

TAX PLANNING FOR THE TRANSFER OF YOUR FAMILY FARM ON YOUR DEATH

If you own a family farm you will need to address a number of issues relating to the transfer of the family farm on your death.

This Reference Guide may assist you by summarizing some of the income tax exemptions and rollover provisions available to individuals who want to transfer their farming business to the next generation.

The information and commentary in this Reference Guide are of a general nature, to highlight the importance and benefits of planning farm transfer transactions ahead of time. As this is a very complex area, this Reference Guide does not provide comprehensive information nor does it cover all situations. As each situation will be unique, you should seek advice from a tax professional who is knowledgeable in farm-related tax matters, prior to implementing your estate plan.

In this Reference Guide, the following matters will be discussed:

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ROLLOVERS

One strategy for minimizing tax on death includes the use of certain rollover provisions. A rollover provision permits property to be transferred between certain persons without incurring an immediate capital gain, capital loss, recapture of capital cost allowance (“CCA”) or terminal loss. Instead, the tax liability is deferred until the person to whom the transfer is made (the “transferee”) disposes of, or is deemed to have disposed of, the transferred property.

Your legal representative may elect not to have a rollover provision apply in order to generate taxable capital gains or recapture of CCA for the purpose of fully utilizing personal tax credits, charitable tax credits, low marginal tax rates, alternative minimum tax credits carried forward from prior years, or losses available from other sources or from prior years that could be applied against taxable capital gains or recapture of CCA in the year of death.

Electing out of a rollover provision could also generate allowable capital losses, which could be used to offset taxable capital gains realized in the year of death.

Your legal representative may also elect not to have a rollover provision apply where the capital gain could be sheltered by:

- ❖ the principal residence exemption,
- ❖ the capital gains exemption for qualified farm property, or
- ❖ the capital gains exemption for shares of a qualified small business corporation.

Electing out of a rollover provision effectively increases the cost of the property to the transferee, which could reduce the transferee’s income tax liability on a future disposition, or deemed disposition of the property.

You should ensure that your Will gives your legal representative the power to make any elections or designations available under the Income Tax Act (Canada)(the “Income Tax Act”), provincial income tax legislation or any foreign tax legislation in order to ensure that your personal representative can take advantage of any tax planning opportunities.

Rollover to Your Spouse

You may defer the tax that would otherwise arise on your death if, as a consequence of your death, certain property is transferred or distributed to your spouse or common-law partner. In general, opposite sex and same sex partners are considered to be common-law partners for tax purposes after a period of 12

months cohabitation.¹ Accordingly, all references to a “spouse” in this Reference Guide apply equally to a common-law partner. (Similarly, all references to a “spousal trust” apply equally to a common-law partner trust.)

Unless your personal representative elects in your tax return for the year of death *not* to have the rollover apply, your spouse will inherit your cost amount for the property, and any potential income tax liability will be deferred until your spouse disposes of the property or is deemed to have disposed of it (for example, on his or her death). The election to have the spousal rollover *not* apply can be made on a property-by-property basis, which allows your legal representative to specify which properties will be rolled over to your spouse and which properties will be disposed of at their fair market value.

Capital property, depreciable property of a prescribed class or an interest in certain partnerships may be transferred on a tax-deferred basis to your spouse if:

- (a) you and your spouse were resident in Canada immediately before your death; and
- (b) within 36 months of the date of your death the property becomes indefeasibly vested in your spouse. The Minister of National Revenue may grant an extension of this vesting period within the 36-month period.

It is not necessary for the transferred property to have been used in a farming business in order to qualify for this rollover.

Rollover to a Spousal Trust

You may also defer the income tax that would otherwise arise on your death if, as a consequence of your death, certain property is transferred or distributed to a qualifying spousal trust (or a common-law partner trust).

Unless your personal representative elects in your tax return for the year of death *not* to have the rollover apply, the spousal trust will inherit your cost amount for the property, and any potential income tax liability will be deferred until the spousal trust disposes of the property or is deemed to have disposed of it (for example, on the death of your spouse). The election to have the spousal rollover *not* apply can be made on a property-by-property basis, which allows your legal representative to specify which properties will be rolled over to the spousal trust and which properties will be disposed of at their fair market value.

