Minimum Trust Tax arrives

Navigating Treasury's draft legislation

Alexis Kokkinos
Executive Director

Pitcher Partners Advisors Proprietary Limited
ABN 80 052 920 206

Agenda

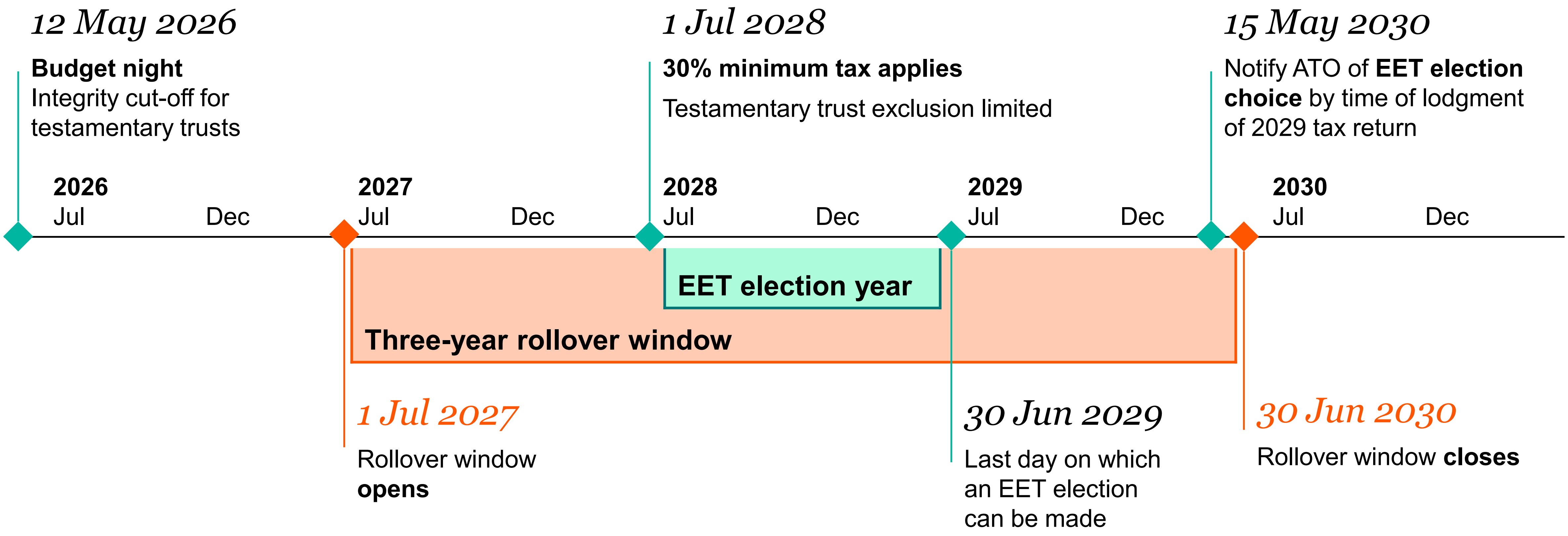
What we are covering today

- Overview
- Examples
- Restructuring options
- Excluded election trust
- Case study
- Future structures

Overview

Key dates

Minimum tax on discretionary trusts



EXPOSURE DRAFT

EXPOSURE DRAFT

Inserts for

Treasury Laws Amendment Bill 2026: Minimum tax on discretionary trusts

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1.		
2. Schedule 1	At the same time as the *Income Tax Rates Amendment (Minimum Tax on Discretionary Trusts) Act 2026* commences. However, the provisions do not commence at all if that Act does not commence.	
3.		

3 September 2026

Exposure draft legislation – Minimum tax on discretionary trusts

The Hon Dr Jim Chalmers MP
Treasurer

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The Albanese Government is today releasing draft legislation to implement the core components of the minimum tax on discretionary trusts announced in the 2026–27 Budget.

We're delivering a fairer tax system and helping fund tax cuts for workers by better aligning the tax rate on trust income with tax rates paid by workers.

The draft legislation builds on the consultation paper released in July and includes expanded options to limit or eliminate restructuring costs for small businesses and others using discretionary trusts.

