

Tax Planning for the Family Farm

The Capital Gains Deduction and Intergenerational Farm Property Rollover

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The family farm continues to serve an important role in the Canadian economy and, as such, receives special status under Canada's tax law. In particular, there are two important tax planning strategies that can be used when transferring a Canadian farm property. The Capital Gains Deduction is available to potentially shelter capital gains realized on transfers of qualified farm property, and the Intergenerational Farm Property Rollover ("Intergenerational Rollover") permits tax-deferred transfers of farm property to other family members. Both strategies can apply to lifetime transfers (i.e., a sale or gift), or to transfers that take place upon the death of the owner. The rules surrounding these strategies are very complex and only a general discussion is provided here. As with all tax planning, professional advice is critical to understand the specific implications for your situation.

What is a farming business?

For income tax purposes, farming includes tillage of the soil, raising or exhibiting livestock, maintaining horses for racing, raising poultry, fur farming, dairy farming, fruit growing and beekeeping. This is not an exhaustive list and additional activities may be considered farming. However, the lease of property for farming in a "share cropping arrangement" is generally not considered to be farming. Whether a farming activity is considered a business is a further consideration, and will depend on the degree of time and effort expended, amongst other criteria.

Capital Gains Deduction on qualified farm property

A Canadian resident individual has a lifetime Capital Gains Deduction available to shelter capital gains on qualified small business corporation shares and qualified farm or fishing property, which is reduced when previous Capital Gains Deduction claims have been made by the individual. The 2015 Federal budget increased the lifetime Capital Gains Deduction to \$1,000,000 of capital gains realized by an individual on the disposition of qualified farm (or fishing) property effective for dispositions occurring on, or after, April 21, 2015 (i.e., the date of the 2015 Federal budget).¹ Given that the lifetime deduction amount was only \$500,000 until 2007, it may be worthwhile for individuals

who previously claimed a portion of their current lifetime deduction to consider planning that would enable them to access any remaining unused lifetime amount. Qualifying property includes land used in a Canadian farming business or an interest in a family farm business owned through a corporation or partnership.

There are a number of complex rules relating to this deduction. For example, tests for qualification may include whether the owner is engaged in the business of farming on an active and continuous basis, and whether the farming income was greater than income from all other sources for at least two years. Less onerous tests may apply where the farm property was acquired prior to June 18, 1987. In addition, certain amounts claimed by an individual such as allowable business investment losses, capital losses, interest expenses or other investment expenses (i.e., cumulative net investment losses), may disentitle or defer the individual's right to claim the deduction. Also, other personal tax considerations such as the application of "Alternative Minimum Tax" may result from the use of the Capital Gains Deduction, thereby reducing its benefit.

Many tax planning strategies are available to obtain optimal benefit from the Capital Gains Deduction.² It may be possible to reorganize the ownership of the qualified farm property – to multiply access to the deduction – by making it available

to other family members in the future. It may also be possible to immediately trigger the use of the deduction without any change in beneficial ownership through a transaction called a “crystallization.” This would have the benefit of creating an increased tax cost base for the property, thereby reducing the capital gain on a future sale or transfer (e.g., at death). Tax planning for the deduction is often combined with an “estate freeze” which transfers future growth to other family members (typically on a tax-deferred basis) and can limit the tax liability upon the transferor’s death to be based on the accrued gain at the time of the freeze. Sound tax planning advice by professionals who have specific expertise and experience is recommended to explore opportunities to utilize the deduction during your lifetime, or as part of a tax-efficient estate plan.

The Capital Gains Deduction is separate from the Intergenerational Rollover of farm property that can prevent the realization of capital gains or a recapture of the capital cost allowance (i.e., tax depreciation) on farm property when it is transferred to a child or grandchild. The eligibility requirements are not identical for both strategies, although in many situations both are available to decrease or defer tax on transfers of qualifying farm property.

Using the Intergenerational Rollover

Canadian farm property, including shares of a family farm corporation, enjoys an additional tax benefit in the form of a tax deferral. More specifically, a farmer may be able to transfer the interest in the family farm to Canadian resident children (or grandchildren) on a tax-deferred basis either during their lifetime or at death. In general, the child inherits the parent’s tax cost base so the deferred gain could be taxable when the child subsequently disposes of the property. In theory, farms that are passed down from generation to generation could escape capital gains tax indefinitely. The requirements of farm property for this rule are different from the Capital Gains Deduction requirements and, as such, this tax deferral may not be available even where the farm property qualifies for the Capital Gains Deduction. Even where the Intergenerational Rollover is available, there may still be a tax liability to your estate if your executor opts to

forego implementing the Rollover where your beneficiaries intend to sell the property and receive the proceeds instead of the farm property itself (assuming the Capital Gains Deduction is not available).

Incorporating tax planning strategies for farm property into your estate plan

Ideally, the use of the Capital Gains Deduction and Intergenerational Rollover tax planning strategies for farm properties should be executed to achieve the maximum benefit, where available. However, this can be particularly tricky where some family members will inherit the farm property or carry on the farming business and others will not. Conflicts can arise between the competing interests of these beneficiaries. What benefits one beneficiary from a tax perspective may reduce the value of another beneficiary’s inheritance. It is important that your estate plan take into consideration whether these tax strategies will be available and their effect on all beneficiaries and your estate as a whole. For example, the Intergenerational Rollover can save estate taxes, but ultimately the tax on the unrealized gain may be payable by the child who receives or inherits the farm property because the tax cost base will not be increased. Conversely, the tax cost base of other property inherited by the other children will generally be the fair market value at the time of death and additional tax will only be payable on further increases in value after the transfer to them.

Seek advice

Tax and estate planning involving the family farm requires consultation with professional advisors as the rules are extremely technical and complex. In addition, each individual’s situation will be unique in many respects, requiring the expertise of a professional to customize the appropriate plan or solution to fit your particular circumstances and personal objectives. You may require a tax advisor, estate planning lawyer and a professional appraisal.

For more information, please speak with your BMO financial professional.



¹ For taxation years after 2015, the Capital Gains Deduction (“CGD”) for qualified farm (or fishing) property will be maintained at \$1,000,000 until the indexed CGD applicable to capital gains realized on the disposition of qualified small business shares (\$913,630 in 2022) exceeds \$1,000,000. At that time, the same CGD limit, indexed to inflation, will once again apply to all three types of property.

² Anti-avoidance tax measures aimed at preventing corporate “surplus stripping” can apply on the transfer of a (farming) business to a family member (versus a sale to a third-party purchaser) to convert a capital gain otherwise realized on the transfer into a taxable dividend (which is subject to a higher tax rate than a capital gain, and is ineligible for the Capital Gains Deduction). Recent tax legislative developments have sought to address this inconsistency in the tax law, and facilitate other complex tax-efficient corporate restructurings involving family (farm) businesses. However, some uncertainty remains, particularly in respect of certain intergenerational share transfers that seek to obtain access to the Capital Gains Deduction. For more information, please ask your BMO Financial Professional for a copy of our publication *Tax Relief Proposed for Intergenerational Transfers of Family Businesses*, and consult with your external tax advisor for direction in your particular situation as we await further announcements from the Department of Finance on this important development for family (farming) businesses.

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