

Selected Tax Matters Involving Transactions of Farm Properties

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I. INTRODUCTION

Transacting with farm land 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 of the capital gains exemption in farm land transactions,
2. using of intergenerational rollover provisions in farm land transactions,
3. issues and opportunities relating to principal residences on the home quarter, and
4. change in use from farm land capital property to development land inventory.

II. USING THE CAPITAL GAINS EXEMPTION IN FARM LAND TRANSACTIONS

A. Overview

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

The Exemption is limited to \$1,000,000 in respect of qualifying capital gains and will be reduced by any prior Exemption claim, use of the repealed \$100,000 capital gain exemption formerly provided in subsection 110.6(3), and any relevant “cumulative net investment loss” (defined in subsection 110.6(1)) or “allowable business investment loss” (provided for in paragraph 38(c)) amounts.²

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” (or qualified fishing property). The definition of “qualified farm property” (“**QFP**”) is in subsection 110.6(1) and states:

“qualified farm or fishing 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 or fishing partnership of the individual or the individual’s spouse or common-law partner that is

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

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

² New subsection 110.6(2.2), applicable for dispositions after April 20, 2015, provides a “top-up” of the Exemption amount after utilization of the indexed amount (\$824,176 for 2016) otherwise available under section 110.6.

- (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 or fishing 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 or fishing partnership of an individual referred to in any of subparagraphs (i) to (iii),
- (b) a share of the capital stock of a family farm or fishing corporation of the individual or the individual's spouse or common-law partner,
 - (c) an interest in a family farm or fishing 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 farm property (or fishing property³) is disposed of directly by the individual or indirectly through a disposition of an interest in a family farm partnership (“**IFFP**”) or a share of the capital stock in a family farm corporation (“**SFFC**”).

B. Using the Exemption on Capital Gains on Dispositions of Real Property

Subsection 110.6(1.3) provides that, for purposes of the definition of QFP, real property⁴ 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, Set forth below is an abbreviated summary of these tests.

³ Amendments to the Act in 2014 combined the statutory requirements for use of the Exemption in respect of farming and fishing property. For purposes of this paper, statutory references to fishing property are hereinafter omitted.

⁴ An interest in real property includes a leasehold interest. In CRA document 2000-0046125 “Qualified Farm Property” (March 20, 2001), the CRA confirmed that QFP could include a leasehold interest.

The Ownership Test is contained in subparagraph 110.6(1.3)(a)(i) and requires that the land is owned throughout a 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**”),
3. his or her child,⁵
4. his or her parent,
5. a partnership (an interest in which is a IFFP of the individual or the individual’s spouse),
6. a personal trust in respect of which one of the individual, his or her spouse, child or parent acquired the property,

If the individual in 1. above *is* a personal trust, the Ownership Test may be satisfied with ownership of the property in the 24 month period by the individual from whom the trust acquired the property or his or her spouse, child or parent.

The Ownership Test uses the word “throughout” as a result intervening ownership by a non-qualifying Owner may necessitate a restart of the requisite Ownership Period for purposes of subsection 110.6(1.3): see CRA document no. 2009-033287117 “Qualified Farm Property” (October 7, 2009).

There is a different Revenue Test and Activity Test depending on when the land was “last acquired”.⁶

The Revenue Test, as it pertains to property *last* acquired on or after June 18, 1987,⁷ is in subclause 110.6(1.3)(a)(ii)(A)(i) and requires that the gross revenue of an Owner for at least two years (“**Revenue Period**”) within the Ownership Period from the farming business referred to in the Activity

⁵ The definition of “child” in subsection 110.6(1) states that a child, for purposes of section 110.6, has the meaning of child assigned in subsection 70(10). Subsection 70(10) defines “child” to include grandchildren and great grandchildren.

⁶ In the case of a successor joint tenant to an entire land parcel when his or her land last acquired? In CRA document 2004-0065501E5 “QFP – Attribution (Property Last Acquired) dated June 25, 2004, the CRA considered a situation where a husband and his wife purchased certain real property prior to June 18, 1987 as joint tenants. For land registry purposes, the property was registered in the husband and wife’s names as joint tenants. Subsequent to June 17, 1987, the husband transferred the legal and beneficial ownership of his 50% interest in the property to the wife. The wife became sole owner of the property. In determining whether the remaining 50% interest in the property owned by the wife would be considered a “qualified farm property” of the wife as defined in subsection 110.6(1) of the Act, the CRA stated *inter alia* that it was their view that the wife last acquired her pre-existing 50% interest in the property (that she owned as a 50/50 joint tenant prior to the Transfer), before June 18, 1987.

⁷ Property is “acquired” by a successor upon the death of an individual. In the result, the post June 17, 1987 Revenue Test and Activity Test is increasingly the applicable test.