Vegetable Cost prod.

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Economics and Management of Vegetable Production

Editor : T. M. Morrison

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PROCEEDINGS OF A SHORT COURSE ON ECONOMICS AND MANAGEMENT OF VEGETABLE GROWING

MAY 1969

Edited by Professor T.M. Morrison

Department of Horticulture
Lincoln College
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PREFACE

The Vegetable and Produce Growers Federation for a number of years has been encouraging collection of costs of production of process crops. While this is valuable in maintaining a watching brief on processor payouts, it is only one factor in assessing the relative profitability of competing crops. The full science or art, of management must be brought to bear on the problems before any solution can be suggested.

With farmers diversifying into vegetable production and others likely to follow as processing expands into export it is opportune that a course such as this was held at this time. Some of the discussions show the pertinence of papers to problems facing the industry right now. Others show the way to the future.

The course offered a new look in education to vegetable growers. We have maintained that our greatest contribution to the established grower is to bring recent information to his notice - preferably after he has been in the industry for some time. With a recession in fresh vegetable prices, "economic" management is probably the most serious omission from growers' education. Fortunately in this department and others in the College we can present an expertise in this modern subject.

The papers do not attempt to answer all specific questions but are designed to give a base on which the individual grower can build for himself from his own experience. They also may serve to demonstrate to the grower that in horticulture we have a long way to go to fill the gaps in our "management" knowledge. It behoves all growers to help us and consequently themselves to acquire this knowledge.

Finally I must thank all lecturers at this course for they provided a stimulating four days and all growers who attended, for without a receptive audience no course can succeed.

T.M. Morrison
Professor of Horticulture
Lincoln College

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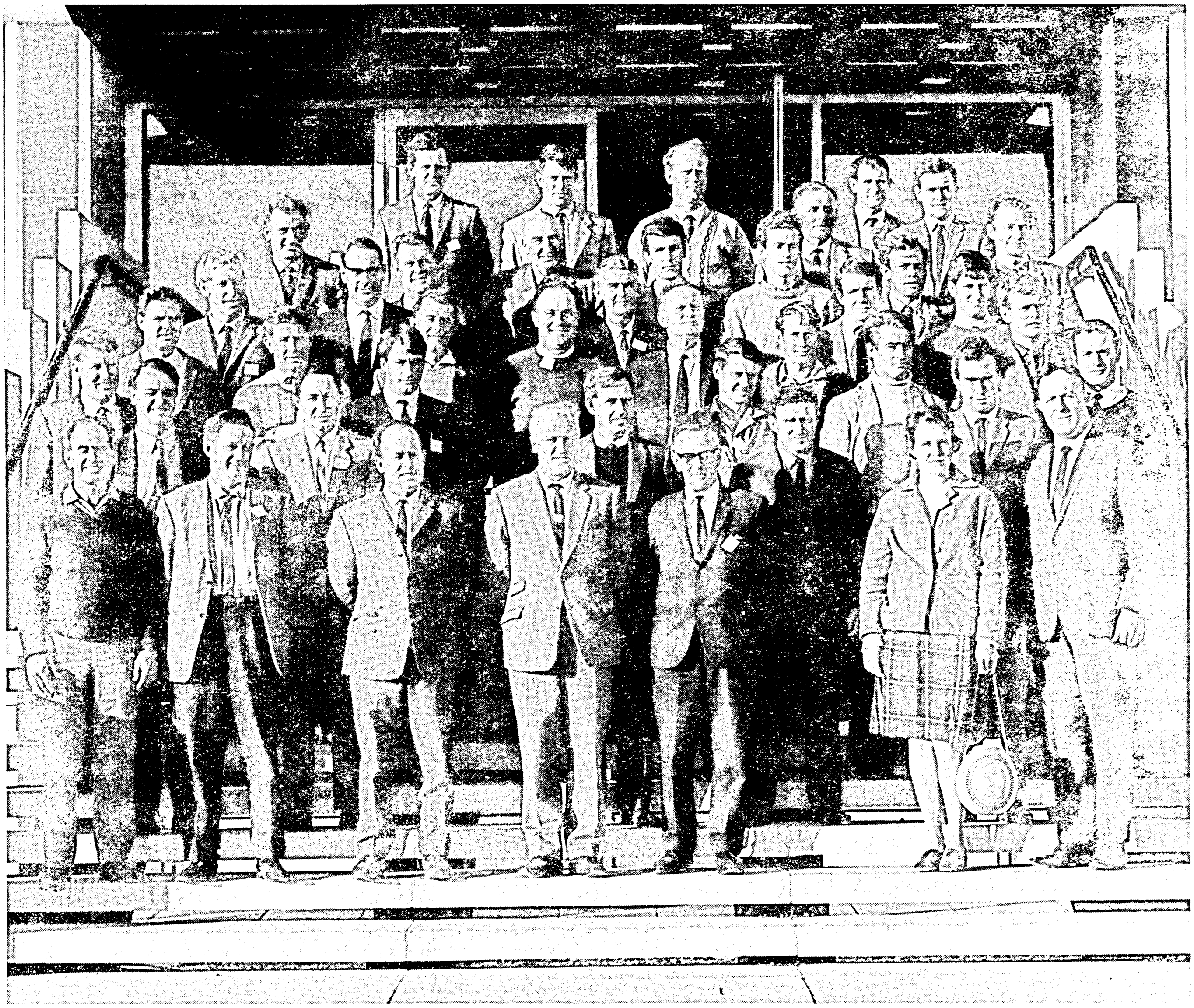

