E: admin@ifx.com.au
T: 61 2 9956 7775
W: www.ifx.com.au

AUSTRALIAN TAX ADVISER

Issue 2705 | November 2026

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Section 1 – Professional Developments

TRUST CHANGES – ARE WE THERE YET?

When cooking pasta, one way to see if it's done is to throw it at the wall. Sadly, this has become the practice with tax legislation of late – and trust legislation seems to be an example of this.

The Treasury Laws Amendment (Tax Reform No. 3) Bill 2026 was introduced to Parliament on 14 October. Among other things, it introduces the proposed minimum tax of 30% on discretionary trusts as well as outlining the roll-over relief and electable regime rules. The Bill does provide some helpful clarification compared with the exposure draft (including refinements to the fixed trust definition) but several significant issues remain outstanding, which are explained below.

¶5.1 What we know so far

The minimum tax on discretionary trusts and electable regime rules will apply to income years starting on or after 1 July 2028, and the three-year restructuring roll-over will be available for transfers occurring at any time between 1 July 2027 and 30 June 2030.

The legislation is largely consistent with the September 2026 exposure drafts (ED), but some important refinements have been introduced, as outlined below.

Minimum tax trusts

As outlined in the Bill, a *'minimum tax trust'* is any trust that is subject to the *minimum tax rules*. Trusts that do not fall within this category include:

- widely held trusts, and
- managed investment trusts (MITs).

These trusts will continue to be classified as 'fixed trusts' and therefore remain excluded from the minimum tax rules.

The power of the Minister to make a legislative determination to exclude other types of trusts from the minimum tax rules has been expanded to cover 'widely held' or 'collective investment' trusts. The explanatory memorandum (EM) notes that this criterion is intended to be used if the expanded legislated exclusions do not cover widely held or collective investment vehicles that the government hasn't yet thought of.

Fixed trust definition

The second limb in the new definition of a fixed trust has been relaxed. This was done so that the discretionary elements need to be capable of *significantly affecting* beneficiaries' rights to trust

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