



A Guide to Transferring the Family Farm



AGRICULTURE AND FOOD DEVELOPMENT AUTHORITY

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Executive Summary

The purpose of this publication is to help farm families familiarise themselves with some of the complex issues that can arise while developing a farm succession plan. It is essential for every farmer to have a farm succession plan in place. There are complex legal and taxation rules that, if planned for, can be managed easily. If not planned for, however, there could be a major impact on the viability of the farm business. Some of the issues relate directly to the absence of wills or the failure to keep these up to date. If a farmer dies intestate then the assets are divided along the rules on the succession law – spouse receives two thirds of the estate and children get one third split between them. As part of the completion of a succession plan all of the family need to be consulted. Too often parents assume that their children want to farm or do not want to farm. With the benefit of an open and frank discussion all of the people involved know where they stand. A plan can be created accordingly. It is really the parents who must take the initiative as they are the ones on whom the decision rests.

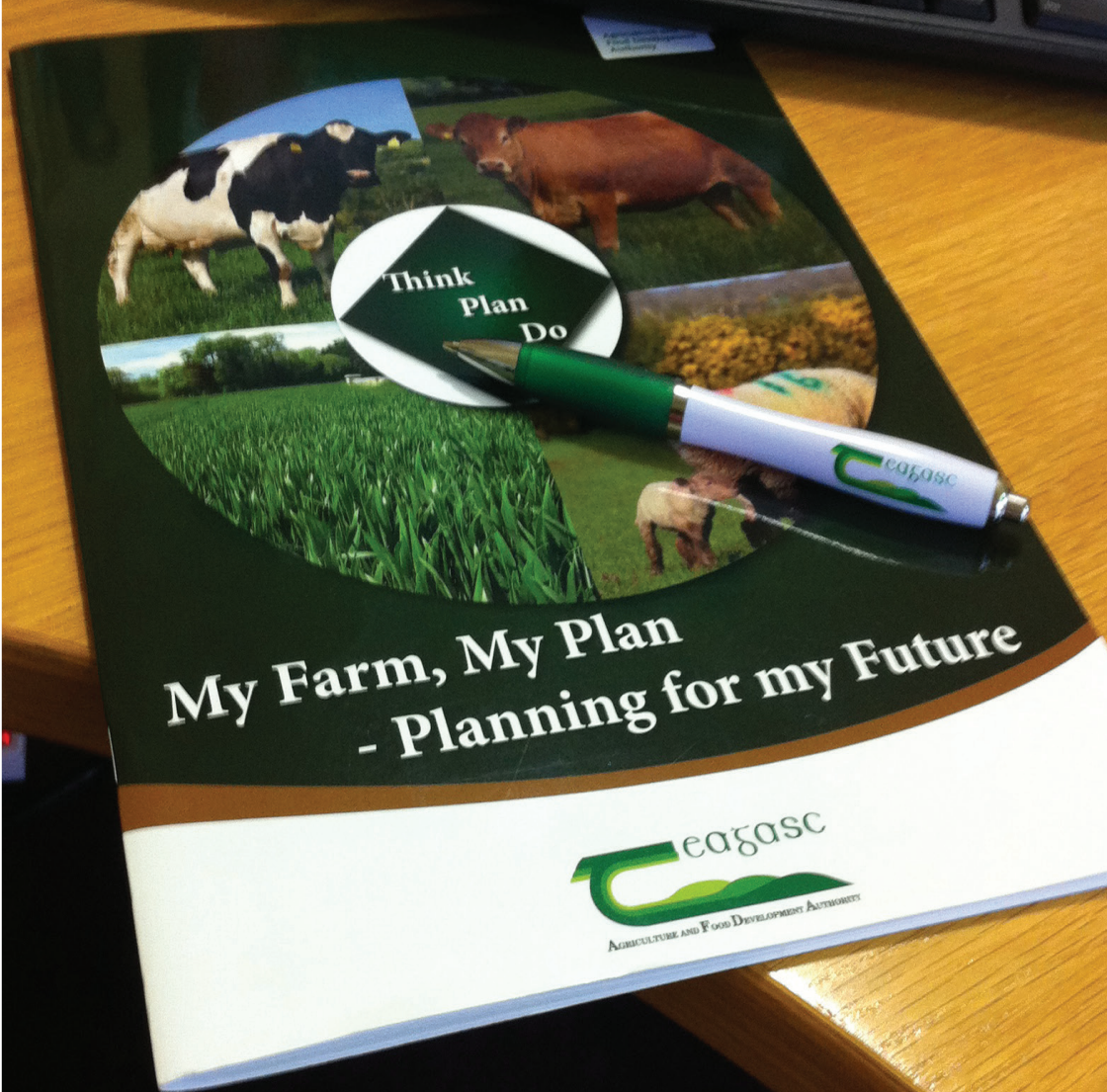
This publication looks at seven specific issues that require discussion when a succession plan is being put in place.

