Submission:
Consultation paper
Minimum tax on discretionary trusts

Australian Grape & Wine
July 2026

Executive Summary

Australian Grape and Wine Incorporated (AGW) welcomes the opportunity to comment on the Consultation paper on the proposed 30% minimum tax on discretionary trusts intended to commence 1 July 2028, however is unsupportive of the policy proposal. Whilst the policy appropriately exempts primary production income to mitigate agricultural volatility, the current ATO definition of primary production creates a division for vertically integrated primary producer businesses. Many wine businesses would face the dilemma that viticulture is classified as primary production, but winemaking is classified as manufacturing. This division imposes compounding compliance burdens and actively penalises grape growers and other primary producers who invest in regional value-add. We therefore propose that if the proposal must go ahead, that Treasury considers several detailed but focused recommendations below regarding:

- The expanded definition of "primary production income" for trust tax purposes; and
- The necessity for duty exemptions from state and territory governments in relation to the rollover relief arrangements.

It appears to be assumed that restructuring into a company is a relatively straightforward solution. For many wine businesses, however, incorporation can create additional complex issues. Like farms, many wine businesses are characterised by multi-generational families holding long-term illiquid assets. Discretionary trusts are used primarily for business continuity and succession rather than income spreading for taxation purposes. They protect financial assets, support family succession planning and are frequently central to holding family assets together for the next generation.

Australian tax policy has long recognised that agriculture operates under fundamentally different economic conditions to standard commercial businesses. Wine businesses that grow their own grapes face significant economic challenges including frost, drought, smoke-damage and unseasonal rain and flooding events, all of which can destroy entire crops. Furthermore, wineries face extreme exposure to global trade shocks. Discretionary trusts build resilience by smoothing the impact of boom-and-bust cycles through the ability to distribute the year's profits to family members based on the farm's performance and individual needs.

A key problem with the policy is that it inadvertently creates a disincentive for agricultural value-add, conflicting with federal objectives to stimulate domestic manufacturing and regional economic growth. Businesses needing to isolate the portion of primary production income exempt from the 30% minimum tax from a value-added wine product because of this policy proposal would incur immense compliance costs; this would contradict the Government's broader agenda to reduce red tape. Most importantly, the policy may encourage businesses to separate production and manufacturing activities purely for tax purposes, resulting in organisational structures that are less economically efficient than integrated operations. Specifically, it contradicts the following Government agenda items in the following ways:

Future Made in Australia: Discourages value-adding and manufacturing in Australia.

National Productivity Agenda: Productivity growth depends on firms investing, expanding and moving up the value chain. Differential taxation between growing and manufacturing may discourage those investments.

Food and Beverage Manufacturing Growth: Governments have consistently encouraged agricultural producers to capture more value through processing rather than exporting raw commodities. Taxing manufactured primary produce more heavily runs counter to that objective.

Regional Development: Regional communities benefit from local processing because it creates skilled jobs and higher wages.

National Reconstruction Fund priorities: A tax that increases the cost of manufacturing by family-owned businesses sits uneasily alongside public investment encouraging the same activity.

Tax neutrality principles Australia's tax system should minimise distortions so commercial decisions are driven by economics rather than tax. Different treatment of primary production and manufacturing income within the same business may distort business structures and investment decisions.

Summary of recommendations:

Recommendation 1: Introduce a specific provision within the final legislation (or accompanying regulations) that expands the definition of "primary production income" for the purposes of the discretionary trust minimum tax to include all income derived from processed agricultural products owned by the trust or its family group at the time of processing; *and/or*
Amend the definition of primary production business under existing *Income Tax Assessment Act 1997* Section 995-1(1) to include a new subsection regarding primary production businesses:
(d) manufacturing wine from raw material that you cultivate.

Recommendation 2: For primary production businesses operating via related-party land leases, Treasury must issue definitive guidance on how to apportion shared costs between exempt and taxable operations.

Recommendation 3: The rollover relief must either be coordinated with State governments to secure duty exemptions prior to implementation, or alternative approaches (as outlined in Question 1 and 8) must be adopted.

Recommendation 4: Treasury should ensure that the interaction between trustees, corporate beneficiaries and family-owned operating businesses does not lead to long-term negative unintended outcomes (as outlined in Question 9).

Recommendation 5: The collection mechanism must be as efficient and clear as possible, with notifications integrated into existing ATO processes. Treasury and the ATO should work with affected industries to develop practical implementation guidance.

