



Local and Overseas Investments for SMSFs and NALI

But first....what you need to know

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This session will cover

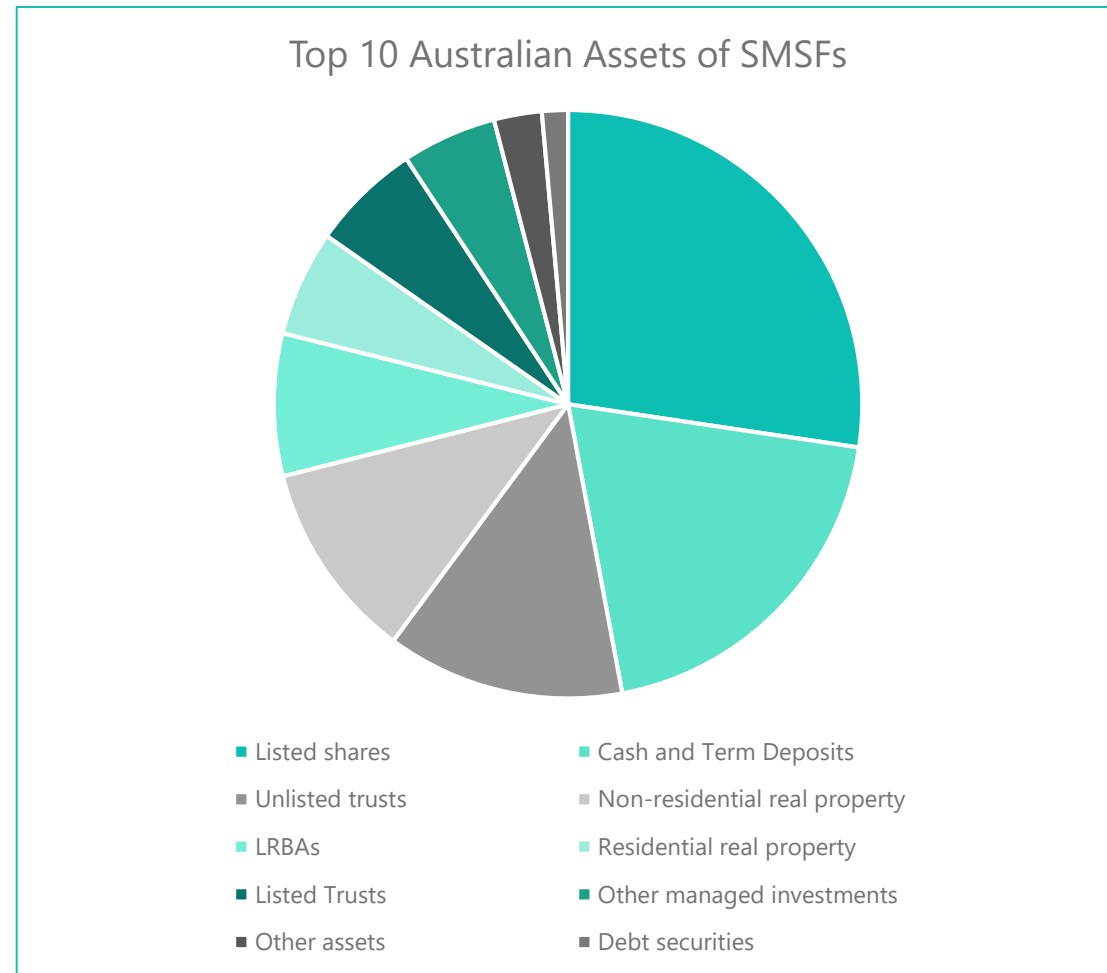
- Local investments
- Company shares
- Managed funds
- Unit trusts
- Real estate
- Artworks and collectibles
- Non-arm's length income and expenses

Overseas investing

- Investing in various countries
- Shares
- Real estate
- Other arrangements
- Audit and compliance issues

