Employee Ownership Australia *Making it your business*

Andrew Clements
Co-Chair of Employee Ownership Australia
c/o Level 27, 447 Collins Street, Melbourne VIC 3000 Australia

31 July 2026

To: Assistant Secretary
Individuals and Indirect Tax and Superannuation Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: mintaxtrusts@treasury.gov.au

Dear Assistant Secretary

Employee Ownership Association: Submission on the Consultation Paper — Minimum Tax on Discretionary Trusts

1 Introduction

Employee Ownership Australia (**EOA**) welcomes the opportunity to make this submission in response to the Treasury's Consultation Paper "Minimum tax on discretionary trusts" released on 8 July 2026.

It should be read together with EOA's earlier submissions of 27 May 2026 (to the Treasurer and Assistant Treasurer) and 9 June 2026 (to the Senate Economics Legislation Committee), both of which raised related concerns about the discretionary trust minimum tax measure and the broader capital gains tax reforms as they affect employee ownership structures.

EOA supports the Government's objective of improving fairness in the taxation of discretionary trusts and addressing distortions arising from income splitting. However, EOA submits that the Consultation Paper's proposed approach to defining "discretionary trusts" is inappropriately broad and, unless adjusted, will capture employee ownership structures that are not within the policy mischief the measure is intended to address.

This submission identifies the key areas of concern, explains why complying employee share trusts covered by Division 13A of the *Income Tax Assessment Act 1936* or Division 83A of the *Income Tax Assessment Act 1997* (**Employee Share Trusts**) and Employee Ownership Trusts (EOTs)should be expressly excluded from the regime, and recommends specific legislative mechanisms to achieve that outcome.

<u>Key Areas of Concern</u>

EOA's central concerns with the proposed minimum tax on discretionary trusts, as described in the Consultation Paper, are:

- **The inappropriate breadth of the proposed definition of "discretionary trust"**, which appears capable of extending beyond the class of trusts that give rise to the integrity concerns the measure is intended to address. The current framework defines a discretionary trust by exclusion — any trust that is not a fixed trust (per section 272-5 of Schedule 2F, ITAA 1936) — with trustees retaining broad discretionary powers even if those powers are unexercised. This definition is insufficiently targeted and risks capturing trusts established for purposes entirely unrelated to income splitting or tax avoidance.

- The inadvertent inclusion of ordinary employee share trusts and similar employee ownership structures, notwithstanding that such arrangements do not fall within the anti-avoidance or integrity issues that underpin the proposed regime. Employee share trusts and EOTs are not used to split family income among taxpayers at different marginal rates. They are practical structures through which employees acquire genuine equity exposure in their employing businesses under regulated or documented plans.

2 Executive Summary

Employee Ownership Australia makes the following principal submissions:

- The legislation should be more carefully targeted to ensure it captures only those arrangements that are properly within the scope of the identified integrity concerns — namely, income splitting through the discretionary allocation of trust income to lower-taxed beneficiaries.
- The provisions should include a more detailed and nuanced definition of the relevant trust arrangements, distinguishing between conventional discretionary trusts that may give rise to policy concerns and trusts (such as employee share trusts and EOTs) that operate under fundamentally different principles and objectives — that is, trusts whose trustees exercise powers for the collective benefit of a broad employee class under a regulated plan, not for income-splitting between family members at different marginal tax rates.
- Employee share trusts should be expressly excluded from the operation of the minimum tax regime by means of an unambiguous statutory exclusion directed at the trust's purpose of acquiring, holding, administering and delivering employee share scheme interests.
- Employee Ownership Trusts should be separately and expressly excluded from the regime. EOTs are established to facilitate broad-based employee ownership, long-term stewardship of businesses, and alignment of employee and business interests. They do not present the avoidance or integrity risks the proposed measures are designed to address.
- An express legislative exclusion for EOTs would provide certainty, ensure the regime remains appropriately targeted, and prevent unintended consequences for legitimate employee ownership structures.
- The omission of any employee ownership carve-out represents a critical implementation gap that should be addressed before exposure draft legislation is settled.
- Targeted, ongoing consultation with EOA, employers, professional advisers and scheme administrators should be undertaken before the legislation is finalised.
- None of these submissions conflicts with the Government's stated policy objectives. They seek only to ensure that the measure operates as intended — against family trust income-splitting arrangements — and does not inadvertently impede employee ownership structures that deliver significant economic and social benefits.

