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The Hon Dr Jim Chalmers MP
Treasurer
The Treasury
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Dear Dr Chalmers,

Minimum tax on discretionary trusts

The Housing Industry Association (HIA) takes the following broad position on the Australian Government's *Minimum tax on discretionary trusts* Consultation Paper: If Treasury's own analysis concludes that these tax measures increase the cost of doing business and require separate policies to offset their effects and offer restructuring relief, it is difficult to justify the objective of implementing this high minimum tax rate on discretionary trusts.

In light of these, HIA has four observations on the proposal:

1. Tax policy should be economically neutral: Australia's tax system should support business investment, productivity and encouraging economic growth. Tax settings should minimise distortions between different business structures and avoid encouraging costly restructuring that does not improve productivity or increase economic activity.

2. The Consultation Paper acknowledges that this policy change will impost compliance costs on business as they transition to new structures. Proposals to provide relief may mitigate these costs. Treasury should undertake and publish a comprehensive cost benefit analysis that includes legal, accounting, valuation and administrative costs, together with any state taxes, including stamp duty, that may arise during restructuring. These costs represent real economic resources that could otherwise be directed towards productive investment.

3. Revenue estimates should transparently incorporate behavioural responses: The proposal is intended to raise significant additional revenue. However, where a policy is expected to alter business behaviour, including through restructuring into alternative legal forms, Treasury should publish the behavioural assumptions underpinning its revenue estimates. Transparent modelling is necessary to assess whether the expected revenue exceeds the economic costs generated by the reform.

4. The proposal simply creates new distortions, by increasing the cost of one structure (discretionary trusts) to make other structures (i.e. fixed trusts, corporations) appear more attractive.

5. There is a narrow base of small businesses to collect the minimum tax from, even before restructuring. After restructuring, the Government's objective of collecting $4.47 billion from this minimum tax would either be levied from a very small number of businesses or fail to meet the Budget revenue projections altogether.

HIA recommends that Treasury assess the proposal against the fundamental principles of good tax policy: efficiency, neutrality, simplicity and certainty.

If the Government's own analysis concludes that the proposal increases compliance costs, requires restructuring relief and creates additional complexity, Treasury should clearly demonstrate that the expected economic and fiscal benefits outweigh those costs before proceeding.

Attached is a discussion paper that articulates some of our concerns in more detail.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED

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Chief Executive Industry and Policy

Discussion Paper on Minimum Tax on Discretionary Trusts

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Introduction

Tax reform plays an important role in supporting economic growth, maintaining confidence in the tax system and ensuring the sustainability of government revenue. HIA supports tax reform that improves the efficiency, fairness and integrity of Australia's taxation system.

Tax reform, however, should not only be judged by the revenue it raises, but also by the economic costs it imposes.

Well-designed tax policy seeks to raise revenue while minimising unnecessary distortions to economic activity. In practice, this requires proposals to be assessed against established principles of tax design.

A recent survey of members reported that over 60 per cent of builders have a trust as part of their company structure. Building businesses structures are already heavily regulated through state government requirements to ensure the solvency of building businesses. The cost of a business restructure on the industry can place additional pressure on the ability of a building company to also comply with onerous state government prudential requirements.

HIA is concerned that the proposal reduces economic efficiency, reduces tax neutrality and adds complexity and uncertainty.

Treasury should assess, in consultation with state and territory governments and home warranty scheme administrators, whether restructuring under the proposed reforms may affect builders' licences, insurance eligibility, financial-capacity assessments or approved construction limits.

Any restructuring relief should provide operational continuity, not merely relief from Commonwealth tax liabilities.

This warrants a thorough investigation of the costs and benefits of these proposed changes.

Implications for the construction sector

Residential builders are experiencing elevated construction costs, labour shortages, rising regulatory burdens and increased insurance costs.

The additional compliance cost of restructuring places further pressure on the businesses responsible for delivering 1.2 million new homes.

Of particular concern is the potential for the reforms to create substantial restructuring costs for businesses that may need to alter long-established business arrangements.

