



Status: **legally binding**

Class Ruling

Diabetes Victoria – loans from public and private ancillary funds

❶ Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out our opinion about the value of the benefit that public and private ancillary funds who take part in the scheme can include in their minimum annual distribution under the *Taxation Administration (Private Ancillary Fund) Guidelines 2019* or the *Taxation Administration (Public Ancillary Fund) Guidelines 2022*, whichever is applicable.
2. Details of the scheme are set out in paragraphs 17 to 27 of this Ruling.
3. Where used in this Ruling, 'PAF' or 'PAFs' refers to both public and private ancillary funds collectively. The *Taxation Administration (Private Ancillary Fund) Guidelines 2019* and the *Taxation Administration (Public Ancillary Fund) Guidelines 2022* are collectively referred to as the Guidelines.
4. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997), unless otherwise indicated.
5. This Ruling does not affect the obligations of public and private ancillary funds to comply with the rules in the Guidelines, whichever is applicable. To remain endorsed as a deductible gift recipient, an ancillary fund must comply with the relevant Guidelines.
6. This Ruling does not address Diabetes Victoria's entitlement to endorsement as a deductible gift recipient. Nor does it address a PAF's compliance with the Guidelines, other than subsection 15(4) of the Guidelines.
7. This Ruling does not address any specific circumstances relating to assignments of a PAF loan.

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Who this Ruling applies to

8. This Ruling applies to you if you are a PAF which is endorsed as a deductible gift recipient under section 30-120 that:

- enters into the loan agreement with Diabetes Victoria (PAF Loan) between 1 July 2025 and 31 December 2026, or
- becomes a lender to Diabetes Victoria under an assignment or transfer of the rights under a PAF Loan, provided that the terms of the assignment or transfer do not result in the Guidelines being breached.

When this Ruling applies

9. This Ruling applies from 1 July 2025 to 31 December 2026. The Ruling continues to apply until 10 years after the date of the PAF Loan (First Termination Date).

Ruling

Interest foregone forms part of the public or private ancillary fund's annual distribution

10. For the purposes of complying with section 15 of the relevant Guidelines, the difference between the amount of interest accrued under the PAF Loan and the interest which would accrue on a comparable loan sourced from a financial institution at 'arm's length' will form part of the PAF's annual distribution. For the purposes of this Ruling, this is referred to as 'the market value of the interest foregone'.

11. Under the scheme, the market value of the interest foregone is 10.69% per annum up until the First Termination Date.

Example 1 – interest foregone forms part of the annual distribution

12. On 1 July 2025, PAF A loans Diabetes Victoria \$100,000 under the PAF Loan. There is no interest payable on the loan.

13. Using the interest rate of 10.69% per annum, the amount of interest that is payable on a comparable loan for the 2025–26 income year is \$10,690.

14. An amount of \$10,690 (being the difference between the amount of interest based on a market rate (\$10,690) and the interest accrued under a PAF Loan (\$0)) qualifies as part of PAF A's annual distribution in the 2025–26 income year, and each subsequent year up until the First Termination Date.

Example 2 – interest foregone forms part of the annual distribution on transfer or assignment

15. If PAF A, referred to in Example 1 of this Ruling, assigns or transfers the loan to PAF B on the first day of an income year, an amount of \$10,690 qualifies as part of PAF B's annual distribution in that income year, and each subsequent year up until the First Termination Date.

16. If PAF A transfers or assigns the loan to PAF B during an income year, the amount PAF A can treat as part of its annual distribution for that income year is calculated as a

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proportion of \$10,690 based on days of the year up to the date the assignment or transfer is effective. The amount PAF B can treat as part of its annual distribution for that income year is calculated as a proportion of \$10,690, based on days of the year from the date the assignment or transfer was effective.

Scheme

17. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

18. Diabetes Victoria is a not-for-profit company limited by guarantee. It is registered as a charity with the Australian Charities and Not-for-profits Commission, and is also endorsed as a deductible gift recipient under section 30-120 and covered by table item 1 of subsection 30-15(2) as a registered health promotion charity (table item 1.1.6 of subsection 30-20(1)).

19. Diabetes Victoria will maintain its endorsement as a deductible gift recipient.

20. Clause 3 of the Constitution of Diabetes Victoria states its objectives:

- (a) The principal object of the Company is to promote the prevention, control and management of diabetes in human beings.
- (b) Without limiting the generality of Clause 3(a), the objectives of the Company include:
 - (i) promoting research into all aspects of diabetes including its causes, treatments, management and social and economic impacts;
 - (ii) encouraging and advancing the prevention and the detection of diabetes;
 - (iii) educating, and providing information about prevention, control and management of diabetes to, people with diabetes, their families and carers, health professionals and the public;
 - (iv) advocating for, and facilitating, equitable access to appropriate treatment and management of diabetes;
 - (v) providing the voice of diabetes on behalf of Members and people with diabetes, their families and carers, and where appropriate, health professionals and research organisations with an interest in diabetes;
 - (vi) developing, providing and facilitating relevant aids and equipment for people with diabetes, their families and carers, health professionals and research organisations; and
 - (vii) developing and co-ordinating health promotion activities promoting the prevention, control and management of diabetes and related health issues.

