The Tax Institute

9 June 2026

Committee Secretariat
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Committee Secretariat,

Treasury Laws Amendment (Tax Reform No. 1) Bill 2026

The Tax Institute welcomes the opportunity to make a submission to the Senate Economics Legislation Committee (**Committee**) in respect of its inquiry and report on the Treasury Laws Amendment (Tax Reform No. 1) Bill 2026 (**Bill**) and accompanying explanatory memorandum (**EM**).

We commend the Government for its willingness to address some significant, long-debated issues regarding Australia's tax system. We acknowledge the political will demonstrated in attempting to tackle the policy issues underpinning the measures contained in the Bill. The measures seek to address specific pressure points in the tax system, including the distributional effects of the capital gains tax (**CGT**) discount and negative gearing. These objectives are to be commended. However, these issues have been approached without apparent regard for the broader tax system in which they operate.

Australia's tax system is in dire need of holistic reform. In particular, while tax settings are an important policy lever, they are only one of a range of factors influencing outcomes such as housing affordability. Structural issues, including housing supply constraints, planning and zoning settings, infrastructure availability and construction costs, also play a significant role. In this context, tax measures of the kind proposed in the Bill are unlikely, in isolation, to resolve broader housing affordability challenges.

Similarly, the personal income tax measures introduced in this Bill do not address more fundamental structural issues within the tax system, including the over reliance on personal income tax as a primary revenue source, and the narrowness of the overall tax base. Absent consideration of these broader settings, there is a risk that isolated changes will produce partial or uneven outcomes, rather than delivering coherent and sustainable reform.

While we support the Government's intention to address issues in the tax system, we have serious concerns about how these measures have been developed, designed, and introduced. Changes of this scale and significance require thorough consultation, clear information, and sufficient time for proper consideration. Without this, even well-meaning changes can lead to poor design, technical problems, and outcomes that do not align with their intended goals.

The measures in this Bill represent some of the most significant changes to Australia's tax system in decades. They will have far-reaching, economy-wide implications for taxpayers, investors and businesses. Despite this, the Bill has been introduced without any prior public consultation, consultation papers, or an exposure draft, and without any meaningful opportunity for those affected to contribute to its design. In doing so, the Government has bypassed a crucial safeguard in the tax policy development process.

The approach taken with this Bill reflects a concerning trend by the government toward compressed and, in some cases, absent consultation processes for significant tax changes. For example, consultation on the instant tax deduction exposure draft was open for only two weeks. The Strengthening the foreign resident capital gains tax regime draft legislation was also open for just two weeks, despite introducing a retrospective application and much broader approach that had not been foreshadowed in its prior announcements.

This approach limits meaningful input from stakeholders, reduces the likelihood of identifying unintended consequences and practical issues at a time where they may be more readily resolved, and weaken public confidence in how tax policy is developed. The original Division 296 proposal was clear evidence of this.

Our concerns are not simply procedural. They go to the integrity of the tax policy development process and, ultimately, to public confidence in the tax system itself. This is a crucial concern given Australia's self-assessment-based tax system, which relies overwhelmingly on public acceptance of, and willingness to comply with, tax rules to function properly.

We call on the Government to reaffirm its commitment to the principles of good tax policy development, including early and ongoing engagement with the tax community on complex legislative changes.

Our detailed observations and recommendations are contained in **Appendix A**. This submission is divided into four parts.

- Part 1 addresses the consultation process and timeframe, including our concerns about the absence of prior consultation on the CGT and negative gearing measures, and the compressed timeframe for this inquiry.
- Part 2 sets out our broader policy observations on the design and effectiveness of the measures.
- Part 3 examines in detail the technical issues and drafting concerns in the Bill.
- Part 4 outlines transitional and implementation considerations, including ATO system readiness and the practical challenges associated with implementing the proposed measures within the current timeframe.

Summary of key issues and recommendations

We recommend that the Committee give careful consideration to the following matters:

- **Lack of consultation and compressed policy development process**

The Bill has been introduced without any prior public consultation on the CGT and negative gearing measures, and the Working Australian tax offset (**WATO**), and with only limited consultation on the standard deduction on work-related expenses. This has significantly constrained stakeholders' ability to provide meaningful input and to properly identify and address technical and practical issues.

- **Compressed timeframe and lack of urgency for time-critical designation**

The timeframe provided for this inquiry is insufficient given the scale, complexity and far-reaching implications of the proposed measures. The CGT and negative gearing measures are not intended to commence until 1 July 2027. Yet they have been included in a time-critical Bill and progressed on an accelerated timetable. At the same time, other measures with an earlier commencement, including the permanent extension of the instant asset write-off, and the new penalty regime for mischaracterised or undervalued royalties for large multinationals, both proposed to apply from 1 July 2026, have not yet been legislated. This creates a clear inconsistency and raises questions as to the basis on which some of the measures contained in the Bill have been prioritised for expedited passage.

- **Significant technical gaps and unresolved issues in the Bill and EM**

The Bill and the EM contain a number of material technical gaps, unresolved interactions and areas of uncertainty. These include:

  - the absence of core design elements, including valuation and apportionment rules, which are deferred to legislative instruments;
  - unresolved interactions with existing regimes, including Division 152 (small business CGT concessions), Division 83A (employee share schemes), trust provisions and foreign income tax offset rules;
  - uncertainty in key definitions and operational rules, including ‘new residential dwelling’ and residential accommodation days; and
  - inconsistencies and incomplete drafting affecting the operation of the regime in common scenarios.

These issues create significant uncertainty about how the measures are intended to operate in practice and increase the risk of unintended outcomes, compliance burdens, and disputes.

- **Transitional and implementation risks**

The implementation of the proposed measures is not aligned with the Australian Taxation Office (**ATO**) system readiness. Significant system changes will be required across the ATO, digital service providers and taxpayers, at the same time as other major reforms (including Payday Super) are being implemented.

Overarching recommendations

Having regard to the issues outlined above, we consider that the Bill is not sufficiently developed to proceed in its current form. We therefore recommend that the Bill not be passed as introduced.

Instead, the Government should undertake further consultation, address the identified technical deficiencies and drafting gaps, and release revised legislation that provides a complete, coherent and workable framework.

As a starting point, many of the matters currently proposed to be addressed in legislative instruments should instead be included in primary legislation, given their central importance to the operation of the measures, and the need for full parliamentary scrutiny. At a minimum, the Bill should not proceed until key supporting rules and legislative instruments have been developed and released for consultation.

We further recommend that the Government commit to a post-implementation review of the measures within 12 months of commencement to ensure that the changes operate as intended, and to address any later identified unintended consequences.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all.

If you would like to discuss any of the above, please contact our Tax Counsel, John Storey, on (03) 9603 2003.

Yours faithfully,

Julie Abdalla	**Tim Sandow**
Head of Tax & Legal	President

APPENDIX A

We have set out below our detailed comments and recommendations for your consideration.

Part 1 – Consultation process, timeframes and Senate Committee role

We are deeply concerned by the absence of consultation on key measures in the Bill prior to being introduced into Parliament. We are also concerned that in the case of the single measure that was open for consultation (being, the standard deduction for work-related expenses), the process was severely compressed and produced no substantive changes to the legislation despite stakeholder feedback.

CGT discount and negative gearing changes – no prior consultation

The proposed changes to the CGT discount and negative gearing were introduced into Parliament without any prior public consultation, consultation papers or exposure draft legislation. This has limited the ability of taxpayers, practitioners and the broader community to provide meaningful input on how the measures will operate in practice. The Bill was introduced on 28 May 2026, only 16 days after the Budget announcement on 12 May 2026, a period wholly insufficient for substantive pre-legislative engagement on measures of this complexity.

In this submission, while we provide our observations on the technical aspects of the Bill, we note that many fundamental aspects of the proposed measures remain contingent on yet-to-be-determined regulations. The absence of any of the legislative instruments referenced in the legislation at the time of its introduction further underscores the need for meaningful consultation before the measures commence.