Local investments

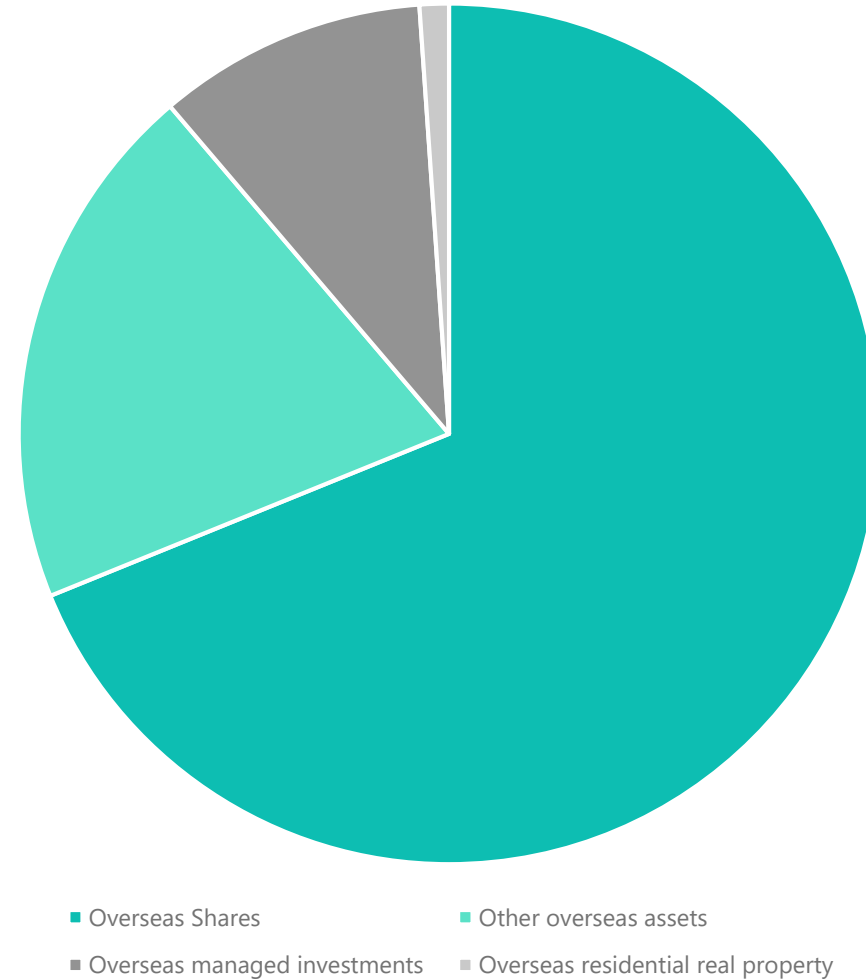
1. Listed shares \$207,443 bn
2. Cash and Term Deposits \$149,390 bn
3. Unlisted trusts \$99,214 bn
4. Non-residential real property \$82,931 bn
5. LRBAs \$59,366 bn
6. Residential real property \$44,076 bn
7. Listed Trusts \$45,749 bn
8. Other managed investments \$39,539 bn
9. Other assets \$19,954 bn
10. Debt securities \$10,811 bn



Overseas Investments

1. Overseas Shares \$9,132
2. Other overseas assets \$2,641
3. Overseas managed investments \$1,343
4. Overseas residential real property \$146

Top overseas investments by SMSFs





Super
Concepts

Local Investments for SMSFs

Shares in Listed Companies

- Online brokers
- Full service brokers
- IPOs
- Benefits
 - Easy to transact on and off market
 - Relatively inexpensive to transact
 - Valuations readily accessible
 - No currency fluctuations
 - Capital gains benefits
 - No double tax issues
 - Franking credits
 - Can be acquired (purchased or transferred in specie) from related parties by the fund
 - Some companies have significant overseas investments

Private Companies and unlisted companies

Must be transacted off market

Benefits

- Relatively inexpensive to transact
- No currency fluctuations
- Capital gains benefits
- No double tax issues
- Franking credits

Limitations

- Restrictions if acquired by the fund from related parties
- Possible difficulties in buying and selling
- Valuation of shares may not be easy to obtain
- May need consent from shareholders to transact
- Employee share schemes may create issues for some employees

Private trusts

Must be transacted off market

Benefits

- Relatively inexpensive to transact
- No currency fluctuations
- Capital gains benefits
- No double tax issues
- Franking credits

Limitations

- Restrictions if acquired by the fund from related parties
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Issues with private companies and trusts

Example 1

Darren holds shares in an unlisted public company. As the company is not listed the shares cannot be sold or transferred to his SMSF

Example 2

Max's SMSF owns 20% of the shares in a private company and Max owns 20% of the shares in his own name. Two unrelated parties who each hold 30% of the shares in the company.

