INTER-GENERATIONAL TRANSFERS IN THE RURAL SECTOR: A REVIEW OF SOME PROBLEMS

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Three kinds of inter-generational transfer are discussed. Despite the obvious advantages of partnerships and other forms of income splitting from the income tax viewpoint, about half of the primary producers in Australia continue to operate their businesses as sole traders. Some of the problems which arise with partnerships, trusts and companies in this regard are considered. The transfer of the ownership of the assets in addition to the ownership of the income stream they generate, is then considered in detail. The taxation of this transfer by means of gift and death duties raises many questions in relation to economic equity and efficiency. The third type of inter-generational transfer discussed in this paper is the transfer of the managerial role. Several suggestions are made which could help not only to reduce the family trauma which usually surrounds this issue, but which also could help reduce the tendency for farmers to hold the reins for too long.

There are three kinds of inter-generational transfers of interest in relation to the financial management of a farm business. They are the transfer of the ownership of future income streams, the transfer of the ownership of wealth, and the transfer of the decision-making function. Under the current Australian income tax laws, primary producers are in a better position than most other people in the community to gain from transferring the ownership of their income. In the last two decades a significant number of farmers and graziers have taken advantage of this situation [14 and 29]. However, as a group, primary producers tend to be more reluctant to transfer wealth and decision-making before the final day of reckoning than other groups in the community.

The once and for all nature of inter-generational transfers, together with the long-term consequences for the family which flow from such transfers, would suggest farmers and graziers ought to be well-informed about the broad principles involved, the various options available, and the advantages of arranging transfers before death. Unfortunately this is not the case. Agricultural extension information in this field has always been rather sketchy [11]. At worst it has been positively misleading [2],[1] and at best it encourages the myth that the legal and accounting procedures involved are too complex for ordinary mortals [22]. While

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[1] The article written by Blanckensee [2] was correct when published in 1963 but it was quickly out-dated by the 1964 changes to the Income Tax Assessment Act.

acknowledging that good legal and accounting advice is absolutely essential, one of the objectives of this paper is to review some of the literature in the field.[2]

Transfer of Income Streams

The primary incentive for the transfer of the ownership of future income streams before death is the saving of income tax involved. Under Australian income tax laws, family businesses may be operated as family partnerships. The effect of such partnership arrangements is to divide the income between several taxpayers and, given the progressive income tax scales, reduce the total tax liability of the family. While this concession is available to all sectors of the economy, rural families are particularly well placed to take advantage of this method of income splitting.[3]

Downing *et al.* attack the principle of income splitting by the use of family partnerships, but they did not list the right to form such partnerships as a concession favouring the rural sector [12, 7]. In fact, Wells and Bates appear to be the only authors who have specifically referred to the opportunity to form partnerships, and hence save income tax, as a major tax advantage for primary producers [29 p. 65]. Although Glau was well aware of the growing importance of partnerships in the rural sector [14 p. 20], he did not regard the opportunity to form partnerships as a concession unique to this sector. He, therefore, did not consider this aspect of rural taxation in his analysis. The rapid increase in the number of rural partnerships over the last twenty years, a period during which the number of rural holdings remained almost constant, has no doubt saved the farm sector a considerable amount of money. These tax savings would have been particularly important in the 1960's. Since Glau did not allow for this source of farm liquidity, he may have over-stated the value of the other investment incentives, especially during the latter period to which his analysis applies.

When family partnerships have such obvious advantages, why is it that over half the farmers and graziers in Australia still continue to operate as sole traders? The argument that lack of knowledge, conservatism and just plain apathy are responsible, can be exaggerated. There are practical problems with partnerships which may deter a significant number of primary producers from entering into partnership agreements.

The formation of a family partnership is a relatively simple legal procedure. On the other hand there are many details about setting up a partnership which do require the attention of an accountant and a solicitor. For example, one or more of the original owners should always have at least a 25 per cent interest in the new partnership. If this con-

[2] For an excellent general discussion see McMahon [20]. The book by Adams and McMahon [1], although somewhat out-of-date, provides a more detailed treatment. For even greater depth and complexity see Edwards [13] and Pascoe [21].