3 Background: The Proposed Minimum Tax and Its Policy Rationale

The Consultation Paper confirms that the Government will introduce a 30 per cent minimum tax on discretionary trusts from 1 July 2028.

The minimum tax operates at trustee level. The trustee pays 30 per cent on the trust's taxable income. Individual beneficiaries who are presently entitled continue to be assessed at their marginal rates but receive a non-refundable minimum tax offset for tax paid by the trustee. Corporate beneficiaries cannot access the offset. The offset is not refundable, cannot reduce Medicare levy, and cannot be carried forward.

The stated rationale is to address arrangements in which discretionary trusts allow lower tax rates through income splitting (for example, trustees allocating income to beneficiaries with lower marginal tax rates, producing outcomes not available to most salary and wage earners).

The Consultation Paper identifies a number of exclusions from the minimum tax, including fixed trusts, widely held trusts, complying superannuation funds, special disability trusts, deceased estates, charitable trusts, primary production income, and testamentary trusts (subject to conditions). Notably, no exclusion is provided or contemplated for employee share trusts or Employee Ownership Trusts.

The Definitional Approach

The Consultation Paper proposes to define "discretionary trust" by exclusion: any trust that is not a "fixed trust" within the meaning of section 272-5 of Schedule 2F to the ITAA 1936 (and see also section 102UC(4) of the ITAA 1936). The fixed trust concept requires beneficiaries to have "vested and indefeasible" interests — guaranteed entitlements that cannot be taken away.

The Consultation Paper itself acknowledges that relying on the existing fixed trust definition may result in the scope of "discretionary trusts" for minimum tax purposes being broader than intended. It specifically seeks feedback on cases such as modern commercial trusts where trustees typically retain powers to change entitlements, add beneficiaries, or amend trust deeds — whether or not those powers are exercised.

This acknowledgement by Treasury is directly relevant to employee share trusts and EOTs, which routinely include trustee powers of the kind described — powers exercised not for income-splitting purposes but for the proper administration of employee equity plans and the collective benefit of participating employees.

4 Employee Ownership Structures Are Not the Policy Target

The policy rationale for the minimum tax, as stated in the Consultation Paper and the 2026–27 Budget materials, is directed at income splitting through discretionary trusts — specifically, the allocation of trust income to beneficiaries with lower marginal tax rates, producing outcomes not available to salary and wage earners on similar incomes.

Employee ownership structures are materially different from the arrangements targeted by the measure.

The Fundamental Distinction

Employee share trusts and EOTs are not ordinarily used to split family income among taxpayers at different marginal rates. They are used as practical structures to acquire, hold, warehouse and allocate shares or other equity interests to employees under regulated or documented employee equity plans.

The beneficiaries of an employee share trust or EOT are employees of a business — typically a broad class of employees rather than members of a single family.

The trustee's discretionary powers are exercised for the purpose of administering the plan and delivering equity to participating employees in accordance with plan rules, not for the purpose of directing income to lower-taxed individuals to achieve a family tax arbitrage.

Australian tax law and existing ATO guidance already recognise employee share schemes as a specific and specialist regime (Division 83A, ITAA 1997). The trust minimum tax measure should respect and maintain that distinction.

The Risk of Overbroad Drafting

A reform designed to address family trust income-splitting should not, by reason of broad drafting or unduly narrow exclusions, apply to trusts whose sole or predominant function is to facilitate employee equity participation.

