

Labor's double tax will 'destroy' trusts:

Arnold Bloch Leibler

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The Albanese government's proposed new trust tax changes could single-handedly "destroy discretionary trusts overnight", warns one of Australia's most influential law firms Arnold Bloch Leibler, which has pleaded in a submission to Treasury that it needs to reconsider the proposed plan for double taxation of trusts.

The May budget included \$88 billion worth of changes to capital gains tax, negative gearing and a minimum 30 per cent [tax on trusts](#), legislation for which is now being repeatedly watered down and rushed out with minimal consultation time frames, creating uncertainty for families and businesses and an estimated advice bill alone of \$2.8bn across more than 840,000 trusts.

On Friday, Arnold Bloch Leibler tax partner Jonathan Ortner and Paul Sokolowski, said in a submission to Treasury that it had to reconsider the legislation yet again and that Jim Chalmers' department was misleading people on the likely impact to families and businesses.

"The government's statement that more than 90 per cent of active small businesses will not be affected understates the measure's reach. With more than 840,000 discretionary trusts in existence, the affected population extends well beyond the subset of entities Treasury has chosen to describe as active small businesses," Mr Ortner said.

The new tax changes impose a minimum 30 per cent tax on distributions and capital gains for discretionary trusts in part to deter income splitting. This would likely trigger many trusts to restructure into companies where tax rates are lower, but that would risk state stamp duty bills.

In a fundamental shift last month the Treasurer offered an exemption from the 30 per cent minimum tax if trustees elected to make permanent fixed distributions of income and capital to pre-nominated beneficiaries.

However, the government's new design also now denies a tax offset to a corporate beneficiary receiving income already taxed by the trust – effectively creating an tax rate of more than 60 per cent.

Arnold Bloch Leibler as well as some major tax and accounting firms such as Pitcher Partners say this is double taxation and will kill off discretionary trusts and create significant restructuring costs.

“The government's proposal could single-handedly destroy the discretionary trust overnight,” Mr Ortner said.

“These trusts are not tax dodges. Families use them to protect business assets, plan for succession, and reinvest profits in the business. But under the government's proposal, tax already paid by the trust could be ignored when the income is later paid to a company. That creates the risk of the same income being taxed twice unless families dismantle structures that may have operated legitimately for decades,” he said.

“If Treasury nevertheless proceeds with the regime, it should reconsider the proposed denial of the minimum tax offset to corporate beneficiaries.

“That denial would result in the trustee paying tax at 30 per cent and the corporate beneficiary being taxed again on the same income without credit for the tax already paid. Double taxation is neither necessary to preserve the proposed 30 per cent floor nor consistent with sound tax design.”

The Treasurer has maintained he is open to consultation on the process.

Tax partners have suggested a simple solution which allows the government to keep its desired new minimum 30 per cent tax, but which also prevents double taxation.

“There is a simple fix. When income passes from a trust to a company, give the company credit for the tax already paid, just as the government proposes to do for other beneficiaries, but make that credit non-refundable,” Mr Ortner said.

“The government would still collect at least 30c in every dollar in line with their policy intent. Families would then have a genuine choice of keeping their trust structure without having to undertake an expensive restructure to achieve the same result.

“The irony is that the simpler proposal of providing a non-refundable credit to a corporate beneficiary could actually leave the government with more revenue.”