50 YEARS PHILANTHROPY AUSTRALIA

Philanthropy Australia Ltd
philanthropy.org.au

ABN 79 578 875 531
ACN 070 104 255

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

31 July 2026

Dear Sir/Madam,

Minimum Tax on Discretionary Trusts

Philanthropy Australia thanks the Treasury for the opportunity to make a submission in response to the consultation regarding the implementation of a minimum tax on discretionary trusts.

Should the Treasury wish to discuss the matters raised in this submission further, please do not hesitate to contact our Executive Director, Policy and Sector Development, Krystian Seibert (kseibert@philanthropy.org.au).

Kind Regards

Maree Sidey
Chief Executive Officer

Sydney
Yirranma Place, 262 Liverpool Street
Darlinghurst NSW 2010
sydney@philanthropy.org.au

Melbourne
Level 14, 90 Collins Street
Melbourne VIC 3000
info@philanthropy.org.au

Adelaide
161 Frome Street
Adelaide SA 5000
adelaide@philanthropy.org.au

Brisbane
Level 1, 826 Ann Street
Fortitude Valley QLD 4006
brisbane@philanthropy.org.au

Perth
136 Stirling Highway
Nedlands WA 6009
perth@philanthropy.org.au

Key Points

- Philanthropy Australia (PA) acknowledges that significant taxation reform is a challenging undertaking, with governments having to grapple with complex trade-offs and balance various considerations when designing taxation policy settings.
- Australia's taxation framework includes important incentives to encourage philanthropy for the benefit of the community, and we are concerned that the current design of the minimum tax on discretionary trusts would negatively impact giving.
- Without some form of deduction or exemption, the minimum tax would function along the lines of a 'donation tax', affecting the flow of funds for various causes in the community.
- We are proposing a principled way forward for addressing these issues, whilst recognising the policy intent of the minimum tax and the Australian Government's desire to enhance equity within the tax system.
- The reason the Deductible Gift Recipient (DGR) system exists is to address these situations – its purpose is to determine which entities can receive tax deductible donations.
- Ensuring that distributions to DGRs are deductible from the income of a discretionary trust, for the purposes of the minimum tax (and where they meet the criteria for a gift), provides a solution that aligns the tax deductions available to individual taxpayers and those using discretionary trusts.
- However, such an approach would reinforce and further entrench an existing DGR system that in its current form, according to the Productivity Commission's *Future Foundations for Giving* report, is not fit for purpose and needs reform.
- PA believes that the DGR system needs to be the key part of the solution that addresses the issues with the proposed design of the minimum tax, ensuring that it does not function along the lines of a 'donation tax'.
- However, we cannot support a solution that does not include reform of the DGR system – the Australian Government should commit to expand its scope to include more charities and simplify its operation, as recommend by the Productivity Commission.
- Using this approach, whether an individual taxpayer donates to a charity with DGR status, or a discretionary trust makes a distribution that amounts to a gift – both would provide a deduction from taxable income.
- This would more closely align the benefits available to individual taxpayers and those using a discretionary trust.
- Even if DGR system reform is implemented, there will still be some charities and other not-for-profit organisations that would remain ineligible for DGR status, potentially making distributions to them subject to the minimum tax.
- If more consistency is the main motivating factor for the Australian Government introducing the minimum tax, then the Government may be inclined to make distributions to these other non-DGR entities subject to the minimum tax, impacting giving to these entities.
- As an alternative, discretionary trusts could be allowed to make tax deductible distributions to non-DGR charities and other not-for-profit organisations, up to an annual cap.
- However, PA could only support such an approach alongside a clear commitment from the Australian Government to implement DGR system reform.
- In the interests of simplicity and reducing administrative burdens, PA does not believe that an approach using a refundable tax credit is appropriate.

Introduction and Background

For more than 50 years, Philanthropy Australia (PA) has worked to strengthen giving for the benefit of the Australian community.

We have over 800 members, including trusts, foundations, individual donors, professional advisers, intermediaries, corporates and not-for-profit organisations. We work alongside our members and our partners across the wider not-for-profit sector, to mobilise generosity so that it flows with purpose and impact.