¹ Note that this definition applies only for income tax purposes. Each province and territory also has its own laws governing the rights of common-law partners for other purposes, such as property sharing on the breakdown of the relationship or on death.

Capital property, depreciable property of a prescribed class or an interest in certain partnerships may be transferred on a tax-deferred basis to a spousal trust where:

- ❖ you were resident in Canada immediately before your death;
- ❖ the trust was created by your Will;
- ❖ the trust was resident in Canada immediately after the property vested indefeasibly in the trust;
- ❖ your spouse is entitled to receive all of the income of the trust that arises during his or her lifetime and no person except the spouse may, during the spouse's life, receive or otherwise obtain the use of any of the income or capital of the trust; and
- ❖ within 36 months of the date of your death the property becomes indefeasibly vested in the trust. The Minister of National Revenue may grant an extension of this vesting period within the 36-month period.

It is not necessary for the transferred property to have been used in a farming business in order to qualify for this rollover.

Additional information on spousal trusts is available in our Reference Guide on Spousal Trusts.

Rollover of Farm Property from a Parent to a Child

Where you owned land in Canada or depreciable property of a prescribed class in Canada, you may be able to transfer the property to your child on a tax deferred basis on your death where:

- ❖ before your death the property was used principally (i.e. more than 50%) in a farming business in which you, your spouse or any of your children was actively engaged on a regular and continuous basis;
- ❖ on or after your death the property was transferred or distributed to your child as a consequence of your death;
- ❖ your child was resident in Canada immediately before your death; and
- ❖ within 36 months of your death the property becomes indefeasibly vested in your child. The Minister of National Revenue may grant an extension of this vesting period within the 36-month period.

For purposes of this provision, a "child" includes your natural child, grandchild, great-grandchild, an adopted child, a child or adopted child of your spouse or

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common-law partner, a spouse or common-law partner of a child, and a person who is wholly dependant on you for support and for whom you have, or immediately before the person attained 19 years of age had, custody and control. Note that the child relationship must exist at the time of death. For example, your son-in-law would not be regarded as your child if your daughter predeceased you.

Land or depreciable property that you own will be deemed to be used in the business of farming if the property was used by:

- ❖ a family farm corporation of you, your spouse or any of your children, or
- ❖ a family farm partnership of you, your spouse or any of your children,

in the course of carrying on the business of farming.

“Farming”, as defined in the Income Tax Act, includes the tillage of the soil, livestock raising or exhibiting, maintaining horses for racing, raising of poultry, fur farming, dairy farming, fruit growing, and the keeping of bees, but does not include an office or employment under a person engaged in the business of farming. Other businesses considered by the Canada Revenue Agency (“CRA”) or the courts to be farming include, for example, tree farming, cattle feed lots and the operation of nurseries and greenhouses.

Factors considered by the CRA in determining whether a particular farming operation constitutes a “farming business” include:

- ❖ the size of the property used for farming,
- ❖ the time spent on the farming operation in comparison to the time spent in employment or other income-earning capacity,
- ❖ plans for developing and expanding the farming operation given available resources, and
- ❖ whether the taxpayer qualifies for some type of provincial farming assistance.

The CRA takes the view that a person will be regarded as actively engaged on a regular and continuous basis in the business of farming when the person is actively engaged in the management and/or day to day activities of the farming business. Ordinarily the person would be expected to contribute time, labour and attention to the business to a sufficient degree that the person’s contributions would be a meaningful factor in the successful operation of the business.

Unless your personal representative elects in your income tax return for the taxation year in which you died not to have the rollover provision apply, your child

will inherit your tax values and any potential tax liability will be deferred until the property is disposed of, or is deemed to have been disposed of by the child, in the future. However, your legal representative may elect to realize a full or partial capital gain, capital loss, recapture of CCA or a terminal loss by electing to have the asset transferred for proceeds of disposition equal to any amount between its fair market value immediately before your death and certain other values depending upon the type of asset being transferred.

The child does not have to use the transferred property in the business of farming after the child receives it.

Property that cannot be rolled over to your child includes inventory, eligible capital property and land, buildings or equipment leased to a person outside your immediate family for more than 50% of the ownership period.

Note also that farm assets cannot be rolled over to your child unless the transfer or distribution is as a consequence of your death. For example, if your Will states that the farm assets are to be sold to your child then the transfer will be regarded as a sale and not as a consequence of your death. As an alternative, your Will could provide for a gift of the farm assets to your child conditional upon your child paying a specified amount to, for example, your spouse or other children.