Standard deduction for work-related expenses – compressed and ineffective consultation

The $1,000 standard deduction for work-related expenses was subject to a two-week public consultation period on the exposure draft legislation. The Tax Institute, together with other professional bodies, made a joint submission to that process, raising concerns and providing recommendations to improve the design of the measure.

Schedule 4 of the Bill is in all material respects identical to the exposure draft. None of the substantive concerns raised during the consultation process appears to have been reflected in the Bill. This raises a fundamental question about whether stakeholder feedback provided during the consultation period was genuinely considered. Where feedback is not incorporated, or even acknowledged, the process risks being perceived as performative rather than genuine consultation.

Compressed timeframe for this inquiry

We are also concerned about the compressed timeframe for stakeholder feedback on the Bill as a whole. The Bill was referred to the Committee on 28 May 2026, with submissions due by 9 June 2026 and the Committee due to report by 22 June 2026. This provides only 12 calendar days (including weekends and a public holiday across several States) for stakeholders to consider complex and far-reaching changes, seek input from affected parties and prepare considered, evidence-based submissions.

We note that this compressed timetable is, in part, a consequence of the Senate's order of 13 May 2026 to automatically refer all 'time-critical' Budget bills. While we welcome the Senate's decision to refer this Bill, we question the Government's decision to rush through this Bill and designate measures of this magnitude as time-critical without any prior consultation.

The CGT and negative gearing changes do not commence until 1 July 2027, more than 13 months after the Budget announcement. There is sufficient time for the Government to consult properly, release exposure draft legislation, consider stakeholder feedback, and reintroduce a revised Bill before that date. The urgency that justifies the time-critical designation is not apparent from the commencement date itself.

This stands in marked contrast to the Government's approach to many other measures that have been legislated either extremely late or retrospectively. For example, the instant asset write-off measure applying to the 2023–24 income year, enacted through the *Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Act 2024*, received Royal Assent on 28 June 2024, just two days before the end of the income year to which it applied. Similarly, the extension for 2024–25, legislated by the *Treasury Laws Amendment (Tax Incentives and Integrity) Act 2025*, was not enacted until 27 March 2025, approximately nine months into the relevant income year.

Importantly, these measures were merely extensions of existing arrangements and could have easily been passed sooner. By contrast, the proposed changes to CGT and negative gearing represent entirely new and significant changes with far broader implications for taxpayers and markets.

We note that the permanent extension of the instant asset write-off for 2026-27, announced in the 2026-27 Federal budget, has not yet been introduced into Parliament, despite its proposed commencement on 1 July 2026, which is now only weeks away.

This creates a clear inconsistency. The Government is seeking to expedite legislation for certain measures that will not commence until July 2027, while small businesses remain without legislative certainty for a measure due to begin in July 2026.

In the present circumstances, there is no clear or principled basis for suggesting that measures not due to take effect for over a year require expedited passage at this stage, particularly where they involve complex and far-reaching policy changes.

A pattern of inadequate consultation leading to poor outcomes

We are concerned that this approach reflects a broader pattern rather than an isolated failure. The absence of consultation on the measures in this Bill is not an isolated instance. It is part of an increasingly concerning trend by this Government toward compressed or absent pre-legislative engagement on significant tax changes.

We note that, in November 2023, amendments introducing breach reporting obligations for tax practitioners were inserted into the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 without any consultation, exposure draft legislation or explanatory memorandum. The peak professional bodies, including The Tax Institute, expressed concerns that the resulting law was vaguely expressed, imposed significant compliance burdens, and has proven difficult to apply and administer in practice. These issues remain ongoing. This is but one example of many that illustrates the real cost of bypassing consultation on complex measures, and we consider that the measures in this Bill present similar risks.

Effective tax policy development in Australia requires consultation to test policy design, clarify intent and ensure the legislation achieves the stated policy intent. Doing so allows affected taxpayers an opportunity to contribute feedback and allows experts to support Government to minimise unintended consequences. In a 2013 paper, Tax policy formulation in Australia, the Treasury acknowledged that consultation plays an important role in improving the quality and operation of tax measures. The paper identifies the major aims of consultation as being to:

- act as a discovery process to provide valuable input on the most effective way to implement government policy, and to assist in minimising compliance and administration costs, as well as to avoid (to the extent possible) unintended consequences;
- elucidate on the policy intent of proposed changes;
- serve as a vehicle to formulate current and future tax policy; and
- improve situational and strategic awareness to better inform Treasury thinking.

The lack of commitment to, and governance around, consultation is leading to poorer outcomes in tax policy design and its translation into legislation. This undermines public confidence in the tax system and is entirely avoidable.

The role of the Senate Committee

The Committee's inquiry is of heightened importance as the only formal mechanism through which stakeholders can provide input on the Bill prior to its passage. The Committee's role includes examining bills in detail, receiving submissions and evidence from stakeholders, and reporting to the Senate on its findings. In performing this function, the Committee is empowered to gather information from a range of sources, including through written submissions and hearings.

In this context, consideration of the policy design and development of the measures, including whether appropriate stakeholder consultation has occurred, is a relevant and appropriate aspect of the Committee's inquiry, particularly where stakeholder input may affect the practical operation and effectiveness of the proposed legislation.

The value of Senate Committee scrutiny in addressing consultation failures is well established in practice. For example, when the debt deduction creation rules were introduced without prior consultation as part of the Treasury Laws Amendment (Making Multinationals Pay Their Fair Share – Integrity and Transparency) Bill 2023, stakeholders, including The Tax Institute, raised the absence of pre-legislative engagement as a significant concern in submissions to the Committee. The Committee's report, released on 22 September 2023, recommended that Schedule 2 be passed subject to technical amendments. In responding to that recommendation, Treasury released exposure draft amendments for public consultation in October 2023 before the Bill was finalised. While a number of technical and interpretive issues remain following enactment, the additional consultation process resulted in significant refinements and a materially more workable framework than that originally proposed.

We respectfully submit that the absence of prior consultation on measures of this significance is precisely the kind of policy development failure that Senate Committee scrutiny exists to identify. We urge the Committee to consider whether, in the circumstances, it can recommend passage in its current form, without first requiring the Government to remedy that deficiency and resolve the volume of technical issues across the proposed measures.

Recommendations

1. Statement on consultation standards in the Committee's report

A clear statement in the Committee's report that this approach to consultation is unacceptable would serve an important purpose beyond this inquiry, by signalling that future measures introduced without proper consultation can expect similar scrutiny and that better engagement is expected of the Government.

2. Need for proper consultation before finalisation of the Bill

We recommend that the Bill not be passed in its current form until the Government undertakes a proper public consultation process. This should include the release of exposure draft legislation and an explanatory memorandum, with at least 30 days for stakeholders to provide feedback, in line with the recommendation in the March 2023 *Australian Government Guide to Policy Impact Analysis* report by the Office of Impact Analysis.

3. Consultation on yet-to-be-released legislative instruments prior to finalisation

In the alternative, and at a minimum, we recommend that the Bill not be finalised until key supporting rules and legislative instruments have been developed and released for public consultation.

Many of the issues proposed to be addressed in legislative instruments are central to how the measures operate and are not merely administrative details. Finalising the Bill without these elements creates uncertainty and limits stakeholders' ability to assess the practical impact of the reforms.

4. Post-implementation review of the measures

We recommend that the Government commit to a post-implementation review of the measures no later than 12 months after commencement. This review should assess whether the measures are working as intended and identify any unintended impacts, with input from affected stakeholders.

Part 2 - Policy design and effectiveness of the measures

This section examines the policy design of the measures against their stated objectives and identifies a range of concerns regarding their effectiveness and potential unintended consequences.

Limitations of piecemeal change and tax as a policy lever

We acknowledge that the measures announced in the Federal Budget 2026–27 engage with genuine and longstanding concerns about Australia's tax settings, including the distributional effects of the CGT discount and negative gearing, their fiscal cost, and the case for redirecting investment incentives toward new housing supply rather than the established market. We recognise these as legitimate policy concerns. However, addressing symptoms of a broken tax system is not the same as structural reform.

