Wilson Business Services

"Building and Supporting Businesses"

June 2026

BUDGET CHANGES TO NEGATIVE GEARING

What do they mean for you?

So, what do the Budget changes to negative gearing mean to you if you own a residential investment property?

About this newsletter

Welcome to the **Wilson Business Services** client information newsletter, your monthly tax and super update keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics covered, please contact us via the details below.

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Well, the first thing to note is that the negative gearing changes are "grandfathered" ie. they do not apply to properties that are already owned at the time of the Budget (12 May 2026) – and such properties can be continued to be negatively geared as long as you own them.

Furthermore, if you buy a property between Budget day and 1 July 2027, you can still negatively gear it up to 1 July 2027. But for any property bought from 1 July 2027, you will not be able to negatively gear it.

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However, under the changes your denied negatively geared deductions will not be lost for ever.

They can be carried forward and offset again positive rental income from the property in future years. In other words, the losses are "quarantined" (as per the Keating model from the 1980s) .

And to the extent this is offsetting is not possible, well the current law still allows those denied deductions to reduce any capital gain you make on sale of the property.

So, it is all not bad news.

Also, if you do buy a rental property between now and 1 July 2027, there are legitimate ways to maximise the deductions you can claim before the new rules against negative gearing apply.

However, it is important to emphasise two things:

Firstly, this proposed negative gearing restriction does not apply to any other investment assets that you may borrow money to buy (eg. commercial property, shares in a company or units in a unit trust).

Secondly, the negative gearing restrictions do not apply to SMSFs (and nor do the proposed changes to the CGT discount).

Suffice to say, the devil will be in the legislative detail after many months of consultations and submissions. And there is already clamouring for changes to be made to these proposals.

So, it is a good idea to come and speak with us about what may be best to do if you already own such a property and are looking to sell it or if you are considering buying an investment property in the future.

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BUDGET CHANGES TO CGT DISCOUNT

What do they mean to for you

So, what do the Budget changes to the CGT discount mean to you?

And what these changes will do is to allow any capital gain that accrues up to1 July 2027 to continue to be entitled to the 50% discount - but thereafter the assessable gain will be worked out under an inflation base indexation rule and gain itself will be subject to a minimum 30% tax rate.

But firstly, here are the specific rules regarding the proposed changes In a nutshell:

Firstly, if you buy and sell an asset after 30 June 2027, the new rules apply (ie your gain will be calculated by reference to inflation based indexation only and a minimum 30% tax rate will apply to the gain).

Secondly, if you buy and sell an asset before 1 July 2027, the existing 50% discount rules will continue to apply and there is no minimum tax rate.

Thirdly, if you buy an asset before 1 July 2027 but sell it after that date (ie your ownership of the assets straddles this key date), then you will get the discount up to the asset's market value on 1 July 2027 and thereafter the gain is calculated under indexation and a minimum 30% tax rate will apply to the gain.

Importantly, the new rules apply to all assets (eg. shares) - and not just real estate.

A fundamental feature of this rule as it applies to the straddling situation, is the need to determine the asset's market value on 1 July 2027. This will be easy in some cases (eg publicly listed shares on the ASX). But harder in other cases – including real estate.

But here it is worth noting that the ATO currently takes the view that you do not have to get a professional valuer where the CGT rules requires a market value – and that a "comparative valuation" will do instead eg comparative sales of similar houses in the neighbour (and perhaps supported by a real estate agent's letter).

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However, if the Commissioner challenges your market valuation the onus will be on you to show that your valuation is better than the Commissioner's valuation!

Another key thing to bear in mind is whether the new indexation system will give you better advantage than the discount – which is possible especially if you have owned the asset for a long time. Also, if shares you have owned on the share-market have only risen in line with inflation, indexation may also give a better result.

The timing of sale is also important because it is better to realise a capital gain in an income year in which your other income is low (or you have capital losses or a tax loss) - so that you therefore pay less tax on the gain. And with the minimum tax rate of 30% applying from 1 July 2027, this is an important matter – especially if you are considering retiring in the near future.

