Gordon & McLeod LLP

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Keeping the "Family" in Family Farm Succession Planning

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The topic of family farm succession planning is far beyond the scope of any single article that we could write, but it is also one of the most important discussions that many of our clients will have with their legal and accounting advisors.

Being lawyers we aren't big on numbers, but the statistics in this area demonstrate the aging demographic of family farms and highlight the fact that most of these operations are reaching an age of maturity where families will need to start considering their options in terms of succession and the transfer of farm assets to future generations.

What is the most important core issue in succession planning? To our minds, it is not tax rollovers, qualified farm property, capital gains exemptions, estate freezes, farm corporations or any of the other myriad of tax and legal strategies (which admittedly forms a very important part of all succession planning). Instead, we believe that it is most important to never lose sight of the "family" in family farm succession planning. The goals of the family and family dynamics must not be overlooked, and the financial and emotional needs of all individuals involved must be taken into consideration. Agribusiness is a complex, multi-generational enterprise, and each family farm is unique and must be treated as such. It is therefore very important when reviewing legal and taxation strategies that your advisors take the time to discuss your wishes and understand the family dynamics. After all, the farm is not just another asset to be sold or transferred.

Once your advisors have a solid understanding of your goals and key considerations, it is their role to provide you with the best options in terms of business structure, financial/tax planning, etc. in order to develop and fully implement the family farm succession plan.

One of these options may be to take advantage of the "intergenerational rollover" rules, which results in the transfer of ownership of qualifying farm property to children or grandchildren by gifting any accrued gain to them.

Another option might be to consider a full or partial "estate freeze". Through this method, the outgoing generation transfers the assets of the farm to a corporation held by the incoming generation in exchange for fixed-value shares of that corporation. The current value of the assets transferred is

"frozen" or "crystallized" through these shares so that any future increase in the value of the transferred farm assets belong to the incoming generation. As a result, the outgoing generation defers the taxes on the capital gain that would have been payable on a subsequent disposition of those assets.

We would welcome the opportunity to be part of the legal side of your succession planning team to help you work towards the ultimate goal of ensuring that the outgoing generation's wishes and years of hard work are respected, while at the same time contributing to the success of the incoming generation and the overall future of your family farm.

Contact us today to set up an appointment at 403-646-6111.