smaller, family-owned property developers out of the market.

These are businesses undertaking legitimate economic activities which are often high risk, and trusts allow them to manage their affairs effectively.

The Federal Government has made it clear through the National Housing Accord that it wants to deliver more housing to solve the housing supply and affordability crisis.

Tax measures such as this one, unless modified, will only lead to fewer homes being built, genuine small businesses shutting down, and an escalating housing supply crisis.

Should you wish to discuss any aspect of this submission further, please contact our Economics and Planning Analyst, William Hughes, on 0418-286-530 or via email at will@urbantaskforce.com.au

Yours sincerely



Paul Waterhouse
A/Chief Executive Officer

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18 September 2026

Ms Laura Berger-Thomson
Assistant Secretary
Individuals and Indirect Tax and Superannuation Division
The Treasury
Langton Crescent
PARKES ACT 2600

Sent to: mintaxtrusts@treasury.gov.au

Dear Ms Berger-Thomson

Minimum Tax on Discretionary Trusts– Exposure Draft Legislation

I write in response to the Exposure Draft Legislation on Minimum Tax on Discretionary Trusts.

Urban Taskforce Australia understands that the Federal Government intends to amend the income tax law to impose a 30 per cent minimum tax on discretionary trusts from 1 July 2028.

As we noted in our submission on the consultation paper in July, while the idea behind this proposal appears to be to prevent high-income and high-wealth taxpayers from using discretionary trusts to minimise tax through income splitting, there will be unintended consequences from this decision for small businesses using trusts for legitimate economic activities.

This includes many in the construction sector, in which trusts allow property developers to manage and offset their losses on projects against other revenue, as shareholders are permitted to do with shares.

Residential development is an inherently risky business. Delays are common, especially during the construction phase, and they can be very expensive.

This often requires land intended for development to be held in a discretionary trust so that it is ringfenced from other projects, as a way of reducing risk.

Australia is facing a housing supply and affordability crisis, fuelled in part by rapidly declining project feasibility. The consequences of this taxation measure could ultimately be to drive smaller and family-owned property developers out of the market, reducing housing supply and driving up housing costs.

While Urban Taskforce is pleased that the Federal Government has taken on board some of the feedback received through the consultation process, significant concerns remain.

The codified fixed trust definition, the carve-out for charitable and exempt beneficiaries, the refund of excess franking credits, and the alternative excluded election trust (EET) are meaningful improvements.

Urban Taskforce made a comprehensive response to the consultation paper in July (attachment 1) and in this submission we will focus on ancillary matters that have

arisen between the release of the consultation paper and the exposure draft legislation, where concerns remain.

State duty and land tax certainty

Urban Taskforce is concerned that under the proposed changes, a discretionary trust that takes up the option to be a fixed trust and that allocates 100 percent of its income and capital in set proportions each year to beneficiaries, may in fact change the beneficial ownership of its property for transfer duty and landholder duty purposes under state or territory legislation.

While the Federal Government may be of the view that entities moving from discretionary to a fixed trust arrangement are not expected to result in state and territory stamp duties, there is no guarantee that they will remain special trusts for land tax purposes. Such questions require specific consideration under each state's law.

The EET election exists so that a trust can stay outside of the minimum tax arrangements without moving assets, so that they don't incur the duty a restructure would attract.

If the election itself could attract duty, it replicates the cost it was designed to avoid. Transfer duty is assessed at ad valorem rates on the full dutiable value of the property, so the exposure could be substantial relative to the tax saved. The choice is also irreversible. The EET election can only be made in the first income year commencing on or after 1 July 2028, cannot be remade once revoked, and is not available where the rollover has been used.

Urban Taskforce is of the view that no trustee holding real property can responsibly make that choice while the state transfer duty consequences are unresolved.

Recommendation 1: That the Federal Treasurer seek advice from the states and territories on whether or not state duties and land taxes will apply to trust entities that restructure.