These measures address individual pressure points in a system that requires a wholesale redesign. We are concerned that piecemeal changes of this kind, without a coherent system-wide vision and approach, risk producing outcomes that are distortionary, inequitable or contrary to the objectives the measures seek to achieve.

CGT discount and negative gearing

We acknowledge that there are issues with the current policies regarding the CGT discount and negative gearing, and that the proposed changes are an attempt to address them. . The current CGT discount, a large, flat discount that can apply after just 12 months of asset ownership, can be highly concessionary in some circumstances. Further, there can be a disconnect between taxpayers claiming deductions for 100% of their ownership losses on investments via negative gearing, yet subsequently only paying tax on 50% of the gain on selling that investment.

However, the way these changes have been designed risks creating a raft of additional new issues, greatly adds to complexity and compliance costs, and may result in unintended consequences, all of which may prove worse than any concerns ostensibly being addressed.

Targeting and distributional outcomes

One of the issues sought to be addressed by these proposed measures is concerns about the concentration of existing tax benefits among higher-income taxpayers. However, there is a risk that these measures do not properly target that intended cohort and might have the opposite effect. Below are some examples.

The minimum 30% tax on capital gains applies broadly to all individual investors, whether they hold a single small investment property or a large portfolio of assets. Yet the minimum 30% tax will apply equally to both. This undermines the principle of progressive tax rates, which underpins the fairness of our income tax system. A low income taxpayer that sells a small investment will face a minimum 30% tax rate, which might be the same rate as a taxpayer selling a much larger investment, and might in fact be a higher tax impost than will apply to a taxpayer who actually earns a higher income, but from sources that are not capital gains (such as salary and wages). .

The transitional and grandfathering arrangements may similarly have the practical result of benefiting wealthier and higher income earners. The grandfathering of negative gearing and allowing the 50% CGT for gains that accrue before 1 July 2027 could have the effect of locking in the tax advantages of the current system for the wealthier cohort of taxpayers who have benefited from these existing concessions, while locking out young or aspirational investors who will now have no such advantages under the revised rules.

As a final example, the decision to apply the negative gearing restrictions on an aggregated basis across a portfolio of residential investments may similarly give rise to equity concerns. Wealthier investors are more likely to hold multiple residential properties, allowing losses from one investment to be offset against income or gains generated from another within the portfolio. In contrast, smaller investors are more likely to hold only one or two properties, meaning that losses from those investments are more likely to be affected by the quarantining rules.

This appears inconsistent with the stated policy objective of reducing tax concessions for wealthier investors, and may result in the measures having a more limited effect on those with large, diversified investment portfolios, while disproportionately affecting smaller or newer investors.

Negative equity risks for recent first-home buyers

To the extent that the measures place downward pressure on established property prices, as is an intended policy goal of the changes, there is a risk of adverse impacts on recent first-home buyers, particularly those with high loan-to-value ratios. Buyers who entered the market with minimal deposits (for example, by utilising the Government's 5 per cent deposit scheme) may face negative equity where property values fall below their outstanding loan balance. This may undermine the financial resilience of the very cohort the measures are intended to support – young and first home buyers.

Rental affordability and housing supply

The measures seek to impose downward pressure on housing costs, including rents, by redirecting investor demand from established properties to new residential construction. However, this expected behavioural change may not necessarily prove fruitful.

For example, an investor in new residential housing will be cognisant of the future realisable sale price of such an investment. The disincentive to invest in existing housing may mean that a subsequent sale price of previously new housing is constrained, which will be a factor in whether an investor chooses to invest in new housing at all. It may prove harder to quarantine the intended downward price pressure on housing to only existing housing, and therefore, these policy changes may result in less investment in all forms of housing, undermining the stated policy goals.

Even if these changes do maintain or increase demand for new residential construction, this might also still raise unintended concerns. For example, if preferential tax treatment for new builds increases demand for these investments, this could place upward pressure on their prices. Much of the benefit of this may accrue to developers and land speculators, while making owning a new residential property harder for owner-occupiers.

Further, the existing supply pipeline is unlikely to accommodate a material increase in demand. Structural constraints, including land availability, financing costs, high construction costs and development viability, continue to limit new housing supply. In this context, tax settings alone are unlikely to address underlying supply shortages or materially improve affordability outcomes.

Reduced market liquidity and 'lock-in' effects

The proposed grandfathering arrangements, while providing transitional relief, may create a 'lock-in' effect by discouraging investors from disposing of existing assets. Investors may be incentivised to retain grandfathered properties to preserve favourable tax treatment, rather than reallocate capital. This may reduce listings and constrain turnover in the established property market, limiting the extent to which first-home buyers benefit from reduced competition, and potentially contributing to higher rental costs due to higher demand for a more limited pool of rental properties.

Again, the disruptions in the housing market that are likely as a result in these measures will not necessarily be predictable or result in the intended outcomes of improving affordability for first-home owners and renters.

Pre-commencement asset realisation

The transitional rules may trigger behavioural responses before the commencement date. In particular, investors may seek to realise capital gains prior to 1 July 2027 to fully access the existing 50 per cent CGT discount. This may result in a temporary increase in listings and transaction activity ahead of commencement, potentially contributing to short-term price volatility and market disruption.

This might adversely interact with the concern raised above about existing investors in residential property being incentivised to retain those investments due to the negative gearing grandfathering rules. If there are incentives to retain some residential property investments, while at the same time incentives to sell other categories of investments that will be subject to higher future CGT liabilities, then the price of residential properties may comparatively be increased relative to other asset classes by these measures. This would have the opposite effect of what is intended.

Behavioural responses and tax planning

The measures may trigger behavioural responses as taxpayers adjust their investment decisions in response to differential tax treatment. There is a risk that the changes may discourage entrepreneurial activity and business formation in Australia. In many cases, individuals derive economic returns from personal effort by creating and eventually selling a business. The application of a minimum tax to capital gains may reduce incentives to undertake such risk, particularly when individuals may not be in a position to draw income during the development phase but are taxed heavily on exit. This may have unintended consequences for innovation, productivity and the broader Australian economy.

The interaction between the revised CGT and negative gearing rules may also result in taxpayers maintaining loss-making investments for extended periods, raising questions about whether the outcomes align with underlying commercial objectives.

Further, differences in treatment across asset classes, property types and acquisition dates may incentivise investors to reallocate capital toward investments that remain more favourably treated, or to adjust the timing of transactions to optimise tax outcomes. For example, disincentives to invest in housing may shift investment into stock markets, cryptocurrencies, or other investment classes. This could encourage speculation in more volatile and less stable investments.

While recent proposed changes to the taxation of discretionary trusts will seek to limit certain forms of tax planning, such as income-splitting, the interaction of these measures may still greatly incentivise tax planning, ultimately contributing to increased overall system complexity.

Intergenerational equity impacts

The measures may also have unintended implications for intergenerational equity. While they are, in part, intended to improve access to home ownership for younger Australians, any adverse impacts on rental affordability may disproportionately affect younger households, who are more likely to rent for longer periods.

To the extent that the measures increase rental costs or reduce rental availability in the short- to medium-term, for some of the reasons explained above, they may increase housing stress for households currently in the rental market, including those seeking to transition to home ownership, many of whom are younger Australians. This may result in uneven outcomes across cohorts, undermining the broader equity objectives of the policy.

Further, as mentioned, the transitional and grandfathering measures lock in the tax advantages enjoyed by investors over recent decades (who are overall likely to be older investors) while closing the door to the same advantages for future (likely younger) investors.

Impact on philanthropy

Liquidity events are often a time when taxpayers consider making significant charitable donations or adopting a more structured approach to philanthropy. Under the current framework, where a taxpayer realises a capital gain and makes a donation to a deductible gift recipient (**DGR**) or establishes a giving structure, the taxpayer is generally able to claim a deduction at their marginal tax rate.