- The Farm Business
- The Farm Family
- Legal Issues
- Taxes
- Collaborative Farming
- Availing of a Pension on Retirement
- Education

Succession and inheritance is a very complex subject. There is no “one-size-fits-all” answer for any farm family. There are many different professionals involved in the succession plan. The Solicitor and Tax consultant become the main players but are often assisted by the local Teagasc Adviser, different government departments and possibly a mediator. This publication will explain some of the main issues to you in order to make the process simpler when writing the succession plan.

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Chapter 1: The Farm Business



Chapter 1 – The Farm Business

Summary

- A - Ask your Advisor
- B - Bring All Family Members into the Transfer Process
- C - Consider your Future
- D - Define the Farm Business
- E - Explore all the Options

Introduction

Traditionally in Ireland, land continuously passes from one generation to the next. This transfer of ownership does not always go smoothly. While there is no magic formula to guarantee the successful transfer of a farm from one generation to the next, major difficulties can be avoided if the farm transfer process is efficiently planned.

A - Ask your Advisor

If you have begun to think about transferring your farm, then your first port of call should be to your Teagasc advisor. Your advisor has a detailed knowledge of your farm business and can therefore provide sound advice throughout the transfer process. At the initial appointment with your Teagasc advisor, you need to tease out what exactly you wish to happen. Who do you want to transfer the farm to and when do you want this transfer to happen? Your advisor should be able to inform you of the implications of this transfer on the farm business in terms of farm scheme participation e.g. Basic Farm Payment, Disadvantaged Payment etc. Your advisor will also give you guidance on when you need to consult your solicitor and accountant.

For many farmers the prospect of transferring their farm business is daunting. There are no second chances in farm transfer, it must be done correctly the first time around. It is worth noting that Teagasc advises on many farm transfers each year and has built up expertise in the area which will be of benefit to you.

While no two farm transfers are the same, experience has shown that there are basic steps that should be followed in all cases. The key to a successful transfer is to plan the process carefully and complete it in manageable stages.

B - Bring All Family Members into the Transfer Process

Bringing all family members into the transfer process is a safeguard against future problems arising. We are all aware of situations where farm transfers turn sour, resulting in family disputes and perhaps even financial ruin. To avoid this situation on your own farm, plan your transfer process in a timely manner and communicate your plans to all involved. If you have decided on a lifetime transfer of the farm or whether you are going to pass the farm on via your Will, there is a clear need to keep all involved informed. A prolonged guessing game with regard to who the farm successor is does not benefit any party and can lead to resentment and ill-feeling amongst everyone.

The age of all family members at the time of farm transfer is important. If a decision is made to transfer the farm to an eldest son while there are still younger children to be educated, then provisions must be made to pay for this education. Similarly if the parents transferring a farm are too young to qualify for a pension, then provisions must be made to provide an income for both the new farmer and the parents. While one spouse may be actively farming, it is vitally important that both spouses agree on the farm transfer process in order to prevent difficulties further down the line.

Family settlements to non-farming children should be openly discussed and agreed upon before the farm transfer takes place. Irish farms tend to be asset rich and cash poor, so the gift of a site rather than cash has become an increasingly popular family settlement. In the past new farmers were often burdened with unrealistic cash settlements for non-farming siblings which resulted in slowing down investment for the development of the farm.

It should be noted that there is no onus on the new farmer to give sites to non-farming brothers or sisters so this issue should be resolved before farm transfer takes place. Decisions taken at this stage could have tax and or legal implications, you should involve your solicitor and tax adviser at this stage also.

C - Consider your Future

So you have decided to transfer your farm and retire from farming. Going to improve your golf game? Travel to all those far-flung destinations you have dreamed of? Before you sail off into the sunset, you need to consider your future in detail. Some important criteria to look at include your age, health status and living expenses. While you can be considered lucky to be retiring at a young age and in good health, you will undoubtedly need income to support yourself over the coming years. Future income from either state or private pensions needs to be examined. Will you have enough money to meet your living expenses? Too often in the past, farmers have transferred farms leaving no provision for their own future income. It is vital that this issue is resolved at the time of farm transfer, one solution being a private contract between parents and the new farmer in which the new farmer transfers an agreed sum of money to the parents on an annual basis. It is important to consider the viability of the business if this is being considered.

We all dream of enjoying our retirement but many farmers only actually stop farming when they are forced to do so through ill-health. It is unwise to postpone farm transfer until ill-health occurs. Should you be unfortunate enough to be struck down with a sudden illness e.g. stroke, heart attack you may be suddenly incapable of making decisions regarding farm transfer.

Furthermore if you are unfortunate enough to need prolonged medical care in a nursing home the high medical costs involved will have a considerable negative effect on your farm business and the value of your entire estate.

D - Define the Farm Business

Perhaps the most important step in the farm business transfer process is to define the actual farm business. Farmers have an in-depth knowledge of their business but a lot of this information is not written down and may only be known by the farmer himself. If you were struck down by a serious illness in the morning, could someone step in and run your farm business efficiently and effectively? The transfer of your farm must be used as an opportunity to fully separate the farm business from the existing farmer and place the reins of ownership firmly in the hands of the younger generation. Fill in the simple table below to begin the process of defining your farm business.

