NAVARINO WEALTH

CLIENT UPDATE

September 2026

The trust tax backflip — there is now a way out, but it locks you in for good

The Government has retreated again, and this time because it had to. The states would not give up their stamp duty, which killed the restructure path Canberra was relying on. The workaround lets trusts avoid the tax entirely — at the cost of fixing who gets what, permanently.

Draft legislation was released on 3 September 2026 and it is materially different from what was announced in May. Rather than paying the tax or restructuring out, a family can elect to fix its beneficiaries and their shares permanently, and pay no minimum tax at all. Here is the choice, the deadline, and the penalty for getting it wrong.

30%	1 July 2028	30 June 2029	47%
the minimum tax you can now avoid	when the regime starts	deadline to lock in your beneficiaries	penalty rate if you later vary the split

In a nutshell

- This is the second backdown in four months. Budget night set a hard 30 per cent floor on trust income; testamentary trusts were carved out first; now there is a way out altogether.
- The way out is a one-off election. Nominate your beneficiaries and their fixed percentages once, and the 30 per cent trustee tax does not apply to you.
- The price is permanence. You give up varying distributions year to year, which for most families is the entire reason the trust exists.
- It fixes capital, not just income. The percentages you set in 2028-29 also govern who receives the assets whenever the trust is eventually wound up.
- Get it wrong once and it is gone. Vary the distributions and the election is revoked, that year is taxed at 47 per cent, and you are in the 30 per cent regime permanently.
- It happened because the states said no. Duty is a state tax and the Commonwealth cannot waive it. Without matching state relief the restructure path was unaffordable, so the Government built a way to avoid moving anything at all.
- The bucket company survives, and franking works again. A corporate beneficiary can be nominated and is taxed once at 25 or 30 per cent, instead of the two layers that took the original design to 63 to 70 per cent.
- New trusts miss out. Any discretionary trust established after 1 July 2028 can never make the election.

What actually changed

On budget night, 12 May 2026, the Treasurer announced a 30 per cent floor on family trust income, aimed at families streaming profits to relatives on lower tax rates. There was no way around it. The advice at the time, ours included, was that families running a bucket company would need to restructure, and would pay state stamp duty to do it.

The first retreat covered testamentary trusts, carved out after warnings that the measure would operate as a death tax on families settling a deceased estate.

The second came on 3 September, when the draft legislation was released carrying something few expected: an election that takes a trust out of the 30 per cent tax altogether. The Treasurer's own framing is that there is now no need to restructure.

That is true as far as it goes. But the concession is not free, and what it costs is the flexibility most families set the trust up to have. Consultation on the draft closes on 18 September 2026, so the detail can still move again.

Why they had to back down

The reason is worth understanding, because it explains why the fix looks the way it does.

Capital gains tax is federal, so Canberra could offer relief on it, and did: a three-year rollover from 1 July 2027 letting families move assets out of a trust without a CGT bill. Stamp duty is not federal. It belongs to the states, and a Commonwealth rollover does not bind a state revenue office.

So the restructure path only worked if the states matched the relief. They were asked, and state treasurers were not willing to give up the duty. That left the supposed escape route costing full transfer duty on the market value of everything that moved, which in WA takes in business assets and goodwill as well as property. For a family holding a commercial premises or an operating business, the duty bill could swallow the tax it was meant to save.

A restructure nobody can afford is not really an option. Rather than fix the duty problem, which the Commonwealth cannot do on its own, the Government has bolted on a way to avoid moving anything at all. Nothing is transferred, so no duty arises. For anyone who takes the election, that is the single most valuable part of this announcement, and it is the gap our July update flagged.

It works. It is also the second redesign of a measure that has not been legislated once, and the patch carries its own permanent commitment and its own penalty. A change that was already complicated has been made more so, and the reason is a question of federalism that was not settled before the policy was announced.