Example 3

Tina's SMSF owns 10% her family own 30% of the units in a unit trust. Unrelated parties own the other 60% of the units. Tina's family wish to purchase another 20% of the units in the unit trust.

Lending by the SMSF

Loans to related parties

- Members and relatives
- Other related parties

Loans to unrelated 3rd parties

The loan arrangement

- Documentation
- Interest rate
- Term
- Potential for non-arm's length income issues
- Recoverability of the loan

Property and SMSFs



Issues with property in SMSFs

- Types of property
- What types of property can be acquired and how
- What is BRP v Residential property
- Direct ownership of property
- Indirect ownership of property
- Gearing and no gearing
- Vacant Land
- Investment Strategy
- Overseas property



Ownership of property by an SMSF?

- Directly
- Jointly
- As tenants in common
- As units in a unit trust
- In partnership
- Syndicate
- Shares in a company
- As a limited recourse borrowing arrangement



In House Assets

- Major exceptions to in-house asset rules are:
 - Widely held unit trusts
 - Property owned as tenants in common with a related party (unless leased to a related party)
 - Business real property leased to a related party
 - Assets specified in regulations not to be in-house assets
 - Reg 13.22C trusts & companies, LRBA arrangements
 - Unrelated (uncontrolled) geared unit trusts and companies

Structure	In house asset	Gearing	Construction	Business	Acquire from related parties
Outright ownership	No	No	Yes	No	N/A
Tenants in common	No	No	Yes	No	BRP only
Related trust – not 13.22C	Yes	Yes	Yes	Yes	Within 5% limit
Related trust – 13.22C	No	No	Yes	No	Yes
Non-related trust	No	Yes	Yes	Yes	widely-held trusts
LRBA	No	Yes	No	No	N/A

Artworks and collectibles

- Storage
- Valuation
- Acquisition from related parties
- Proof of ownership (bullion)



Super
Concepts

Non-Arm's Length Income & Expenses

What is treated as Non-arm's length income?

- All income from discretionary trusts
- Private company dividends unless satisfy requirements in s.295-550(3)
- A scheme where parties are not at arm's length but the income is greater than arm's length
- Income from fixed trusts where parties are not at arm's length and income is > arm's length
- Cannot claim NALI as exempt pension income.

Company dividends

- Value of shares in the company,
- Cost of the shares on which the dividends were paid,
- The rate of the dividend,
- Whether the dividend ranked equally with other dividends,
- Other relevant considerations

Trust distributions

NALI includes:

- income derived other than due to holding a fixed entitlement,
- Income derived under a non-arm's length dealing where there is a fixed entitlement.

The impact of NALI

- Complying funds enjoy concessional rates of tax
- NALI taxed at 45%
- Top marginal rate applies even if ECPI is 100%
- May be reduced by deductions attributable to the NALI
- NALI can be ordinary/statutory income
- Must be identified as a specific amount.

Example - The Good Life Super Fund

- Good Life Super Fund owns commercial property which is leased to Better Than Gold Financial Services
- The market rent for the property has been determined as \$60,000 per annum
- However, the amount of rent actually paid is \$80,000
- The fund also received income from other arm's length investments of \$30,000 and concessional contributions of \$50,000.

NALI changes

Income exceeds
amount expected
from an arm's length
dealing

or

Expenses less than
amount expected
from an arm's length
dealing

= NALI

PCG 2020/5 and LCR 2021/2

Recent publication of LCR 2021/2 (previously Draft LCR 2018/D10) for non-arm's length income – expenditure incurred under a non-arm's length arrangement.