A comprehensive document titled Personal Affairs Checklist is available from the Institute of Chartered Accountants in Ireland.

Hectares owned	_____
Hectares rented	_____
Herd Number	_____
Farm Bank A/C's number	_____
Farm Schemes	Payments Received
Basic Farm Payment	€ _____
ANC Payment	€ _____
REPS	€ _____
Other specify	€ _____

It is also important that you define your business relationships with others. Who is your contact person in your bank? What agricultural merchants do you deal with? Do you have outstanding bills for purchases made e.g. feed, fertiliser etc. Perhaps more importantly are you owed money from others for sales of hay, straw, silage etc? It can be a good idea in the early stages of the succession process to bring your successor along to meetings with the bank, accountant, merchant etc. This will enable the young farmer to get to grips with the complex nature of the farm business and ensure the smooth transfer of business interests from one generation to the next.

E - Explore all the Options

Before you start the process of transferring your farm, you need to examine all the options open to you. Traditionally Irish family farms were passed to the eldest son. However with the increase in third level education it is now becoming more common that there are no children actively farming.

Furthermore perhaps none of the adult children are interested in becoming farmers. New and different ways of retiring from farming are becoming more commonplace.

Entering a partnership with a non-family member, leasing out or selling land are all options which should be explored. With record numbers of agricultural students now leaving agricultural college and no limitations on entering dairying, the availability of farms for partnerships or leases would be seen as a good opportunity for many of these graduates to start off in the business of farming. In addition leasing out is a tax efficient way of retaining an annual income from your land. While selling land is often seen as the last option for retiring farmers, it should be explored, particularly in cases where no children are actively involved in farming.

Chapter 2: The Farm Family



Chapter 2: The Farm Family

Summary

- The family structure in Ireland
- Fair and Equal shares
- The retired farming couple
- Policy
- Mediation

The Family Structure in Ireland

The farming family can be a complex structure. In some cases there could be up to four generations living on the farm. Some of these may be working together in an informal way and generally with the ownership with one generation. Traditionally in Ireland the farm may be given to one child with other children/siblings receiving a site and or an education as a method of “setting up” the others. In some cases the family farm might be divided between siblings or siblings might farm together as tenants in common. These structures often work well for a number of years until there is a change to the family circumstances as a result of a death or an addition to the family structure.

In Ireland we look upon the ownership of land differently to other countries. “The Field” by John B Keane demonstrates this to some extent. Purchased land might be looked on differently to land that has been in the family for generations. Some have the attitude that we only have the use of the land while we are alive and must pass it on to the next generation in better condition than we received it. In other countries when the time comes to retire the farm is often sold to the next generation to create a retirement lump sum. This sale could be to a family member or on the open market to a neighbour.

Fair and Equal Shares

Farmers are seen as a wealthy sector owning a lot of valuable assets; unfortunately due to the nature of the enterprise carried out the cash returns on an annual basis are often very low.

Where there are a number of children to be “looked after”, there is sometimes an expectation that the farm should be divided equally in monetary terms, meaning if one child is getting the farm a cash payment must be made to other siblings. This system could put the farm out of business as the debt carrying capacity of the business could be very low. So how then can a parent treat all the children fairly? Fair may not always mean equal. Providing one child with a decent education and another with a site and a third with the farm may be a fair result. The child getting the education may end up with a better salary than the farmer.

What is fair? Is a fair share an equal share? It all depends on the situation. Here are some questions that you should answer as part of the process of figuring this out.

- How large is the farm and what is the extent of the farm business?
- How many siblings are to be catered for?
- What are the circumstances of the siblings?
(in education, emigrated, working, etc)
- What long term support is required for family members?
- What is the income generating capacity of the farm?
- What other assets are part of the succession plan?
- How are the parents to be looked after?

Example Situation

- Farm 80 acres, with a 30 cow suckler herd and selling weanlings
- The farm is valued at €800,000 including all stock, buildings etc.
- Parents aged 64 and 66
- 3 children (Paul 34, Mary 30 and Peter 28)
- Paul is interested in farming, living in separate house on the farm, working off farm and helping on the farm.
- Mary has been educated and has a good job & house with large mortgage
- Peter has a good job, lives at home and is about to get married
- Nursing home care has not been discussed

Parents Expectations: The parents would like to treat all the children fairly. In this situation it does not make sense to divide the farm due to the scale of the enterprise. Paul is the only child interested farming the land. The parents both qualify for the contributory pension and are happy that this will provide an adequate income for the medium term. They feel that all 3 children have been educated equally but would like to give some help to the other children that will not be farming. The parents would like to stay in the farm house for their retirement, but have not ruled out a house swap with the Paul as this would suit farming operations better.

Peters Expectations: Peter would like a site for a house on the farm.

