This Bulletin explains the operation of the young farmers duty exemption and concession as set out in Division 7 of Part 5 of Chapter 2 of the *Duties Act 2000*.

Young Farmers Duty Exemption and Concession

Duties Act Bulletin

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From 1 July 2011, 'young farmers' buying their first farmland property will be able to obtain a full stamp duty exemption on purchases worth up to $300,000. For the purchase of a single parcel of farmland valued between $300,000 and $400,000, a duty concession will also be available.

The exemption is aimed at encouraging young people to enter and stay in the industry and applies to contracts entered into on or after 1 July 2011.

Eligibility criteria

To be eligible for the exemption or concession, applicants must satisfy the following eligibility criteria.

- The purchaser must be a 'young farmer' or a 'young farmer business entity'.
- The purchased property is an estate in fee simple in farmland (and not, for example, a leasehold interest). The land must also be used, or intended to be used, primarily for the business of primary production.
- The 'young farmer' must be under 35 years of age at the contract date. If the purchaser is a 'young farmer business entity', the young farmer in respect of that entity must be under 35 years of age.
- Neither the young farmer nor the young farmer's partner can have a disqualifying interest. If the transferee is a young farmer business entity, neither that entity or the young farmer or the young farmer's partner in respect of that entity can have a disqualifying interest.

  This requirement broadly relates to the requirement that the young farmer must be acquiring his or her first farmland property. More information on disqualifying circumstances is provided below.
- On the transfer of a single parcel of farmland, its value cannot exceed $400,000. If one or more parcels of farmland are transferred, at least one of those transfers cannot exceed $300,000.
- Within 5 years of the transaction, the purchaser ('young farmer' or 'young farmer business entity') must be normally engaged in a substantially full-time capacity in the business of primary production of the type carried on on the farmland.

'Young farmer' or 'Young farmer business entity'

Young farmer means a natural person who is carrying on, or intends to carry on, a business of primary production in relation to the purchased property.

In recognition of the different structures in which a person may purchase farmland, the exemption or concession also applies to a young farmer business entity which may be:

- a trustee for a young farmer; or
- a company (not acting in the capacity of a trustee under a trust) all the shares in which are owned by a young farmer, or the young farmer and the young farmer's partner; or
- a trustee under a discretionary trust, the capital beneficiaries of which are limited to a young farmer, or the young farmer and the young farmer's partner; or
- a trustee under a fixed trust, the beneficiaries of which are limited to a young farmer, or the young farmer and the young farmer's partner.

First farmland property and disqualifying interests

The property purchased must be the first farmland property of the farmer or the farmer's partner. Accordingly, if they have previously owned an estate in fee simple in farmland they will be ineligible for the exemption or concession. However, there is no restriction on ownership of non-farmland property and a young farmer will still be eligible for the concession if they have previously owned non-farmland property.

It is now also common practice for a farmer to purchase farmland in a company or trust structure. Accordingly, the *Duties Act 2000* (the Act) will disqualify a young farmer from obtaining the exemption or concession where they have held an interest in an entity which owns or has previously owned farmland.

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A young farmer will be disqualified from obtaining the exemption or concession if the young farmer or the young farmer's partner:

- currently holds shares in a company, if the company holds or has previously owned farmland; or
- previously held shares in a company, if those shares were held at the same time that the company owned farmland; or
- is a beneficiary of a fixed trust and the trust property includes or has previously included farmland; or
- was previously a beneficiary of a fixed trust and, while the young farmer or the young farmer's partner was a beneficiary, the trust property included farmland; or
- is a capital beneficiary of a discretionary trust and the trust property includes or has previously included farmland; or
- was previously a capital beneficiary of a discretionary trust and, while the young farmer or the young farmer's partner was a capital beneficiary, the trust property included farmland.

If the farmland is being purchased by a young farmer business entity, the following interests will disqualify the entity from obtaining the exemption or concession.

- Where the purchaser is a trustee for the young farmer and the trustee holds or has previously held farmland; or
- Where the purchaser is a company (not acting in the capacity of a trustee under a trust) and the company holds or has previously held farmland; or
- Where the purchaser is a trustee under a discretionary trust and the trustee holds or has previously held farmland; or
- Where the purchaser is a trustee under a fixed trust and the trustee holds or has previously held farmland on trust for that fixed trust.

The underlying rationale for these measures is that if a farmer and/or the farmer's partner owns, or has previously owned, shares in a family company or family trust which owned farmland, then they have already had the benefit of the farmland owned by that company.

However, it is recognised that in some situations share ownership and trust interests may extend beyond family companies and trust situations. For example, a farmer may own shares in a listed company which directly owns farmland that is primarily used for the business of primary production. Depending on the nature of the ownership of shares in a listed company or units in a public/listed unit trust, it may technically prevent the farmer from being eligible for the duty concession.