This includes a new option for discretionary trusts to be exempt from the minimum tax if they elect to make fixed distributions to pre-nominated beneficiaries, as an alternative to roll-over relief. The election would not require a restructure and is not expected to result in state and territory stamp duties.

The Government has been clear that a range of trust types will be excluded including charitable trusts, special disability trusts and superannuation funds, as well as primary production income and certain income relating to vulnerable minors. Deceased estates and all discretionary testamentary trusts established for genuine testamentary purposes will also be excluded.

The draft legislation also ensures that all distributions from trusts to registered charities and deductible gift recipients (DGRs) are also exempt. Distributions to other income tax-exempt entities like sporting clubs will also be exempt, up to a reasonable cap to be finalised following consultation.

The draft legislation also sets out other implementation details including:

- A new definition of fixed trusts to help ensure a range of commercial trust types that do not have material discretionary elements are not captured by the minimum tax. This includes widely held trusts, managed investment trusts, bare trusts and employee share trusts.
- Details of the expanded roll-over relief that will be available for three years from 1 July 2027 to assist taxpayers that wish to restructure out of a discretionary trust into other arrangements.
- Refunds for franking credits that relate to income subject to the minimum tax, which remain after the trustee has offset its income tax liabilities.

Less than 10 per cent of Australia's 2.7 million active small businesses will be affected by these reforms in any given year.

Consistent with other significant tax reforms, the Government will continue to finalise implementation of these changes in further tranches of legislation, including administrative and integrity arrangements as necessary. Legislation to address implementation of the 2018 Budget measure on unpaid present entitlements that was announced but not enacted by the previous Government will be progressed separately.

The Government thanks the many stakeholders and community members who have already contributed to the consultation process and invites further feedback on this reform.

Discretionary trusts: minimum tax

Overview of the rules

30% minimum tax on discretionary trust income from 1 July 2028

Non-refundable credit

Only for **individuals and non-corporate beneficiaries**

Corporate beneficiaries do not receive credits

Trustees must use franking credits to meet minimum tax

Prevents conversion to **refundable franking credits**

EXAMPLE 1

Discretionary trusts: minimum tax

Basic example

The Trust	
Income	120,000
Expenses	(20,000)
Net taxable income	**100,000**
Minimum trust tax @ 30%	(30,000)
Net after tax profit	**70,000**

Distributes 100% to Beneficiary A

Beneficiary A	
Trust distribution received	70,000
Gross up for tax offset	30,000
Other income	20,000
Taxable income	120,000
Income tax payable	26,252
Tax offset	(30,000)
Medicare levy	2,400
Total tax payable	2,400

Minimum tax trusts

Which trusts are in scope?

Non-fixed
trusts

Proposed expanded definition of fixed trust to include those trusts with no material discretionary elements

EET Trusts
excluded

Trusts that have made an Excluded Election Trust (**EET**) election are excluded

Other exceptions

Does not include deceased estates, certain testamentary trusts, super funds, and charities

Certain income exclusions e.g. primary production income and income subject to non-resident withholding tax

Testamentary trusts (TT)

Overview of proposed rules

For qualifying testamentary trust, no 30% minimum tax applies if

Genuine testamentary purpose

Trust must be established for genuine testamentary purpose

Integrity rules limit ability to introduce property to the estate to avoid the minimum tax

Only applies to assets derived from estate

Exemption is not available for all income of the TT

Only for income generated from assets of the deceased estate

Creating new testamentary trusts

For TT established after 1 July 2028, net income will only be excluded if the beneficiaries are individuals or exempt entities.