Marys Expectations: Mary would like some help with the mortgage. The parents would like Paul to give Mary €150,000 as part of the succession plan. This however is causing a problem.

Pauls Situation: Paul has a current mortgage of €150,000 and is willing to swap houses with the parents and continue to pay this mortgage; this mortgage is a struggle at present. The repayment capacity is not in the farm business as it stands. The farm also needs investment of €80,000 to update the facilities. Paul believes the only option to do this is to sell some land.

Other Expectations: The parents may need home care in the future. The younger siblings think that Paul should “look after” this as he got the farm. Paul is unaware of this. This situation requires further family discussion and the end result will more than likely mean that the assets are divided fairly but not in equal shares.

The best solution in this case is to have an open conversation between the family members to arrive at an agreed position. This may need to be facilitated by a third party.

The Retired Farming Couple

The average person is now expected to live to their mid-80's, giving a potential retirement period of 20 years. In many cases the parents are not ready to retire, but the successor is reaching the age of 35 when the Stamp duty exemption is running out. This sometimes creates the problem of trying to generate an income for two families from a small average sized Irish family farm.

Once the retiring couple reach the “pension age” this provides some additional income into the system, but this may not be enough depending on the circumstances of the retiring couple. While we would all love to spend our last days in the home, it might not always be possible for a family to provide the level of care that may be required. Hiring in help to work in the home can be very expensive, so too are nursing homes. While the “Fair Deal Scheme” is available to contribute to these costs, it ultimately puts a cost against the estate of the deceased. It is therefore important that a family discussion on how the retiring couple are to be cared for, and who will provide the money and/or time to for this. This agreement should be built into the succession planning process so that potential family conflict can be avoided in the future.

Policy

Both the Irish government and the EU have land mobility/farm family support structures built into policy. The government of Ireland largely dictate the tax policy; part of this policy is to encourage early transfer of land to a younger generation. Stamp duty exemptions are granted to those who start farming before the age of 35 and have a certain minimum agricultural education. Agricultural relief can be claimed against Capital Acquisitions tax and the retiring parent can claim Retirement relief against Capital Gains tax. (see chapter 4 for further details)

Although in recent years there has been no specific financial payment to help with the costs of transfer, a new incentive introduced as part of the new CAP commenced in 2015. A 25% top up on the Basic Payment Entitlements will be paid to qualifying young farmers for up to 5 years. This could potentially provide a payment of up to €15,000 to a young farmer.

Mediation

Mediation is more often associated with work related disputes where a union and a company are trying to resolve a dispute. It can also be used in succession planning. It is a voluntary process that can be used to allow parties to address their concerns and issues in a confidential setting. This can be successfully used where the family structure is complex and where any of the parties has any concern. Mediation is a process in which an impartial and independent third party facilitates communication and negotiation and promotes voluntary decision making by the parties to a dispute to assist them to reach a mutually acceptable solution.

Mediation can be useful in the following circumstances

- When someone is about to retire
- Before a new member joins (marriage or partnership)
- After an unplanned event (sudden illness, death, marriage breakdown)
- There is no interested successor or obvious successor
- Normal family communication has broken down
- A change in farming system has occurred or is needed

The mediator facilitates discussion and finding a solution, however the solution may also have taxation and/or legal implications, so from this point of view, you may require your solicitor/accountant/farm adviser involved also in the process.

Chapter 3: Legal Issues



Chapter 3: Legal Issues

Summary

- Making a will
 - The first step in a succession plan.
 - Making a valid will
- Administration of an estate
 - Intestacy
 - Probate
 - Department of Agriculture's Inheritance Enquiry Unit
- Planning for your later years
 - Power of Attorney
 - Advance Care Directives (Living will)
 - Ward of Court
 - The Nursing home support scheme (fair deal)
 - Personal affairs checklist.

The First Step in a Succession Plan

Making your Will is a quite a significant legal task to undertake. This legal document sets out how you wish your assets to be shared out on your death. It is a document that is often thought of too lightly, the comment "anybody can write a will" comes to mind, but if completed incorrectly can have dire consequences for those left behind. When you die your affairs need to be settled up. There are likely to be bills that need to be paid and property to be distributed. A Will is the simple mechanism that allows you to decide what happens to your assets with a minimum fuss and delay.

For too many people this task remains only an intention and never takes place. One reason for this might be that you keep putting off "the family meeting" and deciding where you would like your assets to go. But if you don't make a will then you have no say where your assets go after your death. This uncompleted task then becomes the "decision". If you die without making a Will then what happens your assets will be determined by law (Intestate).

The 1965 Succession Act is the relevant legislation that now decides on how your assets are distributed. Irrespective of your age, state of health or financial status, it is imperative that you have a legally recognised valid will.

