

Taxation

The guidelines governing PPFs can appear complicated and difficult to navigate, so below we have offered some insight. This bulletin provides an update on Tax Office views regarding distributable income, as well as some alternative structures to the standard PPF to increase your options for charitable and non-charitable giving. And, of course, we are always here to assist with any queries you may have.

Are you having difficulty ascertaining the amount of income that must be distributed by your PPF each year?

The PPF annual income distribution requirement obliges trustees to estimate annual income and to distribute all income (subject to a CPI adjustment to maintain the real value of the capital base) in the year of receipt.

This is often impractical as it requires trustees to estimate the income received before the end of each financial year. Where investments are held in managed funds, the fund managers often do not provide their reports until three to four months after the end of the financial year.

The Tax Office accepts this impracticality and has indicated to us that they will allow a small alteration to the Trust Deed so a PPF can distribute income in the year following the year of receipt when the precise amount of income for the relevant financial year is not yet known. Where the amount of income can be readily determined, however, it must be distributed in the year of receipt.

A simple Deed of Variation is required to reflect this amendment to a PPF's Trust Deed.

Does your PPF want to give to a broader range of non-charitable DGRs?

If so, you may want to consider converting your existing PPF to what is known as an Income Tax Exempt Fund (ITEF).

A PPF can only distribute to a Deductible Gift Recipient (DGR) that is charitable at law. The definition of charitable, established over the years by case law, dates back to the 1601 Statute of Charitable Uses known as the Statute of Elizabeth, which sets out a list of uses deemed charitable. These include: the relief of poverty; the relief of the needs of the aged; the relief of sickness or distress; the advancement of religion; the advancement of education; and other purposes beneficial to the community.

Not all DGRs (even if they are of benefit to the community) are considered charitable at law. An entity is not a charity if it is primarily: for sporting, recreational or social purposes; for commercial or business purposes rather than cultural purposes; for political, lobbying or promotional purposes; a public authority; or a governmental department, including government special schools.

For example, the Australian Sports Foundation, the Australian Business Arts Foundation and some public hospitals are not 'charitable' as a matter of law and therefore a PPF cannot distribute funds to these DGRs.

An ITEF is a relatively new form of non-charitable fund. Its advantage compared with a charitable PPF is that it can distribute to both charitable and non-charitable DGRs. ITEFs are also exempt from paying tax on their income.

So, to broaden the range of recipients to which your PPF can make distributions, it is a fairly simple process to convert your existing PPF's Tax Concession Charity (TCC) status to endorsement as an ITEF. A simple Deed of Variation to your PPF's existing Trust Deed is required to alter the eligible recipient DGRs. It is also necessary to alter the TCC status with the Tax Office so the PPF is endorsed as an ITEF to reflect the non-charitable nature of the fund.

Have you checked your PPF's details on the Australian Business Register (ABR) website?

Go to www.abr.gov.au, click on 'Search for an ABN using ABN Lookup' and enter the name of your PPF to find the details of your PPF's DGR and TCC status. All PPFs should be listed as DGRs once approved by the Tax Office and most should be entitled to endorsement as a TCC. It is worth checking your PPF's details on the ABR website to ensure they are correct. If they are not, let us know and we can contact the Tax Office on your behalf.

When will the new PPF guidelines be released?

The last version of the guidelines governing PPFs (version 3) was released by the Tax Office in May 2004. We understand from the Tax Office that new guidelines were drafted two years ago but have still not been released despite initial indications that they would do so by 30 June 2007. Now, with the new Labor Government likely to seek input, it is not known how long it will be until the new guidelines are released. We will keep you informed of further developments.



Contacts

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