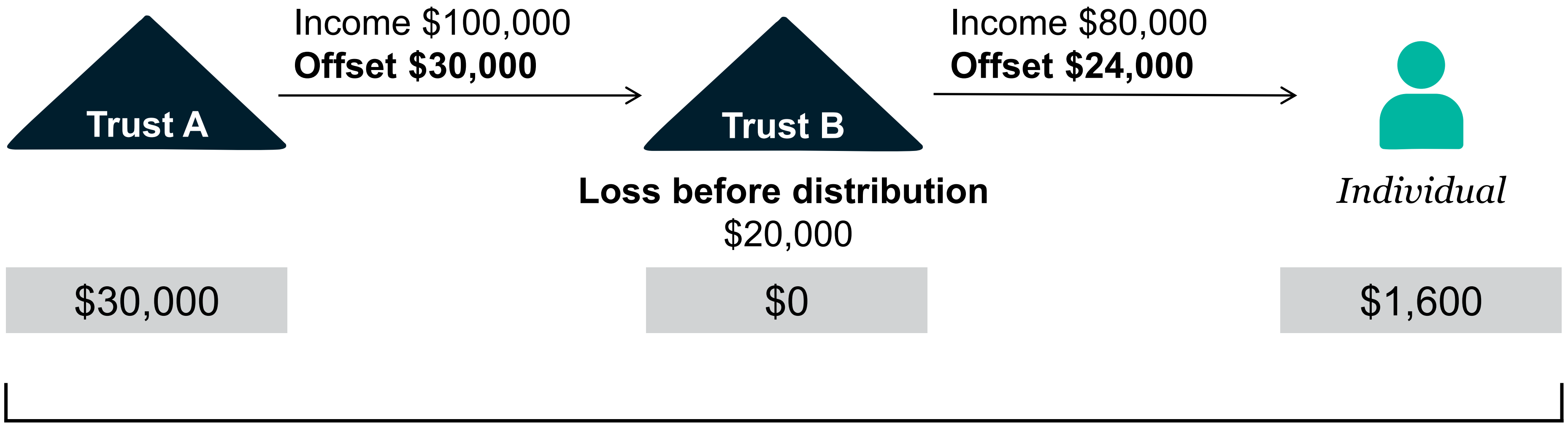
Changes to wills may be required

A testamentary trust may still be established **after 1 July 2028** even if the will was signed years ago

Examples

EXAMPLE 2

Distributions to other trusts



TOTAL TAX PAID

$31,600

Total tax paid is $30,000 (minimum tax) plus $1,600 of Medicate levy
Tax losses do not reduce this amount and are wasted

EXAMPLE 3

Distributions to corporate entities

Family **Trust** → Income $100,000 **Offset $0** → **A Co** → Dividend $40,000 **Franking credit $17,143** → *Individual* Top MTR

Family Trust	A Co	Individual
$30,000	$30,000	$9,714

TOTAL TAX PAID

$69,714

Distributions through a corporate beneficiary could result in a tax rate of 69.7%

EXAMPLE 4

Franked distributions received by a trust

Current law

A Co

Dividend $70,000
Franking credits $30,000

Family Trust

Other losses
$50,000

Income $50,000
Franking credits $30,000

Individual

TAX PAID $30,000	**TAX PAID** $0	**TAX REFUND** ($23,748)

TOTAL TAX PAID

$6,252

Current law ensures total tax paid aligns with
$50,000 of taxable income earned by beneficiary

EXAMPLE 4

Franked distributions received by a trust

Proposed changes

A Co

Dividend $70,000
Franking credits $30,000

Family Trust

Other losses
$50,000

Income $50,000
Trust tax Offset $15,000

Individual

A Co	Family Trust	Individual
NEW TAX PAID $30,000	NEW TAX PAID ($15,000)	NEW TAX PAID $1,000

TOTAL TAX PAID

$16,000

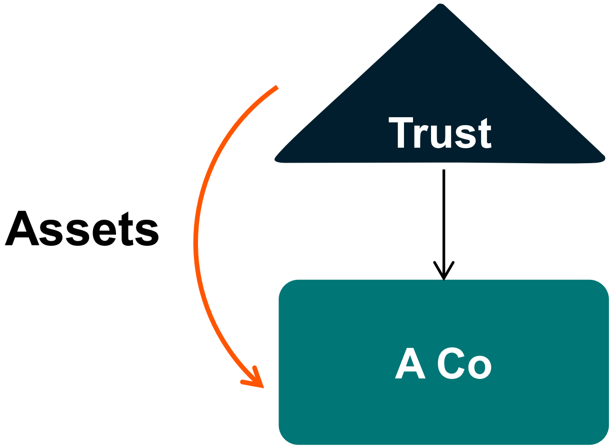
Proposal results in minimum tax of 30% on
the total income of $50,000 plus $1,000 Medicare Levy