1. How should discretionary trusts be defined to appropriately distinguish them from fixed trusts for the purposes of the minimum tax?

Estate-grown winemaking is economically analogous to other accepted forms of primary-production processing (such as crushing olives, milling grain, or processing fruit) because it is inseparable from the agricultural production cycle and subject to the same climatic and biological risks. Wineries remain fundamentally exposed to agricultural risk even where they purchase a proportion of their grapes. Under the current definition, the primary production income exclusion should be broadened to avoid actively discouraging regional innovation and value-adding. For example, if a grape grower sells their fruit to a corporate, 100% of their income is exempt from the trust tax. However, if that same grower decides to invest in regional infrastructure, employ local winemakers, and add value to their crop at the farm gate, they are penalised with a 30% minimum tax rate. This directly contradicts broader government objectives to boost domestic manufacturing and regional employment. The definition of primary production income should be expanded to include the manufacture of a product if raw materials are grown by the same entity or family group.

There is already strong legislative precedent for aligning tax definitions with the commercial reality of value-added agriculture. For example, Victorian legislation rightly encompasses processed primary products within its definitions. Aligning the federal definition of primary production income for trust tax purposes with this state definition would ensure consistency and prevent growers from being unduly penalised for value-adding their raw materials

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Amend the definition of “primary production business” under existing *Income Tax Assessment Act 1997* Section 995-1(1) to include a new subsection regarding primary production businesses:

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The latter would bring wine in line with the treatment of manufactured dairy products.

2. What is the appropriate minimum tax treatment for income tax-exempt entities?

Although wine businesses are not income tax-exempt, regional wineries can use discretionary distributions to support income tax-exempt activities in their local community such as local charities, fundraising events or industry-related education. If a trust distributes funds to these local groups, a heavy tax penalty at the trust level would indirectly impact on rural communities by putting this regional support at risk.

3. Are there any other implementation matters not addressed in this paper that should be considered in designing the minimum tax on discretionary trusts?

The consultation paper does not clearly explain how mixed businesses must apportion income between exempt primary production income and taxable non-primary production income. If Treasury requires these activities to be separated, many trusts would need to determine how much profit relates to grape growing versus wine manufacture. This would be a complex and contentious exercise, potentially creating inequities where businesses may be tempted to manipulate internal pricing to varying degrees. Furthermore, the proposal does not address how inventory valuation and stock held for maturation should be allocated between exempt and non-exempt activities. Rather than requiring detailed internal calculations between farming and manufacturing activities, it would be more efficient and less ambiguous to exempt all vertically integrated primary producer income (as outlined in question 1).

The alternative of allowing the business to use the rollover relief to move the winemaking operations into a fixed trust or company while retaining the vineyard inside the discretionary trust to retain the primary production exemption, would be more burdensome again. This would require operating across two entirely different legal, tax, and compliance structures, driving up administrative costs, compliance costs and creating complex value allocations between connected entities. Restructuring may trigger significant financing costs, including refinancing requirements, security re-documentation and valuation expenses. These costs are independent of tax outcomes and represent a material economic burden on regional businesses. The likelihood of this policy promoting highly expensive restructuring exercises conflicts with the Government's objective of productivity.

The policy must explicitly recognise that primary production income is frequently derived from land held by related entities (such as a Self-Managed Superannuation Fund) and leased to the operating family trust. As established by existing ATO frameworks, the definition of a primary production business correctly focuses on the agricultural activity undertaken, independent of the underlying land ownership. Given the prevalence of these related-party lease structures in family agriculture, Treasury will potentially need to provide definitive, practical guidance on how businesses are required to apportion shared costs such as related-party lease payments, utilities, and administrative overheads between exempt primary production activities and non-exempt operations. Without clear legislative methodology for allocating these shared costs, the policy will trigger widespread inconsistencies in how rural accountants calculate the exempt income portion, ultimately driving up compliance costs and forcing the ATO to expend unnecessary resources auditing apportionment methodologies. If an integrated farm-gate definition is applied as suggested in recommendation 1, meaning the entire winery is primary production, the issue of rent-apportionment in integrated businesses would be less likely to arise.

Recommendation 2: For primary production businesses operating via related-party land leases, Treasury must issue definitive guidance on how to apportion shared costs between exempt and taxable operations.