- Sufficient nexus between expenditure and income.
- A sufficient nexus may exist between the expenditure and all fund income.
- ATO will not allocate compliance resources for the 2018/19, 2019/20 and 2020/21 financial years for expenditure of a general nature that has a nexus to ordinary or statutory income.

PCG 2020/5

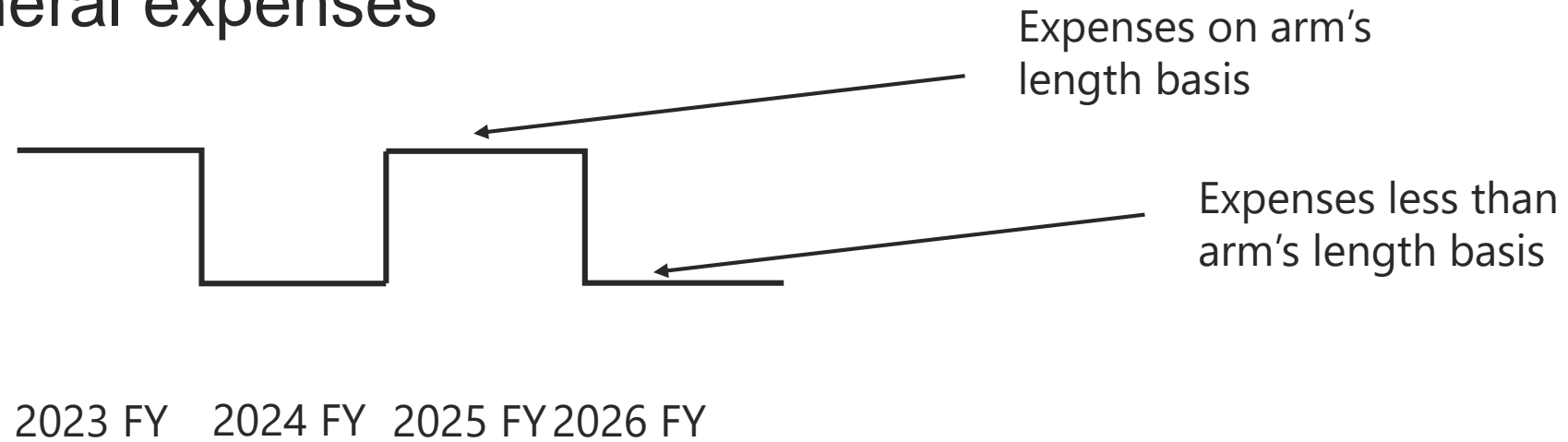
- Examples:
 - related party accounting services which are used but not charged to the fund.
- It does not apply where the fund incurred non-arm's length expenditure which relates specifically to particular ordinary or statutory income.
 - related party real estate agent foregoing commission for a property purchase by the fund

LCR 2021/2

- Sufficient nexus between NALE and relevant income of the SMSF.
- Applies to ordinary or statutory income derived by the fund from the relevant asset.
- Where general expenses are lower than on arm's length all income may be treated as NALI

