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Welcome to the early Spring edition of *Rural eSpeaking*. We hope you find the articles of interest and that they're useful to you.

If you would like to talk further about any of the topics covered in this newsletter, please be in touch.

Inside:

The next issue of Rural eSpeaking *will be published in December 2012.*

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NZLAW AN ASSOCIATION OF INDEPENDENT LEGAL PRACTICES

Buying a Farm and GST Rating

Make sure you complete the set of warranties

The sale of a business, such a dairy or a garage, is zero-rated for GST as it's treated as being sold as a 'going concern'. Effectively the old owner walks out and the new owner continues trading in their place. Accordingly everything necessary to continue trading is included in the sale, ie: building or lease, stock and customers. As the purchase is of an existing business, or trading activity, GST is charged on the sale at 0%; the only requirement being that both vendor and purchaser are registered for GST. Farms, however, are generally treated differently from a GST perspective; this article gives an overview.

Until 2011 a farm could be sold as a going concern. This was unusual, however, due to the various trading structures that might have been used by the vendor and purchaser, and also the necessity for land, stock and plant to be sold in order to qualify as a going concern. Where the sale was of just the farmland, GST had to be paid. This frequently involved careful juggling of GST registration, timing of GST periods, the correct selection of payments or invoice registration, and organising short-term funding to cover the GST component of the purchase.

This delicate balancing act ended in 2011 due to a change in the GST Act 1985. The sale of land used for a taxable actively, such as farming, is now deemed to be a zero-rated transaction for GST purposes. This greatly simplified the GST implications on the sale and purchase of farmland allowing the parties to focus on the business aspects of the transaction rather than taxation concerns.

Set of warranties to meet zero-rating criteria

The requirements to meet the zero-rating criteria are a simple set of warranties which are now incorporated into Schedule 2 of the standard Agreement for Sale & Purchase.

These warranties assure that, for the purposes of the transaction, the vendor is GST-registered and the purchaser, or the purchaser's nominee, is (or will be) GST-registered on settlement.

It's very important that this registration is not overlooked; failing to register for GST would leave the purchaser paying GST on the purchase price and not being able to claim back that GST from the Inland Revenue.

The purchaser must also warrant that the purchase of the land is for the purposes of carrying out a taxable activity, that is, it is a business making supplies which are taxable.

Finally the purchaser must warrant that they will not use the property as a principal place of residence. Failure to confirm this prevents the sale being zero-rated requiring that GST be paid and isn't claimable. This question causes the greatest confusion as there is usually a dwelling on the land and the purchaser does intend to live in it. However, the warranty relates to the farmland not the dwelling.

Living on the farm

The taxable activity or property being purchased is the farmland, not the dwelling and, accordingly, the farm land is zero-rated for GST as the farmland is not the principal place of residence. The purchase of the dwelling is deemed to be a 'second sale' or 'supply' occurring with the farmland. This second sale, being residential property, is GST-exempt and doesn't impact on the sale of the farm.

In order to deal with the residential component of the sale a valuation of the dwelling is obtained and that value is deducted from the sale price of the farm land before GST is calculated; this provides a taxable value for the farmland alone. GST is then calculated on the land at the correct rate, zero percent, if all other warranties are provided.

The end effect is the sale of the farm at the agreed price, plus GST if any, of which there is none. ■

« BACK

Succession Planning without Gift Duty

Now more straightforward

The issue of succession planning is one that most family farming operations need to deal with at some time or another. Until last year when gift duty was abolished, succession planning had the added complication of dealing with this issue. Now the process is more straightforward, although careful consideration is still required.

Succession planning is an issue that confronts most farming families. While each family situation is different, some common issues that arise are:

- The need to keep the family enterprise economically viable
- The wish to accommodate or be 'fair' to all family members, and
- The need to provide a retirement income and a home for parents who are moving off the farm or handing over the farming operation.

The ability to deal with these issues depends very much on individual circumstances. Some families are fortunate enough to have built up a farming enterprise that can be split up between various members which can be carried on economically. Some can't be. Sometimes, however, hard decisions need to be made which means there will be disappointment for some. While good communication and early planning can avoid some problems, sometimes economics and personalities mean that family disappointment or disharmony can't be completely avoided.

For that reason, it may be necessary for you to put in place succession structures or plans that may not be acceptable to some of your family members. In those instances, the parties, usually you and your spouse and one or more children, will want to put in place structures that are robust enough to stand up to future challenges from their disgruntled siblings. You may also want to make arrangements for those siblings who may feel they've been sidelined. Family members often more readily accept decisions made by their parents during those parents' lifetimes, rather than being dealt with by their Wills.