Rollover of Farm Property from a Spousal Trust to a Child

A tax deferred transfer from a qualifying spousal trust (or common-law partner trust) to your child may be available where:

- ❖ land in Canada or depreciable property of a prescribed class in Canada was transferred or distributed to a spousal trust that was created either during your lifetime or by your Will;
- ❖ the property (or certain replacement property) was used in the business of farming immediately before the death of your spouse;
- ❖ on the death of your spouse, the property was transferred or distributed to your child as a consequence of the death of your spouse;
- ❖ your child was resident in Canada immediately before the death of your spouse; and
- ❖ the property indefeasibly vested in your child.

The requirement that the property be used in the business of farming immediately before the death of the spouse does not mean that the trust, spouse or child has to use the property in a farming business immediately before the

death of the spouse. In addition, there is no requirement that the property be “used principally” (i.e. more than 50%) in the business of farming. For example, the property may still be rolled over to your child where, during the period between the settlement of the trust and the death of the spouse, the property was rented to someone who used it in a farming business and the other requirements for the rollover are met.

Your child does not have to use the property in the business of farming after receiving it.

The rollover will defer the tax on the transfer of the property unless the trust elects in its tax return for its taxation year in which the spouse died not to have the rollover apply. However, the trust may elect to realize a full or partial capital gain, capital loss, recapture of CCA or a terminal loss by electing to have the property transferred for proceeds of disposition equal to any amount between its fair market value immediately before the death of the spouse and certain other values depending upon the type of property being transferred.

Eligible capital property, inventory and certain other assets cannot be rolled over to your child under this rollover provision.

Rollover of Shares of a Family Farm Corporation from a Parent to a Child

A share of the capital stock of a family farm corporation may be transferred to your child on a tax deferred basis where:

- ❖ on or after your death the share was transferred to your child as a consequence of your death;
- ❖ your child was resident in Canada immediately before your death; and
- ❖ within 36 months of your death the share becomes indefeasibly vested in your child. The Minister of National Revenue may grant an extension of this vesting period within the 36-month period.

A share may qualify as a share of the capital stock of a family farm corporation where all or substantially all of the fair market value of the property owned by the corporation immediately before your death was attributable to property that has been used by an eligible user principally in the course of carrying on a farming business in Canada in which you or your spouse, child or parent was actively engaged on a regular and continuous basis.

An “eligible user” with respect to a family farm corporation would be:

- (a) the corporation or any other family farm corporation belonging to you or your spouse, child or parent,

- (b) a corporation controlled by a corporation referred to in (a),
- (c) you, your spouse, child or parent, or
- (d) a family farm partnership of you, your spouse, child or parent.

A share of a holding corporation may qualify as a share of the capital stock of a family farm corporation, provided that all or substantially all of the fair market value of the property owned by the holding corporation was attributable to shares or indebtedness of one or more corporations, all or substantially all of the fair market value of the property of which was attributable to:

- (a) property that has been used by an eligible user principally in the course of carrying on a farming business in Canada in which you were, or your spouse, common-law partner, child or parent was, actively engaged on a regular and continuous basis, or
- (b) shares of the capital stock or indebtedness of one or more other such holding corporations.

The CRA takes the position that “all or substantially all” means 90% or more.

The rollover will defer the tax on the transfer of the shares unless your legal representative elects in your income tax return for the year of death to recognize all or part of the accrued capital gain or capital loss on the shares.

Rollover of an Interest in a Family Farm Partnership from a Parent to a Child

An interest in a family farm partnership may be transferred to your child on a tax deferred basis where:

- ❖ on or after your death your partnership interest was transferred to your child as a consequence of your death;
- ❖ your child was resident in Canada immediately before your death; and
- ❖ within 36 months of your death the partnership interest becomes indefeasibly vested in your child. The Minister of National Revenue may grant an extension of this vesting period within the 36-month period.

An interest in a partnership may qualify as an interest in a family farm partnership if it was owned by you immediately before your death and at that time all or substantially all of the fair market value of the property of the partnership was attributable to:

- (a) property that has been used by an eligible user principally in the course of carrying on a farming business in Canada in which you were, or your spouse, common-law partner, child or parent was, actively engaged on a regular and continuous basis,
- (b) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to property described in (c), or
- (c) properties described in paragraph (a) or (b).

