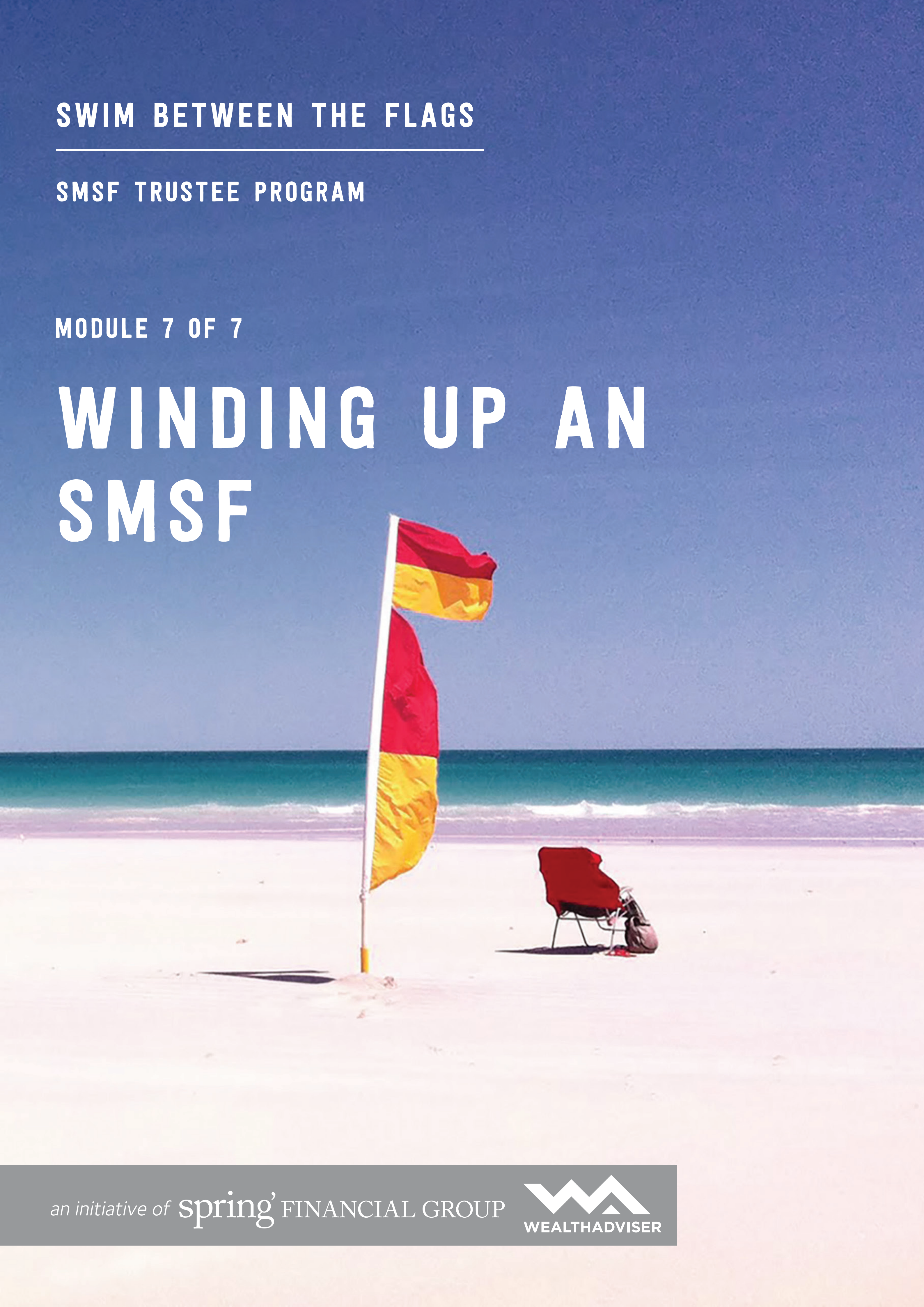
SWIM BETWEEN THE FLAGS

SMSF TRUSTEE PROGRAM

MODULE 7 OF 7

WINDING UP AN SMSF



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WEALTHADVISER

No Advice Warning

Letter from Wealth Adviser

Dear *Reader*

The goal of Wealth Adviser is to ensure that concise, informative financial education is available to everyone at no cost. Our educational material seeks to inform people of not only the benefits but also the potential risks and pitfalls of various strategies and investments.

