Guideline

Intergenerational Rural Transfer Exemption (Family Farm Exemption)

Summary

The existing exemption (from 1995) has been amended to ensure that it reflects the contemporary ownership structures of family farming businesses and continues to operate in accordance with the original policy intent.

Important: This guideline should be read in conjunction with the list of defined terms set out on page 4.

The exemption provisions

Section 225 of the *Duties Act 2001* (the Act) provides an exemption from duty (the family farm exemption) for the transfer of an interest in primary production land and associated farming equipment, either directly to a relative or to certain trusts and companies involving relatives. The family farm exemption also exempts duty on the transfer of shares in certain land-rich companies that own farming property.

The family farm exemption relates to land that:

a) is used in the business of primary production at the time of the transfer;

b) will continue to be used in the business of primary production after the transfer; and

c) is rated as primary production land for land tax purposes.

The exemption is limited to certain transactions that involve relatives. The exemption will **not** be applied if the transfer arises from a scheme to evade duty.

The exemption conditions

1. **The land must be used at the time of transfer and must continue to be used in the business of primary production.**

It is a requirement that the land is used in the business of primary production and must continue to be used in the business of primary production. It is not imperative that the transferor and transferee are the parties running the business, for example the land may be leased to another person or entity that runs a primary production business on the land. Generally this will be identified on the statutory declaration lodged at the time of transfer. If it is later found that the transferee did not continue to use the land in the business of primary production, the transfer may be reassessed and full duty paid.

2. **The land must be primary production land within the meaning of the *Land Tax Act 2000*.**

Generally land will have a Primary Production Land classification (PPL) applied to it for the purpose of land tax. If a PPL is not applied to the land, the Commissioner will seek to clarify that the property meets the PPL requirements and would generally request that a PPL application be made. Use the PPL application form at www.sro.tas.gov.au.

3. **There must be a 'relative' relationship between the transferor and transferee.**

The following table sets out the conditions for receiving the exemption; these are based on the status of the transferor and transferee as natural persons, trusts or companies:

From (the transferor)	To (the transferee)	Conditions
Natural person/s	Natural person/s	• The transferee must be a relative of the transferor at the time of the transfer [section 225(1)(c)(i)].
Natural person/s	Trustee/s of a trust	• All of the beneficiaries of the transferee trust must be individually named in the trust deed. • All of the beneficiaries of the transferee trust must be relatives of the transferor at the time of the transfer. • The trust must be incapable of including non-relatives of the transferor as beneficiaries [section 225(1)(c)(i)].
Natural person/s	A company (other than as trustee) (1)	• This condition does not apply to transfers executed prior to 21 October 2013. • All the shareholders of the transferee company must be a relative of the transferor at the time of the transfer [section 225(1)(c)(iia)].
Company/ies	Trustee/s of a trust	• All of the beneficiaries of the transferee trust must be individually named in the trust deed. • All of the beneficiaries of the transferee trust must be relatives of all the company's shareholders at the time of the transfer. • The trust must be incapable of including non-relatives of the transferor as beneficiaries [section 225(1)(c)(ii)].
Company/ies	Natural person/s	• The transferee must be a relative of all the company's shareholders at the time of the transfer [section 225(1)(c)(iii)].
Company/ies	A company/ies (2)	• All the shareholders of the transferee company must be relatives of all the shareholders of the transferor company at the time of the transfer [section 225(1)(c)(iiia)].
Trustee/s of a trust	Natural person/s	• The transferee must be a relative of the named beneficiaries of the transferor trust who are natural persons [section 225(1)(c)(iv)].
Trustee/s of a trust	Trustee/s of another trust	• All of the beneficiaries of the transferee trust must be individually named. • All of the beneficiaries of the transferee trust must be relatives of the named beneficiaries of the transferor trust who are natural persons. • The transferee trust must be incapable of including non-relatives of the transferor as beneficiaries [section 225(1)(c)(v)].
Trustee/s of a trust	A company/ies (3)	• This condition does not apply to transfers executed prior to 21 October 2013. • All the shareholders of the transferee company must be relatives of all the named beneficiaries of the transferor trust who are natural persons [section 225(1)(c)(vi)].

(1) These conditions were inserted in the Duties Act (effective 21 October 2013) by the *Taxation and Related Legislation (Miscellaneous Amendments) Act 2013*.

(2) The exemption was expanded to include a transfer from one company to another from 7 December 2011.

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Duty avoidance

The family farm exemption was introduced to assist family members to take up ownership of family farms. An application for an exemption for a transfer that does not have a principal purpose of transferring a farming property to a relative will be considered an avoidance scheme, and will not have the exemption applied.

For example, if an individual owns a farm in their own name and transfers the property to the trustee of their superannuation trust, the family farm exemption would **not** be available. Here, the principal motivation had been to accommodate financial affairs and did not have a principal purpose of transferring the farming property to a relative.

Types of trusts that do not satisfy the requirements of the Act

A transfer to a trust, which includes a beneficiary who is **not** a relative, will be liable to pay duty.

