

# **Selected Tax Matters Involving Transactions of Farm Properties**

Prepared For: Legal Education Society of Alberta

*45<sup>th</sup> Annual Refresher Course – Real Estate*

Presented by:

**Jason M. Stephan**

**CA Tax Law**

**Red Deer, Alberta**

For Presentation In:

Lake Louise, AB

May 6 – 8, 2012

## SELECTED TAX MATTERS INVOLVING TRANSACTIONS OF FARM PROPERTIES

### INTRODUCTION

Transacting with farmland may give rise to unique tax considerations and planning opportunities. Set forth below is a discussion of some of these considerations and opportunities in respect of:

1. Using the of capital gains exemption in farmland transactions,
2. Using of intergenerational rollover provisions in farmland transactions,
3. Issues and opportunities relating to principal residences on the home quarter, and
4. “Change in use” of farmland from capital property to development land inventory.

### USING THE CAPITAL GAINS EXEMPTION IN FARMLAND TRANSACTIONS

#### Overview

Taxpayers transacting with farm properties should consider the availability and potential use of the lifetime \$750,000 capital gains exemption (“**Exemption**”) provided in section 110.6 of the *Income Tax Act* (Canada) (“**Act**”).<sup>1</sup>

The Exemption is limited to \$750,000 in respect of qualifying capital gains and will be reduced by any prior Exemption claim, any use of the repealed \$100,000 capital gain exemption formerly provided in subsection 110.6(3), and any applicable “cumulative net investment loss” (defined in subsection 110.6(1)) or “allowable business investment loss” (provided for in paragraph 38(c)) amounts.

Pursuant to subsection 110.6(2) a taxpayer can claim the Exemption on a capital gain earned on the disposition of a “qualified farm property”. The definition of “qualified farm property” (“**QFP**”) is in subsection 110.6(1) and states:

“qualified farm property” of an individual (other than a trust that is not a personal trust) at any time means a property owned at that time by the individual, the spouse or common-law partner of the individual or a partnership, an interest in which is an interest in a family farm partnership of the individual or the individual’s spouse or common-law partner that is

(a) real or immovable property that was used principally in the course of carrying on the business of farming in Canada by,

---

<sup>1</sup> All statutory references herein are to provisions of the Act, unless otherwise noted.

- (i) the individual,
  - (ii) if the individual is a personal trust, a beneficiary of the trust that is entitled to receive directly from the trust any income or capital of the trust,
  - (iii) a spouse, common-law partner, child or parent of a person referred to in subparagraph (i) or (ii),
  - (iv) a corporation, a share of the capital stock of which is a share of the capital stock of a family farm corporation of an individual referred to in any of subparagraphs (i) to (iii), or
  - (v) a partnership, an interest in which is an interest in a family farm partnership of an individual referred to in any of subparagraphs (i) to (iii),
- (b) a share of the capital stock of a family farm corporation of the individual or the individual's spouse or common-law partner,
  - (c) an interest in a family farm partnership of the individual or the individual's spouse or common-law partner, or

...

There are several technical requirements relating to claiming the Exemption on a QFP capital gain and the requirements differ depending on whether the farmland is disposed of directly by the individual or indirectly through a disposition by the individual of an interest in a family farm partnership (“**IFFP**”) or a share of the capital stock in a family farm corporation (“**SFFC**”).

### **Using the Exemption on Direct Dispositions of Real Property**

Subsection 110.6(1.3) provides that, for purposes of the definition of QFP, real property will not be considered to have been “used in the course of carrying on the business of farming in Canada” (a necessary condition for real property to qualify as QFP, see paragraph (a) of the definition of QFP) unless the individual satisfies an “Ownership Test”, a “Revenue Test”, and an “Activity Test” in described in this subsection.

The Ownership Test is contained in paragraph 110.6(1.3)(a) and requires that the land is owned for a continuous period of *at least* 24 months (“**Ownership Period**”) prior to the disposition of the property by any one or more of the following persons (“**Owners**”):

1. The individual,
2. His or her spouse or common law partner (hereinafter collectively, “spouse”),