ATTACHMENT A

Details of the ***Taxation Administration (Private Ancillary Fund) Guidelines 2019***

This Attachment sets out further details of the Taxation Administration (Private Ancillary Fund) Guidelines 2019 (the 2019 Guidelines). All references are to the 2019 Guidelines unless otherwise stated. For the corresponding provision in the Private Ancillary Fund Guidelines 2009 (the 2009 Guidelines), as identified by the finding tables at Attachment B.

All sections in the 2019 Guidelines replicate (and in some cases consolidate) the corresponding provisions in the 2009 Guidelines, but have been updated in accordance with current drafting practice. This Attachment does not catalogue changes of a minor or machinery nature, such as references to section rather than µ J X L G. Where changes are made that require further explanation, these are identified and explained in this Attachment.

Details of existing law can be found in the Explanatory Statement to the 2009 Guidelines and at www.ato.gov.au.

Part 1 - Preliminary

Section 1 ± Name of instrument

This section provides that the title of the 2019 Guidelines is the Taxation Administration (Private Ancillary Fund) Guidelines 2019.

Section 2 ± Commencement

This section provides that the 2019 Guidelines commence the day after registration.

Section 3 ± Authority

This section provides that the 2019 Guidelines is made under the Taxation Administration Act 1953.

Section 4 ± Schedules

This section provides that each instrument listed in a Schedule to the 2019 Guidelines is amended or repealed in accordance with the instructions in the Schedule.

Section 5 ± Definitions

This section replicates the corresponding provision in the 2009 Guidelines but has been updated in accordance with current drafting practice. To improve clarity, section 5 now includes definitions of key terms previously included in later provisions of the 2009 Guidelines, as follows:

- the definitions of µ G L V W U L E X W L R Q ¶ S R Q and L E O H S H U V R Q ¶
- governing rules ¶ is defined to have the same meaning as in the Australian Charities and Not-for-profits Commission Act 2012

Section 6 ± Penalties

This section replicates the corresponding provision in the 2009 Guidelines, but has been updated to reflect current drafting practice. Section 6 provides that the amount of an administrative penalty imposed for a breach of these Guidelines is set out, or worked out, in accordance with the relevant provision of the 2019 Guidelines which has been breached.

No changes have been made to any penalties for breaching the 2019 Guidelines ± the penalty provisions (and amounts) identified throughout the 2019 Guidelines reflect the corresponding penalty provisions (and amounts) in the 2009 Guidelines.

Part 2 ² Rules for establishing and maintaining private ancillary funds as deductible gift recipients

Sections 7 and 8 ± Object and general principles

These sections replicate the corresponding provisions in the 2009 Guidelines, but have been updated in accordance with current drafting practice. Section 7 provides that the object of Part 2 is to set minimum standards for the governance and conduct of private ancillary funds. Section 8 establishes general principles which private ancillary funds must observe.

Sections 9, 10 and 11 ± Establishing a private ancillary fund

These sections replicate the corresponding provisions in the 2009 Guidelines that set out rules for establishing and operating a private ancillary fund, but have been updated in accordance with current drafting practice.

Section 9 provides that a private ancillary fund must be established and maintained, under a will or an instrument of trust, as a valid trust. This provision no longer refers WR µ D Y Under State law or Territory law¶. The reference to State or Territory law has been removed because the trustee must comply with all relevant laws that go WR D W U X V W ¶ V Y D O L G LSate law or Territory law, or Commonwealth O D Z law and, where relevant, foreign law. The additional text merely created unnecessary confusion and was therefore removed (similar references to State or Territory law have also been removed at section 25, see below).

Section 10 provides that a private ancillary fund must be established and operated as a not-for-profit entity. Section 11 provides that it must be established and operated in Australia.

Section 12 ± Trustees of private ancillary funds

This section replicates and consolidates the corresponding provisions in the 2009 Guidelines concerning trustees of private ancillary funds, but has been updated in accordance with current drafting practice. In addition, D G H I L Q L W L R Q R I µ U H V S R Q S H U V R Q¶ has been included at subsection 12(7) to improve clarity and readability.

Section 13 and 14 ± Governing rules of private ancillary funds

These sections replicate the corresponding provisions in the 2009 Guidelines, but have been updated in accordance with current drafting practice. Section 13 obligates a W U X V W H H W R Q R W L I \ W K H & R P P L V V L R Q H U R I D Q \ F K D Q J

Section 14 prohibits a private ancillary fund from indemnifying a trustee against losses due to their decisions LQ FHUWDLQ VLWXDWLRQV ZKHUH WKH W considered highly inappropriate

Section 15 ± Minimum annual distribution

This section replicates the corresponding provision in the 2009 Guidelines, but has been updated in line with current drafting practice. Section 15 requires a private ancillary fund to distribute a proportion of its income and assets each year to a deductible gift recipient. The key change is the inclusion of a definition of µ*9 LW U L E X W L R Q¶ (4) to improve clarity (this definition is also referenced in section 5). The definition does not alter the substantive effect of the section.

The section retains the amendments introduced in 2016 that permit the Commissioner to reduce the minimum distribution requirements for a fund for a particular year. The Commissioner also retains the power to subject a decision to reduce the minimum distribution rate for a fund for a year, to conditions the Commissioner considers necessary. Those conditions may seek to protect the integrity of the regulatory framework or improve the operation of a fund to minimise the likelihood of future requests for a lower distribution being made.

Section 16 ± Valuations

This section replicates and consolidates the corresponding provisions in the 2009 Guidelines that prescribe procedures for working out the market value of a private DQFLOODU\ ,QYHVWPHQW (4) has been updated in accordance with current drafting practice.

