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Death & Taxes

How many farmers have a Will but don't fully understand what it means? It is not just a matter of who gets the farm and the beach house. There can often be tax implications which come as a horrible surprise at the time of death.

We advise our clients to work with both their lawyer and accountant to ensure their Will is a true reflection of their intentions, but also to ensure there won't be negative financial implications when least expected.

There are three man issues to be considered – who retains ownership of the asset, who receives income from the asset and what tax implications are there with ownership transfer at the time of death.

The Will needs to ensure tax treatment of assets is the most beneficial for the situation. This is a very complex and technical area, especially when there is a range of assets or the distribution is not simply to the spouse.

If depreciation recovery on fixed assets is triggered, it could result in tax due to the Inland Revenue Department, even when no cash has been realised to pay the tax

Exemptions apply for the spouse or close family of the deceased and when all tax based property is left to them.

However the exemptions can easily be broken. An example of breaking the exemption is where a partnership owns all assets and on death a farm is left to the spouse with a commercial property left to a Trust. Depreciation recovery is triggered on all the fixed assets involved. But if non tax based property such as term deposits and personal assets are left to the Trust and the spouse receives the farm and commercial property, this would usually satisfy the exemption test. But even here there are fishhooks which are not obvious on the surface.

An issue can arise if assets are left to an individual, but then it is transferred to their Trust. It is better for a will to give flexibility by including the option of the individual name or their trust.

On the other hand it could be beneficial for the depreciation recovery to be triggered at the time of death. If the deceased has losses brought forward these will otherwise be extinguished at the time of death.

The other factor to be aware of is the income from the asset and the ownership of the asset can often be different. In many cases the deceased leaves their share of assets to their Estate. The spouse receives the income, but it can be a surprise to the spouse that they do not have control or ownership of the asset. They may need to get approval from the children before making decisions to buy or sell if the Trustees of the Estate are the children.

It is very important to understand what the implications of a Will are before the tragic event of a death. This is not the time for receiving surprises.

The wording of the Will can be very important. Work with your professional advisors as a team for sound advice. Pull your Will out of the bottom drawer and ask your accountant to review it to ensure it is worded correctly.

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