A fixed trust nomination cannot accommodate commercial realities

Urban Taskforce understands that under a fixed trust nomination every beneficiary must be named and each beneficiary's share of income and capital fixed, in identical proportions totalling 100 per cent.

Each nominee must have been capable of benefiting under the trust on 1 July 2028.

The nomination can be varied only on the death of a nominated individual or a relationship breakdown between two nominated individuals; *there is no variation event for a nominated trust or company*.

This design assumes a single-family trust with a stable set of individual beneficiaries, not a commercial business.

A commercial property group is a set of asset-specific entities, each with its own lenders and its own life. Profitability in a given year depends on leasing cycles, vacancy, refurbishment programs and where a development sits in its life.

Capital gains, and carrying a revenue or capital loss, depend on when assets are sold and when projects complete. Entities are wound up when their asset is sold or their project is finished, and new entities are subsequently established for new assets. None of that can be known in 2028-29 for a portfolio that will be held for decades.

Under the current law, if the loss entity is within the same family group and the trust loss and integrity rules are satisfied, the trustee of a profitable trust can make distributions to the loss trust so that the group is taxed on its net result.

Under the EET as drafted, each trust must distribute to the nominees it chose in 2028-29. Take a group in which Trust A distributes to Trust B, Trust B to Trust C and Trust C to an individual, each on a fixed nomination. A capital loss arising in Trust A after 2028 cannot absorb a capital gain arising later in Trust C.

The chain runs one way, and no nomination can be varied to offset the gain against the loss. Taxable income arises in one entity, but a genuine loss remains unusable elsewhere. An analogous mismatch can arise between revenue losses and rental income.

Two further features compound the problem. First, income and capital must be nominated in identical proportions. Rental income is recurring and consistent. Capital gains, on the other hand, are lumpy, arise only on a sale, and frequently need to go to a different recipient if the group is to be taxed on its net result.

Second, the regime requires present entitlement to capital in the nominated proportions each year. It is not clear what that requires where capital is retained in the trust to service debt or is reinvested, whether a beneficiary's fixed entitlement to trust capital is consistent with lender covenants over that capital, or how the requirement operates where no cash is distributed.

The revocation triggers turn these problems into an unacceptable risk. A nominated trust that vests or is wound up revokes the election of every trust that nominated it. In a group of asset-specific entities, winding up an entity whose asset has been sold is ordinary housekeeping, not a change of substance. Under the draft it forfeits the regime for the nominating trust permanently and taxes a full year's income at 47 per cent.

A transfer of a share in a nominated company, other than on death or relationship breakdown, has the same effect, which rules out ordinary succession planning.

It is also unclear whether an inadvertent departure from the nominated proportions, such as a rounding difference in a distribution resolution, is a decision not to confer present entitlements in accordance with the nomination.

Recommendation 2: Trusts and companies within the same family group, and including entities covered by an interposed entity election, should be able to group for minimum tax purposes.

Conclusion

Urban Taskforce Australia is very concerned that the proposed tax on discretionary trusts will drive smaller, family-owned property developers out of the market.

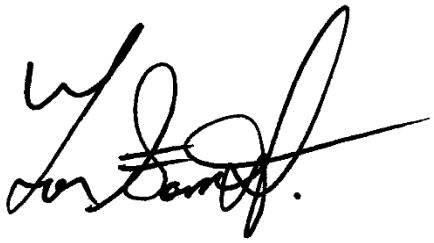
These are businesses undertaking legitimate economic activities which are often high risk, and trusts allow them to manage their affairs effectively.

The Federal Government has made it clear through the National Housing Accord that it wants to deliver more housing to solve the housing supply and affordability crisis.

Tax measures such as this one, unless modified, will only lead to fewer homes being built, genuine small businesses shutting down, and an escalating housing supply crisis.

Should you wish to discuss any aspect of this submission further, please contact our Economics and Planning Analyst, William Hughes, on 0418-286-530 or via email at will@urbantaskforce.com.au

Yours sincerely



Tom Forrest
Chief Executive Officer