21. The purpose of the PAF Loan is to assist Diabetes Victoria to establish sustainable long-term funding to support translational diabetes research in Australia for the benefit of people living with diabetes. Diabetes Victoria's research strategy is set out in its strategic plan (2024–2030). A core tenet of Diabetes Victoria's research strategy is the establishment of strategic research partnerships with selected diabetes research centres. Funding raised through the PAF Loan will be directed to supporting these research partners.

22. The PAF Loan will be entered into between Diabetes Victoria and the relevant PAFs.

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23. The key terms of the PAF Loan are set out in Table 1 of this Ruling.

Table 1: Key terms of the PAF Loan

Terms	Information
Borrower	Diabetes Victoria
Lenders	PAFs or other entities or individuals as agreed by the Borrower.
The Facility	An Australian dollar term loan facility in an aggregate amount equal to the Total Commitments. (Clause 2.1) There will be a single loan made under the Agreement, which the Lenders will participate in proportionately to their commitment. (Clause 4.3)
Termination Date	10 years after the date of the Agreement (First Termination Date), or if all Lenders agree to a Renewal Term, 20 years after the date of the Agreement (second Termination Date). (Clause 1.1) No later than 12 months before the First Termination Date, the Borrower may request an extension of the Loan from the Lenders for an additional 10-year term (Renewal Term). All Lenders must agree in writing. (Clauses 6.1 and 6.2) The Borrower shall repay the loan on the Termination Date. (Clause 7.1) The Borrower may not prepay the whole or any part of the Loan. (Clause 8.2)
Purpose	The Borrower must apply all amounts borrowed by it under the Facility towards the purchase of the Investment in accordance with an approved investment strategy. (Clause 3.1) The Borrower must apply all distributions received by it in respect of the Investment in furtherance of its charitable mission and the objectives of the Diabetes Research Initiative (Subclause 14.6(a)) Diabetes Research Initiative means the Diabetes Translational Research Fund initiative undertaken by the Borrower and/or other similar projects and activities undertaken by the Borrower from time to time. (Clause 1.1)
Interest	Interest is not payable on the Loan. (Clause 9)
Cancellation or disposal by Borrower	The Borrower may not cancel the whole or any part of the Commitments. (Clause 8.1) The Borrower may not assign any of its rights or novate any of its rights or obligations without the approval of all Lenders. (Clause 18.1)
Assignment and Transfer by Lenders	A Lender may assign any of its rights or novate any of its rights and obligations to another entity. The consent of the Borrower is required (which must not be unreasonably withheld or delayed) unless an Event of Default is continuing. (Clauses 17.1 and 17.2)
Investment strategy	The Investment Manager will determine, in consultation with the Borrower, the investment strategy and distribution strategy for the Investment, provided that these strategies must take into account each of the following: (i) an expected timeframe for the investment of 10 years; (ii) agreed ESG screening criteria; (iii) an objective of stable regular distributions;

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Terms	Information
	(iv) the long-term capital growth requirements of the Borrower; and (v) a measure of capital protection. (Subclause 14.6(b))
Investment income	The Borrower must apply all Distributions received by it in respect of the Investment in furtherance of its charitable mission and the objectives of the Diabetes Research Initiative. For the avoidance of doubt, the Borrower may apply distributions: (a) for funding operating, administration or other expenses (other than capital expenditure unless agreed by the Lenders) in accordance with its objectives of the Diabetes Research Initiative incurred or to be incurred in the Current Period; (b) to create a working capital buffer; and (c) by reinvesting the distributions, in accordance with the investment strategy. (Subclause 14.6(a))

24. The Term Sheet for the PAF Loan includes the following details about the Investment:

Table 2: Term Sheet for the PAF Loan

Terms	Information
Amount	Expected to be at least \$10,000,000 in aggregate or such other amount as agreed.
Description of the Investment	To be invested in a range of domestic and international securities and funds in accordance with the approved Investment Strategy.
Investment capital	The Borrower will be the legal owner of the Investment and, for the avoidance of doubt, will be entitled to any capital appreciation on the Investment after repayment of the loan.

25. The Lenders will not be involved in determining the investment strategy for the PAF Loan. Subclause 14.6(b) of the PAF Loan states '[t]he Investment Manager will determine, in consultation with the Borrower, the investment strategy ...'. Clause 1.1 of the PAF Loan states that 'Investment means the investment in a portfolio of securities in accordance with an investment strategy agreed with the Investment Manager', and that 'Investment Manager means the investment manager appointed by the Borrower or a replacement investment manager appointed by the Borrower ...'.

