Probate another farm cost

J Ripley

Follow this and additional works at: https://researchlibrary.agric.wa.gov.au/journal_agriculture4

Part of the Accounting Commons, Agribusiness Commons, and the Taxation Commons

Recommended Citation
Available at: https://researchlibrary.agric.wa.gov.au/journal_agriculture4/vol13/iss3/8

This article is brought to you for free and open access by Research Library. It has been accepted for inclusion in Journal of the Department of Agriculture, Western Australia, Series 4 by an authorized administrator of Research Library. For more information, please contact jennifer.heathcote@agric.wa.gov.au, sandra.papenfus@agric.wa.gov.au, paul.orange@dpird.wa.gov.au.
Probate another farm cost

By J. Ripley, Rural Economist

Death duties are too big a cost to be ignored on most farms, because most farms have substantial assets in land, stock, buildings and machinery. The saying "a wise man does not lay up treasures, the more he gives to others the more he keeps for his own" seems true of the types of estate planning outlined in the following article.
One sure thing about life is that it will be terminated by death. The unpleasantness of this prospect often tends to delay any thinking about or planning for the disposal of one's estate after death.

Another inevitable situation for anyone with net assets in excess of about $20,000 is that death duties will have to be paid on the value of the assets. Death duties are paid in the form of probate duty to the Western Australian Government and estate duty to the Commonwealth Government. The amount of duty payable depends on the beneficiaries and the size of the estate. Death duties become due for payment immediately after assessment, although under certain circumstances they can be paid over a period of time, with the consent of Taxation Commissioners.

At death, the deceased's assets are frozen and cannot be sold or borrowed against until death duties have been paid, unless agreed to by the Taxation Commissioners. Such concessions are only made under special circumstances.

In a farming situation where the assets are all in the name of the deceased, the estate is subject to the control of an executor. The executor may open an executor's account and pay into this all money received after death. The executor can draw against this account for normal outgoings. If there is no will or if an executor is not named in a will there could be long delays as an executor must then be appointed through the Court.

Anyone who has assets must seriously consider formulating suitable plans covering the control of the assets after death. Many estates pay death duties well in excess of the amount they need have paid if the main asset holders had made adequate plans during their lifetime.

This article is mainly intended to deal with the aspect of death duties, but it is useful to also look at the likely income tax advantages which are the result of most forms of estate planning.

**Examples**

Various situations have been chosen to illustrate the costs of probate and taxation. It will be clear that the relative costs of these items and any plan formulated will depend on the individual case.

The examples shown in the table are based on assets assessed for probate at $70,000 and $140,000. To compare the costs of income tax with various situations, the examples use two taxable annual incomes of $10,000 and $20,000, with three cases—

1. **Husband and wife**—husband holds all assets in his name and income all in his account. Estate left to wife.
2. **Husband and wife equal partners in asset holding, and share taxable income equally. Estate left to surviving partner.**
3. **Father, son and daughter-in-law**—father has ½ share of asset, son has ¼ share of asset, daughter-in-law has ¼ share of the asset. Father leaves his share of the asset to son. Taxable income is split equally between the three partners.

These three situations are combined in Table 1 with the income tax costs calculated over a 10-year period for the two asset levels and the two income levels. No attempt has been made to allow for interest, or any other factors associated with calculations during the 10-year period.

The main point illustrated by this table is that the relative costs of these items and any plan formulated will depend on the individual case.

**Family partnerships**

Family partnerships are legally formed between husband, wife and others as necessary. These partnerships can involve all assets. Very often partnerships are formed including only stock and plant. In such cases the main objective is the taxation benefit of dividing income among partners. In cases where probate is also a consideration the partnership may need to include land and this may be more complicated and costly process, which requires the sale of the land to partners and a formal agreement detailing terms. The land can be transferred over a period of years by gifting and profit allocation. The land sold can be portion of the total holding.

Family partnership formation is the most commonly used method of minimising taxation and probate costs. Formation of a partnership involves minimal costs and allows great flexibility concerning profit distribution, capital sharing, business control and dissolution.

**Family companies**

Family company formation is usually undertaken only where the asset holding is large, say, in excess of $150,000. It provides a means for the major shareholder to divest large amounts of capital while still maintaining control over the asset. Companies can often be used to minimise income tax as well but calculations are first necessary to ensure that the company taxation rates are smaller than those the individual would otherwise be paying. Companies do not pay provisional tax. They are often complex and require the continual services of an account-
Taxation may be an annual cost so most people try to reduce it, but many people are afraid of the thought of probate and do not give it the attention required. Many farmers' wives and families have had to face excessive probate costs because husbands have been unwilling to discuss probate with their lawyers and accountants. Farmers who have not done so should obtain advice on how best to combine the lowest cost probate and taxation strategy. The family must then fit this to their desires and thus a final programme is worked out.

Control
Some farmers are reluctant to consider estate planning as they consider that by so doing they will lose control of their assets. This need not be so, as good estate planning will allow the senior partner full financial and management control over the assets, irrespective of how the assets are allocated between partners or shareholders.

Wills
Any estate planning involves partners making wills which are such that they complement the strategy. Wills must be carefully thought out and as simple as possible. They should be changed if circumstances warrant.

Wills are made after the individual requirements of the family partners have been established and clearly explained. Many families of deceased estates are put in an untenable position when the estate is willed so that all family members have an equal share. In such cases the farmer is usually trying to be fair to all next-of-kin and also to leave the farm intact for a son, or even two sons to carry on farming. In many cases the estate is not large enough to cope with this situation and the son or sons cannot meet repayments to family members and still maintain viability. The testator must decide, preferably in conjunction with his family, whether he wishes the farm to continue as such and, if so, divide his assets accordingly.

It is essential for all family partners to make a will, as when no will is made standard principles of inheritance are enforced and these may not fit in with family wishes.

In conclusion, the cost of probate and taxation are a significant farm cost. These costs can be minimised and it is absolutely essential that each farming family be clear about the likely costs. Frank discussions with lawyers, accountants and other qualified advisers are essential to establish the strategy required to give the farmer the best possible probate and taxation benefits.

### Examples of probate and tax costs for three family or partnership arrangements and two levels of asset and income

<table>
<thead>
<tr>
<th>Asset Value</th>
<th>Taxable Income</th>
<th>Cases</th>
<th>Probate and estate duty</th>
<th>Tax total over 10 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>$70,000</td>
<td>$10,000</td>
<td>1</td>
<td>$10,000</td>
<td>$32,000</td>
</tr>
<tr>
<td>$140,000</td>
<td>$10,000</td>
<td>2</td>
<td>$1,400</td>
<td>$20,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>$2,700</td>
<td>$14,000</td>
</tr>
<tr>
<td>$140,000</td>
<td>$20,000</td>
<td>2</td>
<td>$10,000</td>
<td>$62,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>$11,300</td>
<td>$48,000</td>
</tr>
<tr>
<td>$70,000</td>
<td>$20,000</td>
<td>1</td>
<td>$10,000</td>
<td>$88,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2</td>
<td>$1,400</td>
<td>$62,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>$2,700</td>
<td>$48,000</td>
</tr>
</tbody>
</table>