The risk is real. Employee share trusts and EOTs will typically include trustee powers — to allocate interests among participating employees, to vary allocations in accordance with plan terms, to acquire or dispose of shares, and to amend administrative provisions — that may cause them to fall outside the "fixed trust" definition. That is not because they are being used for income splitting. It is because the administration of employee equity inherently requires a degree of trustee discretion in order to function.

If these trusts are brought within the minimum tax regime simply because the exclusion criteria are too narrow — not because Government intends to tax them as discretionary wealth vehicles — the legislation will impose inappropriate tax outcomes on arrangements outside the policy mischief targeted.

Practical Consequences for Employees

If employee share trusts or EOTs are taxed at 30 per cent at trustee level with only non-refundable credits available to non-corporate beneficiaries, the practical consequences are:

- A real and unrecoverable tax impost falling on ordinary employees, disproportionately affecting broad-based and lower-paid employee participants who are most likely to participate in plans where the equity interest is modest but the tax treatment is fundamental to the economic case for participation.
- Employees in $1,000 exemption plans and broad-based arrangements — who are not high-income family trust beneficiaries engaging in tax arbitrage — would bear the greatest relative detriment.
- Practical complexity, distortion of employee outcomes, and a reduction in the attractiveness of broad-based employee ownership plans across Australia.
- An outcome directly at odds with the Government's stated policy objectives of fairness for workers and productive investment.

This is a legislative design and drafting issue capable of straightforward correction. It does not reflect a conflict with the Government's stated policy intent — which is targeted at family trust income splitting, not employee ownership.

5 The Inappropriate Breadth of the Discretionary Trust Definition

The Consultation Paper's Discussion Question 1 asks: "How should discretionary trusts be defined to appropriately distinguish them from fixed trusts for the purposes of the minimum tax?"

EOA submits that the current definitional approach — defining a discretionary trust as any trust that is not a fixed trust — is insufficiently nuanced and will produce unintended outcomes for employee ownership structures.

The Problem with the Current Approach

The existing fixed trust definition in section 272-5 of Schedule 2F to the ITAA 1936 requires beneficiaries to hold "vested and indefeasible" interests. A trust is a discretionary trust if it does not satisfy that test. This binary classification makes no distinction between:

- A conventional family discretionary trust used to allocate income among family members at different marginal tax rates (the intended target of the measure); and
- An employee share trust or EOT in which the trustee exercises powers for the collective benefit of a broad employee class under a regulated plan, in accordance with documented plan rules, and not for income-splitting purposes.

The consequence is that employee share trusts and EOTs — which routinely include powers to allocate interests, vary participation, acquire or dispose of shares, and amend plan terms — will fall on the "discretionary" side of the binary test, not because of any income-splitting purpose but because proper administration of employee equity inherently requires some degree of trustee discretion.

A More Nuanced Definitional Approach Is Required

EOA submits that Treasury should adopt a more nuanced definitional approach that moves beyond the simple binary of "fixed trust" versus "everything else".

Specifically, the legislation should:

- Identify and separately carve out employee share trusts and EOTs as categories of trust that are not within the policy mischief, regardless of whether they technically satisfy the existing fixed trust definition.
- Recognise that the presence of trustee powers directed to the administration of employee equity plans does not, of itself, indicate that the trust is being used for income-splitting purposes.
- Distinguish between the exercise of discretion for the benefit of a family group at different marginal tax rates (the target) and the exercise of discretion for the benefit of a broad class of employees in connection with a regulated or documented employee equity arrangement (not the target).

This approach would ensure that the definition remains fit for purpose while avoiding the capture of trusts that operate under fundamentally different principles and objectives from those that give rise to the identified integrity concerns.

6 The Case for Express Exclusion of Employee Share Trusts

Employee share trusts are central to the operation of many forms of employee ownership in Australia. They are used across listed and unlisted companies and are particularly important for broad-based plans, plans involving deferred allocation, and plans intended to support orderly administration of employee equity.

