national
electrical and
communications
association

Minimum tax on discretionary trusts

Minimum tax on discretionary trusts: NECA submission

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Executive Summary

The National Electrical and Communications Association, NECA, welcomes the opportunity to respond to Treasury's consultation on the proposed minimum tax on discretionary trusts. NECA supports the Australian Chamber of Commerce and Industry submission and opposes the proposed 30 per cent minimum tax in its current form. The Government should not proceed with a broad measure that imposes substantial new tax, compliance and restructuring costs on legitimate small and family businesses.

NECA is the peak industry body representing Australia's electrical and communications contracting sector. Our members deliver essential electrical, communications, data, security and integrated technology services across housing, commercial construction, hospitals, schools, transport, defence, renewable energy, battery storage, electric vehicle infrastructure, data centres and telecommunications networks. A substantial proportion of the sector consists of small and family owned contractors that operate with limited cash reserves, carry significant commercial risk and rely on stable legal and financial structures to employ workers, train apprentices and deliver projects safely.

The concerns expressed in this submission are consistent with concerns raised across the construction contracting sectors, The common issue is straightforward. Trusts are not merely tax arrangements. They are often embedded in business ownership, asset protection, succession planning, financing, contracting, licensing and risk management. They cannot be unwound through a limited federal tax rollover without serious commercial consequences.

NECA Position

1. The proposed broad minimum tax should not proceed. Treasury has not established that existing integrity rules, targeted enforcement and specific anti avoidance measures are inadequate. Tax avoidance should be addressed directly, based on conduct and evidence, rather than through a broad tax that captures legitimate businesses because of a legal structure.

2. Existing active small business trading trusts should be grandfathered. If the Government proceeds, existing electrical and communications contracting businesses that lawfully adopted trust structures should remain able to operate under the current flow through taxation arrangements. Prospective rules for newly established structures are materially fairer than forcing established businesses to unwind long standing business structures made lawfully and in good faith.

3. Rollover relief does not constitute adequate compensation. Federal income tax rollover relief may remove some immediate tax consequences, but it does not meet the expected legal, regulatory, financial and operational costs of restructuring. Further it does not sufficiently anticipate other consequences of restructuring including the payment of transfer duty, licences, novate contracts, lender consents, maintain insurance, retain procurement approvals or compensate owners for business interruption and management time.

4. No affected contractor should bear net restructuring costs. If government policy causes an electrical or communications contractor to restructure, the Commonwealth must provide full and timely compensation for all reasonable direct and indirect costs. Businesses that have complied with the law should not be required to fund a government imposed change from

working capital needed for wages, apprentices, equipment and project delivery.

5. Implementation must be nationally coordinated. The Commonwealth must secure binding arrangements with states and territories to ensure that they are not exposed to state government taxes and transfer fees associated with transition to new business structures. These may include transfer duty, electrical worker/contractor licence disruption or loss of government prequalification is not a workable transition arrangement.

Discretionary trusts are used for legitimate commercial reasons

Electrical and communications contracting is a technically regulated, capital intensive and commercially exposed sector. Electrical contractors frequently work within long subcontracting chains, accept significant design and performance obligations, provide warranties and securities, carry substantial insurance and equipment costs, and face delayed progress payments, retention arrangements, insolvency exposure and disputed variations. Many owners also provide personal guarantees to lenders, landlords and suppliers. A trust can form an important part of a broader lawful structure for managing those risks, protecting business and family assets, planning succession and ensuring continuity if an owner dies, retires or becomes unable to work.

The proposed measure rests on an assumption that the flexibility of discretionary trusts is principally a tax advantage. That assumption does not reflect the operating reality of many contractors. For a family electrical business, income is commonly received irregularly and only after wages, superannuation, materials, vehicles, equipment finance, insurance, rent, taxation, licence fees and subcontractor accounts have been paid. The business owner bears the residual risk and is often the last person paid. The choice of trust structure may reflect commercial risk, family succession, asset ownership and finance requirements rather than any improper tax purpose.

NECA is particularly concerned that Treasury has not published a detailed electrotechnology or construction sector impact assessment or quantified how many contractors, employees and apprentices may be affected.

The case for a broad minimum tax has not been established

NECA accepts that the tax system must contain effective integrity measures. However, integrity measures should be targeted, proportionate and supported by evidence. A broad minimum tax applies irrespective of whether a contractor has engaged in avoidance. It penalises the structure rather than the conduct. That is a blunt policy response and risks creating new inequities for businesses that have arranged their affairs lawfully over many years.

