

## **NOTES RE PUBLIC ANCILLARY FUNDS**

The Public Ancillary Fund (PAF) provisions in the Income Tax Assessment Act 1997 (ITAA 1997) were established to provide a structure to serve as a conduit for remitting tax deductible money to other tax deductible funds (commonly known as Deductible Gift Recipients (DGRs)). The PAF would therefore receive donations from the public and issue a tax-deductible receipt. The funds would be held by the PAF until a decision is made regarding its ongoing distribution (which would normally be within a 12-month cycle).

The PAF needs to be established as a Charitable Trust and comply with the Trustee Laws for the State in which it is created. It needs to have a complying not-for-profit clause and be established and operate only in Australia. It cannot be used as a vehicle to send funds overseas unless it is an approved overseas aid fund through AusAID.

The PAF structure has diverse uses. Larger churches and charities use the facility to more effectively control fund transfers throughout their areas of interest. It is also a helpful budgetary control tool.

New rules regarding the operation of PAFs came into force from 1 January 2012. Any new PAF established must have a corporate trustee (incorporated under either Corporations Act or the WA Associations Incorporations Act. It needs to be managed by a committee or board of individuals – the majority of whom must satisfy the “responsible person” requirements of ITAA 1997.

As a conduit the Trust is expected to distribute income regularly and in accordance with the following rules: -

- At least 4% of the market value of the funds net assets as at the end of the previous financial year;
- If 4% is less than \$8,800 then the Trust must distribute either \$8,800 or the balance of the fund (if it is less than that figure). These provisions presume that some of the PAF’s resources can be accumulated provided these rules are complied with. This would also depend of the Objects of the Trust itself.

The Trustee is required to estimate the market value of the Trust assets at least annually. If shares or real estate are amongst the assets, a reasonable determination of the market value of those assets needs to be undertaken. The market value of land can, in the discretion of the Trustees, be estimated on a three-yearly cycle. The land value should be estimated by a certified valuer independent of the Trustees. Listed shares should be valued on the basis of stock exchange information. The valuation of other assets, other than funds at bank or

in fixed deposit elsewhere may be more difficult to value and will introduce possible valuation expenses.

A PAF will need to be audited or have a review, depending on its size. Where the Trust has revenue and assets exceeding \$1M for the year an audit needs to be carried out by a Registered Company Auditor (RCA). Where revenue and assets are less than \$1M a lesser obligation of a review can be conducted by either an RCA or an accountant in public practice who holds a Public Practice Certificate that complies with the provisions of Section 324 B E of the Corporations Act 2001.

Each Trust will also need to have an investment strategy. As most PAFs operate as mere conduits such an investment strategy may be simple. An example would be to hold all funds prior to distribution in a cash management trust or term deposit with a recognised Australian bank. Where the assets are in some part invested in the share market the investment strategy should set out the objectives of the share market investment and under what circumstances investments should be reviewed. That area would need more specific detail than a simple cash management account. The Trustee is not allowed to borrow money.

Fees and expenses of operating the PAF would be expected to be met from within the resources of the Trust itself.

Where a Trust was established and endorsed by ATO prior to 1 January 2012 there is a transitional provision. This allows the Trust to operate under the previous Trust Rules until 30 June 2015. The Trust would be required to amend the governing Rules to comply with the new guidelines by that date.

For DGR endorsement for Public Ancillary Funds (PAF) the Objects Clause (sometimes referred to as 'Purposes') needs to clearly identify that the Objects of the Trust are to benefit another entity or group of entities that are defined as 'eligible charities' (that have tax deductibility status as Deductible Gift Recipients, commonly referred to as DGR's). This is to enable the income of the PAF to be distribution to these DGR's in accordance with Sub-Division 30-B of ITAA 1997.

A reference to an 'eligible charity' refers to a fund, authority or institution which is both charitable at law and gifts to which are deductible under Item 1 of the Table at Section 30-15 of the ITAA 1997.

The purpose of the documentation is to ensure that the PAF qualifies for DGR under Item 2 and distributions from the PAF can be made to DGRs in accordance with Item 1-conditional on them also being charitable at law. The reason for this is that some DGRs are not eligible for TCC endorsement (e.g. some government bodies).

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