WealthAdviser

WINDING UP AN SMSF

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Before you get started

This digital handbook contains general and factual information only, and is part of the Wealth Adviser library, published by:

- Wealth Today (AFSL 340289)
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- Millennium3 (AFSL 244252)

Before acting on any information contained herein you should consider if it is suitable for you. You should also consider consulting a suitably qualified financial, tax and/or legal adviser.

Information in this handbook is no substitute for professional financial advice.

We encourage you to seek professional financial advice before making any investment or financial decisions. We would obviously love the opportunity to have that conversation with you, and at the rear of this handbook you will find information about our authorised representative and how to go about booking an appointment.

If ultimately you decide not to meet with us we still encourage you to consult with another suitably licensed and qualified financial adviser.

In any circumstance, before investing in any financial product you should obtain and read a Product Disclosure Statement and consider whether it is appropriate for your objectives, situation and needs.

Letter from the Wealth Adviser Library

Dear Reader

Welcome to the Wealth Adviser Library

This library was built specifically to facilitate the provision of sound financial information to everyday Australians.

Our mission is to build an accessible, comprehensively supported team of members who share our vision and commitment to providing tailored financial advice and a new foundation of financial understanding and security for everyone.

With a national network of likeminded experts, we have the potential to provide the financial building blocks for future generations.

Knowledge gives you a huge advantage

We believe that knowledge gives you a huge advantage in creating and effectively managing wealth; in planning to reach your goals; and in being prepared for whatever unexpected twists and turns life may present.

That's why our team of experts has created this series of digital handbooks and manuals that seek to inform you of not only the benefits but also the potential risks and pitfalls of various strategies and investments.

We trust you enjoy this publication and find it informative and professionally presented. Of course, your feedback is always welcome as we strive to continually offer content in a format that is relevant to you.

Take the next step

Wealth Adviser (a division of WT Financial Group Limited) supports more than 400 privately owned and operated advice practices around the country. We invite you to engage with one of our advisers to discuss what it was you were hoping to achieve when you obtained this handbook, and to establish if they can help you achieve your goals and objectives.

At the rear of this handbook you will find details on how to book an appointment.

Wealth Adviser Library

Reasons for winding up an SMSF

SMSFs could be wound up for a number of reasons, including:

Costs associated with SMSF not viable -Due to the fixed costs associated with running an SMSF, it is generally advisable to have a minimum level of assets to be viable. Sometimes a more cost-effective option would be to consider a public offer or small fund regulated by the Australian Prudential Regulatory Authority (APRA).

Trustee(s) moving overseas -One or more trustees may be intending to move overseas and it may be difficult for the SMSF to meet the definition of an 'Australian super fund', and will cease to be a complying fund and would incur penalty tax rates. To avoid this situation, one option is to wind up the fund and rollover the member's benefits to a non-SMSF.

Ceasing membership -A member may cease to be a member of an SMSF for reasons such as death, divorce or family or business relationship disagreements.

SMSF no longer desirable –Trustees may decide they no longer wish to undertake the administrative tasks and responsibility required to maintain the SMSF.

Age/ declining capacity of trustees–As trustees age, their capacity to fulfil their duties and make decisions may become a challenge.

Trustee/director of a corporate trustee becomes a disqualified person-Where a trustee becomes disqualified, they are prohibited from acting as a trustee of the fund or director of a corporate trustee, and hence cannot be a member of the fund.

The decision to wind an SMSF up is likely to involve more than one consideration listed above. For instance, the cost of the fund should be considered in conjunction with the benefits of having the fund and considering the reasons why it was set up in the first place.

WARNING

Once an SMSF is wound up, it cannot be restarted, unless the wind up was in error.

Legal and accounting assistance

The task of winding up an SMSF will need to involve the fund's legal advisers and financial and tax accountant.

Legal advisers will assist with interpreting the fund's trust deed to ensure the winding up complies with this and the income and capital of the fund are distributed correctly.

The role of the accountant is to ensure that the income and liabilities of the fund are identified correctly, benefits are paid or transferred correctly, and sufficient money is kept in the fund to pay any remaining expenses, including taxes.

Factors to consider prior to winding up an SMSF

Before the decision is made to wind up your SMSF, you should consider a range of issues to ensure there are no unexpected implications in winding up the fund and nothing to prevent or stall this.

TIP

The process of winding up an SMSF may take up to 14 months to complete, dependent on when the fund is able to sell its assets (e.g. a direct property may take months to sell), when the trustee(s) request the fund to be wound up, and the Australian Taxation Office (ATO) lodgement requirements.