PREPARE TO MEET THY DOOM

J.P. Goldsmith B.Com. A.P.A.N.Z.
Christchurch A.I.A.N.Z.

It would appear from the sub-headings of this address as laid down by the organisers of the course that I have to instruct you on the various legal entities under which a person or persons can trade, to compare them - discuss their advantages and disadvantages and give you an understanding of the legislation governing the respective existances, explain to you taxation legislation in New Zealand and having done this to suggest a means to devise schemes for planning and minimising of taxation including income tax and death duties. Of course we are only dealing with some of the most difficult, lengthy and complicated legislation on the statute books so that whoever chose the headings for this lecture has given a task which could not be satisfactorily covered if I were to talk non-stop for 12 months let alone the whole of the short course. It is just impossible in a half hour to do any more than to outline in brief the background to such a vast subject. So that if I said to you "engage competent professional advisers in particular, an accountant and a solicitor, present your case to them jointly and let them come up with the right answer for your particular case", if I did this and sat down now I would be being sensible because I cannot do justice to this topic in the time available. It is absolutely vital for the accountant and the solicitor for the client to work closely together to devise the right ownership and income pattern for a business, but it is up to the individual client to be able to define how he wants his capital and income arising from a given business to be held and by whom.

Each year the legislature enacts more complicated statutes and the verbage is so complicated that it gives you indigestion to try and comprehend it and the Courts take years to cure the indigestion. When these problems are almost resolved a new batch of legislation is brought down and starts the process all over again.

Very briefly then, a partnership is the coming together of the owners of capital to undertake the joint ownership of a business to derive profits to be spread in accordance with a basis agreed between the partners. The governing legislation is the Partnership Act 1908 which in the main lays down simple guide lines for conducting of partnerships which generally can be overruled by a Deed which the partners may or may not wish to enter into. In other words, if there is a Deed of Partnership in existance, this takes care of otherwise normal guide lines laid down in the Partnership Act. A partnership is not a legal entity on its own but comprises the individual members of the partnership. The existence of a partnership may be a question of fact and often no Deed exists but the partner's separate estates can be involved if the partnership fails financially. Used by the family entity the partnership can spread the burden of taxation between the partners who attract lower rates of taxation than if the income arising from the partnership were taxed in the hands of one individual but a partnership which is not considered bona fide can be overriden as regards the spread of income by the Commissioner of Inland Revenue if the partnership in the opinion of the Commissioner divides income which could be considered a gift for the purpose of the Estate Gift Duties Act. The relevant section of the Land and Income Tax Act is 106 and all accountants are familiar with this section.

