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The Law and Agriculture

Be aware of the dangers of Section 9HA

Tax and estate planning involve many interrelated and potentially complex issues for farmers operating their farming activities in own name.

The tax legislative provisions may have a significant influence on the way a farmer manages his farming operations and his estate.

Section 9HA of the Income Tax Act (the "Tax Act") is one of the examples that can burden the farmer as tax payer upon death. Before implementation of section 9HA, livestock held by a farmer in own name upon his date of death, was regarded a deemed disposal to his estate as a capital asset and subject to capital gains tax.

Subsequent to the implementation of section 9HA on 1 March 2016, a farmer owning livestock in his own name at date of death will also be deemed to have disposed of the livestock to his / her estate, but at market value. Usually, such livestock is included in the farmer's closing stock at a standard value for purposes of the first schedule of the Tax Act. Any opening stock still on hand at the end of the year of assessment must be included in the closing stock at its standard value and not market value.

However, the deemed disposal upon death per section 9HA will result in an inclusion in the farmer's gross income in the final year of assessment (calculated up to date of death) equal to the market value of the stock, giving rise to income tax.

The effect of section 9HA is that the deemed disposal of the livestock to the farmer's estate will bear similar effects as if the livestock were disposed of in the ordinary course of the farming operations. In light of the above, it may serve as a solution for a farmer, owning livestock in his personal name, to transfer such assets to a company in exchange for shares in order to eliminate the possible unforeseen income tax consequences upon death. Transferring the assets to a company will not only have invaluable tax benefits, but will also minimise the risk of personal liability. As the saying that goes: Prevention is better than cure.

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