Restructure options

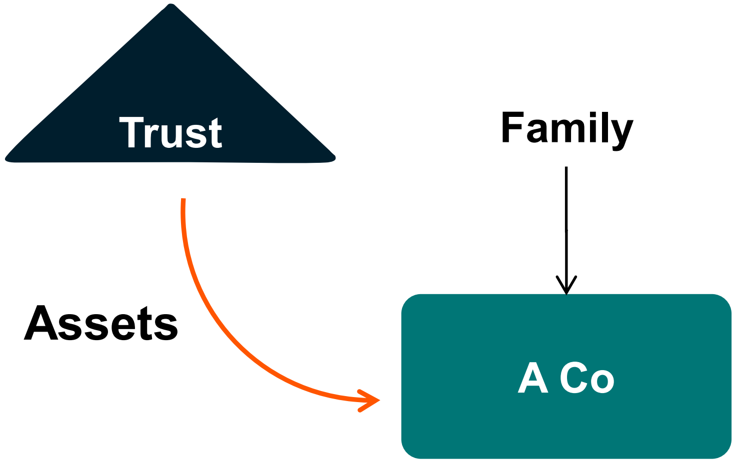
122-A or 126-C?

Restructuring options

Existing 122-A



New 126-C



Rollover requires consideration of
stamp duty, transaction costs, and commercial considerations

Restructuring

Proposed eligibility for new Subdivision 126-C rollover

Time restrictions

Rollover relief of 3 years from 1 Jul 2027

Choice and notification requirements apply

All assets

Must transfer all assets other than limited exclusions
e.g. primary production, assets not capable of transfer, assets less than $1,000

All assets must be to same transferee

Transferee

Can be any type of entity other than

- Discretionary trust
- Tax exempt entity
- Super fund
- Company with discretionary elements
- Entity owned by a discretionary trust **

Residency

Transferee has to be Australian resident

Continuity requirements

For an FTE trust, no individual outside the family group can hold a direct or indirect interest in transferee

No pathway currently available for non-FTE trusts until legislative instrument is made

Excluded election trust

Excluded Election Trust (EET)

New option intended to reduce restructuring costs

Trusts that make an EET election are excluded from the minimum tax
but must nominate "fixed" beneficiaries (of income and capital)

Time restrictions

One-time deadline
Discretionary trusts must make election during 2028–29 income year; it cannot be chosen later

Birth / newborn tax
Under current draft guidelines, only for **beneficiaries who exist as of 1 Jul 2028**

Variation and revocation

Variations only for death and divorce

Revocations can be voluntary or automatic

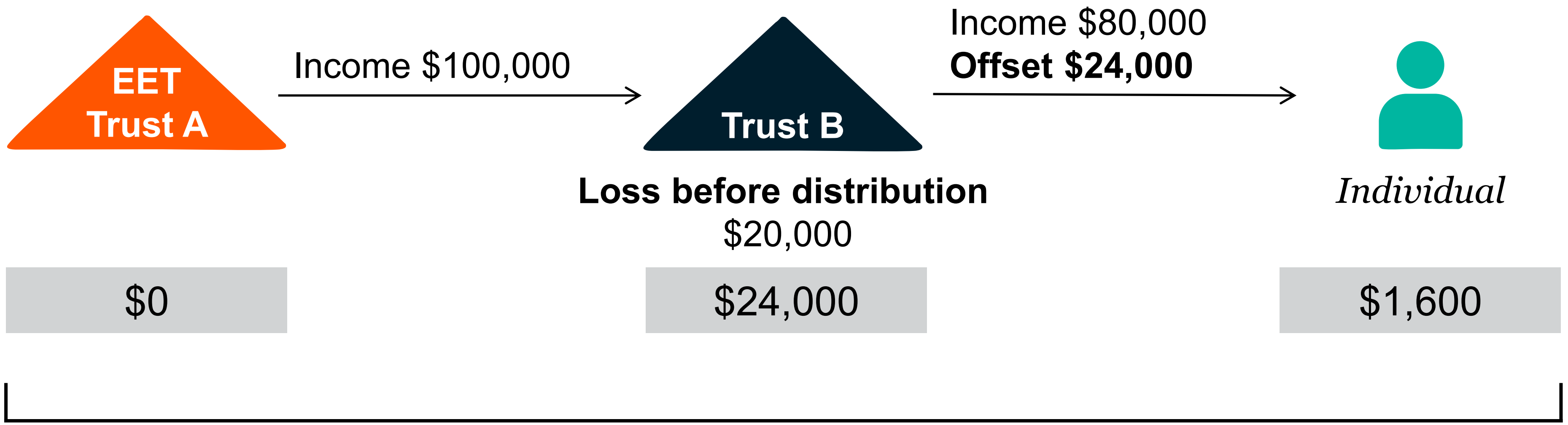
- Distribution inconsistent with nomination
- Change of shareholding in or wind up of corporate beneficiary

