Impact of minimum tax on discretionary trust

The cost of building and construction work will increase as a result of these reforms placing another handbrake of productivity adversely impacted housing affordability. Whether it's due to restructuring costs, other licensing and administrative costs or diminishing returns, businesses will look to recoup these expenses for their clients and homeowners. The impacts will disproportionately affect small business in the building and construction industry. About one in five construction businesses (20.1 per cent) are structured as Trusts.

Direct and ongoing cost.

- For a small construction family owned business with a taxable income of $400,000 the business is looking at **tax increases of up to 70 percent plus an ongoing yearly expense of between ~$21,000 – $67,500 and a one of restructure cost of between $82,000 – $175,000 that could take a up to a year to complete.**
- Professional accounting and legal advice
- Administrative costs associated with establishing a new business structure such as notifying customers, changing marketing and advertising material, registering business names and changing licensing details will be required to be funded by the business.
- State and territory **stamp duty costs** with no guarantee of any concessional treatment or relief as a result of a restructure in response to these reforms. **Master Builders estimates that the average construction industry trust had approximately $1.6 million in non-current assets and on this basis a construction company could pay up to $51, 112 in tax in NSW a Victorian business would have to pay around $65,000 in duty, but a similar business in the ACT would pay $40,500 around $25,000 less**
- Diminishing profits by restricting the distribution of legitimate income becomes a barrier to growth and investment, as the risks associated with such decisions may no longer be offset by the rewards.

Unintended consequences

Business restructure in the building and construction industry has a range of consequences that have not yet been surfaced. These include:

- **Operational and implementation burden**

- **Consumer protection obligations severed:** Statutory warranty and insurance claims are jeopardised as the entity that carried out the work no longer exists. This means homeowners with legitimate defective work claims have severely limited options for recourse. A regulatory gap emerges as a result of federal government reforms.
- **Licensing implications:** Those operating in a sector of the building and construction industry that require a license/registration will be required to secure a new license in the new entities name imposing cost and time obligations and jepardising existing business arrangements.
- **Contractual implications:** Contractual rights, obligations and liabilities are disturbed impacting a party's ability to sue and/or claim for compensation. Business will be required to enter into legal arrangements to transfer contracts on foot to a new entity.
- **Business viability is jeopardised:** Any businesses that restructure is treated as a new entity for a range of regulatory and compliance requirements. Starting 'afresh' may jeopardise a building businesses ability to continue trading in the same way and at the same levels as in the past.
- **Perception of phoenixing by regulators and customers:** Changing licensing arrangements and transferring contracts on foot raises adverse perceptions regarding the business practice and long term viability.
- **Other forms of insurance:** Newly established entities are treated as 'new' impacting the ability to secure insurance at the same level and cost when compared to that obtained through the prior entity Including workers compensation, contract works, and public liability insurance.

Recommendations

1. **Grandfathering arrangements:** The minimum 30 per cent tax arrangements should only apply to discretionary trusts entered into after commencement i.e. 1 July 2028. This removes the unenviable choice for small businesses between higher tax burden vs costly and risky restructure. This also mitigates against a range of direct, and unintended consequences for the building and construction industry should these reforms progress.
2. **A permanent small business carve out:** Small businesses with a turnover of up to $10 million should be exempt from the changes to the tax arrangements. This mirrors the recent changes captured by the *Treasury Laws Amendment (Tax Reform No. 1) Bill 2026* that increased the turnover threshold for the existing small business 50 per cent active asset CGT reduction from $2 million to $10 million.
3. **Narrow definition of discretionary trust:** Treasury should adopt a narrow and precise definition of discretionary trust. Many commercial trusts contain powers or discretions that may technically prevent them from being fixed trusts, even where the arrangement does not present the perceived integrity concerns targeted by the proposal. A broad definition could inadvertently capture unit trusts, business succession structures, family investment structures and other commercial arrangements that should not be treated in the same way as ordinary discretionary family trusts.
4. **A formal regulatory impact assessment must be conducted:** That assessment should quantify the number of affected trusts, trust-owned businesses and trust-shareholder private company groups in the building and construction industry and across the SME economy more broadly. The analysis should also cover state and territory building licensing, home warranty insurance, statutory warranties, consumer protection, security of payment rights, tender prequalification, finance covenants and the treatment of historical regulatory records following a restructure.