- Capital gains -Typically, the winding up of an SMSF results in the fund's assets being sold or transferred in-specie, which will trigger a CGT event. If the disposal results in a capital gain this will mean a capital gains tax liability and will impact on the members' benefits. If a capital loss results from the disposal, these losses remain with the SMSF and will be offset against any capital gains within the fund.
- Allocation of reserves -Where an SMSF holds reserves, this money or assets will need to be allocated to members' accounts prior to the member's benefits being transferred out. An SMSF reserve is money or assets set aside in the fund that have not yet been allocated to any particular member's account.
- Claiming tax deductions for personal contributions -Members who have made a personal contribution need to ensure they lodge their notice of intent to claim this deduction. This is required prior to their benefits being rolled over to another fund or paid out.
- Life insurance –Options for personal life insurance owned by the SMSF include implementing insurance in an alternative fund or transferring the policy into the individual's name. The existing policy should not be cancelled prior to the new insurance commencing.
- Outstanding returns -Any outstanding returns to the ATO will need to be finalised prior to the ATO finalising the wind up of the fund.
- SMSF owns a frozen asset –Where a frozen asset exists in the fund it will generally not be able to dispose of those assets. This may pre- vent you from being able to wind up the fund.
- Current income streams being paid from the SMSF -for those members in receipt of an existing income stream from the fund consideration will need to be given to the merits of transferring the pension to another fund or receiving a lump sum, assuming the member is eligible to do so. The type of income stream being received, if the member is receiving social security and the taxation components of the member's interest in the fund, will all impact on the appropriate course of action.

Steps in winding up an SMSF

The steps involved in winding up an SMSF are:

Check the trust deed

The provisions of the fund's trust deed should be reviewed to determine what is required in the event of winding up. Each trust deed will be unique and legal assistance may be required for this step.

Wind up rules in a fund's deed could deal with:

- in what circumstances the fund may be wound up
- what trustee resolutions are required
- communication with members or employer sponsors
- the process of distributing unallocated money to members
- the valuation of the fund's assets
- maintaining an amount in the bank account for the payment of final expenses and tax
- record keeping after the wind up has occurred and who the fund contact will be.

Trustees/ members to document written agreement

Trustees should hold a trustee meeting and resolve to wind up the fund. It is important that the decision to wind up the SMSF should be included in a resolution signed by the trustees to ensure all parties are properly informed and avoid unnecessary complications.

In the case of a corporate trustee, the directors must decide whether the company should remain running or be wound up.

Review and dispose of fund assets

Trustees will need to value the fund's assets and ascertain whether members wish to receive their benefits in cash or in-specie (if permitted by the trust deed).

Those assets that are not being transferred in-specie will need to be sold in order for the benefit either to be paid to the member or transferred

to another fund in cash. Those assets being transferred in-specie will need to be valued at market value.

Those assets that are earmarked to be sold should be actioned with proceeds credited to the fund's bank account.

WARNING

A frozen asset may hinder the fund actually being wound up. A frozen asset is one that there is a restriction on accessing or redeeming the investment.

WARNING

There may be capital gains tax implications on the disposal of assets in order to pay benefits to another fund or transfer in-specie.

Protect Yourself from the Impact of Major Life Events (Life, illness, and disability insurance)

The effects of serious illness, or even death, could seriously jeopardise your family's financial well-being. In this area your objectives should basically be twofold:

- Protecting your income stream and
- Providing for your family in case of death or disability.
- Any policy that you take out should include at least the following elements:
  - Income protection insurance: This type of insurance kicks in when you are unable to earn an income due to illness or injury. Policies will generally pay a set amount to compensate you for loss of income over a specified period.
  - Critical Illness Insurance: Provides cover in case you contract certain specified illnesses and conditions.

Total and Permanent Disability insurance:

This type of insurance will usually pay out a lump sum in case of total inability to work. Total and permanent disability policies sometimes differentiate between cover for own occupation and cover for any occupation. If you are covered for your own occupation the policy will pay out when you cannot work in that specific occupation anymore (the profession you are performing at the time of disability). Any occupation cover will only pay out if you cannot work at all. It is obviously better to go for the former (i.e. own occupation cover), even though it is usually more expensive.

Life insurance: This can be used to provide for your family in case of your death. Policies will normally pay a lump sum to your family.

Policy options: The types of insurance discussed above are often packaged together in a single policy. This can sometimes result in significant cost savings, but you should nonetheless make very sure that it is the best option in your case.

Consider the level of insurance: One of the most important aspects of setting up life and disability insurance is to choose the correct levels of cover. It is our experience that most people are woefully underinsured when it comes to this type of insurance. This happens because they neglect to adjust coverage levels to reflect changes in circumstances (e.g. the birth of a child) or because they simply underestimate the financial needs of their families. Choosing the right levels of cover can be quite a difficult exercise as there are so many variables to take into account. This is therefore an area where it would be very much to your advantage to get some professional help and input.

Preparation of draft financial statements

An interim set of financial accounts should be completed so the members' interests can be valued and the calculation of their benefits can be made.

As part of preparing the set of financial accounts, trustees should ensure any fund reserves are allocated back to members. Also, provision should be made for any wind up costs, such as:

- administration, accounting and audit fees
- legal costs
- final tax liability
- SMSF Supervisory Levy.

Pay out/rollover members' benefits

Once any assets to be paid as in-specie transfer have been valued at market value and other assets sold in order to pay other benefits, these can be paid out as per the member's instructions.