The introduction of a minimum tax on capital gains reduces the effectiveness of deductions associated with charitable giving. While tax considerations should not be the primary driver of philanthropic giving, they do play an important role in influencing both the timing and quantum of donations. The application of a minimum tax may result in a residual tax liability even where a capital gain is substantially or wholly offset by a charitable deduction. This reduces the overall tax benefit of donating appreciated assets, increases the after-tax cost of giving, and may limit the amount of funds directed to charitable purposes. The measure also alters the relative tax treatment of charitable donations funded from different sources. Donations funded from capital gains may not fully offset the associated tax liability due to the minimum tax, whereas donations funded from ordinary income are not subject to the same limitation. This may create a difference in outcomes depending on the source of income, which could affect taxpayer behaviour.

These impacts are difficult to reconcile with the Government's stated commitment to double philanthropy in Australia by 2030. In this context, the interaction between the minimum tax and charitable giving appears unintended and warrants reconsideration to ensure that existing incentives for philanthropy are not undermined.

Compliance complexity

The measures will increase the complexity of compliance. The interaction between revised CGT settings and differential treatment of residential property based on acquisition date and asset characteristics introduces a dual regime.

This added complexity is likely to increase compliance and administrative burdens for taxpayers, tax practitioners, and the ATO. It may also increase the risk of errors and disputes, particularly where taxpayers are required to track and apply different tax treatments across multiple investments over time.

Cumulative impact on housing supply and affordability

The cumulative effect of these measures warrants careful consideration. To the extent that they reduce individual investors' participation in the rental market, any resulting supply constraint may place upward pressure on rental costs, which is likely to affect households currently participating in the rental market, including those seeking to transition to home ownership. It is therefore important that the interaction between these measures is appropriately modelled to ensure that overall housing affordability outcomes are improved, and not shifted between different segments of the market.

Personal income tax measures – Working Australians tax offset, standard deduction, and bracket creep

The Bill introduces two personal income tax measures: the WATO, and a $1,000 standard deduction for work-related expenses. While these measures provide targeted cost-of-living relief and have some merits from a design perspective, they do not address underlying structural issues within the personal income tax system, most notably, bracket creep, nor do they make a meaningful step towards reducing Australia’s overreliance on personal income tax.

Working Australians tax offset

The WATO provides a permanent annual tax offset of up to $250 from 1 July 2027. While this represents a modest and welcome form of relief, it does not address the structural drivers of increasing tax burdens over time.

A tax offset reduces tax payable in a particular year but does not alter the income thresholds at which marginal tax rates apply. As nominal wages increase, taxpayers are progressively pushed into higher tax brackets, regardless of whether the offset is present. In this respect, the WATO operates as a temporary mitigation measure rather than a structural reform.

Standard deduction for work-related expenses

The introduction of a $1,000 standard deduction has merit as a simplification measure, reducing compliance costs for taxpayers with relatively low work-related expenses.

However, the absence of indexation raises concerns regarding its long-term effectiveness. Over time, inflation will erode the real value of the deduction, reducing the proportion of taxpayers for whom it provides a meaningful benefit. In effect, a non-indexed deduction is subject to a form of bracket creep in real terms, as its value diminishes without legislative adjustment.

Further design considerations in relation to this measure are addressed in Part 3.

Bracket creep – an unaddressed structural issue

Bracket creep remains a central structural issue in the personal income tax system. It arises where inflation and wage growth push taxpayers into higher marginal tax brackets, increasing their effective tax rate despite limited or no improvement in real purchasing power.

While the measures in the Bill provide temporary relief, they do not alter the underlying rate structure or fixed thresholds that give rise to bracket creep. As a result, the effect of bracket creep is likely to re-emerge over time as nominal incomes increase. In this respect, the measures may, at best, defer, rather than resolve, the underlying issue.

A structural response would involve indexing personal income tax thresholds to inflation or wage growth, an approach adopted in comparable jurisdictions such as the United States and Canada. In the absence of indexation, personal income tax is likely to continue to increase as a disproportionate share of Commonwealth revenue over time. The measures in this Bill do not address this broader structural concern.

Combined impact of the measures

While each measure is intended to achieve a particular policy goal, their combined effect may fall more heavily on salaried taxpayers with relatively modest investments, such as those who own a single investment property. As a result, the overall impact of the measures may not align with their intended focus on higher-income investors. This raises questions about whether the measures are properly targeted to achieve their policy intent.

More broadly, the way these measures work together highlights tensions in the policy design. For example, steps taken to make it easier to buy a home may come at the cost of making renting less affordable. At the same time, the measures do not address the broader underlying structural issues that limit housing supply.

Recommendations

Having regard to the concerns outlined above regarding policy design, targeting, effectiveness and unintended consequences, we recommend that the Committee and the Government consider the following.

5. Current form of the Bill and associated risks

Given the range of structural and design concerns identified, we consider that the measures should not proceed in their current form.

In particular, the breadth of the proposed changes, their interaction across the tax system and broader economy, including the housing market, and the potential for unintended consequences demonstrate that further consultation and policy development are required. Proceeding without a more comprehensive and coordinated reform framework risks embedding complexity and producing outcomes that are inconsistent with the stated policy objectives.

6. Consultation and evidentiary basis

We recommend that the Government undertakes consultation with stakeholders, including tax practitioners, industry participants and housing sector experts, to test the design and operation of the measures. This process should be supported by detailed and transparent modelling of the cumulative impacts across:

- housing affordability (both ownership and rental);

- investor behaviour and market participation; and
- distributional outcomes across different taxpayer groups.

A more robust evidence base will help ensure that the measures are appropriately calibrated, achieve their intended objectives, and have greater community buy-in for the changes.

7. Refine targeting through more tailored measures

If the policy objective is to address distributional concerns associated with higher-income investors, more targeted approaches should be considered. Options may include:

- applying modified settings above defined income thresholds;
- limiting concessions based on the number or value of investment properties held; or
- introducing targeted integrity measures aimed at higher-income or more complex structures.

While we recognise that such approaches may introduce a degree of complexity, they are more likely to effectively address equity concerns while minimising unintended impacts on small-scale investors.

8. Targeted measures to support supply and affordability

Rather than broad-based restrictions, more targeted concessions could be considered to support housing supply and affordability. For example, this could include:

- incentives specifically aimed at investment that adds to housing supply, such as new builds in areas with shortages;
- concessions that are time-limited or focused on locations where supply constraints are most severe; and
- measures to improve the viability of development projects, including coordination with non-tax policy settings.

A more targeted approach may better align investor behaviour with policy objectives without introducing unnecessary distortion across the broader market.

9. Design complexity and administrability

The Government should consider opportunities to simplify the design of the measures to reduce compliance and administrative burdens. In particular, the interaction between multiple regimes, transitional rules and asset classifications introduces complexity that will be challenging to administer in practice. Greater simplicity in design would improve certainty, reduce the risk of errors and disputes, and support more effective implementation.

10. Structural reform considerations

Finally, we reiterate that many of the issues the measures seek to address, including housing affordability and bracket creep, are structural. We recommend that these matters be considered as part of a broader, system-wide reform process. Incremental changes to individual concessions, in isolation, are unlikely to deliver durable or coherent outcomes.

Part 3 – Technical issues and drafting concerns

This part sets out our detailed technical issues and drafting concerns regarding the proposed measures. For ease of reference, these issues are considered under each relevant Schedule of the Bill.

Preliminary comment – reliance on legislative instruments

Across the Bill, a number of core features are intended to be determined at a later date through legislative instruments, rather than being set out in the legislation. This includes, for example, the definition of new residential dwellings that will be excluded from the CGT discount and negative gearing changes, specification of valuation and apportionment methodologies under the CGT changes, the Minister's ability to prescribe additional categories of assets under the negative gearing rules, and the operation and calculation of the WATO.

While this approach provides flexibility, it materially reduces certainty at the time of enactment. Taxpayers and advisers are unable to fully assess their compliance obligations or understand the practical operation of the rules without visibility over these key elements. This is particularly problematic given the scale and complexity of the proposed reforms, which involve fundamental changes to the CGT regime, the treatment of investment losses, and the calculation of tax offsets. This approach indicates that key aspects of the regime will evolve incrementally through legislative instruments and administrative guidance, rather than being settled at the outset. This makes long-term planning more difficult, particularly for assets and structures that are expected to be held over extended periods.