Strict penalties upon revocation
EET status is permanently revoked and net income is taxed at 47% for year of revocation (including loss of CGT discount and indexation for gains in that year)

EXAMPLE 5

Distributions to other trusts

Effects of an EET



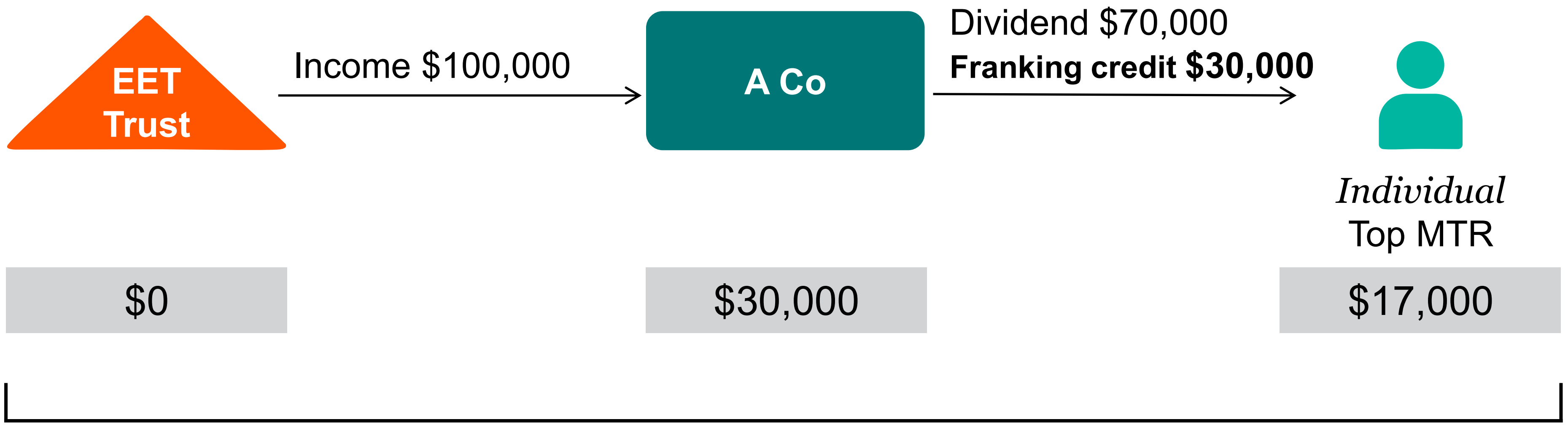
TOTAL TAX PAID

$25,600

Minimum tax paid is reduced by the tax losses
Addresses issue outlined in Example 2

Distributions to corporate entities

Effects of an EET



TOTAL TAX PAID

$47,000

Penalty for corporate beneficiaries is removed and tax rate restored to 47%
Addresses issue outlined in Example 3

Current concerns with the EET

Duty
concerns

Fiduciary obligations

Owies v JJE Nominees Pty Ltd concerns

Loss of CGT concessions
when choosing a corporate

Commercial and family considerations

Case study

Case study

Considering various structuring options

Gain **$40m**
(50% discount)

