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.



Overview >

Winding-up action plan >

Overview

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

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

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

Whilst the circumstances surrounding the reasoning behind the wind up of an SMSF may vary, the process is generally 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 owed 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 wind up process itself (eg auditors, accountants, advisers).

Winding up could potentially 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 initial tranche of sale proceeds of assets are allocated to any liabilities with respect to the administration and other costs associated with the wind up proceedings.

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

There are also provisions in the SIS Regulations relating to the communication to members and also 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 wind up process has 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 the wind 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 trust 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 decision to wind up the fund, 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 the wind up.
- Arrange for the transfer of members' benefits to another complying super fund, and (if there are any pensions), ensure the transfer balance cap reporting is completed as soon as possible.
- Arrange for payment of all outstanding expenses and taxes.
- Complete the final set of fund accounts (with audit), the fund's final annual 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 possible to ensure that any delayed receipts can be banked and forwarded to the correct entity.

The ATO have published a guide on how to wind up an SMSF which can be found here.



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