The current ATO guidance confirms the distinct status of employee share schemes and the specialised tax treatment that applies to them under Division 83A of the ITAA 1997.

The Nature and Function of Employee Share Trusts

Employee share trusts are not tax-driven structures. They are mechanisms to facilitate the proper provision of employee equity under a legislative regime that already contemplates and regulates employee share arrangements. Their essential functions include:

- Acquiring and holding shares (or other equity interests) on behalf of employees pending allocation or vesting.
- Warehousing shares acquired through on-market purchases, new issues, or transfers pending delivery to employees under plan rules.
- Administering the allocation, vesting and forfeiture of interests in accordance with the terms of an employee equity plan approved or established by the employing company.
- Facilitating orderly delivery of equity to employees in compliance with securities laws, listing rules and plan documentation.

None of these functions involves income splitting. The trustee's discretion is directed to plan administration, not to allocating income among family members at different marginal tax rates.

Why the Minimum Tax Should Not Apply

If employee share trusts are included in the minimum tax regime simply because the exclusion criteria are too narrow, the consequences include:

- A 30 per cent tax at trustee level on income (including dividends) received by the trust in connection with its function of holding and administering employee equity.
- Only non-refundable credits available to employee beneficiaries — meaning that for lower-paid employees whose marginal rate is below 30 per cent, there will be a real and unrecoverable tax impost arising solely from the structure through which their employer delivers equity benefits.
- The creation of a perverse incentive to avoid trust-based delivery structures for employee equity, notwithstanding that such structures are the established and appropriate mechanism for broad-based employee share plans in Australia and internationally.
- Increased compliance costs, administrative complexity and uncertainty for employers operating employee equity plans.

Proposed Statutory Exclusion Mechanism

EOA submits that the legislation should include an express and unambiguous statutory exclusion applying wherever the trust satisfies a purpose test directed to the acquisition, holding, administration and delivery of employee share scheme interests or shares acquired in connection with those interests.

Such an exclusion should be:

- Clear and self-contained — not dependent on unduly narrow drafting formulations that may fail to capture the full range of legitimate employee share trust arrangements.
- Directed at the purpose and function of the trust, not solely at the legal form of beneficiary entitlements.
- Consistent with the existing treatment of employee share schemes as a distinct area of tax policy.
- Sufficiently broad to encompass trusts used for broad-based plans, deferred allocation plans, $1,000 exemption plans, salary sacrifice plans, start-up concession plans, and other forms of employee equity delivery.
- Not dependent on case-by-case ATO rulings — the exclusion should provide certainty at the point of legislative application without requiring employers or trustees to seek individual private rulings.

This exclusion would be simple, targeted and consistent with the existing recognition of employee share schemes as a distinct and separately regulated regime.

7 The Case for Express Exclusion of Employee Ownership Trusts

Employee Ownership Trusts are a separate and discrete form vehicle through which employees, typically a broad class of all or most employees of a business, collectively hold an interest in the enterprise that employs them.

They do not fall within the definition of an employee share trust as they perform a different role and purpose.

They should be separately and expressly excluded from the operation of the minimum tax regime. The case for exclusion rests on the nature and purpose of EOTs, the international precedent for their support, and the significant economic and social benefits they deliver.

The Nature and Purpose of EOTs

Employee Ownership Trusts are established to facilitate broad-based employee ownership of businesses. They are vehicles through which employees — typically a broad class of all or most employees of a business — collectively hold an interest in the enterprise that employs them.

EOTs are not private family wealth-splitting mechanisms. They are structures through which employees share in business value and participate in economic ownership. They are not driven by income splitting and do not produce the distributional outcomes that characterise the family discretionary trusts targeted by the proposed minimum tax.