To ensure that the provisions are read in accordance with the express purpose and object of the exemption, each individual transaction will be assessed on its merits and the Commissioner will have regard to the following general principles in determining whether there is a disqualifying interest:

The purpose for which the shares in a listed company, or units in a public/listed trust, were acquired?

- Were they acquired as part of an investment strategy for the purposes of obtaining an income stream?

What are the farmer's rights under the shares/units?

- Does the farmer have any degree of day to day control or input into the decisions of the company or trust, or does the farmer have limited rights such as those attaching to ordinary shares including the right to attend and vote at general meetings, and the right to distribution of profits?
- Is the farmer entitled to an in specie distribution of farmland from the company or trust?

How remote is the farmer's investment from the farmland?

- For example, does the farmer own the shares/units in the company or trust directly, or does it own the shares/units more remotely through a series of other entities or investment platforms?

Accordingly, where a farmer owns shares in a listed company (or similarly units in a public/listed unit trust, or via a superannuation fund), however those shares do not provide the farmer with any relevant rights over the farmland held by the listed company, then those shares will not be regarded as a disqualifying interest for the purposes of the exemption or concession.

Primary production requirement

Within 5 years of the transaction, the young farmer or the young farmer in relation to the young farmer business entity must be normally engaged in a substantially full-time capacity in the business of primary production of the type carried on on the farmland.

The concept of a person being 'normally engaged in a substantially full-time capacity' in the business of primary production excludes mere casual or intermittent employment, and requires the business to be the person's main activity. There should be regular participation in the business for a considerable part of that person's time.

Under section 69AI of the Act, a young farmer or young farmer business entity who has received the exemption or concession must notify the Commissioner of any change in circumstances that may result in the primary production requirement not being complied with.

If a young farmer or young farmer business entity has received the exemption or concession and the primary production requirement has not been complied with, then liability for duty will arise pursuant to section 60AH, in respect of the acquisition subject to the exemption or concession.

Purchases of farmland with multiple parcels

The Act treats the transfer of farmland with multiple parcels differently to the transfer of a single parcel of farmland.

Where multiple parcels of farmland are acquired, the dutiable value of at least one of those parcels must not exceed $300,000 (regardless of whether the combined value of all parcels is over $300,000) to qualify for the exemption or concession.

The young farmer or young farmer business entity is then entitled to an exemption from duty in respect of $300,000 of the total dutiable value of the transactions. The exemption will be applied against the dutiable values of the parcels of land in order of ascending dutiable values.

Example:

A young farmer enters into 3 dutiable transactions with dutiable values of:

- $200,000 (Transaction A);
- $300,000 (Transaction B); and
- $500,000 (Transaction C).

An exemption in respect of $300,000 of the total dutiable value of the dutiable transactions is first applied to the dutiable transaction with the lowest dutiable value, and then to the dutiable transaction with the next lowest dutiable value and so on. This means that a full exemption from duty applies to Transaction A and a partial exemption applies to Transaction B, being an exemption in respect of $100,000 of the dutiable value of Transaction B.

For the purposes of assessing the young farmer's duty liability, Transaction B and Transaction C are taken to have a dutiable value of $200,000 and $500,000 respectively. Duty is calculated at the standard rates on Transaction B and Transaction C individually.

Purchases of partial interests

Where a young farmer acquires a partial interest in farmland, the exemption or concession will be available to each holder of a partial interest in the farmland, subject to satisfying the eligibility requirements.

Accordingly, where there are two eligible young farmers acquiring a half share interest in an estate in fee simple in farmland, each young farmer will be entitled to the exemption or concession with respect to their interest. This applies whether the young farmer purchases with another person who is eligible or not.

Example 1:

Person A and Person B, who are both eligible young farmers, each purchase a 50 per cent interest in a farmland property. The total purchase price is $590,000. Accordingly the dutiable value of each person's interest is $295,000.

The young farmer's exemption threshold is $300,000. Accordingly Person A and B will each qualify for a full exemption from duty on their acquisition.

Example 2:

Person A, who is an eligible young farmer and Person B, who is not an eligible young farmer, each purchase a 50 per cent interest in a farmland property. The total purchase price is $500,000. Accordingly the dutiable value of each person's interest is $250,000.

The dutiable value of Person A's interest falls within the young farmer's exemption threshold. Accordingly, Person A is fully exempt from duty on their acquisition.

Person B will however, be liable for duty on their acquisition. Duty on $500,000 is $25,070. Accordingly, Person B will be liable for duty in the amount $12,535, being 50 per cent of $25,070.

Young Farmers Exemption or Concession v Principal Place of Residence Concession

The young farmer must choose between receiving either the young farmers duty exemption or concession or the principal place of residence concession in section 57J of the Act. Where the young farmer elects to receive the principal place of residence concession or does not make an election, he or she will not be entitled to the young farmers exemption or concession from duty.

Further information

For further information please contact the SRO.

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