4. Are the proposed rollover relief arrangements appropriate?

Although rollover relief is necessary under the current proposal, it should not be seen as a satisfactory alternative to amending the definition of primary production income to include primary production income that has been value-added through processing. This remains the only policy solution that avoids imposing significant harm on regional agricultural businesses.

Furthermore, while the proposed Commonwealth rollover relief (1 July 2027 to 30 June 2030) provides relief from Capital Gains Tax (CGT), it currently offers no protection against state-based transfer stamp duties. Transferring an estate that comprises agricultural land, winery infrastructure and other assets out of a discretionary trust into a new entity may trigger stamp duty liabilities at the state level. An agreement should be sought from State Governments to exempt stamp duty liabilities for any restructures that have to be made under these circumstances i.e. if rollover relief is received from CGT then it should follow that rollover relief from State stamp duty is also applicable. For many family-owned wineries, the cash-flow impact of these duties makes restructuring financially impossible.

5. Are existing integrity rules sufficient to address arrangements that substantially preserve discretionary economic outcomes through alternative legal structures?

Agricultural family businesses use alternative structures for succession planning and asset protection, not tax avoidance. Existing integrity provisions are sufficient to address arrangements that seek to preserve discretionary economic outcomes through alternative legal structures. Introducing additional bespoke integrity rules alongside the proposed minimum tax would create unnecessary complexity and compliance costs for legitimate agricultural family businesses.

6. Is it appropriate that the rollover is designed to prevent the Family Trust Distribution Tax (FTDT) of 47% from applying where a discretionary trust with an existing family trust election and/or interposed entity election(s) transfers property to an entity that is not a member of the family group?

Notwithstanding our fundamental opposition to the proposed 30% minimum tax for primary producers and value-adding agricultural businesses, the need for integrity measures where assets are transferred outside the relevant family group is recognised. Therefore, AGW absolutely agrees that the rollover must prevent FTDT from applying in these circumstances. However, any such provisions should be carefully targeted to prevent avoidance without impeding legitimate commercial transactions, capital raising, business restructures, succession arrangements or investment in wine businesses. The rules should provide sufficient flexibility to accommodate the diverse ownership structures that exist across the Australian wine sector.

7. Are there any other matters that should be considered in finalising the design of the rollover relief?

As previously outlined, the interaction with State-based stamp duties must be addressed. For family wineries, the Commonwealth CGT rollover relief is rendered useless by state stamp duty.

Recommendation 3: The rollover relief must either be coordinated with State governments to secure duty exemptions prior to implementation, or alternative approaches (as outlined in Question 8) must be adopted.

8. Are there other approaches that could reduce the need for upfront restructuring? What practical or legal considerations would arise in implementing these approaches, including their interaction with trust law and trustees' obligations?

The consultation paper appears to assume that restructuring into a company is a relatively straightforward solution. For many wine businesses, however, incorporation can create additional complexity around succession planning, ownership of vineyard land and water entitlements, family ownership structures and Wine Equalisation Tax (WET) Producer Rebate eligibility.

If a winery attempts to retain its vineyard in a trust (to keep the primary production exemption) but rolls its winemaking operations into a company, it creates an unworkable split business model and the potential to manipulate internal pricing for the purpose of tax minimisation. This loophole creates false market signals and is a potential drain on ATO administrative and compliance resources. The only way to eliminate this integrity risk is to broaden the primary production exemption (as outlined in question 1). This also removes the need for complex, costly, and economically disruptive restructures.

Broadening the primary production exemption to include processing aligns tax definitions with the commercial and legal reality of the value-added agribusiness. Removing this artificial division simplifies the trustee's fiduciary and reporting obligations and drastically reduces accounting costs. Furthermore, it provides clear legal certainty, avoiding contentious regulatory interpretations that impose heavy compliance costs on family enterprises and demand disproportionate ATO oversight.

9. Having regard to tax system integrity, compliance costs and administrative simplicity, should excess franking credits be refundable to the trustee? Why or why not?

Yes. Excess franking credits should remain refundable to the trustee to prevent the unwarranted trapping of capital within the trust structure.

Family-owned agricultural enterprises frequently hold shares in allied agricultural companies, regional cooperatives, or broader investment portfolios to diversify agricultural risk. Denying the refund of excess franking credits actively penalises these structures by reducing the liquid capital available to the business.

