Monthly Information Newsletter – Tax & Super

July 2021

Steps to take when winding up your SMSF

There will most likely come a time when your SMSF will need to be wound up, with a change in members, the fund's finances, perhaps separation or other family reasons among the many reasons why winding up the fund becomes necessary.

For example, the reasons to wind up an SMSF could include:

- there are no members left – they may have passed away or rolled benefits into other funds
- there are no assets left – the SMSF may have paid members all of their benefits
- divorce – a marriage breakdown may force husband and wife members to split the fund's assets and may affect the ability of members to effectively undertake their trustee obligations
- insufficient funds – there is not enough money in the fund to keep covering running costs
- old age – trustees' circumstances may have changed in a way that has affected their capacity to effectively manage an SMSF, which can be complex and constantly requires a significant investment of time and expertise
- death – where there is only one member, their legal personal representative will be required to pay out all benefits as per the trust deed or death benefit nomination. Where there is more than one member, other members may not wish to continue the fund.

Once the decision to wind up an SMSF has been made, it is always a good idea to sit down and read your trust deed, as it may contain vital information about winding up your fund.

And remember, once a fund is wound up, it cannot be reactivated.

The necessary steps

You need to let the ATO know within 28 days of the fund being wound up. This is best done in writing, to ensure a record is made, but you must include:

- the name of your SMSF
- its Australian business number (ABN)
- your name and contact details, and
- the date you wound up your SMSF.

You will also need to deal with member benefits, and will have to make sure that:

- you deal with members' benefits according to the superannuation law and the trust deed
- you obtain market value balances of all related accounts
- you ensure all SMSF assets have been sold and member contributions dealt with in accordance with the trust deed and superannuation laws
- you ensure all proper steps are taken to transfer ownership and title of any assets
- you decide whether any corporate trustees in your fund wish to deregister with the Australian Securities and Investments Commission (ASIC), and
- your fund has no assets left once it has been wound up.

But remember, if you have wound up your fund but you, as a member, have not met a condition of release – retirement, transition to retirement, or reaching an eligible age – you cannot access your superannuation. Your superannuation needs to be rolled over into another regulated superannuation fund. Remember, there are serious legal penalties for accessing your superannuation benefits before you are legally allowed.

Advice may be required on the potential capital gains tax (CGT) implications for your SMSF on the disposal of assets to enable the payment of benefits or the rollover of benefits to another fund.

When winding up your fund, you will need to have an audit completed by an approved SMSF auditor before you can lodge your final SMSF annual return. Also, any outstanding tax liabilities will need to be paid at this time and lodge any outstanding returns from previous years.

It is important to wind up your fund correctly. If you fail to carry out these reporting responsibilities, you may be the focus of compliance activities and you may be subject to penalties.

After meeting all of your tax responsibilities, the ATO will send you a confirmation letter stating that it has cancelled your SMSF's ABN and closed your SMSF's record on its systems.

Tips to remember

Trustees do not need to cancel the fund's ABN, and in fact it should be kept active while the wind-up process is completed. The ATO will cancel an ABN once it has been notified, and will then send the trustee written confirmation that the ABN has been cancelled when this happens, usually within six weeks.

The fact that you have lodged a final SMSF annual return and reported wind up information may not be the last contact you will have with the ATO. You need to finalise all lodgement and payment obligations before you can wind up. And keep any records you have, at least for now. A lot of your records will need to be kept for several years, and some even up to 10 years.

Also remember that once a bank account for an SMSF has been closed, a new one cannot be opened without first producing a new trust deed. It is therefore very important to keep the SMSF's bank account open until all expected final liabilities have been settled and requested refunds are received. Tax liabilities (including the final SMSF levy) can be prepaid or paid with lodgement of the SMSF annual return.

TAX IMPLICATIONS

The most common tax issues are outlined below.

Unrealised capital gains

If an asset(s) of the fund has been held over a long period, a capital gain (or loss) event would be triggered upon disposal where the SMSF is in accumulation phase.

If the fund is wound up and a net capital gain arises, the fund will have significant taxation liabilities which, in effect, will reduce the members' overall superannuation balance.

Significant realised/unrealised capital losses

Alternatively, the reverse is that the fund may realise a capital loss during the wind-up process. While these capital losses can be added to the capital losses carried forward from previous years and offset against any current year capital gains, any residual capital losses that are not utilised during the wind-up process will be wasted. Because they cannot be transferred to another person (member or beneficiary) or entity (another superannuation fund), the benefit from any remaining unused capital losses will be lost once the fund is wound up.

Carried forward income tax losses

Some SMSFs can have carried forward income tax losses (because they could not claim any tax deductions that exceeded their income) that could be used to offset any future taxation liability of the fund. Unfortunately, as with capital losses, the benefit of using up its carried forward income tax loss will be lost upon wind up.