The advantages of making a will

- It protects and provides for your loved ones. It will also prevent unnecessary distress and expense on your relations which can occur where there is no will
- It allows a parent(s) appoint a guardian(s) for their child(ren) and long term dependants
- It gives legal status to what you intend to do with your assets or possessions

Making a Valid Will

Making a Will could be straightforward, but it can be more complicated than you realise. It is important that you consult a solicitor who can guide and advise you through the confidential process of making a will for the benefit of your loved ones, while providing the assurance that what you have written is legal and valid.

For a will to be valid in Ireland, the testator (person making the will) must:

- be aged 18 or over (or be - or have been - married)
- act of his own free will and
- be of sound mind, memory and understanding
- the testator must know the nature and extent of his/her property and be capable of recalling all of the people who may expect to benefit from his/her estate
- the will must be in writing
- the document must be signed at the end by the testator (or by someone in his presence and by his direction)
- the signature must be written or acknowledged in the presence of two witnesses, both present at the same time and
- The witnesses must sign in the presence of the testator, but not necessarily in each other's presence.
- A witness or his/her spouse cannot benefit under the will

A will should contain:

- the testator's name and address
- a revocation clause
- a clause appointing at least one (but preferably two or more) executors
- a list of legacies (gifts of money or goods)
- a list of devises (gifts of real property)
- a residuary clause, disposing of the remainder of the estate
- the date
- the testator's signature and
- the attestation clause or testimonium

Where these guidelines are not followed, the will may fail and if this happens the law in relation to intestacy will determine how the assets are distributed.

Intestacy

When a person dies and there is either an invalid or no will, the person is said to have died intestate. The persons assets are then distributed as per the laws of intestacy as laid down in the Succession Act 1965. If some of the beneficiaries have predeceased the testator their children may be entitled to a share in the estate.

A deceased dies totally intestate if:

- he /she has made no will;
- he /she has made an invalid will;
- he /she has revoked a will; or
- he /she had made a will which does not dispose of all his property

Table 3.1 Example of how an estate is distributed on intestacy

Surviving relative		Share of estate
Spouse and children	➔	Spouse gets two-thirds and children share the remainder
Spouse and no children	➔	Spouse gets entire estate
Children and no spouse	➔	Children share entire estate
Father, mother, brothers and sisters	➔	Each parent gets one half
Parent, brother and sisters	➔	Parent gets entire estate
Brothers and sisters	➔	All get equal shares
Nephews and nieces	➔	All get equal shares

Probate

This is the legal process that allows the deceased persons estate to be distributed. This is carried out by a person named in the will (executor), but first the will (if there is one) has to be declared valid. The Probate Office has the authority to decide on what type of grant is given.

Grant of probate is given to the executors by the Probate Office. They must follow the instructions of the will. The executor must first “prove” the will to establish its validity, prior to following its instructions.

Letters of administration are granted if the deceased person dies without a valid will. This is usually granted to a close relative of the deceased. This person then becomes the Administrator of the estate.

Letters of administration with the Will annexed can be applied for if a person applying for probate is someone other than the executor. This can happen if the executor has died or none was appointed. It is usual for a recipient of the residue of the Will to make this type of application.

Department of Agriculture's Inheritance Enquiry Unit (IEU)

This is a facility put in place by the Department of Agriculture, Food and the Marine (DAFM) to help the representative of the deceased to administer the estate in relation to any scheme or programme that the deceased was involved in. The IEU will liaise with the various sections of the DAFM to make administration of the deceased estate as streamlined as possible.

Following the death of a farmer there are generally two issues to be dealt with as follows:

1. A change to the registration details of the herdnumber/herdkeeper
2. Payment of any outstanding monies due to the estate of the deceased and the transfer of any Basic Payment entitlements held by the deceased

Changing the Registration of the Herd Number

When the Regional Veterinary Office is notified of the death of the farmer it:

- Records the death of the farmer on the Department's systems
- Commences the process of herd transfer details and subsequently changes the registration details of the herdowner
- Where appropriate, arranges for the registration of a "herdkeeper" with responsibility for the management and care of livestock in the herd.

Payment of Outstanding Payments and/or the Transfer of Payment Entitlements held by the Deceased

There may be outstanding payments due to the estate of the deceased under various schemes. The deceased may have also owned Basic Payment entitlements. The function of the Inheritance Enquiry Unit is to ensure the payment of any outstanding money due to the estate of the deceased and, where appropriate, to advise on the transfer of any Basic Payment entitlements held by the deceased.

As soon as practicable, the executor/administrator of the estate of the deceased farmer and/or the solicitor dealing with the administration of the estate should contact:

Inheritance Enquiry Unit, Department of Agriculture, Food and the Marine,
Eircom Building, Knockmay Road, Portlaoise, Co Laois.

Tel: 1890 252 238 | Fax: 05786 80457 | Email: inheritance@agriculture.gov.ie

Power of Attorney

Under Irish law there are two types of power of attorney. These legal instruments may be useful in certain circumstances. A power of attorney is a legal document that gives one person (the attorney) the right to act in another person's place (donor) in general or for a specific purpose. This agreement ends when the donor dies or becomes mentally incapacitated.

