Using the Family Farm Stamp Duty Exemption for Farm Succession

The family farm is commonly the largest single asset for a farming family. And the succession of the family farm is an important and significant step in operating and maintaining the farming business.

In Western Australia the family farm stamp duty exemption allows for the farm to be passed onto the next generation within a family without incurring signification stamp duty costs. And given that Western Australian transfer duty can be levied at 5.15% it is important to ensure that the succession of the family farm considers not only the income tax and capital gains tax impact: but also, the indirect tax costs like transfer duty (and the farming exemption).

To enjoy the exemption each person transferring the property was using the farming property in a primary production business immediately before the transaction and the person receiving the farm intends to continue to use the farm in a primary production business. And while this sounds relatively benign family circumstances are often complex: the next generation might intend to undertake a subdivision of the land or using the property as a tourist resort.

And to be a primary production business the definition extends to:

- The growing or rearing of plants; or
- The breeding, rearing or maintenance of living creatures.

If the land is leased for reafforestation or silviculture, it also qualifies as a primary production business.

A family member receiving the farm can be a child (which is easily the most common transferee), brother, sister, aunt, uncle, parent, spouse, or a partner of the above.

The above requirements vary from state to state so getting advice is important. In Victoria, for example, a business of primary production does not necessarily need to be carried out before the transfer. And in South Australia and Victoria the recipient of the farm does not need to carry out a primary production business. And Western Australia has time limits on how long the recipient needs to carry on a business of primary production.

Importantly the succession needs to be documented. We often find that the family farm is passed over to a child without any documentation of the transfer. So, the children proceed to operate the farming business and the strict criteria for exemption may not be enjoyed as the parents no longer operated the business. Alternatively the estate plan might not clearly acknowledge that transfer of the farm so the farm might be an estate asset that is then subject to a claim by disgruntled family members.

When looking at family farm succession it is also important to remember that the tax structuring of the family farm is important. Some types of tax structures for the family farm do not qualify for the stamp duty exemption. And while it is difficult to document every possible negative scenario the following arrangements typically do not qualify in Western Australia for the family farm stamp duty exemption:

1. Farming land held in a unit trust or a discretionary trust
2. Farming land that will be acquired by a discretionary trust (some limited exemptions)
3. An arrangement where an outside person holds an interest in the entities acquiring the land

So the decision to hold the family farm in a family trust might not be a good idea.

The succession of a family farm is an important and delicate part of a family farming business long term success. And getting quality family, tax, legal and business advice is important.

At Westcourt our sole focus is on giving family businesses independent tax, business and succession advice so we can work collaboratively with your choice of investment and legal advisors for the farm succession. So, if you are looking for succession advice on the family farm – Westcourt is a natural choice – so why not give us a call?