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VICCA NEWS

TESTAMENTARY TRUSTS
AS AT 30 JUNE 2026

Per the Prime Minister's announcement, the Government will exempt income from 'Discretionary Testamentary Trusts' from the new 30% taxation of Trusts, provided they are established for 'genuine testamentary purposes'. The exclusion will be limited to income from assets of the Deceased Estate. For Discretionary Testamentary Trusts established on or after 1 July 2028, the exclusion will only apply to trusts that can only benefit individuals and income tax exempt entities.

3 Key Conditions

The ***"genuine testamentary purposes"*** test is undefined. Presumably this is intended to capture Testamentary Trusts used in a traditional estate planning context — asset protection and family succession — rather than as a mechanism for broader tax structuring.

The ***"assets of the Deceased Estate"*** limb is the one most likely to bite in practice. The exception will apply only to income derived from assets of the Deceased Estate, which suggests assets introduced into a Testamentary Trust after death may not only lose the excepted trust income concessions but also attract the 30% minimum tax. This requires clarification, as, if not corrected, it will only add to the cost of genuine Testamentary Trusts.

The ***"beneficiary restriction":*** for trusts established on or after 1 July 2028 the concession is expected to be available only where the trust benefits individuals and income tax exempt entities; it is not yet known whether a post-death variation power to remove other beneficiaries will be required in order to preserve the concessional treatment.

Status and Process

This is still an announcement, not law. The details are still evolving and remain subject to consultation, with early indications pointing to a narrowing of the circumstances in which Testamentary Trusts might receive concessional treatment.

PRACTICAL CONCLUSIONS

Testamentary Trusts continue to retain a meaningful purpose within Wills, whether such provision exists within an existing Will, or within a new Will that may be executed between now and 1 July 2028 or anytime thereafter. Their role in managing Tax efficiency, Asset Protection, Control & Flexibility or Income splitting remains unchanged. We merely need to adapt to the new tax paradigm when we understand how the new rules operate.

Yes, there are unresolved issues, as thus far all we have only a Prime Ministerial statement and no Law, one would not recommend any wholesale changes to existing Testamentary Trusts nor major structural changes to new Testamentary Trusts. It is recommended that clients and fellow professionals alike take a wait and see approach. One should wait until we see the contents of an exposure draft and supporting explanatory memorandum, particularly relating to terms such as "genuine testamentary purposes", what are assets of a Deceased Estate and any proposed reinvestment / tainting rules.

Source: *Prime Minister's 18 June 2026 media release. Proposed Treasury consultation paper had not been released as at the date of this Newsletter.*

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