Importantly, deferring substantive elements to legislative instruments limits the opportunity for parliamentary scrutiny. While such instruments are subject to disallowance and sunset provisions, these mechanisms are not equivalent to the scrutiny applied to primary legislation. In particular, they do not involve the same level of upfront parliamentary debate or committee consideration, limit opportunities for meaningful stakeholder input during the legislative process, and operate in a reactive manner after the instrument has been made. The process assumes acceptance unless disallowed, in contrast to the legislative process that requires a more active acceptance in each House. This creates a risk of ongoing policy uncertainty and unfettered changes, undermining confidence in the tax system over time. From a tax policy perspective, only minor details or matters that inherently require flexibility should be left to subsequent delegated authority. The core design of a major tax change should be set out clearly in the enacting legislation and subject to thorough scrutiny.

Given the scale, complexity and long-term implications of the proposed reforms, greater detail should be included in primary legislation to ensure clarity, transparency and stability. Core elements of the regime should be clearly articulated upfront, with legislative instruments limited to genuinely administrative or procedural matters.

Key elements deferred to legislative instruments

The following aspects of the regime appear to be, or are expected to be, determined through legislative instruments:

- section 112-185: Ministerial power to determine a method for apportioning capital gains and losses by legislative instrument;
- subsection 115-102(3): Ministerial power to determine classes of CGT assets covered by the new residential dwelling rules by legislative instrument;
- subsection 115-235(4): Commissioner's power to require trustees to prepare and provide statements to beneficiaries by legislative instrument;
- subsection 119-15(2): Ministerial power to determine classes of payments exempt from the minimum tax rules by legislative instrument;

- paragraph 26-155(2)(c): Ministerial power to determine activities or purposes for which residential dwellings are excluded from loss quarantining by legislative instrument;
- paragraph 26-155(4)(c): Ministerial power to determine classes of entities exempt from loss quarantining by legislative instrument;
- paragraph 26-160(1)(e): Ministerial power to determine classes of dwellings excluded from the definition of residential dwelling by legislative instrument;
- subsection 26-160(4): Ministerial power to determine requirements for what constitutes a 'new residential dwelling' by legislative instrument; and
- subsection 61-160(2): Ministerial power to determine the method for calculating the WATO by legislative instrument.

Schedule 1 – CGT adjustments

The proposed CGT measures replace a relatively simple discount-based regime with a significantly more complex framework involving multiple calculation methodologies, valuation requirements and interaction rules. This increases compliance costs, record-keeping obligations and the likelihood of disputes with the Commissioner. This increase in complexity will disproportionately affect lower-income taxpayers, who are less able to absorb the additional professional and compliance costs associated with these measures.

As a preliminary observation, much of the complexity arising from the proposed CGT changes stems from the deeming rule under which all assets are taken to have been disposed of and reacquired as at 1 July 2027. This approach is intended to facilitate the apportionment of access to the 50% CGT discount between gains accrued before and after that date.

Importantly, this approach is not the only viable option. It would be possible to design a regime that applies only on realisation, while still appropriately apportioning capital gains so that the 50% discount applies only to the pre-1 July 2027 component. In this regard, we refer to the approach adopted in sections 115-105 and 115-110 of the *Income Tax Assessment Act 1997* (Cth) (**ITAA 1997**), which apportion the discount for non-residents. This provides a more efficient and less complex model for addressing a comparable policy issue.

Foreign and temporary resident indexation

The proposed section 114-25 of the ITAA 1997 adopts an all-or-nothing approach to indexation that does not integrate with the existing CGT framework. The section denies indexation where an individual is a foreign or temporary resident at any time during the testing period.

This gives rise to both structural and practical deficiencies:

- The rule operates on an 'all-or-nothing' basis, such that even a brief period of foreign residency permanently denies indexation for the entire ownership period. This is inconsistent with the broader CGT framework, which generally adopts proportionate or time-based approaches (for example, in apportioning CGT outcomes across periods of differing tax status). The absence of proportionality introduces distortions in measuring real economic gains.

- The provision does not accommodate partial-period changes in residency, despite residency being an annual question and variable over time. This creates arbitrary outcomes in which economically identical taxpayers may receive materially different tax treatment depending on whether foreign residency occurs at any point during the testing period, regardless of its duration or relevance to the overall holding period.
- There is no clear interaction between section 114-25 and other CGT provisions dealing with:
  - changes in ownership interests;
  - rollovers;
  - inter-entity transfers; or
  - trust and beneficiary attribution rules.

  This creates uncertainty about how the denial of indexation applies to more complex ownership structures.
- From a compliance perspective, the rule introduces a binary outcome applied to a multi-period economic reality, increasing the likelihood of dispute. The Commissioner will be required to verify historical residency positions, which may be difficult to substantiate, particularly in cases involving mixed residency, temporary absence, or incomplete records.

As well as these technical deficiencies, we question the policy objective of excluding cost base indexation for non-residents. It can be argued that the 50% CGT discount is concessionary and, therefore, limiting that concession to Australian residents has a policy rationale. However, indexation is designed merely to adjust the cost base for inflation over time, so only real gains in value are subject to tax. Denying indexation due to foreign residency results in the taxation of purely inflationary gains, which goes beyond limiting a concession and could be considered punitive. Further, taxing foreign residents even on notional, rather than real, capital gains is unlikely to support Australia's international competitiveness in attracting foreign capital.

A further issue arises regarding the EM, which contains an example that appears inconsistent with existing law as it applies to temporary residents. Example 1.2 considers the application of the indexation rules to a temporary resident disposing of ASX-listed shares and concludes that indexation is denied because the taxpayer was a temporary resident during the testing period.

However, Subdivision 768-R of the ITAA 1997 has not been amended and continues to provide that capital gains made by temporary residents are disregarded unless the asset is taxable Australian property (**TAP**). As ASX-listed shares generally do not fall within the definition of TAP, any capital gain arising on disposal would be disregarded for Australian tax purposes. However, this is not the case in all circumstances, and indexation would be relevant where the gain is subject to Australian tax.

The example, therefore, produces a technically incorrect and potentially misleading outcome, as it suggests that the denial of indexation has an operative effect in circumstances where the gain would not be recognised in Australia in any event. This risks creating confusion for taxpayers and advisers, particularly in distinguishing between the treatment of foreign residents and temporary residents under the new regime.

More broadly, the example does not reflect the practical operation of the law for temporary residents and may lead to misinterpretation of the interaction between Subdivision 768-R and the proposed indexation provisions. It would be more appropriate for the EM to illustrate the operation of these rules using TAP assets, so that the example aligns with the underlying legislative framework and provides meaningful guidance on when indexation is (and is not) relevant.

Valuation requirements – 1 July 2027 reset

The Bill assumes the availability of reliable and supportable valuations without providing any statutory framework or administrative guidance on how they are to be undertaken. The requirement to determine market value as at 1 July 2027 across a wide range of assets at a single point in time gives rise to significant technical, evidentiary and administrative concerns. In particular, the Bill does not specify:

- acceptable valuation methodologies (e.g. comparable sales, discounted cash flow, capitalisation of earnings, or market multiples);
- minimum evidentiary standards required to support valuations; or
- record-keeping requirements, including the duration for which valuation documentation must be retained.

There is no guidance on the valuation of non-market assets, (such as goodwill, intellectual property or unlisted equity), indirect interests held through entities, or whether retrospective valuations will be acceptable.

The framework appears to assume that reliable and defensible valuations can be established for all relevant assets at a single point in time, and substantiated many years later. However, this assumption does not reflect the practical experience of our members. Even where valuations are performed contemporaneously, it is common for the Commissioner to:

- challenge valuation methodologies;
- substitute alternative valuation approaches; or
- dispute underlying assumptions such as discount rates, earnings normalisation or comparable datasets.