[3] Families who cannot split their income by some means are at an even greater disadvantage than would seem at first glance. See for example, the brief notes by Hagen in the *Economic Record*, Vol. 43, No. 101 (March, 1968), pp. 129-130.

dition is satisfied the parties may take advantage of elections available under the Income Tax Assessment Act (1936-1970) to bring the plant and machinery (under Section 59AA) and livestock (under Sections 36A and 37) into the books of the partnership for tax purposes, at the same tax values as applied prior to the transfer. However, the new partnership must purchase these assets at market valuation to avoid any liability for gift duty. If it were not for the elections mentioned, the original owner(s) would be taxed on the difference between the market values of these assets and their previous tax values.

There are a host of other special conditions which need to be considered. In South Australia, for instance, Part IVB Section 55C of the South Australian Succession Duties Act (1929-1970) specifically prohibits the members of a farming family who operate as a partnership (or company) from receiving the succession duty rebate on land used for primary production. This would seem to indicate that any primary producer in South Australia who enters into a partnership agreement (even if the partnership is only a trading and not a land-owning partnership) automatically disqualified his estate from being eligible for the rebate of state succession duties. Under these circumstances one would expect family partnerships to be less popular in South Australia than in other States. However, surveys conducted by the Bureau of Agricultural Economics indicate that partnerships are *not* less popular in South Australia [8 pp. 9, 26 and 51]. Perhaps the average primary producer places a higher value on the reduction in his income tax liability afforded by a partnership, than on the rebate of succession duties. However, Thomson found that most farmers and graziers were simply not aware of the implications of Section 55C of the South Australian Succession Duties Act [28, p. 137].

The Australian income tax law as it relates to family partnerships was changed significantly in 1964 [19]. The major effect of these changes was to penalize partnerships in which one or more of the partners does not have real control over the disposal of his share in the partnership income. The Commissioner of Taxation has wide discretionary powers under the amended Section 94 of the Income Tax Assessment Act. It is now virtually impossible to have any person under 16 years of age as a partner for tax purposes, because it is extremely difficult to prove he has real control over his share. The powers of the Commissioner are such that even some people over 16 years of age, for instance the wife of the farmer, may not, in the view of the Commissioner, be in full control of his or her share. In this case a tax rate of at least 50 cents in the dollar applies to the income involved. These changes are not all that serious, but they do make it important to ensure that the partnership agreement is correctly worded.

The 1964 changes have had two effects. First, they have made it more difficult for a man with a young family to transfer the ownership of the income stream from his business. He can still reduce his income-tax burden if he is prepared to transfer some of his income producing assets (e.g., land) to a trust or a company in which the shares are held in trust for the minors in his family. These assets are then rented back for a fee. The legal and accounting costs of this operation are relatively high and, in addition, the farmer or grazier concerned will find it harder to understand what is involved. Second, the changes have made it more difficult for a farmer with grown-up children to bring them into the business as 'sleeping partners'. The older family man will now find the law forcing him to transfer his decision-making powers in order to transfer the ownership of the income stream.

Given the current farming situation there are two other aspects of partnerships which may discourage their adoption. The first is the feature of unlimited liability. Each partner to any partnership agreement is responsible for the total debts of the partnership. The second relates to the carrying-forward of tax losses. When a partner dies the tax losses standing against his name will usually be forfeited. The only way to recoup some or all of these losses is to forego the concessions available under Sections 36A, 37 and 59AA of the Income Tax Assessment Act referred to previously.[4] When a business is making tax losses it is preferable for it to be operating as a family company rather than as a partnership, since the death of a major shareholder does not forfeit the tax losses accumulated by the company.

