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a single layered exemption

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

Craig and Joy come to see you about their succession planning. They operate a farming business and have three children. One of their children, Paige, works on the farm with her husband while the other, Jane, works off the farm.

Craig and Joy moved off the farm a few years ago and now want to retire from the business and transfer all of the farm business assets and the land to Paige and her husband.

The farm business is conducted by a partnership of Craig, Joy, Paige and her husband. The farm itself is owned by an old family company established by Joy's grandparents. The shares in the company owning the land are all owned by a second company and the shares in the second company are all owned by a family trust. Craig and Joy are the directors of both companies and are the trustees of the family trust. Craig, Joy, Paige and Jane are the default beneficiaries of the family trust.

Part of the reason Craig and Joy have decided to act now is that they have spoken to some of their friends and have heard that family farms can be transferred to children free of stamp duty. Their accountant has also told them that no tax will be payable when the farm business and the land are transferred to Paige and her husband.

You tell Craig and Joy that as the land is owned by one family structure (being two companies and a trust the only default beneficiaries of which are family members) the exemption will apply and you prepare the documents to transfer the interest in the partnership and the land and have them signed.

## The sting

Stamp duty will be payable on the value of the farm.

Section 274 of the Duties Act 1997 provides an exemption on the transfer of farming land in certain circumstances. Provided the required pre conditions are met, most of which are in s.274(3), transfers from family trusts to children and from family companies to children are usually exempt.

Section 274(4) provides an extension to the general rule in relation to companies and effectively allows a transfer from a subsidiary company to a child to be exempt if a transfer from the parent company to the child would have been exempt.

Section 274(5) makes it clear that only structures meeting the requirements of ss.(3) or (4) will be exempt.

Unfortunately, s.274 does not apply to the transfer from the family company to Paige and her husband: the reason being that s.274 does not cover situations where there are three layers, two companies and one trust in this example, in the ownership structure.

It is always important to review the requirements of s.274 closely in each particular circumstance before assuming a family farm transfer will be exempt from duty.

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