

## Fact Sheet

# Can an SMSF invest in an overseas property?



A self-managed superannuation fund (SMSF) can purchase both residential and commercial property, but did you know this extends to property located overseas?

When an SMSF buys property additional compliance requirements apply compared with buying the property in your own name. For example, there are restrictions on who the property can be purchased from and who it can be leased to. Residential property cannot be purchased from, or leased to, a related party of the fund - such as a family member.

The purchase of property by the SMSF, just like all other fund investments, needs to be allowed under the fund's trust deed and investment strategy. The investment must also be in line with:

- the sole purpose test, which requires the investment to be maintained exclusively for superannuation purposes and not for any other purpose,
- in-house asset rules, which restricts the proportion of some fund assets that can be invested in, lent to or leased to any related parties,
- restrictions on the fund making loans to members or use of the fund's assets,
- the requirement that fund investments are made on an arm's length commercial basis.

Funds that invest in overseas property need to consider the laws of that country, particularly in respect of how, or to what extent, a foreign entity (an SMSF) can own the property. The main issues surrounding the SMSF investing property overseas generally involves the practical aspects of satisfying the relevant laws of the foreign country and how they relate to Australian superannuation law. The following are some of the major considerations:

## 01 Documentation

Documents relating to the property that are not in English, such as the contract of sale, registration of ownership and lease agreement must be translated to comply with the Australian superannuation and taxation legislation.

## 02 The entity that holds the property

All SMSF assets must be clearly identifiable as being owned by the fund. In several countries, a foreign entity such as an SMSF cannot hold property directly. One option could be to establish a local entity such as a company that purchases the property, with the SMSF owning all or some of the interests in the entity. In this case the fund doesn't own the property directly, but owns the shares or units in the foreign entity that owns the property. Generally, the foreign entity would be considered a related party of the fund. This brings the additional compliance considerations of trustees investing in a related party entity. This structure can be quite complex and professional advice should be obtained to ensure it complies with the relevant laws.

## 03 No charge or encumbrance over the property

Generally, SMSF assets are not allowed to be secured for purposes of a loan or other financial accommodation unless it is authorised under the superannuation legislation. The auditor of the SMSF will normally perform a title search at the end of each year to confirm the legal owner of the property and whether the property is used as security. Where the property is in an overseas country and no Australian-style of register exists, it can sometimes be difficult to obtain documents confirming ownership and that no charge is placed over a property.

## 04 Payment of taxes

In some countries the investment entity may be required to lodge tax returns and pay taxes in the country where the property is located. In these cases, specialist advice should be sought, usually from an organization which has the relevant tax expertise.

## 05 Different laws and customs

SMSF trustees will need to carefully consider the laws and customs of the country where they intend to buy the property.

## 06 Local real estate agents

Where the SMSF holds the property directly, the SMSF will receive rent and be required to pay for any relevant property expenses. The SMSF may need to establish a foreign currency account to manage income and expenses for the property. An alternative option could be for a local real-estate agent to run an account for the SMSF with the agent paying the net income to the fund. If a local real estate agent is used records and accounts should be adequate to satisfy the fund's accountant and registered SMSF auditor.

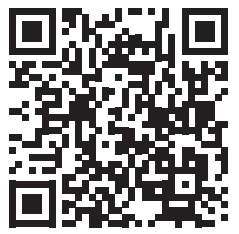
## 07 Foreign currency

The trustees of the SMSF need to consider the risks associated with fluctuations in foreign currency and exchange rates. The value of all superannuation assets are required to be translated into Australian dollars for the SMSF's financial statements. The variations in exchange rates may impact on superannuation calculations such as member balances and minimum pension levels.

## 08 Sovereign risk

Sovereign risk is the risk of a foreign government changing the rules relating to taxation or foreign investors. It could result in the SMSF no longer being able to own property in that country. In some cases it may mean that the foreign government resumes domestic assets owned by foreigners without compensation.

While it's possible for an SMSF to purchase property overseas, trustees need to be well aware of the additional risks and compliance requirements applying compared to buying the property outside of super.



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