



PROPERTY INVESTMENT AND UNIT TRUSTS

Wealth Creation, Tax Minimisation and Asset Protection should be paramount to your strategic thinking. The importance of the correct structure to hold your investment in, (be it property or any other) could mean the difference between paying and not paying hundreds of thousands of dollars in tax over the long term. It could also mean shielding your investment from creditors.

There are four Taxes that could deplete your nest egg of investments. They are: **Income Tax; Capital Gains Tax; Land Tax;** and **Stamp Duty**. Purchasing an Investment Property is completely different to buying a home to live in, which has no tax consequences.

On a daily basis, we see thousands of dollars lost by the incorrect structuring of property investments. A client often tells us that they have purchased a property only **after** they have exchanged Contracts. **It's too late to see your accountant after the contract has exchanged.** You need to get advice **before** the exchange of Contracts.

It's absolutely imperative that you see an Accountant who specialises in Property, such as Austax Accountants, to advise on the correct structure to minimise, if not eliminate, some or all of the above taxes. The meeting with an Accountant at Austax Accountants should be held **before** the Contract of Sale is exchanged but **after** the property has been selected and the Contract of Sale is at your solicitor's office.

Simply notify your solicitor that you will **let him know the name to put on the contract after you have consulted your property accountant.**

At AUCTION, when the hammer falls and a deposit is paid, you are required to exchange contracts immediately. You may not have had an opportunity to see your Accountant, so simply **put on the contract of sale "John Smith as Nominee"**. This allows you to change the name on the Contract at a later date. Please note if you simply put "John Smith" on the Contract you may be unable to change the name later.

THE PROCEDURE

You should only consult an Accountant at Austax Accountants **after** you have selected the property and the Contract of Sale is at your solicitor to attend to the conveyancing. Your solicitor is awaiting your instruction for the name to put on the Contract of Sale.

If you are at this stage than the following procedure should be followed:

1. You should now see an Accountant at Austax Accountants for a Financial Health check and an assessment of and decision on the most tax effective structure for your property investment. We will assess all 4 Taxes and determine how we can minimise their impact on your investments over the short- and long term.

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The various structures that you could use are;

- (a) Individual
- (b) Partnership- variable % ownership depending on circumstances
- (c) Discretionary Trust
- (d) Unit Trust
- (e) Company
- (f) Limited Partnership
- (g) Self Managed Superannuation Fund
- (h) A combination of the above

After a thorough examination of your individual situation, which includes a Financial Health check, Austax Accountants will determine which of the above structures should hold your property.

UNIT TRUST OR DISCRETIONARY TRUST

In NSW, we do not use a Discretionary Trust to hold properties because they do not qualify for a land tax threshold. Discretionary Trusts may be used in Queensland where there is a land tax threshold. Land Tax is a State tax and is assessed on a State by State basis.

The following procedure needs to be followed to establish a unit or discretionary trust:

1. Determine the name you would like to call your Trust (normally it's the Family name eg "Smith Unit Trust"):

Name of Trust _____

2. Decide on the Trustees. The Trustees are like the executor of an estate. They do not own the property but simply **hold it in trust** for someone else, in this case the "Smith Unit Trust". The Trustees (or executors) do all the work and own nothing.

Name of Trustee 1 _____ **Address** _____

Name of Trustee 2 _____ **Address** _____

3. Advise your solicitor to put the Trustees' Names on the Contract of Sale e.g. If the trustee is John and Mary Smith, on the Contract of Sale John and Mary Smith should be listed as **purchaser**.

NOTE: Do not put down "John and Mary Smith as Trustee of the Smith Unit Trust" on the Contract of Sale. We will attend to the Minute to establish that the property was purchased by the Trustees on behalf of the TRUST.

4. Determine who are the Beneficiaries or Unit holders. The Beneficiaries or Unit Holders are the owners of all the assets in the Trust. Your Accountant will help with this and in some instances, this decision can only be determined after the property has settled.

Name of Unit Holder 1 _____ **Number & Class of Units** _____

Name of Unit Holder 2 _____ **Number & Class of Units** _____

INDIVIDUAL OR PARTNERSHIP

Should we decide on an individual or partnership (and in what percentages) simply notify your solicitor at this point and advise him of the name to go on the Contract.

ANY OTHER STRUCTURE

If it is any other structure apart from an Individual or Partnership, a Property Specialist at Austax Accountants will attend to all the paperwork required to establish the structure. We will take over from here and manage the process for you. Our Property Specialist will attend to ordering the structures, handling any queries from you and finally sending the documents out to you for signature. We will also apply for Tax File Numbers, ABN (if applicable), GST (if applicable), paying all Stamp Duty on the documents (\$220 for Trust Deeds) and attend to the lodgement of all forms to the various institutions to avoid penalties.