The widespread use of trusts reflects the particular characteristics of residential construction rather than any pursuit of tax advantages. Residential builders face significant commercial risks, including:

- Contractual disputes.
- Defect and warranty claims.
- Insolvency within supply chains.
- Project delivery risks.
- Personal guarantee requirements.
- Fluctuating market conditions.
- Long project timeframes.
- Significant cash-flow commitments.

As a result, many businesses have adopted trust structures as part of prudent business management practices. Trust structures assist businesses to:

Manage Risk

Trust structures can assist businesses to appropriately separate business operations from personal assets and support effective risk management.

Support Succession Planning

Many residential building businesses are family enterprises that have operated for generations.

Trust structures provide flexibility that enables ownership transitions, succession planning and intergenerational business continuity.

Maintain Business Flexibility

Residential building is highly cyclical and frequently affected by changes in market conditions, finance availability and consumer confidence.

Trust structures provide flexibility that assists businesses to respond to changing commercial circumstances.

Protect Long-Term Business Viability

Many HIA members have established their structures based on longstanding legal, accounting and financial advice.

The proposed reforms have the potential to affect arrangements that have existed for many years and that were established for legitimate commercial purposes.

Manage Variable Income

Smaller builders, in particular, are subject to variable income due to the nature of the industry. A trust is a means of ensuring that income is recognised – and taxed – across the timeframe of which it is earned, rather than received.

Impact on small and family-owned building businesses

A key concern for HIA is that the impact of the proposed reforms is likely to fall disproportionately on small and family-owned businesses.

Unlike larger organisations, small businesses generally do not have access to significant internal accounting, legal and taxation resources. As a result, the costs associated with understanding, implementing and complying with major tax reforms are likely to be more significant for smaller operators.

Increased Compliance Costs

Implementation of the proposed reforms is likely to require businesses to undertake comprehensive reviews of their current arrangements.

This may involve legal, accounting and taxation advice, business structure assessments and have implications for ongoing compliance obligations. For many businesses these costs will be substantial.

Importantly, these costs represent resources that would otherwise be directed towards productive investment, business expansion and housing delivery.

Increased Administrative Burden

The proposed reforms contemplate new arrangements for the collection and administration of the minimum tax. HIA is concerned that excessive complexity could create ongoing administrative burdens for businesses and increase compliance costs over the long term.

Administrative arrangements should be designed to minimise compliance obligations and utilise existing reporting frameworks wherever possible.

Increased Business Uncertainty

Business investment relies on certainty.

Changes to long-established taxation arrangements may cause businesses to delay investment decisions, postpone expansion plans and reconsider future business structures until the legislative framework becomes clearer.

The resulting uncertainty has the potential to reduce business confidence at a time when the industry is already facing significant economic pressures.

The proposal reduces tax neutrality

A well-designed tax system should minimise the influence of taxation on commercial decision making.

Where businesses undertaking substantially the same economic activity face materially different tax outcomes solely because of their legal structure, taxation begins to influence organisational choices rather than simply raising revenue.

The consultation paper argues that discretionary trusts distort labour income taxation because they allow income splitting that is not available to employees earning a salary.

HIA considers that his comparison is not the appropriate benchmark for assessing tax neutrality.

Employees and business owners do not undertake the same economic activity. Employees derive income from supplying labour. Business owners invest capital, assume commercial risk, manage employees, finance operations and bear the consequences of business success or failure. The legal structures through which businesses operate reflect these commercial realities.

Discretionary trusts also perform a range of legitimate commercial functions that extend beyond taxation. These include managing commercial risk, facilitating succession planning, accommodating changing ownership arrangements and providing flexibility for family-owned businesses operating in cyclical industries.

The appropriate comparison is therefore not between an employee and a discretionary trust. It is between businesses undertaking substantially the same economic activity through different legal structures.

From that perspective, the relevant policy question is whether the tax system remains neutral between businesses operating through discretionary trusts, companies and other legal entities. If the proposal increases the relative cost of one legal structure, businesses may alter their organisational arrangements for taxation reasons rather than commercial ones. This reduces tax neutrality by influencing how businesses choose to organise themselves.