PA advocates for policies that help philanthropy and civil society thrive, furthering our purpose to strengthen giving towards a more generous, just and sustainable future. We work to strengthen giving, because this is essential for building more inclusive and resilient communities, making a vital contribution towards addressing the social and environmental challenges we face as a nation.

We advocate for policies that help philanthropy and civil society thrive, furthering our purpose to strengthen giving towards a more generous, just and sustainable future.

In this context, PA has a strong interest in the taxation policy settings impacting philanthropy and the wider not-for-profit sector.

PA acknowledges that significant taxation reform is a challenging undertaking. Governments must grapple with complex trade-offs and balance the need for a taxation framework that supports productivity and promotes equity, alongside the importance of raising adequate revenue to support the provision of services for the community.

Australia's taxation framework also includes important incentives to encourage philanthropy for the benefit of the community. The contribution of these incentives was recognised in the report of the Productivity Commission's philanthropy inquiry, *Future Foundations for Giving*.

We seek to ensure that these policy settings contribute to a vibrant culture of giving and flourishing civil society in Australia. Which is particularly relevant given that the Australian Government has a stated goal to double giving by 2030, which we strongly support.

We are concerned that the design of the minimum tax on discretionary trusts will negatively impact giving, and are proposing a principled way forward to address this.

In light of this, we are concerned that the current design of the minimum tax on discretionary trusts would negatively impact giving for the benefit of the community.

We are proposing a principled way forward for addressing these issues, whilst recognising the policy intent of the minimum tax and the Australian Government's desire to enhance equity within the tax system and more closely align outcomes for different types of taxpayers.

The Minimum Tax Could Function Like a 'Donation Tax'

The consultation paper states that charitable trusts will be excluded from the minimum tax. This is consistent with PA's understanding, but we appreciate this confirmation. Therefore, our comments relate to non-charitable discretionary trusts.

Discretionary trusts commonly include provisions within their deed permitting the trustee to make distributions to charities and other not-for-profit organisations. This enables discretionary trusts to facilitate giving towards a range of causes.

Currently, income distributed from a discretionary trust is taxed in the hands of the beneficiary, according to the relevant tax rates. Because charities and other not-for-profit organisations are typically exempt from income tax, distributions to them are not subject to tax.

The minimum tax would be levied on the income from assets held by a discretionary trust, before it is distributed to beneficiaries, at a rate of 30 per cent. The consultation paper notes that:

> *The minimum tax will be levied at the trustee level and generate a non-refundable tax offset for the tax payable by the trustee, which reduces income tax payable by eligible beneficiaries.* ***However, income tax-exempt beneficiaries, such as registered charities, would not be able to use these offsets as they do not have income tax liability, and the offsets are non-refundable****.*

On this basis, without some form of deduction or other exemption, the minimum tax would act like a 'donation tax', in effect imposing a 30% tax on distributions to charities and not-for-profit organisations from discretionary trusts.

Without some form of deduction or exemption, the minimum tax would act like a 'donation tax', impacting the flow of funds for various causes in the community.

Such a 'donation tax' would reduce giving through discretionary trusts, impacting the flow of funds for various causes in the community.

It appears that the minimum tax would apply even if a charity is a Deductible Gift Recipient (DGR). As in, the consultation paper does not state that income distributed as a donation to a DGR would be deducted from the taxable income of the discretionary trust, before the minimum tax is levied.

On this basis, although the policy intent of the minimum tax is to enhance equity within the tax system – it could also create a new inequity. Where an individual taxpayer earns income, which is donated to a DGR, then this donation is deducted from their taxable income. However, if a taxpayer/s uses a discretionary trust for such giving, it would appear not be deductible in the same way.

The Deductible Gift Recipient System Provides the Solution

As noted above, PA recognises the policy intent of the minimum tax. In seeking to address the issues with the current design of the minimum tax, our proposed way forward reflects the various policy considerations in this context, including:

1. More closely aligning the benefits (including tax deductions) available to individual taxpayers and those who use discretionary trusts;
2. Ensuring the integrity of the taxation framework and that structures are used for proper purposes;
3. Providing sufficient revenue for government to fund services for the community; and
4. Maintaining incentives that encourage giving to charities for the benefit of the community.