A company on the other hand is a distinct legal entity on its own, distinct from the persons who have subscribed capital. It is such that it can hold property in its own name as distinct from the shareholders even to the extent of being involved in litigation with its own shareholders. As such it is not affected by the discontinued living of its shareholders and carries on till it is either wound up or struck off the Register, because it has ceased to trade. The creation of a company has the advantage of bringing together in a legal form capital that can be subscribed by several or many individuals in different amounts, on different conditions into a business entity which is governed by the documents which create the company namely Memorandum of Association which is the charter setting out what the company can or cannot do and the Articles of Association which govern the management of the company. A company owns assets in its own name and not in the name of the individual shareholders, is taxed separately from the shareholders, can have varying conditions as to voting rights and to the distribution of profits through creation of various classes of shares. A company can borrow money on a wider range of security than can the individual in particular, by way of a floating charge. The statutory authority for the creation of a company is the Companies Act 1955 which with its 475 Sections, together with various amendments since, and its 15 Schedules is a vast piece of legislation to comprehend. As regards taxation, because the company is a separate legal entity, it is taxed on its own and distributes its tax paid profit, if any, in the form of dividends which themselves are taxed in the hands of recipients. For the tax planner the company has its place because of our system of progressive taxation where at lower levels of income taxation rates are smaller, so that by spreading income between individuals and companies a lower overall rate of tax can be achieved. But the use of a company by a tax planner is of greater value where the income arising from a given venture would be greater than the personal expenditure of the individual owners of the business had there been no company formation. In other words, a company is valuable to the owners of a business if they are not going to spend all the income arising from that business and some is to accumulate. The recent elimination of excess retention tax provisions affecting all but private investment companies means that a company does not have to distribute 40 per cent of its tax paid profit by way of dividend or pay excess retention tax on undistributed tax paid profit. It means that the company can accumulate tax paid income which could be taxed at a maximum rate of 50c in $1.00 than if the company did not exist and the total income fell in the hands of the proprietor or proprietors to be taxed at a maximum rate of 67.5c in $1.00. If the income of a given business is all required by its owners and if the company does not distribute its retained income by way of dividend, in order to get that income into the hands of shareholders it must lend money to the shareholders and if this is the case, the Commissioner of Inland Revenue has the right under certain circumstances to treat an advance to shareholders as a dividend and tax it accordingly thus reducing the benefit of the above tax advantages.

The financial failure of a company does not affect the personal state of the individual shareholders or its governing body i.e. the Directors, beyond the nominal capital for which the shareholders subscribe. For this reason, when a private company is formed nominal capital should be kept within the resources of the shareholders so that the capital may be fully paid. This is not necessarily required but in a small private company it is most desirable. A company must have a minimum of 2 shareholders and to be a private company a maximum of 25 although this number may be exceeded where full-time employees are also shareholders. A public company is one where the shareholding is not less than 7 with no limit on the maximum and the main difference between private and public companies is that public companies must file with the Registrar of Companies each year, audited financial accounts. The private company can maintain secrecy to its shareholders as regards its financial position subject to the filing of certain documents, particularly related to borrowing, with the Registrar. There are further distinctions between private and public companies in administration in that certain sections of the Companies Act do not apply to private companies.

In the tax planning area until the 1968 amending legislation, a series of companies could be formed by the same shareholders to spread income which could overall attract lower rates of tax. For example, it was not uncommon to have a property owning company distinct from operating companies for particular kinds of businesses where the shareholders were all the same. These individual companies could be taxed separately, provided their formation as individuals were not for the purpose of avoiding tax but for the purpose of conducting their business as distinct entities. By the new legislation enacted last year where the control of the private companies is in the same hands or where the shareholding of the companies is $\frac{2}{3}$rds in the same hands, then 2 or more companies can and will be taxed as if they were one unit and this avoids the possibility of using several companies as a device for tax saving. Where there are a group of people it may of course still be possible to overcome the situation of linking a group of companies together provided control and $\frac{2}{3}$rds of the shareholding is not within the same hands.