There are many reasons for using the company structure in addition to, or instead of family partnerships, as means of achieving the transfer of ownership of income streams. Some of these have already been mentioned. The owners of companies have limited liability, tax losses are preserved despite deaths in the family, and managerial control can be concentrated. However, the major problem with the family company is the relatively high rate of private company tax. Prior to the 1971 budget, private companies were required to pay 32½ cents in the dollar on the first $10,000 and 42½ cents on the rest. Obviously, anyone who wanted to use a private company as a vehicle for transferring the ownership of the income stream from his business, would set up a series of small companies (perhaps in partnership with each other and himself). In this way he would ensure that no company earned more than $10,000 in any one tax year. This loop-hole was partly closed in the 1971 Budget when the Government raised the tax on the first $10,000 to 37½ cents in the dollar. One could expect that eventually the concession on the first $10,000 will disappear altogether. Of course, with a company structure the dividends are taxed a second time in the hands of the shareholders. Family companies are not, therefore, widely used as vehicles for income splitting unless the income of the company can be absorbed by paying salaries and wages to the shareholders for work actually performed.

Trusts may be used in conjunction with family partnerships or companies to provide for young children or to prevent the transfer of decision making. Trusts generally are irrevocable. Therefore, they must be carefully planned and set up so as to take account of all the possible future changes in family circumstance, family relations and in the law as it relates to the taxation of trusts. As the law now stands, the income of

[4] Upon the death of a partner, the assets of the old partnership will eventually be sold to a new partnership (or sole trader). As mentioned previously the partners in the new firm (or a sole trader) may elect to make these transfers at tax values rather than at (the usually higher) market values. If these options are *not* exercised, the partners in the old firm will normally increase their taxable income in the year of the death, and hence some or all of the tax losses accredited to the deceased partner will be used up. As a result of bringing the assets onto the books of the new firm at market values, the future taxable income of the surviving partner(s) will be reduced.

a trust created by a taxpayer, for the benefit of any child of his who is under 21 years of age and unmarried, is taxed at the rate which would apply if that income was part of the taxable income of the taxpayer. The way around this problem is to have the trust set up by someone else. However, the finer points of the law relating to trusts need to be carefully considered before anyone decides to use a trust as part of his plan to transfer the ownership of an income stream. This applies to the individual who provides in his will for a trust to be set up upon his death, as well as to the man who creates a trust in his own life-time.[5]

Transfer of Wealth

The taxing of wealth when it is transferred from one person to another for less than full consideration is a very old concept. The tax gatherers of ancient Greece and ancient Egypt did not differentiate between gifts during one's life-time and transfers upon death [24]. However, today in most countries gifts and inheritances are treated differently for tax purposes [23]. This difference provides one of the greatest incentives for the transfer of wealth before death. Special concessions for certain types of wealth and for the assets of particular groups of people also have a long history. For instance, agricultural assets have frequently received special treatment, and the estates of British servicemen have been totally exempt from death duty since 1694.

There has recently been an upsurge of interest in the incidence of death duties in Australia, especially in relation to the burden these taxes represent for farmers and graziers.[6] During the last ten years primary producers have annually paid between 32 and 39 per cent of the aggregate death duty collected by the Commonwealth Government.[7] However, only about 7 per cent of the income tax paying population are classified as primary producers. There are many possible reasons why the executors of the estate of the average primary producer pay around five times as much death duty as that paid on the estate of the average taxpayer. The simplest and most obvious explanation is that the average farm operator owns more assets than the average taxpayer. In addition, given the progressive nature of the duty, the observed differential incidence of the tax could be the result of much less than a five-fold difference in average wealth. However, even if one allows for the progressiveness of the tax, it is hard to believe that primary producers hold about one-third of all assets in private hands in Australia.[8]

Another simple explanation is that most primary producers are either not sufficiently well-informed, or are not in a position to take advantage of the techniques for avoidance of estate duty used by other wealthy groups in the community. This argument has been strongly supported by the empirical evidence presented by Thomson [27, 28].

[5] See McMahon (20, pp. 97-111).

[6] For example see *Muster*, January 13, 1971, p. 9.
Muster, June 9, 1971, p. 15.
Australian Financial Review, March 4, 1971, p. 3.
Australian Financial Review, May 7, 1971, p. 3.