The reason we have the DGR system is to address exactly these situations. As stated in the Productivity Commission's *Future Foundations for Giving* report, the DGR system is the Australian Government's main policy instructive for incentivising giving. Its purpose is to determine which entities can receive tax deductible donations from taxpayers.

The reason we have the DGR system is to address exactly these situations – its purpose is to determine which entities can receive tax deductible donations.

Therefore, ensuring that distributions to DGRs are deductible from the income of a discretionary trust, for the purposes of the minimum tax, would provide a solution that aligns the tax deductions available to individual taxpayers and those who use discretionary trusts.

However, such an approach would reinforce and further entrench an existing DGR system that in its current form, according to the Productivity Commission, is not fit for purpose.

As stated in Finding 5.1 of the *Future Foundations for Giving* report, the system is 'poorly designed, overly complex and has no coherent policy rationale' and 'it needs reform'.

> **Finding 5.1**
> **The deductible gift recipient (DGR) system is poorly designed, overly complex and has no coherent policy rationale**
>
> The DGR system is not fit for purpose as a mechanism for determining which entities should be eligible to receive indirect government support through tax-deductible donations. There is no coherent policy rationale for why certain entities are eligible for DGR status and others miss out. The complexity of the system continues to increase as new DGR endorsement categories are added in a piecemeal manner.
>
> The DGR system creates inefficient, inconsistent and unfair outcomes for donors, charities and the community. It needs reform.

The Productivity Commission's finding was echoed by the Not-for-profit Sector Development Blueprint released at the end of 2024. Five major reports[1], including two commissioned by the current Australian Government, have recommended an overhaul of the system.

Only around half of registered charities are eligible for DGR status, with many others falling through the gaps between the various DGR categories in Division 30 of the *Income Tax Assessment Act 1997* (Cth). Newly released research from the Centre for Social Impact has again confirmed the challenges this creates for charities trying to attract support[2].

The existing system leads to random outcomes that do not make sense. For example, a charity focused on preventing illnesses in children is eligible for DGR status, whereas a charity focused on preventing injuries to children is ineligible. A charity which assists people experiencing poverty is eligible for DGR status, but a charity seeking to address the systemic causes of poverty can be ineligible.

In addition to problems with the scope of the DGR system, smaller organisations can struggle to deal with its complexity. Organisations operating activities stretching across multiple DGR categories must often maintain multiple DGR endorsed entities, creating unnecessary administrative burdens and confusing donors.

We refer the Treasury to the submission from Justice Connect for further discussion of the DGR system.

---

[1] The other reports are: *Fairer, Simpler and More Effective Tax Concessions for the Not-for-profit Sector*, the Final Report of the Not-for-profit Sector Tax Concession Working Group, 2013 (link); *Contribution of the Not-for-profit Sector,* The Productivity Commission, 2010 (link); *Charitable Organisations in Australia*, The Industry Commission, 1995 (link).

[2] *State of the Social Economy in Australia: Wave 2 Report*, Centre for Social Impact, 2026 (link)

Reform of the Deductible Gift Recipient System is Essential

PA believes that the DGR system needs to be the key part of the solution that addresses the issues with the current design of the minimum tax, ensuring it does not function as a 'donation tax'. However, the Australian Government must act to ensure that the DGR system is fit for purpose, by committing to reform the DGR system.

The Productivity Commission's *Future Foundations for Giving* report applied a principles-based framework to re-design the DGR system, aiming to create fairer and more consistent outcomes for donors, charities and the broader community.

Implementing reform of the DGR system, along the lines of what was recommended by the Productivity Commission, would expand the scope of the DGR system and, also, simplify its operation.

The DGR system is the solution for ensuring that the minimum tax does not function like a 'donation tax' – but the Australian Government must commit to reforming the DGR system to expand its scope and ensure it is fit-for-purpose.

The scope of the system could retain certain categories of charities such as school building funds, which the Productivity Commission recommended should not be eligible, reflecting previous statements from the Australian Government.

Under a reformed DGR system, more charities would become eligible for tax deductible donations, with a simpler process for endorsement based on registration as a charity with the Australian Charities and Not-for-profits Commission. The integrity of the DGR system would be further enhanced.