Gain **$10m**
(indexation $4m)

1 July **2000**

Asset acquired for **$10m**

1 July **2027**

Asset's market value **$50m**

30 Jun **2030**

Asset sold for **$60m**

Rental yield **$6m**

Options

1 **Retain**

2 **Restructure**
Stamp duty 3.23m

3 **EET**

Case study

Option 1 – Retain asset in trust, distribute to individual

Tax outcome from 1 July 2027 to 30 June 2030	Gross amount	Tax	Net amount
Rental income	$6.00m	$2.82m	$3.18m
Pre-2027 gain (discounted) – asset	$40.00m	$9.40m	$30.60m
Post-2027 gain (indexed) – asset	$10.00m	$2.82m*	$7.18m
Sale proceeds (return of capital)	$10.00m	–	$10.00m
Net proceeds available to individual	**$66.00m**	**$15.04m**	**$50.96m**

*tax on indexed gain of $6m

Case study

Option 2 – Restructure to wholly owned company (122-A or 126-C)

Tax outcome from 1 July 2027 to 30 June 2030	Gross amount	Tax	Net amount
Rental income	$6.00m	$1.80m	$4.20m
Fully franked dividend ($4.2m)	$0.00m	$1.02m	($1.02m)
Pre-2027 gain (discounted) – shares	$40.00m	$9.40m	$30.60m
Post-2027 gain (indexed) – shares	$10.00m	$2.82m*	$7.18m
Sale proceeds – return of original capital	$10.00m	–	$10.00m
Stamp duty	$0.00m	$3.23m	($3.23m)
Net proceeds available to individual	**$66.00m**	**$18.27m**	**$47.73m**

*tax on indexed gain of $6m

Case study

Option 3 – EET to company

Tax outcome from 1 July 2027 to 30 June 2030	Gross amount	Tax	Net amount
Rental income	**$6.00m**	**$1.80m**	**$4.20m**
Pre-2027 gain (non-discount)	$40.00m	$12.00m	$28.00m
Post-2027 gain (non-discount non-indexed)	$10.00m	$3.00m	$7.00m
Sale proceeds – return of original capital	$10.00m	–	$10.00m
Total (funds retained in company)	**$66.00m**	**$16.80m**	**$49.20m**
Fully franked dividend ($39.2m)	$39.20m	$9.52m	$29.68m
Net proceeds available to individual	**$66.00m**	**$26.32m**	**$39.68m**

Case study

Considering various structuring options

1 Retain

Net proceeds **$50.96m**

Total tax **$15.04m**

2 Restructure

Net proceeds **$47.73m**

Total tax **$18.27m**

3 EET

Net proceeds **$39.68m**

Total tax **$26.32m**

$3.23m

Stamp duty

$11.28m

Indexation sheltering $1.88m

CGT discount $9.40m

Future structures

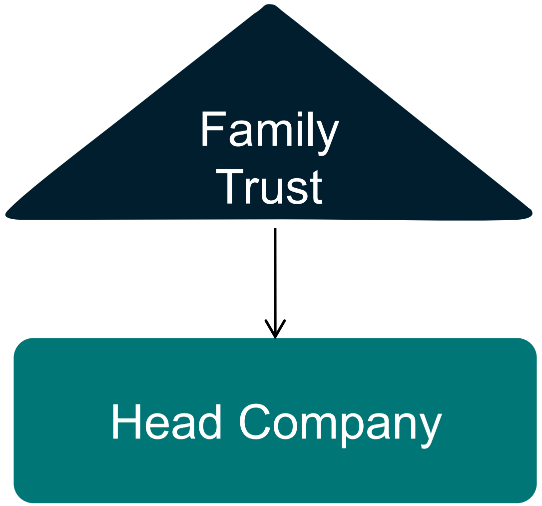
What to do with new acquisitions

What to consider

- Retention at corporate rates
- Asset protection
- Distribution flexibility
- Indexation benefits
- Access to losses and grouping
- Reporting
- Funding