LCR 2021/2

General expenses

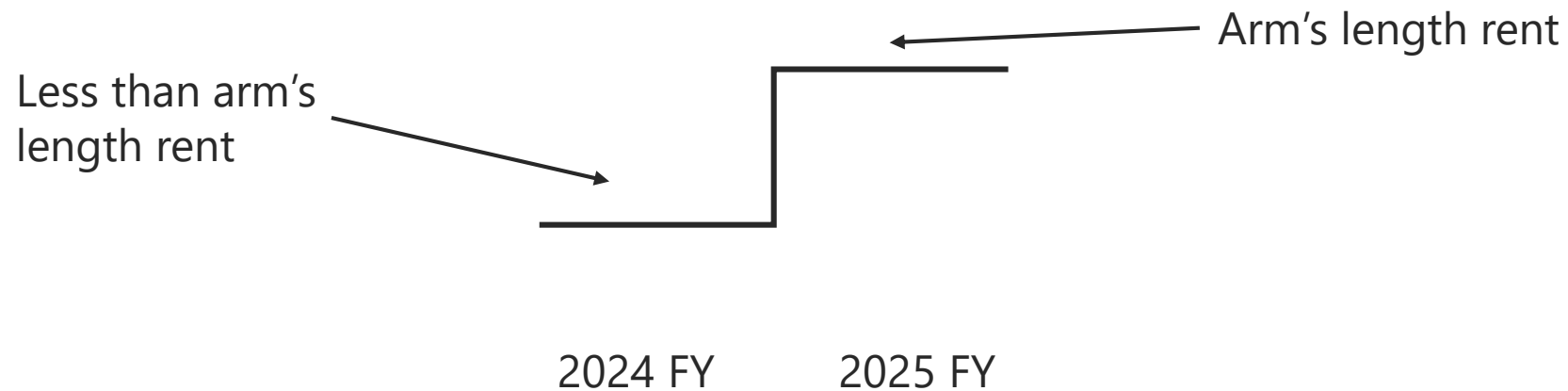


Impact on fund income

Impact on capital gains

Capital gains and NALE

- Property acquired on an arm's length basis
- No rent paid or less than market rent charged on property
- Rent adjusted to market rent



Work undertaken by trustee

- Substantial work in renovating a property
- Insubstantial work to undertake minor repairs to property
- Degree of work is important
- Is it work that a trustee would ordinarily undertake
- If trustee is not qualified and can't be paid under section 17B of SIS will this be an issue with NALE?

COVID issues and NALI

Deferrals, waivers and reductions in income or expenses need to be documented and justified



Super
Concepts

Overseas Investments for SMSFs

Overseas investments

- Acquisition issues
- Valuation
- Entity required for purchase
- Lease of property
- Travel expenses to visit
- Other costs
- Stability of economy
- Knowledge of market
- Audit issues



