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transferring company assets

This article appeared in this month's edition of the Law Society Journal (NSW).

Baxter, Gigi and their accountant come to see you about transferring ownership of their farmland to their children.

Their family company owns two farms, "West Block" and "East Block". Baxter and Gigi are both company directors; however, Gigi is the only shareholder. She inherited her shares from her father when he died some time ago.

Baxter and Gigi used to operate a business on the two properties via the company and as a result the company still owns some plant and equipment as well as the land. However, they have now retired and their daughter, Cindy operates a business on "West Block" while their son, Dudley, operates a business on "East Block".

Baxter and Gigi want to transfer "West Block" to Cindy and "East Block" to Dudley.

You tell them no stamp duty will be payable on the transfers as the farmland exemption in the *Duties Act* will apply. Their accountant tells you he is taking care of all aspects of the tax associated with the land transfers and that none is payable.

The plant and equipment is apparently all written off and is not discussed other than to say Cindy and Dudley worked it out themselves and Cindy will keep and use the plant on "West Block" and Dudley will keep and use the plant on "East Block".

You prepare the land contracts, transfers and applications for stamp duty exemption and after everything is signed and stamped the transfers are registered. Nothing is prepared by you or the accountant in relation to the plant and equipment.

The sting

Cindy will have to pay tax on the market value of the plant and equipment on "West Block" and Dudley will have to pay tax on the market value of the plant and equipment on "East Block".

Under Division 7A of the 1936 Tax Act as Cindy and Dudley did not pay for the plant and equipment they are deemed to have received an unfrankable dividend equal to the market value of the plant and equipment each of them took from the company.

The fact that the plant and equipment has been written off for tax purposes does not mean it has no value and can be given to Cindy and Dudley free of charge.

The plant and equipment needs to be sold by the companies at its market value in a similar way to the land and improvements.

It is important that the company balance sheet and depreciation schedule are looked at in all business succession matters and that all assets owned by the company, not just the land, are dealt with in order to avoid unwanted tax consequences.

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