An “eligible user” with respect to a family farm partnership would be:

- ❖ the partnership,
- ❖ you, your spouse, child or parent, or
- ❖ a family farm corporation owned by you, your spouse, child or parent.

Your legal representative can elect in your income tax return for the year of death to recognize all or part of any accrued capital gain or capital loss on your interest in the family farm partnership.

Note that the rollover will not apply where the child is deemed to have acquired a right to receive partnership property and not to have acquired an interest in a partnership. A child will be deemed to have acquired a right to receive partnership property where, for example, the child is not a member of, or does not, by virtue of the inheritance, become a member of the partnership or the child receives a residual partnership interest.

Rollover of Shares of a Family Farm Corporation or an Interest in a Family Farm Partnership from a Spousal Trust to a Child

Shares of a family farm corporation or an interest in a family farm partnership may be transferred on a tax deferred basis from a spousal trust (or common-law partner trust) to your child where:

- ❖ the spousal trust was established during your lifetime or by your Will;
- ❖ the property was, immediately before the transfer to your child, a share of the capital stock of a family farm corporation or an interest in a family farm partnership;
- ❖ the property was, immediately before the death of your spouse, a share of the capital stock of a family farm corporation (however, the trust, spouse, common-law partner, child or parent does not have to be actively engaged on

a regular and continuous basis in the corporation's business immediately before the death of the spouse or common-law partner) or an interest in a partnership that carried on the business of farming in Canada and in which it used all or substantially all of its property;

- ❖ on the death of the spouse, the property was transferred or distributed to your child as a consequence of the death of the spouse or common-law partner;
- ❖ your child was resident in Canada immediately before the death of your spouse; and
- ❖ the property indefeasibly vested in your child.

The rollover will defer the tax on the transfer unless the trust elects in its tax return for its taxation year in which the spouse died not to have the rollover apply. The trust may elect to recognize all or part of any accrued capital gain or capital loss on the transferred property.

The rollover will not apply where a child is deemed to have acquired a right to receive partnership property and not to have acquired an interest in a partnership.

Rollover to a Parent

You may roll over land, depreciable property of a prescribed class, shares of a family farm corporation and an interest in a family farm partnership to a parent if:

- ❖ you received the property from a parent pursuant to certain rollover provisions available during life or on death;
- ❖ as a consequence of your death, the property is transferred to your parent; and
- ❖ your personal representative elects in your income tax return for the year of death to realize a full or partial capital gain, capital loss, recapture of CCA or a terminal loss by electing to have the asset transferred for proceeds of disposition equal to any amount between its fair market value immediately before your death and certain other values depending upon the type of asset being transferred.

Note that the property does not have to be transferred to the parent from whom you received the property.

No rollover would be available if your Will provides that the farm property is to be sold to your parents.

EXEMPTIONS

A tax exemption can reduce or eliminate a capital gain on the disposition of a taxpayer's capital property. The following outlines some of the exemptions that may be available on your death with respect to the deemed disposition of farm property.

Principal Residence Exemption

The principal residence exemption exempts gains on the disposition of a personal residence provided certain conditions are met, as outlined below.

Farmers may use one of the following two methods to calculate the gain on a disposition or deemed disposition of their principal residence where that residence is located on farmland:

1. Under the first option, your residence and $\frac{1}{2}$ hectare of adjacent land can be designated as your principal residence. The capital gain would then be exempt from tax. Land in excess of $\frac{1}{2}$ hectare may also qualify but only to the extent that it is established to be necessary for the use and enjoyment of the farmhouse as a residence (for example, your municipality imposes a minimum lot size in excess of $\frac{1}{2}$ hectare or the additional land is needed in order to be able to gain access to your residence). With this option, you must make a reasonable allocation of the sale price and the adjusted cost base of the property between your residence (including the $\frac{1}{2}$ hectare) and the remaining farmland.
2. Under the second option, you could elect to deduct from the total capital gain on the entire property (your residence and farmland), the sum of \$1,000 plus an additional \$1,000 for every year since 1971 that your residence was your principal residence.

