

Prescribed Private Funds – A response to proposed changes to PPFs

Taxation

In the May 2008 Federal Budget, the Treasurer announced that the government will legislate guidelines to improve the integrity of Prescribed Private Funds (PPFs) and provide the trustees of PPFs with greater certainty as to their philanthropic obligations, with effect from 1 July 2009.

In late November 2008, Treasury released a Discussion Paper entitled *Improving the integrity of Prescribed Private Funds* and invited the public to comment on the proposed measures.

Improving the integrity of Prescribed Private Funds Discussion Paper

The government believes that PPFs should have four essential characteristics. PPFs should be:

- philanthropic;
- trusts that abide by all relevant laws and obligations and are open, transparent and accountable;
- private; and
- ancillary funds.

These four principles provide the basis for the Discussion Paper. While we do not disagree with the four essential characteristics, we think the proposals in the Discussion Paper, designed to address these characteristics, go further than necessary.

The Discussion Paper proposals include:

- **Required distributions:** the government proposes replacing existing accumulation plans with a system that would require PPFs to distribute a minimum amount (15 per cent is suggested) each year based on the market value of the PPF's net assets at the close of the previous financial year, including unrealised capital gains.
- **Regular valuation of assets at market rates:** the government proposes that PPFs should be required to value their assets annually at the close of the financial year to determine the appropriate distribution amount.
- **Minimum PPF size:** the Discussion Paper suggests PPFs should have a minimum size (for example, \$500,000) to avoid smaller PPFs being eroded by operating expenses. This requirement would not only affect the establishment size of PPFs but also force PPFs to distribute all their capital once their total value falls below the minimum amount.
- **Increased public accountability:** the government proposes making the contact details of PPFs public so that charities can make funding applications directly to PPFs.

- **Give the ATO greater regulatory powers:** to overcome the current 'all or nothing' penalty options for PPFs, the government wants to give the ATO broader regulatory powers and access to a wider range of appropriately tailored penalties in regard to PPFs. To do this effectively, the Discussion Paper implies that all PPFs would be required to have a corporate trustee.
- **Introduce a 'fit and proper person' test for trustees:** the government believes that trustees should be qualified to run a PPF. Trustees would need to meet certain requirements as to their character, educational qualifications, knowledge and skills relevant to their position as trustee in order to satisfy the 'fit and proper person' test. This would limit the type of persons who can act as trustees of a PPF and may limit family member involvement.
- **Limit the number of PPF donors:** the Discussion Paper proposes placing a cap on the number of donors to a PPF (for example, 20) over the life of the fund and suggests that, in the event of a PPF becoming too 'public', it should be forced to convert to an ancillary fund.
- **Restrict PPF investments to only liquid assets:** the Discussion Paper proposes that a PPF be forced to convert illiquid assets to liquid form as soon as practicable after receipt if such assets would assist the PPF's ability to meet its philanthropic obligations.

The government intends to achieve these objectives by amending and legislating the current PPF Guidelines and giving the Commissioner of Taxation greater regulatory powers.

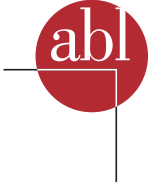
Arnold Bloch Leibler's submission

Given Arnold Bloch Leibler's involvement in establishing and providing ongoing advice to the trustees of PPFs, out of a sense of genuine concern for the future of PPFs, we felt compelled to respond to the Discussion Paper.

Arnold Bloch Leibler lodged a 21-page submission with Treasury on 13 January 2009.

The key arguments articulated in Arnold Bloch Leibler's submission are:

- 1 None of the proposals in the Discussion Paper should be applied retrospectively to existing PPFs. It would be fundamentally unfair to change the ground rules for existing PPFs.
- 2 If the government enacts the proposals in the current form, it may no longer be possible for PPFs to build a self-sustaining fund in accordance with the original rationale behind the PPF philanthropic initiative and a significant number of existing PPFs could be extinct within eight years.



- 3 While Australia has a great tradition of being actively involved in the community, we do not yet have a strong tradition of philanthropy. In our experience, PPFs play a crucial role in building a culture of philanthropy in Australia and delivering benefits to charities and the community. Many of the proposals in the Discussion Paper will not only weaken PPFs, but also discourage people from establishing PPFs or continuing existing PPFs. Therefore any changes to the current PPF Guidelines should be made with the utmost care so as not to destroy the future of PPFs and with them the growing culture of philanthropy in Australia.
- 4 If a minimum required capital distribution rate is considered necessary, it should be 5 per cent not 15 per cent.
- 5 The Commissioner should not have the ability to modify the minimum distribution amount according to market conditions.
- 6 A PPF should not have to distribute all its capital when its total value falls below a minimum amount.
- 7 The contact details of PPFs should not be provided to the public. We fail to see how this proposal can possibly improve the integrity of PPFs.
- 8 PPFs should not be compelled to have a corporate trustee.
- 9 Any 'fit and proper person' test should not oblige trustees to have a minimum required degree of education or technical qualification, knowledge and skills.
- 10 No cap should be introduced that would limit the number of donors to a PPF or the types of assets in which a PPF can invest.

If you would like a copy of Arnold Bloch Leibler's submission, please contact Joey Borensztajn.

Other submissions

We understand that Treasury received 137 submissions in response to the Discussion Paper.

The Discussion Paper and all public submissions are available at <http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1444>.

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