The Government has not demonstrated why existing anti avoidance provisions, and targeted compliance activity cannot address identified abuse. It has also not demonstrated why legitimate trading trusts cannot be excluded or grandfathered. Before imposing a measure with significant consequences for employing businesses, Treasury should publish detailed modelling by industry, business size, beneficiary income, employment status and jurisdiction. That modelling should identify the expected additional tax, restructuring costs, transfer duty exposure and employment consequences.

Specific impacts on electrical and communications contractors

Cash flow, investment and employment

Cash flow is the operating lifeblood of an electrical contracting business. Contractors must fund wages, superannuation, payroll obligations, materials, vehicles, tools, testing equipment, software, insurance and project mobilisation before receiving final payment. Additional tax paid at trustee level will reduce working capital and weaken the buffer needed to manage delayed payment, disputed variations, retentions and project insolvency. For many small contractors, even a temporary loss of cash can determine whether an apprentice is employed, whether equipment is replaced or whether the business can tender for another project.

The electrotechnology workforce is already under pressure from skills shortages and unprecedented demand associated with electrification, housing, renewable generation, transmission, batteries, data centres and communications infrastructure. Diverting funds from contractor investment and apprentice supervision is directly inconsistent with the Government's workforce, productivity, housing and energy objectives. The measure would take money from the businesses expected to deliver those priorities.

Electrical contractor licensing and regulatory continuity

A restructure may create a new legal entity. Depending on the jurisdiction and the work undertaken, that entity may need a new or amended electrical contractor licence, nominated technical supervisor arrangements, state contractor registration, electrical safety approval, metering authorisation, accredited service provider status, consumer energy scheme accreditation, security industry licence or other regulated approval. These approvals are not necessarily transferable merely because the owners, directors, qualified supervisors and employees remain the same.

Any gap in licensing can prevent a contractor from lawfully contracting for work, issuing compliance documentation, connecting installations, accessing networks or continuing regulated activities. A delayed licence can therefore stop revenue immediately while wages and overheads continue. The Commonwealth cannot reasonably describe restructuring as voluntary or supported unless it first secures automatic regulatory continuity across every state and territory.

Communications, data and security contracting arrangements

Communications contractors may also need to amend customer panel arrangements, security licences where applicable, vendor certifications, network access permissions, subcontractor accreditations, professional indemnity and cyber insurance, quality certifications and project specific approvals. Major communications, data, security and integrated systems projects commonly require extensive prequalification and evidence of past performance by the contracting entity. A new entity may not automatically inherit that history, even when the people, capability and ownership are unchanged.

Contracts, procurement and project continuity

Electrical and communications contractors operate under head contracts, subcontracts, maintenance agreements, service level agreements, leases, supply agreements, panel appointments, warranties, deeds of guarantee and project security arrangements. A change of entity may require consent, assignment or novation. Counterparties may use the process to renegotiate price, risk allocation, payment terms, insurance or security. Some contracts prohibit assignment or treat a change in control or legal structure as a termination event.

Government and private procurement systems may also require a new supplier registration, Australian Business Number, insurance certificate, financial assessment, safety accreditation, modern slavery declaration, cyber security assessment or prequalification applications. Contractors may lose access to established panels or tender opportunities while applications are processed. The cost is not limited to legal fees. It includes lost work, delayed projects, duplicated compliance and the risk that a technically capable contractor is excluded because government tax policy changed its legal entity.

Banking, finance, security and credit history

Restructuring can require lender approval, refinancing, replacement guarantees, new equipment finance, lease novation, changed merchant facilities and amendments to security registrations. Banks and financiers may reassess the business, require additional security, reprice facilities or decline to transfer existing arrangements. A new entity may not have the credit history, trading record or financial statements relied upon for tendering, bonding and supplier accounts. Break fees, valuation costs, establishment fees and increased interest margins are real transition costs and must not be ignored.

Insurance and risk allocation

Electrical and communications work carries material public liability, professional indemnity, workers compensation, cyber, product and contract works risks. A change of entity may require policies to be cancelled with Insurers potentially reassessing policy premiums, and associated excesses.

Assets, property and transfer duty

Contractors may hold commercial premises, vehicles, plant, testing equipment, tools, software licences and other assets through a trust. Moving those assets to another entity may trigger state or territory transfer duty, registration fees, valuation costs, lender consent and taxation consequences outside the proposed federal rollover. The cost may be substantial where land or valuable plant is involved. The Commonwealth must not create cost disparities based on location I resulting in differing costs to comply with the changes as proposed.

Succession, retirement and family business continuity

Many electrical and communications businesses are built over decades and passed between family members or employees. A trust may define control, income rights, capital interests and arrangements following death, incapacity or retirement. Forced restructuring may disturb estate plans, beneficiary expectations, ownership arrangements and family agreements.