According to the Productivity Commission, a more diverse range of charities with DGR status means a wider range of causes and beneficiaries could benefit from philanthropy and co-investment from Australian taxpayers – whether the giving comes from an individual taxpayer or occurs through a discretionary trust.

By implementing DGR system reform, more charities would be eligible to receive tax deductible donations, whether they are from an individual taxpayer or from a discretionary trust.

This approach would counteract the negative impacts of the minimum tax on giving, whilst enhancing the overall policy settings for giving in Australia. It would also more closely align the benefits available to individual taxpayers and those using a discretionary trust, consistent with the Australian Government's desire to enhance equity within the tax system.

Examples of Charities That Would Become Eligible for DGR Status	
Neighbourhood houses	Organisations working to prepare communities for bushfires and other natural disasters
Organisations focused on preventing injuries in children	First Nations reconciliation and human rights charities
Public interest journalism charities	Community gardens

Examples of Charities and Other Entities Already Eligible for DGR Status	
Welfare charities	Health and medical research organisations
Universities	School building funds
Public and private giving funds	Environmental charities
Community foundations	Cultural organisations
Overseas aid organisations	Hospitals

As part of implementing this proposed approach, it would be necessary to specify that a distribution from a discretionary trust would need to meet the requirements for being a gift (as set out in Taxation Ruling 2005/13). This would be similar to the requirement for an individual taxpayer.

In addition, some form of reporting may be appropriate for ensuring compliance. For example, a discretionary trust could be required to list the distributions made to charities with DGR status, including the Australian Business Number of the entity, as part of its annual tax return.

It is emphasised that this proposed approach is not a request for a special carve out with a questionable policy rationale. Rather, it is a request that the Australian Government implement a recommendation of the Productivity Commission, so that a reformed DGR system can be used to address issues with the design of the minimum tax. This will ensure that the benefits of giving continue to flow to more charities, supporting their important work in communities across Australia.

It should also be noted that the Productivity Commission's recommended model for DGR system reform is similar to that previously proposed by the *Not-for-profit Sector Tax Concession Working Group*, established by the Australian Government in 2012 and for which the Treasury provided the secretariat.

Whilst PA believes that the DGR system provides the solution to this issue, for the avoidance of doubt, we cannot support a solution that does not involve DGR system reform to expand its scope and simplify its operation.

We believe that the DGR system provides the solution – but we cannot support an approach that does not involve reform of the DGR system, as this would not result in a principled policy outcome.

PA would welcome the opportunity to discuss phasing of DGR system reform, and other such implementation considerations, however we cannot support an approach which merely entrenches the existing DGR system. We are seeking clear action from the Australian Government, to deliver on a much-needed reform with a strong evidence base. Australian charities missing out on tax deductible donations should not have to wait for yet another report to make the same recommendation.

Treatment of Distributions to Non-Deductible Gift Recipients

Even if DGR system reform were implemented, there will still be some charities and other not-for-profit organisations that would remain ineligible for DGR status. These entities can currently receive distributions from discretionary trusts which are not subject to tax.

If more consistency is the significant motivating factor for the Australian Government introducing the minimum tax, then the Government may be inclined to make distributions to these other non-DGR entities subject to the minimum tax. This would more closely align the benefits available to individual taxpayers and those using discretionary trust, but it would also negatively impact giving.

As noted earlier in this submission, PA acknowledges that taxation reform is a challenging undertaking and that governments must grapple with various trade-offs. Policy making rarely has a single objective, and multiple considerations must usually be taken into account.

If distributions to charities and not-for-profit organisations without DGR status were subject to the minimum tax, this would impact the flow of support for various other causes, and the ability to achieve the Australian Government's goal to double giving by 2030. This is also a valid consideration.

An alternative approach could be to allow discretionary trusts to make tax deductible distributions to non-DGR charities and other not-for-profit organisations, up to an annual cap.

An alternative approach could be to allow discretionary trusts to continue to make tax deductible distributions to non-DGR charities and other not-for-profit organisations, up to an annual cap (for example $2,000 or $5,000).

This would move the arrangements for discretionary trusts closer to those for individual taxpayers, whilst retaining some of the existing flexibility to support other causes.

