

Farm Asset Ownership: The Need to Restructure



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WHY IS IT IMPORTANT TO UNDERSTAND HOW FARM ASSETS ARE OWNED?

It is important that farm assets are owned in the correct name or entity for taxation, planning and asset protection purposes.

All farming enterprises need to review how assets are owned and calculate what the potential financial liability of the current ownership structure is.

Correct Structuring

Equals

CERTAINTY plus...

REDUCED RISK plus...

ASSET PROTECTION plus...

TAX SAVINGS plus...

STAMP DUTY SAVINGS plus...

AGED CARE SAVINGS plus...

ACCESS TO OTHER BENEFITS

WHAT ARE FARM ASSETS?

Farm assets include land, livestock, plant and equipment, stock on hand, warehoused stock, buildings and infrastructure. It also includes stock (e.g. grain, hay, potatoes, sheep and cattle) that you have sold but have not been paid for. These are all tangible assets and are a result of your investment and hard work.

There are other intangible farm assets such as related party loan accounts. This is where money is owed or owing between entities or an entity to or from individuals.

HOW DO WE KNOW IF OUR FARM ASSETS ARE STRUCTURED CORRECTLY?

The first step is to complete a detailed review of farm assets. Who or what is the legal owner of each asset and how is the farm business operated. For example, is the farm business operated via a partnership or a trust? If you have a trust, who is the appointor? If there is a company, who are the director/s and shareholder/s.

A detailed summary will enable a review to be completed to determine if there are any issues or concerns. For example, is the business operated via a dad and mum partnership and dad and/or mum also own the farmland in their personal name/s? Are there family loan accounts that a family member or creditor could make a claim on? Is farmland owned in the same entity that runs the farm business?

FLEXIBILITY IS THE KEY

Generally speaking, it is preferable to legally control assets rather than legally own assets. By controlling assets it provides the opportunity to transfer control rather than transfer legal ownership. This gives a farming enterprise flexibility to make changes in the future. Transferring control is a straightforward process compared to transferring legal ownership. Controlling assets provides flexibility to own assets and change control for future planning opportunities.

WHAT ARE THE COSTS OF RESTRUCTURING?

Changing legal ownership is normally deemed a purchase and sale for taxation purposes including stamp duty. In the state of Victoria we are very fortunate as there are tax concessions available resulting in considerable cost savings. There will be

costs such as accounting, legal and titles office fees that can be accurately estimated once the circumstances are known. There may also be bank fees to amend mortgage details if applicable.

The main point to understand is at present many farmers will be able to access stamp duty, capital gains and income tax concessions if a farm enterprise restructure is completed correctly. These concessions may not be available indefinitely.

Stamp duty: In Victoria there is currently a stamp duty exemption to restructure farmland ownership. Therefore land can be transferred from a personal name to a trust without incurring stamp duty. It is not certain if this exemption will continue indefinitely.

Capital gains tax: There is currently a capital gains tax exemption available for the sale of assets if you are categorized as a small business enterprise (SBE). A SBE is a business and its associates that have net assets of less than \$6 million or turnover of under \$2 million.

Income tax: There is currently an income tax exemption that enables a farm business to be restructured without it deemed to be a sale and purchase. This means that stock, plant and equipment can be placed in a new structure without the need to sell at market value creating a potential tax liability.

It should be noted that these concessions are currently available if the correct process is followed. It is not guaranteed that these concessions will continue to be available given the need for governments to look at ways to raise extra revenue.

Don't miss this opportunity.

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Are You Financially Secure?

At Mulcahy & Co we are in a unique position to provide the expert advice and solutions of accounting, financial planning, lending, legal and information technology all under the one roof. This makes a normally complicated process seamless to help you on your way to becoming financially secure.

WHAT DOES BEING FINANCIALLY SECURE MEAN?

It means assessing your personal and business goals and developing a plan to achieve them.

1. **Goals & objectives**
2. **Estate plan**
3. **Risk plan**
4. **Asset protection plan**
5. **Taxation plan**
6. **Debt plan**
7. **Retirement plan**
8. **Business plan**
9. **Superannuation plan**
10. **Investment plan**

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WHAT ARE THE COSTS OF NOT RESTRUCTURING?

Costs include risk and uncertainty. The potential liability of a farming enterprise for restructuring assets is considerable. If the valuable assets such as land is owned by the same person or entity that runs the farm business then these assets are at risk.

If something goes wrong in the business and the business is sued, a creditor could make a claim on the business assets. This could put the land at risk. The cost of aged care is partly calculated based on the level of assets personally owned. Therefore if aged care is required and the farmland is still in the person's name, the aged care cost will be significant. Can the farm enterprise absorb such costs?

SUCCESSION PLANNING CONSIDERATIONS

Asset restructuring is an important part of succession planning. Succession planning can be a challenging process for most businesses to undertake. The first step in developing a succession plan is to have assets held in a way that allows flexibility to how the assets are controlled in the future. This means that when the farming family makes the decision to start the transition of asset control to the next generation this can be achieved efficiently and securely.

WHY RESTRUCTURE FARM ASSET OWNERSHIP?

- Taxation concessions are currently available so this can be completed tax and stamp duty free (in Victoria), saving thousands of dollars.
- The tax and stamp duty concessions are not guaranteed to be available indefinitely.
- **Succession planning benefits:** have assets held in a way that enables changes to be made to ownership when the family is ready to make changes.
- **Provide certainty:** establish a plan to hold assets in a way to reduce or eliminate potential future liabilities for the farming enterprise such as the cost of aged care.
- **Asset protection:** separate the farm business from the valuable farm assets. Refer to farm asset protection information sheet

You may have the opportunity to implement measures and restructure farm assets with no tax or stamp duty and provide certainty for the future. This is an important step in ensuring your financial security.

We offer a free no obligation meeting to review your situation. Call us today on 03 5330 7200 and take advantage of this valuable offer.

