1 September 2026

Assistant Secretary
Individuals and Indirect Tax and Superannuation Division
The Treasury
Langton Crescent
PARKES ACT 2600

BY EMAIL: TaxChanges@treasury.gov.au

Dear Sir/Madam,

SMSF ASSOCIATION SUPPLEMENTARY SUBMISSION: CAPITAL GAINS TAX AND NEGATIVE GEARING – TRANCHE 2 LEGISLATION

The SMSF Association provides this short supplementary submission following our submission dated 21 August 2026 on the Capital Gains Tax and Negative Gearing – Tranche 2 legislation.

We wish to draw Treasury's attention to a discrete issue arising from the proposed CGT treatment of managed investment trusts (MITs) and attribution managed investment trusts (AMITs). Although the Government has stated that superannuation funds, including SMSFs, and most widely held trusts are excluded from the reforms, the interaction of the proposed capital-loss ordering, indexation and attribution rules may nevertheless cause an SMSF investing through a MIT or AMIT to pay more tax than if it held an economically equivalent investment directly.

This would create an unintended structural disadvantage for pooled investment and is inconsistent with the intended policy outcome. SMSFs commonly use managed funds to obtain diversified investment exposure. Their tax treatment should not turn on whether that exposure is held directly or through a pooled vehicle.

Our targeted comments and recommendations are set out on the following page. We support appropriately targeted integrity measures, but they should not come at the cost of tax neutrality, workable reporting or unnecessary restructuring of existing investment arrangements.

If you have any questions about our submission, please do not hesitate to contact Tracey Scotchbrook, Head of Policy and Advocacy via email traceyscotchbrook@smsfassociation.com

Yours sincerely,

Peter Burgess

Peter Burgess
Chief Executive Officer

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.2 million SMSF members and a diverse range of financial professionals. The SMSF Association continues to build integrity through professional and education standards for practitioners who service the SMSF sector. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial advisers, tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them with access to independent education materials to assist them in the running of their SMSF.

Supplementary Submission

CGT Adjustments (Tranche 2) – MIT and AMIT investments

The detailed funds-management mechanics have been raised separately by industry participants. Our concern is the downstream impact on SMSF investors. A complying superannuation fund should receive materially the same CGT outcome whether it holds an investment directly or obtains economically equivalent exposure through a MIT or AMIT.

Tax neutrality for SMSF investors

Under existing law, a complying SMSF can generally apply capital losses against non-discount gains before discount-eligible gains, preserving the benefit of the one-third superannuation CGT discount. Where the same exposure is held through a MIT or AMIT, the trust calculates its gains and applies losses before amounts are distributed or attributed to investors. The proposed loss-ordering rules can therefore reduce the pool of discount-eligible gains before the SMSF receives its attributed amount. The SMSF cannot reverse that trust-level allocation. In a simple case, this can result in $15 of tax rather than $10 for each $100 of affected gain, despite the underlying economic investment being unchanged.

Material Impact for SMSF investors

The proposed changes will have a material impact on SMSF investors. Australian Taxation Office SMSF Annual Return data for the year ended 30 June 2024[1] provides insights to the level of sector exposure:

Asset allocation	Total assets $ (Billion)	Proportion total SMSF assets	SMSF population holding %	Number of SMSFs	Mean $	Median $
Listed trusts	65.72	6.6%	36.6%	224,948	294,330	132,065
Unlisted trusts	123.26	12.4%	23.8%	146,278	849,225	340,571
Other managed investments	62.98	6.3%	14.1%	86,660	731,101	317,766

Given the growth of the sector and member contributions over the ensuing years, the sector exposure is expected to have increased.

Year / Period Ended	Total SMSFs	Total SMSF Members
30 June 2024[2]	614,613	1,133,070
To 31 March 2026[3]	672,805	1,239,977

[1] Australian Taxation Office, *Self-managed super funds: A statistical overview 2023-24* (16 June 2026), <https://data.gov.au/data/dataset/self-managed-superannuation-funds> : See Table 1: Annual SMSF population, total gross assets and growth; Table 6: SMSF asset allocations.

[2] Ibid, Table 1.

[3] Australian Taxation Office, *Self-managed super fund statistical report - March 2026* (16 June 2026) <https://data.gov.au/data/dataset/self-managed-superannuation-funds> : See Table 1: SMSF Population

AMIT attribution and reporting

Proposed subsections 276-85(4A) and (4B) seek to reverse the benefit of indexation for investors that are not entitled to it, including complying superannuation funds. However, the gross-up does not necessarily undo the loss allocation already made at trust level. It also introduces investor-specific treatment into an AMIT reporting model that has historically operated on a standardised basis. Where units are held through custodians, nominees or platforms, the AMIT trustee may know only the registered holder and not whether the underlying investor is an SMSF, individual or another entity. This creates a material risk of incorrect AMMA statements, AIIR reporting and pre-filling, with compliance costs ultimately borne by investors.

Trustee election

Proposed section 110-36A may mitigate the issue where no member is entitled to indexation, but it is unlikely to provide a complete solution for mixed-investor or multi-tiered funds. A single indexation-eligible investor may prevent the election applying to the fund as a whole, while the requirement to establish member status "just before the CGT event" creates practical verification difficulties. An SMSF investor has no control over the composition of the fund's other investors and should not be disadvantaged as a consequence.

Recommendations

1. Preserve tax neutrality.

Amend the Tranche 2 provisions so that a complying superannuation fund investing through a MIT or AMIT is not denied CGT treatment available on an economically equivalent direct investment. We support removing MITs and AMITs from any prescribed loss-ordering rule that produces this outcome or alternatively introducing a workable investor-level reconstruction or adjustment mechanism.

2. Make the section 110-36A election workable.

Remove or modify the all-member eligibility condition or provide class-based treatment together with clear reasonable-reliance rules, appropriate treatment of multi-tiered structures and a safe harbour where investor information subsequently proves incorrect.

3. Preserve standardised AMIT reporting.

The final design should not require trustees to determine underlying investor tax characteristics that they cannot reasonably obtain. Any gross-up or adjustment mechanism should also address consequential cost-base effects, including CGT event E10 for AMITs and, where relevant, CGT event E4 for other trusts.

These changes are necessary to give practical effect to the intended exclusion of superannuation funds and to avoid tax-driven distortions in SMSF investment decisions.