6 May 2026

The Hon Dr Daniel Mulino MP
Assistant Treasurer and Minister for Financial Services
C/- Budget Policy Division
The Treasury
Langton Crescent
Parkes ACT 2600

By email: assistant.treasurer@treasury.gov.au
cc: hasan.erdogan.mo@treasury.gov.au

Dear Assistant Treasurer

**Joint Bodies submission on Family trust elections and Family trust distribution tax**

Chartered Accountants Australia and New Zealand, CPA Australia, Institute of Public Accountants, National Tax & Accountants' Association, and The Tax Institute (together, the **Joint Bodies**) write to you as Australia's peak professional accounting and tax practitioner bodies, representing the tax profession and their clients.

This submission sets out the Joint Bodies' key policy concerns with the family trust election (**FTE**) and family trust distribution tax (**FTDT**) provisions in Schedule 2F to the *Income Tax Assessment Act 1936* (Cth) (**ITAA 1936**).

Although in force since 9 May 1995, concerns raised during the original consultation are now manifesting decades later, with severe consequences for family businesses and their advisers. Provisions intended to prevent trust loss trafficking are producing unexpected and disproportionate tax outcomes for family groups of all sizes — including many small and medium-sized businesses, not just large, high-wealth groups — in circumstances that generally do not involve mischief or tax avoidance.

The emergence of FTDT issues across family businesses and private groups is deeply concerning. While taxpayers must meet their obligations, the scale of these issues underscores the urgent need for legislative reform to address the significant impact on affected taxpayers and advisers. Emerging FTDT liabilities are also placing severe pressure and stress on the accounting profession, increasing litigation risk for historical matters that were unforeseeable at the time.

The Australian Taxation Office (**ATO**) has advised that it cannot disregard the application of FTDT or extend timeframes to revoke or vary elections.[1] This is due to the automatic operation of FTDT 21 days after a distribution is made by a trust that has made an FTE, or an entity that has made an interposed entity election (**IEE**), outside the family group of the individual specified in the FTE (the **triggering distribution**).

[1] See ATO web guidance, Family trusts, General interest charge, under 'Key issues to be aware of'.

As FTDT liabilities are not subject to a process of assessment, nor a limited period of review, the ATO can enforce FTDT obligations dating back to the inception of the provisions. In review and audit cases, tax investigations can potentially examine matters that occurred more than 30 years ago.

Against this background, we outline our five key concerns below, and the impact these provisions are having on family businesses and private groups nationwide. Our overarching concern is that the current regime is unsustainable and poses an existential threat to some businesses and their advisers.

We seek an urgent roundtable with your office, together with Treasury and the ATO, to discuss the operation and impacts of the provisions, and potential legislative solutions to restore fairness, reduce compliance burdens, and address the existential risk the provisions pose. In particular, we wish to consider ways to alleviate the disproportionate tax outcomes for families and businesses without undermining the purpose and intent of the regime.

Legislative amendment is required to restore equity and address the following key concerns:

- unlimited period of review for FTDT liabilities;
- imposition of the general interest charge (**GIC**) 81 days after a triggering distribution is made without an assessment being raised by the Commissioner of Taxation (**Commissioner**);
- limitations on varying or revoking elections;
- application of rules to companies; and
- the ATO's lack of flexibility to disregard the application of FTDT or extend timeframes to revoke or vary elections.

## Unlimited period of review for FTDT liabilities

FTDT is not subject to the normal period of review limitations found in section 170 of the ITAA 1936, leading to liabilities accumulating over many years, potentially back to 1995. FTDT and exponential GIC liabilities can result from minor or repeated errors occurring many years ago.

An indefinite period of review for FTDT liabilities, in the absence of fraud or evasion, is inconsistent with a fundamental objective of a taxation regime to provide taxpayer certainty. Eventually, a taxpayer's tax affairs for a particular year should become final, unless they have deliberately sought to evade their responsibilities.[2]

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[2] Review of aspects of income tax self assessment, August 2004, page 27. The amendments contained in Schedule 5 to the *Tax Laws Amendment (2010 Measures No. 2) Act 2010* (Cth) gave effect to recommendations made by Treasury's *Review of Unlimited Amendment Periods in the Income Tax Laws*. The amendments repealed and replaced more than 100 provisions with the existing general amendment provisions, which provide a finite amendment period of two or four years depending on the taxpayer's circumstances.

The absence of a statutory limitation period allows professional indemnity insurance (**PII**) claims to arise decades later, raising the risk of rejected PII claims. The situation is also discouraging practitioners from advising on discretionary trusts, ultimately constraining access to tax advisory services for Australian businesses.

