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**Private Ancillary Fund Guidelines 2009.**

Dear Sir/Madam,

Thank you for the opportunity to respond to the Draft Guidelines. I have no direct experience of Private Ancillary Funds but am very interested in this development.

I wish to make the following comments:

1. **Commencement** is it realistic to have an October, 2009 commencement date? I doubt whether it is fair or even reasonable. I would estimate it could be effectively achieved if it was to commence on a date such as 31<sup>st</sup> December, 2009
2. **Establishing A Private Ancillary Fund**  
10.1  
Whilst acknowledging that it is not desired to prescribe the governing rules. I note the ATO has required Tax exempt charitable funds and deductible gift recipients to have certain prescribed rules incorporated in all documents. They should be incorporated in the guidelines.  
10.2  
I presume that this allows a private ancillary fund to transfer its assets to a Public Fund with similar objectives without penalty.
3. **The Trustee**  
14.  
The way it is drafted would seem to preclude a licensed Trustee Company from being a Trustee or being a joint Trustee. I believe they should be allowed to be a Trustee if the "founder" so desires.

#### **4. Operation of a Private Ancillary Fund**

##### 19.1

The 5% requirement seems to be reasonable. I do not understand the reasoning of the \$11,000 figure.

##### 19.2

It may also create an issue for a “donor” who may wish to contribute varying amounts over a period of time to establish a fund. It would be better to allow a fund to have say 3 years before it is required to distribute otherwise theoretically you could end up with a fund having to wind up in the year of its establishment.

#### **5. Financial Statements**

26.1 I note the reference to “accounting standards”. It does not appear to be defined. It is well known “accounting standards” seem to be a moving set of rules. I think there should be an attempt to set out the basic standards as they could often conflict with 20 which states “market value”.

26.2. There is a reference to another set of financial statements to be given to the Commissioner. Why are you proposing 2 types of accounts. This clearly needs clarifying

#### **6. Investment Strategy**

##### 29.2

Consideration should be given to expressing it as “the investment requirements imposed by the state or Territory in which the fund is established” Regard must be had to dot points iii) and iv. The dot points i) and ii) are unnecessary.

#### **7 Distribution Strategy**

##### 32.

How can a fund be expected to know the quantity of donations it is going to receive? You seem to have precluded a “targeted capital” amount.

How does a fund know who its expected recipients are going to be? I would expect that in most cases the class of recipients would be set out in the “Trust” document creating the fund.

I also note this refers to donations to and does not include the income of the fund.

#### **8. Investment Limitations. ;**

##### 34.35.36

Why not incorporate these provisions in Investment Strategy and call both *Investment Requirements*.

#### **9. Uncommercial Transactions & Benefits to Founders/Donors & Donors**

##### 43 & 47

It is not clear as to the definition of “associates” where is it defined?

#### **9 Compliance with all relevant laws**

##### 49.

The power given to the Commissioner should be limited to defining the Guidelines not expanding the guidelines.

**9. Converting a Private Ancillary Fund into a Public Fund**

52

. The Commissioner should also have the power to allow a fund to amend its rules to transfer the fund to a public fund.

I trust that as result of this consultation you will release a final draft for comment.

Yours Faithfully,

A handwritten signature in black ink that reads "John Church". The signature is written in a cursive, slightly slanted style.

John Church  
13<sup>th</sup> July, 2009