[7] The Commissioner of Taxation, *Taxation Statistics*.

[8] This is, of course, a researchable question which deserves further empirical investigation.

The survey conducted by Thomson showed that the majority of primary producers, the men with farms of small to average size, had not been well informed about the problems their heirs were going to encounter with respect to death duty, and had not taken effective steps to reduce their estates before death. On the other hand, although there were relatively few farmers or graziers with large estates, almost all of these had significantly reduced their liability to death duty before their demise.

As previously mentioned, owners of agricultural assets have frequently been given concessions with respect to death duty. In the past five years all the Governments of the Australian States and the Commonwealth have introduced legislation providing for new death-duty concessions for owners of rural assets. This rash of *ad hoc* amendments is really no substitute for a complete review of both state and federal gift and death duty legislation. The recently created Senate Standing Committee on Finance and Government Operations will, no doubt, shed some light on the subject.[9] But perhaps it is time to follow the example of Canada and appoint a Royal Commission to examine the issues.[10]

The suggestion has been made that death and gift duties should be abandoned altogether and replaced with an annual net-worth-tax designed to raise the same revenue [15, p. 544]. It has been estimated that a flat 0·25 per cent annual net-worth-tax would achieve this objective.[11] Groenewegen has gone even further and suggested that all property taxes (not only death, gift, probate and succession duties but also State land taxes and even local rates) should be replaced by a net-worth-tax collected by the federal Government [15, p. 545]. There are obvious advantages in an annual net-worth-tax. It would be less easily avoided, its burden would be predictable, and it could be paid out of income rather than by the liquidation of assets.[12] Its chief disadvantage is that it necessitates an annual valuation of assets. This may raise some particularly difficult, but not insurmountable, problems for the rural sector. Given the recent precedent of the payroll tax arrangements, there is every possibility that the States may agree to have a national net-worth-tax, administered by the Commonwealth, to replace some or all property taxes. One of the conditions of such an agreement may be that the Com-

[9] 'The Senate recently established a Standing Committee on Finance and Government Operations and, as its first task, the Committee will be investigating and reporting on:
(a) The effects of Estate, Succession, Probate, Death and like duties imposed by both Commonwealth and State Governments on—
(i) the revenues of the respective Governments (having regard to cost factors involved in their collection); and
(ii) economic circumstances of individuals and communities.
(b) The social consequences of levying such duties and taxes.' C. G. Edwards, Secretary of the Standing Committee on Finance and Government Operations, private communication, November 23, 1971.

[10] Government of Canada, *Report of the Royal Commission on Taxation*, Ottawa, 1967.

[11] *Australian Financial Review*, May 7, 1971, p. 3. The basis of the figure of 0·25 is as follows. Total private wealth in Australia is somewhere around $70,000 million to $100,000 million. The current revenue from death duties is approximately $200 million per year. Therefore, a 0·25 per cent net worth tax should return about the same revenue.

[12] At present the revenue collected from death duties is a tax on private capital but it is used by Governments to finance current expenditure along with income tax revenue. In this sense it represents an erosion of the national stock of capital.

monwealth Government hand over all the revenue collected to the States. That is, apart from acting as the tax collector, the Commonwealth may be asked to vacate this field of taxation. From the viewpoint of the Commonwealth, this may be a small price to pay for what would be a major improvement and rationalization in the Australian tax system.

There have always been a number of ways by which a primary producer could reduce the cost of transferring his assets to his children. Not all of the techniques for reducing liability to tax require the individual to part with his assets before death. One of the most common methods used by farmers and graziers in the past has been to sell the land (and fixtures) to a family company and to create a trading partnership which owns the livestock and machinery and operates the farm by renting the land from the family company. (Some land titles prevent the sale of the land to a company. In this case a trust can often provide much the same kind of arrangement). This system not only saves income tax due to the formation of the partnership, but also stabilizes the value of the estate of the farmer or grazier concerned. His rural estate will now consist of his share in the assets of the partnership and a debt owed to him by the company for the land. He can then proceed to make gifts to the company in the form of reductions in the debt owed to him. The size of each gift and the frequency with which the gifts are made are determined in such a way as to minimise gift duty.

