AUSTRALIAN
SHAREHOLDERS'
ASSOCIATION

Submission to the Treasury Consultation on the Minimum Tax on Discretionary Trusts

6 August 2026

Introduction

The Australian Shareholders' Association (ASA) welcomes the opportunity to comment on the Treasury consultation on the proposed minimum tax on discretionary trusts.

The ASA is Australia's largest independent shareholder advocacy organisation, representing the interests of retail and individual investors. Our comments are confined to matters that directly affect shareholders and retail investors. We do not comment on broader issues of trust taxation policy, trust law or the detailed technical design of taxation measures that fall outside our policy remit.

Accordingly, this submission addresses only those consultation questions relevant to the interests of retail investors and the efficient operation of Australia's dividend imputation system.

Response to Consultation Questions

Question 3 – Other implementation matters

The implementation of any new regime should minimise compliance costs for individual investors and avoid creating unnecessary uncertainty for retail investors who hold investments through discretionary trusts. The final framework should be supported by clear Australian Taxation Office guidance and straightforward administrative processes to facilitate compliance and reduce unintended consequences.

ASA Member Case Study: Practical Impact on Retail Investors

The ASA has received feedback from members highlighting the practical implications of the proposed reforms for ordinary retail investors who use discretionary trusts as long-term family investment vehicles.

One member established a discretionary family trust following the death of a parent to provide continuity of family investments and appropriate asset protection. The member advised that, while they support measures intended to improve tax fairness, they are concerned that the proposed treatment of corporate beneficiaries may result in a materially higher effective tax burden than would apply if the same investments were held through an investment company.

The member further noted that, if implemented in its current form, the proposal could require the unwinding of a long-established family investment structure and the creation of alternative entities, resulting in significant professional costs, administrative complexity and the potential loss of legitimate asset protection benefits that were central to the original investment structure.

While the ASA does not take a position on the detailed taxation treatment of corporate beneficiaries, this example illustrates the importance of ensuring that the final design of the reforms does not inadvertently disadvantage retail investors using legitimate family investment structures. It also reinforces the need to minimise unnecessary restructuring costs, provide certainty for long-term investors and ensure implementation is proportionate and administratively efficient.

Treatment of corporate beneficiaries and avoidance of double taxation

The ASA also wishes to highlight a specific concern regarding the proposed treatment of corporate beneficiaries of discretionary trusts.

The proposed approach, under which corporate beneficiaries would be assessed based on their entitlement to trust income but would not be able to claim a minimum tax offset for tax already paid by the trustee, may create an outcome where the same economic income is effectively subject to taxation twice within a commonly used investment structure.

While the proposed approach may provide administrative simplicity, it risks creating inequitable outcomes for retail investors who use discretionary trusts with corporate beneficiaries as a legitimate long-term investment structure. These structures are commonly used by families and small business owners to manage investment assets, provide continuity across generations and achieve appropriate asset protection outcomes.

A more equitable approach would be to allow corporate beneficiaries to access a tax offset for the minimum tax paid by the trustee, consistent with the underlying principles of Australia's dividend imputation system. To preserve the integrity of the minimum tax measure, the offset could be designed as non-refundable, ensuring that the minimum level of tax paid at the trust level is maintained while avoiding double taxation where income subsequently flows through to beneficiaries.

This approach would provide a simpler and more consistent outcome by ensuring that taxation outcomes are not determined primarily by the legal structure through which investors hold their assets. It would also reduce incentives for investors to restructure legitimate investment arrangements solely to avoid unintended tax consequences arising from the interaction between discretionary trusts, corporate beneficiaries and the proposed minimum tax regime.

The ASA considers that the final design should maintain neutrality between economically equivalent investment structures and ensure that retail investors are not disadvantaged merely because they have adopted a commonly used discretionary trust structure with a corporate beneficiary.

Questions 9 and 10 – Treatment of excess franking credits

The ASA strongly supports the refundability of excess franking credits to trustees as the preferred approach over a carry-forward model.

Refundability best preserves the integrity of Australia's dividend imputation system by ensuring company profits are taxed only once and that the economic benefit of franking credits flows to the underlying beneficiaries who would otherwise be entitled to those credits. Removing refundability would reduce the value of franked dividends for many retail investors who legitimately invest through discretionary trusts and would create inequitable outcomes by treating economically equivalent investments differently depending on whether shares are held directly or through a commonly used family investment structure.

By contrast, the ASA is concerned that a carry-forward model would introduce unnecessary complexity, including additional compliance costs, record-keeping obligations and administrative burdens for trustees and beneficiaries. It could also delay access to the economic benefit of franking credits, reducing the effectiveness of the imputation system and creating cash flow disadvantages for affected investors.

If the Government nevertheless adopts a carry-forward approach, the design should minimise compliance costs by relying, wherever possible, on existing integrity provisions rather than introducing new tracing or attribution requirements. Administrative simplicity, certainty and ease of compliance should remain key design principles.

Question 11 – Other matters regarding excess franking credits

The final design should ensure that retail investors who hold investments through discretionary trusts are not disadvantaged relative to investors who hold shares directly.

In particular, the framework should:

- preserve the economic value of franking credits;
- minimise ongoing compliance and administrative costs;
- provide certainty for trustees and beneficiaries; and
- maintain the integrity and neutrality of Australia's dividend imputation system.

Questions 12–15 – Administration, notification and collection mechanisms

The ASA supports administrative arrangements that are practical, proportionate, and integrated with existing tax reporting processes.

Reporting requirements should be standardised and designed to minimise duplication and compliance costs for trustees and beneficiaries.

Any collection mechanisms should first apply to trust assets. Personal liability for directors of corporate trustees should not arise automatically and should include appropriate notice, review rights and protections for directors who have taken reasonable steps to ensure compliance.

Questions 1, 2, 4–8, 16 and 17

The ASA has no specific comments on these questions. They concern matters relating to the legal definition of discretionary trusts, trust taxation policy, rollover relief, integrity rules, family trust elections, restructuring mechanisms and related legal considerations, which are outside the ASA's policy focus.

Conclusion

The ASA's principal interest in these reforms is ensuring that retail investors are not disadvantaged by changes affecting discretionary trusts that are commonly used as long-term family investment vehicles.

The Government should ensure that the final design of the reforms:

- preserves the integrity of Australia's dividend imputation system;

- ensures that legitimate investment structures, including discretionary trusts with corporate beneficiaries, do not result in unintended double taxation outcomes;
- minimises compliance costs and unnecessary restructuring;
- provides certainty through clear guidance and simple reporting arrangements; and
- avoids unintended consequences that diminish long-term investment outcomes for Australian shareholders.

The ASA appreciates the opportunity to provide this submission and would welcome further engagement with Treasury as the design of these reforms progresses.

Regards,

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CEO

Australian Shareholders' Association