THE LAW SOCIETY
OF NEW SOUTH WALES

FACTSHEET
TAXATION ISSUES - INCOME TAX

Balancing Adjustments (Recouped Depreciation)

Apportionment of Price

The vendor's depreciation schedule should be checked prior to exchange. The parties and their professional advisers should discuss the apportionment of purchase price between land, improvements, crops and any livestock prior to exchange of contracts. The contract should document that agreed apportionment.

Primary Production

Numerous income tax concessions are available to a primary producer. These include:

- Annual deprecation for telephone lines[1]
- Accelerated write-offs for plants and grapevines[2]
- Write off of expenses on water facilities over 3 years[3]
- Deducibility of landcare expenses[4]
- Deductions for timber depletion[5]
- Tax deferrals for double wool clips[6]
- Spreading of profits on forced disposals of livestock[7]
- Income averaging[8]
- Income equalisation under farm management deposit schemes[9]

Careful regard must be had to the definition of what may constitute primary production and, as with all tax planning, appropriate advice should be obtained before activities are commenced.

Capital Gains Tax

Planning

Practitioners should plan now to minimise CGT liability in the future. Consider:

- What entity should be used in the purchase;
- What value should be placed on a principal place of residence;
- Cost base; and
- How apportioning of price between improvements, land and water entitlements can impact on CGT.

Sale of Farmlands or Small Business Assets as at 1 July 2009[10]

There continues to be many changes to the law in this area, which have resulted in more changes to the CGT status of small business assets on sale, including farmland. It is therefore worthwhile considering all the options and getting advice in this very complex area before making any decision.

Some of the key elements that have to be satisfied to qualify for the Small Business Rollover concessions include:

- The farmer or any affiliates must have assets less than $6 million. The assets do not include the principal place of residence or superannuation. Specialist advice needs to be obtained to determine what an affiliate is.
- Some debts may be taken into account when considering whether the assets exceed or fall below the $6 million threshold.
- Where assets of a farmer and/or affiliates is greater than $6 million, a new test has been introduced to provide that where a business has a turnover of less than $2 million, small business concessions may be available.[11]

If the farmer satisfies the CGT small business test, the following small business concessions and discounts may be available:

- A 50 per cent discount of any capital gain on sale of any asset providing it has been held for 12 months.
- Small businesses selling active assets may be entitled to a further 50 per cent active asset discount[12] (and so leaving a taxable gain of 25 per cent of the total capital gain). If the owner is involved in the farming business or actively involved in a share farming arrangement, the farm will be classed as an active asset. A property leased for a long period, can lead to the seller being disqualified from CGT Small Business Rollover concessions. Advice should be obtained as to how to satisfy this criteria, but remember that if the owner was actively involved in farming the property for the lesser of 7.5 years, or one half of the period of time, the person was the owner of the property.[13]
- Your client could then take advantage of the business rollover concession, the retirement concession or the 15 year concession. Depending on age and circumstances, the 25 per cent gain can be rolled over into another active asset or paid into superannuation and for people aged over 55 years there are certain other concessions.[14]
- Where a company or trust disposes of an asset, an individual seeking to qualify for concessions must satisfy the requirement of holding 20 per cent of the control of a company.[15]

The CGT Small Business Rollover concessions are very complex and these comments are designed to highlight certain issues that need to be considered. It is not meant to be a detailed summary.

Duty

The value of the growing crop can be exempt from duty (formerly known as stamp duty). For income tax purposes, the cost of the crop will be a tax deduction for the purchaser and the proceeds of the crop will be taxable income for the vendor. For example, if the value of the property was $400,000.00 and the growing crop was valued at $50,000.00 then duty would be payable on $350,000.00.

