

Succession and Forestry Rights

We have recently been working on succession planning when dealing with forestry assets with accountants and our farming clients.

While families may wish to leave their forestry assets to their children, care must be taken in structuring this arrangement to avoid adverse tax consequences.

Under the Income Tax Act 2007 (**Act**), different tax rules and implications apply to the transfer of forestry assets depending on the circumstances.

What are "forestry assets"?

Forestry assets covered under the Act include:

- timber;
- rights to take timber; and
- standing timber.

Transfer of forestry assets

When forestry assets are transferred in the following circumstances, the transferor is treated as having derived an income from the disposal of the assets at market value and may incur a tax liability:

- trust distributions to beneficiaries;
- gifts; and
- trust resettlements.

However, an exception applies under the Act to forestry assets transferred under a Will to close relatives. In such circumstances, we are advised that the forestry assets can be treated as having been transferred for the same value as the cost of timber (or the right to take timber) to the deceased, so no taxable income arises in relation to the transfer.

Who are close relatives?

The definition of "close relative" under the Act includes a surviving spouse, civil union partner, and de facto partner of the deceased person. It also extends to people within the second degree of relationship to the deceased, such as grandparents, siblings, children and grandchildren (but not nephews, nieces or cousins).

Wills

When vesting property under a Will, the property must be clearly identifiable. The Will needs to identify the specific forestry asset for the transfer to occur, and this can be difficult when the asset is owned jointly with third parties. Forestry assets can be clearly identified by entering into Forestry Right Agreements and registering these interests on land titles. This may need to be considered at the same time as updating a Will.

We recommend that you get in touch with your accountant to ensure that your current succession planning structure does not trigger any adverse tax positions. Following this, contact your lawyer to ensure that your intentions are given clear effect under your Will.