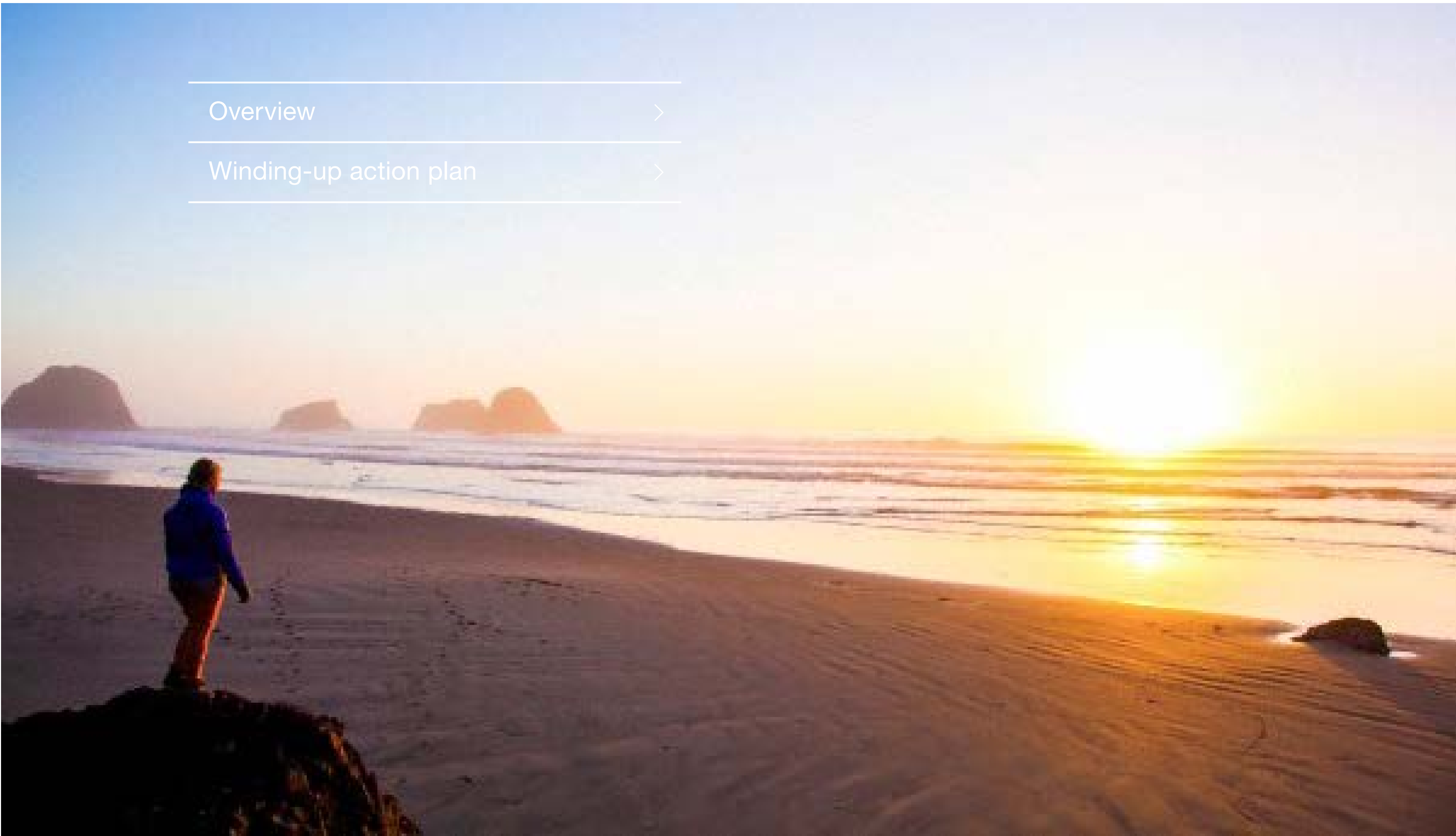
TechKnowledge Adviser

Winding up an SMSF

There are no prescribed steps for winding-up an SMSF, however there are a number of specific requirements that must be satisfied for a fund to be wound-up.



Overview

There are a number of reasons why a fund may need to be wound up including:

- The members have insufficient assets to justify an SMSF.
- Running the SMSF has become too onerous.
- The last member has died.

Wind-up an SMSF in an orderly and equitable fashion.

While winding-up may occur in quite different situations, the general process is the same. Winding-up an SMSF essentially involves determining the value of the fund's assets and its liabilities and using the assets to pay out those liabilities in an orderly and equitable fashion. Liabilities generally include:

- members' benefit entitlements
- taxes or duties owing by the fund
- insurance premiums due and payable by the trustee
- expenses payable to other parties in relation to the fund's activities and the winding-up process itself (eg auditors, accountants, advisers).

Winding-up may be a lengthy process as it may be necessary to wait until lumpy assets such as property have been sold so that all liabilities can be extinguished. The SIS Regulations do require the trustee to give certain priorities to the various liabilities of the fund including ensuring the first assets go towards the liability in respect of the administration and other costs associated with the winding-up proceedings.

If the fund is solvent, the next priority is members' benefits — the amount allocated to members must be at least their minimum guaranteed benefits. If the fund is insolvent, members still receive the next priority, but their benefit entitlement will be a proportion of the remaining assets of the fund.

There are also provisions in the SIS Regulations relating to the communication to members and the regulator of the decision to wind-up a fund. The regulator is required to be informed of a trustee's decision to wind-up a fund before, or as soon as practicable after, the winding-up is commenced.

The decision to wind-up a fund is also a significant event, and therefore must be communicated to members. The trustee must inform members as soon as practicable after it is reasonable for the trustee to expect that winding-up will commence.

Winding-up action plan

The SIS Regulations do not prescribe the steps a trustee should take in the wind-up of a fund, and it would be unlikely for the fund's deed to contain detailed steps however the following is indicative of the steps that a trustee would be required to complete.

- Convene a trustee meeting to ratify the decision to wind-up the fund. Record the decision in the trustee minutes, along with the timetable for the wind-up.
- Notify the regulator of the trustees' decision to wind-up the fund.
- Inform members of the wind-up decision, the reasons for it and what it will mean for them.
- Make provision for the outstanding expenses of the fund, including tax, insurance premiums, administration charges and professional advisers' fees.
- Calculate all members' entitlements up to the date of wind-up.
- Arrange for the transfer of members' benefits to another fund.
- Arrange for payment of all outstanding expenses and taxes.
- Complete the final set of fund accounts (with audit), the fund's wind-up return as required by the regulator and the final tax return for the fund.

As a practical consideration, the trustee should continue to keep the SMSF's bank account open as long as practicable to ensure that any delayed receipts can be banked and forwarded to the correct entity.

The ATO has published a guide to winding up an SMSF which can be found here.

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