This approach and other similar plans have always had the disadvantage of not removing the potential burden of death duty until the gifts have all been made, some considerable time in the future. One way around this problem is short-term life insurance. There is a wide range of insurance policies which provide this kind of cover at a relatively low premium provided the owner of the assets is young enough and healthy enough.

Even if the owner of the rural assets does not wish to reduce the size of his estate (and hence the amount of duty his executors will have to pay) through measures such as have just been outlined, there are many points about life insurance which need to be carefully considered. For instance, the established life insurance companies do not encourage young family-men to regard life insurance purely as a hedge against premature death. Rather they prefer to sell policies which are really a mixture of death cover and long-term investment. For example, a 25-year-old farmer may need a death cover of $100,000. But he cannot afford the $1,500 per annum premium on a whole-of-life policy for this amount. He may be persuaded to buy a whole-of-life policy for a much smaller amount, say $20,000, on the basis that this is all he can afford at present. Of course, this man could have purchased a pure death cover for $100,000 (in the form of a reducing term insurance) for the same annual outlay in premium as that required for a $20,000 whole-of-life policy. However, for obvious reasons the insurance companies prefer to sell policies which include an investment component as well as a pure death cover component.[13]

[13] In addition to the choice of the appropriate kind of policy there are many other decisions which influence the usefulness and value of life insurance. The decisions regarding who owns the policy, who pays the premiums and where the policy is registered, may all be critically important in determining the ultimate value of the policy to the executors of an estate. Irrespective of whether the

The traditional technique of selling the land to a family company and then making gifts to eliminate the debt has recently encountered two serious difficulties. First, the capital value of many rural holdings has fallen by 25 to 50 per cent in the past three or four years. Any primary producer who sold his land to a family company between 1962 and 1969 may now find that he needs to have gifted away 25 to 50 per cent of the debt owed to him by the company in order to reduce his estate to what it would have been if he had not sold his land to the company. Of course, the costs of setting up the company, the costs associated with transferring the assets to the company, and the gift duties he has had to pay, all make the exercise rather expensive.

The second recently created difficulty associated with the traditional approach could be regarded as even less predictable *ex ante* than the problem just described. In 1970 the Commonwealth Government introduced amendments to the Commonwealth Estate Duty Assessment Act (1914-1970) which provided for a 50 per cent rebate of estate duty on rural assets having a value of less than $140,000 and then a declining rebate up to $220,000. To be eligible for this rebate the estate of the primary producer had to satisfy several requirements, one of them being that the value of rural assets included in the estate had to exceed half the dutiable assets of the estate [26]. A debt owed by a family company is not a rural asset under the Act. Consequently a primary producer who had sold his land to a family company now found that the executors of his estate would be liable for up to twice as much Commonwealth duty as would otherwise have been the case.[14]

Another criterion applied to rural estates under the new Commonwealth legislation was that gross farm income of the deceased for the previous five years before death must exceed half the gross income from all sources. Although this condition was inserted so that the rebate would not be available to city businessmen investing in rural properties as a means of tax avoidance, it will also deprive the heirs of a number of *bona fide* primary producers of the concessions. The estate of any farmer or grazier who has formed a family partnership and left himself with a share of the gross farm income which is less than his gross non-farm income, will not be eligible for the 50 per cent rebate.

The 1970 Commonwealth legislation may be viewed as an attempt to close a loop-hole. However, it is nothing more than another *ad hoc* addition to the already complex death duty legislation which does nothing to improve the overall equity of the law.

Two other interesting manoeuvres aimed at reducing the cost of transferring wealth by the use of companies have become known as the Gorton Case and the Robertson Case.[15] The principles involved in the Gorton Case have been widely used in the rural sector. The original

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policy is a short-term policy to cover the possibility of unanticipated early death, or whether it is a longer-term investment to provide liquid funds after death in accordance with normal life expectancy, the policy should be owned by someone other than the person with the estate problem, the premiums should be paid by the owner, and it may be an advantage to have the policy registered in Canberra. See McMahon [20, pp. 112-126].