Enduring power of attorney is a legal document where the donor states that the attorney will have the power to act in their place if the donor becomes mentally incapable or unable of looking after their own interests. It ends on death of the donor or if the donor revokes the document.

Enduring power of attorney (EPA) is a useful tool that can be part of a succession plan. You could use it to appoint someone to look after your affairs should you become mentally incapacitated, for example as a result of a disease (Alzheimer's or dementia) or brain damage as result of an accident. It also allows you to avoid becoming a "Ward of Court" so essentially you get to decide who will control your affairs.

It is important to note that using an EPA is a giving another person substantial control of your affairs. EPA's should be set up carefully with expert legal help especially in relation to the conditions and restrictions.

Advanced Care Directive (Living Will)

Advanced Care Directive is also known as a “living will”. This is a statement declaring how you would like to be cared for in the future on the assumption that you may not be able to make these decisions for yourself at the relevant time. The statement is limited to decisions around medical and surgical treatment.

In Ireland there is no legislation on advanced care directives, this means that their status is unclear as to whether they are valid or not. If the directions in the directive are illegal they are not enforceable, but if the set of circumstances are very specific and relate to the exact set of circumstances you face, it might be enforceable, but no case has yet been ruled on in an Irish court. Under normal circumstances where a patient is not able to make a decision around their own care the next of kin is consulted. Guidance is given by the Irish Medical Council on these affairs under medical ethics.

Ward of Court

When it is thought that a person is incapable of making decisions on their welfare and the management of their assets for their own benefit due to mental incapacity an application can be made to the courts for this person to become a Ward of Court. This means then that a committee is appointed to control the assets of the person (ward) for their own benefit. This process involves satisfying the court that the person is of unsound mind and incapable of managing their own affairs. The office of the wards of courts is responsible for administration of this procedure. A booklet produced by the courts service can be downloaded at the following website address: www.courts.ie

The Nursing Home Support Scheme (fair deal scheme)

The decision to enter a nursing home is never taken lightly, but sometimes becomes the only option as it may not be possible for your family to provide the care that you require in your home for a variety of reasons and circumstances. The cost of care in a nursing home can be a substantial cost and your business or the business you passed to your successors might not have the

cash flow to pay for this care. It is often said that farmers are wealthy (own a large amount of assets) but have poor cash flow. The fair deal scheme is designed to aid in this situation. In essence you will make a contribution towards the cost of your care and the State will pay the balance. This applies whether the nursing home is public, private or voluntary. The HSE administer the fair deal scheme. As part of the application process your means are assessed to figure out how much state support you require. This assessment looks at two elements.

1. Charge on income (80% of weekly income)
2. Charge on Assets (7.5% of value of Asset)

These limits are capped at the percentages outlined above on an annual basis, and you will never be charged more than that cost of care.

Other elements of the scheme include:

- Savings disregard of €36000/ 72000 (single/couple)
- Transfers of assets in previous 5 years look back
- Asset charge limit on dwelling limit to 3 years (22.5%)
- Asset charge limit on farms / business only in certain circumstances

There is also a Nursing home loan that can be used as an ancillary measure. As your assets form part of the assessment and your contribution is calculated based on your assets, this contribution may be deferred until after your death so that you do not have to find the money to pay this contribution during your lifetime. Instead, if approved, the HSE will pay the money to the nursing home on your behalf and it will be collected after your death. This is an optional benefit of the scheme. It is effectively a loan advanced by the State which can be repaid at any time but will ultimately fall due for repayment upon your death.

Further information on this scheme is available at the following website address: www.hse.ie

Personal affairs checklist

Putting your affairs in order is a tedious task. There are an awful lot of things to consider. The process of writing a will and the decisions around it are important to us as we try to make sure our estate goes to where we want. As part of putting our affairs in order it is important to have a list of all of the items and information that is important to us in a safe place. The family that you leave behind when your death takes place will need to get access to a lot of different types of information so that your wishes can be carried out. In general it might be obvious to the successor who the family solicitor and accountant are, but do they know what your desired funeral arrangements are and where you have kept the family heirloom?

The Institute of Chartered Accountants in Ireland produced a Personal Affairs Checklist to help you bring all this information together.

The checklist contains all your relevant personal information: - bank account details, - a list of advisors like your solicitor, accountant and clergyman; - details of where your will is placed as well as who wrote it up and the executors; - your grave plot as well as any funeral arrangements that you have made; - your insurance policies and properties you might have; any assets you might have in your house or in safe keeping; - a list of safety deposit boxes; - societies or any other associations you might be a part of as well as any directorships you might hold; - details of your employment; where vital documentation is held, like your marriage or birth certificate, along with an array of other information that will be valuable to your family in friends if you should pass unexpectedly.

You should fill in all the details and tell someone that you trust where this item is kept (ideally the executor of your will).

