TAX with Shukri Barbara

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A question of ownership

There are several options when it comes to structuring the ownership of your investment property, writes **Shukri Barbara**

DECISIONS ABOUT STRUCTURE SHOULD REMAIN IN YOUR OWN HANDS

With Australia's extensive, sometimes uncertain and ever-changing tax laws, determining and then adopting the appropriate ownership structure is complex for the uninitiated.

Many people meet and discuss with me the need for the appropriate structure when embarking on their journey to wealth creation using property as a class of asset.

On sourcing a property meeting your strategy's investment criteria, it is time to decide on ownership and structure.

The question to ask at this point is why structure beyond an individual name or names.

Some of the reasons why people use complex ownership structures include:

- To protect their assets – not from legitimate creditors as this illegal, but from frivolous claims
- To minimise tax – especially when they have positive rental income
- To hide wealth from the public eye – where privacy is a major concern
- To facilitate family succession – passing on assets to the next generation without having to lose cash to capital gains tax and stamp duty on transfer
- To plan for retirement

From simplest to most complex, the structures available for holding property are: in the person's own name, a partnership, a company or (the most complex), a trust.

The trust, with corporate trustee, is the structure that requires most explanation.

The advantages of a discretionary trust structure are primarily protection of assets for the family and the minimisation of tax where circumstances allow. This is because positive rental income or capital gains can be distributed among the beneficiaries with the lowest tax rates.

Assuming the advantages are attractive, the barrier preventing many from setting up a discretionary trust structure with their first purchase is the initial cost outlay to set up (from $4,000 to $6,000).

Along with the requirement to maintain records, do administration and ensure compliance, including lodging tax returns, a perception of complexity is created. This often leads to the conclusion that 'simple is best': 'I just want to get started' or 'at the seminar, it sounded simple'.

Other considerations include rental losses since rental losses from property held in a discretionary trust will not be available to be offset against other individual income.

The losses can be carried forward to future tax years, while accumulated losses will reduce a capital gain where it is generated on the sale of the property.

State land tax, payable on land owned by investors, is another consideration. Tax is calculated after the value of the land exceeds the tax-free threshold. Land owned in trusts has no threshold (except for Queensland).

Payment of land tax increases rental expenses and reduces the yield on a property. No matter how small the tax is, the cash can be better used to pay interest on a first property.

So, should you set up a trust or not? For people with a high risk profile, where the risk of being sued is high, then the answer is yes. For those with a low risk profile the answer is 'maybe'. ■

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