

21 August 2019

Senior Adviser
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Dear Sir/Madam

Remake of sunseting private ancillary fund guidelines

CPA Australia represents the diverse interests of more than 164,000 members working in 150 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

The remake of the sunseting Private Ancillary Fund (PAF) Guidelines (the Guidelines) occurs at an opportune time as it coincides with the Government developing deductible gift recipient (DGR) reforms. We believe there are potential synergies in considering this consultation alongside the DGR reforms. We therefore make these comments in this context and take the general position that the Guidelines should align with the anticipated DGR reforms and remove any potential future regulatory inconsistency.

As a general observation, the Guidelines administered by the Australian Taxation Office (ATO) are highly prescriptive and exceed the regulatory and governance requirements imposed by the Australian Charities and Not-for-profits Commission (ACNC) on registered charities, which include PAFs. We suggest that an evaluation is undertaken to assess whether there is a need to retain these requirements applicable to PAFs or whether alternative existing legislation and regulations can be utilised or modified instead. This may include a review against the existing ACNC governance standards and ACNC reporting requirements.

Section 18 Financial Statements and Section 19 Audits

The ATO-administered proposed PAF Guidelines differ from the ACNC reporting requirements (see Attachment for comparison). The Guidelines require the auditing of all financial statements, except for funds with both revenue and assets of less than \$1 million which can be subject to a review (unless the ATO Commissioner requires an audit).

In contrast, the *Australian Charities and Not-for-profits Commission Act 2012 (the ACNC Act)* requires large registered entities (revenue of more than \$1 million) to submit audited financial reports and medium registered entities (revenue between \$250,000 and \$1 million) to submit reviewed financial reports with an exemption from a requirement to prepare and lodge financial statements for small registered entities (revenue of less than \$250,000).

We submit that the PAF guidelines should align to the reporting requirements of subdivision 60-C of the *ACNC Act* including:

- for small entities with revenue of less than \$250,000, the Note in section 18 should confirm that they are exempt from the section if they are registered with the ACNC, and
- the removal of the assets test in subsection 19(3).

Transparency

Subsection 8(d)(ii) of the Guidelines require that "[the PAF] is open, transparent and accountable to the public (through the Commissioner of Taxation....and the ACNC". The Note then references the confidentiality of the PAF's information provided to the Commissioner of Taxation under privacy, secrecy and disclosure laws.

In order to enhance the transparency of the not-for-profit sector, we recommend that consideration is given to publishing PAF information provided to the ATO in the same manner as the information provided to the ACNC. This can be achieved by either modifying tax disclosure laws or through the DGR reforms which will affect PAFs that are not currently registered as charities.

If you have any queries do not hesitate to contact Gavan Ord, Manager Business and Investment Policy on gavan.ord@cpaaustralia.com.au or 03 9606 9695, or Ram Subramanian, Policy Adviser Reporting on ram.subramanian@cpaaustralia.com.au or 03 9606 9755 at CPA Australia.

Yours sincerely



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Table 1: Comparison of reporting and audit requirements under the proposed Guidelines and the ACNC Act

Guidelines		ACNC Act	
18(1)	The trustee of a *private ancillary fund must prepare, or cause to be prepared, a financial report showing the fund's financial position for each *financial year.	60.10(1)	Medium and large registered entities must give annual financial reports A medium registered entity or a large registered entity must give the Commissioner a financial report for a financial year, together with any auditor's report or reviewer's report that the entity is required to obtain under section 60-20 or 60-25.
19(1)	In relation to each *financial year, the trustee of a *private ancillary fund must arrange for a registered company auditor ... to audit ...: (a) the financial report of the fund; and (b) compliance with this instrument by the fund and the trustee.	60.25	Large registered entities must have annual financial reports audited
		205.25 (3)	A registered entity is a large registered entity for a particular financial year if it is not a small registered entity or a medium registered entity for the financial year.
		60.20	Medium registered entities must have annual financial reports audited or reviewed
19(3)	Unless the Commissioner, by written notice, provides otherwise in relation to a particular *private ancillary fund, a fund that meets both of the following: (a) revenue of less than \$1 million for a financial year; and (b) assets of less than \$1 million for a financial year; may instead have its financial report, and compliance with this instrument, for that year reviewed rather than audited.	205.25 (2)	A registered entity is a medium registered entity for a particular financial year if: (a) it is not a small registered entity for the financial year; and (b) the revenue of the registered entity for the financial year is less than \$1,000,000, or any other amount prescribed by the regulations for the purposes of this paragraph.
		205.25 (1)	A registered entity is a small registered entity for a particular financial year if the revenue of the registered entity for the financial year is less than \$250,000, or any other amount prescribed by the regulations for the purposes of this subsection.