On the question of trusts, again very briefly a trust can be created either by Will, where certain assets are held by the Trustees for fixed purposes until such time as they are to be distributed which period cannot be longer than 21 years after a life in being, or a trust can be created by operation of Law where a minor is entitled to certain assets which cannot be distributed to that minor until he or she reaches the age of 21, or a trust can be created by an individual who sets aside in the hands of Trustees assets from which income will be derived and distributed in accordance with the Deed of a Trust. For taxation planning, purposes income which is retained by a Trustee for later distribution is taxed in the hands of the Trustee as income which he receives. Where the beneficiary is, in simple terms, fully entitled to income then that income can be taxed in the name of the beneficiary. This is an over-simplification of the situation but you can see from a tax planning point of view that a person can introduce 2 or more additional persons to be taxed i.e. the Trustee and the beneficiary, and where income can be spread from the original owner to the hands of the Trustee and beneficiary then because of the overall tax assessed and personal exemptions to be taken advantage of, the overall tax assessed may be reduced.

The legislation affecting Trusts is the Trustee Act and the relevant taxation provisions are contained in Section 155 of the Land and Income Tax Act and I would suggest that you do not bother to get involved in its intricacies personally and leave it to your advisers because this is a most complicated area of taxation, one which is frequently before the Courts for clarification and which has been subject to major revision by the 1968 Amendment Acts. Assets forming part of the trust must pass beyond the control of the settlor and herein lies a problem because a Trustee must be completely independent of the settlor.

The basis of tax planning then is to take advantage of personal exemptions of a family group and where legally possible spread income into as many hands as possible to take advantage of the lower progressive rates of tax. This of course can mean that an individual completing such an exercise can lose control over assets and income and place himself in the hands of his family which may not be the most desirable set of circumstances due to the influction of time and family differences that do arise. The spreading of income in this way can also achieve savings in estate duties, a subject which is close allied to my topic today and must be brought into account at the same time as considering the form of ownership of a business. Section 108 is the bogy that hangs over the head of the tax planner. Enacted in 1900 only in the last few years has it been of significance. It states that any agreement to avoid the incidence of taxation is void against the Commissioner. Tax savings must not be the dominant motive of an agreement or Section 108 can apply. Let us have a brief look at a case study to give you a little more insight to what I have been talking about and show you how things can operate.

Take the case of a husband and wife who are getting on in years, they have substantial assets and a family, one of whom is involved in the family business, some of whom are not. Shall we say one son will probably take over the family farm, another son is not interested in farming and a daughter who is either married or going to be married and will not be involved in the family farm. The parents wish to divest themselves of capital, minimise their taxation, yet maintain control of their business and keep the family farm intact when they pass on. They have discussed the matter with their accountant, their solicitor and a possible solution could be the formation of a company whereby the assets of the farm are sold to the company and they are given a mortgage,and or debenture, back as security for unpaid purchase money. In other words the company is formed with a capital lower than the total value of the assets transferred and the unpaid purchase money is secured. The parents retain as their share capital only a small number of shares because the Commissioner of Inland Revenue can ignore conditions attaching to shares for purposes of valuing shares for estate duty purposes. We will call their shares preference shares on which the Articles of Association can state that there will be either no dividend payable on this class of shares or perhaps a maximum of 6 per cent per annum non cumulative. We will say that the capital of our company is to be $5,000 and the parents will hold all the preference shares namely 200 (100 each) and the sons will hold 4,800 ordinary shares between them. These ordinary shares, have no voting rights whereas the preference shares can retain all the voting rights in the company, but these ordinary shares will attract dividend whereas the preference share dividend is either nil or at least limited. We can also give to the son who is going to take over the business,the right to acquire by valuation at a given time the shares held by his brother.