Suffice to say, these CGT discount matters are ones on which important planning decisions can be made. So, make an appointment to see us to discuss how they apply to your assets.

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The new 30% minimum tax on trust income will hit many small businesses hard

Discretionary trusts have been a familiar feature of Australian business life for generations, partly due to their suitability for asset protection and retirement planning, as well as their ability to legitimately achieve lower overall tax rates through income splitting, where trustees of discretionary trusts allocate all or part of the trust income to associates who have a lower marginal rate than the high-income primary earner. If enacted, the 12 May 2026 Budget announcements will put an end to tax minimisation through income splitting.

As from 1 July 2028, there is to be a radical shift away from the well-established flow-through treatment of the taxable income of discretionary trusts. Instead, a 30% minimum tax is to apply at the trustee level. The 30% tax paid by the trustee will be creditable (but not refundable) to non-corporate beneficiaries.

Trustees in receipt of franked dividends will have to apply their franking credits to the 30% tax impost, while corporate beneficiaries are prevented from using the 30% credit at all, leading to the likely demise of bucket companies as such a structure would involve double taxation going forward in most cases.

The proposed new rules will not apply to other types of trusts such as fixed and widely held trusts (including fixed testamentary trusts), complying superannuation funds, special disability trusts, deceased estates or charitable trusts.

The government seems to think its new 30% minimum tax applied to trust income will mainly fall on lotus eating wealthy investors who reduce their tax bill by

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splitting their income with lower tax family members, with the Treasury Explainer released on Budget night noting:

> "The majority of trust income flows to the top earning 10% of families and approximately 90% of total private trust wealth is held by the wealthiest 10% of households (those with net worth above around $2.3 million)."

We're not so sure about that.

Our experience suggests that many clients who use trust structures are hardworking Australian small business owners who certainly do not regard themselves as wealthy. They would have been advised to adopt a trust structure when they took a risk and started off their business because it provided them with asset protection as well as an effective path for their eventual retirement. Trust structures do allow for some income splitting, but they have been around for decades and there is nothing particularly artificial or aggressive about the practice.

Wealthier beneficiaries are mostly already taxable at higher marginal rates, so that a minimum 30% tax at the trustee level would make no practical difference to their net tax position at all.

The change is expected to raise $4.5 billion over five years from 2025-26. That additional revenue will be applied to funding a permanent $250 annual rebate from 1 July 2027 for Australian salaried workers, as well as for business owners who run their own business as sole traders. That's equivalent to one cup of coffee a week.

Good luck to employed Australians and sole traders for being singled out for a modest tax cut, but hitting small business operators with higher tax bills as from July 2028 to help pay for it is just going to put even further financial pressure on that group. Instead of pitting one set of battlers against another, the government could perhaps have done more to reduce spending.

It's important to remember that none of this is yet law. There is to be a consultation process around the announced measures and, starting on 1 July 2027, there will be a three-year window to allow businesses to restructure their affairs. Whether the States and Territories will be prevailed upon to also provide stamp duty relief remains to be seen. If not, the cost of restructuring could be pretty steep if there is real property involved and you factor in the cost of legal and accounting advice.

If you operate your business through a trust structure we need to get together and work out how much extra tax your business might be paying under the proposed new rules. We can also make an estimate of what restructuring will cost, including through the tax profile of an alternative business structure.

There is an unusually high level of pushback on the announced trust, capital gains tax and negative gearing changes (when compared to previous Budgets), so the final scope and shape of the tax package may well change through the consultation and legislative process.

We will keep you informed of further developments as they occur.

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CEASED WORK AND CLAIMING JOBSEEKER?
What it Means for Your Super

If you've stopped working in your early 60s and are receiving JobSeeker Payment (JSP) while waiting to access your super or the Age Pension, there's an important rule you need to understand. The conditions attached to JSP can directly conflict with the rules for releasing your superannuation, potentially leaving your retirement savings locked away longer than you expected.

The Conflict Explained

There are two ways to access your super under the retirement condition of release once you've reached age 60. The first requires satisfying your super fund that you have no intention of ever again being gainfully employed for 10 or more hours per week. The second is simpler, you just need to have ceased a gainful employment arrangement after turning 60.