COMPANY

If a Company is selected the following steps are required.

1. Determine whether you want a "off the shelf" name or your own name.
2. Advise Austax Accountants. We will require the following:
 - a. Name of the Company (if you decided on your own name)
 - b. Name and address of Directors and Secretaries
 - c. Date of birth, place of birth (city and country)
 - d. Place of Registered Address. Could be at our office (\$99 annual fee charged) or your home (needs to be open to the public in normal business hours).
3. Advise your solicitor of the name of the Company to put on the Contract of Sale. The Company may take a few weeks to finalise, however this will not stop your solicitor continuing with his job. Your solicitor simply needs the name to complete the Contract details. Austax Accountants will work on all the paperwork for the company behind the scenes.

2. BANK LOAN NAME

Your Accountant will advise you of whose name the loan should be in, **after** the Financial Health check is complete. This is determined on a case by case basis.

For example, if the trustees are "John and Mary Smith" but we want the units to be in John's name, then the loan has to be in John's name, i.e. John has borrowed the money to purchase units in the Unit Trust. The Unit Trust has used this money to buy the property. The landlord is the Unit Trust and the unit holder is John. The rent will flow to the "Smith Unit Trust" and after paying for expenses such as water & council rates the net rent is distributed to John and in John's Tax Return we claim the interest to the bank (i.e. negative gearing).

Name on the Bank Loan _____

3. BANK ACCOUNT

Once you receive the completed documents from Austax Accountants, you should take your Trust Deed to the Bank and open a cheque account in the name of **John & Mary Smith as Trustees for the Smith Unit Trust**. If possible, pay the vendor (seller of property) from this account. You may need to draw down on the bank loan and deposit it into this account prior to paying the vendor. We need a paper trail to prove that the "Smith Unit Trust" paid for the property. It may be sufficient for the settlement funds to come from the **Solicitor's Trust Account** as long as he shows in his register that it was paid on behalf of the "Smith Unit Trust".

Have your real estate agent to automatically credit this account with the rent after expenses have been paid. Arrange for the repayments of the bank loan account to be electronically taken from this account. Any shortfall in your interest payments on your **Loan Account** should be paid from the Unit Holder's personal bank account.

4. ALL EXPENSES RELATING TO THE RENTAL PROPERTY

Have your real estate agent notify Councils, water board etc to have all invoices sent to the real estate agent for payment. Try not to pay anything yourself. The reason for this is simply at the end of the year all expenses are summarised on one sheet of paper, which saves a lot of time in preparing your tax return.

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5. **APPLYING FOR 221D OR 1515 CERTIFICATE**

Whether you apply for the tax reduction during the year (apply for the Certificate) or at the end of the year is a personal choice. Some people require it during the year to assist with the repayments to the bank. Some people like to get the refund at the end of the year because it's a "forced way of saving". This becomes their "safety net". What you decide on is a personal choice.

If you apply for a 221 D or 1515 Certificate, application has to be done each year. We recommend that we do the first one for you and thereafter, you can apply for them yourself based on what was done in the first year if you so desire.

6. **QUANTITY SURVEYOR'S CERTIFICATE**

You should contact a Quantity Surveyor to prepare a Report on Depreciation of the building and fixtures and fittings. We have names of Quantity Surveyors should you require one.

7. **WHAT DO YOU GIVE YOUR ACCOUNTANT AT TAX TIME?**

Your investment property should be a passive investment that should make money for you without being a burden. If you get your real estate agent to pay for everything, it will minimise your workload. If you have to pay for something yourself, please keep a list on a sheet of paper. We **do not need** the receipts.

1. First Year of Purchase. You need to bring with you the following:

- a. Quantity Surveyors Certificate
- b. Solicitors settlement sheet
- c. Real Estate rental property summary
- d. Bank statements for the Loan.
- e. Summarise extra payments made that were excluded from (c) above on a single sheet of paper. We do not need to sight receipts. You need to retain them in case of an audit from the Tax department.

2. Second and Subsequent Years. All the above except (a) and (b).

TEAM AT AUSTAX ACCOUNTANTS

To ensure that you receive first class service at a reasonable cost we have a wide range of areas of expertise within the office. We understand that no single person can know everything but that collectively we can know a lot. The staff of Austax Accountants are highly trained professionals and bring their training and experience to assist each of our clients in the running of their affairs.

***WELCOME TO AUSTAX ACCOUNTANTS
You Will Have A Wonderful Experience***