Close to 600,000 self-managed super funds (SMSFs) are in operation according to the ATO and thousands of funds are being established each quarter. SMSFs are touted as the most flexible way for accumulating a retirement nest egg, offering significant investment choice and control. With this comes additional responsibilities for trustees, who are in control.

This free SMSF Trustee Program aims to equip trustees and financial services professionals with an awareness and knowledge of the relevant super rules and regulations. The program comprises seven modules, to be completed in sequential order via our Online Learning Centre. There is a short assessment at the end of each module to test your understanding. You must successfully complete each assessment in order to proceed to the next module.

The SMSF Trustee Program comprises the following modules:

1. Introduction to SMSFs
2. SMSF Trustee Responsibilities
3. Contributing to Superannuation
4. Withdrawing money from superannuation
5. SMSF Investment Rules
6. Taxation of SMSFs
7. Winding up an SMSF

By successfully completing the seven modules and online assessments you will receive a Certificate of Completion for the SMSF Trustee Program.

New SMSF trustees are required to sign a declaration that they understand the duties and responsibilities required of them according to the superannuation rules and regulations. A thorough working knowledge of the requirements is essential for trustees. An SMSF is not right for everyone and being informed is essential to maximising the opportunities from this type of super fund and minimising the risks of an SMSF.

This course is also suitable for SMSF trustees who have received an education direction and are required to complete an approved Australian Taxation Office (ATO) education course. To meet your education direction obligations, you are required to sign the Trustee Declaration (or re-sign this declaration if you have previously signed it) within 21 days of completing this course and forward the certificate of completion to the ATO by the date specified on your education direction.

We hope that this education course is beneficial and of service to you. From there, once you have a general understanding of options available to you, we believe that it is important for you to seek personal advice that is appropriate to your situation. If you are an SMSF trustee, you should find a trusted adviser and work with them.

Best regards

Wealth Adviser

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Learning outcomes

After completing this module, you should be able to:

- List the possible reasons for winding up a self-managed super fund
- Outline the role of legal and accounting assistance in winding up a self-managed super fund
- Consider specific factors prior to winding the fund up
- Outline the process of winding up a self-managed super fund
- Describe record keeping requirements after the fund has been wound up

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, dependant 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) lodgment 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 prevent 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.

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.

Submit final annual return to 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 investment 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

Learning check

Below is a repeat of the learning outcomes. This lists the key areas developed in this module and is designed to help identify gaps in your knowledge which you may choose to seek further guidance on. After completing this module, you should be able to:

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Readers Notes

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About Spring Financial Group

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Spring Financial Group is not owned by a bank or large institution. Spring offers services and solutions that best suit your requirements and circumstances.

Our advisers are educated and experienced in Financial Planning, specialising in advanced investment strategies for wealth accumulators. We also provide deep expertise in sourcing and investing in direct residential investment.

We provide a balanced approach to investing between property and shares; plus considerable expertise in Self-Managed Superannuation Funds and wealth creation.

We are a fully integrated firm; consisting of:

- Spring FG Wealth - Financial Planning
- Spring FG Accounting - Accounting and tax
- Spring FG Finance - Mortgage broking and structuring advice
- Spring FG Realty - Investment Property advice
- Spring Equities - Shares and trading advice
- Wealth Adviser - free financial educational eBooks.

We operate a primarily fee-for-service based advice model.

To utilise the services of Spring Financial Group contact one of our experienced Advisers or send an email to:

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