



# MYER FAMILY OFFICE

28 May 2009

Manager  
Philanthropy & Exemptions Unit  
Personal & Retirement Income Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email to: [ppfreview2008@treasury.gov.au](mailto:ppfreview2008@treasury.gov.au)

Dear Sir,

## **Tax Laws Amendment (2009 Measures No. 4) Bill 2009: Prescribed private funds**

The Myer Family office has created approximately 50 PPFs in conjunction with our clients. We continue to work closely with them on the administration of their PPFs including grant research, investment, accounting and reporting.

As you are aware, on 13 January 2009 The Myer Family Office made a detailed submission on Treasury's November 2008 Discussion Paper relating to PPFs. The issues pertaining to PPFs discussed in our submission are still relevant and we still hold great concern for the significant adverse impact on the philanthropic sector, and consequently the charitable sector, as a result of several of Treasury's suggested rules for PPFs in the Discussion Paper.

We have read Treasury's press release and PPF exposure draft released last week and note that while submissions on this issue are required by 29 May 2009, "An exposure draft of the new guidelines is likely to be made available for public consultation later this month." Of course these guidelines will contain key requirements of PPFs, including the annual distribution requirements and privacy issues. Accordingly, we find it difficult to make this submission when we don't have the revised guidelines available to determine their impact on PPFs.

We have the following comments on the exposure draft, particularly items 1.32 and 1.36:

Item 1.32 The Treasurer will be able to make binding guidelines about the establishment and maintenance of a private ancillary fund.

Item 1.36 It is envisaged that the guidelines will specify matters such as the role and purpose of private ancillary funds; the class of entities that the fund may donate to; that the fund be not-for-profit in character; the individuals that may be directors of the fund's trustee; the minimum distribution requirements of the fund; the permitted investment strategies of the fund; and any ongoing audit requirements.

Comment: 1. The class of entities that the fund may donate to, the minimum distribution rate and the permitted investment strategies are matters which require long term planning. We believe that these items should be enshrined in legislation rather than being subject to the Treasurer making binding guidelines.

While we appreciate that the guidelines would be a legislative instrument and therefore subject to disallowance by either House of Parliament, we believe that the above matters should still be legislated to give greater certainty and less opportunity for change.

We further believe that PPFs should be grandfathered to the rules applicable when they were established. For founders to voluntarily establish a philanthropic foundation they need certainty as to the rules under which the foundation will operate. Existing founders have been appalled at the breach of trust relating to the suggestions in Treasury's initial PPF Discussion Paper e.g. suddenly there could be no privacy, nor perpetuity.

Treasury's Discussion Paper has resulted in the confidence in the future of the PPF sector being severely tarnished. Certainty and clarity are now required. Without such certainty it is likely that few new PPFs will be established. This will have a significant adverse impact on the charitable sector in our country.

2. We are in favour of there being an appropriate penalty regime for trustees breaching their responsibilities. We are also in favour of the need to replace trustees or direct them to comply in cases of breach of their responsibilities. We are concerned that these powers are given to the Commission of Taxation (subject to administrative tribunal review). While the Commissioner of Taxation generally acts appropriately, there have been cases of over zealous officers of the Commissioner acting inappropriately in other matters. In these cases the process of review by the tribunal is an expensive and lengthy process.

Should you wish to discuss the above, please contact Peter Winneke on 03 9207 3065 or  
Graham Reeve on 03 9207 7814.

Yours sincerely,

Handwritten signature of Peter Winneke in blue ink, appearing as 'Peter Winneke'.

**Peter Winneke**  
Head of Philanthropic Services

Handwritten signature of Graham Reeve in blue ink, appearing as 'Graham Reeve'.

**Graham Reeve**  
Managing Director