There could be consideration of which categories of income tax exempt not-for-profit organisations would be eligible to receive such deductible distributions. For example, it could be limited to entities exempt under section 50.5 of Division 50 of the *Income Tax Assessment Act 1997* (including all registered charities), as well as those exempt under section 50.10 (community service), section 50.30 (health), and section 50.45 (sport, culture and recreation).

In effect, the end outcome would be that:

1. **Distributions to charities with DGR status, within a reformed DGR system** – deductible in full for the purposes of the minimum tax, consistent with arrangements for individual taxpayers (provided the distribution meets the criteria of a gift)
2. **Distributions to charities without DGR status and other not-for-profit organisations** – deductible up to an annual cap (provided the distribution meets the criteria of a gift)

However, PA could only support such an approach alongside a clear commitment from the Australian Government to implement DGR system reform.

Consideration of Alternative Approaches

The table below summarises the impact of different approaches for addressing how distributions to charities and other not-for-profit organisations are treated in terms of the application of the minimum tax on discretionary trusts.

There has been some discussion about whether a refundable tax credit could address the issues with how the minimum tax applies to distributions to charities and not-for-profit organisations.

Under such an approach, the trustee of a discretionary trust would pay the minimum tax on income from assets held by the trust. Then when making a distribution to a charity or not-for-profit organisation (or whichever eligible entity, including a charity with DGR status), a refundable tax credit would be provided, reflecting the tax that has, in effect, been paid on the distributed amount. The recipient entity could then apply to the ATO for a refund of the tax paid.

While this would be similar to the arrangement for claiming refunds of franking credits by charities and not-for-profit organisations, those arrangements reflect a shareholder relationship rather than a relationship where one entity makes a donation to another entity.

An approach which uses a refundable tax credit would involve higher administrative burdens, for both the entity claiming the credit and the ATO. A charity or not-for-profit organisation would have to be notified that funds have been donated by way of a distribution from a discretionary trust. It would then need to submit an application for processing by the ATO. There could be a considerable lag between when a distribution is made and when a refund is provided by the ATO, with impacts on cashflow.

An approach which uses a refundable tax credit would involve higher administrative burdens, for both the entity claiming the credit and the ATO.

Therefore, in the interests of simplicity and reducing administrative burdens, PA does not believe that an approach using a refundable tax credit is appropriate. We would prefer that any issues with how the minimum tax applies to distributions to charities and not-for-profit organisations are resolved at the level of the discretionary trust, using the mechanism of a deduction from the taxable income of the trust.

Approach	Considerations
No deduction for distributions to DGRs or other charities or not-for-profit organisations	• The minimum tax would function like a 'donation tax'. • Negatively impacts giving for the benefit of the community.
Deduction for distributions to DGRs, with a capped deduction for distributions to certain other registered charities *[PA's preferred approach]*	• Would considerably counteract the negative impacts of the minimum tax on giving, whilst ensuring that the DGR system is fit for purpose as a way of providing indirect government support for charities. • The arrangements for discretionary trusts would move closer to those for individual taxpayers, whilst retaining some of the existing flexibility for discretionary trusts to support other causes.
Deduction only for distributions to DGRs, with no deduction for distributions to other registration charities and not-for-profit organisations	• Would considerably counteract the negative impacts of the minimum tax on giving, whilst ensuring that the DGR system is fit for purpose as a way of providing indirect government support for charities. • However, giving to charities and not-for-profit organisations without DGR status would be negatively impacted.

Maintaining the status quo prior to the introduction of the minimum tax, with distributions to income tax exempt entities not subject to tax, but without DGR system reform	• Although giving through discretionary trusts would be less impacted, charities without DGR status would continue to find it harder to attract donations more generally. • Does not address deficiencies with the DGR system, with existing gaps and complexities persisting. • Raises tax system equity issues and is less consistent with the policy intent of the minimum tax. • Retains different benefits for taxpayers using discretionary trusts and other taxpayers.
A refundable tax credit is used instead of a deduction	• Would involve higher administrative burdens, for both the entity claiming the credit and the ATO. • Could create cashflow issues, given the lag between when a distribution is made and when a refund is provided by the ATO.