Rollover relief does not resolve the problem

In summary, the proposed three year rollover period commencing on 1 July 2027 does not provide adequate relief for the aforementioned reasons.. Rollover relief may defer some specific tax consequences, but does not preserve the many foreseeable consequences on an operating business.

Required transition and compensation arrangements if the measure proceeds

1. Grandfather existing active small business trading trusts. Grandfathering is the most effective and least disruptive protection. Existing electrical and communications contracting businesses should remain outside the minimum tax while prospective rules apply only to structures established after the legislation is enacted and fully operational. Grandfathering should attach to genuine active trading businesses and should permit ordinary succession and ownership changes without losing protection.

2. Establish a fully funded compensation and cost recovery scheme. The Commonwealth should reimburse all reasonable costs caused by a restructure undertaken in response to the measure. The scheme should cover legal, taxation, accounting and valuation advice, state and territory duties, ASIC and registration fees, licence and accreditation applications, banking and finance fees, break costs, contract and lease assignment, insurance amendments, procurement and prequalification applications, software and systems changes, employee and customer communications, and demonstrable business interruption or lost tender costs.

3. Ensure compensation is complete, prompt and tax neutral. Compensation should be available before or immediately after costs are incurred, not through a delayed process that requires small businesses to fund government policy from working capital. Payments should not create a further income tax, goods and services tax or capital gains tax liability. Reasonable claims should not be constrained by an arbitrary low cap, and decisions should be subject to transparent criteria and independent review.

4. Secure national transfer duty relief. The Commonwealth must reach binding agreements with every state and territory to exempt transfers required by the reform from duty and related registration charges. The measure should not commence until those exemptions are enacted. Federal rollover relief without state and territory duty relief is incomplete and inequitable.

5. Guarantee automatic continuity of licences and approvals. Where beneficial ownership, responsible management, qualified supervisors and technical capability remain materially unchanged, licences, accreditations and regulated approvals should transfer automatically or continue by statutory deeming. No contractor should be unable to trade while an authority reprocesses substantially identical information. Fees should be waived and regulators should be required to complete any necessary administrative update within a fixed and short period.

6. Protect contracts, procurement status and trading history. Government procurement agencies should recognise the predecessor entity's experience, financial history, safety performance and prequalification status. Standard novation instruments and statutory safe harbours should be developed with industry to reduce unnecessary consent and renegotiation. Commonwealth funded projects should prohibit contractors from losing panel access or prequalification solely because of a restructure caused by this measure.

7. Provide an adequate transition period. Any transition period should be timed to commence after certainty has been reached between the Commonwealth and States to ensure adequate exemptions with regards to financial compensation associated with taxes, fees and other charges across jurisdictions.

8. Adopt a more targeted scope. If the measure proceeds, the definition of discretionary trust needs to be precise and directed at entities the Government has evidence are being behaving unconscionably.

9. Prevent double taxation and stranded credits. Beneficiary credits and franking credit arrangements must be simple, refundable where appropriate and capable of being used without lengthy tracing or carry forward requirements. A trustee level tax must not create a permanent higher tax burden for lower income beneficiaries or impose double taxation because credits cannot be used.

10. Use proportionate collection arrangements. Trustees, directors and family members should not face expanded personal liability or aggressive recovery mechanisms merely because the tax system has changed. Personal liability should arise only where there is misconduct, avoidance or deliberate non-payment. Collection arrangements should not worsen working capital pressure or create new risks for compliant small business operators.

Conclusion

NECA cannot support a policy that has not been the subject of consultation to ensure that direct and indirect costs associated with the massive structural transition electrical and communications contractors will need to undertake have been negated.

These businesses adopted continue to operate under lawful structures developed for legitimate commercial reasons.

The preferred course is to withdraw the proposal and address identified tax avoidance through targeted integrity measures and enforcement. If the Government proceeds, existing active small business trading trusts should be grandfathered. Any contractor that nevertheless restructures because of the measure must receive full compensation and national regulatory protection so that the business is not left financially or operationally disadvantaged.

Transition arrangements cannot be confined solely to federal income tax relief. They must take into account the necessity of electrical and communications contractors to remain licensed, insured, financed, accredited, prequalified and capable of employing workers and delivering projects. Compensation therefore needs to modelled with a view to compensating all these items which exist across state and territory boundaries. No small business should be required to sacrifice apprentices, investment or working capital to fund the consequences of a government imposed restructure.

To arrange NECA's further input, or should you wish to discuss any matter relating to the issues raised, please contact Mr Kent Johns, Head of Government Relations and Policy, kent.johns@neca.asn.au.