

Prescribed Private Funds

your own private charity now ... and with tax benefits

Don't see yourself in the company of J.D. Rockefeller, Bill and Melinda Gates or the Myer Family...but you feel just as philanthropic? What these names have in common, apart from staggering wealth, is the establishment of philanthropic institutions that contribute billions of dollars to worthwhile causes around the world every year and which have stood as a testament to the generosity of their founders long after they have (or, in Bill and Melinda's case, will) shuffled off this mortal coil.

Even if you are some way from matching the Rockefellers, Gates or Myers on the *Forbes* or *BRW* rich lists, you can still follow their philanthropic example by establishing your own Prescribed Private Fund (PPF).

If you're thinking about or planning to give away some of your wealth to charity when you die, how about doing it while you're alive and save some tax as well. A PPF is a great way to deal with your wealth especially when you receive a large assessable lump sum eg you've cashed up the share portfolio or sold a capital asset. Rather than paying tax now you could make an offsetting deductible contribution to your PPF and from there donate the funds over time (rather than the total amount in one go).

This article outlines some of the main features of a PPF and the steps involved in getting a PPF approved by the Australian Taxation Office (ATO) and the Commonwealth Treasury.

What is a PPF?

A PPF is a trust established, funded and managed by an individual, family or corporation for the sole purpose of making gifts to other entities that the ATO has approved as being deductible gift recipients (DGR): these are entities to which tax deductible gifts are able to be made.

PPFs are tax effective because donations made to a PPF are tax deductible to the donor and the PPF itself does not pay tax on the contributions or its earnings.

How is a PPF structured?

A PPF **must** be a trust. Like any trust, a PPF must have a trustee: this can be an individual, a board of trustees or a company limited by guarantee (the directors of which will ultimately control the trust).

A PPF can be controlled by a single individual or members of a single family, unlike other charitable foundations which require public involvement. However, to ensure a PPF is properly managed one of the trustees (or one of the directors of a company that is trustee) must be a *responsible person*: this is a person who has a responsible position in the community, such as a lawyer, accountant or religious minister.

The responsible person must be independent of the PPF's founding individual or family, although a trusted professional adviser can occupy this role.

Where can a PPF's money come from?

A PPF must be primarily funded by the individual, family or corporation that has set it up. This is different to "public" charities, which are required to solicit money from the public.

The founders can build up the PPF's capital base. Some of the earnings can be retained to preserve the capital base (i.e. to counter the effects of inflation) with the rest being donated to other DGRs.

By building up and preserving a capital base, the PPF can continue making donations over a long period of time. However, the PPF cannot accumulate wealth indefinitely or for a purpose other than distributing to DGRs. So, as part of the application process, the ATO will want to see a capital accumulation and investment plan and may pre-approve a plan to build a capital base.

Where can a PPF's money go?

A PPF can only donate to other entities that have been endorsed as DGRs. The Australian Business Register shows all DGRs.

Some of the money going into the PPF must go out to eligible DGRs every year. The PPF guidelines indicate 5% - 10% of money coming into the PPF will be a reasonable benchmark. So if in June 2008 \$1 million is donated, \$100,000 should go to other DGR's during the 2008/9 year.

So, its not the case that what goes in must go out straight away. You could plan to put in say \$300,000 per year for five years to build a capital base from which you then generate a reasonable amount to donate annually. Alternatively you might find an opportunity to fund all or part of a major capital expense eg new medical equipment but need to fund it over a few years.

Unlike a public charity, a PF cannot perform philanthropic activities directly. Most of the large agencies have a series of special projects each year so you can make a donation which essentially goes to a particular project.

What are the benefits of a PPF compared with the alternatives?

The main alternatives to conducting philanthropic activities through a PPF are to establish a charitable foundation or to make donations directly to a DGR. Establishing a charitable foundation is more difficult and expensive.

The organisation cannot be controlled solely by "insiders" (eg a family) and it must actively appeal to and source donations from the public. However, public charitable organisations can allow for more "hands-on" charitable work in terms of providing direct benefits.

Making donations directly to DGRs, rather than through a PPF, is obviously the easiest option and ultimately achieves the same outcome. This is preferable if you have a short-term view of your philanthropic activities.

The main benefit of using a PPF is that a significant capital base can be accumulated in a tax-free environment, which enables the founder to support their DGRs of choice with more funding and over a longer period of time. Moreover, a PPF allows the founder to maintain effective control over the investments and allocation of their capital.

Finally, but perhaps most importantly, a PPF allows for philanthropy to become a family affair (including future generations) and, since a PPF can outlive its founders, can serve as a testament to your commitment to philanthropy. We see many cases where the children do not display the same philanthropic bent as their parents.

A PPF gives you the opportunity to donate in an orderly way; often the hardest part of philanthropy is finding suitable recipients. Yes, it is easy to just give it away but if you want to have a sustained impact, it's actually hard work.

What does the application process involve?

Although a PPF must be approved by the Commonwealth Treasury, the application process is coordinated by the ATO.

Prior to the application being lodged, the PPF's structure should be established by settling the trust and, if necessary, incorporating the trustee company. This means that some thought must be given to who will act as trustees and responsible person.

Also, a proposed policy for the making of gifts to DGRs (eg outlining the particular DGRs that the PPF intends to benefit, or at least some broad parameters) and a capital base accumulation strategy must be considered and documented. In our experience, the ATO prefer some detail around this.

While the PPF is operating, there will be ongoing administration, accounting and other compliance obligation costs, including an audit.