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13th January 2009

Manager
Philanthropy and Exemptions Unit
Personal and retirement Income division
The Treasury
Langton Cres
PARKES ACT 2600

At first reading of the 'Discussion Paper' I was left with the feeling that Treasury were totally unaware of the meaning of philanthropy and were not in favour of encouraging those who are able to make a contribution to those who have less.

It is common practise for any not for profit organisation that has established a financial base to support their operations, be they a school, church or other not for profit, such as an endowment fund that this fund generate an 'income' of 5% plus CPI to maintain parity and most importantly the real value of their contribution to their work.

It MUST be born in mind that every cent spent by these organisations is a cent NOT spent by any level of Government other than those funds provided by way of grants. If these organisations did not provide these services and facilities then it would be a level of Government's responsibility and it is a given that the costs to the tax payer would be higher through government than it is through the not for profit sector.

There are good years and bad when it comes to investments and last and this year are no exception. Over time a 5% return plus CPI has worked out as an average.

Comment:-
Page 2 Item 10.
If all assets in a PPF were converted to cash/shares and not hold real property then it would be a simple matter to 'value' the portfolio. If the 'increase the size of compulsory distributions' was to go through then the value of the fund would eventually drop to zero. This does not help promote the true meaning of philanthropy.

Please bear in mind that these funds are established in perpetuity therefore the children/trustees of the fund will continue the good work (saving the governments money in perpetuity).

Page 2 Item 11.
I am in full agreement that the ATO should take a proactive role in protecting the 'capital of a PPF'. I also believe the ATO should be seen to be more proactive when it comes to making sure current DGRs are managed correctly and follow the spirit of the legislation and do not flirt with current guidelines as has been happening for well over 20 years in some cases.

Page 3 'Principles' 3.
As a DGR all PPFs can receive donations from other than the initial sponsor of the Fund.

Page 3 ‘Principles’ 4.
It is my understanding that no PPF was to be set up as a charity in its own right. If they were then it is the regulator i.e. Treasury that has erred.

Page 4 Item 16.
These funds, being established to operate in perpetuity, cannot have a regulated to gift a fixed ‘quantity’ of their assets as in times of minimal or negative return (below CPI) the fund will diminish.

Page 4 Item 19.
I totally agree. It would be even simpler to have all PPFs convert their assets to cash and deposit them with the various governments with a guarantee of return at 5% plus CPI and a guarantee of the deposit in perpetuity. The fund could be government guaranteed bonds and the PPFs would then distribute the 5% return to other DGRs for community support.

Page 5 Item 20.
First dot point. I think you’ll find this has changed markedly. Long term is 5% plus CPI.

Second dot point.
This is a typical Treasury argument that Tax deductibility is in effect a subsidy by the Government. This is total hog wash and flies in the face of philanthropy and an understanding of philanthropy.

A donor provided $1million and received a once off tax deduction of $500,000. This $1m is invested and a 5% return is distributed on the first anniversary. That’s a distribution of $50,000 in real term forever. The $1m will never be spent and will not generate an income for the donor ever again therefore there will no longer be a loss of income to the Government. The income distributed in perpetuity will relieve the Government of the responsibility to provide for the recipient of the $50,000 per year.

After 10 years the $500,000 loss to the government in income tax has been realised through distributions and then the fund will continue too give the ‘real’ value of $50,000 forever.

A long term view needs to be taken.

Fourth dot point.
If the funds were ‘Government Guaranteed Bonds’ then they wouldn’t diminish as there would be a guaranteed income of 5% plus CPI. There would be no fees and obviously no negative investment.

Page 5 Consultation question. Answer.
Should a return of better than 5% plus CPI be realised then it would be a simple matter to direct the PPF to distribute the ‘surplus’ in the second year after receiving the ‘surplus’ through their annual returns.

Page 6 First Consultation questions.

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With the provision of ABN and TFN and funds invested on the Australian Stock Market or through Australian Banks or Government bonds it is a simple matter of record matching by the ATO.
Nothing new here as they are doing it now for Income tax.
These annual returns will be verified by this data matching.

Page 6 Item 22.
If the PPF is established under Treasury guidelines in the first place I cannot see where there would be 'excessive' management costs. If there are 'excessive' expenses then the ATO can review the PPF operations and if these are unsatisfactory the shut the PPF down and give the funds to a PPF or DGR that knows what it is doing. Once the funds to set up a PPF are gifted then they no longer belong to an individual or family and therefore can be distributed under the set up regulations.

Page 6 Second Consultation questions
Setting a minimum size is appropriate however encouraging more than two people joining together to set up a joint fund should happen.
Once the funds drop to an amount predetermined by the regulations then the fund should be wound up and distributed to a common fund which meets the original reasons for establishing the fund i.e. Aboriginal Health, Education of minority, etc. This will then enable the wishes of the initial philanthropist to be met and continued in perpetuity.

Page 6 Third Consultation questions.
It will be a simple matter to audit the trustee's capabilities to manage a fund and if they are found wanting the wind up the fund and move the assets to a fund that is being managed correctly and that also follows the original desire of the philanthropist.
Yes there are lawyers and solicitors who are less than honest.
Full disclosure of PPF name, contact details, scope of funding and last two years distribution details will be sufficient for any DGR applying for funding and any research institute studying philanthropy in Australia. An annual report should be provided on request. This could be done electronically to save costs. This information should include annual return to ATO.

Page 7 Item 26.
If a fund is found to have deliberately breach the guidelines then the ATO should not only disendorse the Fund but also order the movement of the assets to a like fund as is laid down in the guidelines is winding up a fund.

Page 8 Item 27.
PPFs are established to carry out charitable functions not business enterprises therefore they should not carry on a business. The management of investments for the benefit of the fund is not a business but the mismanagement of these investments should be reviewed with a view to the funds being redistributed due to mismanagement. If it can be proved that this mismanagement was malicious then legal action should be taken on behalf of the fund and recompenses sought on behalf of the fund prior to the fund being wound up under the regulations.

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Page 8 Item 28
It is more important to provide the legislative basis for this action than it is to worry about the 'loss' of revenue from the establishment of the fund in the first place.

Page 11 Consultation questions
The funds are established in perpetuity therefore there should not be a 'life of the fund'.
It would be far better to wind up a fund and move the assets of the fund to a like fund as is currently in legislation as there is always a desire to have these funds operate in perpetuity.

A PAF can be quite restrictive in that a person can gift assets to a PAF thinking that these will be passed on to a named fund (DGR) yet the PAF has been established to hold these funds in perpetuity. The Queensland Community Foundation is a classic example where funds have been bequeathed to a DGR 'through' the QCF yet the DGR can only benefit from the 'income' of these funds and not the total asset which was the original intention of the bequest.

Once the funds are in the QCF they cannot be moved elsewhere.

Donors circumstances change and I have direct knowledge of individuals who have established a PPF and intend that their entire estate go to their PPF eventually however they have no idea how long they will live and there are other more beneficial, in a philanthropic sense, actions that they can carry out. These were unknown to the donor at the time the PPF was established.

The principle of a PPF is still their intent and the receipt of their estate will provide for those less fortunate, forever.

Please do not loose sight of this aspect of philanthropy.

John C Hocknull J.P. (Qual), ADAPEF, MACE
Director

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