AUSTRALIAN SHAREHOLDERS' ASSOCIATION

2 November 2026

Committee Secretary
Senate Economics Legislation Committee
Parliament of Australia

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

Dear Committee Secretary,

The Australian Shareholders' Association (ASA) welcomes the opportunity to provide comments on the Bills. We acknowledge that this submission is being provided after the closing date and appreciate the Committee's consideration of our views.

ASA represents the interests of retail shareholders and individual investors. Our comments focus on the proposed minimum tax on discretionary trusts and its implications for individuals, families and small business owners who use these structures for legitimate investment, business operations, asset protection and succession planning.

We support tax settings that are fair, transparent and protect the integrity of Australia's tax system. While recognising the Government's objective of addressing tax advantages associated with discretionary trusts, these structures are not used exclusively by wealthy Australians. They are also used by small business owners and ordinary families for legitimate purposes. As raised in our 6 August 2026 submission to Treasury, reforms should not inadvertently disadvantage these Australians or impose disproportionate costs on those using legitimate investment and business structures.

Changes ASA welcomes

ASA acknowledges that the Government has responded to several concerns raised during consultation. In particular, the Bills include the following measures, which go some way towards addressing issues raised in our earlier submission:

- **Electable regime (partly addresses ASA's concerns):** Trustees can make a one-off election to nominate fixed entitlements for beneficiaries and so avoid the minimum tax without restructuring. This responds directly to ASA's concern that families should not have to unwind long-established investment structures. However, the election is rigid and carries significant penalties if it is revoked, as outlined below.
- **Transitional roll-over relief (partly addresses ASA's concerns):** Trusts that restructure into a company or fixed trust between 1 July 2027 and 30 June 2030 can defer income tax on the transfer of assets. This reduces, but does not remove, restructuring costs, because state duties and other taxes may still apply.

- **Non-refundable beneficiary tax offset (partly implemented):** Consistent with ASA's recommendation, the offset for minimum tax paid by the trustee is non-refundable, which protects the integrity of the measure. However, the offset is available only to non-corporate beneficiaries.
- **Clarified fixed trust definition and exclusions (partly addresses ASA's concerns):** The new fixed trust definition and the exclusions for certain testamentary trusts, special disability trusts and deceased estates provide greater certainty for some investors. However, the definition relies on undefined terms such as "material" and "significantly", which may create new uncertainty.

Matters requiring further consideration

It is important that these safeguards operate effectively in practice. ASA asks the Committee to consider the following matters, which are not yet addressed or only partly addressed in the Bills:

- **Double taxation of corporate beneficiaries (not implemented):** ASA recommends extending the non-refundable tax offset to corporate beneficiaries. Under the Bill, income taxed at the trustee level can be taxed again in the hands of a corporate beneficiary. This can produce outcomes above the stated 30% policy objective and treat economically equivalent investments differently depending on their legal structure. Because the offset would be non-refundable, the minimum level of tax paid at the trust level would be maintained while double taxation is avoided. CA ANZ, CPA Australia and the Tax Institute have raised similar concerns.
- **Franking credits:** ASA welcomes the proposed refund of excess franking credits relating to income subject to the minimum tax, after the trustee has offset its income tax liabilities. ASA asks that this treatment be retained in the final arrangements and that the provisions preventing a "double benefit" do not erode the value of franking credits beyond that purpose. This is important to preserve the integrity of the dividend imputation system and avoid unnecessary complexity for investors.
- **Flexibility of the electable regime (partly implemented):** ASA asks that the electable regime allow nominations to be updated for genuine changes in family circumstances, such as the birth of children or succession, and that the Commissioner's discretion to prevent automatic revocation be applied practically. As drafted, the regime effectively freezes the family group at 1 July 2028. Revocation, including through events outside the trustee's control, results in tax at the top marginal rate plus the Medicare levy for that year. Long-term family investment vehicles need to be able to adapt to changing circumstances.
- **Compliance and restructuring costs (partly implemented):** ASA asks that the Commonwealth work with the states and territories to provide stamp duty relief for both the roll-over and electable pathways, and that GST interactions be addressed. Roll-over relief defers income tax only, and stamp duty relief for the electable regime is not guaranteed across jurisdictions. Without this, many retail investors may face significant professional and transaction costs simply to preserve existing legitimate arrangements.

- **Administration, collection and director liability (not implemented):** Reporting, notification and collection arrangements have been deferred to future legislation. ASA asks that these be released for consultation well before commencement and that they be integrated with existing tax reporting processes. Collection should apply first to trust assets, and personal liability for directors of corporate trustees should not arise automatically. Directors should have appropriate notice, review rights and protections where they have taken reasonable steps to comply. Without these details, stakeholders cannot fully assess how the regime will operate in practice.
- **Investor certainty (not yet implemented):** ASA asks that outstanding legislative instruments be finalised and clear ATO guidance, including practical examples, be published well before 1 July 2028 and the electable regime window. Trustees should not be required to make one-off decisions with long-term consequences before the rules necessary to understand those consequences are settled.

The proposed 30 per cent minimum tax, commencing on 1 July 2028, represents a significant change for some individual investors, families and small business owners. While ASA recognises the objectives of the reform, investors should have confidence that the final legislation will operate fairly and predictably, without unnecessary disruption to legitimate investment and business arrangements.

ASA welcomes the improvements made since consultation and recommends that the Committee seek assurance that the remaining issues are addressed before commencement, particularly the treatment of corporate beneficiaries, franking credits, the flexibility of the electable regime, restructuring costs and the outstanding administrative arrangements.

We appreciate the Committee's consideration of our views as part of its examination of the legislation.

Yours sincerely,



Rachel Waterhouse
Chief Executive Officer

Australian Shareholders' Association