There is also a risk that taxpayers may rely on retrospective valuations obtained at the time of disposal, rather than on contemporaneous valuations as at 1 July 2027. Such retrospective valuations are inherently less reliable and more likely to be challenged. These challenges are amplified for long-held assets, as taxpayers may be required to substantiate valuation assumptions for many years, potentially decades, after the relevant valuation date.

There is no indication of:

- whether safe harbour valuation methodologies will be available;
- whether taxpayers may rely on independent professional valuations without further challenge; or
- how disputes will be resolved where valuation positions differ materially.

The requirement effectively imposes a single valuation date across the entire private asset base, potentially resulting in:

- significant capacity constraints in the valuation profession;

- increased costs for taxpayers; and
- potential clustering of valuations with reduced consistency and quality.

There is also no guidance on:

- whether valuations must be obtained at or around 1 July 2027, or may be established by reasonable approximation;
- how subsequent changes in asset condition (e.g. deterioration, redevelopment, business restructuring) affect reliance on the valuation; or
- how materiality thresholds apply.

Further complexity arises where assets are held through companies, trusts or other entities. In these cases, determining market value as at 1 July 2027 will require valuation of underlying assets at multiple levels, creating cascading valuation obligations across ownership structures. The Bill does not provide guidance on how such indirect valuations are to be undertaken or on acceptable approaches for valuing equity interests in unlisted entities.

The regime relies on market valuation as a critical input, without providing the legislative or administrative framework necessary to ensure consistency, reliability or dispute resolution. In practice, it may not be feasible for taxpayers to obtain reliable valuations for the full range of affected assets at or around 1 July 2027, particularly for non-homogeneous or privately held assets.

Interaction with pre-CGT assets

The Bill does not resolve how existing CGT asset segmentation rules operate within the new regime.

Sections 108-55 and 108-70 of the ITAA 1997 treat post-CGT improvements on pre-CGT land as separate CGT assets. Under the proposed framework the continued operation of separate asset treatment becomes unclear once pre-CGT land is brought within the CGT regime.

It is unclear whether:

- the land and improvements should continue to be treated as distinct assets for all purposes; or
- they should be consolidated into a single asset for the purposes of the 1 July 2027 reset and subsequent calculations.

This ambiguity creates consequential issues for:

- cost base allocation, including how historical expenditure is attributed between land and improvements;
- indexation calculations, particularly where different acquisition dates and cost bases apply; and
- subsequent CGT event calculations, including how gains are apportioned between components of the asset.

There is no clarity on:

- whether the reset valuation should be undertaken separately for each component;

- how to deal with multiple layers of improvements over time; or
- whether improvements that have merged economically with the land should continue to be artificially separated for tax purposes.

Uncertainty also arises in cases where:

- improvements are no longer separately identifiable; or
- valuation of improvements independently of land is impractical.

These issues are compounded in:

- trust structures;
- entity restructures; and
- partial interests in land.

CGT event K6 or pre-CGT share issue

The proposed changes add complexity to identifying and applying CGT event K6 to pre-CGT shares. The requirement to identify pre-CGT interests affected by the changes will necessitate analysis of whether CGT event K6 applies, including determining the extent to which underlying assets comprise post-CGT property. This requires taxpayers to identify and value underlying assets within entities and apportion unrealised gains accordingly. The Bill and the EM do not provide sufficient guidance on how to perform these calculations, particularly for entities with complex or historical asset bases.

Timing of CGT events

The drafting creates ambiguity between when a CGT event 'happens' and when it is taken to occur for tax purposes.

The Bill refers to CGT events 'happening on or after 1 July 2027', which does not align with established CGT timing rules. Under existing provisions, the legal event, such as the transfer of title, may occur at a different time than when the CGT event is taken to occur for tax purposes. For example, CGT event A1 is generally taken to occur at the time of contract, rather than settlement.

The use of the term 'happens' therefore introduces uncertainty as to whether the relevant timing is the legal trigger point or the statutory timing rule in Part 3-1 of the ITAA 1997. This ambiguity has practical consequences for the application of the law. In particular, it creates uncertainty about whether gains fall within the existing or new regime, how transitional rules apply, and how contracts entered into before 1 July 2027 but settled after that date should be treated.

This lack of clarity may lead to inconsistent treatment across taxpayers, increased disputes with the Commissioner, and unintended timing outcomes, including the potential deferral or acceleration of assessable gains. The drafting approach is not consistent with the structure of the CGT provisions, which typically rely on statutory timing rules rather than the ordinary meaning of when an event 'happens'.

Residential accommodation rules

The definition of 'residential accommodation days' in proposed section 102-6 is insufficiently imprecise and does not address common factual scenarios.

The rule relies on whether an asset is used ‘solely for the provision of residential accommodation’, which introduces a number of interpretive challenges. The Bill does not clearly address how common scenarios should be treated, including vacancy periods, properties actively marketed for lease, short-term or intermittent rental arrangements such as holiday letting, and properties with mixed uses.

The requirement that the asset be used ‘solely’ for residential accommodation is particularly problematic. Even minor or incidental non-residential use may disqualify an entire period, and the absence of any materiality threshold creates an overly rigid outcome that does not reflect commercial reality.

In addition, the calculation is based on legal ownership periods rather than actual patterns of use. This may distort outcomes in cases where properties are not continuously utilised or where their use changes over time. It does not adequately reflect the economic reality of how residential assets are held and used.

There is also no guidance on appropriate apportionment methodologies for mixed use, the evidentiary requirements for tracking usage over time, or the treatment of changes in use throughout the ownership period. The lack of clarity in these areas is likely to increase compliance costs and the likelihood of disputes.

Definition of a new residential dwelling

The Bill does not define what constitutes a ‘new residential dwelling’, creating uncertainty about how the rules will apply in practice. This is particularly important for the negative gearing rules (discussed below), where the distinction between new and existing properties determines whether the rules apply. It is also relevant to the CGT changes, where the classification of a property may affect how the new CGT rules apply.

This uncertainty gives rise to practical issues in transitional scenarios. For example, a purchaser who contracts before 7:30 pm AEST on 12 May 2026 for an off-the-plan apartment settling after that time would be grandfathered from the negative gearing quarantine under paragraph 26-155(2)(a), with the EM confirming that the relevant test is the contract date rather than settlement. However, there is no equivalent clarity for CGT purposes. The availability of the 50% CGT discount under section 115-102 depends on whether the asset is a ‘new residential dwelling’, a concept that is to be defined by a Ministerial instrument.

Accordingly, it is unclear whether such a purchaser would be eligible for the 50% CGT discount on eventual disposal, in addition to benefiting from negative gearing grandfathering. We recommend that Treasury clarify that a purchaser who entered into a contract prior to Budget night for a newly constructed dwelling will be eligible to access the 50% CGT discount, or otherwise provide clear guidance on the intended interaction between these regimes.

Deferred gains and death

The treatment of deferred gains in the context of death is not clearly addressed. It is uncertain whether deferred gains are to be treated as arising from the original notional disposal occurring on 1 July 2027, or whether they are reset under the general death provisions in Division 128 of the ITAA 1997.

While subparagraph 112-160(3)(a)(i) suggests a continuing linkage to the original event, this does not clearly align with the established CGT framework for assets passing on death. This creates uncertainty in determining the appropriate cost base for beneficiaries and the tax treatment of subsequent disposals.

These uncertainties have practical implications for estate administration, including the calculation of gains, record-keeping obligations, and the treatment of inherited assets over time.

Interaction with small business CGT concessions

The interaction between the deemed disposal mechanism and Division 152 small business CGT concessions is unclear.

Under Division 152 of the ITAA 1997, access to certain concessions, particularly those in Subdivision 152-D, requires the payment of amounts to CGT concession stakeholders based on capital proceeds received. However, under the proposed deemed disposal and reacquisition model, no actual capital proceeds are realised. This creates uncertainty about how the payment requirements in section 152-325 will operate in practice and whether taxpayers will be able to satisfy the conditions necessary to access these concessions.

Further uncertainty arises regarding section 292-100, which allows eligible capital gains amounts to be contributed to superannuation funds. As these rules are also contingent on the receipt of capital proceeds, it is unclear how they will apply in the context of a deemed disposal where no proceeds are received.

