



# Private ancillary funds – trustee guidance

Information about private ancillary funds (private AFs) for trustees and directors of trustees.

**Last updated** 29 March 2021

Private ancillary funds (AFs) include funds formerly called prescribed private funds (PPFs).

It is essential for you to read the private ancillary fund guidelines in addition to the information on this webpage.

See [Taxation Administration \(Private Ancillary Fund\) Guidelines 2019](#)  for more information.

## Establishing a private ancillary fund



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The trustee is expected to have sufficient liquidity to allow appropriate distributions in every financial year.

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## Establishing a private ancillary fund

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To establish a private ancillary fund (AF) with deductible gift recipient status, you need to:

1. Create a trust that is a private ancillary fund (private AF)
2. Obtain an Australian business number (ABN)
3. Get endorsement as a deductible gift recipient (DGR).

## Creating a trust

You can use our model deed to establish an acceptable form of trust for private AFs. It must be edited according to your individual circumstances.




We may update the model deed from time to time. You must ensure you are using the current version available on our website at the time your trust is created.

To show the trust is a private AF, all of the following must apply:

- its deed complies with the requirements of item 2 of the table in section 30-15 of the *Income Tax Assessment Act 1997*
- each trustee of the trust is a constitutional corporation
- each trustee has agreed to comply with the rules in the private ancillary fund guidelines, and none of them have revoked that agreement.
- each of the trustees is a constitutional corporation.

## Obtaining an ABN

To obtain an ABN you can apply:

- electronically through
- the Australian Business Register at [abr.gov.au](http://abr.gov.au) 
- the Australian Government business website [business.gov.au](http://business.gov.au) 
- through a tax agent, who will [lodge an application online](#) .

When completing the application for ABN registration:

- Question 1 – Type of entity: place **X** in the box for 'Discretionary trust – investment (includes charitable trusts)'.
- Question 16 – From what date does the entity require its ABN? The date should be the date of establishment of the trust.

## Endorsement as a DGR

If you are applying to have the private AF registered as a charity with the Australian Charities and Not-for-profits Commission (ACNC), you can use the ACNC's registration application form to apply for

endorsement as a DGR. The ACNC will send the DGR application information to us automatically for our consideration.

If you are already a registered charity, or are not required to apply to the ACNC, you can apply for endorsement of the private AF using the **application for endorsement as a deductible gift recipient**. You must provide all of the following:

- a completed private ancillary fund – schedule for deductible gift recipient applicants
- a copy of the executed deed of trust
- an agreement to comply with the private ancillary fund guidelines.

**See also**

- Application for endorsement as a deductible gift recipient
- Private ancillary fund – schedule for deductible gift recipient applicants
- Agreement to comply with the private ancillary fund guidelines

## **Private ancillary fund guidelines**

The [Taxation Administration \(Private Ancillary Fund\) Guidelines 2019](#)  are available online. An explanatory statement is also available.

## **Common reporting standard**

If a private ancillary fund is a financial institution for the purposes of the common reporting standard (CRS), it will need to report to us all of its reportable accounts (that is, accounts held or controlled by foreign residents).

To determine if an ancillary fund has obligations under the CRS see **Not-for-profits and the common reporting standard**.

## **Converting to a public ancillary fund**

Private AF guidelines 2019 section 27 allows a private AF to amend its governing rules to convert to a public ancillary fund with the agreement of the Commissioner of Taxation.

## **Transfer of property to another ancillary fund**

The transfer of all the property of a private AF to another AF can occur only in limited circumstances. Private AF guidelines 2019 section 28 allows a private AF, with the agreement of the Commissioner, to transfer its assets to another ancillary fund if certain requirements are satisfied.

## **Responsible person**

Individuals with a degree of responsibility to the Australian community are generally known as 'responsible persons'. These people would generally include:

- school principals
- judges
- religious practitioners
- solicitors
- doctors and other professional persons
- mayors
- councillors
- town clerks
- members of parliament
- an individual before whom a statutory declaration may be made.

Private AF guidelines 2019 section 12 requires that at all times at least one of the individuals involved in the decision making of a private AF be an individual with a degree of responsibility to the Australian community as a whole. The individual cannot be a founder, a donor to the fund who has contributed more than \$10,000, or an associate of a founder or such a donor.

## **Responsible person on board of trustees**

If you are establishing a company to be the trustee, you need a responsible person on the board of the trustee company. The ATO

does not have any special requirements for the other members of the board.

The only requirements for other directors are those under Corporations law. The *Corporations Act 2001* details the circumstances under which an individual will be automatically disqualified from managing corporations.

These include where the person has:

- a conviction on indictment of an offence in relation to decisions that affect the business of a corporation or its financial standing
- an offence involving a contravention of the *Corporations Act 2001* punishable by imprisonment for 12 months or more
- an offence involving dishonesty punishable by more than three months imprisonment
- conviction for an offence against the law of a foreign country punishable by more than 12 months imprisonment
- has been declared an undischarged bankrupt.

