

May 2026 Edition

The 30% Minimum Tax on Discretionary Trusts

A plain-English digest of the 2026 Federal Budget tax-reform package — what it does, who it hits, and the arguments for and against.

1. What the Government has announced

In the 2026–27 Federal Budget, the Government announced a suite of tax-reform measures under the banner “Tax reform for workers, businesses and future generations.” One measure has dominated discussion in the legal and accounting professions: a **minimum 30 per cent tax on discretionary (family) trusts**, commencing **1 July 2028**, with limited exceptions and three years of rollover relief from 1 July 2027 to allow small businesses and others to restructure.

Sitting alongside that change are the replacement of the 50% CGT discount with an inflation-indexed discount and a 30% minimum tax on capital gains from 1 July 2027, the limiting of negative gearing to new builds, and a \$250 Working Australians Tax Offset from 2027–28. Source: budget.gov.au — *Tax reform* theme paper.

2. How a discretionary trust is taxed today

A discretionary trust is not itself taxed on income that is distributed. Instead, the trustee uses its discretion to stream income to beneficiaries, who pay tax at **their own marginal rate**. That allows income-splitting between adult family members, spouses, related companies (taxed at 25%/30%) and, in some structures, charities or non-residents.

Under the announced reform, distributions from a discretionary trust will attract a **floor of 30%**. If the beneficiary’s personal rate is lower (for example a spouse on 19% or an adult child studying full time on 0%), top-up tax will lift the effective rate on that distribution to 30%. Distributions to beneficiaries already on a higher marginal rate are unaffected.

3. Worked example

Scenario	Today	From 1 July 2028
\$120,000 trust profit to spouse (no other income)	Tax ≈ \$26,788 (avg ~22%)	Tax = \$36,000 (30% floor)
Same profit streamed to adult child (no other income)	Tax ≈ \$26,788	Tax = \$36,000
Same profit to working spouse on \$190k salary	Tax at 45% + Medicare	Unchanged (already > 30%)

Figures are illustrative only and ignore Medicare, LITO and offsets.

4. The case for the reform — pros

- **Equity and integrity.** The Henry Review (2010) and successive Treasury papers have identified discretionary trusts as a leading source of high-end income splitting. A 30% floor narrows the gap between

trust beneficiaries and PAYG wage earners on the same household income.

- **Alignment with company tax.** 30% mirrors the headline corporate rate, removing an arbitrage where wealthy families can stream profits to low-rate individuals while businesses operating through companies cannot.
- **Revenue for services.** Treasury costings (forthcoming MYEFO) project the package — CGT, negative gearing and trust reforms combined — will fund the \$250 Working Australians Tax Offset and the legislated Stage-3 cuts without further deficit.
- **Simpler audits.** A bright-line floor reduces the ATO’s reliance on Section 100A “reimbursement agreement” litigation, which has produced uncertain outcomes since *Guardian AIT* and *BBlood*.
- **Carve-outs preserve genuine business use.** The Government has flagged exceptions and three-year rollover relief from 1 July 2027 so trading trusts and farm trusts can restructure without CGT or stamp-duty shocks.

5. The case *against* the reform — cons

- **Hits ordinary family businesses, not just the wealthy.** Roughly 1 million Australians use a discretionary trust — many are tradies, farmers, GPs, and small-business owners using the trust for asset protection rather than tax minimisation.
- **Penalises low-income beneficiaries.** A retired parent or a non-working spouse with no other income will lose the benefit of the tax-free threshold and lower brackets on trust distributions.
- **Discourages succession planning.** Trusts are a primary vehicle for inter-generational transfer of farms and small businesses; a 30% floor reduces after-tax returns and may push families to sell rather than transition.
- **Restructure costs are real.** Even with rollover relief, moving to a company or unit-trust structure creates legal, accounting and stamp-duty costs, and exposes assets that were previously ring-fenced.
- **Complexity, not simplification.** Australia will run two parallel regimes: discretionary trusts on a 30% floor, and other entities on their own rates. Practitioners expect a new wave of integrity rules and anti-avoidance provisions.
- **Behavioural response may erode revenue.** History (e.g. the 2018 “unfranked franking credit” debate) suggests taxpayers will restructure aggressively, so projected receipts may not materialise.

6. Is this “political socialism” — or sensible base-broadening?

The political framing matters as much as the technical detail. Supporters argue that a 30% floor is not socialism but **horizontal equity**: a wage earner on \$90,000 pays an effective rate well above 20% with no ability to split income, while a similarly-placed trust beneficiary may pay far less. From that view, the reform restores neutrality between labour and capital income.

Critics counter that a flat minimum on discretionary distributions is **blunt redistribution**: it ignores why the trust exists (asset protection, succession, blended families) and treats a farming family the same as a hedge-fund principal. They warn the measure is closer to a **wealth-style surcharge on structures**, dressed as a tax-integrity measure.

Our view at Elamine Lawyers is that the reform is neither pure ideology nor pure integrity policy. It is a **revenue measure** — designed to fund the Working Australians Tax Offset and CGT reforms — that uses trusts as the mechanism because they are politically defensible to tax. The legal profession’s job is to make sure clients are not collateral damage.

7. What clients should be doing now (2026–2028 runway)

- **Audit your trust deed.** Confirm beneficiary classes, default beneficiaries and streaming powers — many older deeds will need amendment before 1 July 2028 to optimise under the new rules.
- **Model the 30% floor against current distributions.** If most income is already streamed to beneficiaries on rates above 30%, the impact may be modest. If you rely on low-rate beneficiaries, expect a material increase.
- **Consider restructuring during the rollover window.** Three years of rollover relief from 1 July 2027 is a planning gift — but only if used early. Bunbry queues at the ATO are likely from mid-2028.
- **Review CGT exposure on pre-2027 assets.** Replacement of the 50% CGT discount with an inflation-based discount + 30% floor on gains is a separate and equally important reform.
- **Speak to us before 30 June 2027.** Once the new regime commences, options narrow quickly.

8. Key dates

Date	Measure
1 July 2027	CGT reform commences; rollover relief window opens for trusts
1 July 2027	Negative gearing limited to new builds
1 July 2028	30% minimum tax on discretionary trust distributions begins
1 July 2028	Loss refundability for small start-ups (≤ 2 yrs old) commences

Need tailored advice?

Elamine Lawyers acts for family businesses, professional practices and high-net-worth families across Victoria. We work with your accountant to model the new regime, redraft trust deeds and execute restructures within the rollover window. Call **(03) 8400 0100** or email **admin@elaminelaw.com.au**.

Disclaimer: This newsletter is general information current at May 2026 and is based on announcements in the 2026–27 Federal Budget (budget.gov.au). It is not legal or tax advice. Legislation as enacted may differ from announcements. Obtain advice tailored to your circumstances before acting.