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Tax Implications for farm sales and purchases

There has been a marked increase in the sale and purchase of farms in recent months. The average price per hectare has risen and we believe demand is increasing. This raises the importance of purchasers and sellers (vendors) to consider the tax consequences of these transactions.

Our recommendation is that the purchaser and vendor each ensure that their own solicitor and accountant review all sale and purchase agreements before they sign the agreement.

Some points to consider include:

Good and Services Tax (GST)

All land transactions will be zero rated for GST purposes if both the vendor and purchaser are registered for GST. There is a Schedule 2 form in the sale and purchase agreement that should be completed for GST purposes. There may also be items in the agreement e.g. Fonterra Shares that are exempt from GST.

Development Expenditure

The vendor should provide details of capital development expenditure in the sale and purchase agreement. The purchaser can then continue to claim depreciation on these items. Examples of development include contouring, drainage, water, races etc.

Depreciation

Any assets that the vendor sells where they have claimed depreciation may result in depreciation recovered. This depreciation recovered amount will attract income tax. Some of the major items include the cowshed and farm buildings.

The date of the sale or purchase should be considered for depreciation purposes, this will depend on the balance date of the vendor.

Related party capital gains

If a company is selling the farm to an associated person or entity it is important that you check with your accountant if this has income tax implications. Related party capital gains are an income tax liability that arises on the capital profit of an asset when it is sold from a company to a related person or entity.

Fonterra Shares

Fonterra shares may or may not be included in the sale and purchase agreement. If they are included the valuation method of the shares needs to be agreed to and included in the agreement before signing. For example the value of the Fonterra shares may be the value of the shares at settlement date or at an agreed share price.

Usually any gain or loss on Fonterra shares has no tax implications. The purchaser may choose to purchase shares from Fonterra rather than the vendor to make use of Fonterra's payment plans such as payment over a six year period. The vendor could then sell their shares back to Fonterra at a date they choose.

Grass Cover

The amount of grass cover from the vendor's point of view may become an issue. The vendor prior to leaving the farm should take photos, and/or have an independent farm consultant assess the level of grass cover on the farm. This will give an independent opinion as to whether the terms in the Sale and Purchase agreement have been adhered to.

This will minimise the results of any potential disputes.

Livestock

Both parties should ensure in-calf guarantees have been attained. The vendor and purchaser should check livestock valuation methods with their accountant to review any possible tax consequences.

For more information regarding tax implication when buying or selling a farm please contact Anna Bennett 07 888 8002

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