For example, if a transferee trust includes beneficiaries that are charities or non-relative employees, the trust will not be eligible for the exemption because those beneficiaries would not meet the definition of relatives of the transferor. The terms of the trust must not give the trustee the power to include as beneficiaries any persons who would not come within the definition of relative of the transferor under section 225(3) of the Act.

All beneficiaries of the trust must be individually specified by name in the trust deed. That is, general groups of beneficiaries such as 'the children of…' or 'the spouse of…' will not meet the requirement of the Act.

If a trust deed provides for the distribution of capital or income of the trust to persons other than relatives of the transferor, the transfer will not be entitled to the benefit of the exemption.

Other transfers

A farming company is a company whose shares are not listed on a stock exchange and has assets that include farming property. The company will be considered land rich if it owns land in Tasmania with a value of $500 000 or more, and land (including buildings and fixtures) comprises 60 per cent or more of the company's assets.

For more information please read the Land Rich Provisions Guideline.

Sometimes farming land can be effectively moved to a relative by transferring the shares in a company that owns the land rather than by directly transferring the farm land itself. If the farming company is land rich the transfer of those shares may attract a duty liability.

Section 225(2) contains an exemption from duty resulting from the acquisition of shares in a farming company. The exemption is limited to the value of the company's farming property, and does not cover non-farm land.

For example, if a farming company holds farming land with a value of $1,000,000 and also holds other non-farming investment property with a value of $500 000, the exemption would only apply to the former. Duty would still be payable on the value of the investment properties.

The same eligibility conditions apply to the transfer of shares in farming companies as for transfers of land itself.

How to claim the exemption

Applicants must provide sufficient information to satisfy the Commissioner of State Revenue that all the prerequisite conditions applying to the transfer of the farming property have been met.

The lodgement of the transfer of realty or shares should be accompanied by a statutory declaration application. Use the Intergenerational Rural Transfer Exemption Form at www.sro.tas.gov.au.

Where the transfer involves a trust, a copy of the trust deed together and any deeds of variation to that trust are also required.

Where the transfer involves a company, a copy of the share register showing the names of each shareholder is also required.

Subsequent liability for duty in certain circumstances

Important: The Commissioner has the power to revisit transactions that have previously been granted an exemption under section 225 of the Act.

Under section 226, duty is chargeable on a transfer (that was previously granted an exemption) if the Commissioner becomes aware the transfer was not eligible to receive the exemption, or when:

a) a person who is not a relative of the transferor becomes entitled to a share or interest in the trust, whether that share or interest is vested or contingent; or
b) a person who is not a relative of the transferor otherwise benefits from the trust.

Section 226(3) provides that where any of the above situations occur, a statement disclosing the event/s must be lodged with the Commissioner.

Definitions of key terms

Caring partner

A partner in a caring relationship that is the subject of a deed of relationship registered under Part 2 of the *Relationships Act 2003*.

Farming company

A company whose:

a) shares are not quoted on a stock exchange; and
has assets including *farming property*.

Farming property

This type of property is:

a) land used solely or principally in the business of *primary production*; or
b) personal property used solely or principally in connection with the business of *primary production*.

Primary production

This term means:

a) cultivating land to sell the produce of the cultivation;
b) maintaining animals or poultry for sale or selling their natural increase or bodily produce;
c) keeping bees to sell their honey;
d) commercial fishing and the cultivation of aquatic plants or animals, including the preparation for fishing and the storage and preservation of fish and fishing gear;
e) cultivating or propagating for sale plants, seedlings, mushrooms or orchids.

Relative

In relation to a person who wishes to transfer a family farm, relative means:

a) a lineal descendant of the person;
b) an adopted child, a natural child or step-child of the person; or
ba) a surrogate child of the person; or
c) a lineal ancestor of the person; or
d) a brother, sister, nephew, niece, aunt or uncle of the person; or
e) the *spouse* or caring partner of a person referred to in (a), (b), (ba), (c) or (d). Spouse *incl*udes a person who is in a significant relationship as defined in the *Relationships Act 2003*.
f) an adopted child, natural child, step-child or surrogate child of a person referred to in paragraph (a), (b), (ba), (c), (d) or (e) or the spouse or caring partner of that child.[4]

For the purposes of this section:

a) a relative is taken to include a person himself or herself; and
b) a deceased estate may be taken to be a deceased person;[4] and
c) the death of a person does not alter the relationship between that person and any other person.[4]

[4] The definition of relative was expanded (effective 21 October 2013) by the *Taxation and Related Legislation (Miscellaneous Amendments) Act 2013*

For more information about the exemption provisions

Email	dutyhelp@treasury.tas.gov.au
Website	www.sro.tas.gov.au
Phone	(03) 6166 4400 (weekdays, 9:00am to 4:00pm)
In person	Ground floor Salamanca Building Parliament Square 4 Salamanca Place HOBART TAS 7000 (weekdays, 9:00am to 5:00pm)
Mail	The Commissioner of State Revenue, GPO Box 1374, HOBART TAS 7001
Fax	(03) 6234 3357