

Freehills

Ancillary funds and prescribed private funds

Ascertaining eligible recipients

- 1 To provide a degree of comfort that a grant will only be made to a recipient entitled to it, an ancillary fund or prescribed private fund should obtain from a proposed recipient:
 - (a) except where the recipient is specifically named in Subdivision 30-B of the *Income Tax Assessment Act 1997 (ITAA 97)*, a copy of its "Endorsement as a deductible gift recipient"¹; **and**
 - (b) unless ancillary fund or prescribed private fund is a non-charitable ancillary fund or prescribed private fund (see paragraph 2 below), whether or not the recipient is specifically named in Subdivision 30-B, a copy of its "Endorsement as an income tax exempt charitable entity" or "Notice of endorsement for charity tax concessions".
- 2 If the ancillary fund or prescribed private fund is non-charitable², a copy of the recipient's endorsement as exempt from tax under section 50-105 of ITAA 97 in lieu of a notice referred to in paragraph 1(b) will be satisfactory. Of course, the recipient must also specifically named in Subdivision 30-B (see paragraph 3) or be endorsed as a deductible gift recipient – paragraph 1(a).
- 3 If the proposed recipient is specifically named in Subdivision 30-B as a deductible gift recipient, it will not also have been endorsed as a deductible gift recipient³. The ancillary fund or prescribed private fund should satisfy itself that the proposed recipient is the same entity as the entity named in Subdivision 30-B to avoid confusion over similar names. The entry for the recipient on the Australian Business Register⁴ can be checked to ensure that it is shown as a deductible gift recipient.
- 4 The notice of endorsement as a deductible gift recipient is also helpful in identifying whether the proposed recipient is an ancillary fund. Ancillary funds can not receive grants from prescribed private funds (or other ancillary funds). If the notice of endorsement as a deductible gift recipient states the "Provision for gift deductibility" of the proposed recipient is "item 2 of the table in section 30-15 of the *Income Tax Assessment Act 1997*", it will be an ancillary fund and therefore not entitled to receive grants.
- 5 The list of gazetted prescribed private funds should also be checked to see whether the proposed recipient is on the list as ancillary funds and prescribed

¹ This Endorsement notice is on a single sheet accompanied by a letter from the ATO. The Notice is important as it states the item in Subdivision 30-B applicable to the proposed recipient.

² As has been possible for ancillary funds or prescribed private funds established on or after 1 July 2005

³ Section 30-125(1)(b) at <http://scaleplus.law.gov.au/html/pasteact/1/597/0/PA003210.htm>

⁴ [http://www.abr.business.gov.au/\(qw2yi4ugzndoic551r4d1u45\)/content.aspx?page=advancedSearch](http://www.abr.business.gov.au/(qw2yi4ugzndoic551r4d1u45)/content.aspx?page=advancedSearch)

private funds can not make grants to prescribed private funds. The list appears at this website⁵. However, a prescribed private fund established before the regulation is made will not, of course, be listed.

- 6 As from 1 July 2005, the Australian Business Register purports to disclose not only the deductible gift recipient status of an entity but whether it is a charitable institution, charitable fund, public benevolent institution or health promotion charity.
- 7 But it still does not disclose whether an entity is an ancillary fund or a PPF and so, unless the entity is specifically named as a deductible gift recipient⁶, the notice referred to in paragraph 1(a) should continue to be required from potential recipients.
- 8 It is also suggested that for the time being until the accuracy of the Australian Business Register becomes established, the Register not be relied on solely as to whether a proposed recipient is a charity and that the notice referred to in paragraph 1(b) should continue to be required.

Of course, if a copy of an "Endorsement as an income tax exempt charitable entity" or "Notice of endorsement for charity tax concessions" is provided and the Australian Business Register does not show that the entity is a charitable institution, charitable fund, public benevolent institution or health promotion charity, an explanation should be sought from the proposed recipient. It may be that its charity endorsement has been revoked.

September 2005

⁵ <http://scaleplus.law.gov.au/html/pastereg/2/1384/0/PR000500.htm>

⁶ If so, it will not be an ancillary fund or a prescribed private fund