[14] It may be possible to get around this problem by selling the land to the operating partnership rather than a company.

[15] *Gorton v. Commissioner of Taxation*, A.L.J., 39, 343-348.
Robertson v. Commissioner of Taxation, A.L.R., 60, 1-17.

case was concerned with the estate of an elderly woman (Mrs Abel) who had transferred her major assets (shares in the large public company Marrickville Holdings Ltd.) to two new private companies each of which was owned by herself and one of her two nephews (R.C. and T. G. Crebbin). The total market value of the Marrickville Holdings shares on the day Mrs Abel exchanged them for ordinary shares (issued at a large premium) in the two new companies was $670,000. On this same day she and each of her nephews in turn held a series of company meetings and changed her shares in the two new companies from ordinary shares to much less valuable fixed interest preference shares. Mrs Abel died two days later and her executors proceeded to file an estate for probate which was almost non-dutiable. The Commissioner of Taxation decided that the full value of the shares should be included in Mrs Abel's estate. The High Court of Australia, however, later ruled on appeal that the shares should not have been included in the estate. The major principle behind the Gorton Case is that the owners of shares in a company may change the class and hence the value of the shares held by any one of the owners. The Commissioner for Taxation has now decided to try to close this loop-hole by charging gift duty on the basis that such companies have made gifts. Even if the courts accept the arguments of the Commissioner on this point (a possibility which seems far from certain), the amount of gift duty could be minimized by setting up a series of Gorton-style companies. The value of the assets transferred to each of these companies would then be chosen so as to minimise the gift duty paid by each company and hence the total duty. This possibility has already been exploited by most people aware of the uncertainty surrounding the original manoeuvre involved in this case.

The Robertson Case is even more astounding. It concerned the estate of Sir MacPherson Robertson who died in 1945 owning 561,667 fully paid $2.00 shares in MacRobertson Pty. Ltd., the sweet manufacturing firm. One of the Articles of Association of this company provided that upon the death of Sir MacPherson, the valuable ordinary shares held in his name were to become almost worthless 5% second preference shares. The effect of this change was to transfer the value of his shareholding to the other ordinary shareholders upon his death. The Commissioner of Taxation ruled that the full value of these shares before death be included in the estate. The executors challenged this ruling and the High Court of Australia decided against the Commissioner. The Judges ruled 'that in the present case the estate must be valued as at the death, but on the hypothesis that the deceased has died.'[16] Once the death has occurred the shares were virtually worthless. Twenty years have passed since this ruling and only the Victorian and Tasmanian Governments have legislated to counter the further use of the principle involved.

The concept of deliberately attracting gift duty rather than death duty obviously plays a major role in many schemes designed to minimise the costs of transferring wealth. However, there are some aspects of gift duty which are worthy of note. For example, in most states no gift duty is payable unless the transfer involves documents. The duty is really a stamp duty and not a gift duty. This means that the transfer of cash (and

[16] *Ibid.*, p. 12.

certain other classes of asset) is usually free of State gift (stamp) duty. However, the Commonwealth gift duty must be paid on gifts of property (defined to include cash) irrespective of whether there has been an exchange of documents. Commonwealth gift duty is applied at rates similar to the rates used for Commonwealth estate duty and there are no statutory exemptions. The rate of duty applicable to any one gift under either state or federal legislation will depend upon the total amount of gifts made within some specified period. For example, the rate of Commonwealth duty applied to a particular gift will be a function of the total value of all gifts which were made by the donor in the three-year period beginning 18 months before the date on which the gift under review was made. If this total value does not exceed $4,000, the gift in question is taxed at a zero rate. This point is particularly significant for anyone planning a series of gifts.[17]