The trustee of an EOT exercises powers for the genuine purpose of facilitating employee ownership for the benefit of a broad class of employees and the long-term stewardship of the business — not for family income-splitting purposes.

International Precedent: The United Kingdom EOT Regime

The international precedent strongly supports the separate recognition and concessional treatment of EOTs. The United Kingdom's experience since 2014 is instructive.

The UK Framework

Since 2014, the UK has provided a complete capital gains tax exemption for vendors who sell a controlling interest in a trading company to an EOT for the benefit of employees. The relief was introduced by the Finance Act 2014 following the Nuttall Review of Employee Ownership, which identified the economic benefits of employee ownership and the barriers to its expansion.

The UK EOT framework has driven a substantial expansion of employee-owned businesses. Over 1,700 companies are now held in EOT structures. The model has proved effective as a vehicle for business succession while preserving jobs, maintaining company culture, and distributing value among employees rather than concentrating it in external acquirers.

The UK Government has since expanded the EOT regime in recognition of its economic and social benefits, confirming its commitment to employee ownership as a policy priority.

Relevance to Australia

The UK experience demonstrates that a dedicated EOT framework, underpinned by appropriate tax concessions, can successfully:

- Facilitate orderly business succession, particularly for small and medium enterprises whose founders are approaching retirement.
- Preserve employment, institutional knowledge and company culture through ownership transitions.
- Distribute business value broadly among employees rather than concentrating it in trade acquirers, private equity or financial buyers.
- Build workforce engagement, productivity and resilience.
- Promote more equitable wealth distribution across the economy.

The Case for an Australian EOT Framework

Business Succession and Generational Transition

Australia faces a generational transition in small business ownership as baby boomer founders reach retirement age. Tax settings governing business disposal directly affect whether businesses survive, who acquires them, and whether value built over decades is preserved.

An EOT framework provides a mechanism for employee-led business succession — allowing founders to sell their businesses to the people who have helped build them, preserving jobs and distributing ownership among those who have contributed to the enterprise's success.

Without a recognition of EOTs, the tax system will systematically favour trade sales over employee-led succession, concentrating ownership rather than distributing it. This is because:

- Employee buyers typically cannot offer the same upfront cash consideration as trade buyers or financial acquirers, making after-tax proceeds even more critical to the vendor's retirement planning.
- EOT-style transitions are often structured as deferred acquisitions funded from future business profits, meaning the vendor bears ongoing risk and illiquidity — a higher tax burden makes this less tolerable.
- The policy rationale for concessional treatment of EOT sales is strongest precisely because employee ownership delivers broad economic and social benefits that trade sales do not.

Wealth Building for Younger Australians

The case for an EOT framework is not only about retiring founders. It is equally about younger Australians.

Younger Australians find it increasingly difficult to build wealth and buy a home. Employee ownership directly addresses this gap. When a business transitions to an EOT, employees — including younger workers who may have no realistic prospect of home ownership or significant financial assets — acquire a genuine stake in the enterprise that employs them.

This provides wealth accumulation tied to productive work rather than leveraged property speculation, and creates a pathway to financial security independent of the housing market.

An Australian EOT framework would therefore serve two complementary objectives:

- An orderly, concessionally taxed succession pathway for retiring founders.
- A mechanism for distributing business value to younger employees otherwise locked out of meaningful capital participation.

Workforce Productivity, Retention and Resilience

Evidence from comparable jurisdictions demonstrates that broad-based employee ownership increases workforce productivity, reduces staff turnover, improves business resilience during economic downturns, and contributes to more equitable wealth distribution. These benefits are well documented in the UK, the United States and numerous European countries.

These jurisdictions actively promote employee ownership through dedicated tax concessions because of these productivity, wealth distribution and succession benefits. Australia should be strengthening, not weakening, its settings in this area.