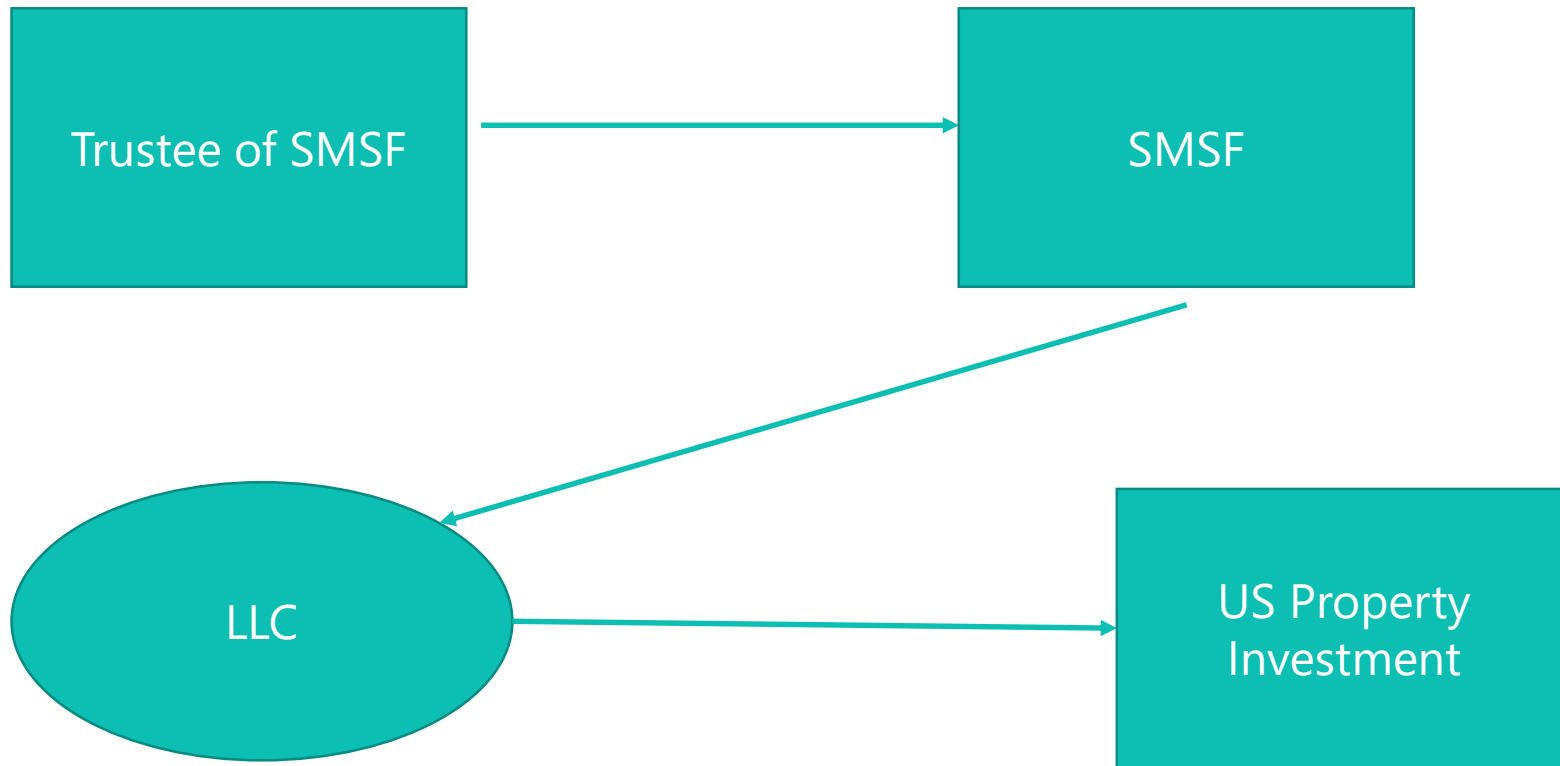
Overseas shares

- Purchase can be arranged with an most Australian resident brokers
- Shares may be held by broking house as custodian
- May need to open foreign currency bank account
- Currency fluctuations

Overseas property

- USA
- Finland
- Italy
- Great Britain
- Bosnia and Herzegovina

US property



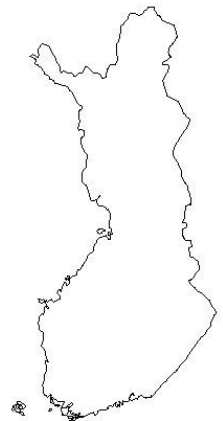
US Property

- Property is generally cheaper than in Australia with higher rental yields
- Set up Limited Liability Company (LLC)
- Set up bank account in the US
- Property manager receives rent for the property
- State taxes – flow through vehicle for tax purposes
- LLC taxes levied at State level
- US taxes can be claimed back in Australia – issues with the SMSF



Property in Finland

- Majority of property is held in 'public hands' rather than privately (about 30%)
- Type of property depends on whether it is new or previously occupied
- Non-resident needs to obtain permit to buy a secondary residential property in Finland. Restrictions apply to foreigners acquiring property in some areas.
- Purchaser must examine certificate of title



Property in Finland

- Negotiation commences with owner with a preliminary agreement binding on both parties.
- Notary will arrange transfer of the property to confirm the identity of the buyer and seller or representatives.
- After confirmation of title the claim is submitted to the district court where the property is located. Claim for the title must be made within 6 months within completion of the deed of sale. Once the title is released the transaction has come to an end.

Property in Finland

Taxes

Real property transfer tax – 4% of property value

Registration fees – notarisation of the deed registration fee at district court

Real Estate Agent's Fee – 3-4%, plus 24% VAT for single detached houses and 5% plus 24% VAT for apartments

Legal Fees – fixed hourly fee

Property in Italy



- No restrictions on foreign ownership in Italy
- Money remitted to Italy for property purchase should be documented to ensure proceeds on sale of the property can be repatriated
- Hire real estate attorney to protect the buyers interests
- Transfer biased against the buyer
- Pre contractual liability
- Can be reimbursed for expenses if seller is unfair
- On purchase buyer pays 1% of purchase cost which is binding on them but not the seller as an act of good faith. Time limit to transact is recommended on the contract

