The new trust tax — and the stamp duty question nobody has answered

Treasury has released its consultation paper on the 30 per cent minimum tax on family trust distributions. Here is what it confirms, what it leaves open, and why Western Australian families with a trust should take particular note.

In our Federal Budget update in May we flagged the Government's plan to tax distributions from discretionary (family) trusts at a minimum rate of 30 per cent from 1 July 2028. Treasury has now released the consultation paper that will shape the final legislation. There is some genuinely good news in it for families weighing up whether to keep their trust or wind it up — and one large, unanswered question that matters more in WA than almost anywhere else: state stamp duty.

30%	1 July 2028	31 July 2026	No CGT
minimum tax rate on trust distributions	slated start date for the new tax	Treasury consultation closes	confirmed for restructures out of trusts

In a nutshell

- The Budget plan to tax discretionary trust distributions at a minimum 30 per cent is on track to start on 1 July 2028; Treasury is consulting on the detail until 31 July 2026.
- Good news: families who restructure assets out of a trust will not pay capital gains tax on the way out, and the federal rollover relief will not be capped.
- The gap: the paper says nothing about state stamp duty — and WA is one of the two worst-placed states, charging duty on transfers of both real property and business assets.
- Industry bodies warn restructuring costs could run to hundreds of thousands of dollars — even millions — depending on the assets and the state. There is no need to rush: nothing starts for another two years.

A quick recap: what is changing

Discretionary trusts have long allowed families to spread investment and business income across beneficiaries, so some of it is taxed at lower marginal rates. Under the Budget measure, distributions from these trusts will face a minimum tax rate of 30 per cent from 1 July 2028 — removing much of the benefit of income splitting for beneficiaries on lower rates. Trusts will remain useful for other reasons (asset protection, estate planning, business succession), which is exactly why the keep-or-restructure decision needs care rather than speed.

What the consultation paper confirms

Two helpful things. First, families who decide the trust no longer earns its keep will be able to restructure assets out of the trust without triggering capital gains tax — a rollover relief that experts had feared might be capped. Treasury has indicated there will be no cap on the size of the relief. Second, the paper confirms the Government is still consulting on how the rollover will work in practice, including how distributions to tax-exempt bodies such as charities are treated. Feedback is open until 31 July 2026, with legislation to follow.

The gap: stamp duty is a state tax — and the paper is silent on it

Capital gains tax is federal; stamp duty belongs to the states. Moving a property or a business out of a trust is a transfer of ownership, and most states charge duty on at least some transfers — at full rates, the relief question entirely unaddressed in Treasury's paper. Tax bodies including the National Tax and Accountants' Association and CPA Australia have called the result a “postcode lottery”: the same restructure could cost little in one state and hundreds of thousands of dollars — in some cases millions — in another.

Where the trust's assets sit	Duty on real property transfers	Duty on business asset transfers
WA and Queensland	Yes — full transfer duty	Yes — duty applies here too
South Australia	No duty on non-residential property	No
Other states and territories	Yes, on all property	Generally no

Broad summary of current state duty settings on transfers out of a trust, as reported at July 2026. Duty outcomes depend on the asset, the entities involved and any concessions — always get specific numbers before acting.

Why this matters most in WA

Western Australia charges transfer duty on real property and on business assets — putting WA (with Queensland) at the expensive end of the country for trust restructures. A family whose trust holds an investment property, a commercial premises or an operating business could face a six-figure duty bill to move those assets into personal names or another structure, even though the federal CGT relief applies. Unless the states agree to their own rollover relief — and none has — the stamp duty cost may be the deciding factor in whether restructuring makes sense at all. Some families will genuinely be caught between paying the new 30 per cent tax to stay in the trust, or paying substantial duty to leave it.

A note on charitable giving

Charities themselves are excluded from the minimum trust tax. However, under the Budget-night design, a charity receiving a distribution from a discretionary trust would not be able to claim back the tax the trust has already paid. Treasury is consulting on this treatment — worth watching if your trust makes regular charitable distributions.

Key dates

May 2026	9 Jul 2026	31 Jul 2026	2026-27	1 Jul 2028
Federal Budget announces the measure	Consultation paper released	Feedback to Treasury closes	Legislation introduced	30% minimum tax starts

What this could mean for you

If you...	What's worth doing
Have a family trust	Do not rush to restructure. The CGT relief is confirmed, but the stamp duty position is not — and the tax does not start until 1 July 2028.
Hold property in a trust	In WA, moving real property out of a trust can attract full transfer duty. Get the actual duty numbers before making any decision.
Run a business through a trust	WA also charges duty on business asset transfers, so a restructure can cost more here than the same move would in most other states.
Are weighing keep vs wind up	Model both paths — the ongoing 30 per cent tax against the one-off exit costs — with us and your accountant, once the rules are settled.

We are here to help

If your family uses a discretionary trust, this is the biggest change to trust taxation in decades — but it is a decision for the next two years, not the next two weeks. We can work through what the new rules mean for your structure, and coordinate with your accountant on the keep-or-restructure numbers once the legislation lands.

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

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