

SELECTING THE RIGHT ENTITY TO PURCHASE PROPERTY

By Paul McHugh

“One of the most important decisions a Buyer will make when purchasing a property is to decide what entity to purchase the property in. Should it be in your own name, your spouse, a trust (Hybrid, Discretionary or Unit Trust), a company, your superannuation or a combination of the above. You should structure your purchase to provide maximum asset protection and leverage, minimise tax and achieve the best return on your investment.

Choosing the wrong entity can have significant adverse taxation implications or asset protection issues for you and you should discuss this aspect with your accountant and solicitor prior to signing on the dotted line.

Individual Names

If you will live in the property, it is usually best to purchase the property in the name of at least one of the people who will reside in the property. This is because you will be entitled to a home buyers stamp duty concession and will be exempt from paying Capital Gains Tax when you sell. This is not to say that a husband and wife should always purchase a property in their names jointly. If the husband is in a high financial risk occupation (such as a builder) then it might be prudent to purchase the property in the wife's sole name from an asset protection viewpoint.

If you are purchasing an investment property and there are no asset protection issues, then it may be prudent to purchase the property solely in the name of the main bread winner in the family if you wish to obtain negative gearing benefits. Of course if the property will be positively geared, then the non bread winner or another entity may be appropriate.

Companies and Trusts

There are a myriad of options when it comes to companies and trusts. The advantage of a company is the limited liability it offers its shareholders and, to some extent, its directors.

The most common form of trust is a discretionary family trust. This provides the property owner with the ability to distribute income amongst various beneficiaries (usually members of the same family and their associated entities) in its discretion to minimise tax and assist with asset protection strategies. The Trustee of a trust must be either a company or a natural person or persons, or a combination of the above. A company or trust may not be advisable if your intention is to negatively gear the property, unless the company or trust is earning other income to offset against the property losses.

Self Managed Superannuation Funds

Self Managed Superannuation Funds (SMSF) are an attractive investment vehicle because of the favourable taxation treatment of income generated within the fund. Until recently SMSF's could not borrow to purchase investment properties and therefore the fund needed significant funds to purchase the investment property with cash.

SMSF's can now borrow under what is called "Limited Recourse Borrowing". There are strict rules that apply when borrowing in Super and the amount a Bank will lend is usually less than the amount you could borrow when purchasing in another entity.

You can view more information on limited recourse borrowing by SMSF's on the Australian Taxation Office website by following this link:

<http://www.ato.gov.au/superfunds/content.asp?doc=/content/00132054.htm>

There are many factors which must be taken into account when deciding on the entity that will best suit your particular circumstances and any decision should only be made after seeking professional advice tailored to your specific needs.