This checklist should be kept in a safe place as it could be used to steal your identity. You should review this document from time to time as some of the information may change. The document can be downloaded from the following website: www.condolan.ie/personal_affairs_checklist.pdf

Chapter 4: Taxes



Chapter 4: Taxes on a Farm Transfer

Summary

- Potential tax bills that could result from any plan transfer of farm assets or handover of a farm business
- Timely advice from your agricultural adviser, accountant and solicitor can help you plan the transfers to reduce the tax burden
- This article summaries some of the features of the main taxes
 - Capital Gains Tax (CGT) Paid by donor
 - Capital Acquisitions Tax (CAT) Paid by donee
 - Stamp Duty (SD) Paid by donee

One of the issues that people either worry a lot about or else ignore completely are the potential taxes that could apply to any transfer of a farm business.

The ideal attitude here is neither to worry about nor ignore the tax aspects but to get proper advice in advance of any transfer and to plan the process so that taxes are minimised. With good advance planning and preparation the issue of taxes should not have a major negative impact on the farm business transfer.

As part of a farm transfer there are two significant tax triggering events occurring - the transfer of assets (land, entitlements, machinery, livestock) between the parties to the transfer as well as the finishing up of the business in the hands of one person and the starting up of the business in the hands of the new farmer. We will first look at the taxes applying to the transfer of assets and identify the main areas to be aware of to attempt to control any potential tax liabilities.

The Transfer of Assets Event

As part of a farm business transfer the ownership of the business assets usually changes. In the Irish tax system there are a set of taxes that kick in whenever a change in ownership of an asset occurs. These taxes are the capital taxes of which there are three – Capital Gains Tax, Capital Acquisitions Tax and Stamp Duty. These taxes target the change in ownership of capital assets – the main

ones that apply in a farm situation are land, buildings, payment entitlements, milk quota and in some cases cash on deposit. Assets such as farm livestock and machinery are not usually subject to these taxes in the transfer of a whole farm business but there may be income tax issues with these items which will be discussed briefly later.

Some of the key features of each of these capital taxes are as follows:

Capital Gains Tax

Capital gains Tax or CGT for short looks to apply tax on the increase in value of assets such as land, building while these assets were in the hands of the person now considering transferring them. The tax applies only for the disponent (the person who owns the asset but is about to transfer it) who is transferring the asset during his/her lifetime. The current rate of the tax is 33%. This increase in value (the Gain) can be crudely calculated as follows:

$$\text{Gain} = \begin{array}{l} \text{Current value at date of disposal} \\ \text{minus} \\ \text{the value when the assets were first acquired by the current owner} \end{array}$$

As stated this is a crude measure in that the gain can be adjusted to take account of improvements made to the asset (for example land drainage) and account can also be taken of the effect of inflation on the value of the asset. The main saviour in reducing the impact of CGT is via its main relief called CGT Retirement Relief which can greatly reduce or eliminate the tax completely. To avail of CGT Retirement relief there are a number of conditions that must be complied with, mainly

- The owner must be over 55 years of age at the time of the transfer
- The owner must have owned and used the asset in question for the previous ten years

These conditions particularly the “ownership and usage” condition have some flexibility but timely advice and forward planning is essential to make sure that this valuable relief is availed of. There are also other conditions relating to the maximum value of the assets that qualify (see later table for relief ceilings) so it is important that timely advice is received from an accountant/ tax adviser BEFORE any transfer takes place. Note that even though this is called Retirement Relief the claimant can still continue farming even after claiming the relief

Retirement Relief Ceilings

Disposal to	Age of Donor	Consideration Amount	Relief
A child of the owner	55 yrs - 66 yrs	Full amount	Full relief
	> 66 yrs	Upper limit of €3 million	Full relief
Any other person	55 yrs - 66 yrs	Up to €750,000 (lifetime limit)	Full relief
		> €750k	Partial or no relief
	> 66 yrs	Up to €500,000 (lifetime limit)	Full relief
		> €500k	Partial or no relief

Capital Acquisitions Tax

Capital Acquisitions Tax (CAT) is a tax that targets the person receiving the assets via a gift (lifetime transfer) or via an inheritance (on a death). So unlike Capital Gains Tax (CGT) this CAT could apply where assets pass by lifetime transfer or on a death. This tax is also levied at 33% on the received benefit (the gift or inheritance) and the tax liability is calculated bases on the total value of the gift or inheritance on the date that it is received. It can apply to assets such as land, buildings and cash. However there are also some useful

measures and reliefs to reduce/ eliminate the exposure to CAT.

There are tax-free thresholds that apply depending on the relationship between the parties to the transfer with parent to child transfers having the highest threshold which means that they can transfer assets of higher value without attracting any tax. A list of the current thresholds is shown in the table below:

Capital Acquisitions Tax Thresholds

Relationship to Donor	Tax Class Thresholds
Child, favourite niece/nephew	€310,000
Brother, sister, children of brother, sister	€32,500
Any other person	€16,250

There is a very useful CAT relief called Agricultural Relief which if applicable will reduce the value of the assets for calculation of the tax to 10% of its value. To qualify for Agricultural Relief the receiver of the gift/ inheritance must pass what is known as the Farmer Test. Passing this test requires that the receiver has at least 80% of their total assets invested in agricultural assets. From 1st January 2015 there is also an additional requirement for the receiver of the agricultural assets to be classified as an “active farmer”. (See Appendix III for “Active Farmer” conditions) You should discuss the possibility of availing of agricultural relief of your own particular case with your accountant and solicitor as early as possible in the farm transfer process.

