



EVERSOL'S weekly law

Contributed by Angus Tainsh

RELIEF FOR COMPANY OWNED FAMILY FARMS

In June last year in this column Ken Sorrenson wrote about coming changes to tax law that would affect family farms owned through a company.

Under the changes initially proposed, where a company owned a farm and an associated third party (a shareholder or their spouse, for example) used that property to run a farming business, the third party would have to pay market rent to the company, or face the ATO treating the value of the rent as income of the third party and taxing it accordingly.

The draft legislation has now been released that will make these changes law. Thankfully, there are now some welcome exceptions for farming businesses but farmers will need to examine their arrangements carefully to ensure that the exceptions apply to them.

The final effect of the changes will be quite different depending on whether the farm (and any house on the farm) is used by the third party under a lease or under a licence agreement. If a lease has been granted, the third party must pay market value rent to the company. If a licence has been granted, the exceptions may apply.

The ATO considers that the difference between a lease and a licence agreement is that under a lease the lessee has exclusive use or possession of the property. Under a licence agreement, on the other hand, the licensee has permission to use the property, but not exclusively. For example, an arrangement where the owner of a farming property allowed a farmer to run a farm on the property, but the owner was also allowed to enter the property at any time, would be a licence agreement.

If the ATO decides to look closely at your arrangements, it is vital to have evidence in support of your position. In this case, it could take the form of a written licence agreement between the company and the farmer. This would ensure there is no question that a licence was granted rather than a lease.

This legislation is proposed to apply from the current financial year. Farmers who might be affected should seek specific advice without delay.

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Everingham Solomons
SOLICITORS

Incorporating Thomas & Hogue
and Creagh O'Brien & Co.

Consultant:

Ted Heazlett

Directors:

John Boag

Terry Broomfield

Ken Sorrenson

Terry Robinson

Mark Grady

Jennifer Blissett

Associate:

Lesley McDonnell

Level 3, Ray Walsh House,
437 Peel Street, Tamworth NSW 2340

Ph: 6766 1066 Fax: 6766 4803

Email: solicitors@eversol.com.au

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