ALERT

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30 APRIL 2015

Public Ancillary Fund Guidelines 2011 fully operational on 1 July 2015

Introduction

The Public Ancillary Fund Guidelines (**Guidelines**) (which commenced on 1 January 2012) established mandatory standards for the governance and conduct of public ancillary funds and their trustees. The broad purpose of the Guidelines is to ensure that public ancillary funds are accountable to the public given they derive their funds from public donations and utilise the benefit of significant tax concessions (the cost of which is indirectly borne by the public).

The transitional arrangements that applied to certain items of the Guidelines are set to conclude on 1 July 2015. Accordingly, now is an opportune time for all public ancillary funds (particularly those established prior to 1 January 2012) to carry out a spot check and ensure they comply with the Guidelines.

This alert sets out four key aspects of the Guidelines that should be on the review checklist of all public ancillary funds this end of financial year.

Corporate trustee

All public ancillary funds established after 1 January 2012 are required to have a trustee which is a 'constitutional corporation' (i.e. company, incorporated association, licensed or public trustee). The trustee must be constituted by a majority of individuals with a 'degree of responsibility' to the Australian community. The Guidelines provide that judges, religious practitioners, medical practitioners and school principals are some examples of people who would meet this requirement. Public ancillary funds that have experienced changes to their trustee(s) (or to the composition of the board of their trustee), should consider who is involved in making decisions on behalf of the fund and whether those people are sufficiently 'responsible', as determined by the Guidelines.

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Trust deed provisions

The transitional period to incorporate mandatory trust deed provisions expires on 1 July 2015. It is therefore essential that all trust deeds for funds established prior to 1 January 2012 are reviewed to ensure they contain the requisite clauses.

Annual distribution requirement

A public ancillary fund must distribute at least 4 per cent of the market value of the fund's net assets each year (**Annual Distribution Requirement**). Public ancillary funds with capital less than $220,000 on 31 December 2011 were exempt from the Annual Distribution Requirement until the earliest of:

- 30 June 2015; or
- The end of the financial year in which the market value of the net assets of the fund reaches $220,000.

Accordingly, all public ancillary funds will be required to meet the Annual Distribution Requirement in the financial year ending 30 June 2016.

Trustee duties

Trustees would benefit from briefly considering whether the trustee's activities in the past 12 months may have placed them at risk of breaching the law in relation to the following:

- obtaining the relevant licence, registration or permit prior to commencing fundraising activities;
- failing to raise funds from the public;
- carrying on business activities to raise funds;
- not having or acting in accordance with a written investment strategy; and
- imposing additional grant conditions but failing to account for GST.

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