The capital gains exemption for qualified farm property (discussed below) may be available to shelter any part of the gain on the disposition of the farm property that does not qualify for the principal residence exemption.

Where a taxpayer uses a home partly as a residence and partly to earn business or property income, there is some uncertainty as to how much of the sale proceeds may be sheltered by the exemption. The CRA takes the position that the entire residence may still qualify as a principal residence where all of the following conditions are met:

- ❖ the income-producing use is ancillary to the main use of the property as a residence;

- ❖ the taxpayer did not make structural changes to the property to accommodate the income-producing use; and
- ❖ the taxpayer does not claim capital cost allowance on the property.

If these conditions are not satisfied, then the portion of the home used for the income-producing purpose would be ineligible for principal residence status, and any gain related to this portion of the house would be taxable. However, the portion of the property used as a residence and ordinarily inhabited by the owner would be eligible for the principal residence exemption.

In order for a residence to qualify as your principal residence, you must own the property either alone or in joint ownership with another person (which includes either joint tenancy or tenancy-in-common). In addition, you, your spouse, your former spouse, or your child must ordinarily inhabit the house in the year.

For the residence to be your principal residence for a particular year, you must designate it as such for each year. After 1981, only one property per family unit (which would include, for example, your spouse or unmarried minor child) can be designated as a principal residence for the year. The designation must be made in your income tax return for the taxation year in which you dispose of the property or are deemed to have disposed of the property.

Where your residence (or farmland on which your residence is located) is rolled over on your death to your spouse or a spousal trust, then the spouse or spousal trust, in determining any gain on a subsequent disposition of the residence, will be permitted to take into account the number of years the residence was your principal residence.

If the residence was used primarily for your personal use and enjoyment, any loss on the deemed disposition of your residence on your death will be deemed to be nil. However, your legal representative may be able to claim a capital loss on that part of the farm property that does not qualify as your principal residence.

Capital Gains Exemption

A \$750,000 capital gains exemption (or \$650,000 if you had previously claimed the \$100,000 capital gains exemption that was eliminated on February 22, 1994) is available to an individual (other than a trust) who is resident in Canada throughout the year and who disposed of or is deemed to have disposed of qualified farm property or qualified small business corporation shares in the year.

The capital gains exemption for qualified small business corporation ("QSBC") shares is discussed in our Reference Guide on Tax Planning for the Sale of Your Business.

Note, however, that your ability to claim the capital gains exemption to offset taxable capital gains realized on a disposition of qualified farm property or QSBC shares may be limited by the amount of:

- ❖ capital losses in prior years,
- ❖ allowable business investment losses, or
- ❖ any cumulative net investment losses (“CNIL”) outstanding at the end of the taxation year in which you sold or are deemed to have disposed of your property. A CNIL account reflects the cumulative amount by which your investment expenses (such as interest and carrying charges on income-producing property (other than business property)) exceed your investment income since 1988. Your CNIL balance must be nil before you will be able to use any portion of your capital gains exemption.

In addition, certain rules provide that the capital gains exemption may be denied where it can reasonably be concluded that a significant part of an individual's capital gain results from the fact that the shares (other than certain prescribed shares) have paid low or no dividends or that dividends paid were less than 90% of the annual rate of return that a prudent investor would expect to receive. These rules are designed to prevent taxpayers from converting dividends into more tax-advantageous exempt capital gains.

Qualified Farm Property

There are specific criteria that must be met for property to be considered “qualified farm property”. Whether a property meets the requirements for being qualified farm property will depend on a variety of factors including:

- ❖ who owns the property;
- ❖ the type of property being transferred;
- ❖ what the property was used for and how long the property was so used;
- ❖ by whom the property was used;
- ❖ where the property was used,
- ❖ when the property was acquired by the transferor; and
- ❖ when the property is transferred to the transferee.

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The following are the types of property that will constitute “qualified farm property” if owned by an individual (including a personal trust²), the individual’s spouse or common-law partner, or a partnership, an interest in which is an “interest in a family farm partnership” of the individual or his or her spouse or common-law partner:

- ❖ real property that has been used by a qualified user in the course of the business of farming in Canada. A qualified user includes:
 - (a) the individual disposing of the property;
 - (b) if the individual is a personal trust, a beneficiary of the trust;
 - (c) a spouse, child or parent of the individual or of the beneficiary of the personal trust;
 - (d) a family farm corporation, a share of which is owned by a person referred to in any of (a) – (c) above; and
 - (e) a family farm partnership, an interest in which is owned by a person referred to in any of (a) – (c) above.

