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‘There’ll be a crisis point’: 26-year backtrack prediction on 30% minimum trust tax

One tax lawyer has said that the “astronomically complex” discretionary trust tax proposal from the Albanese government, “at some stage”, could end up where the Coalition was with their proposal in late 2000, following a “crisis point”.

24 September 2026 • By Carlos Tse, Accountants Daily and Matthew Burgess, View Legal

A tax lawyer has described the government’s proposed discretionary trust minimum tax regime as ill-considered, completely unworkable, and a straight tax grab, when comparing it to the Howard government’s 11 October 2000 taxation of discretionary trusts exposure draft materials.

While the 2000 legislation, which proposed that non-fixed trusts were to be taxed like companies, was scrapped after submissions raised technical problems, particularly in relation to distinguishing the source of different distributions, and valuation and compliance issues, View Legal director Matthew Burgess told Accountants Daily that there are some things that the current government can learn from the 26-year old proposal.

“It [did] exactly what they’re claiming they [wanted] to do, which is achieving consistency between entities,” he said.

“Whereas [with] this new approach, not only doesn’t [it] address any of the historical problems, it basically just tries to reinvent a wheel that was already built 26 years ago.”

Compared to the government’s latest exposure draft, the 11 October 2000 version provided 24 days of consultation, which ended on 3 November that same year.

Although Burgess said he does not completely endorse the 26-year-old entity taxation regime, it at least tried to move past a tax system that has been broken for the past two or three decades.

“You’ve got the smartest tax brains in the country saying quite transparently, they don’t understand how those new rules work in material ways, so the whole thing’s just going to become astronomically complex; it’s going to get tied up in litigation, and I suspect that there is going to be every chance that at some stage they’ll go, ‘we probably should just go with the stuff we wrote back in 2000’,” Burgess said.

“At some stage they’re going to have to come back and have another recut at all of this, because they did such a shoddy job in the first place.”

The income splitting argument

In its initial consultation paper released on 8 July, Treasury said that discretionary trusts allow income splitting which “reduces the progressivity of the tax system”.

“They’re playing the player, not the ball, so they’re actually focusing on the wrong thing,” Burgess said.

He told the brand that the government already has sufficient integrity measures in place to address this, such as section 100A, Division 7A, and Part IVA.

“There are multiple layers [that] the Tax Office regularly uses if they are concerned about income splitting.”

“No one’s seen anything like this, no matter which brand of “Big Gov” [sic] is in control.”

“It makes a mockery of the entire system, and the reality is that the more piecemeal they are in their approach, the more rushed they are in the approach, the more they keep having to backtrack and change this here or change that there or reserve rights to the minister to make changes, just makes the prospect of what people refer to as “planning opportunities” or “loopholes” enormous.”

For Burgess, the minimum trust tax regime is overall “ill-considered”, with integrity “so far removed” from the government’s rhetoric.

“They’re saying they’ll listen to industry, they’re saying that there’s a material problem they’re trying to address, they’re saying that this will provide a pathway to achieve the socialist equality that they’re saying is so important, but in fact, this is a straight tax grab”.

“At some stage, as it continues to get more and more out of control, and you’ve got more and more people just saying, ‘well, this is all too hard, I’m going to leave the country’, the crisis point.”

“It may not be this year or next year, but there’ll be a crisis point in relation to the taxation of trusts, and I suspect one of the first casualties will be that they get rid of the minimum tax of 30 per cent because it is simply proven to be completely unworkable.”