Your three options from 1 July 2028

Option	How it is taxed	The trade-off
A. Do nothing	The trustee pays 30 per cent. Individuals receive a 30 per cent non-refundable credit. Corporate beneficiaries receive none.	Full flexibility retained. A bucket company path lands at an effective 63 to 70 per cent.
B. Make the election	No trustee tax. Individuals are taxed at their own marginal rates. A bucket company is taxed once, at 25 or 30 per cent.	Cheapest by a wide margin, but the split is fixed for the life of the trust.
C. Restructure or wind up	Assets roll into a company or fixed trust with no capital gains tax, between 1 July 2027 and 30 June 2030.	Federal CGT relief only. WA still charges duty on property and on business assets including goodwill.

For most families with a bucket company, option B is now clearly the cheapest path. The question is not whether it saves tax. It is whether you can live with the commitment.

Can you still distribute to a bucket company?

Yes, and this is the single biggest thing the election rescues.

Under the original design a corporate beneficiary got no credit at all for the tax the trustee had already paid. The company was assessed on its full entitlement and paid company tax on top of it. On $200,000 of trust income that means the trustee pays $60,000, the company is assessed on the whole $200,000 and pays another $60,000, and $120,000 of tax has been paid before a cent reaches a shareholder. That is 60 per cent, and it climbs further when the dividend is finally paid out, because the company can only frank the tax it paid itself. Commentators put the end-to-end result at between 63 and 70 per cent. None of that was accidental — the design was intended to close the bucket company down.

Under the election a bucket company can be one of your nominated beneficiaries, and its share is taxed once, at 25 or 30 per cent. One layer of tax instead of two. The bucket company survives, provided you are willing to fix its percentage permanently along with everyone else's.

The same $200,000, both ways

	Option A — do nothing	Option B — make the election
Tax paid by the trustee	$60,000 (30 per cent)	Nil
Credit to the company for that tax	**None**	Not applicable — no trustee tax arose
Amount the company is assessed on	$200,000	$200,000
Company tax	$60,000	$60,000 (or $50,000 at 25 per cent)
Total before any dividend is paid	**$120,000 — 60 per cent**	**$60,000 — 30 per cent**

Illustrative only, assuming $200,000 of trust income directed to a corporate beneficiary and a company tax rate of 30 per cent. Your own rates, franking position and outcome will differ.

Then the dividend. Under option A the company can only frank the $60,000 it paid itself, so the shareholder tops up tax on the rest and the trustee's $60,000 is never recovered by anyone, which is how commentary arrives at an end-to-end 63 to 70 per cent. Under option B the distribution is fully franked out of the company's own tax and the shareholder receives the credit in the ordinary way.

Do franking credits still flow through?

Under the original design, not properly. Where the trust received franked dividends the credits were absorbed against the trustee's own minimum tax rather than flowing out to beneficiaries, and a corporate beneficiary could only ever frank the tax it had paid itself. The trustee's 30 per cent became a dead cost that nobody received credit for. What happens to excess credits was flagged as an open design question and is still not settled.

Under the election there is no minimum tax at trustee level, so there is nothing for the credits to be absorbed into. Franked income flows through to your nominated beneficiaries with the credits attached, the way it does now. The existing conditions are unchanged — the family trust election and the holding period rules still have to be satisfied — but imputation works the way you would expect it to.

For a trust holding Australian shares, that difference may matter more than the headline rate does.

The catch: you are fixing this for good

A discretionary trust is discretionary because the trustee decides each year who receives what. That is what lets a family direct income to whoever has the lowest marginal rate in a given year. The election trades that away.

- The percentages are set once. Nominate the beneficiaries and their shares, and they hold from 2028-29 onwards.
- You cannot add people. The list can only change if a nominated beneficiary dies or the family breaks down. There is no limit on how many you nominate, and they need not be family, but they must have been capable of benefiting under your deed as at 1 July 2028.
- It binds the capital too. The same fixed percentages apply to trust capital, so you are deciding today who receives the assets when the trust ends, possibly decades from now.
- Circumstances will change and the split will not. If a spouse returns to work or a child lands a well-paid job, their share cannot be redirected without breaching the election.