26. The arm's length interest rate on a comparable loan from a financial institution (10.69%), and the methodology used to determine the interest rate, were accepted by the Commissioner prior to entering into the scheme.

27. Other information referenced is the template PAF Loan (provided on 19 June 2025).

Commissioner of Taxation
17 December 2025

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Appendix – Explanation

❶ *This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

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Background

28. To be endorsed as a deductible gift recipient, a fund that is an ancillary fund, and its trustee, must comply with the relevant Guidelines (paragraph 30-125(1)(d)).

29. The meaning of deductible gift recipient is set out in section 30-227, and includes an entity which is endorsed under Subdivision 30-BA as an ancillary fund under table item 2 of subsection 30-15(2).

30. Section 426-103 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) requires the Minister to formulate public ancillary fund guidelines that must be complied with to remain endorsed as a deductible gift recipient. By legislative instrument dated 17 February 2022, the public ancillary fund guidelines were remade and titled the *Taxation Administration (Public Ancillary Fund) Guidelines 2022*.

31. Section 426-110 of Schedule 1 to the TAA requires the Minister to formulate private ancillary fund guidelines that must be complied with to remain endorsed as a deductible gift recipient. By legislative instrument dated 20 September 2019, the private ancillary fund guidelines were remade and titled the *Taxation Administration (Private Ancillary Fund) Guidelines 2019*. The most recent compilation is dated 25 February 2022.

Interest foregone forms part of the public or private ancillary fund's annual distribution

32. Section 15 of the Guidelines requires a PAF to make an annual distribution.

33. Subsection 15(4) of the Guidelines states:

A **distribution** is the provision of money, property or benefits. Where a fund distributes property or benefits, the market value of the property or benefit provided is to be used in determining whether the fund has complied with subsection (1).

34. Subsection 15(4) of the Guidelines provides examples of distributions of benefits and how they are to be valued.

35. Example 4 in the *Taxation Administration (Public Ancillary Fund) Guidelines 2022* states:

Where a public ancillary fund lends money to an eligible deductible gift recipient at a discount to the interest rate which would be charged on a comparable loan sourced from a financial institution at arm's length, the fund is providing the borrower with a benefit equal to the market value of the interest forgone in the financial year by the lender because the borrower was not charged an arm's length rate of interest.

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36. Similarly, Example 4 in the *Taxation Administration (Private Ancillary Fund) Guidelines 2019* states:

Where a private ancillary fund lends money to an eligible deductible gift recipient at a discount to the interest rate which would be charged on a comparable loan sourced from a financial institution at arm's length, the fund is providing the borrower with a benefit equal to the market value of the interest forgone in the financial year by the lender because the borrower was not charged an arm's length rate of interest.

37. In the context of subsection 15(4) of the Guidelines, a 'benefit' includes an advantage, a profit, or a gain.¹ It is not limited to the payment of money or transfer of property. Its meaning may encompass anything that is for the good of a deductible gift recipient and that puts it in a better or more favourable position.²

38. The advantage, profit, or gain, provided under subsection 15(4) of the Guidelines must be objectively ascertainable and it must present an actual benefit to the deductible gift recipient.

39. Therefore, under the scheme, a PAF would be considered to be providing a benefit to Diabetes Victoria equal to 'the interest forgone' by the PAF, because Diabetes Victoria is paying less than a market rate of interest.

40. The amount of this benefit will therefore form part of the PAF's annual distribution.

41. To determine the market value of the interest foregone, the PAF may use an interest rate of 10.69% per annum up until the First Termination Date, being a rate equivalent to the rate on a comparable loan sourced from a financial institution at arm's length.

¹ Definition of 'benefit': Nygh, PE (ed.) and Butt, P (ed.) (1998) *Butterworths Concise Australian Legal Dictionary*, 2nd edn, Butterworths, Sydney.

² *Eldersmede Pty Ltd and Ors and Commissioner of Taxation* [2004] AATA 710 at [40].

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References

Legislative references:

- ITAA 1997 30-15(2)
- ITAA 1997 30-20(1)
- ITAA 1997 Subdiv 30-BA
- ITAA 1997 30-120
- ITAA 1997 30-125(1)(d)
- ITAA 1997 30-227
- TAA Sch 1 426-103
- TAA Sch 1 426-110
- Taxation Administration (Private Ancillary Fund) Guidelines 2019
- Taxation Administration (Public Ancillary Fund) Guidelines 2022

Cases relied on:

- Eldersmede Pty Ltd and Ors and Commissioner of Taxation [2004] AATA 710; 2004 ATC 2129; 56 ATR 1179; [2005] ALMD 1375; [2005] ALMD 1385

Other references:

- Nygh, PE and Butt, P (ed.) (1998) Butterworths Concise Australian Legal Dictionary, 2nd edn, Butterworths, Sydney
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ATO references

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