Trust provisions

The proposed sections 112-165 and 115-235 create incomplete and unclear rules for trust level calculation and beneficiary attribution.

Section 115-235 requires trusts to provide beneficiaries with detailed CGT information, potentially including components of gains calculated using different methodologies and amounts relating to pre- and post-1 July 2027 periods. However, the Bill and the EM do not specify the scope or format of the required disclosures, nor provide guidance on how these requirements are to operate in multi-tier trust structures.

This lack of clarity raises practical issues regarding the timing of reporting, particularly when upstream entities delay providing information. It also creates uncertainty as to how these new disclosure obligations interact with existing trust reporting regimes.

Subparagraph 112-165(1)(d) appears to condition the availability of CGT discounts on beneficiaries' eligibility. However, the provision is unclear in its operation. In particular, it is uncertain how the rule applies where a trust has an overall capital loss, where income is assessed under section 99A, or where the trust is discretionary, and beneficiary entitlements are not fixed.

The timing of these obligations is also uncertain, as the specified period will be determined by the Commissioner, creating a risk that reporting deadlines may fall shortly after year-end, placing significant pressure on trustees and advisers. Trustees will be required to implement significant system changes, undertake additional data collection and tracking, and manage complex reconciliation processes.

Taken together, these provisions do not provide a coherent or workable framework for calculating and attributing gains at the trust level.

Foreign income tax offsets interaction

The reforms introduce complexity in the calculation of foreign income tax offsets (**FITO**) due to differing CGT treatments across periods and residency status.

The interaction between pre-1 July 2027 gains and post-1 July 2027 gains, combined with differing treatment based on residency status, creates complexity in determining the amount of assessable income relevant for FITO purposes. Even when indexation is denied to foreign residents, taxpayers may still be required to reconcile multiple calculation methodologies for a single asset, including gains calculated under different regimes and over different time periods. This creates difficulties in aligning foreign tax paid with the corresponding Australian assessable income, particularly where foreign jurisdictions apply different CGT rules or do not recognise the 1 July 2027 reset. The Bill and the EM do not provide guidance on how to manage these interactions, increasing the risk of inconsistent application, double taxation, and compliance errors.

Minimum rate of tax on capital gains

The operation of proposed Division 119 introduces a number of inconsistencies with the broader tax framework. In particular, there is an asymmetry in the treatment of losses. Capital losses are recognised in reducing minimum tax exposure, whereas revenue losses are effectively absorbed but do not provide equivalent relief. This creates inequitable outcomes between taxpayers with similar economic positions.

The exclusion of the Medicare levy from the minimum tax calculation further distorts outcomes, leading to effective tax rates that do not align with actual tax liabilities. This is inconsistent with the standard calculation of an individual's tax position.

There is also limited clarity regarding the interaction between Division 119 and other provisions, including the treatment of quarantined losses, such as negative gearing losses, and the operation of the Division 36 loss recoupment rules.

More broadly, the minimum tax regime effectively overlays a parallel calculation system on top of the existing income tax framework. This increases complexity, creates duplication in calculations, and increases the risk of errors and disputes.

Where gains are deferred under proposed section 112-170, it is not clear how those deferred amounts will be treated when subsequently realised. In particular, there is uncertainty as to whether such gains will be subject to the minimum tax under Division 119 at the time of realisation, and how the timing and character of the deferred gain is preserved. The absence of clear interaction rules creates uncertainty in determining future tax outcomes and may lead to inconsistent treatment.

The minimum tax framework also does not account for the inherently lumpy nature of capital gains, which are often realised in a single income year despite accruing over a longer period. The absence of any averaging or smoothing mechanism may result in taxpayers being subject to a minimum tax outcome that does not align with their overall income profile across time, creating outcomes that are inconsistent with the broader progressive marginal tax system.

Consideration could be given to whether an averaging or smoothing mechanism may be appropriate to better align tax outcomes with the period over which gains economically accrue.

Interaction with employee share schemes

Further interaction issues arise in relation to employee share schemes (**ESS**). The interaction between the proposed CGT changes and the ESS provisions in Division 83A is unclear and may undermine the operation of existing concessions.

While the proposed measures do not include specific amendments to Division 83A, they have the potential to materially affect the tax outcomes associated with ESS. The concessional treatment underpinning ESS arrangements, particularly for early-stage companies, relies on favourable CGT outcomes. Changes to the CGT framework, including the introduction of indexation and minimum tax settings, may reduce the effectiveness of ESS interests as a remuneration tool.

Further complexity arises from the interaction between the proposed residency requirements and the existing ESS framework. There is a lack of clarity regarding the relevant acquisition date for the purposes of the indexation testing period. While the CGT asset (being the share) is typically acquired on exercise of an option, aspects of the ESS regime, including the effective holding period for CGT purposes, may reference the grant date of the underlying interest. The absence of clear rules explaining how these timing concepts interact creates uncertainty for taxpayers and advisers.

In addition, as discussed above, the proposed residency requirements appear to operate on a binary basis, without accommodating proportional outcomes for periods of Australian and foreign residency. This differs from aspects of the current framework and may lead to outcomes that do not align with the economic realities of employees with global mobility.

Practical issues also arise, as employees often have limited control over the timing of disposal events, particularly when liquidity is driven by company-level transactions or when employees cease employment prior to a liquidity event. In such cases, the proposed rules may result in unintended or disproportionate outcomes.

The absence of clear interaction rules between Division 83A and the proposed CGT framework introduces uncertainty and risks reducing the effectiveness of ESS arrangements, particularly for start-up and growth companies.

Also, given the significant interaction with trust taxation outcomes, these measures should be considered in the context of broader reforms to the taxation of trusts to ensure consistency and coherence across

Schedule 2 – Limit negative gearing for residential property to new builds

Definition of a new residential dwelling

The Bill does not define the scope of 'new residential dwellings'. The absence of a clear statutory definition creates uncertainty as to whether certain types of developments, such as granny flats, secondary dwellings and other forms of infill housing, are intended to fall within the scope of these rules. Although the Budget fact sheet provides some high-level guidance on the types of housing intended to be captured, this is not reflected in the Bill or the EM. The lack of legislative clarity creates uncertainty in applying the rules to common real-world scenarios, despite the increasing prevalence and distinct legal and economic characteristics of these arrangements.

From a technical perspective, this lack of clarity complicates the determination of eligibility at the time of acquisition or construction, and increases the risk of inconsistent treatment among taxpayers. It also introduces uncertainty where dwellings are constructed on existing titles or form part of a broader property development.

Loss calculations, income characterisation and reporting

The proposed negative gearing measures introduce additional complexity in loss calculations, income characterisation and reporting obligations, without clear integration into the existing tax framework.

The rules in subsection 26-155(1) appear to operate on a global basis across all residential properties held by a taxpayer, rather than on a property-by-property basis. This implies that income and deductions from multiple properties are aggregated, allowing losses from one property to offset gains from another within the same income year. While subsection 26-155(2) appears to contemplate aggregation of income and deductions from residential dwellings, it does not clearly articulate the intended scope or operation of that aggregation, or how it is meant to interact with existing principles governing the calculation of rental income and deductions. In particular, it is unclear whether the rules are intended to operate consistently on a portfolio basis in all circumstances, or how they integrate with existing tax concepts. This creates uncertainty about how loss quarantining is expected to operate in practice.

In addition to the issues arising under subsection 26-155(1), subsection 26-155(7) provides that income derived through a trust that is attributable to residential dwellings is to be treated as assessable income from residential dwellings in the hands of the beneficiary. This creates a new category of income that must be separately identified, tracked and reported by trustees and beneficiaries. Trustees will be required to maintain more granular records and provide more detailed distribution information, while beneficiaries will need to separately account for these amounts in their income tax returns.

This requirement sits alongside existing reporting obligations and introduces an additional layer of complexity, particularly when combined with other emerging distinctions in tax law, such as income types that are proposed to be excluded from the announced minimum tax on discretionary trusts (for example, primary production income). The cumulative effect is a significant increase in compliance and systems burden, including the need for changes to accounting processes, trust distribution statements and tax return reporting.

