Which Ownership Structure is Ideal for Real Estate Investments?

By Ershad Ullah, August 17, 2023

Choosing the right property investment structure is a critical decision that can have a significant impact on your financial success as a real estate investor. There are several options available, including individual ownership, joint ownership, and various forms of business ownership, with each structure providing different benefits and drawbacks depending on your investor profile. As a property investor, it is important to know the best structure for your situation in order to maximize the value of your property acquisition.

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As rewarding as a property investment can be for your financial success, it is imperative to know and understand the most common investment schemes to structure your purchase before buying. Your choice of ownership structure will be influenced by your financial circumstances, risk appetite, and property portfolio objectives. A few essential factors to take into account when making your decision include safeguarding assets, tax consequences, and the expenses and intricacy of the structure. Some of the most frequently selected real estate investment structures include:

Individual Ownership

Joint Ownership

Discretionary Family Trusts
Unit Trusts
Companies
Self-Managed Super Fun ds

We'll dive deeper into the advantages and disadvantages of each structure so you can easily make the right choice for your investment.

INDIVIDUAL OWNERSHIP IN PROPERTY INVESTING – PROS & CONS

Individual ownership is the simplest and most straightforward form of property investment and is perfect for first-time investors looking to take advantage of negative gearing. You own the property in your own name and are solely responsible for any debts or liabilities associated with the investment. This structure offers maximum control and privacy, but also requires you to bear all the risks and costs of ownership.

Advantage	Disadvantages
Simplest structure, minimal compliance requirements	Limited asset protections during times of financial or legal troubles
Claim various rental income tax deductions such as interest on your loan, rental expenses & depreciation	Income generated will be taxed at marginal tax rates, which can be as high as 47% due to the Medicare Levy
No setup costs	Any change in ownership will trigger Stamp duty and Capital Gain Tax
Access to negative gearing if you purchase using a loan (deduct losses from other taxable income)	
Access to the CGT 50% discount if you hold the property for longer than 12 months	Cannot split Capital Gain to reduce tax

JOINT OWNERSHIP IN PROPERTY INVESTING – PROS & CONS

Joint ownership is another option, where two or more individuals own a property together. This can be useful if you want to share the costs and risks of property ownership with others (such as a spouse) and are looking to take advantage of negative gearing with minimal risks. There are several types of joint ownership, including tenancy in common and joint tenancy. It is important to carefully consider the implications of each type of joint ownership before making a decision.

Tenancy In Common – Establishes two co-owners without the right of ownership; in the event of your death, your estate would take control of your stake in the property. This model is suitable for business partnerships.

Joint Tenancy – Establishes a co-ownership situation where each party has equal ownership and in the event of a co-owner's death, their share passes to the surviving owner. This structure is ideal for married couples or domestic partners.

Advantage	Disadvantages
Simplest structure, minimal compliance requirements	Limited asset protections during times of financial or legal troubles, even if you're not at fault
Claim various rental income tax deductions such as interest on your loan, rental expenses & depreciation	Changes in ownership will trigger Stamp duty and Capital Gain Tax
No setup costs	Any change in ownership will trigger Stamp duty and Capital Gain Tax
Access to negative gearing if you purchase using a loan (deduct losses from other taxable income)	
Access to the CGT 50% discount if you hold the property for longer than 12 months	Any income and CGT generated follows the owner and is split according to your ownership stake
Split property ownership stake and generated rental income based on holding percentage. For example, you could hold 1% of the property and designate 99% to your non-risk spouse (professional investment advice required).	Any income and CGT generated follows the owner and is split according to your ownership stake

PROPERTY INVESTING WITHIN A DISCRETIONARY FAMILY TRUST – PROS & CONS

Property investing with a discretionary family trust involves placing property ownership within the trust structure, rather than in the name of the individual investor. The trust is typically managed by a trustee, who has discretion over the distribution of assets to the beneficiaries, as specified in the trust deed.

Trusts are ideal for high-income earners looking to reduce risk, optimize tax savings and safeguard their investment, as the property is held by the trust and is generally protected from creditors in the event of bankruptcy or financial difficulties.

Advantage	Disadvantages
Limited liability and increased asset protection as property is owned by the trust	Complexity and cost; setting up the trust requires annual financial compliance with detailed tax returns, financial statements, and compliance fees
Minimized tax obligations on any generated property income	Losses are trapped within the trust until they can be offset by profits. No tax advantage for properties that are negatively geared
A company can be designated as the trustee, providing even more security for property investors	Annual ASIC fee ever year
The trust can also be used for estate and succession planning, helping to minimize estate taxes, probate costs and secure generational wealth for your family	
Access to the CGT 50% discount if you hold the property for longer than 12 months	
Confidentiality; trusts can provide anonymity and privacy, as the identity of the beneficiaries and the details of trust assets are not publicly available	

PROPERTY INVESTING WITHIN A UNIT TRUST – PROS & CONS

Property investing within a unit trust involves investing through a trust that holds ownership of a specific property or property portfolio. The trust is managed by a trustee, who holds the property on behalf of the unit holders, who have a fixed interest in the trust assets. Unit trusts can be thought of as a collective investment vehicle, allowing investors to pool their money to purchase larger and potentially more lucrative property investments that they may not be able to afford individually.