Gift duty abolition last year

There was a great deal of media coverage when gift duty was abolished in October 2011. Most of that publicity centred on the simple fact that with gift duty abolished, it was possible to move assets without the 'debt back' and forgiveness of debt at a rate of $27,000 a year per person over, sometimes, many many years.

In a farming situation, prior to the abolition of gift duty, if you wanted to transfer the farm to your son or daughter to the exclusion of others, either directly to your child or to a trust, the transaction had to be structured as a sale at market price, with the unpaid purchase price left as a debt back often meaning many years of gifting was necessary to complete transfer of the ownership of the farm safely into the hands of the recipient. Usually the Wills of you and your spouse provided for a forgiveness of the balance of any debt when you died. However, that residual debt was an estate asset and accordingly, was vulnerable to challenge, for example, under the Family Protection Act 1955 or the Law Reform (Testamentary Promises) Act 1949.

No gift duty payable

Now that gift duty is no more, the above problem doesn't arise. Theoretically, you could give an asset to someone and then die the following week. Unless there were issues around mental capacity, then once you give away the asset it doesn't form part of your estate and therefore isn't available to meet a claim in the event of a challenge.

Therefore, where there is a need for robustness and finality in a settlement, the ability to pass an asset immediately to your son or daughter with no 'debt back' is a useful tool in succession arrangements.

As with all succession matters, however, careful consideration is needed. Once you gift an asset, it has gone and there's no getting it back. In some instances, a debt back is desirable as it's a way to ensure that there is an asset (or potential income stream) available for your retirement should the need arise.

As with all these issues, the transaction as a whole needs to be considered. Just because the removal of gift duty presents an opportunity – it doesn't mean it should, or needs to, be taken. ■

Over the Fence

National Animal & Identification Tracing Act 2012

The National Animal Identification and Tracing (NAIT) Scheme became mandatory for dairy and beef farmers, including lifestylers, on 1 July 2012.

With calving now mostly underway we remind you of your requirements to comply with the scheme. Calves born from 1 July onwards should be tagged with a birth tag. Tagging exemptions apply for calves less than 30 days old and going directly to a meat processor (bobby calves). This exemption doesn't apply to calves sold at sale. ■

Casual and fixed term employees

As we enter busy times on the farm with lambing and calving in progress it's not uncommon for additional labour units to be employed to help with the increased work load. It's important you give careful consideration to the manner in which you employ additional labour.

The essence of a true casual employment relationship is on an 'as and when required' basis. Casual employment should be used when you need an employee to work for a short and specific period of time, such as when another employee is on annual or sick leave. There should be no continuing expectation of work by another party. If there are subsequent engagements beyond the first, each new engagement is a new employment relationship. It's reasonably common in the farming sector for some 'casual' staff to stay on and work for a period of time. This practice, however, carries risk for you and you should instead consider employing the additional labour unit on a fixed term basis, ie: for the calving or lambing months. When casual relationships develop a sense of continuity, then the relationship starts to take on characteristics of permanent employment. This means that discontinuing the 'casual' employment may amount to a dismissal with the potential for a personal grievance claim.

A fixed term employment agreement is used for an employment relationship that will end either at a specific time or on the occurrence of a specific event, such as the end of calving or a maternity leave period. The Employment Relations Act 2000 includes a requirement that fixed term agreements must state in writing the way in which the employment will end and the reason for ending the employment in that way. If you don't comply with these requirements, it may mean that the fixed term arrangement is ineffective as a way to end the employment relationship. ■

Emissions Trading Scheme

In July 2012 the government announced changes to the Emissions Trading Scheme. These include:

» Leaving agricultural emissions out of the Emissions Trading Scheme until at least 2015, and

» From 2013 off-setting for pre-1990 forest land owners will be allowed. 'Off-setting' means that the forest land owner can plant new forest on other land if that owner wants to convert the pre-1990 forest land to a better use. ■

Proposed changes to rules for agricultural vehicles

The government recently announced proposed changes to the transport laws regulating the on-road use of agricultural vehicles such as tractors and harvesters. It proposes to align driver licences, work-time restrictions and vehicle inspection requirements for agricultural vehicles used on road to a two-tier system based on a 40km/hour operating speed.

Some of the changes include an exemption from Warrant of Fitness requirements for agricultural vehicles not exceeding 40km/hour. These vehicles would still need to be maintained in a road-worthy condition. Holders of restricted car licenses are to be permitted to drive these vehicles. Agricultural vehicles that exceed 40km/hour will be required to obtain an annual Warrant of Fitness and be driven by the holder of a wheels endorsement or Class 2 licence. Other changes are proposed to improve and simplify the rules around pilot vehicles, hazard identification and vehicle visibility.

The rule changes are expected to come into force during the first half of 2013; we will keep you posted. ■