



Farm Sale & Purchases – It's all about Team Work

There are numerous issues involved in a farm sale and purchase that are often overlooked.

It is important for accountants, lawyers, real estate agents and valuers to work together to achieve the best possible result. All too often we are presented with the signed sale & purchase agreement and it is too late to change anything.

Issues to be considered include:

The Timing of the Sale

From a vendors perspective you would normally want to have the sale occur on 1 June. For most farmers this will push the tax that has crystallised on a sale out another year. This is generally helpful regardless of whether you are retiring or if you are buying one farm and selling another.

Allocation of Asset Values

Most farm properties include at least one dwelling house, some farm buildings and some fixed plant (e.g. a fuel tank). There may also be Dairy Company shares, irrigation shares in some areas, feed and standing timber. There are income tax implications, which mean that the global selling price needs to be broken down into its component parts. Special clauses need to be inserted into the Agreement to cover off these values. The values attributed to the assets must be sensible and not commercially unrealistic. If no values are attached, the vendor often wants a low value to reduce their depreciation recoveries and the purchaser wants a high value to support future depreciation claims. This can lead to each party using different values and an IRD match up could lead to penalties and interest for either or both of the parties. We strongly recommend that values are formally recorded in the Sale and Purchase Agreement.

Feed

What harvested feed is to be included with the property? A value must be affixed to this.
What average grass cover is the property to have at changeover and who will be assessing this?

Standing Timber

This comprises all trees including shelter belts and erosion control planting. The sale of standing timber is taxable income on a sale. If the value of standing timber is not specified in a Sale & Purchase Agreement, the purchaser may seek a valuation to set the value as they can eventually offset this against the sale of any timber. This could give rise to a nasty surprise for the vendor if the IRD review and agree with the purchaser's treatment. We always advise a value be put in the sale and purchase agreement, even if it is noted as Nil or a nominal amount is used.

ETS (Emissions Trading Scheme)

If there is a forestry block on the land there may be costs that the purchaser unwittingly purchases, particularly where the vendor is or was required to be registered. A forest is defined as land that has or will have tree cover of more than 30% in each hectare. It does not include shelter belts where the crown cover has, or is likely to have an average width of less than 30 metres. Forest species include Manuka or Kanuka. Be particularly wary for vendors that have registered and received their carbon credits, as the purchaser will want them to be assigned to compensate them for future costs.

Capitalised Development Expenditure

Development Expenditure capitalised by the vendor in the past and being amortised can continue to be amortised by the purchaser. Of course you have to know about it to do that, so a clause should be added into the Sale & Purchase Agreement requiring the vendor to disclose this. Note, there is no tax cost to the vendor doing this.

Accrual Rules

It is common for the timing between the agreement and the settlement to exceed 93 days. In this case we to add a Core Acquisition Price clause in the contract. Without this clause being added the purchaser may be able to deem an interest claim in the purchase for the time between agreement and settlement and the vendor will have to treat part of the sale price as taxable interest income. Great for the purchaser, not so great for the vendor!

GST

It is advisable to get your accountant to review the Sale & Purchase Agreements before they are signed to ensure the GST treatment is correct.

Farm Management

There is generally a clause included to state that the vendor will continue to manage the property within accepted farming practice, will not increase stock numbers, remove trees or remove any improvements or fixtures relating to the farm. There is also normally a clause relating to the fertiliser program continuing as normal and can be specified in detail in the Agreement if the purchaser requires.

I am happy to work with anyone considering the purchase or sale of a property. Please contact me on 03 755 8866 or peter@cuffs.co.nz

Peter Cuff
Director

Level 2, Como House, 51 Tancred Street, Hokitika 7810

- PO Box 325, Hokitika 7842
- **Phone** 03 755 8866 • **Fax** 03 755 8910
- **Email** team@cuffs.co.nz • **Web** www.cuffs.co.nz