During his lifetime the father is appointed by the Articles of Association as Governing Director of the Company. This gives him absolute control of the policy and workings of the company and in the event of his death before the death of his wife, this Governing Directorship could be passed on to the widow. This means that during the lifetime of the parents with the control over the company, they can nominate not only the policy of the company but what income they may wish to draw by way of salary from the company. Now with a couple of wealthy parents it is not their desire to build up capital, in fact they wish to divest themselves of the same so that they would take only what salary that was necessary to support themselves, one that will be kept down to little more than covering personal tax exemptions. They can pay the son, who is working in the business, such salary as they may wish (subject only to a Section of the Tax Act where the Commissioner may, if he so thinks, consider this excessive and treat the same as a dividend) and any profits undrawn in the form of salary are then taxed in the company and can be distributed by way of dividend or better still allowed to accumulate in the appropriation account of the company for the benefit of the ordinary shareholders only. The parents having taken a mortgage or debenture for their unpaid purchase money for the farm can then gift the mortgage or debenture back to the company over a period of years. They can each make a gift of $4,000 per annum without attracting Gift Duty provided they live 3 years after making the gift and this gift made to the company then becomes a capital reserve in the hands of the company. If ever distributed it would not be subject to dividend tax but the gift would increase the value of the ordinary shares held by the sons. The sons would not be able to get their hands on this money because it belongs to the company and the company is in control of the Governing Director, the father or mother, so that during the lifetime of the parents they maintain control in the business while the sons cannot get their hands on it and spend it.

In this particular case we mentioned the daughter earlier on and it may be desirable to provide for the daughter from the mortgage or debenture and this could be done through the parents' Wills giving the daughter part of the mortgage or debenture or instead of making gifts during their lifetime completely to the company, the daughter could be provided for through these gifts. But once a gift is made, the asset is outside the control of the parents.

So what we have achieved in this little exercise, through a company having two classes of shares, is continued control by the parents, spreading of income through the company with a salary for both parents and the son in the business, the company being taxed as a separate individual and an estate plan which divests the parents of capital without allowing capital to build up faster out of future profits. This often happens in many schemes where despite a heavy gifting programme the parents' capital builds up faster than they can give it away. So our scheme gives quite a nice tidy set up. One of the problems in estate planning is that the realty has a habit of increasing in value over the years, but having been sold in this case to the parents, then the ordinary shareholders - the sons get the benefit of any increase in the value of the land. There are also questions of how the parents should leave their estate to take advantage of exemptions for Death Duties, but I am not going to open this subject up right now, suffice to say that apart from the exemptions e.g. widow's exemption, and provision for the daughter, the respective estates could also be willed to the company.

This is one example of what can be done and there are hundreds of alternatives available provided you take proper advice. I have not cluttered up the example with a lot of figures which require mental gymnastics to understand. The problem is already tricky enough to grasp, but I have endeavoured to demonstrate to you some ideas on tax estate planning but before you can embark upon any scheme, there has got to be profit and assets around in worthwhile chunks that the owners want to protect. It is not in many cases worthwhile establishing tax saving schemes by trusts or companies where the circumstances do not warrant it, but all accountants are well equiped to advise you. It is up to the individual to present his case to his financial adviser and ask for help where required. The individual must know what he ultimately wants to achieve because once you get involved in one of these schemes you cannot put the clock back if you divest yourself of assets and income. It is gone for good and this is one of the problems of trust creations hence the example I have given you today endeavours to retain control over assets and income to the maximum extent whilst avoiding tax and Death Duties. When I say avoidance of tax this is quite distinct from the evasion of tax where the penalties for so doing can be quite severe and in fact, vegetable growers seem to be the ones who can get themselves into trouble unnecessarily.

I can tell you that of the 105 taxpayers who during the year ended 31 March 1968, were levied with penal tax, the biggest group of taxpayers levied with the tax appear to be market gardeners. It is obvious to me that vegetable growers therefore do not present their financial position clearly to their financial advisers for this to happen. So keep proper records of your financial affairs, hide nothing from your accountants and give them all the facts. Think of what you ultimately want to achieve for an estate plan and the solicitors and the accountant can get together a tailormade programme suitable for your own particular case.

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