Probably the most important aspect of making gifts as far as primary producers are concerned is to ensure that the gift is a gift under the law. The nature of farming often means that the donor may be continuing to benefit from the gift. As a result the transfer may not be recognized for purposes of assessment of death duty. This problem has been well illustrated by three cases in which the assessments of the New South Wales Commissioner of Stamp Duties have been challenged before the Privy Council. The first of these, the Munro Case, was concerned with the estate of a grazier who died in 1929.[18] In this instance the grazier created a family partnership with the right to use his land. Some years later in 1913 he transferred the ownership of the property to his six children. When he died the Commissioner of Stamp Duties ruled that as a member of the trading partnership he had retained an interest in his gift (the land) and, therefore, the 1913 transfers were not valid for death-duty purposes. The Privy Council reversed the Commissioner's ruling on the basis that it implied that the land had been given 'shorn' of the rights of the partnership to continue using it [1, pp. 69-70].

The Oakes Case concerned the estate of a grazier who created trusts for his four children and himself as tenants in common in 1924.[19] The trust deed gave him wide powers including the power to pay himself remuneration for all work done by him in managing the trust property on which he and his family continued to live. When the grazier died in 1947 the Commissioner of Stamp Duties ruled that the whole value of the property (and not just one fifth) should be included in the estate. The Privy Council agreed with this decision on the grounds that the grazier continued to benefit from that which had been given.

The third case in this series was the Chick Case.[20] On the surface this case was similar to the Munro case in that the grazier concerned gave land to his two sons but at the time of death, the father and sons were operating the property concerned (together with another property) as a trading partnership. Unfortunately for the Chick family, there was a subtle difference. The gift of the land in the Chick Case came before the formation of the operating partnership, not after as in the Munro

[17] For an up-to-date reference on gift and stamp duties see [26]. This publication may also be of value to anyone interested in more detail on the rural rebates available to estates with rural assets.

[18] *Munro v. Commissioner of Stamp Duties*, A.C., 1934, 61-69.

[19] *Oakes v. Commissioner of Stamp Duties*, A.C., 1954, 57-80.

[20] *Chick v. Commissioner of Stamp Duties*, A.C., 1958, 435-450.

Case. The Privy Council supported the ruling of the Commissioner on the grounds that the father had continued to benefit from the gift.

Enough has been said about the transfer of wealth both before and at death to suggest that there is no substitute for expert advice and perhaps a 'second opinion'. The making of wills, the giving of gifts, the establishment of trusts, and the creation of companies, all require relatively simple legal and accounting procedures. However, it is the subtle interplay between the transfer plan and the law which calls for particular attention.

Transfer of Decision-Making

Although primary producers may be aware of the savings which can be achieved by the transfer of the ownership of wealth before death, many will be reluctant to make the necessary arrangements because they do not want to lose control of their businesses. This natural fear of the King Lear syndrome, so common in the farming community, is understandable. Life on a farm is such that a man can continue to participate in the business well past the usual retiring age. The pre-death transfer of the power to make the decisions is, therefore, difficult for the ageing farmer to accept because he often, rightly or wrongly, sees his long experience on the family farm as the paramount qualification required for good managerial decision-making.[21] As a result the most popular plans for the pre-death transfers of income and wealth are plans which do not involve any real change in the control of the business. Some people have argued against this approach on the basis that the formation of a family partnership and the introduction of collective decision-making and responsibility may improve the quality of management [29]. Unfortunately human nature and the life style of Australian farming communities frequently lead to exactly the opposite result. It is not surprising, therefore, that accountants and solicitors encourage their clients to avoid the transfer of control. Under these circumstances it is futile for the Government to introduce so-called tax reforms (for example, the 1964 changes in relation to partnerships), which are aimed at forcing people to transfer control at the same time as they transfer income and wealth. There are, however, a number of steps which could be taken to help reduce the tendency for ageing farmers to retain control for far too long from the viewpoint of both the family and the nation.

Recent public discussions concerning a national superannuation scheme have not mentioned primary producers. Although the compulsory retirement of farmers and graziers at some specific age would be impractical, there does not seem to be any reason why this group should be excluded from a national superannuation scheme. At present the lack of any kind of retirement fund, the means test associated with the old age pension, and the tendency for farmers to buy whole-of-life insurance, all mean that the ageing primary producer frequently has only one nest egg for his old age, namely his equity in the family farm. With the recent crisis in the rural sector and the fall in land values, many of these nest eggs have all but disappeared.

