

Welcome to the Winter 2011 issue of *Rural eSpeaking*. We hope you find the articles of interest. If you would like to talk further about any of the topics covered in this newsletter, please don't hesitate to contact us.

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The next issue of Rural eSpeaking will be published in December 2011.

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Beware the Traps of the Abolition of Gift Duty

Don't embark on a frenzy of gifting in October

It is common knowledge that the government is to abolish gift duty from 1 October 2011. The legislation will be amended to record that 'no gift duty is payable under the Estate & Gift Duties Act 1968 in relation to a gift made on or after 1 October 2011'. It is expected that the Bill will pass with the proposed wording unchanged when it returns to the House for its second reading.

However, before you engage in a frenzy of gifting in October, there are a number of factors which you should take into account.

- » The abolition of gift duty has not resulted in any amendment to a wide range of other legislation that deals with the disposal of your property (see below)
- » It will still be important to record any gift that you do make so there is clear evidence of it having been done in case of future disputes about the status of your assets, and
- » It is also likely that due to a number of factors that we refer to below you should complete a Solvency Statement. This will become important when you are transferring significant assets so you can minimise the risk of claw-back.

Income Tax Act 2007

Forgiving debt (which will reduce or wipe out a debt) will still give rise to income for the recipient under the Financial Arrangement Rules unless you have natural love and affection for the recipient of the gift.

Insolvency Act 2006

Under the Insolvency Act 2006, any gift you (if you are the bankrupt) may have made within two years of being made bankrupt may be set aside. Furthermore, under s205 of the Act, the Official Assignee may also set aside gifts you have made within two and five years before bankruptcy if you were unable to pay your debts at the time that the gift was made. The burden of proving that you were solvent at the time that the gift was made falls on the recipient of the gift.

The Insolvency Act 2006 also provides that any transaction you make within six months of your being adjudicated bankrupt is presumed, unless the contrary is proven, to be made at the time when you were unable to pay your debts.

Hence, the importance of the Solvency Statement which we refer to in the third bullet point above.

Property Law Act 2007

The Property Law Act 2007 enables the court to set aside specific transfers of property that 'prejudice' creditors. It is therefore important that in terms of this legislation, any transfer or gifting of property does not have the effect of prejudicing any creditor.

Property (Relationships) Act 1976

The Property (Relationships) Act 1976 has provisions that enable the court to examine the transfer of property, particularly to trusts. The legislation also enables the court to make Orders to compensate a spouse, civil union or de facto partner, whose claim or rights have been defeated by the transfer of property to a trust.

Social Security Act 1964

The Social Security Act 1964 has provisions that state that if you or your spouse or partner apply for a means assessment, and either of you have directly or indirectly deprived yourself of any income or property (other than an exempt asset) then a means assessment will include as your property the value of any assets you have disposed of for less than fair market value (ie: by gifting it).

Think carefully before starting to gift

It may seem that the abolition of gift duty will make it easier for you to pass stock, plant and machinery or land to the next generation. Our warning to you, however, is that although gift duty may be abolished from 1 October, you should talk with us before embarking upon any gifting to ensure that you avoid any unintended consequences.

Improving Health and Safety on the Farm

Moral, social and economic reasons to do so

Provisional statistics from the Department of Labour show that 50% of workplace fatalities in the first four months of 2011 occurred in the agricultural sector¹. These figures speak for themselves. The rate that farming families, their employees and contractors are dying as a result of farm accidents is horrific.

For moral, social and economic reasons the sector's occupational safety and health (OSH) record must be improved – and fast. This article lists some steps to help comply with OSH obligations on your farm or rural businesses.

Steps to improve health and safety

If you are responsible for a workplace, you must take all practicable steps to identify and then eliminate, isolate and minimise workplace hazards.

Know your obligations. Get advice. The Department of Labour has a wealth of free industry-specific information, see www.dol.govt.nz.

Put your obligations into practice. You will need to undertake a hazard identification process and develop the appropriate response to those hazards (whether that is by setting policies, supplying protective equipment, guards, maintenance and so on). You must be directly involved in doing this; no one will know your farm or rural business and its hazards as well as you do. External consultants (and don't forget your employees) can be useful, however, to help identify issues of which you might not have otherwise been aware.

Have a full induction process for all employees. This includes ensuring all employees have appropriate employment agreements – a legal requirement. Employment agreements are a good starting point for your OSH procedures because they are, probably, the only contracts that you will enter into with your employees. Employment agreements should set out basic rights and obligations, including those relating to OSH.

