A Matter of Trusts - Options A, B and C - side by side

Status: Exposure draft legislation released 3 September 2026 - NOT YET LAW. Consultation closes 18 September 2026.

Consideration	OPTION A Pay the 30% minimum tax	OPTION B Restructure under the roll-over relief	OPTION C Lock in nominated beneficiaries (election)
What each option actually is:			
In plain English	Keep the family trust exactly as it is. From the 2028-29 year the trustee pays 30% tax on the trust's net income, and beneficiaries top up or absorb the difference.	Move the trust's assets and/or business into a Company or into a Fixed/Unit trust before 30 June 2030.	Keep the original trust, but the Trustee gives up the discretion of distributing income to beneficiaries of its choosing each year. In the 2028-29 year the trustee nominates the beneficiaries and fixes each chosen beneficiary's share of income and capital. The trustee is then not subject to the minimum 30% tax.
Action required	None. This is the default if nothing is done.	Substantial. Establish the new entity, transfer all relevant assets, deal with stamp duty (if applicable), financiers, licences, leases and employees, then wind the existing trust down.	Brutal and exacting. Review the trust deed which will require expensive legal advice. Then decide the permanent beneficiary split taking ALL beneficiaries into account and make and notify the election in the 2028-29 year.
Timing	Automatic from the 2028-29 income year.	The transfer of assets must occur between 1 July 2027 and 30 June 2030. All assets that must move have to move within that window or relief is lost for all of them.	The trust must exist on 1 July 2028 meaning this Option C will not be available for new Trusts set up after this date. The election can only be made in the 2028-29 income year. One election per trust, ever.
Flexibility afterwards	Full discretion retained. The trustee can still choose who receives income each year - it is simply taxed at a minimum of 30% first.	Whatever the new structure allows. A Company pays dividends to fixed shareholdings. A Fixed/Unit Trust distributes pre-tax income to fixed unitholders. Discretion cannot be reintroduced during the four-year clawback period.	Effectively none. The nominated percentages are locked in for each year until the Trust ceases. The only changes allowed are on the death of a nominated beneficiary or where there is a relationship breakdown between two nominated beneficiaries.
Reversibility	Fully reversible - Option B or C can still be considered while their windows are open.	Not practically reversible. Once used, the trust can no longer make the Option C choice.	Revocable, but never remakeable. Revocation is punitive - see the disadvantages below.
Tax outcomes			
Tax on trust income	30% at trustee level on the trust's net income, whether distributed or accumulated. Tops up any tax already paid so the effective rate is at least 30%.	A Company is taxed at the corporate rate of either 25% for operating businesses and 30% for passive investment companies. Franking credits allowed on the payment of dividends to shareholders. A Fixed/Unit Trust distributes pre-tax profits to its unitholders who pay tax at their applicable tax rates.	Ordinary trust taxation continues. Beneficiaries are taxed on their fixed share at their own marginal rates but there is no minimum 30% tax rate for them.
Beneficiaries on low rates	Disadvantaged. The offset is non-refundable, so a beneficiary whose marginal rate is below 30% loses the benefit of the excess.	Family members in low tax brackets can genuinely hold the units or shares and benefit in the lower tax rates that may apply to them.	Preserved - but only in the fixed percentages nominated, which cannot then be changed as circumstances change.
Bucket company / corporate beneficiary	Heavily penalised. A corporate beneficiary receives no offset for the trustee's 30%, so trust income routed to a bucket company is taxed twice before it reaches a shareholder meaning a tax rate of 63-69%!	The problem disappears if the group is converted to a Company, because there is no longer a discretionary Trust distribution in the chain.	A company can be a nominated beneficiary provided it is an "eligible company". An "eligible company" is broadly one with no discretionary features in members' rights. Dividend Access Shares or Alphabet share classes will not qualify.
Franking credits	Used by the trustee against the minimum tax; excess is refundable to the trustee, NOT to the beneficiaries.	Normal company imputation applies in a corporate structure. Existing franking account balances need careful planning before any wind-up.	Ordinary flow-through treatment continues, in the fixed nominated proportions.
Capital gains tax (CGT)	Net income includes net capital gains. Treasury has flagged that further legislation will deal with CGT interactions - treat this as unresolved.	The roll-over provides relief from CGT on the transfer itself. The transferee inherits the Trust's original cost base, so the gain is deferred, not forgiven.	Ordinary CGT rules and the CGT discount continue to apply in the fixed proportions. Note this is an area flagged for further legislation.

