MASTER BUILDERS
AUSTRALIA

The Treasury
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Minimum tax on discretionary trusts – exposure draft legislation

On 3 September Treasury released exposure draft legislation that looks to implement a 30 per cent minimum tax on certain discretionary trusts from 1 July 2028 (Exposure Draft).

Master Builders response focuses on one key aspect of the draft legislation being the new electable regime for exclusion from the minimum tax (EET Election).

While on face value, the option to elect to have a discretionary trust treated as a fixed trust (by making fixed distributions to pre-nominated beneficiaries) may avoid the 30 per cent tax and some restructure costs in the short term, over the longer term such consequences remain a live consideration for businesses, particularly small businesses operating in the building and construction industry.

These complex tax changes will affect about one in five construction businesses which are almost entirely small businesses, poses an industry wide risk to the sector and to the nation's housing supply challenges.

For small business, the proposed EET Election does not resolve the issue that the discretionary trust has been a long-established structure used for asset protection, succession planning, risk management, and flexibility in managing the often-variable income that comes with trading on one's own account.

The no-win situation that Master Builders has consistently called out since the announcement of these reforms in the Federal Budget remains the case.

Master Builders continues to oppose the reforms.

The only common-sense way to allow their fair implementation is through the adoption of grandfathering arrangements that offer certainty to existing businesses, particularly small businesses which make up 98 per cent of the construction industry, while enabling new businesses to make a clear and informed choice based on current legislative arrangements that would ultimately include the proposed 30 per cent tax.

Should the reforms progress as is and without any grandfathering arrangements, Master Builders calls for indefinite roll-over relief to ensure that those who choose the EET Election are not disadvantaged in the future.

The Trojan Horse

The EET Election acts like a Trojan Horse.

There is a perception that under the proposal those operating as a discretionary trust can 'deem' those arrangements as a fixed trust arrangement, do nothing and avoid the 30 per cent tax.

This is clearly incorrect.

Under the EET Election key aspects of a discretionary trust must be forfeited; making fixed distributions to pre-nominated beneficiaries undermines the very nature of a discretionary trust.

Further, in cases where an EET Election is made there is a risk that greater costs will be incurred at a future point when there will (invariably) be a desire to make a change to distributions and/or beneficiaries. The added risk in this scenario is the likely loss of the roll over relief which is time limited to 3 years from 1 July 2027.

In fact, an EET Election adds yet another layer of complexity with businesses being forced to consider whether to:

- **Do nothing,** retain a discretionary trust and incur the 30 per cent tax, or more if beneficiaries include companies.

- **Restructure now,** lose long standing protections and flexibilities, incur significant restructure, business and professional services cost but take advantage of some roll over relief from Commonwealth costs only.

- **Take up the time limited EET Election** avoiding a 30 per cent tax now but delaying the inevitable. These businesses still lose long standing protections and flexibilities associated with discretionary trusts immediately, but also risk losing roll over relief when there will be an inevitable future desire to change distributions and/or beneficiaries. As outlined in the Exposure Draft any changes to those fixed arrangements will void the EET Election leading to the imposition of the 30 per cent tax forcing consideration of restructuring.

Master Builders continues to rely on our previous submission in response to the proposed reforms which set out in detail the costs and consequences of this proposal.

Yours sincerely,

Master Builders Australia