For the Australian wine sector, maintaining robust working capital is critical. Wineries and vineyards operate under signficant cash-flow volatility due to unpredictable climatic events (such as frost, drought, or smoke taint) and extreme exposure to global trade shocks. When excess franking credits are rendered non-refundable, it strips regional businesses of essential liquidity that would otherwise be reinvested into farm-gate infrastructure, local employment, or climate-resilience measures. Furthermore, allowing refunds at the trustee level supports administrative simplicity and upholds the foundational integrity of the dividend imputation system. The system should be designed to ensure corporate income is ultimately taxed at the correct marginal rate, rather than arbitrarily locking tax credits away as a trapped cost within a legitimate family business structure.

10. What compliance costs or tracing requirements may arise under a carry-forward model? Could existing integrity rules adequately address these matters?
11. Are there any other matters that should be considered when finalising the treatment of excess franking credits?

Not that AGW is aware of other than the potential for double taxation. Because of the long-term nature of family agribusiness, and the associated potential for long-term unintended consequences, this needs to be considered very carefully to avoid unintended consequences.

12. What additional safeguards, administrative modifications, or beneficiary notification requirements should be considered to support the effective operation and collection of the minimum tax, particularly for arrangements involving corporate trustees?

There remains uncertainty around the treatment of corporate beneficiaries and whether double taxation outcomes could arise where trustee tax credits are unavailable.

Recommendation 4: Treasury needs to ensure that interaction between trustees, corporate beneficiaries and family-owned operating businesses does not lead to long-term negative unintended outcomes (as outlined in Question 9).

13. What notification arrangements would be most effective for trustees and beneficiaries to give effect to the minimum tax in a way that minimises compliance costs?
14. Are the complementary collection mechanisms for trustees and corporate trustees proportionate to support the effective collection of the minimum tax?
15. Are there any other matters that should be considered in the design of the collection mechanisms?

Wineries and agricultural trusts already face overwhelming and compounding compliance burdens. In addition to WET reporting, excise, levies, tax reporting obligations, and looming mandatory reporting under the new Mandatory Code of Conduct, producers must constantly navigate licensing, recent increased labelling requirements, container deposit schemes, and complex compliance across multiple jurisdictions.

Notwithstanding the fundamental lack of support for the proposal to impose a 30% minimum tax on income of primary producers that value add, if a vertically integrated winery is forced to pay the 30% minimum tax on its manufacturing income, then the collection mechanism must be efficient and clear as possible.

Treasury should establish an industry reference group to produce sector-specific guidance for integrated agricultural manufacturing businesses, including wine producers, recognising that many businesses derive income from both primary production and value-added manufacturing and other regional activities such as tourism.

Recommendation 5: The collection mechanism must be as efficient and clear as possible, with notifications integrated into existing ATO processes. Treasury and the ATO should work with affected industries to develop practical implementation guidance.

About Australian Grape & Wine

Australian Grape & Wine is Australia's national association of winegrape and wine producers with the role to help forge a political, social and regulatory environment - in Australia and overseas - that enables profitable and sustainable Australian Grape & Wine businesses. To do this, activities focus upon the objective of providing leadership, strategy, advocacy, and practical support. Australian Grape & Wine represents small, medium and large winemakers and winegrape growers.

The grape and wine businesses that Australian Grape & Wine supports are unique in agriculture as a value-added product with regional exports and food and wine tourism, making a significant contribution to Australia's rural and regional economies and driving economic growth. There are over two thousand producers and approximately five thousand grape growers, a vast majority based in regional Australia.

The Australian grape and wine sector is a major contributor to Australia's economy and to rural and regional communities. The grape and wine sector:

- Supports 203,392 direct and indirect full- and part-time jobs.
- Generates $15 billion in income from direct and flow-on employment.
- Contributes $51.3 billion to Australia's gross output.
- Adds $25.4 billion in value-added to the Australian economy. [1]

Australian Grape & Wine is recognised as the representative organisation for winegrape and wine producers under the *Wine Australia Act 2013* and is incorporated under the *SA Associations Incorporation Act 1985*.

Australian Grape & Wine has a proud history working with the Australian Government to develop and implement policy that is in the best interests of winegrape growers and winemakers across Australia.

[1] https://www.wineaustralia.com/getmedia/813bfd73-955c-40f5-aae2-c6a8c14d3d4a/MI-AgEconPlus-Gillespie-Economic-Contribution-Aust-Wine-Sector-2025-report.pdf

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