Consider hidden tax opportunity

SUCCESSION planning is complex, can be confusing and emotionally very stressful. There are a multitude of issues to consider as part of the process. If you are part of a family operation which is considering succession planning or will be at some point in the future, you need to consider hidden capital gains tax opportunities that potentially could be worth millions to the next generation of landowners.

When handing over the farming operation to the next generation, it is often commonplace to leave the land in Mum and Dad's ownership. There are a variety of reasons why this might be the case.

This might be part of a staged process to see if the next generation is "serious" i.e. a 'trial period'. It may be that there are some concerns about the next generation's marital status. Holding the land in the parent's name can be a good way to protect the asset from a marriage breakdown (hopefully Mum and Dad's marriage is sound).

Director Flor-Hanly Tony Olsen.

The plan may be to pass the land to the next generation on the death of the parents.

Transferring land via a will

Although death duties are a thing of the past, they are still greatly feared by many on the land who have seen their parents having to deal with the financial stress they caused.

Death does not trigger capital gains tax. So what happens? There are two scenarios depending on when the deceased acquired the land.

If the land was acquired before September 1985 when capital gains tax commenced, the beneficiary of the will is deemed to have acquired the property at the date of death of the deceased at market value. It is important such a valuation is obtained to keep as a record.

> Most taxpayers and advisors are not always looking for opportunities.

If the land was acquired since the commencement of capital gains tax the beneficiary will inherit the cost base of the deceased.

Transferring the land now

There are two main potential tax burdens with transferring the land now – stamp duty and capital gains tax.

In Queensland an exemption from stamp duty applies when land is being transferred from one generation to the next as a gift. Any portion of the transfer which is not a gift, i.e. if some form of payment is made (could be the striking of a loan) it would be subject to stamp duty.

If the land was acquired before September 85 there will be no capital gains tax. On the transfer, the next generation will have a cost base equal to market value at the date of transfer. If you are in this position it may be worth considering the benefits of holding the property and transferring via your will. All future capital growth would be tax free and if land values rise over time, the next generation would be inheriting a higher cost base.

Where the land was purchased since capital gains tax, a disposal is deemed to have been made at the date of transfer at market value and any deemed gain will be subject to capital gains tax.

Hidden planning opportunities could be worth millions

The small business capital gains tax concessions are extremely generous for anyone who is eligible to take advantage of them. As primary producers typically have low income and big assets they very often have access to these provisions. The provisions are very complex, however, if your turnover is less than $2 million you are likely to be able to access the provisions. If you can access them it is possible for the capital gain to be completely tax free.

Most taxpayers and advisors are not always looking for opportunities. Tax planning is mostly reactive, dealing with current tax problems as they crop up. Across Australia there is in my opinion, an opportunity to "reset" the cost base of properties now to benefit the next generation in the future.

This is best explained by way of an illustration:

John and May purchase their cattle property in October 1985 for $500,000. They have no plans to sell it and plan to gift it via their wills to their son Bill. They are both 85 and although in good health admit they are "getting long in the teeth". The property is currently valued at $8.5 million. If they do this, Bill will inherit their cost base of $500,000. If he later sold the property he would have a capital gain of $8m to deal with. Some $2 million of tax could be payable if Bill couldn't access the concessions at the time.

If instead, John and May gift the place now to Bill, there would be a deemed disposal and a capital gain for John and May each of $4m. If they are entitled to apply the small business concessions, this gain would be tax free as they have owned the property for more than 15 years. Bill will have a cost base for the future of $8.5m.

The small business CGT concessions provide this opportunity. As they are extremely generous, there is a very real risk that they may be removed or wound back by governments trying to increase revenue.