A very limited exemption from duty may be available for the purchase of a new home. This is an area where government policy is very fluid and close attention should be given to current concessions as well as eligibility dates and criteria.[16]

Practitioners should be made aware that there is no duty on farming intergenerational transfers. This means that, provided the property has been used for farming and is to be transferred to a sibling or descendant (who is a natural person) and the property will continue to be used for farming, the transfer will be exempt from duty. Practitioners should check the ruling in relation to a transfer from a company/trust to a natural person who is a descendant, which may be exempt from duty. This is an enormous boon for farmers and an avenue for succession planning.

Practitioners should be aware of the aggregation rules,[18] which provide that if there is the same vendor or related vendors, and the same purchaser or related purchasers, then those transactions can be treated as one transaction, if they take place within the same 12 month period.

If a company is involved in land holdings and shares are to be transferred within that company, duty at conveyance rates may apply in some cases.[19]

GST

An exemption from GST is available in some cases where farm land is being transferred.[20] The other assets of the business may also in some cases be sold without attracting GST.[21]

Land Tax

Most primary production land is exempt from land tax.[22]

Rates and charges

Other than in the unincorporated area, local Councils are entitled to levy rates and charges under the *Local Government Act 1993*.[23] In most cases rural land can be appropriately classified as farmland by the Council so as to attract a lower level of rating.[24] Where the land also falls within an irrigation scheme or the area of a water supply authority (e.g. Essential Water in the Broken Hill region), rates and charges can also apply.

In addition, rural land involving Crown interests will be liable to pay various rentals.[25] In the Western Division, rural land is also liable to Wild Dog Rates.[26]

Rural lands are also liable to Local Land Service rates and charges.[27]

Other Taxes

Each of the following taxes are no longer operating in Australia, or NSW as the case may be:

- Death duties
- Probate duties
- Gift tax
- Lease duty
- Vendor duty

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Endnotes

1. Income Tax Assessment Act 1997 (Cth), ss 40-645 and 40-650.
2. Income Tax Assessment Act 1997 (Cth), ss 40-515 - 40-575.
3. Income Tax Assessment Act 1997 (Cth), ss 40-515 - 40-575.
4. Income Tax Assessment Act 1997 (Cth), ss 40-630 – 40-675.
5. Income Tax Assessment Act 1997 (Cth), s 70 - 120.
6. Income Tax Assessment Act 1997 (Cth), s 385 - 135.
7. Income Tax Assessment Act 1997 (Cth), ss 385-90 – 385-125.
8. Income Tax Assessment Act 1997 (Cth), ss 392-1 – 392-95.
9. Income Tax Assessment Act 1997 (Cth), Div 393.
10. Income Tax Assessment Act 1997 (Cth), Div 152.
11. Income Tax Assessment Act 1997 (Cth), s 152-15.
12. Income Tax Assessment Act 1997 (Cth), subdiv 152-C.
13. Income Tax Assessment Act 1997 (Cth), s 152-35.
14. Income Tax Assessment Act 1997 (Cth), subdiv 152-D.
15. Income Tax Assessment Act 1997 (Cth), s 152-50.
16. Duties Act 1997 (NSW), Part 8, Div 1.
17. Duties Act 1997 (NSW),s 274.
18. Duties Act 1997 (NSW), s 25.
19. Duties Act 1997 (NSW), Chapter 4, Part 2.
20. A New Taxation System (Goods and Services Tax) Act 1999 (Cth), ss 38-475 – 38-480.
21. A New Taxation System (Goods and Services Tax) Act 1999 (Cth), s 38-325.
22. Land Tax Management Act 1956 (NSW), s 10AA.
23. Local Government Act 1993 (NSW), Chapter 15.
24. Local Government Act 1993 (NSW), s 515.
25. Western Lands Act 1901 (NSW), s 20; Crown Lands Act 1989 (NSW), s 141A; Crown Lands (Continued Tenures) Act 1989 (NSW), Part 1A.
26. Wild Dog Destruction Act 1921 (NSW), s 12.
27. Local Land Services Act 2013 (NSW), s 57.