The property is held and managed by the trustee, and the income and capital gains generated by the property are distributed to the holders in proportion to their holdings.

Advantage	Disadvantages
Allows for diversification of a property portfolio, as unit holders can spread their investment across multiple properties and partners.	Generated property income must be split according to each unitholder's ownership stake
Each unitholder has a fixed ownership stake that doesn't change	Asset protection is compromised due to the subscription of Unit holding.
Limited liability and increased asset protection as property is owned by the trust	Complexity and cost; setting up the trust requires annual financial compliance with detailed tax returns, financial statements, and compliance fees
Minimized tax obligations on individual unit holder if the unit holders borrow money to purchase units of the Trust	Losses are trapped within the trust until they can be offset by profits
A company can be designated as the trustee, providing even more security for property investors	Annual ASIC Fee
The trust can also be used for estate and succession planning, helping to minimize estate taxes, probate costs and secure generational wealth for your family.	
Access to the CGT 50% discount if you hold the property for longer than 12 months	To eligible Unit holders and beneficiary only

PROPERTY INVESTING USING A COMPANY – PROS & CONS

Property investing within a company structure involves owning real estate assets through a company, rather than in one's personal capacity. The company may be a public or private limited liability company or another type of corporate entity.

Using a company to execute property investments is ideal for high-net-worth individuals who want to minimize tax obligations and arm themselves with limited liability protection, as the company is considered a separate legal entity and the shareholders' personal assets are generally protected from the company's debts and liabilities.

Advantage	Disadvantages
Allows for investing with company tax rates (currently at 25%)	Unable to access the 50% CGT discount
Inherent limited liability protection as the company is considered a separate legal entity, thereby separating the shareholders' personal assets from the company's debts and liabilities	Inherent limited liability protection as the company is considered a separate legal entity, thereby separating the shareholders' personal assets from the company's debts and liabilities
Simplified ownership structure, reduced administrative costs, and a more streamlined approach to property management under one entity	Losses are trapped within the Company until they can be offset by profits
Taxes can be passed on to shareholders via franked dividends	No tax advantage for properties that are negatively geared
Generated income can be held through time for tax-advantageous payouts	

PROPERTY INVESTING USING A SELF-MANAGED SUPER FUND – PROS & CONS

Property investing with a self-managed super fund (SMSF) involves using a SMSF to purchase and hold real estate assets as part of the fund's investment portfolio.

An SMSF is a type of superannuation fund that allows individuals to take control of their retirement savings, including the investment of those savings in real estate.

Though investing through an SMSF requires one to wait until retirement to truly realize the benefit of the investment, it is ideal for investors that are planning ahead and don't need to sell or access income from the property.

Advantage	Disadvantages
All income is taxed at a cap rate of 15%	Your investment can't be truly accessed until you retire or reach the age of preservation
Eligible for capital gains discount of one-third if relevant assets had been owned for at least 12 months.	Personal use prior to retirement is forbidden and violates the investment parameters

Tax-free income if the property is purchased when the SMSF is still in the pension phase (when your balance is less than 1.6 million)	Subject to complex regulations and compliance requirements, and there are significant self-management on running an SMSF, including ongoing cost of audit, accounting, and legal fees
Secured retirement via capital growth	Investing in property through an SMSF can be more complex and time-consuming than other forms of property investment, and there is a higher degree of risk involved in managing the fund and its assets.

WHAT'S THE BEST PROPERTY INVESTMENT STRUCTURE?

Ultimately, the ideal structure for your property investment depends on your specific needs, objectives, and overall financial progress. Finding the right structure requires careful consideration and analysis of your personal circumstances. For instance, if you are a new property investor, individual or joint ownership might be the best route due to first-time investor tax advantages. If you are an established, high-net-worth individual, a trust or company structure might be ideal due to asset protection, diversification, and confidentiality benefits.

Fortunately, you can rely on the expertise of a financial advisor to assist you in determining the most suitable structure for your investment. They can provide tailored advice to help you reach your investment goals, maximize your purchase and ensure a successful future for your property investment.

Choosing the right property investment structure is a critical decision that can have a significant impact on your financial success as a real estate investor. There are several options available, including individual ownership, joint ownership, and various forms of business ownership, with each structure providing different benefits and drawbacks depending on your investor profile. As a property investor, it is important to know the best structure for your situation in order to maximize the value of your property acquisition.

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