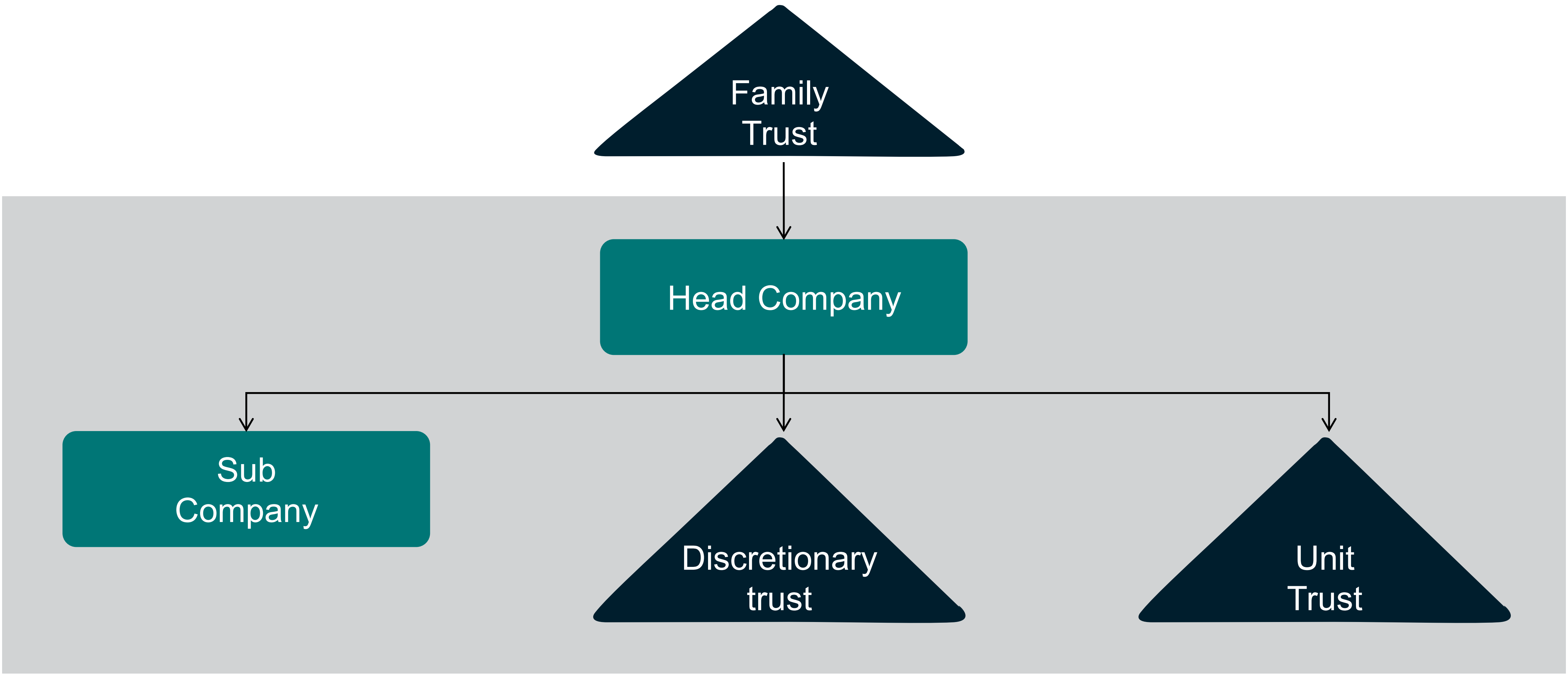
Future structures

Basic structure



Future structures

Group structure (tax consolidated group)



Next steps

Want to know more?

Contact us

Alexis Kokkinos
Executive Director
p +61 3 8610 5170
e alexis.kokkinos@pitcher.com.au

Yina Tang
Executive Director
p +61 3 8610 5436
e yina.tang@pitcher.com.au

Chanel Palmer
Client Director
p +61 3 8610 5805
e chanel.palmer@pitcher.com.au

Leo Gouzenfiter
Client Director
p +61 3 8612 9674
e leo.gouzenfiter@pitcher.com.au

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