The Relationship Between EOT Exclusion and the Broader EOT Framework

Employee Ownership Australia has separately called for the legislation of a full Australian EOT tax framework — including, as a central element, a CGT concession for qualifying sales to an EOT. This submission's request for express exclusion from the discretionary trust minimum tax is a necessary complement to, and should be read consistently with, that broader recommendation.

An EOT framework will not function if EOTs are simultaneously exposed to a 30 per cent discretionary trust minimum tax intended for unrelated income-splitting arrangements. The two policy settings must be coherent: an EOT regime that provides concessional tax treatment to encourage employee ownership cannot operate effectively if the resulting trust structure is then subject to a minimum tax designed to prevent income splitting among family members.

Even in the absence of a comprehensive EOT framework at the present time, the express exclusion of EOTs from the minimum tax is necessary to ensure that the emerging landscape for employee ownership in Australia is not inadvertently foreclosed by legislation directed at a completely different policy problem.

Proposed Statutory Exclusion Mechanism for EOTs

EOA submits that the legislation should include a separate, express statutory exclusion for trusts established for the genuine purpose of facilitating employee ownership of a business for the benefit of a broad class of employees and not for family income-splitting purposes.

Such an exclusion should:

- Be directed at the trust's purpose of facilitating broad-based employee ownership.
- Require that the trust operates for the benefit of a broad class of employees (not a narrow or family-connected group).
- Require that the trust is not established or maintained for the purpose of income splitting among family members at different marginal tax rates.
- Be clear, unambiguous and self-contained — not dependent on unduly narrow drafting formulations that may fail to capture the range of legitimate EOT arrangements.
- Not require case-by-case ATO rulings — the exclusion should provide certainty at the point of legislative application.
- Be capable of application to both existing and future EOT structures, including structures established in anticipation of a comprehensive Australian EOT framework.

Definition of EOT

For the purpose of the proposed exclusion, EOA submits that EOT may be defined as a trust that satisfies the following conditions:

(a) the trust is a resident trust estate (within the meaning of subsection 95(2) of the *Income Tax Assessment Act 1936* (Cth));

(b) all or substantially all of the *market value of the property of the trust is attributable, directly or indirectly, to membership interests in one or more qualifying companies that the trust controls, where *qualifying company* means an Australian incorporated *private company that carries on a business (whether directly or as the *head company of a *consolidated group);

(c) The trustees must hold membership interests of the qualifying company which carry an entitlement to at least 20% of:

  (i) distributable profits of the qualifying company;

  (ii) assets of the qualifying company on winding up; or

  (iii) voting power on all questions affecting the company as a whole;

(d) the property of the trust must be applied solely for the benefit of all eligible employees , where *eligible employee* means:

  (iv) any individual who is employed by, holds an office in, or is an independent contractor of, a qualifying company or a related entity; and

  (v) does not hold a membership interest of 10% or more in the qualifying company,

  and the trustee may only permit differential participation by matters relating to their employment by, office-holding in or contract with the qualifying company;

(e) if:

(i) the trustees comprise natural persons, at least one third of the trustees must be beneficiaries of the trust; or

(ii) the trustee is a company, at least one third of the directors of the company must be beneficiaries of the trust.

(f) the trust may only distribute income or capital of the trust estate (within the meaning of section 272-45 of Schedule 2F of the Income Tax Assessment Act 1936 (Cth)) directly to beneficiaries in their capacity as beneficiaries;

(g) the trust must be prohibited from making any loan (within the meaning of subsection 109D(3) of the *Income Tax Assessment Act 1936 (Cth)*) to a beneficiary or an associate of any beneficiary; and

(h) the power to amend the terms of the trust is restricted in such a way that it cannot be used to alter the purpose of the trust or the nature of beneficiaries entitled to benefit under the trust.

An exclusion for EOTs as defined above would ensure that the minimum tax regime operates as intended, against family trust income-splitting, without impeding the development of employee ownership arrangements that deliver significant economic and social benefits. It would provide a clear and principled basis for excluding EOTs from the minimum tax.

