ONTARIO Farmer

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Agriculture struggles with Estate Administration Tax

Under the new law, there are challenges and fees for executors who administer farm assets

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The OFA has been lobbying to have farm assets exempted from the Estate Administration Tax.

Dealing with the loss of a loved one is tough enough without the overwhelming task of dealing with estate taxes and wills.

Many in the agriculture industry were caught off-guard with the Ministry of Finance's Estate Administration Tax (EAT) and its changes put into play Jan. 1, 2015.

"You now have to fill out a special form and tell them exactly what the deceased's assets were and they go back and check it," said Robert Fuller, partner at Brimage Law Group.

"If the executor doesn't do it right, there are all sorts of penalties that can arise. That's the big difference."

Another challenge is now land grandfathered in under the old land registry system can be subject to EAT if it's being administered under a will with other significant assets.

Fuller, author of Agriculture Law in Canada, said EAT isn't a new tax. It was formerly known as probate fees but when it was deemed unconstitutional in 1998 the EAT was created to cover estate taxes.

The special form, called a certificate of appointment of state trustee, or an estate certificate, is a court provided stamp that confirms the person is dead, this is the executor and that person is providing the court with the deceased's final will.

Previous to this executors would visit a lawyer, swear to the value of the estate, pay the necessary fees and it was virtually never questioned, said Fuller.

"It's the estate certificate stamp the court issues that costs the money," he said. "The problem is if you have to get that stamp for one asset, you have to pay it on all the assets the will covers and there are only very limited deductions and exclusions."

It isn't the only issue. The estate tax return needs to be filed within 90 days of getting the certificate explaining how the taxes were calculated and how those financials were arrived at.

If your land is registered under the new Land Titles system, it's subject to EAT, however if it was grandfathered in under the old land registry it is exempt for the tax for the first sale assuming you don't need to the certificate for another reason, said Fuller.

Fuller said in addition to the certificate, the Ministry of Finance can argue with your asset valuations anytime within a four-year period of filing and adjust the assessment, which leaves the executor on the hook for any outstanding taxes if he can't get the amounts back from the beneficiaries.

In some cases the property is of nominal value or it may already be valued yearly for property tax purposes but the MOF is very vague on what constitutes a solid valuation so the more thorough the valuation the better

"It could be a real problem if you're an executor," he said. "A bank account is a bank account, it's worth $500,000 because that's how much is in it. But how much is a farm worth? If you're an executor you may be spending a few thousand bucks on appraisers to make sure you have the right figures in there."

THE ONTARIO Federation of Agriculture is looking at ways in which agriculture land might be eligible for an exemption.

"Exempting farm assets from the Estate Administration Tax will help facilitate the transfer of the family farm to the next generation, much in the same way the land transfer exemption for qualified farmland aims to do," said Neil Currie, OFA general manager.

"Farm assets could qualify for an Estate Administration Tax exemption under similar conditions to land transfer tax exemption."

Some wills can be very straightforward and an estate certificate can be avoided, for example if, in addition to the grandfathered land, you have joint bank accounts and RRSPs and insurance policies, with the same person listed as beneficiary.

It becomes complicated when the grandfathered land is also accompanied by assets, like a $200,000 bank account, or agriculture quotas, that are registered only to the deceased.

"That's very common in farm situations. You have a farm that's worth two or $3 million and you don't have to get (an estate certificate) on it, but now you do because you have a bank account that's only in one spouse's name," said Fuller.

"Or the quota. Let's say the Chicken Farmers of Ontario require probates to transfer the quota. That's where the problem comes in, one asset can taint, or dirty, the will."

Now, instead of paying tax on the $200,000 bank account the estate certificate will cost you the taxes on the grandfathered-in farmland and quota as well.

Fuller said Ontario taxes are half-a-per cent, or five dollars per $1,000, up to $50,000 and one-and-a-half per cent, or $15 per $1,000, after that with no upper limit.

"On $1million it's only $14,500, it grates, it's annoying but it's not that much in absolute terms," he said. "You need to get that certificate to access those assets. You don't have to get that certificate now, but the bank won't release that $200,000 until you do."

