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**Trustee  
Corporations  
Association  
of Australia**

23 July 2009

The Manager  
Philanthropy and Exemptions Unit  
Personal and Retirement Income Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Sir / Madam.

**PRIVATE ANCILLARY FUNDS: DRAFT GUIDELINES**

The TCA appreciates having the opportunity to comment on the draft guidelines for PAFs.

We believe that the proposed new regulatory framework for PAFs will facilitate the continued growth of this important element of the philanthropic sector while ensuring the integrity of the associated taxation arrangements.

Distribution

We welcome the decision to reduce the required distribution rate for PAFs to 5% compared with the 15% previously suggested, as the lower figure will allow the perpetual nature of those entities to be preserved.

However, while a PAF could be expected to have a well considered distribution plan, we do not see the need for this to be an auditable requirement.

If this is to remain a requirement, we suggest that the ATO consider issuing a pro-forma.

Corporate trustee

We also welcome the decision that the directors of 'registered trustee companies' will not be liable to the administrative penalties for failure to comply with the guidelines, on the basis that those entities are subject to an appropriate level of supervision to cover their liabilities.

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### Investment strategy

We support the flexible approach now proposed for a PAF's investment strategy, which must have regard to the entity's investment objectives and risk.

The initial suggestion that investments be restricted to 'liquid' investments would have limited a PAF's ability to generate greater income and hence reduced the amount of money available for charitable recipients.

### Capital Gains Tax

We note that, under clause 9 of the draft guidelines, a PAF must be established and maintained, under a will or instrument of trust, as a valid trust under State or Territory law.

Further, we understand that a PAF will only attain PAF and DGR status upon approval from the Commissioner.

We presume that, to avoid CGT Event K3 and have assurance of approval of their trust as a PAF, a donor could establish a 'dormant' PAF (under an instrument of trust) and have it approved prior to their death.

However, we would appreciate confirmation that CGT would also not apply in situations where the donor / testator arranged in their will for a PAF to be established after their death, the PAF was subsequently endorsed as a DGR, and property then passed from the estate to the PAF.

### Ability to borrow

We question the proposed prohibition on PAFs borrowing money as this is allowed under the current PPF model trust deed.

### Limit on donations

Similarly, we do not see the logic in the 10% limit on annual donations by entities other than the founder (or their associates / employees).

### Public information

We note that a PAF should be "*open, transparent and accountable to the public (through the Commissioner).*"

We presume that this does not mean that the ATO intends to release to the general public information on individual PPFs – such a step would be unreasonable given that PAFs are not obliged to seek donations from the public,

Rather, the ATO should continue to release aggregate annual data on PAF donations received, distributions (broken up into several categories of recipients) and closing value of those funds.

Yours faithfully,



Ross Ellis

Executive Director