8 Response to Consultation Paper Discussion Questions

Discussion Question 1: How should discretionary trusts be defined?

Discussion Question 1 asks: "How should discretionary trusts be defined to appropriately distinguish them from fixed trusts for the purposes of the minimum tax?"

EOA submits that the current approach — defining discretionary trusts as the residual category of "any trust that is not a fixed trust" — is inappropriate for the purposes of the minimum tax. The existing fixed trust definition was designed for a different statutory context and produces a category of "discretionary trusts" that is far broader than the class of arrangements giving rise to the income-splitting concerns the measure is intended to address.

A more nuanced approach is required. EOA recommends that Treasury:

- Develop a definition of "discretionary trust" for minimum tax purposes that is directed at the specific characteristics giving rise to the policy concern, namely the allocation of trust income among family or connected beneficiaries at different marginal tax rates for the purpose of reducing the overall tax burden of the family group.
- Separately identify and expressly carve out employee share trusts and Employee Ownership Trusts as categories that do not give rise to the identified policy concern, regardless of the breadth of trustee powers.
- Recognise that the presence of trustee discretionary powers does not, of itself, indicate that a trust is being used for income-splitting purposes — it is the purpose and context in which those powers are exercised that determines whether the trust falls within the policy mischief.

Discussion Question 3: Other implementation matters

Discussion Question 3 asks: "Are there any other implementation matters not addressed in this paper that should be considered in designing the minimum tax on discretionary trusts?"

EOA identifies the following critical implementation matter:

The omission of any employee ownership carve-out. The Consultation Paper does not address, or even acknowledge, the position of employee share trusts and Employee Ownership Trusts under the proposed minimum tax. This is a significant gap. As set out in this submission:

- Employee share trusts and EOTs are a distinct category of trust that does not give rise to the income-splitting concerns targeted by the measure.
- Without express exclusions, these trusts will be inadvertently captured by the minimum tax, producing outcomes inconsistent with the Government's stated policy intent.
- The practical consequences for employees — particularly lower-paid employees in broad-based plans — are material and inappropriate.
- The issue is capable of straightforward legislative correction at the design stage, and should be addressed in the exposure draft rather than left to post-enactment amendment or administrative guidance.

EOA further notes that targeted consultation with employee ownership stakeholders — including EOA, employers, professional advisers and scheme administrators — should form part of the implementation process before exposure draft legislation is finalised.

9 Consistency with the Government's Broader Policy Objectives

The adjustments recommended in this submission do not undermine the Government's broader reform agenda. They are entirely consistent with the stated policy objectives.

Compatibility with the Fairness Objective

The Government's stated objective as reflected in the Consultation Paper and the 2026–27 Budget materials is to improve fairness and address distortions arising from the use of discretionary trusts for income splitting. The measure is directed at arrangements in which high-income or high-wealth individuals achieve lower effective tax rates by allocating trust income to lower-taxed family members.

Excluding employee ownership structures that are not used for income splitting preserves that objective. A targeted exclusion for employee share trusts and EOTs would ensure that the reform continues to operate against the intended policy target while preventing inappropriate taxation of working Australians participating in employee equity programs.

Supporting Employee Ownership and Productive Investment

The Government has stated its commitment to supporting productive investment, workforce participation, and improved outcomes for workers. Employee ownership arrangements directly serve these objectives:

- They align worker interests with enterprise success, promoting productivity and engagement.
- They provide pathways for wealth accumulation tied to productive work, not speculative investment.
- They facilitate orderly business succession that preserves jobs and distributes value.
- They improve workforce retention and business resilience.

Inadvertently taxing these arrangements under a regime designed for income splitting would be inconsistent with the Government's broader economic objectives and would weaken the settings that support productive employee participation in enterprise value.

A Legislative Design Issue, Not a Policy Conflict

The current risk is not one of policy intention. It is one of legislative overreach or insufficiently tailored exclusions. That is a problem capable of straightforward correction at the design stage.