TIP

Trustees should obtain precise instructions in writing from the members to avoid any misunderstanding.

WARNING

The trustee should be sure the member has met a condition of release in order to access their super as a cash benefit, instead of rolling over to another super fund.

Prepare final annual return

Trustees should have draft financial statements prepared, which will determine the value of each member's benefit within the fund. These should factor in the impending benefit payments/ rollovers and factor in the anticipated final wind up costs and tax liabilities.

TIP

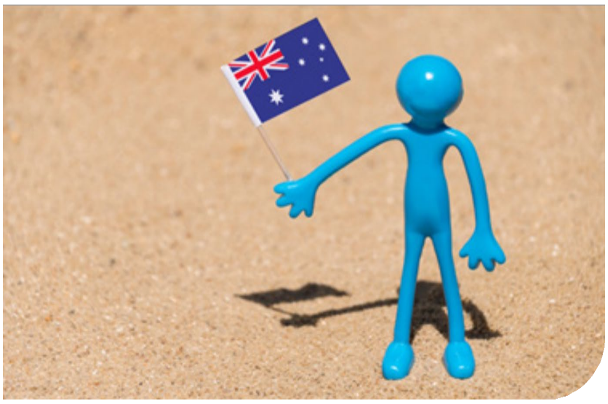
The fund bank account should be left open with sufficient funds to pay the outstanding liabilities.

Arrange a final audit

A final audit is required by an approved SMSF auditor prior to lodging the fund's final SMSF annual return.

Lodge final annual return with the Australian Taxation Office and pay outstanding tax liabilities

Once the audit has been finalised the annual return can be lodged. As part of winding up an SMSF, the trustees are required to comply with certain reporting obligations under the super and taxation regulations. This includes ensuring all lodgements and tax returns are up to date for previous years, as well as the current year.



Confirmation from the Australian Taxation Office

Once an SMSF has met all of its tax reporting and wind up responsibilities, the ATO will send the trustees a letter advising cancellation of the SMSF's ABN and the closing of the SMSF's record in its systems.

Pay final liabilities and close bank account

Once the final liabilities have been paid and any anticipated receivables received the bank account can be closed. Liabilities may include accounting and audit fees, income tax, bank charges, etc. If sufficient funds have not been set aside in the fund's bank account, the (former) trustees may need to pay those liabilities personally

If the fund receives a tax refund, such as from the ATO or from share distributions from when the fund was a shareholder, these amounts should be apportioned between the members and distributed to the members in the same way as the distribution of the members' benefits (i.e. paid as member benefits or rolled over to another fund, as appropriate).

Inform the Australian Taxation Office

The trustees must notify the ATO within 28 days of the date of winding up the SMSF by providing the following information:

- the name of the SMSF
- the fund's ABN
- details of a contact person for the fund (e.g. one of the trustees)
- the date the fund has been wound up.

IMPORTANT POINT

If the directors of the corporate trustee of an SMSF decide to wind up the company as well, they will also need to advise Australian Securities and Investments Commission (ASIC) of the decision to wind up the company as well as the resignation of the directors within 28 days.

Record keeping after an SMSF has been wound up

Even after an SMSF has been wound-up, records will need to be retained for the specified time period, which will assist in resolving any disputes or issues that arise after the closure.

The ATO requires trustees keep accurate records for prescribed periods and must make them available to the fund's auditor or the ATO on request.

The following records must be kept for a minimum of five years:

- accounting records that detail the transactions and financial position of the SMSF
- annual returns lodged with the ATO
- copies of any other returns or statements provided to the ATO or other super funds (e.g. Rollover Benefits Statement).

These records must be kept for a minimum of ten years:

- minutes of trustee meetings e.g. details of in- vestment decisions, decisions to pay benefits and decisions on where to store collectables or personal use assets
- trustee declarations
- the written consent of members to act as trustees
- copies of all statement or reports given to members
- records of changes of trustees.

TIP

Keep all copies of the SMSF's trust deeds and any amendments.

Take the next step

We trust you enjoyed this publication and

found it informative and professionally presented. Of course, your feedback is always welcome as we strive to continually offer

content in a format that is relevant to you.

We now invite you to take the next step and meet with an adviser to discuss what it was you were hoping to achieve when you downloaded this handbook and to establish if we can help you achieve your goals and objectives.

Next you will find details on how to book an appointment with an adviser.

We look forward to meeting you soon.

Appointment booking request form

About the Adviser

Our services

Contact details

Please complete the Appointment Booking Request below and scan and email to:

____

Appointments are available Monday-to-Friday.

Please nominate your preferred day, date and time to meet with us. One of our client services representatives will call you to confirm your appointment.

Preferred appointment day and time

Day ______________________________

Date ______________________________

Time ______________ am/pm ______________

If you would like us to contact you via email to confirm your appointment or to answer any questions you have, please provide a valid email address for our records.

Email ______________________________

Your Details

Title ______________________________

First name ______________________________

Last name ______________________________

Mobile ______________________________

Reader Notes

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Wealth Adviser

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