



PLAIN ENGLISH GUIDE

STAMP DUTY EXEMPTION AND TRANSFER OF THE FAMILY FARM

On 23 November 1994 **THE STAMP DUTIES ACT 1920** was amended to provide that in certain circumstances intergenerational transfers are exempt from stamp duty if the transfer was executed on or after 14 September 1994.

Why the stamp duty exemption is important to farmers and their advisers?

The stamp duty exemption will:

- Allow farmers to transfer all or part of their farmlands to the next generation free of stamp duty with the hope this will encourage younger people to become involved in farming.
- The transfer of farmlands to the next generation will encourage farmers to plan for their retirement. Too often in the past the farmers have delayed transferring farmlands due to the stamp duty costs and often farmers have reached retirement age and find themselves asset rich, income poor.
- The stamp duty exemption will allow farming families to restructure. For example, just prior to the abolition of death duties in 1981 many farmers' advisors arranged for their farmlands to be owned by companies or family trusts. Since the abolition of death duties and the introduction of capital gains tax there are certain disadvantages of holding farmlands in a company or family trust.

Guidelines

- Initially the guidelines provided for transfers between:
 - grandparents to grandchildren
 - Parents to children
 - Siblings who inherited the property under a Will
 - Trusts and proprietary limited companies where the transferee had to satisfy very rigid guidelines.

The guidelines in relation to trusts and companies were very inflexible. The guidelines were changed following submissions and it is interesting to note that the wording adopted in the new guidelines was identical to a submission by Peter Griffin, and a Consultant to our firm. The guidelines basically provide that the transferor must hold a 25 per cent interest in the capital of the trust fund or be entitled to 25 per cent of the shares or a lower percentage considered just and reasonable by the Commissioner of State Revenue.

The guidelines were extended to include transfers from aunts and uncles to nieces and nephews.

On 7 May 1997 transfers between all siblings were allowed providing the transfer complied with the balance of the guidelines.

The new guidelines clearly set out the transfers between siblings whether or not they inherited the lands under a will are eligible subject to the other criteria.

1. The property must be used for primary production by the older generation or the trust or company of which the older generation and younger generation are involved.



2. The property must continue to be used for primary production. A question arises on whether an individual must be operating the farmlands after the transfer rather than a trust or company.
3. The guidelines do not apply for lands that are currently leased to someone who is not a descendant. Therefore any leases would need to be terminated at a time prior to the transfer taking place.
4. The exemption extends to cover property that is integral to primary production such as water licences.
5. The transferor or lessor may be a natural person, a discretionary trust, a trust with named beneficiaries, a proprietary limited company or a private unit trust.
6. The transferee must be a descendant of:
 - A natural person who is a transferor or lessor,
 - A beneficiary of a trust for a named person,
 - A person who holds a 25 per cent interest in the capital of a trust fund or a lower percentage considered just and reasonable by the Commissioner for Stamp Duties,
 - A shareholder(s) of a proprietary company,
 - i. who hold the shares beneficially (not in trust),
 - ii. Who are entitled to vote at meetings,
 - iii. must be entitled to 25 per cent or such lower percentage of the assets on the winding up of the company considered just and reasonable by the Commissioner for Stamp Duties.
 - The unit holders of a unit trust. The 25 per cent rule referred to above applies.
7. Descendant includes child, stepchild, grandchild, sibling, niece or nephew, or the spouse of any of them.
8. The transferee must take the legal and beneficial ownership of the property. The transfer cannot be to a trustee.
9. A lease of primary production property to a person defined as a descendant is exempt from duty from 7 May 1997

Capital Gains Tax Issues

Date of acquisition

If there has been a death after September 1985 then the capital gains tax clock could have started.

Valuation v Market Appraisal

The options available to persons transferring include an estimate of value, a market appraisal by an agent, or a valuation by a registered valuer.

The parties should weigh up the advantages and disadvantages of the above in consultation and their accountant.

Market Appraisal

The advantages of a market appraisal are that it is cost effective and a valuation can be obtained at a late date in hindsight by a registered valuer.

Consequently, if values change dramatically, you are not locked into a registered valuation.



The disadvantages of a market appraisal are that it does not provide prima facie evidence from the Commissioner for Taxation of market value, and it is often costly and difficult to get a valuation in hindsight

Valuation by a Registered Valuer

The advantages of a valuation include prima facie evidence of market value for taxation purposes and certainty.

The disadvantages of a valuation include the cost and being locked into a fixed valuation. It can be hard to get a registered valuer to change his opinion.

Other Issues

- If disposal has taken place post-September 1985, check cost-base with an accountant to see whether the transfer could give rise to capital gains tax.
- Arrange for pre-capital gains tax lands to be valued as high as possible.
- Value the principal place of residence as low as possible.
- Weigh up the advantages and disadvantages of transferring to individual as compared to a trust or company. In doing so, you should consider;
 - i. The stamp duty exemption does not apply in relation to a transfer to a trust or a company;
 - ii. The capital gains tax problems concerning companies;
 - iii. Tax implications in relation to the transfer of plant and livestock.

Consider whether the trading entity operation the farm should be restructured.