There is also no clear guidance on how these provisions interact with existing trust taxation rules, including streaming, present entitlement concepts and established reporting conventions. In practice, this creates a risk of inconsistent treatment across taxpayers and increases the likelihood of reporting errors and disputes. Further uncertainty arises regarding the treatment of losses in the context of deceased estates or changes in ownership, including joint tenancy arrangements, where the operation of the rules has not been clearly addressed.

Further technical issues arise regarding the application of the transitional rules in specific ownership scenarios. For example, the operation of the transitional negative gearing rules does not align with existing rollover provisions for marriage or relationship breakdowns. Under Division 126-A, a compulsory rollover applies where assets are transferred pursuant to a court order, with the receiving spouse effectively stepping into the position of the disposing spouse, including inheriting the original cost base. However, the Bill does not appear to include an equivalent rule deeming the receiving spouse to have acquired the asset at the time of the original acquisition for the purposes of the negative gearing transitional exemption.

As a result, where an ownership interest is transferred after 12 May 2026 pursuant to a court order, the receiving spouse may not qualify for the transitional treatment, even if the asset was held within the family group prior to that date. This creates an anomalous outcome and appears inconsistent with the treatment of similar rollovers under the CGT discount rules (for example, section 115-30). The absence of a corresponding look-through rule may result in unintended and inequitable outcomes.

Schedule 3 – Working Australians tax offset

The design of the WATO creates inconsistencies in eligibility and uncertainty in the treatment of business losses.

Section 61-255 excludes partners in partnerships from eligibility for the offset, while allowing sole traders to access it. This results in inconsistent treatment of taxpayers engaged in similar economic activities under different legal structures.

In addition, the Bill does not clarify how deferred commercial losses are treated for purposes of calculating eligibility for the offset. It is unclear whether such losses are taken into account in the year they are incurred, or in the year they are deducted, creating uncertainty and potential inconsistency in application.

Schedule 4 – Standard deduction for work-related expenses

Despite consultation, key design and technical issues identified in the exposure draft, as identified in The Tax Institute's joint submission with other professional bodies, remain unresolved in Schedule 4. In particular, the Bill does not clearly provide taxpayers with a practical choice between claiming the standard deduction and deducting actual work-related expenses, and it introduces complex interactions with existing deduction rules that may limit access to the measure. Rather than simplifying the system, the inclusion of additional technical rules, such as restrictions on low-value pooling and new balancing adjustment requirements, adds complexity for individual taxpayers and may undermine the intended compliance savings.

Concerns also remain regarding the interaction with the fringe benefits tax (**FBT**) regime. The proposed changes appear to switch off the otherwise deductible rule more broadly than necessary, potentially disrupting existing salary packaging arrangements and creating unintended FBT liabilities. This is particularly problematic where salary-packaged expenses exceed $1,000, as the removal of the otherwise-deductible rule can result in FBT applying to the full value of the benefit, producing a disproportionate outcome relative to the marginal benefit obtained under the standard deduction. In addition, the proposed amendment to section 58X of the *Fringe Benefits Tax Assessment Act 1986* (Cth), which removes the exemption for work-related items provided under salary sacrifice arrangements, raises further concerns. This change would result in FBT applying to items that are otherwise primarily used for employment purposes, such as mobile devices and laptops, increasing costs for employers and reducing flexibility in common arrangements.

Importantly, the absence of indexation for the $1,000 deduction further reduces the measure's long-term effectiveness, as its real value will decline over time. More broadly, the limited detail in both the Bill and the EM creates uncertainty as to how the rules are intended to operate in practice, increasing reliance on future guidance and education to support compliance.

In addition to the above issues, a number of further concerns have been identified through subsequent review and analysis of the measure.

The removal of existing simplification concessions also raises practical concerns. Taxpayers who currently rely on simplified substantiation rules, including those for allowances such as award transport payments and overtime meal allowances, may be adversely affected, particularly when such amounts exceed the $1,000 threshold. In addition, the proposed changes may result in PAYG withholding obligations applying to certain allowance payments from 1 July 2026 if the measure proceeds in its current form. This is likely to result in immediate and widespread disruption for employers, particularly in sectors such as construction, that will be required to update payroll systems and processes within a compressed timeframe.

The standard deduction is limited to income subject to PAYG withholding and does not extend to sole trader income, resulting in inconsistent treatment of individuals earning similar labour income through different structures. The treatment of self-education expenses may also reduce access to the standard deduction for taxpayers undertaking professional development, particularly in industries where such costs are significant. In addition, the treatment of subscription-based knowledge services is unclear, as these expenses do not appear to be captured within the proposed carve-outs for trade and professional memberships, creating uncertainty for taxpayers in professions where these services are essential.

Recommendation

11. Addressing significant technical gaps and unresolved issues

The technical issues and drafting concerns outlined above are not minor or isolated matters. They go to the core operation of the proposed measures and raise significant uncertainty about how the rules are intended to function in practice.

Individually, these issues create ambiguity and complexity. Collectively, they indicate that the Bill, in its current form, does not provide a complete or coherent framework that can be readily complied with or administered, with certainty or consistency.

Given the scale and significance of the proposed changes, it is crucial that the legislation is settled, internally consistent, and fully operational at the time of enactment. Deferring key elements to legislative instruments, leaving important interactions unresolved, and introducing provisions that may not operate as intended create a substantial risk of unintended outcomes, increased compliance costs, and disputes.

In these circumstances, we recommend that the Bill not be passed in its current form.

Instead, the Government should undertake further consultation, address the identified technical deficiencies, and release revised legislation that provides a complete and workable framework for implementation. This will ensure that the measures, if enacted, operate as intended, and maintain confidence in the integrity and administration of the tax system.

Part 4 - Transitional and implementation issues

ATO, digital service provider, and taxpayer readiness

While we acknowledge that there is just over 12 months until tax returns affected by the proposed measures will start to be prepared, we consider it is important to look ahead to the practical implications of these measures.

The implementation of the proposed CGT and negative gearing measures is not aligned with the ATO's system readiness. The proposed reforms, including the CGT changes (particularly the 1 July 2027 reset, valuation requirements and significantly expanded reporting obligations) and the negative gearing measures will require substantial updates to ATO systems and digital service provider (**DSP**) platforms. Members of The Tax Institute have raised concerns that the implementation of Payday Super is already placing significant pressure on ATO systems, employers and software providers, given the shift to more frequent reporting, increased data flows and the need for system integration across multiple stakeholders. Overlaying the CGT and negative gearing reforms on top of these existing pressures further increases the scale and complexity of the required system changes.

Members have specifically highlighted that the ATO's core systems, including the Practitioner Lodgment Service (**PLS**) and individual-facing platforms such as myGov, will need to accommodate new calculation methodologies, reporting labels and data capture requirements. This includes separately tracking pre- and post-1 July 2027 CGT amounts, new income categories, expanded trust reporting, and more frequent superannuation reporting under Payday Super.

Given the scale of the required system changes and the limited lead time before commencement, a substantial portion of the implementation effort will likely need to occur after the measures commence. This creates a risk that the necessary system functionality will not be ready when taxpayers, employers and advisers are required to comply with the new rules. Members have observed that this misalignment would likely require interim manual processes, increase reliance on workarounds, and place a significant burden on tax practitioners, employers and DSPs.

In practice, this is likely to result in higher compliance costs, increased risk of errors in reporting and tax returns, and potentially increased amendments and disputes. It also raises concerns as to whether sufficient technical resources, both within the ATO and across the broader software provider ecosystem, will be available to implement the required changes within the proposed timeframe. There may also be downstream impacts on the cost of tax software subscriptions, as DSPs seek to recover the costs of implementing and maintaining the required system changes.

Overall, this can hardly be said to be consistent with the Government's stated objectives of increasing productivity and reducing red tape.

Recommendation

12. Addressing transitional and implementation risks

We recommend that implementation timelines be aligned with system readiness and that appropriate transitional administrative relief be provided where necessary.