One gap the draft does not answer: it is clear new family members cannot be added, but not what happens to a child or grandchild born after the election is made. If your structure exists to bring the next generation in over time, watch that before committing.

The penalty for changing your mind

The election can be revoked deliberately, in which case you simply lose its benefit. Breaching it is far more expensive. If the trustee varies the distributions or pays the wrong beneficiaries, the election is automatically revoked, that year's trust income is taxed at 47 per cent, being the top marginal rate plus the Medicare levy, and the trust is permanently locked into the 30 per cent regime for every year after that.

One mistake costs the concession for good, which makes the quality of the initial decision, and the trustee's discipline afterwards, more important than the tax saving itself.

The dates that matter

Date	What happens
18 September 2026	Consultation on the draft closes. The detail can still change.
1 July 2027	Restructure rollover window opens, running to 30 June 2030.
1 July 2028	The 30 per cent minimum tax starts. Trusts established from this date can never make the election.
1 July 2028 to 30 June 2029	The window in which the election must be made.
2029 trust tax return	Notification form due to the ATO, on lodgement or by the due date, whichever comes first.

Nothing needs to happen this financial year and the decision itself is nearly three years away. What is worth doing now is knowing which option you are heading for, because one of them requires setting the trust up before 1 July 2028.

Who is not affected

- Fixed trusts, widely held managed investment trusts, bare trusts, complying superannuation funds including self-managed funds, and special disability trusts are all excluded, as are distributions to registered charities and deductible gift recipients.
- Primary production income, income for vulnerable minors, and genuine testamentary trusts funded before 12 May 2026 are outside the minimum tax.
- Trusts already distributing to adults taxed at 30 per cent or more pay no additional tax, so many families will see no change at all. Treasury's own estimate is that fewer than 10 per cent of Australia's small businesses are affected in any given year.

What this means for you

If you	What to think about
Distribute to a bucket company	This is the biggest change. The election keeps the bucket company workable at 25 or 30 per cent. Without it you are looking at 63 to 70 per cent.
Have a non-working spouse or a child at university	Their low rate is worth locking in, but only if you accept it stays locked when they start earning.
Have young children or grandchildren	The draft does not say whether someone born after the election can be added. Worth waiting for that answer before committing.
Run a business through the trust	Wages to family members genuinely working in the business sit outside all of this. Look there first.
Hold property or a business in a WA trust	The election avoids stamp duty entirely. That may now be a better answer than restructuring.
Were thinking about setting up a trust	Establish it before 1 July 2028 or the election will never be available to you.

Which option are you heading for?

Was the trust established before 1 July 2028?

No

The election is never available

A trust set up on or after that date is permanently on the 30 per cent minimum tax. If you were planning to establish one, establish it first.

Yes

Could your family live with a fixed split, of income and capital, for the life of the trust?

No

Option A, or Option C

A. Pay the 30 per cent floor and keep full flexibility. A bucket company path lands at 63 to 70 per cent.

C. Restructure between 1 July 2027 and 30 June 2030. No capital gains tax, but state duty still applies.

Yes

Option B — make the election

Elect between 1 July 2028 and 30 June 2029. No trustee tax, beneficiaries taxed at their own rates, a bucket company taxed once at 25 or 30 per cent, and no stamp duty because nothing moves.

Vary the split later and you pay 47 per cent that year and lose the concession for good.

Most families will find the answer turns on the middle question, not the tax rates. A trust already distributing to adults taxed at 30 per cent or more may see no change under any of the three.

We are here to help

This has moved twice already and consultation is still open, so we are not suggesting anyone commit to anything yet. What is worth doing is working out which of the three options your structure is heading for, and whether a fixed split is one your family could live with for the life of the trust. We can work through that with you and coordinate with your accountant.

Book a complimentary chat with us, or call the office on 0478 745 533.

Navarino Wealth

Suite 3A, 356 Oxford St, Leederville WA 6007 | P 0478 745 533 | E admin@navarinowealth.com | W www.navarinowealth.com