The problem with the first pathway is that JobSeeker recipients must agree to accept any offer of suitable paid work. You can't declare to your super fund that you never intend to work again while also assuring Centrelink that you'll accept suitable job offers. The two positions are incompatible.

The second pathway is also unavailable if you ceased work before turning 60, because it specifically requires the employment arrangement to end *after* you've reached that age. In this situation, your super may remain inaccessible until age 65, when it becomes available regardless of your work status.

Pathways that may still be available

The good news is that this doesn't necessarily mean your super is out of reach. There are alternative pathways worth exploring with an adviser.

Transition to Retirement (TTR) income stream. Once you've reached age 60, you can commence a TTR pension to draw on your super while still satisfying JobSeeker requirements. You're limited to drawing 10% of the account balance each year, and the balance will count under Centrelink's assets and income tests, which may reduce your JSP.

Severe financial hardship provisions. This is an often-overlooked pathway. If you've received JobSeeker (or another qualifying Commonwealth income support payment) for a cumulative period of 39 weeks after reaching your preservation age, and you're not currently gainfully employed, your entire super balance can become accessible. This is a particularly powerful option because, unlike the standard hardship provision (which only allows a single withdrawal of between $1,000 and $10,000 per year), this pathway unlocks your full balance.

The Bottom Line

The interaction between Centrelink rules and superannuation law can be complicated, and decisions made without proper advice can have unintended consequences including delayed access to your retirement savings.

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Super and Bankruptcy: What's Safe and What isn't

If bankruptcy is on the horizon, one of the first questions people ask is what happens to their super. The answer turns on timing, the type of contribution, and how you draw on the fund.

The general rule

Money sitting in a regulated super fund is protected from your bankruptcy trustee. Creditors cannot touch it, and the balance stays yours. That protection covers accumulation accounts and pension accounts inside the fund, and it extends to lump sums you withdraw after the date your bankruptcy starts. If you take a lump sum out post-bankruptcy and use it to buy a car or a holiday or invest in your own name, those assets remain protected too.

The protection only applies to regulated funds, approved deposit funds, and public sector schemes. If your fund becomes non-complying, you lose protection.

Contributions made to defeat creditors

Under sections 128B and 128C of the Bankruptcy Act, your trustee can claw back super contributions made before bankruptcy if the main purpose of the contribution was to keep money out of creditors' reach. This applies whether you made the contribution yourself or someone made it on your behalf such as employer via a salary sacrifice arrangement.

What does the bankrupt trustee actually look at? Patterns. A sudden spike in voluntary contributions in the year or two before bankruptcy is a red flag, particularly if it looks out of step with your earlier contribution history. Routine employer SG contributions and ordinary salary sacrifice arrangements that have been running for years usually pass without issue. Large one-off personal contributions when you knew the wheels were falling off do not.

There is also a presumption to be aware of. If you were insolvent or about to become insolvent when the contribution was made, the law presumes the contribution was made to defeat creditors, and the burden shifts to you to prove otherwise.

Pensions and the income limit

Lump sums from super are treated very differently to pension payments. Once your super starts paying you a pension or income stream, those payments are counted as income under the Bankruptcy Act. Income during bankruptcy is only protected up to a threshold set by Australian Financial Security Authority (AFSA), which is indexed twice a year and varies based on your number of dependants. Anything above the threshold gets split, with 50 per cent going to your bankruptcy trustee.

For someone already drawing a pension when bankruptcy hits, it can be worth getting advice on commuting the pension back to accumulation phase and taking lump sums instead. The tax and Centrelink consequences need careful thought before doing this.

A few other things worth knowing

Withdrawals taken out of super before you become bankrupt are not protected. Once the money is sitting in your bank account, it forms part of your divisible property.

If you run an SMSF, you must resign as trustee on bankruptcy. You become a disqualified person under the SIS Act, and staying on is an offence.

Super is generally protected in bankruptcy, but the timing and shape of any contribution or withdrawal matters enormously. Get advice before you move money.

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