[21] One could argue that this problem may occur with any kind of unincorporated firm. However, the close relationship between the home and the business which always exists on farms, suggests it will be a more common problem in the rural sector.

In this connection there is an aspect of the Commonwealth Rural Reconstruction Scheme which deserves urgent review. The State authorities administering the scheme are in a position to require the inter-generational transfer of control as a prerequisite for providing assistance. However, they are not prepared to lend money at concessional rates of interest to facilitate this transfer. In other words, a son cannot borrow money for a farm build-up scheme if that scheme entails buying land from his father. In terms of both equity and efficiency it would frequently be in the interests of everyone to allow the older man to withdraw his capital and retire with dignity.

Commercial banks and other credit institutions could play a major role in smoothing the inter-generational transfer of decision-making on farms. Frequently these institutions hold mortgages over property under the control of, but not owned by, the senior member of the family. It would not be unreasonable for the lending authority to require, or at least encourage, the real owners of the property to participate in the management of the business (provided, of course, they were legally capable). The implementation of such a policy would not be popular at first and could not, therefore, be introduced unilaterally by any one bank or pastoral house. However, it would be an effective means of enabling the future managers to gain managerial experience at an earlier age.

Unfortunately education is often a major factor in retarding and hindering the transfer of decision-making on farms. Very few of the present generation of farmers in Australia have had any formal managerial training and, perhaps as a result, they are suspicious of anyone, especially their own sons, who has had a formal education in agriculture. This, of course, is one feature of the rural sector which those who advocate more education for the future farmers of Australia conveniently overlook. In many cases it may be 10 to 20 years (if ever) before the present student at the Hawkesbury, Gatton or Muresk Agricultural Colleges assumes real responsibility for the financial management of the family farm. The successful sharing of responsibility and the collective making of decisions on a farm depend heavily on the personalities involved. However, they also depend upon the attitudes of the individuals concerned. These attitudes could be influenced for the better if the agricultural colleges ran a series of short courses for both fathers and sons while the sons were attending the colleges. These courses could be used to familiarize both generations with each other's problems and the advantages of working together for mutual benefit in the future. In addition, the parent could gain an appreciation of what his son was being taught at the college. However, perhaps the most important single contribution such short courses could make to the future father-son relationship, would be to provide a shared-experience and talking-point.

Concluding Comments

There have been relatively few recent studies concerned with inter-generational transfers in agriculture [3, 4, 5, 6, 10, 17, 18, 25, 27]. This is unfortunate because inter-generational transfers raise important problems of general economic equity and efficiency, as well as problems connected with organization of the farm firm.

From the policy viewpoint, the current Australian income-tax, gift-duty and death-duty laws have some strange consequences for the rural sector. At a time when tens of millions of dollars of public money are being spent to encourage the enlargement of farms, the death duty legislation requires that the duty be paid in cash, even if this means selling land and reducing the size of the family farm.[22] Another odd feature of the current system of State and Federal death taxes, is that any reduction in the duty payable under the state law automatically increases the Commonwealth duty.

Changes such as the recent Commonwealth and State rebates on rural assets, are not any final answer. Although Australia has long needed a complete review of all taxation legislation, a close look at the gift and death duty laws would be a good first step. Since tax reforms do not occur overnight, there is a simple short-term measure which would clear the air and improve the equity aspect of the present legislation as it affects the rural sector. State and Commonwealth authorities should co-operate to produce a guide to State and Federal death duties along the lines of the booklet entitled *Income Tax Guide for Primary Producers* which was first issued twenty years ago [9].[23] Such a publication could explain the legislation and the special concessions (defined to include legal loop-holes currently accepted by the courts), so that everyone would have an equal opportunity to minimise the size of his estate. The booklet would be a valuable extension aid and might help to reduce the taboo which prevents farmers and graziers freely discussing problems concerning death duties.

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