SUPERCENTRAL

What trustees need to consider in closing an SMSF

What do trustees need to consider when winding up an SMSF?

Mary is the sole member and one of two individual trustees of her SMSF – the other being her daughter. Mary's health is starting to deteriorate and she no longer wishes to run the fund in the future. She now wishes to wind up her SMSF.

Mary's desire to wind up her SMSF is a common scenario that sees trustees choosing to wind up their SMSF. Other reasons why trustees may choose to wind up an SMSF include:

- the members having insufficient assets to justify the running of an SMSF;
- the members have exited the fund either by rolling over their benefits to another fund, or have passed away;
- there is a breakdown of a relationship between one or more members of the SMSF;
- a trustee becomes bankrupt; and
- the members of the fund wish to move overseas indefinitely and no longer want the burden of running the fund.

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 the fund's liabilities.

Just like starting an SMSF, the members/trustees will need to ensure that they wind up their SMSF properly.

Some key issues that Mary and other members/trustees will need to consider when winding up their SMSF are outlined below.

Issue 1: Who has the power to wind up the SMSF?

Mary will need to check the trust deed of her SMSF to see what it says about who has the power to wind up the fund, who needs to be notified, and the procedure of allocation of the fund's assets. This section of the deed may commonly be called "Termination of the fund" or "Winding up". It is important that the rules on winding up as outlined in the trust deed be followed. This is especially important in circumstances where a trustee is bankrupt and is disqualified from acting in their capacity as a trustee. Where this arises, the trust deed may provide further information regarding who has the power to wind up the fund in exceptional circumstances.

Issue 2: What will happen to the fund's non-cash assets and how will each member's benefits be paid?

If Mary's fund owns real property or other assets that are not cash, it will be necessary for her to consider whether those assets are to be liquidated or, alternatively, transferred in specie to her as the sole member of the fund.

Any cash benefits can be transferred as a rollover to another complying superannuation fund, or by paying the funds to the member directly. It is important to note that the relevant condition of release under superannuation laws will need to have been met before any funds are paid out directly to a member. There are serious penalties where if a member accesses their super and a condition of release has not been satisfied.

Where assets of the fund are sold, transferred in specie or cash benefits paid directly to a member, appropriate advice on any tax implications and any other implications such as impact on Centrelink entitlements should be taken into consideration before determining the appropriate course of action.

Mary should also consider whether the disposal of a fund asset to enable the payment of benefits or the rollover of benefits to another fund may give rise to a capital gains tax (CGT).

If a transfer of an asset in specie is to occur the value of the asset being transferred or portion of the asset being transferred cannot exceed the member's total benefit in the fund.

Where a member of the fund has passed away, the relevant rules in the trust deed about the allocation of a deceased member's benefits should be followed.

If Mary is in retirement phase she may also need to consider whether she has any transfer balance account reporting obligations when winding up the fund. Such an obligation would arise where Mary's member account has been debited as a result of her retirement phase income stream being fully or partially commuted as this would affect her member's transfer balance account. The value of this commutation is required to be reported to the ATO by completing a super transfer balance account report (TBAR) at the time it occurs.

For more information on any aspect covered in this article, please call SUPERCentral on 02 8296 6266 or email info@supercentral.com.au.