Sections 17, 18 and 19 ± Record keeping, financial reporting and audits

These sections replicate and consolidate the corresponding provisions in the 2009 Guidelines that set out the rules for record keeping, financial reporting and audits, but have been updated to reflect current drafting practice.

Sections 20 and 21 ± Investment strategy and limitations

These sections replicate and consolidate the corresponding provisions in the 2009 Guidelines that require the trustee of a private ancillary fund to implement an investment strategy and comply with certain investment limitations to protect a IXQG¶V philanthropic assets, but have been updated in line with current drafting practice.

Section 22 ± Uncommercial transactions and benefits to founders and donors

This section replicates and consolidates the corresponding provisions in the 2009 Guidelines that generally prohibit the trustee of a private ancillary fund from entering into uncommercial transactions or providing benefits to founders and donors, but has been updated in accordance with current drafting practice.

Section 23 ± Fees and expenses

This section replicates the corresponding provision in the 2009 Guidelines that allows a trustee of a SULYDWH DQFLOODU\ IXQG WR EH UHLPEXUVHG F income or capital, but has been updated in accordance with current drafting practice.

Section 24 ± Donors

This section replicates and consolidates the corresponding provisions in the 2009 Guidelines that prohibit private ancillary funds from soliciting public donations, but has been updated in accordance with current drafting practice.

Minor changes have been made to this provision to improve clarity and ensure the law operates as intended ± that is, the section now ensures there can be no
P L V X Q G H U V W D Q G L Q J W K D W I R O O R Z L Q J W K H G H D W K R I D
F R Q W L Q X H W R G R Q D W H D Q G R S H U D W H W K H S U L Y D W H D
private philanthropic purposes.

Section 25 ± Compliance with all relevant laws

This section replicates the corresponding provisions in the 2009 Guidelines that
U H T X L U H W K H W U X V W H H R I D S U L Y D W H D Q F L O O D U \ I X Q G
compliance with all relevant Australian laws, but has been updated in accordance with current drafting practice.

Consistent with the removal of unnecessary references to State or Territory law at section 9 (outlined above), similar references have also been removed from this provision ± the additional text is unnecessary because section 25 requires the trustee to comply with all U H O H Y D Q W O D Z V W K D W J R W R D W U X V W ¶ V Y D

Sections 26, 27 and 28 ± Winding up, or ceasing to be, a private ancillary fund

These sections replicate the corresponding provisions in the 2009 Guidelines concerning winding up, or ceasing to be, a private ancillary fund, and portability of assets, but have been updated in line with current drafting practice.

Part 3 ² Application and transitional provisions

Section 29 ± Transitional rules for former prescribed private funds

This section replicates and consolidates the corresponding provisions in the 2009 Guidelines that set out transitional rules for private ancillary funds that were prescribed before 1 October 2009, but has been updated in accordance with current drafting practice.

Section 30 ± Transitional rules for things done under the 2009 Guidelines

This new section sets out transitional rules modifying how Part 2 applies to a private ancillary fund to ensure a seamless transition between the 2009 Guidelines and the 2019 Guidelines. The intention is that the effect of the 2009 Guidelines continues, despite being repealed and remade into 2019 Guidelines.

Schedule 1² Repeals and consequential amendments

Schedule 1 repeals the 2009 Guidelines from the commencement of the 2019 Guidelines. Schedule 1 also updates a cross-reference to the 2019 Guidelines in the Public Ancillary Fund Guidelines 2011

ATTACHMENT B

Finding tables

As a result of changes described in Attachment A, it was necessary to renumber the provisions in the 2019 Guidelines. This Attachment includes finding tables to assist in identifying which provision in the 2019 Guidelines corresponds to a provision in the 2009 Guidelines that has been rewritten or consolidated, and vice versa. Tables B.1 and B.2 (below) locate the provisions of the 2019 Guidelines in relation to the corresponding provisions in the 2009 Guidelines.

In the finding tables, LQ WKH µ*XLGHOLQHV¶ PHDQV WKH *XLGHOLQHV WKDW DUH D QHZ provision that has no corresponding provision in the 2009 Guidelines. In the µ2019 Guidelines¶ F R O X P Q µ R P L W W H G ¶ P H D Q V W K D W D 2009 Guideline has not been remade. Typically, these are spent or non-operative provisions, guidance material or similar.

Table B.1: 2019 Guidelines to 2009 Guidelines

2019 Guidelines	2009 Guidelines
1	1
2	2
3	No equivalent
4	No equivalent
5	3
6	4
7	7
8	8
9	9 and 10
10	11
11	12
12	13 to 16
13	17
14	18
15	19
16	20 to 23
17	24 and 25
18	26 and 27
19	28 and 29
20	30 to 32
21	33 to 40
22	41 and 42
23	43
24	44 to 47
25	48 and 49
26	50
27	51
28	51A
29	59 and 60
30	No equivalent
Schedule 1	No equivalent
omitted	5
omitted	6

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Table B.2: 2009 Guidelines to 2019 Guidelines

2009 Guidelines	2019 Guidelines
1	1
2	2
3	5
4	6
5	omitted
6	omitted
7	7
8	8
9 and 10	9
11	10
12	11
13 to 16	12
17	13
18	14
19	15
20 to 23	16
24 and 25	17

2009 Guidelines	2019 Guidelines
26 and 27	18
28 and 29	19
30 to 32	20
33 to 40	21
41 and 42	22
43	23
44 to 47	24
48 and 49	25
50	26
51	27
51A	28
59 and 60	29
No equivalent	30
No equivalent	Schedule 1
No equivalent	3
No equivalent	4

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