

ARGYLE ADVOCATE

Charitable funds a gift to planners

Advisers looking for an alternative to the usual philanthropic vehicles can now use a prescribed private fund, **LISA CHAMBERS** and **PAULA ZAMMIT** write.

If you believe your role as an adviser is to ensure your clients plan for their retirement, implement their estate succession plan and guarantee their assets are protected – all in the most tax effective manner – then there is a product that could be just your thing.

The product is a type of charitable trust that provides great tax advantages to your client and allows them to retain control of their monies when gifting such monies to various charities.

If your clients are like ours, they will love having control over their monies in a manner that will also provide them with tax advantages. And let's face it, a lot of clients are up to speed with the usual family discretionary trusts and testamentary trusts, so you will look great in your clients' eyes when you can suggest a new product to them.

The trust we refer to is none other than a prescribed private fund.

As a result of the Government's response to the report on philanthropy in Australia, individuals and corporations are able to establish funds for philanthropic purposes without seeking and receiving public contributions.

Generally speaking, there are two routes by which a charitable fund can be recognised by the Australian Taxation Office (ATO) such that tax-deductible donations may be made to that fund.

1. Application for deductible gift recipient (DGR) endorsement. In order to be endorsed as a DGR, the fund would need to fall within one of the general DGR categories established by the Income Tax Assessment Act 1997 (ITAA). In general, those categories do not apply to private funds, but rather require an intention that the public will contribute to the relevant fund, invitations to the public to contribute to that fund, actual public contributions and public participation in the administration of the fund; and

2. Application to the ATO for prescribed private fund status. A prescribed private fund is a trust to which businesses, families and individuals can make tax-deductible donations. Broadly, prescribed private funds may only make distributions to other DGRs or for the



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establishment of other DGRs.

Prescribed private funds have the same characteristics as ancillary funds (which is a category of public fund under the general DGR categories) with the exception that they do not have to seek and receive contributions from the public.

There are three sets of requirements which must be met by a prescribed private fund:

1. The fund must be established and maintained under a will or instrument of trust solely for the purpose of providing money or benefits to a fund, authority or institution, gifts to which are deductible under item 1 of the table in section 30-15 of the ITAA or for the establishment of such fund, authority or institution;

2. The fund must meet the criteria applicable to public funds which are set out in Taxation Ruling TR 95/27 with the exception that the public need not be invited to contribute to the fund and the requirement for control by a committee, a majority of whom have a degree of responsibility to the general community, need not be met; and,

3. The fund must comply with a series of integrity assurance measures designed to ensure that funds which have been subject to concessional tax treatment are



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directed to the achievement of philanthropic ends. These include that:

- (a) the trust deed must prohibit benefit to donor/settlor;
- (b) accumulation of money – while settlement funds may be retained indefinitely, other receipts may be accumulated, but not indefinitely; and
- (c) the requirement to provide a simple annual return to the ATO.

Following its establishment and recognition as a prescribed private fund, in order to be exempt from income tax, the fund must be endorsed by the ATO as an income tax exempt

and the relevant requirements for endorsement. These are that:

- (a) the entity must be a charitable fund or institution;
- (b) to be endorsed as an ITEC, the fund must have an ABN;
- (c) a charitable fund must be established under an instrument of trust or a will;
- (d) a charitable fund must be applied for the purposes for which it was established;
- (e) the charitable fund must be established in Australia;
- (f) the charitable fund must meet at least one of the following four tests:
 - (i) it must incur its expenditure principally in Australia and

ities that, to the best of the trustees' knowledge are deductible gift recipients.

Fundraising

Fundraising and receipts of public monies are dealt with under State legislation. Section 5 of the Charitable Fundraising Act 1991 provides that:

(1) For the purposes of this Act, the soliciting or receiving by any person of any money, property or other benefit constitutes a fundraising appeal if, before or in the course of any such soliciting or receiving, the person represents:

- (a) that the purpose of that soliciting or receiving; or
- (b) that the purpose of an activity or enterprise of which that soliciting or receiving is a part;

is or includes a charitable purpose.

The Act requires that before an organisation may conduct charitable fundraising activities, it is required to hold an authority to fundraise.

There is no specific exemption in the Act for receipts of monies by prescribed private funds, and on its face, the legislation would appear to encompass, for example, receipts from family members or other persons by the fund. The Office of Charities, however, accepts that where the receipt of donations is limited to persons associated with the fund, the fund will not be considered to be fundraising.

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charity (ITEC) which first entails application by the trustees for an Australian Business Number (ABN). The application for an ABN queries whether the trustees are trustees of a charitable fund, a positive response to which triggers the application for endorsement as an ITEC.

Tax exemption

It is relevant to briefly describe the ITEC endorsement process

pursue its purposes solely in Australia; or

- (ii) it must be a deductible gift recipient ; or
- (iii) it must distribute solely to charities that to the best of the trustees' knowledge are located in Australia, incur their expenditure principally in Australia and pursue their purposes solely in Australia; or
- (iv) it distributes solely to char-