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SOLUTION BRIEF

Property Investment Structures



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The most suitable vehicle for acquiring an investment property will depend on a number of tax and non-tax considerations, including how the investment is funded, the tax impacts of acquiring, holding and ultimately disposing of the investment, and how to protect the investment from potential unjust claims.

There are several ways to structure the ownership of an investment, including holding the investment personally, holding it in joint names, using a discretionary “family trust”, leveraged trust, company or superannuation fund. The following Solution Brief compares each of the above alternatives:

01

Individual names

Positive factors: It is possible to “negatively gear” the investment costs against other sources of personal income (i.e., wages and salary). The 50% CGT discount will be available for capital gains (provided the relevant conditions are met). Banks are relatively comfortable with lending to individuals.

Potentially negative factors: Personal marginal tax rates will apply to periodic income, without the ability to split the income with others, or accumulate at the flat corporate rate.

Capital preservation issues: Holding an asset in your own name exposes the investment to all the risks that you are exposed to personally, including potential liability in your work or profession, and other unforeseen events.

Overall ranking: Fair.

02

Joint tenancy

Positive factors: The ability to access “negative gearing”. The 50% CGT discount will be available on disposal of the asset (provided the relevant conditions are met). Bank funding is relatively straight forward.

Potentially negative factors: Personal marginal tax rates will apply to periodic income. However, this burden will be shared between the co-owners.

Capital preservation issues: Better capital preservation than in a single individual name, because half of the equity is held elsewhere. On death the interest will pass to the other joint tenant and is therefore better protected in the context of family inheritance claims.

Overall ranking: Good.

03

Tenants in common

Positive factors: Same as joint tenancy.

Potentially negative factors: Same as joint tenancy.

Capital preservation issues: Same as joint tenancy, other than the interest in the asset will pass into your Estate, to be dealt with under your Will. This can be positive if you wish to leave the asset in a testamentary trust for future generations.

Overall ranking: Good.

04

Private company

Positive factors: Tax on current income can initially be capped at 30% (however, the final rate is still the shareholder’s individual marginal rate). Bank funding is relatively straight forward but may require director guarantees.

Potentially negative factors: The 50% CGT discount is not available. Final tax on distributed income and gains is at full marginal rates.

Capital preservation issues: An interest in a company is an asset available to creditors. Better capital protection can be achieved by holding the shares through another entity, e.g., a discretionary trust.

Overall ranking: Poor.

05

Family discretionary trust

Positive factors: Income is subject to tax in the hands of recipient beneficiaries (which may include a company), at their relevant rate of tax. The 50% CGT discount is available if gains are distributed to individuals (provided the relevant conditions are met). Funding is relatively simple, subject to financier review of the trust deed and potential guarantees from controllers and beneficiaries.

Potentially negative factors: Negative gearing benefits against personal income are unavailable, as losses accrue to the trust, and cannot be distributed to beneficiaries. Higher level of administrative costs. Special Estate Planning is required to ensure that control of trust assets passes to the appropriate persons.

Capital preservation issues: No individual has a fixed interest in the trust assets, and therefore discretionary trusts provide good capital preservation benefits. It is important to properly structure the control of the trust to maximise and preserve capital protection benefit.

Overall ranking: Good.

06

Leveraged Trust

Positive factors: Income is subject to tax in the hands of recipient beneficiaries (which may include a company), at their relevant rate of tax. The 50% CGT discount is available on capital gains (provided the relevant conditions are met). Negative gearing benefits are potentially available.

Potentially negative factors: Obtaining a loan from a bank to fund the acquisition of units in a hybrid trust can take longer. Depending on the particular draft of the Deed, the Tax Office may take the view that deductions for interest are limited to the income earned.

Capital preservation issues: A Leveraged Trust provides good capital preservation benefits in respect of a level of capital appreciation associated with the underlying assets.

Overall ranking: Good.

07

Superannuation

Positive factors: Superannuation benefits from relatively low tax rates, ordinarily being 15% on income, 10% on long term capital gains, and 0% on income and gains when in pension phase. Debt funding of assets in super is now possible through our limited recourse borrowing structure.

Potentially negative factors: It is generally not possible to access accumulated income and gains until retirement.

Capital preservation issues: Reasonable contributions to a super fund are protected from claims made against a member, including bankruptcy proceedings.

Overall ranking: Excellent.



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What next?

As a general rule we find that a properly structured discretionary trust, or a complying superannuation fund, is often the best investment vehicle for our clients.

The acquisition of an investment through a superannuation fund may be appropriate when:

- +0|The asset can be funded through the accumulated savings in the fund; and
- +0|If the savings are insufficient, when the fund has the capacity to borrow, through an appropriately structured limited recourse borrowing arrangement.

If you would like to speak to someone about property investment structures, call us on 1300 654 590 or email us at wehelp@adlvlaw.com.au.

Further information can also be found on our website at www.adlvlaw.com.au.