

Private ancillary funds

Outline of requirements

Key points

- Private ancillary funds can be a good structure for families and businesses to pursue their philanthropic desires
- Private ancillary funds are highly regulated
- Before establishing a private ancillary fund, the requirements (including ongoing legal compliance) should be understood

What is a private ancillary fund?

1. A private ancillary fund (**PAF**) is a private fund that:
 - (a) is exempt from income tax
 - (b) can provide a receipt to donors, which enables them to claim a tax deduction for their donation
 - (c) generally, has the same tax status as registered charities.
2. A PAF is a channel by which money or property is distributed to other charitable bodies endorsed by the Australian Taxation Office (**ATO**) or specified in the income tax legislation.
3. A PAF must be endorsed as such by the ATO and be registered as a charity with the Australian Charities and Not-for-Profits Commission (**ACNC**).
4. To be classified as a PAF, the fund must:
 - (a) have an ABN
 - (b) be established and maintained under a trust document
 - (c) be established and operated on a non-profit basis in Australia
 - (d) have as its sole purpose, the provision of money, property or benefits to other registered charities that are endorsed as deductible gift recipients (DGRs)
 - (e) have a private company that complies with the PAF guidelines as trustee
 - (f) have acceptable rules for the transfer of surplus gifts and deductible contributions on winding-up or revocation of endorsement
 - (g) meet the other requirements of the legislation, the ATO and the ACNC.

Trustee of the PAF

5. A trust is not recognised as a legal entity therefore, the trust must have a trustee as its legal representative.
6. PAFs must have a private company as trustee.
7. Most of the directors of the trustee company can be family members or business associates provided that at least one of the directors is an independent person who is a 'responsible person' who is not:
 - (a) the founder
 - (b) a donor who has contributed more than \$10,000 to the fund
 - (c) an associate of such a founder or donor.
8. The responsible person must have a degree of responsibility to the Australian community as a whole. Examples of such people include:
 - (a) clergy
 - (b) school principals

- (c) lawyers
- (d) doctors
- (e) other people who perform a public function or belong to a professional body
- (f) a person before whom a statutory declaration may be made.

Investment plan, accounts and audit

9. A PAF must:
- (a) develop and maintain a current investment strategy
 - (b) obtain a valuation of any land in the fund every three financial years and revalue other assets annually
 - (c) prepare annual financial statements and be audited or reviewed annually
 - (d) lodge a tax return
 - (e) keep proper accounts in relation to payments and receipts for a period of five years after the completion of any transaction.

Distributions and donations

10. A PAF does not have to make any distributions in the financial year it is established.
11. If the PAF's expenses are met from outside the fund, it must distribute at least five per cent of the market value of the fund's net assets (as at the end of the previous financial year) to external charities in each subsequent year.
12. If the PAF's expenses are paid from the fund's assets, the PAF must distribute at least \$11,000 or 5% of the market value of the net assets (as at the end of the previous financial year) to external charities, whichever is greater.
13. If the fund is worth less than \$11,000, the entire amount of the fund must be distributed during the relevant financial year.
14. The PAF must be a private fund. Therefore, there must be a close relationship between those who establish the fund and those who donate to it. A PAF must not solicit donations from the public.
15. A PAF can invest funds received in the same way as a trustee can generally invest trust funds, such as by holding shares or purchasing property but the PAF cannot carry on a business.

Investment limitations

16. The PAF cannot borrow (subject to some minimal exceptions).
17. All investments must be on an arm's length basis. This does necessarily preclude the assets in the PAF being invested in or lent to related entities – provided the terms of the investment or loan is on arm's length terms and the transaction is in the course or furtherance of the PAF's purpose.
18. The trustee must not give security over or in relation to any asset of the fund in limited circumstances.
19. The fund must not acquire collectables, except by way of gift. If the fund acquires a collectable by gift, it must sell or distribute the asset within 12 months of acquisition.

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