Examples would include land, buildings and leasehold interests in real property such as grazing leases.

- ❖ eligible capital property (for example, a poultry or milk quota) used by a qualified user (as described above) in the course of the business of farming in Canada,
- ❖ shares of the capital stock of a family farm corporation of the individual or the individual’s spouse, or
- ❖ an interest in a family farm partnership of the individual or the individual’s spouse.

There are specific conditions that must be met in order for real property and eligible capital property to be considered as having been “used in the course of carrying on the business of farming in Canada”. The applicable conditions depend on whether the property was last acquired by the individual or partnership *before* or *after* June 18, 1987. In general, the conditions that apply for property acquired after June 18, 1987 are stricter.

Real property or eligible capital property (or substituted property) *last acquired after June 17, 1987* will only be considered to have been used in the course of

² Generally, a personal trust is either a testamentary trust or a trust created during life where the beneficiaries have not paid any consideration to acquire their interests in the trust.

carrying on the business of farming in Canada if the following two tests are satisfied:

1. the property (or property for which the property was substituted) was owned by a qualified user or by a personal trust from which the individual acquired the property *throughout* the 24 months immediately preceding the transfer; *and*
2. depending on who the user of the property is, either a “gross revenue” test is met for at least two years while the property was so owned, or a 24-month “principal use period” test is met.

The “gross revenue” test: In at least two years while the property was owned as provided in paragraph 1 above, the gross revenue of the qualified user (or the personal trust) from the farming business in which the property was principally used must have exceeded the person’s income from all other sources for the year. In addition, the qualified user (or a beneficiary of the trust) must have been actively engaged on a regular and continuous basis in the farming business in which the property was principally used. The person who meets the gross revenue test does not have to be the person who owns the property.

The 24-month “principal use period” test: This test applies where the property was used by a family farm corporation or by a family farm partnership, a share or interest of which is owned by the individual disposing of the property, (or where the individual is a personal trust, a beneficiary of the trust), a spouse, child or parent of the individual or of the beneficiary of the personal trust. In this case, the property must be used principally in the course of carrying on the business of farming in Canada throughout a period of at least 24 months during which time the individual, a beneficiary of the personal trust, or a spouse, common-law partner, child or parent of the individual or beneficiary was actively engaged on a regular and continuous basis in the farming business in which the property was used. The 24-month period of use does not need to be the 24-month immediately preceding the transfer.

As noted above, a less strict test applies in determining whether real property or eligible capital property last acquired by the individual or partnership prior to June 18, 1987 will be considered to have been used in the course of carrying on the business of farming in Canada. In particular, the property must have been used by a qualified user or by a personal trust from which the individual acquired the property, principally in the course of carrying on the business of farming in Canada either:

- ❖ in the year the property was disposed of by the individual, or

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- ❖ in at least five years during which the property was owned by the individual, a beneficiary of a personal trust, a spouse, child or parent of the individual or beneficiary, or personal trust from which the individual acquired the property or a family farm partnership.

Note that the *post*-June 17, 1987 rules will apply to any property on which you elected to claim the \$100,000 capital gains exemption prior to the elimination of this exemption on February 22, 1994 in order to increase the adjusted cost base of real property such as farmland.

Income that will not be eligible for the capital gains exemption includes:

- ❖ capital gains realized on the sale or transfer of depreciable property (such as machinery and equipment);
- ❖ recapture of depreciation on, for example, buildings, machinery and equipment;
- ❖ recapture of write-offs on quotas; and
- ❖ income generated from the sale or transfer of inventory.

