



EVERSOL'S weekly law

Contributed by Ken Sorrenson

Another tax problem for the family farm

Many long established family farms are owned by companies. This was a common practice particularly in the days of death duty as the company structure allowed a significant component of the value of the property to be sheltered from potential liability for death duty.

Times change however and legislation moves on. Death duty is a thing of the past and capital gains tax is now an entrenched part of our tax system. There are now real problems with many of these companies particularly in the context of inter-generational transfer of ownership including -

- potential difficulties in accessing inter-generational rural stamp duty exemption; and
- capital gains tax issues particularly where there has been a change in shareholders in the company since the time capital gains tax was introduced in September 1985.

Very commonly these companies own the farm but do nothing else. The farming operations on the property are usually conducted through a different entity such as a partnership or a trust and it is relatively uncommon for that other entity to pay the company a rental fee for its use of the land.

Changes to tax laws announced in the recent Federal Budget create an additional difficulty. Under the proposed changes where an asset (in this case the farm) is owned by a company and made available for use by an associated third party, it is likely that there will be a requirement that the third party pays a market value rental for use of the property.

The purpose of the change was to reduce the scope for private companies to allow their shareholders or associates to use company assets for less than arm's length value. Whilst the changes were intended to deal with quite different factual situations, there is apparently no proposal to exclude primary producers.

The introduction of this legislation which is to commence from 1 July 2009 will require all farm owning companies to review the arrangements upon which the farming property is made available for use in the farming business.

At Everingham Solomons we have the expertise to assist you in all your business planning issues.

Because helping you is our business.



EVERINGHAM SOLOMONS
SOLICITORS

Consultants:
Ted Heazlett

Directors:
John Boag
Terry Broomfield
Ken Sorrenson
Terry Robinson
Mark Grady
Jennifer Blissett

Associates:
Natalie Scanlon
Lesley McDonnell

Level 3, Ray Walsh House,
437 Peel Street, Tamworth NSW 2340
Ph: 6766 1066 Fax: 6766 4803
Email: solicitors@eversol.com.au

Previous articles available at
www.eversol.com.au



**AUST
LAW**

Liability limited by a scheme approved under Professional Standards Legislation