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Fuller said there are ways to work around paying EAT on assets but it takes planning ahead and an understanding of the pros and cons to chose the best route.

One way is to own property together under a joint tenancy with right of survivorship so there is no tax. It's pretty straightforward, if one person dies the other gets everything.

However complications arise when a surviving parent tries to create a joint tenancy with children. You may avoid EAT, however if either child already owns a home they will now have to pay income tax on their half of the farm house because only the principal residence is income tax free.

This could cost the children to pay income tax on a home that could easily exceed the EAT on the assets in the will.

It can also present issues if the children added have creditors, have a marriage breakdown while living in the farm home, or one of the children predeceases the other which cuts the deceased sibling's children out of their share of the farm.

A second method is designating a beneficiary for RRSPs, TFSAs, and insurance policies to avoid EAT. However if a child predeceases, the surviving beneficiaries share the spoils and there is no recourse for the deceased beneficiary's offspring or spouse.

The taxes owed will come out of the estate which could further reduces their share, all to save a few grand, said Fuller.

"You have to be really careful with beneficiary designations," he said. "Does it avoid EAT? Sure it does. Does it do the best way you want? Maybe, maybe not."

If you are over 65 you can set up a trust, called an alter ego or joint partner trust. This is where you set up assets in a trust fund which you can access until you die and then it pays out to your beneficiaries, but it's complicated, rarely used and takes an upfront investment to set it up and administer it.

A double will, which lists assets that don't require estate certificates on one will and the balance of assets on another is the fourth way to ensure you only pay taxes on what is necessary, said Fuller.

"What goes on that will? That land under the (former) registry system, shares of a private company that I know I control," he said. "For example: I own Fuller Farming Inc. and I leave all the shares to Mrs. Fuller when I die. Is the board of directors going to insist I get an estate certificate before the shares get transferred? No, because Mrs. Fuller is the board of directors."

Personal assets such as valuable paintings, owned farm equipment that isn't included under the farm business can also be listed, he said.

It's key to ensure both wills mesh properly, said Fuller. If one child, for example, is designated the beneficiary of the non-probate will, the other will should equalize the value to the other siblings or beneficiaries.

A double will won't help if your land is under the new system, because it won't qualify, he said.

In spite of all the planning a non-tax will could get challenged in court, so there is no guarantee you won't have to get the certificate on that will and pay estate taxes.

The best way to ensure an easy succession for farms is to create a solid estate planning and be aware of how changes to your will can impact how it's executed in the future, said Fuller.

News

Smartphone helps get a handle on crop pests

Researchers at the University of Manitoba and Agriculture and Agri-Food Canada are developing an app to help farmers accurately identify the insects and weeds in their crops.

They aim to have the app ready for 2018 and to offer it free to farmers and crop consultants.

They already have the technology to identify 69 insect pests of canola. It will eventually have additional insect pests of other crops, 160 to 200 weeds, and several diseases in its database.

The farmer will be able to bring up the app on an iPhone or Android device in the field, choose the type of pest - i.e. 'canola bugs' and scroll through multiple, high-definition images of different characteristics - such as wing shape, or type of crop damage - to help identify the bug.

Once the farmer confirms its identity, the app has a guide to more information about how to manage the pest, or offers the option to email extension staff or an agronomist.

The forecasting tool provides real-time data that's generated and updated as fields are scouted by growers, agronomists and extension staff who can upload the information into the database.

Risk maps reflect the current situation and the algorithm can incorporate climate and other data to help guide management decisions.

The crop management tool allows farmers to keep a history of pests, weeds and diseases they have had in their fields, how they dealt with them, and the outcomes, so they can make better management decisions in the future based on what worked for them.

The app will also have a notifications feature so that any new risk map, warning, research finding or relevant information is available to the farmer as it's produced, reports the Manitoba Cooperator.

"We're trying to make the app work for specialists and non-specialists," says Dr. Ana Dal Molin, who is working on the project together with Dr. Barb Sharanowski at the University of Manitoba.