## **Active director requirement**

Private AF guidelines 2019 section 12(3) requires the responsible person to be 'an active director of the trustee'. This wording is used to emphasise the expectation that a responsible person will actively fulfil their role as a director recognising, for example the fiduciary duties involved with doing so, and the potential personal liability on the director. The responsible person should be able to provide evidence they have actively fulfilled their role as a director of the board.

The directors must, as a board, make decisions on matters of fundamental importance. This includes, but is not limited to, investments, distributions, and significant decisions concerning the market value of the fund's assets. The responsible person is expected to actively participate in those decisions. They are not expected to agree with each decision of the board.

The directors need not make every investment or distribution decision. The board may decide that investment strategies or distribution policies are to be implemented by a person who is not a member of the board, such as an appropriate third party or employee. The investment

strategy or distribution policy should be sufficiently detailed to provide clear guidance to the third party or employee.

The directors may seek advice from, and may delegate administrative functions to, a person who is not a member of the board. For example, directors may seek advice from investment advisers on investment decisions and may delegate administrative matters or functions to an employee. The responsible person is expected to participate in almost all meetings of the directors and attend meetings at which decisions on matters of fundamental importance will be made. This includes, but is not limited to, investment strategy and distribution policy and significant decisions concerning the market value of the fund's assets.

## Trustees

The following requirements apply to trustees:

- If your private AF has a constitutional corporation as the trustee but the TAA says that each trustee must be a constitutional corporation, the private AF doesn't need another trustee. If the fund has only one trustee which is a constitutional corporation, the requirement that each trustee of the trust is a constitutional corporation has been met.
- Private AF guidelines 2019 section 13 requires the trustee to notify the Commissioner in the approved form of any change to the fund's governing rules. The approved form is at **Notification of change to the governing rules of an endorsed private ancillary fund**.
- If a former PPF has an individual as the only trustee and they are to be replaced, the replacement doesn't have to be a constitutional corporation. It is accepted that the replacement of the individual may be another individual.
- If a private AF has two or more corporate trustees, section 12 of the private AF guidelines 2019 doesn't require each trustee to have at least one responsible person on its board. If there is more than one corporate trustee, and they are required by the deed to make all decisions jointly, only one responsible person is needed.
- There is no public website for accessing the names of trustees and/or founders of private AFs, including private AF those that were formerly PPFs. The Australian Business Register (ABR) displays an entity's name, trading name and Australian business number (ABN).

- If you are the person who put in the original capital to set up a private AF, you can prescribe in your will that your estate be given to your private AF. You can make a gift in your will to a private AF. Gifts made under a will are not deductible, but gifts of property are exempt from capital gains tax if the DGR endorsement is effective before the death of the giver.

**Find out about:**

- [Distribution](#)
- [Compliance](#)
- [Making a voluntary disclosure](#)

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## Distribution

The trustee is expected to have sufficient liquidity to allow appropriate distributions in every financial year.

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The trustee is expected to have sufficient liquidity in the fund to allow appropriate distributions in every financial year. Private AF guidelines 2019 section 20(3) requires that the investment strategy of the fund reflect the purpose and circumstances and have particular regard to (but not limited to) the liquidity of the fund's investments.



## **Minimum annual distribution requirements**

Private AF guidelines 2019 section 15 states during each financial year, a private AF must distribute at least 5% of the market value of the fund's net assets as at the end of the previous financial year.

Private AF guidelines 2019 section 15(2) states the fund must distribute at least \$11,000, or the remainder of the fund if that is worth less than \$11,000, during that financial year if both of the following applies:

- the 5% is less than \$11,000
- any of the expenses of the fund in relation to that financial year are paid directly or indirectly from the fund's assets or income.

## **Market value of fund's assets**

Private AF guidelines 2019 section 16 requires that the market value of the fund's assets (other than land) be estimated at least annually and section 16(3) allows the trustee to estimate the market value itself or to arrange for a qualified valuer or another appropriate entity to make the estimation.

Any estimation must be based on reasonably objective and supportable data, and the methodology and data used for the estimate should be documented in the fund's records.

If the Commissioner considers an estimation to be unreasonable, we may request the trustee to arrange for another valuation to be undertaken.

If during the current financial year, the value of the fund's assets has fallen and the return is lower than expected, the fund still has to distribute 5% of the market value of the fund's net assets as of 30 June of the previous financial year. In determining net assets, the expenses, returns or losses for the current financial year cannot be used to determine an applicable new value.

## **Distributing less than 5%**

The fund is established to provide to DGRs. The guidelines require distribution of at least 5% of the market value of the fund's net assets as at 30 June of the previous financial year. However, funds may apply

under Private AF guidelines 2019 section 15(7) to lower the minimum distribution rate for a financial year (but not to zero).

## **Prescribed private funds**

A former PPF with individual trustees doesn't need to replace individual trustees with corporate trustees unless one of those individual trustees has revoked their agreement to comply with the Guidelines.