Property in Italy

- If seller accepts contract (compromesso) is binding on both parties
- Contract to cover price, deposit, completion date, description of property, water rights, access etc.
- Once contract is signed then deposit is increased to 20% as agreed. If the contract does not go ahead then the deposit is forfeited. If seller does not go ahead the cost of forfeited for double the deposit.
- The notary acts for both parties. Title search, identification of purchaser.
- Documents submitted to tax authorities and Land Registry and must be paid to recognise ownership. Authorities to be notified of the change of ownership

Property in Great Britain

- Similar to Australia
- Search and offer to purchase
- Offer not binding except in Scotland where it is binding on the buyer and seller
- Survey – building survey,
- Conveyance of property
- Arranged by solicitor or conveyancer. Fees are negotiable. Exchange of notes between the seller's solicitor and buyer's solicitor. Contract drawn up by seller's solicitor
- Searches on property
- Transfer contract documenting the transfer of title with Land Registry office
- Stamp duty and land registration fee is required to be paid



Property in Bosnia and Herzegovina

Property can be owned by foreigners including residential and commercial property.

Must be purchased by the use of a Limited Liability Company

The capital of the company must be set up with capital of less than €1,000.

Property must be purchased via a company which has the sole activity as dealing in real estate.



Audit issues for overseas investments

- Validation of ownership
- Investment structures in overseas countries
- Market values of assets
- Currency issues and fluctuations
- Leasing and rent collection in overseas countries
- Taxation issues with double tax agreements and recognition of the SMSF as a valid entity



Questions?

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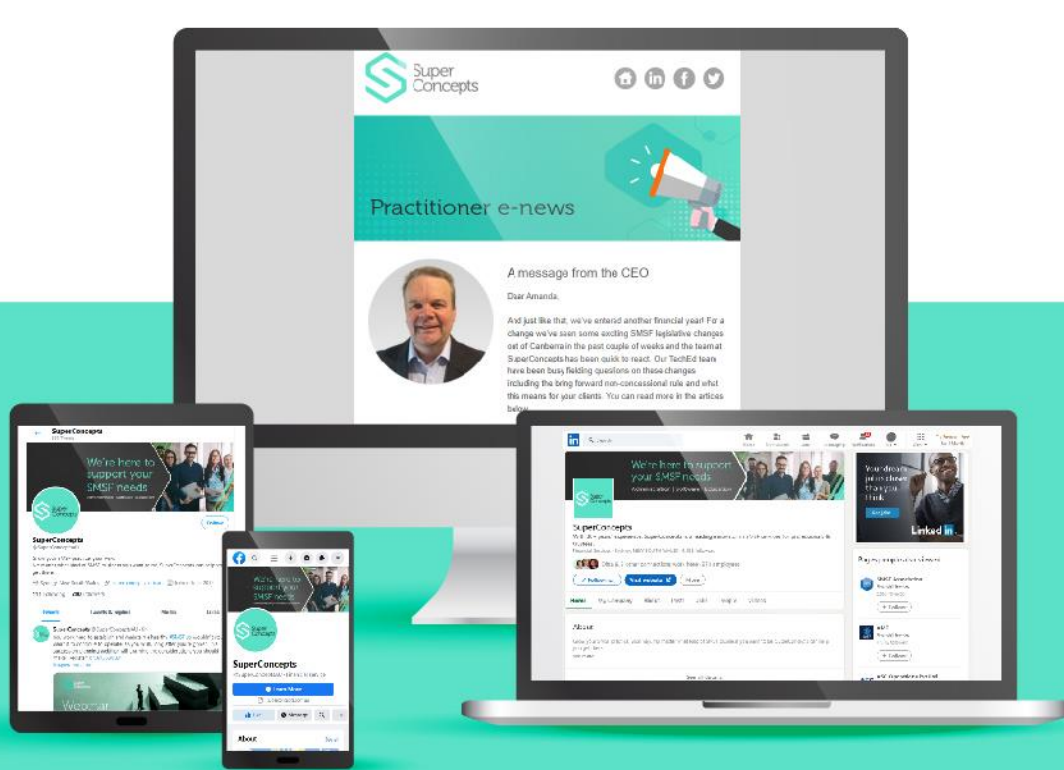
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