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**Private and Public Ancillary Fund Guideline Changes**

The Guidelines governing both Private and Public Ancillary Funds have been amended by the Assistant Treasurer with immediate effect. Some useful flexibility has been introduced without disrupting the underlying framework so the changes are reassuring and welcomed.

The changes are generally aligned to the position peak body Philanthropy Australia put to the government back in 2014 and also reflect the feedback Australian Philanthropic Services (APS) submitted earlier this year on the proposed changes. The key amendments are the introduction of portability for PAFs, greater clarity around provision of non-grant support to eligible charities and discretion of the ATO Commissioner to approve a lower minimum distribution in certain circumstances. There has also been some general clarification and tidying up of wording.

The changes to the Private Ancillary Fund (PAF) Guidelines 2009 are:

- Private Ancillary Funds can now be transferred into an existing Public Ancillary Fund - such as the APS Foundation – or another PAF under certain conditions. This is an opportunity for those with smaller PAFs with insufficient scale to warrant running an independent trust and for situations where there is no one to take over the administration of a PAF from the Founder.

- There is greater clarity about how PAFs can use assets and financial instruments such as loans, social impact bonds and guarantees to provide benefit to eligible charities which will encourage more impact investing.

- The definition of who qualifies to be a Responsible Person has been expanded.

- The 5% minimum distribution requirement has been maintained but with the ATO Commissioner given new powers to approve a lower distribution when specific circumstances warrant (designed particularly to help those PAFs that receive bequests of sometimes illiquid and low yield assets).

- Notification and reporting to both the ACNC and the ATO has been streamlined.

- The Financial Statements and compliance of PAFs with less than $1m can now be subject to a review rather than full audit.

- The investment strategy requirements now include specific mention of the need to consider conflicts of interest of founders and trustee, and the penalty for non-compliance with the investment strategy increased.

As many of the changes were already in the Public Ancillary Fund (PuAF) Guidelines 2011, the changes for PuAFs are not as extensive as for PAFs and replicate them:

- There is greater clarity about how PuAFs can use assets and financial instruments such as loans, social impact bonds and guarantees to provide benefit to eligible charities which will encourage more impact investing.

- The 4% minimum distribution requirement has been maintained but with the ATO Commissioner given new powers to approve a lower distribution when specific circumstances warrant (designed particularly to help those PuAFs that receive bequests of sometimes illiquid and low yield assets).

- Notification and reporting to both the ACNC and the ATO has been streamlined.

- The investment strategy requirements now include specific mention of the need to consider conflicts of interest of founders and trustee, and the penalty for non-compliance with the investment strategy increased.

- Portability of PuAFs and sub-funds thereof remains, but only funds linked to a donor can be transferred to a PAF and not funds raised from the general public.

The amendments can be viewed at https://www.legislation.gov.au/Details/F2016L00651/Download

We expect consolidated sets of the now current Guidelines will be released shortly.