

Philip J Harrington F.C.A.
16 Pine Ridge
DONVALE VIC 3111
0419 292633
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Manager
Philanthropy & Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir

Submission in relation to Prescribed Private Funds

I refer to the Treasury's Discussion Paper "Improving the Integrity of Prescribed Private Funds" and I make the following comments as a Chartered Accountant who has assisted clients in establishing PPF's and as a Co-Trustee of a large PPF.

I have concerns about certain aspects of the proposed legislation and particularly the potential effects on existing PPF's.

I will address those concerns in answering the relevant consultation questions.

What is an appropriate minimum distribution rate? Why?

The minimum distribution rate should be no more than the annual income received from investments or 5% of capital.

A distribution minimum of 15% of capital will dramatically shorten the life of a fund. There are many examples of Charitable Foundations supporting long term programs and thereby relieving pressure on Government to provide those funds. If 100% of annual income is distributed there would be no loss of taxation revenue as the donations would be tax deductible in any event and offset tax on earnings. The issue of revenue forgone could be addressed in restricting contributions into a trust.

The proposal is short term in vision and may deter future involvement.

Should the Commission have the ability to modify the minimum amount according to market conditions?

No.

This should be set by Statute and I don't believe it is necessary for any adjustment to the minimum distribution rate by any officer. The Commissioner's job is to regulate according to the Law and any Treasury guidelines associated. The Commissioner should not set policy.

Should a lower distribution rate apply for a period (say 1 – 2 years) to allow newly established PPF's to build corpus?

No.

Distributions should be based on earnings as from the first year.

Are there any issues the Government needs to consider to ensure PPF's regularly value their assets at market values?

Yes.

The majority of assets will likely be invested in areas which will have a listed market value however, some assets may include for example, property or unlisted equities. It may be impractical and costly to revalue all assets each year. Some allowance should be made for 3 – 5 year cycles in respect of those assets.

Normal audit process should ensure reason in this regard.

Is setting a minimum PPF size appropriate?

No.

The point has been made that there is a concern that the administrative expenses could be disproportionate and erode capital. Donor families will make these decisions based on commercial reality, they will not contribute to a fund if the costs are going to be such that it defeats the purpose of their intention. In these cases they will contribute direct to a deductible charity rather than establish a PPF/PAF.

Are there any costs or other concerns relating to the corporate trustee proposal?

Yes.

I have difficulty understanding the need for a Corporate Trustee. I do not understand how the ATO's ability to take action is enhanced where there is a corporate trustee. If there has been some misuse of PPF funds surely a trustee is liable whether an individual or corporate trustee. Corporate trustees will generally have little substance and therefore action would need to be taken against directors just as could be taken against individual trustees.

I also have an issue with regard to existing PPF's where there are co-trustees. In the case of a trust that has a large corporate trustee and an individual co-trustee it is likely the corporate trustee will assume the trusteeship as established PPF's will be deemed PAF's and individual trustees will be excluded.

The transitional provisions should provide for a restructure to a new trustee company and directorships based on the existing balance of numbers.

Ownership of the trustee company, which determines directorship also needs to be addressed.

I have no comment to make on other consultation questions.

Yours faithfully



P J HARRINGTON FCA