Australian Property Institute Ltd.
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18 September 2026

The Assistant Secretary
Individuals and Indirect Tax and Superannuation Division
The Treasury
Langton Crescent
Parkes ACT 2600

Lodged via the Treasury Consult hub, consultation c2026-799771

Supplementary submission: Minimum tax on discretionary trusts, exposure draft legislation

Dear Assistant Secretary,

The Australian Property Institute (API) welcomes the release of the exposure draft legislation for the minimum tax on discretionary trusts. This submission adds one matter to our submission of 31 July 2026 on the consultation paper and does not repeat it. The API is Australia's peak professional body for property valuers, representing more than 7,000 members nationwide.

We ask that the drafting of Subdivision 112-E of the Income Tax Assessment Act 1997 be corrected in this tranche of the reform legislation, in two respects:

- harmonise "just before" and "immediately before" within Subdivision 112-E so that one expression is used throughout, and
- state the date of 30 June 2027 in operative or guide text rather than leaving it to the notes.

Neither change alters the policy, the revenue or the amount assessed. Both are needed because the Subdivision fixes the value that resets the tax base for most privately held assets in the country, and it describes the moment of that valuation in three different ways.

Sections 112-155(2) and 112-165(2) deem the assets sold "just before 1 July 2027", and sections 112-155(3)(a) and 112-165(3)(a) fix the proceeds at market value "just before 1 July 2027". Section 112-175(3)(a), dealing with pre-CGT assets, uses "immediately before 1 July 2027". The notes to those provisions state that the sale happens on 30 June 2027, and the note to section 112-160(1) describes it as happening at the end of 30 June 2027. Section 102-6(4) ends the pre-commencement ownership period on 30 June 2027, and the draft Determination to be made under section 112-185 works out the pre-commencement cost base as at the end of 30 June 2027.

The operative provisions never state the date 30 June 2027. It appears only in the notes. Notes form part of the Act (Acts Interpretation Act 1901, section 13), but the practical effect is that a professional reading the operative words sees 1 July 2027 while one reading the notes sees 30 June 2027. The Subdivision also uses two formulations for what is evidently the same instant, and different expressions in the same enactment are ordinarily presumed to carry different meanings.

Nothing turns on the amount. The market value of an asset at the end of 30 June 2027 and at the start of 1 July 2027 is the same figure. What turns on the drafting is the date stated on the face of the valuation report. The Australian Taxation Office's guidance on market valuations for tax purposes requires a valuation to be prepared for the date the legislation specifies and treats a prospective assessment as unacceptable. A report bearing a date the Commissioner later regards as wrong is open to challenge on its face, whatever the quality of the valuation behind it. The risk falls hardest on the longest-held assets, because for pre-CGT assets the deemed reacquisition value becomes the whole of the future tax base. Farms, family business premises and long-held commercial property are the most exposed.

The confusion is not hypothetical. National valuation firms have published adviser guides anchored to 1 July 2027, and peak business bodies have used both dates within a single submission to Treasury's recent consultation. The API has corrected its own published guidance to the 30 June 2027 anchor, but a professional body cannot settle a question of statutory construction.

This bears on the present package because of timing. The roll-over relief in proposed Subdivision 126-C of the Income Tax (Transitional Provisions) Act 1997 is available for transfers from 1 July 2027 to 30 June 2030, so the window opens on the day the reset takes effect. The same two expressions also appear in the new drafting: the exposure draft uses "just before the transfer takes effect" (sections 126-440(1) and 126-455(2)), while the explanatory materials describe the same moment as "immediately before the transfer" (paragraphs 1.68 and 1.70). Little turns on it there, but one expression across both would be stronger.

The API raised the Subdivision 112-E drafting with the Treasurer and the Assistant Treasurer on 26 August 2026. We recognise that the policy in this exposure draft was settled before that letter reached Treasury, and we do not seek to reopen it. Our request is confined to drafting.

The API would also be available to assist Treasury or the Australian Taxation Office with the form of words to be used in valuation instructions and reports, including the separation of the valuation date from the inspection date and the date of issue.

For any further information, or to discuss this submission, please contact Harriet Warr, General Manager Policy and Standards, at hwarr@api.org.au or 0474 772 291.

Yours sincerely,

John Winter
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Australian Property Institute Ltd.