Public ancillary funds

Outline of requirements

Key points

- Public ancillary funds can be a good structure to pursue philanthropic desires
- Public ancillary funds are highly regulated
- Before establishing a public ancillary fund, the requirements (including ongoing legal compliance) should be understood

What is a public ancillary fund?

1. A public ancillary fund (**PubAF**) is a public fund that is exempt from tax and is a deductible gift recipient (**DGR**), which means it can receive tax deductible donations.

2. A PubAF is a channel by which money or property is distributed to other charitable bodies endorsed by the Australian Taxation Office (**ATO**) as DGRs or specified in income tax legislation.

3. To be classified as a PubAF, the fund must:

   (a) be endorsed by the ATO and registered as a charity with the Australian Charities and Not-for-Profits Commission

   (b) have an ABN

   (c) be established and operated in Australia

   (d) be established and maintained under a trust document

   (e) be operated on a non-profit basis and have as its sole purpose the provision of money, property or benefits to other registered charities that are endorsed as DGRs

   (f) have a company that complies with the PubAF guidelines as trustee

   (g) invite and receive donations from the public

   (h) meet the other requirements of the legislation, the ATO and the ACNC.

4. Because a PubAF must invite and receive contributions from the public, the PubAF must be registered to fundraise. In Queensland, the PubAF must register under the *Collections Act*. There is similar legislation in other states and territories.

Trustees of the PubAF and responsible person

5. The PubAF must have a company as its trustee and a majority of directors of the trustee company are required to have a degree of responsibility to the community.

6. Examples of individuals with a degree of responsibility to the Australian community as a whole include:

   (a) school principals

   (b) judges

   (c) religious practitioners

   (d) solicitors

   (e) doctors

   (f) members of parliament

   (g) other people who perform a public function or belong to a professional body

   (h) a person before whom a statutory declaration may bemade.

Minimum annual distribution

7. The fund must distribute a minimum level of assets in most years.

8. If the PubAF's expenses are met from outside the fund, it must distribute at least 4% of the market value of the fund's net assets (as at the end of the previous financial year) to external charities that are also DGRs in each subsequent year.

9. If the PubAF's expenses are paid from the fund's assets, the PubAF must distribute at least $8,800 or 4% of the market value of the net assets (as at the end of the previous financial year), whichever is greater, to external charities that are also DGRs.

10. If the fund is worth less than $8,800, the entire amount of the fund must be distributed during the relevant financial year.

11. No distribution is required during the financial year in which the fund is established or during the next four financial years.

Investment plan, records and reporting

12. The fund must:
    (a) develop and maintain a current investment strategy
    (b) obtain a valuation of any land in the fund every three financial years and value other assets annually
    (c) prepare annual financial statements and to 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 the transaction.

13. A PubAF 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 PubAF cannot carry on a business.

Investment limitations

14. The PubAF cannot borrow (subject to some minimal exceptions).

15. All investments and transactions must be on an arm's length commercial basis unless the transaction is with a DGR and in accordance with the PubAF objectives or on more favourable terms for the PubAF.

16. The trustee must not give security over or in relation to any asset of the fund in limited circumstances.

17. The fund must not acquire collectables, except by way of gift.

18. If the fund acquires a collectable by gift, it must sell or distribute the asset within 12 months of acquisition.