Farm Property Transfers – The Basics
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FARM PROPERTY TRANSFERS – THE BASICS

INTRODUCTION

General Rules for Asset Transfers:

- Normally, if an individual sells or gives property to family members, other than a spouse, they are considered to have sold the property for its fair market value.
- As a result, they have to recognize a capital gain on the difference between the original cost and the property’s current value and any income that might result from the transfer at fair value such as recaptured depreciation.

Special Rules for Certain Farm Property:

- Farm property rollover rules allow certain farm property to transfer to a child on parent’s death or during parent’s lifetime without triggering a deemed sale at fair market value.
- Where the rollover rules apply, they allow an individual to sell or transfer qualifying property to a child at any amount between the cost of the property (adjusted cost base for capital property such as land and undepreciated capital cost for depreciable property such as equipment) and the fair market value of the property.
- The amount chosen is accepted as the proceeds of disposition for tax purposes and becomes the child’s cost.
- The child inherits the original cost with respect to the depreciable assets such as equipment, so the same recapture will occur in the child’s hands as would have occurred on a sale in the hands of the parent.
- In a death situation the legal representative of the estate can elect to have the transfer occur at any value between cost and fair value.
- Additional requirements are necessary on death particularly the fact that the property must “vest indefeasibly” in the child within 36 months of death.

The following conditions must be met for subsection 73(3.1) to apply:

1. the property transferred must be, immediately (note the word immediately is being removed pursuant to November, 2010 technical bill) before the transfer, land, depreciable property of a prescribed class under Schedule II to the Income Tax Regulations, or eligible capital property in respect of a farming business carried on in
Farm Rollovers (cont’d)

Special rules for Certain Farm Property (cont’d):

Canada by the taxpayer (There Is No Rollover During Life to a Child of Farm Inventory)

2. the child of the taxpayer was resident in Canada immediately before the transfer

3. the property must have been used principally (ie more than 50 per cent of the time) in a farming business in which the taxpayer, his/her spouse or common-law partner, his/her parent, or any of his/her children was actively engaged on a regular and continuous basis.

Conditions Under Which Rollover is Recognized

CRA’s views on these requirements, are outlined in IT-268R4 (paragraphs 21-27). In summary they are as follows:

Used Principally in the Business of Farming by a Parent, or by his or her Spouse or Child

• it is always a question of fact whether a particular property (for example, land or depreciable property of a prescribed class) is used principally in a farming business. In resolving this question the use of the property as a whole must be considered.

• Generally, a property is used principally in a farming business if its primary use (that is, more than 50% of its use) is in respect of the farming business operation as opposed to use in concurrent corporate or partnership operations that may even be ancillary or related to the farming operation such as, for example, storage or trucking of farm products for others or contract

• Assuming that a farming business is being carried on and that the property is in fact used in that farming business, it also must be determined on a fact basis whether a particular taxpayer, or the spouse or child of the taxpayer, is carrying on that particular farming business. In this regard, a taxpayer, a spouse or a child is considered to be carrying on a particular farming business when that person, to the extent that the circumstances of the particular farming operation allow, determines, for example, which fields will be planted, the type of crops to be seeded and the times for spraying and harvesting. The fact that the services of another person may