If you were a trustee of a PPF as of 30 September 2009, you are now required to comply with the private AF guidelines. Each trustee was taken to have agreed to comply with the rules in the private AF guidelines as of 1 October 2009.

## **Winding up**

A private AF, including one that was a former PPF, doesn't have to continue to operate. Where a trustee does not wish to continue to be a private AF, it may wind-up and distribute to DGRs.

The trustee must undertake all of the following steps to wind up and stop being a private AF DGR:

- take steps as necessary under state or territory trust or charity laws, including having written evidence of the trustee's decision
- pay all liabilities and distribute all of the remaining assets
- ensure there are completed accounts, financial statements, an audit report, the annual return for a private AF for the current year, and an investment strategy
- provide the ATO with
  - advice of the trust being wound up and the date of that occurrence
  - any outstanding ancillary fund return
  - the revocation of agreement to comply with the private ancillary fund guidelines
- cancel the ABN of the trust.

Any private AF must, on revocation of endorsement and after settlement of debts, transfer any surplus gifts of money or property,

deductible contributions, and money received because of such gifts or contributions (that is, gift-related assets) to eligible entities.

**Find out about:**

- [Compliance](#)
- [Making a voluntary disclosure](#)

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## Compliance

Administrative penalties can be applied for non-compliance with the private AF guidelines.

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The applicable private AF guidelines where a private AF has not complied are:

- an amount equal to the amount or value of any benefit (except as set out in private AF guidelines 2019 section 23) provided directly or indirectly to the trustee or a member, director or employee of the trustee, to a donor or founder, or to an associate of any of these entities
- an amount equal to 25% of the net profits of the business for each financial year during all or part of which the trust carries on a business
- five penalty units for not notifying the Commissioner in the approved form within 21 days of any change to the fund's will or deed of trust unless the trustee is not required to notify the Commissioner in accordance with Private AF guidelines 2019 section 13(2).
- 10 penalty units in relation to: accounts, financial statements, audit, the investment strategy
- 15 penalty units in relation to implementation of the investment strategy

- 10 penalty units for accepting in a financial year, donations greater than 20% of the market value of the fund's assets from entities other than a founder or an associate or employee of the founder, or the deceased estate of any of these entities
- 30 penalty units in relation to the distribution if the shortfall is greater than \$1,000, and 10% of the shortfall (reduced by the 30 penalty units but not below nil) in relation to not rectifying the shortfall
- 30 penalty units in relation to investment limitations, uncommercial transactions and soliciting from the public.

A private AF needs to keep more accounts than other DGRs. This is because a private AF is a DGR and it must keep records that record and explain all transactions and other acts the DGR engages in that are relevant to their status as a DGR.

Private AF guidelines 2019 section 19 requires that the trustee must arrange for an auditor to audit or, in certain circumstances, review the financial statements of the trust, and compliance with the private AF guidelines by the trust and the trustee.

The private AF guidelines have requirements regarding specific information on the timing and the availability of information to us. A private AF is required to lodge an annual information return (return) whether or not it is exempt from income tax, and we will approve an appropriate return form for private AFs. That form will be available when we require it.

#### **Find out about**

- [Making a voluntary disclosure](#)

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## **Making a voluntary disclosure**

Information about making a voluntary disclosure.

**Last updated** 13 November 2024

You need to make a voluntary disclosure if at the end of the financial year, you realise that your private ancillary fund is not compliant with the guidelines.

You can make a voluntary disclosure using the secure mail message function in Online services for business or by writing us a letter. To use Online services for business, see **Accessing online services with Digital ID and RAM** and **Online services** for more information.

Your tax agent can make a voluntary disclosure on your behalf online. They will need to ensure that their registered agent number is recorded against the fund's records.

Include the following information:

- the fund's name
- the fund's tax file number (TFN)
- the fund's ABN
- your name as an authorised person
- your phone number and address
- tax agent's phone number and address (if represented)
- the relevant accounting period(s)
- an explanation of the disclosure to be made
- a description of the amount(s) affected
- a signed and dated declaration.

You are not required by law to provide the fund's TFN or ABN, but providing it will speed up the processing of your voluntary disclosure letter.

Include the following signed and dated declaration on your written voluntary disclosure:

- I declare that the information I have given in the document (including any attachments) is true and correct and that I am authorised to disclose this information.

Voluntary disclosures made in writing may be lodged with the Commissioner:

- at an ATO site

- by handing it to a tax officer conducting a review or audit on your entity
- by posting it to

– **Australian Taxation Office**  
**PO Box 3004**  
**PENRITH NSW 2740**

If we have informed you that we are going to conduct a review or audit, you can't use the above methods to correct any errors. You will need to disclose any errors to the tax officer conducting the review or audit.

A voluntary disclosure will affect the information return. The information return should reflect all distributions made during the financial year including those made to organisations that are not endorsed DGRs.

If the private AF retrieves the distribution from the organisation or the trustee reimburses the private AF there should be a negative distribution recorded at the time the funds are returned.

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## **Our commitment to you**

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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