Super Concepts

FACT SHEET

Can an SMSF invest in an overseas property?

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A self-managed superannuation fund (SMSF) can purchase a residential or commercial property, including a property located overseas.

Additional compliance rules apply compared to when buying property outside of super and there are also restrictions on who the property can be purchased from and who it can be leased to. For example, residential property cannot be purchased from, or leased to, a related party of the fund — such as a family member.

Just like with all other fund investments, the transaction needs to be allowed under the trust deed and investment strategy. The investment must also be in line with the sole purpose test, with the investment return through rental income and capital growth, being the sole focus for making the investment.

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

01 | Documentation

Where documents relating to the property, such as the contract of sale and lease agreement are not provided in English, they would have to be translated which could result in additional fees.

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, this 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.

03 | No charge over the property

Generally, SMSF assets are not allowed to have a charge against them. A charge may be a bank loan, or the asset may be security for another loan. With property, the auditor of the SMSF will normally perform a title search at the end of each year to confirm who the legal owner is and whether there are charges held over the property, or not. It can sometimes be difficult to obtain documents confirming no charge is in place over a property in countries where there is no Australian-style register of titles.

04 | Payment of taxes

The investment entity may need to be a taxpayer in the country in which the property is purchased. This may mean local tax returns need to be lodged and tax may be payable in the country in which the property is located. In this case, specialist advice should be sought, probably from an expert in the country where the asset is located.

05 | Different laws and customs

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 the relevant property expenses. The SMSF may need to establish a foreign currency account to manage income and expenses in relation to 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.

07 | Foreign currency

The trustees of the SMSF need to consider the risks associated with fluctuations in foreign currency and exchange rates. All superannuation assets need to be converted into Australian dollars for financial statements, so they will be affected by movements in the exchange rate. These variations could in turn affect other superannuation calculations such as member balances and minimum pension levels.

08 | Sovereign risk

A foreign government could change the rules relating to taxation or foreign investment. This could result in the SMSF no longer being able to own property in that country. There may even be the possibility of a foreign government resuming ownership of domestic assets from foreigners without compensation.

While it's possible for an SMSF to purchase property overseas, trustees need to ensure they are aware of the additional compliance rules that apply compared to when buying property outside of super and also consider all practical implications of owning.

Further information

CALL
1300 023 170

EMAIL
enquiries@superconcepts.com.au

VISIT
superconcepts.com.au

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