

Asset Transfers

A Very
Quick
Summary

Before the new rules death posed difficult issues

- n Tax Act is inconsistent with some provisions deeming an event to take place
- n Lawyers argued whether assets transmitted on death or were disposed of on death
- n It was unclear when tax liabilities occurred, on death or on distribution

New Rules

- n It has taken about 15 years for the new rules to move off the drawing board and into law
- n The new rules apply to all asset transfers:
 - u In specie distributions
 - u Resettlements
 - u On Death
 - u On distribution from estate to a beneficiary
 - u A gift made by one person to another
 - u Distribution from a trustee to a beneficiary

Death and Distributions

- n Generally there will be two tax events; once on death and then on distribution
- n That means two separate market valuations and of course potential tax liabilities for the parties involved
- n As in the good old days of estate duty there could be cash flow problems – such as a big farm but no cash !

What tax issues arise when I sell or transfer an asset?

- n Depreciation recovered
- n Profit on sale of standing timber
- n Profit on sale of land
- n Profit on sale of livestock crops etc
- n Base price adjustment
- n Goods and Services Tax

Exemptions

- n There are two main exemptions
- n The first applies to simple estates
- n The second applies to spouses and de facto couples

Simple Estates

- n The final beneficiaries must be persons within the second degree of relationship or charities
- n There is no life interest created
- n None of the assets to remain in trust after the period of administration
- n Net income distributed to maximum extent required under the terms of the will

So What happens

- n The transfer at death is treated as a market value transfer
- n The transfer to the beneficiary is treated at that same value
- n So it is a cost saving on compliance and valuation
- n Not a big deal because the tax event occurs on death

Spousal Rollover Relief

- n Nice if you can get it !
- n This is the tricky bit and therefore there are more planning opportunities and pitfalls for the unwary
- n Once again no tax base assets can pass to beneficiaries that are not within the second degree of relationship

How does it work ?

- n It only applies to assets transferred by an executor or administrator to a spouse or de facto partner (not civil unions until 2007)
- n No tax liability arises because the assets are transferred as if the spouse was the deceased – at cost and depreciated value etc
- n This means that the spouse pays all of the tax when they dispose of the asset

Planning Opportunities

- n Do we always want spousal relief to apply ?
- n No
- n Why not ?
- n Because if an asset has been held for many years and it is intended that the next generation will keep it for years to come then a new cost base might be attractive

Planning Opportunities

- n You have a choice to plan that the spousal relief will apply or to plan that it does not apply
- n This can be considered at the time that you draft the will
- n By including a distribution of a tax asset to a person not within the second degree

Planning Opportunities

- n But wait there is more
- n A trust does not die, so as obvious as it seems, settlement of assets into a trust has the effect of removing the assets from an estate (presuming the will forgives any debt to the trustees)
- n The same applies to assets owned by companies

Planning Opportunities

- n But wait there is still more
- n Consider joint ownership of properties
- n Remember these assets pass by survivorship and so they are not estate assets
- n Effectively the survivor has to deal with the tax issues when they transfer them – the same effect as the spousal exemption

Any Questions ?

n Go ahead “Make my day”

