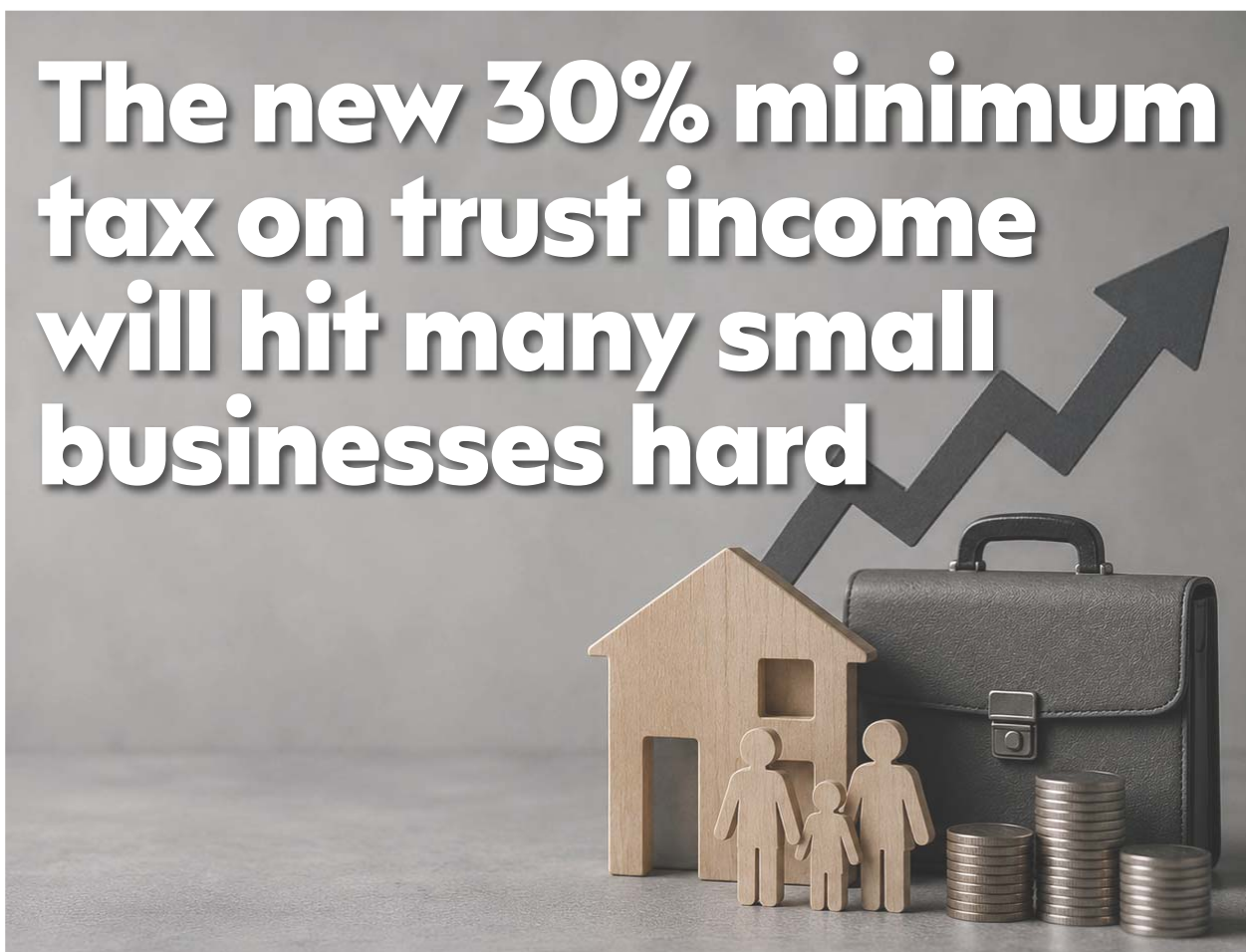


# The new 30% minimum tax on trust income will hit many small businesses hard



Discretionary trusts have been a familiar feature of Australian business life for generations, partly due to their suitability for asset protection and retirement planning, as well as their ability to legitimately achieve lower overall tax rates through income splitting, where trustees of discretionary trusts allocate all or part of the trust income to associates who have a lower marginal rate than the high-income primary earner. If enacted, the 12 May 2026 Budget announcements will put an end to tax minimisation through income splitting.

**A**s from 1 July 2028, there is to be a radical shift away from the well-established flow-through treatment of the taxable income of discretionary trusts. Instead, a 30% minimum tax is to apply at the trustee level. The 30% tax paid by the trustee will be creditable (but not refundable) to non-corporate beneficiaries.

Trustees in receipt of franked dividends will have to apply their franking credits to the 30% tax impost, while corporate beneficiaries are prevented from using the 30% credit at all, leading to the likely demise

of bucket companies as such a structure would involve double taxation going forward in most cases.

The proposed new rules will not apply to other types of trusts such as fixed and widely held trusts (including fixed testamentary trusts), complying superannuation funds, special disability trusts, deceased estates or charitable trusts.

The government seems to think its new 30% minimum tax applied to trust income will mainly fall on lotus eating wealthy investors who reduce their tax bill by

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splitting their income with lower tax family members, with the Treasury Explainer released on Budget night noting:

“The majority of trust income flows to the top earning 10% of families and approximately 90% of total private trust wealth is held by the wealthiest 10% of households (those with net worth above around \$2.3 million).”

We're not so sure about that.

Our experience suggests that many clients who use trust structures are hardworking Australian small business owners who certainly do not regard themselves as wealthy. They would have been advised to adopt a trust structure when they took a risk and started off their business because it provided them with asset protection as well as an effective path for their eventual retirement. Trust structures do allow for some income splitting, but they have been around for decades and there is nothing particularly artificial or aggressive about the practice.

Wealthier beneficiaries are mostly already taxable at higher marginal rates, so that a minimum 30% tax at the trustee level would make no practical difference to their net tax position at all.

The change is expected to raise \$4.5 billion over five years from 2025-26. That additional revenue will be applied to funding a permanent \$250 annual rebate from 1 July 2027 for Australian salaried workers, as well as for business owners who run their own business as sole traders. That's equivalent to one cup of coffee a week.

Good luck to employed Australians and sole traders for being singled out for a modest tax cut, but hitting small business operators with higher tax bills as from July 2028 to help pay for it is just going to put even further financial pressure on that group. Instead of pitting one set of battlers against another, the government could perhaps have done more to reduce spending.

It's important to remember that none of this is yet law. There is to be a consultation process around the announced measures and, starting on 1 July 2027, there will be a three-year window to allow businesses to restructure their affairs. Whether the States and Territories will be prevailed upon to also provide stamp duty relief remains to be seen. If not, the cost of restructuring could be pretty steep if there is real property involved and you factor in the cost of legal and accounting advice.

If you operate your business through a trust structure we need to get together and work out how much extra tax your business might be paying under the proposed new rules. We can also make an estimate of what restructuring will cost, including through the tax profile of an alternative business structure.

There is an unusually high level of pushback on the announced trust, capital gains tax and negative gearing changes (when compared to previous Budgets), so the final scope and shape of the tax package may well change through the consultation and legislative process.

We will keep you informed of further developments as they occur.

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