As noted earlier, the definitions of “a share of a family farm corporation” and “an interest in a family farm partnership” for purposes of the capital gains exemption are different than the definition of those terms for the purposes of the rollover rules. The definitions for purposes of the capital gains exemption are as follows:

Share of the Capital Stock of a Family Farm Corporation

A share of the capital stock of a family farm corporation of an individual (other than a trust that is not a personal trust) at any time is a share of the capital stock of a corporation owned by the individual at that time (the “Corporate Determination Time”) that meets the following criteria:

1. *24-Month Corporate Asset Test:* Throughout any 24-month period ending before the Corporate Determination Time (the “24-month Corporate Period”), more than 50% of the fair market value of the property owned by the corporation must be attributable to:
 - (a) property that was used by:
 - ❖ the corporation,
 - ❖ the individual,
 - ❖ a beneficiary of the trust where the individual is a personal trust,

- ❖ a spouse, child or parent of the individual or of a beneficiary, or
- ❖ a partnership, an interest in which was an interest in a family farm partnership of the individual, a beneficiary or a spouse, child or parent of the individual or of such a beneficiary (each of the above referred to as a “Corporate Qualified User”),

principally in the course of carrying on the business of farming in Canada in which the individual, a beneficiary or a spouse, child or parent of the individual or of such a beneficiary was actively engaged on a regular and continuous basis,

(b) shares of the capital stock or indebtedness of one or more corporations, all or substantially all of the fair market value of the property of which was attributable to property described in 1(c), or

(c) properties described in either 1(a) or (b).

2. *Corporate Determination Time Asset Test.* At the Corporate Determination Time, all or substantially all of the fair market value of the property owned by the corporation must be attributable to:

(a) property that was used principally in the course of carrying on the business of farming in Canada by a Corporate Qualified User,

(b) shares of the capital stock or indebtedness of one or more corporations, all or substantially all of the fair market value of the property of which was attributable to property described in 2(c), or

(c) properties described in either 2(a) or (b) above.

Ownership of significant reserves of cash or investment assets (non-eligible assets) by a corporation may therefore disqualify the shares of a corporation as shares of the capital stock of a family farm corporation if those non-eligible assets exceed 10% of the fair market value of all assets of the corporation at the time of disposition, or 50% of the fair market value of all assets of the corporation during the 24-month Corporate Period. The determination as to whether assets are eligible or non-eligible active business assets for the purposes of the tests described above is a question of fact. Such a determination must be made in light of all the facts and requirements of a particular farming business, in consultation with your professional advisors.

Interest in a Family Farm Partnership

An interest in a family farm partnership of an individual (other than a trust that is not a personal trust) at any time is an interest owned by the individual at that time

(the “Partnership Determination Time”) in a partnership that meets the following criteria:

1. *24-Month Partnership Asset Test:* Throughout any 24 month period ending before the Partnership Determination Time (the “24-month Partnership Period”), more than 50% of the fair market value of the property of the partnership must be attributable to:

(a) property that was used by:

- ❖ the partnership,
- ❖ the individual,
- ❖ a beneficiary of the trust where the individual is a personal trust,
- ❖ a spouse, child or parent of the individual or of a beneficiary, or
- ❖ a corporation a share of the capital stock of which was a share of the capital stock of a family farm corporation of the individual, a beneficiary or a spouse, child or parent of the individual or of such a beneficiary (each of the above referred to as a “Partnership Qualified User”),

principally in the course of carrying on the business of farming in Canada in which the individual, a beneficiary or a spouse, child or parent of the individual or of such a beneficiary was actively engaged on a regular and continuous basis,

(b) shares of the capital stock or indebtedness of one or more corporations, all or substantially all of the fair market value of the property of which was attributable to property described in 1(c), or

(c) properties described in either 1(a) or (b).

2. *Partnership Determination Time Asset Test:* At the Partnership Determination Time all or substantially all of the fair market value of the property of the partnership must be attributable to:

(a) property that was used principally in the course of carrying on the business of farming in Canada by the partnership or by a Partnership Qualified User,

(b) shares of the capital stock or indebtedness of one or more corporations, all or substantially all of the fair market value of the property of which was attributable to property described in 2(c), or

(c) properties described in either 2(a) or (b) above.



“Used principally” in 2(a) refers to the use of the asset over the entire period of ownership by the partnership. Therefore, the asset does not need to be used in farming by the partnership or by a Partnership Qualified User at the time of disposition of the partnership interest.

CONCLUSION

As the tax rules relating to the transfer of the family farm on death are complex, it would be important to involve professional legal and accounting advisors who are knowledgeable in this area in your planning.

Note that if you currently do not qualify for a rollover or exemption, it may be possible to undertake certain steps during your lifetime, which could enable you to qualify for a rollover or exemption on death. You should discuss this further with your professional advisors.