Advantages			
Key benefits	- No transaction costs, no duty, no deed changes and no costly fees now. - Complete discretion is retained for asset protection, succession and annual distribution decisions. - Nothing is locked in, so the trust can respond to future changes in the law. - Simplest to explain and administer; no monitoring obligations. - Make sense where the trust's income is small, or it has a large amount of excluded income such as Primary Production income, or the income is distributed to beneficiaries taxed above 30%.	- Removes the trust from the minimum 30% tax regime permanently. - Relief from income tax and CGT on the transfer, plus relief from family trust distribution tax. - A corporate structure caps tax at the company rate and allows profits to be retained for reinvestment. - Clean, well-understood structure for finance, external investors and eventual sale. - Available to investment groups as well as active businesses, and is not limited by turnover.	- Avoids the minimum tax without transferring a single asset. - No transfer of business, contracts, licences, leases or employees. - The cost of Stamp duty on a full restructure per Option B may be avoided but see Key Drawbacks below. - Existing trust, ABN, bank accounts and history are preserved. - Any number of beneficiaries can be nominated, including individuals, eligible companies, eligible trusts and income tax exempt entities.
Disadvantages			
Key drawbacks	- A hard 30 % minimum tax on trust income. - Beneficiaries on marginal rates below 30% are worse off, because the offset (ie the tax the trustee paid) is non-refundable. - Distributions to a bucket company become uneconomic - no offset is available to a corporate beneficiary. - Franking credits are absorbed at trust level instead of flowing to beneficiaries. - The trustee must fund the tax payable which may have cash flow issues for some trusts.	- State stamp duty, landholder duty and land tax are NOT relieved. In many cases duty this is the SINGLE largest cost and can make this Option B uneconomical and impractical. - Only ONE transferee entity is permitted, which limits asset protection and estate planning designs. - All assets that are required to be transferred must move by 30 June 2030 or relief is lost for all of them. - A four-year clawback applies after the final transfer if discretionary elements are introduced into the new entity. - Loss of the trust's flexibility in distributing income and capital. For Companies, the loss of the CGT general concession and more difficult application of the small business CGT concessions. - For Fixed/Unit Trust, the more difficult application of the small business CGT concessions and the potential application of CGT event E4. - Trust losses and franking balances do not simply carry across; each needs specific planning.	- All Trustee Discretion is gone. Percentages are locked in and cannot be varied for a beneficiary's changed income, financial hardship, relocation, loss of capacity or a falling-out. - Each beneficiary's income percentage must equal their capital percentage, and the total must be 100% - so income splitting and capital splitting can no longer be set independently. - Automatic revocation is easy to trigger. This includes distributing NOT in the nominated proportions, a share transfer in a nominated eligible company or a share issue in nominated eligible company. - Revocation has severe consequences. For that year beneficiaries are treated as never having been presently entitled and the trustee is taxed at the top marginal rate plus Medicare levy which is currently 47%. Also, the 30% minimum tax applying from the following year, ie the trust reverts to Option A. - The election can never be remade. - Making distributions rigid may sit uncomfortably with the trustee's duties and will often require a deed amendment - which itself carries duty and resettlement risk. - Ongoing monitoring of nominated companies' shareholdings becomes a massive compliance obligation and burden.
Key drawbacks (cont.)			- Finally Stamp Duty. Within days of the announcement of this Option C by the Federal Government, State Governments repeated their claim that they would not give up the Stamp Duty taxing rights. There is a general consensus in the legal community, that fixing the entitlements in a discretionary trust may be a resettlement of that trust and stamp duty is likely to apply. We wait for an answer on this matter.
Choice Lockouts	Choosing this Option A, aka doing nothing forfeits the ability to choose Option B or Option C once their availability windows close.	Choosing this Option B forfeits the ability to choose Option C.	Choosing Option C means you do not choose Options A or B but you might end up at Option A if the Trustee makes the wrong distribution.

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Worked example - a typical family group

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The facts

- A family trading trust operates a services business. The corporate trustee is controlled by the two parents.
- The parents are both on the top marginal rate. Two adult children are at university with little other income.
- The trust owns goodwill, plant and equipment, and its business premises (real property in one state).
- The trust distributes to the parents, to each child up to the tax-free threshold, and the balance to a bucket company.
- The bucket company has an accumulated franking account and has lent funds back to the trust under a Division 7A loan.

Aspect	OPTION A - Pay the minimuim 30% tax	OPTION B - Restructureto a new Company or a Fixed/Unit Trust	OPTION C - Lock in beneficiaries with an Election
What happens to the business	Nothing changes. The trust continues to run the business and distribute as before.	The business, goodwill and plant are transferred to a new company (or unit trust) between 1 July 2027 and 30 June 2030. The premises must also move if relief is to be preserved.	Nothing moves. The trust continues to run the business.
The parents	Their share is taxed at the top rate, with a 30% offset for the trustee tax. Broadly no worse off, but the tax is paid earlier at trust level.	They become shareholders or unitholders. Profits are taxed in the company and released as franked dividends when needed.	They are nominated with fixed percentages of income and capital, which then cannot change.
The university-age children	The tax benefit of distributing to them is largely lost. The 30% trustee tax is non-refundable in their hands, so distributions below the 30% rate no longer help.	They can only benefit if they genuinely hold shares or units - a permanent commitment with its own family and asset protection consequences.	They can be nominated - but at a percentage that is fixed for life, whatever they go on to earn. If one later earns a high income, the split cannot be redirected.
The bucket company	Becomes uneconomic. No offset is available to it, so income routed there is taxed at 30% in the trust and again in the company.	Typically absorbed into the new structure, or retained only for its existing retained profits and franking account.	It can be nominated if it is an eligible company - broadly, one ordinary class of shares with no discretionary rights. Any later change to its shareholders will revoke the election.
The business premises	Unaffected.	The single largest issue. Transferring the property triggers state duty, which the roll-over does not relieve. Financier consent and any lease will also need to be dealt with.	Unaffected - no transfer occurs. Duty on any deed amendment still needs to be confirmed.
Division 7A loans	Continues, with minimum yearly repayments still required.	Needs to be dealt with as part of the restructure, and is a common trap.	Continues unchanged.
Practical conclusion for this family	A reasonable interim position, but it accepts a permanent increase in the group's tax, mainly through the loss of the bucket company and the children's distributions.	Often the best long-term answer for a growing business that retains profits - provided the duty on the premises does not overwhelm the benefit. The premises are sometimes better left in the trust and leased to the new company, but the all-assets condition must be checked before assuming that.	Attractive only if the family is confident the split will never need to change. With children whose circumstances are still forming, the inflexibility and the harsh revocation rules usually outweigh the saving in duty.

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