

Taking the 'con' out of conacre

Why both farmers and landowners should seriously consider long-term leasing

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the terms of the lease before signing. Farm buildings should generally be dealt with in a separate agreement to avoid any issues with the Landlord Tenant Act. Alternatively, a separate renunciation clause may be signed by both parties where the tenant waives any rights under the Landlord Tenant Act at the outset of the lease. So, why should landowners consider long-term land leasing?



Long-term leasing makes a lot of sense for both the landowner and the active farmer in terms of land use and maintaining the land in a good productive state. It also makes sense financially to both parties as it allows the active farmer to better justify any required investments and the landowner has the benefit of the income tax incentives. A booklet on long-term land leasing is available at <http://www.teagasc.ie/publications/>

Short-term, 11-month land rental has long been part of Irish farming. But there are a number of significant negatives attached to it. For the active farmer it's difficult to plan the business and invest in the rented land. For the landowner, conacre offers flexibility but the land may become rundown; the income is taxable and there may be implications for capital taxes in transferring the land to a family member. Long-term leasing offers a number of really significant benefits compared with conacre.

What is a land lease?

A land lease is a written legal agreement between a landowner (lessor) and an active farmer (lessee). It is signed by both parties, witnessed by an independent person and stamped by Revenue. Details to be included:

- Term of the lease.
- Annual payment and payment procedure.
- Details of the land use and the upkeep of the land.
- Insurance.
- Treatment of Basic Payment entitlements.
- A clause preventing subletting.
- The lease must be stamped by Revenue and registered with the Property Registration Authority (PRAI).

Legal advice

The people involved in the lease must sign up to the conditions contained in the written lease agreement. While there are template lease agreements available, it is important to tailor the lease agreement to the needs of both the lessor and the lessee. An example of this would be the upkeep of fences or hedges on the farm. The responsibility for this should be clearly stated in the lease. Have a solicitor review

1. Enhanced tax relief incentives

The income tax incentives were enhanced by Revenue and the Department of Agriculture, Food and the Marine in 2014 to make leasing more attractive to landowners who did not wish to farm the land themselves. The changes were also designed to encourage landowners who already had their land let out on conacre to change to long-term land leasing.

Since the introduction of these new income tax incentives, a survey carried out by the Department of Agriculture, Food and the Marine showed that the use of long-term land leasing increased by 27% in 2015. The tax-free thresholds are shown in Table 1.

Some further changes introduced were that land can now be leased for up to 25 years without affecting the landowner's right to qualify for retirement relief on capital gains tax. Limited companies can now qualify for the landowner for the income tax incentives.

Payments received under the Basic Payment Scheme and the agreed land lease fee per acre (or per hectare) can be added together as tax-free income under the relevant threshold. The landowner must still pay PRSI and USC on this income. The amount of income involved may determine the length of the lease agreed. If land is co-owned between a husband and wife, the relevant thresholds shown in Table 1 can be doubled.

Table 1: Income tax incentives for long-term land leasing

Term of lease	Max tax-free income/year
Five to seven years	€18,000
Seven to 10 years	€22,500
Ten to 15 years	€30,000
More than 15 years	€40,000



Where land is let on conacre for more than 10 years, the landowner may not qualify for retirement relief on capital gains tax if the farm is sold or transferred to a family member.



CASE STUDY

John and Mary are in their early sixties and they want to step back from farming. They are looking at the option of leasing the farm to a third party to avail of the income tax incentives. John is the sole owner of the 32ha farm and there are 32 entitlements worth €260/ha. The farm is a grassland farm and is very good quality land.

To maximise the income that is covered by the income tax exemption, they are looking at leasing the farm and entitlements for 15 years.

The total potential income is €24,320 including a lease payment of €500 per hectare and entitlements worth €260 per hectare.

All of this income would be tax free as it comes under the threshold of €30,000 for a 10- to 15-year lease. Table 2 illustrates the advantages of leasing the land long-term and availing of the income tax incentives.

Table 2: Net lease income

32ha at €500/ha (plus lease of 32 entitlements at €260/ha)	Total lease income (land and entitlements)	Lease income threshold for 15-year lease	Income tax payable with lease income exemption	Income tax payable without lease income exemption*
Long-term lease (10-15 years)	€24,320	€30,000	€0	€4,864

* NOTE 1: Assumes all lease income is taxable. It also excludes tax credits, USC and PRSI.

To qualify for the income-tax incentives, land can only be leased to non-relatives. The only exception to this is the uncle/aunt to nephew/niece relationship.

2. Providing an opportunity for lessee to invest in the land

By opting for a long-term lease, the landowner is providing the opportunity to the active farmer to invest in the land during the term of the lease. This means that the land may be better looked after and more productive both during and at the end of the lease.

3. Qualify for retirement relief on transfer or sale of the farm

Where land is let on a long-term lease for more than 10 years, the landowner may not qualify for retirement relief on capital gains tax if the farm is sold or transferred to a family member. Leas-

ing the land long-term provides the structure to avoid this happening.

Why should active farmers consider long-term land leasing?

1. Security of tenure

An active farmer (lessee) who is using long-term leased land as part of their farming operations can better plan their business in terms of lands farmed, stock carried and crops grown. It gives more certainty to the business, the scale of farming operations and may provide expansion opportunities. This is the key advantage for the active farmer.

2. Better financial justification for the required investment

With a long-term lease, the active farmer (lessee) can justify financial investment in any improvement

works that are necessary to the land in order to farm it productively. Such investments may include: reclamation, soil fertility, reseeding, roadways, fencing and the provision of adequate water supply.

3. Farm buildings may come with the land which will reduce capital investment

In a situation where the active farmer is expanding their farm business, making use of existing facilities can greatly reduce any capital investment required in buildings. Such investment may include the provision of animal housing, slurry storage and silage facilities.

A good reference is the publication *Guidelines to Long-term Land Leasing*, which can be found on the Teagasc website.