The Government's stated policy intent is directed at family trust income splitting. Employee ownership structures are not within that target. The recommended exclusions merely ensure that the legislation accurately reflects the policy intent, rather than inadvertently capturing arrangements that the Government does not intend to burden.

Correcting this at the design stage — before exposure draft legislation is settled — is simpler, less disruptive, and less costly than retrospective amendment after enactment.

10 Summary of Recommendations

Employee Ownership Australia recommends the following:

(1) **Express exclusion for employee share trusts**. The legislation should include an express and unambiguous statutory exclusion applying to trusts that satisfy a purpose test directed at the acquisition, holding, administration and delivery of employee share scheme interests or shares acquired in connection with those interests. The exclusion should be clear, self-contained, and should not require case-by-case ATO rulings.

(2) **Express exclusion for Employee Ownership Trusts**. The legislation should include a separate, express statutory exclusion for trusts established for the genuine purpose of facilitating employee ownership of a business for the benefit of a broad class of employees and not for family income-splitting purposes. The exclusion should be clear, unambiguous, and capable of application to both existing and future EOT structures.

(3) **A more nuanced definitional approach**. In response to Discussion Question 1, Treasury should adopt a definitional approach that moves beyond the simple binary of "fixed trust" versus "everything else". The definition should separately identify and carve out employee share trusts and EOTs as categories of trust that are not within the policy mischief, regardless of whether they technically satisfy the existing fixed trust definition.

(4) **Recognition of the employee ownership carve-out as a critical implementation gap**. In response to Discussion Question 3, EOA identifies the omission of any employee ownership carve-out as a critical implementation matter not addressed in the Consultation Paper that must be considered in designing the minimum tax. Without this carve-out, the legislation will capture structures outside the policy target and produce outcomes inconsistent with the Government's stated intent.

(5) **Targeted, ongoing consultation**. Treasury should undertake targeted consultation with Employee Ownership Australia, employers, professional advisers and scheme administrators before finalising the minimum tax legislation or exposure draft. Given the specialised nature of employee share schemes and employee ownership trusts, and the risk of unintended consequences from broad drafting, direct engagement with affected stakeholders is essential to achieve appropriately targeted legislation.

(6) **Coherence with EOT framework development**. The exclusion of EOTs from the minimum tax should be designed to operate coherently with the broader Australian EOT framework that EOA has separately recommended. The two policy settings must be consistent: an EOT regime that encourages employee ownership cannot function effectively if the resulting trust structure is simultaneously subject to a minimum tax directed at family trust income splitting.

11 Conclusion

Employee Ownership Australia supports a principled tax system and recognises the Government's objective of addressing income splitting through discretionary trusts.

However, the proposed minimum tax, unless its scope is appropriately refined, risks imposing serious and inappropriate burdens on employee ownership arrangements that are economically productive, socially beneficial, and clearly outside the intended policy target.

Employee share trusts and Employee Ownership Trusts are not tax shelters. They are not income-splitting vehicles. They are mechanisms through which employees participate in enterprise value, align their interests with the businesses in which they work, and build long-term wealth through productive investment.

The existing tax law already recognises employee share schemes as a distinct policy area. The proposed minimum tax should maintain that distinction by expressly excluding employee share trusts and EOTs from its operation.

The recommended exclusions do not conflict with the Government's reform objectives. They merely ensure that the legislation accurately reflects the policy intent and does not inadvertently capture arrangements outside the identified mischief.

Employee Ownership Australia urges Treasury to adopt the recommendations in this submission and to engage directly with EOA and other affected stakeholders before exposure draft legislation is finalised.

EOA would welcome the opportunity to provide further information or participate in targeted consultation on the design of the exclusions recommended in this submission.

Andrew Clements
Co - Chair
Employee Ownership Australia

31 July 2026