Treasury's own statistics don't support a major integrity problem

The Consultation Paper and the Budget 2026/27 Paper on the Minimum Tax say that around 350,000 active small businesses (or less than 15 per cent of active small businesses) use discretionary trusts. They go further by saying that 140,000 small businesses are not expected to pay additional tax or need to restructure in any given year, and that over 90 per cent of active small businesses won't be affected.

If the government expects widespread restructuring rather than ongoing payment of the tax, either the tax base largely disappears, or the tax is levied on a very narrow segment of the economy.

The proposal increases complexity

It appears that the government's position on discretionary trusts providing greater tax planning opportunities subsequently means that these structures should be taxed. In the process of doing so, the government is also introducing additional complexity, some of which have yet to be worked out.

This includes working out collecting the trustee minimum tax, beneficiary offsets, non-refundable offsets, rules on corporate beneficiaries, franking credit rules, carry-forward mechanisms, beneficiary notifications, new PAYG instalment systems, director liability and tracing rules.

Entire sections of the paper are devoted to administration rather than tax policy.

Restructuring costs

The consultation paper assumes rollover relief largely solves the transition problem. The paper repeatedly discusses rollover relief through the Small Business Restructure Rollover (SBRR) as though restructuring is almost frictionless.

In reality, businesses would incur:

- state stamp duty.
- legal fees.
- accounting fees.
- valuation costs.
- Refinancing.
- mortgage discharge and registration fees.
- amendments to shareholder agreements.
- changes to trust deeds.
- payroll and accounting software changes.
- contract novation.
- licence transfers.
- ongoing compliance for companies.

Of particular importance to the building industry is the unintended consequence of these changes on the ability of building businesses to access home owners warranty insurance.

Businesses must not incur unreasonable transaction costs from government policy

A central concern for HIA is that businesses that choose or need to restructure as a consequence of the reforms may become exposed to significant transaction costs.

These costs can be significant and may ultimately discourage businesses from restructuring or create substantial financial burdens for businesses merely responding to a change in policy.

If policy results in businesses having to alter their structures, those businesses should not be penalised through additional taxation liabilities or transaction costs that would not otherwise have arisen.

While HIA considers that grandfathering is the most appropriate pathway, if it continues on the current trajectory, it is essential that the Australian Government work collaboratively with state and territory governments to ensure restructuring can occur without unnecessary financial penalties.

The objective should be a genuinely revenue-neutral restructuring framework.

Restructuring may affect builders' access to home warranty insurance

A further issue of particular importance to the residential building industry is the potential interaction between the proposed tax reforms and state and territory home warranty insurance arrangements.

Home warranty insurance, also described in different jurisdictions as home building compensation, domestic building insurance, building indemnity insurance or fidelity fund insurance, is a statutory consumer protection mechanism. It generally protects homeowners against financial loss where a builder cannot complete residential building work or rectify defects because of insolvency, death or disappearance.

Queensland operates a broader first-resort statutory scheme, while most other jurisdictions operate last-resort arrangements. Tasmania is the only jurisdiction without a mandatory home warranty insurance scheme.

HIA's published position is that home warranty insurance forms only one part of the broader consumer protection framework for residential building, which also includes licensing, mandatory contracts, inspections, statutory warranties and dispute resolution arrangements. HIA has consistently argued that the design of these schemes must balance consumer protection with the availability and cost of insurance for builders.

In jurisdictions where cover is mandatory, a builder generally cannot enter into, commence or receive payment under an eligible residential building contract unless the required project-specific insurance or scheme certificate has been obtained.

Access to cover is therefore not merely an insurance matter. It is a prerequisite for undertaking residential building work.

Eligibility attaches to the building entity

Home warranty eligibility is generally assessed against the licensed or registered entity that contracts with the homeowner and undertakes the building work. The assessment may consider:

- the entity's financial position and trading history;
- net tangible assets, working capital and capital available to the building business;
- the value and number of projects under construction;
- the type and maximum value of work undertaken;
- technical experience, management capability and claims history; and
- any guarantees, indemnities or financial security supporting the entity.