Employment agreements should also state appropriate disciplinary action if your employees do not comply with your OSH requirements. What is important is that you must then buy into your own OSH requirements and back up employee non-compliance with disciplinary action. It usually follows the course of a verbal warning, a written warning and then probably dismissal, but in serious cases may result in instant dismissal.

For example, if your farm worker rides a motorcycle without lights at night, take disciplinary action. If another worker fails to wear a helmet or use safety equipment, then take disciplinary action. If this means you are dismissing employees then, ultimately, that has to be better for your business than retaining employees who are a danger to themselves and others.

Training and supervision. Your employees must be adequately trained and supervised. Not everyone learns well in a formal learning environment such as a seminar or reading a manual; you may have people for whom having a buddy system works best. If that's the case, it's appropriate to record that in your health and safety manual as one of your policies. At the very least, it is sensible that all staff undertake a first aid course.

Staff communications. Have regular staff meetings where OSH issues can be raised. You want to create a workplace where your employees feel safe asking for advice and are proactive in identifying potential hazards.

Contractors. Ensure your contractors are aware of your OSH policy. Preferably, get them to sign a contract up-front stating they have read the policy and agree to abide with it.

Action plan. Have a plan outlining what to do if there's an accident.

- » Your first priority is to help the injured person, give first aid, then get emergency assistance
- » Secure the accident scene; don't interfere with it
- » Notify the Department of Labour. Ring 0800 20 90 20 if the accident has caused serious harm or if in doubt and,
- » Get support. For example, who is milking the cows? If you do get professional advisers involved, check that they routinely practise in health and safety law and can give immediate advice.

Get insurance. While you cannot insure against OSH fines, you can insure against the legal costs of dealing with an OSH investigation and/or prosecution.

Whilst OSH requirements may seem onerous, it is your moral and legal responsibility to keep yourself, and your employees and contractors safe. Good health and safety is also good business. Let's see if we can get those horrific statistics reduced for the second half of 2011.

¹ From 14 reported workplace deaths from 1 January – 30 April 2011, seven of these were in the agricultural sector. www.osh.govt.nz/resources/stats/fatalities-2011.shtml

Over the Fence

Quad bike safety guidelines

Our article on the previous page – Improving Health and Safety on the Farm – highlighted the rural sector's poor occupational safety and health (OSH) record. Of particular concern is the Department of Labour's (DoL) statistics that quad bikes are involved in about 28% of all work-related farm deaths, and 850 people are injured every year riding quad bikes on farms.²

In March 2011 the DoL published *Guidelines for the safe use of quad bikes*.³ These guidelines help to identify hazards and provide suggestions for their elimination and isolation. Checklists are also provided including those for a farm quad bike pre-operation, routine maintenance and sample rider competency assessment.

It has been suggested these DoL guidelines may be used by the courts to determine whether or not someone has failed to comply with any provision of the Health & Safety in Employment Act 1992, whether as a result of formal investigation or potential prosecution.

We strongly recommend you download or obtain a hard copy to familiarise yourself and your farm workers with these guidelines and adopt the recommended safety practices.

Employers to retain employment agreements

We remind all employers that you are now legally obliged to retain a signed copy of the individual employment agreement for all your employees. This obligation came into force on 1 July 2011 under s64 of the Employment Relations Amendment Act 2010.

If you don't comply with the provisions of s64, you may be fined by the Employment Relations Authority as a result of an action brought by a labour inspector.

Pre-1990 forest owners must make decisions this year

Owners of forestry land need to be aware of decisions they should make this year under the Climate Change Response Act 2002. The Act was created to enable this country to meet its international obligations to reduce carbon emissions.

As it affects forestry, the Act divides forests into two main categories:

1. Pre-1990 forests: those forests planted in non-native species before January 1990, and
2. Post-1989 forests: planted after 31 December 1989 either with native or non-native species on land which was not in forest on 1 January 1990.

Under the New Zealand Emission Trading Scheme certain foresters will be allocated New Zealand Units under the Kyoto Protocol. However, there are restrictions placed on the land regarding deforestation and disposal.

Pre-1990 forest owners' crucial dates for 2011:

30 September: Application for exemption under 50 hectares

30 November: Application for free allocation of units

Furthermore, if you are selling or buying forestry land you need to be clear as to the proper treatment of the units. Specific units are transferrable and some are not. If units are retained and not transferred with the property the value of the units (at present about \$20/unit) must be paid back to the government.

If you need expert advice to navigate your way through this tangled undergrowth, please be in contact as soon as possible.

² <http://www.dol.govt.nz/quad-bikes/index.asp>

³ www.osh.govt.nz/publications/booklets/safe-use-quad-bikes/safe-use-in-agriculture.pdf