Given improved ATO data-matching, more sophisticated systems, and additional reporting by taxpayers[3], the Joint Bodies consider that an unlimited period of review for FTDT liabilities is no longer justified — particularly, when the general anti-avoidance rules in Part IVA of the ITAA 1936 are subject to a four-year review period.[4]

In most cases, FTDT liabilities arise from benign circumstances, such as:

- the complexity of the provisions, making them difficult for taxpayers and advisers to apply, and causing some distributions within an economic family group to fall outside the technical definition of a 'family group';
- missing documentation, given the passage of time and changes in control of family entities and advisers since the original elections were made — the lack of physical records can lead to disputes over the validity of elections; or
- incomplete information relating to earlier elections, including difficulties identifying the individual specified in the FTE.

Such administrative failures are not comparable to fraud and evasion, tax avoidance or even mischief, giving rise to disproportionate tax outcomes. These issues can inadvertently recur over multiple years and are compounded by gaps in ATO records, which do not fully reflect all elections that have been made. The treatment of amounts subject to FTDT as non-assessable non-exempt income for the beneficiary does not, in all cases, prevent double taxation.

## Imposition of the general interest charge

GIC applies to an unpaid FTDT liability from 60 days after it was due, without the need for an assessment by the Commissioner. The amount of GIC exponentially accrues, often without the taxpayer even being aware of the existence of the FTDT or GIC debt.

This is resulting in GIC liabilities that are grossly disproportionate, far exceeding the amount of the FTDT itself, despite the triggering distribution arising from minor or administrative issues.

We acknowledge the ATO's administrative response in August 2025 and November 2025, which allows case-by-case remission of GIC until 31 December 2026 in accordance with PS LA 2011/12. However, this does not address the underlying FTDT liabilities, and substantial work is still required to identify and resolve historical issues spanning decades.

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[3] Further changes are proposed to the reporting of FTE details in tax returns from 1 July 2027 (as part of the 2026–27 tax return).

[4] A six-year period of review applied before the 2004–05 income year.

Practitioners are facing significant pressures through to the end of 2026, alongside the implementation of Payday Super, Division 296 and the Anti-Money Laundering and Counter-Terrorism Financing (**AML/CTF**) reforms. The scale and impact of historical FTDT and GIC liabilities cannot be ignored. Without a comprehensive solution, these liabilities risk crippling thousands of businesses and threatening the viability of accounting practices.

The Joint Bodies consider that a range of options could be explored with the Government to address outstanding FTDT liabilities, many of which taxpayers are generally unaware of in both existence and quantum.

## Limitations on varying or revoking elections

An FTE or IEE can be varied or revoked by no later than four income years after the income year specified in the election, despite retrospective FTEs being permitted as far back as 2005 in certain circumstances.

Many entities unnecessarily made these elections without relying on them to recoup losses or pass on franking credits, but are out of time to vary or revoke them, exposing the entity and its controllers to FTDT liabilities.

This rigidity is particularly problematic in the sale of shares in companies or trust interests under commercial sale agreements to third parties, where post-sale distributions to the new owners can trigger unexpected and unavoidable FTDT liabilities.

## Application of rules to companies

A significant proportion of issues that we are aware of involve a distribution to a company that is not technically part of the family group and is not able to make an IEE to fall within the family group due to the narrow application of the family control test to companies.

This contrasts with the broader approach taken when applying the family control test to unit trusts, and there appears to be no clear policy rationale for the test to apply more narrowly to companies.

We consider that any amendments to address this issue should not raise integrity concerns, as distributions would still need to be made within the family group.

## Lack of flexibility for the ATO to exercise administrative powers

The ATO has advised that it cannot disregard the application of FTDT, extend timeframes to revoke or vary elections, or exercise flexibility in its enforcement.

However, regulatory flexibility is a core principle of modern governance, enabling rigid laws to be applied proportionately to highly complex, evolving and individual circumstances. Given that FTDT liabilities arise automatically without assessment, the Joint Bodies consider that the severity of outcomes in many cases warrants a more practical administrative approach to avoid overly technical interpretations that produce unfair and disproportionate results.

The absence of a discretionary power for the Commissioner to respond appropriately exacerbates the impact of the issues discussed in our submission.

For any queries on our submission and to arrange a roundtable with the Joint Bodies, please contact, in the first instance, NTAA's Senior Advocate, Robyn Jacobson, on (03) 9209 9999 or at advocacy@ntaa.com.au.

Yours faithfully,

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