In New South Wales, for example, a builder must obtain eligibility before it can obtain Home Building Compensation Fund cover for individual projects. The eligibility profile determines the number and total value of open jobs, the permitted types of construction and the maximum contract value. Assessments may examine the builder's financial performance, equity exposed to building operations, technical capacity and claims history. Conditions can include maintaining capital, providing financial security and meeting specified financial-reporting requirements.

Financial information may be required for both a company and a trust, together with personal asset and liability statements where relevant. Eligibility is reviewed periodically, and a special review may occur where the builder's circumstances materially change.

This distinction is important for the proposed tax reforms. Rollover relief may reduce the immediate income-tax consequences of transferring a business from a discretionary trust into a company or fixed trust. It does not necessarily preserve the insurance eligibility, licence, financial history or construction limits held by the existing building entity.

Where the entity named on the building licence, building contract or insurance eligibility changes, the restructured business may need to:

- obtain or amend its builder licence or registration;
- apply for a new or revised insurance eligibility profile;
- provide new financial statements and supporting information;
- demonstrate that sufficient assets and working capital remain within, or are available to, the new entity;
- replace guarantees, indemnities or securities;
- transfer or novate existing contracts; and
- obtain confirmation that existing and future projects remain insured.

The outcome may depend on the particular restructuring and jurisdiction. It should not be assumed that a builder's previous eligibility limits, approved construction capacity or claims history will automatically transfer to a new legal entity.

Capital adequacy and financial reporting

These schemes are closely connected to the financial capacity of the contracting entity. Eligibility limits are intended to restrict the number and value of projects a builder can undertake to a level supported by its capital, working capital and management capacity.

This creates an important distinction between tax rollover relief and operational continuity. A restructuring may be tax neutral while materially changing the balance sheet assessed by an insurer or building regulator. Assets may be transferred between entities, liabilities may remain behind, existing guarantees may cease to apply, or the capital available to the licensed builder may be altered. Any of these changes could affect the builder's eligibility or approved construction limits.

The requirements vary materially between jurisdictions.

In **New South Wales**, Home Building Compensation Fund eligibility is separately assessed and subject to limits on open jobs, contract values and construction types. Eligibility may be reviewed regularly or following a material change in the builder's circumstances. Insufficient assets within a building company may also lead to requirements for director security or indemnities.

In **Victoria**, reforms commencing on 1 July 2026 replaced the previous Domestic Building Insurance eligibility assessment with Minimum Financial Requirements for domestic builders. Builders are assessed against their financial capacity and assigned a Maximum Construction Capacity, which limits the total value of domestic building work they can undertake at one time. Existing builders transitioned on the basis of their existing eligibility, but reassessment may occur when they seek increased capacity, provide updated financial information or become subject to regulatory review.

In **Queensland**, the home warranty scheme operates through the Queensland Building and Construction Commission and is closely connected to the licensing system. Contractor licensees must continuously satisfy Minimum Financial Requirements, including prescribed working-capital, current-ratio and net-tangible-asset requirements. Licensed companies are subject to annual financial reporting regardless of revenue, and larger individual contractors must also report annually. The maximum revenue a licensee may earn is linked to its financial category and supporting net tangible assets. Trust structures require financial information for both the trust and trustee.

In **South Australia**, builders undertaking prescribed domestic building work must have an eligibility facility with an approved insurer before project-specific Building Indemnity Insurance can be obtained. Insurers assign eligibility and job-profile limits, which constrain the volume and type of work that may be insured. South Australia has recently introduced automatic reviews of eligibility limits to recognise increases in construction costs, illustrating the direct relationship between insurance capacity and a builder's ability to maintain project delivery.

In **Western Australia**, registered builders must obtain Home Indemnity Insurance for prescribed residential work before accepting payment or commencing work. The insurance certificate identifies the builder responsible for the work. A change of builder during construction requires the incoming builder to obtain new cover for the remaining work, demonstrating that cover is connected to the particular building entity undertaking the contract.

The **Australian Capital Territory** requires residential building work insurance or an approved fidelity fund certificate for prescribed work. The insurance or fidelity arrangement must be in place before work starts and is connected to the builder responsible for the residential building work.

