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How to set up a charity giving fund

Dan Saunders

A charity giving fund, also known as an 'ancillary fund', is a vehicle for public and private philanthropy. It is a type of charitable trust designed to provide an investment structure for philanthropic giving purposes. Simple and quick to set up, they offer tax deductions to donors and tax exemptions for income earned by the fund.

This paper addresses the following questions:

- What is an ancillary fund?
- What is the difference between a public and a private ancillary fund?
- Why establish a giving fund?
- What are the main features of an ancillary fund?
- What are the ongoing obligations?
- What steps are involved in setting up an ancillary fund?

What is an ancillary fund?

Ancillary funds are philanthropic 'giving' funds that provide a link between people who want to give (donors) and organisations (not other ancillary funds) that can receive tax-deductible donations as deductible gift recipients (DGRs).

An ancillary fund does not undertake charitable work itself, but can be used as a collection point or funnel to pool donations and

then distribute them to other DGR charities and causes, as decided by the trustees.

There are two types of ancillary funds, namely:

- private ancillary funds
- public ancillary funds.

An ancillary fund is itself registered as a DGR, and so donors can receive a tax deduction for donations made to the fund. Further, ancillary funds will usually be registered with the Australian Charities and Not-for-profits Commission (ACNC) as a charity so they can be endorsed as income tax exempt by the Australian Taxation Office (ATO).

What is the difference between a public and a private ancillary fund?

In a basic sense, a private ancillary fund is used by family groups to undertake private philanthropy by pooling resources and distributing donations to chosen DGR organisations. Donors do not necessarily all need to be from the same family, but they usually share some form of common interest or close relationship. Private ancillary funds cannot solicit donations from the general public.

In contrast, a public ancillary fund is used for fundraising purposes to collect donations from the public.

There are other differences in establishment, administration and the required minimum annual distributions, which are set out in the following section.

Why establish a giving fund?

An ancillary fund, (that is, a giving foundation) may be suitable for those:

- wishing to establish a charity foundation that will keep on giving after their death
- wanting a structured way to involve their children or family in giving
- who have recently disposed of an asset and wish to obtain a tax deduction in the year of sale (however, keep in mind that once a gift is made to the trust it cannot be revoked)
- wishing to devote a considerable amount of time and money to charity and philanthropy into the future
- who see themselves in a philanthropic, financial, supportive role rather than wanting to establish an organisation that provides charitable services or activities itself
- wanting to establish a tax-deductible vehicle for investing and accumulating assets for philanthropic and charitable purposes
- who are an organisation that wants to establish a public foundation for more efficient fundraising and to give to DGR entities connected to the organisation.

An ancillary fund is not necessary where someone is happy to give to charity on an ad hoc basis in response to requests or needs. There are costs in establishing and maintaining an ancillary fund (for instance, costs of audit or review of financial statements and the lodgement of an income tax return), so whether or not it is worthwhile establishing a fund usually depends on the amount being invested. We recommend an ancillary fund should start with around \$500,000.

What are the main features of an ancillary fund?

Ancillary funds have the following additional features and requirements:

- The fund must have an Australian Business Number and be established and operated from Australia.
- The fund must comply with various rules and guidelines, have the required clauses in its trust deed and operate as a 'not-for-profit' entity.
- A public ancillary fund must invite the public to make donations, and the public must in fact contribute (this is not a requirement of private ancillary funds).
- The fund must meet what is known as the 'minimum annual distribution' requirements.

Generally, for a public ancillary fund, every year the fund must distribute at least 4% of the fund's net assets (5% for a private ancillary fund). If the expenses of the fund are paid out of the fund, the fund must distribute at least \$8,800 (or \$11,000.00 for a private ancillary fund). Depending on the trust deed, no distribution is required during the year of establishment or the next four financial years.

- The fund must have its financial statements audited or reviewed each year (an audit is not required if revenue and assets are less than \$1 million).

- The fund must have a formal investment strategy. Generally, public ancillary funds cannot borrow money, must maintain investments on an arm's-length basis, and must not provide assistance to related parties or acquire assets from them (other than by way of gift).

- A private ancillary fund must have a corporate trustee, with at least one director meeting the ATO's 'responsible person' test. This person cannot also be the founder or a major donor to the private ancillary fund.

For a public ancillary fund, a majority of directors of the corporate trustee must meet the responsible person test.

What are the ongoing obligations?

Private and public ancillary funds registered with the ACNC have ongoing obligations to both the ACNC and the ATO. These obligations include:

- notifying the ACNC of certain changes
- keeping records
- providing annual reports to the ACNC (by submitting an Annual Information Statement and financial reports where required)
- submitting audited or reviewed accounts and income tax returns to the ATO
- complying with the ACNC's governance standards.

What steps are involved in setting up an ancillary fund?

There are six main steps for establishing an ancillary fund:

1. Choose whether one wants to establish a public or private ancillary fund.
2. Identify the individuals that will be 'in control' of the fund. These individuals will most likely become the directors of the trustee company. It is necessary to be sure that the founding directors meet the applicable responsible person requirements.
3. Choose a name for the fund. This could be one's own surname (for a private fund) or the name of the organisation establishing the fund (for a public fund).
4. Incorporate a trustee company with the Australian Securities and Investments Commission.
5. Establish the ancillary fund by preparing and signing a Trust Deed.
6. Apply to the ACNC for registration as a charity (for income tax exemption) and to the ATO for DGR endorsement. **FS**



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