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Director
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Electronic

Dear Sir/Madam

Submission on distribution guidelines for ancillary funds

The purpose of this letter is to respond to one of the proposed policy changes set out in the Treasury's March 2022 consultation paper on distribution guidelines for ancillary funds.

1 Our submission

This submission supports the proposal to provide greater flexibility in transferring assets between private ancillary funds.

1.1 Response to question 9

We consider that private ancillary funds should be permitted to transfer their assets to other private ancillary funds, and transfers of assets should not be limited to transfers from private to public ancillary funds.

We support the first option set out in the consultation paper that transfers between funds should **not** count towards minimum distributions and should only be permitted once the giving fund has made its minimum distribution for the year.

1.2 Response to question 10

To mitigate arrangements that may result in slowing the distributions to type 1 DGRs, we recommend the Commissioner's consent be required where different accounting periods exist between funds, the funds use different accounting bases or multiple asset transfers are contemplated.

1.3 Example from our client

We consider an example based on one of our client's private ancillary funds (**Fund**) highlights the benefits of providing greater flexibility in transfers between private ancillary funds.

The background in relation to the Fund is as follows:

(a) The Fund was set up in 2005.

(b) The Fund is run by three siblings and one independent person.

(c) Each of the three siblings are a director of the Fund ("family directors"), together with the independent person.

(d) The ages of the family directors are 64, 62, and 59.

(e) The family directors each have children of their own. Respectively, they have 2, 3 and 4 children.

(f) The family directors are now considering succession planning for the Fund.

(g) The Fund is valued at approximately $10m.

(h) The Fund distributes on average between 6% and 7% of the net asset value of the Fund each year, which is above the minimum distribution rate.

It would be attractive to the family directors if they could at the appropriate time split the Fund and transfer the Fund's assets so that there were a total of three private ancillary funds (ie the existing Fund and two new funds) that could be run by the children of each family director.

The family directors' intention behind splitting the Fund into three separate funds and transferring the assets is to allow the philanthropic activities to continue beyond their lifetime in an administratively easier fashion.

Having a fund for each family would promote administrative ease. This is because the children of each of the family directors could separately control a fund. It would be administratively more difficult if there were to be only the Fund. If all of their children were to be directors, there would be 9 plus the independent person. If the Fund were split into three, then each family would be able to control a separate fund.

If the transfers were permitted, the funds would continue to ensure that the total value of distributions made to type 1 DGRs is at least the minimum required.

The intention of the family directors is not to limit or decrease the distributions. That is why the family directors support the option that assets should be transferred only once the fund has reached the minimum distribution in the year the transfer is made.

The family directors also submit that the Commissioner's consent should only be required if there are concerns on slowing distributions to type 1 DGRs.

We consider that the circumstances of the family directors of the Fund, given the number of family members involved and their intention to plan for the longevity of the Fund to continue to support type 1 DGRs, would be a key example of when asset transfers between private ancillary funds should be permitted.

We consider the benefits of splitting the Fund into three would outweigh the administrative costs in transferring the assets and operating the separate funds as it would ensure the funds are structured so that future generations can continue to support type 1 DGRs in an administratively easier fashion. We consider that the private ancillary fund guidelines should not prohibit that.

1.4 Other examples

While not relevant to our client, other examples where it may be desired to split a private ancillary fund into two or more private ancillary funds include:

(a) A private ancillary fund operated by a husband and wife and an independent person, and the husband and wife separate or divorce and each would like to continue operating a private ancillary fund but they can no longer work together.

(b) Conflicts between family members who are operating a private ancillary fund.

(c) If changes to the deed were desired by some directors but not others.

2 Suggested amendment to private ancillary fund guidelines

In accordance with the above, our recommendations are marked-up in the below suggested amendments to section 28 of the *Taxation Administration (Private Ancillary Fund) Guidelines 2019:*

28 Portability

*(1) ~~With the agreement of the Commissioner, a~~ Subject to subsection 28(2), a *private ancillary fund may transfer assets to ~~another~~ one or more *ancillary funds if:*

> *~~(a) the private ancillary fund transfers all of its net assets to that ancillary fund; and~~*
>
> *(a~~b~~) the *private ancillary fund has already complied with section 15 for that financial year (about minimum annual distributions); and*
>
> *(b~~c~~) none of the assets of the *private ancillary fund have been received from another ancillary fund during the 2 previous financial years;~~.~~*

*(2) The prior agreement of the Commissioner is required to transfers to *private ancillary funds if:*

> *(a) the receiving *private ancillary fund has a different accounting period to the giving *private ancillary fund; or*
>
> *(b) the receiving *private ancillary fund uses a different accounting base to the giving *private ancillary fund; or*
>
> *(c) there are transfers on different days in a financial year.*

Please let me know if you have any question or require further information in relation to this submission.

Yours sincerely

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