The **Northern Territory** operates a mandatory fidelity fund scheme for prescribed residential building work. The cover protects homeowners where work is incomplete or defective and the builder has died, disappeared, become insolvent or had its registration cancelled.

These jurisdictional differences mean that a nationally designed tax reform may interact with several distinct licensing, insurance and financial-capacity regimes.

Potential consequences for housing delivery

A delay or reduction in home warranty eligibility can have an immediate effect on a building business.

Without sufficient eligibility or construction capacity, a builder may be unable to obtain certificates for new contracts, accept deposits or commence work. A reduction in approved limits can constrain the number or value of projects the business may have underway simultaneously.

The policy risk is therefore not limited to the direct cost of legal and accounting advice. A restructuring undertaken to avoid the proposed minimum tax could also:

- delay the issue of insurance certificates;
- temporarily prevent a builder from entering into new contracts;
- reduce the number or value of projects the builder is authorised or insured to undertake;
- require additional capital, guarantees or security;
- disrupt existing contractual and financing arrangements; and
- create uncertainty for homeowners, lenders, developers and subcontractors.

Treasury should consult with state and territory building regulators, statutory scheme administrators, insurers and industry participants to determine whether restructuring will trigger new eligibility or licensing assessments in each jurisdiction.

At a minimum, the government should ensure that businesses restructuring solely because of the tax reform can preserve their existing licences, insurance eligibility, approved construction limits and claims history, provided there has been no substantive change in ownership, management, financial capacity or risk.

Without such continuity arrangements, tax-driven restructuring could temporarily or permanently reduce the capacity of otherwise viable builders to contract for and deliver new homes.

Impact for housing supply

Australia continues to face significant housing supply and affordability challenges. This conversation about an adverse change to the business and taxation arrangements for the residential construction sector could not be had without acknowledging the failure of the Commonwealth to meet its own housing targets.

Governments across Australia have identified increasing housing supply as a national priority and claim to be implementing policies designed to increase residential construction activity. Residential builders are the delivery mechanism for those objectives. Any policy that increases business costs, creates additional compliance obligations, reduces investment confidence, or diverts capital away from productive activity has the potential to affect the industry's capacity to deliver new housing.

While the minimum tax proposal is directed at taxation outcomes, HIA is concerned that insufficient consideration has been given to the broader impacts on the businesses responsible for delivering housing supply.

The cumulative effect of additional costs and compliance burdens may ultimately reduce the industry's ability to invest, employ staff, engage apprentices and expand housing delivery.

Treasury should undertake further assessment of these potential impacts before finalising the reforms.

Conclusion

The residential building industry engages one in ten employed Australians to deliver homes required to meet Australia's growing housing needs.

The overwhelming majority of residential building businesses are small and family-owned enterprises.

Unlike large public corporations, many of these businesses have been established over generations and continue to operate through structures designed to support long-term ownership, succession planning and risk management.

The proposed minimum tax on discretionary trusts has the potential to affect a significant number of these businesses.
While the consultation paper is focused on taxation outcomes, the practical impacts of the proposal extend beyond tax administration and have implications for business investment, business confidence, succession planning and housing supply.

HIA encourages Treasury to consider these broader economic impacts when developing the final policy framework.

Any government policy that encourages or requires restructuring should ensure businesses are not exposed to transaction costs, including transfer duty, stamp duty, capital gains tax liabilities or other charges that arise solely because of the policy change.

HIA acknowledges the government's objective of improving the fairness and sustainability of the taxation system.

However, discretionary trusts are a common and legitimate feature of business structures across the residential building industry. Their use reflects the commercial realities of operating small and family-owned businesses in a high-risk sector rather than an intention to obtain inappropriate tax advantages.

The proposed reforms have the potential to create significant compliance costs, restructuring expenses and uncertainty for businesses that play a critical role in delivering Australia's housing supply.

If the government proceeds with the reforms, it is essential that implementation arrangements minimise impacts on small business, avoid transaction costs associated with restructuring and support the continued viability of the businesses responsible for building Australia's homes.