

Taxation

As detailed in previous newsletters, the new Private Ancillary Fund (PAF) Guidelines commenced with effect from 1 October 2009.

What must I do now?

Nothing! As at 1 October 2009, PAF trustees were deemed to have agreed to comply with the new PAF Guidelines, and therefore the trustees will not be required to sign any documents to agree to be bound by the Guidelines.

What must I do before 30 June 2010?

New PAF distribution requirements

During each financial year, a PAF must distribute at least 5 per cent of the market value of the PAF assets (at the end of the previous financial year) or a minimum of \$11,000. There are no longer separate income and capital distribution requirements.

Transitional PAF distribution requirements

A PAF may continue to act in accordance with its agreed accumulation plan until 30 June 2014 (or earlier if the plan expires, if the target capital base is reached or if the PAF chooses not to apply this transitional rule) as long as the PAF distributes at least:

- annual income less CPI; and
- 5 per cent of each gift received in the previous financial year.

All current PAFs that were formerly PPFs will distribute under this common distribution strategy irrespective of their own agreed accumulation plan.

A PAF will automatically opt in to the transitional distribution rules unless the PAF chooses not to apply the transitional distribution rules before lodging the PAF income tax return for that financial year.

In many cases, the new transitional distribution requirements will result in smaller distributions than under the former distribution regime.

PAFs are still permitted to accumulate gifts to create a capital basis. There are no caps or restrictions on accumulation plans and no ATO or Treasury approval is required to change an accumulation plan. The current continuing agreed accumulation plan will apply until 30 June 2014 unless the plan expires or the PAF meets its target capital base in the interim.

Other 30 June 2010 requirements

- The market value of PAF assets (other than land) must be estimated annually by the trustees. The trustees may estimate the market value themselves or arrange for a qualified valuer or other appropriate entity to make the estimate. The market value of the land must be estimated by an independent certified valuer or the Commissioner every three financial years.
- Trustees must prepare and maintain a written investment strategy for the PAF and implement that strategy. The investment strategy should set out the investment objectives of the PAF and detail the investment methods the trustees would adopt to act on those objectives. The investment strategy and a record of the associated decision making processes must be available in a written form for audit purposes.
- Trustees must arrange an annual audit of compliance with the Guidelines by the PAF and the trustees, as well as an audit of the PAF financial statements. For this reason, it will be necessary to prepare the PAF investment strategy and market value estimate prior to 30 June 2010.

What do I need to do after 30 June 2010?

- A PAF must not acquire any 'collectables' (artwork, jewellery, antiques, coins, rare books, etc) except as a gift and any collectables held must be sold within 12 months of acquisition. Collectables acquired prior to 1 October 2009, must be sold by 1 October 2010.
- If the PAF Deeds do not comply with the Guidelines, they must be amended by 1 October 2012, but only if the Deed operates in a manner contrary to the Guidelines. Some Deeds may not require change.
- Comply with the PAF Guidelines.

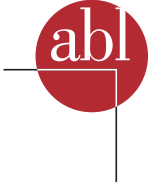
ATO Frequently Asked Questions

The ATO are currently working on a list of Frequently Asked Questions about PAFs, which will be released in the near future.

Contacts

If you would like further details about the information contained in this bulletin or assistance with any philanthropy or tax-related issues, please contact:

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