Your accountant/solicitor should be contacted to assist in carrying out the calculation. If Agricultural Relief is not available then a similar relief called Business Asset Relief may be available. It is important to note that if either of these reliefs are availed of then there are minimum holding periods for which the assets must be held in the ownership of the receiver otherwise the relief may be clawed back. As previously advised advance planning prior to a transfer may be required to fully avail of the reliefs so it is important to discuss your transfer plans in advance with your solicitor and accountant.

Stamp Duty

Stamp Duty as the name implies is a tax levied where an official Revenue Stamp is applied to the official transfer document (Called a Deed) for an asset. It applies to assets that require such official documentation to effect the transfer such as land, farm buildings or commercial property or a private dwelling. Payment entitlements, livestock or machinery are some of the assets that are not liable to stamp duty since they don't require a Revenue stamp to give legal effect to the transfer. The stamp duty charge is levied on the recipient of the asset on the stamping of the deed or within 30 days of the transfer. The rate of stamp duty that applies differs depending on whether the asset is residential property or not.

Stamp Duty Rates

Non Residential Rates		Residential Rates	
Consideration	Rate of Duty	Consideration	Rate of Duty
Entire Consideration	2%	Up to €1,000,000	1%
		Over €1,000,000	2%

Stamp Duty has its own set of reliefs including a relief which reduces the rate applying to a transfer of a non-residential property (land, farm buildings) to half the normal rate (so 1%) provided the transfer is between blood related parties. This relief called Consanguinity Relief will have additional qualifying conditions attached from 1st January 2016 including a new “active farmer” conditions. (See Appendix III for more details)

Another much publicised relief is Young Trained Farmer Relief from Stamp Duty whereby a young farmer (< 35 years old) with the appropriate qualifications (minimum Level 6 Certificate in Agriculture) can get full relief from stamp duty. As with some of the other reliefs there are conditions applying on the young farmer as to the length they must hold onto the asset and also that they must remain classed as a farmer for a period after availing of the relief.

Summary of the main features of the capital taxes

	Capital Gains Tax	Capital Acquisitions Tax	Stamp Duty
Current Rate	33%	33%	2% - non residential 1% - residential €1m; 2% on excess
Who is liable?	Donor (the giver)	Donee (the receiver)	Recipient
What assets are taxable?	All capital assets – including land, buildings, payment entitlements	The value of all gifts/ inheritances where cash or equivalent benefit does not pass back to the doner (giver)	Assets that are transferred via a stampable instrument – land, buildings by means of gift or sale only (No SD on inheritances)
Reliefs available	<ul style="list-style-type: none"> • Annual Exemption • Indexation Relief • Retirement Relief 	<ul style="list-style-type: none"> • Small Gift Exemption • CAT Thresholds • Agricultural Relief 	<ul style="list-style-type: none"> • Consanguinity Relief • Young Trained Farmer Relief
Key dates for payment and making a return	Payment by 15 th December or by the following 31 st January Return due by 31 st October	31st October	Return filed and payment due within 30 days of date of execution of transfer

As with any issues around taxation it is important to get advice from qualified professional as early as possible in the process. It is vitally important that you meet your accountant and solicitor early in the process to discuss your succession and farm transfer plans. Getting legal and tax advice early along with input from your Teagasc adviser can help you avoid unnecessary tax bills

by missing out on available reliefs and can help ensure that there is no unnecessary leakage of valuable funds from the business to pay unnecessary tax bills.

Income Tax Repercussions of any Proposed Transfer

Many of the non-capital assets such as machinery and livestock can be transferred without incurring capital taxes or any income tax if the business is passed as a going concern from a farmer to his successor. There may however be income tax implications for the retiring farmer when they stop trading as a farmer under the “Cessation to Trade” rules. Getting an accountant to run the rule over the potential income tax implications of any handover can prevent any unforeseen tax shocks.

Chapter 5: Collaborative Farming and Succession



Summary

- **Partnership:** Registered family partnership can be first step in the succession process on the family farm. Registered Partnerships are open to all enterprises from 2015.
- **Succession Farm Partnerships:** A new income tax credit to encourage the planned transfer of farm assets to the next generation of Irish farmers while providing a level of protection for the transferors by allowing them to retain 20% of farm assets.
- **Contract Rearing:** An alternative to drystock enterprises for retiring dairy farmers and drystock farmers. An opportunity for expansion and labour efficiency to the dairy farmer.
- **Share Farming:** Provides an avenue of entry to farming for young trained people. Option to continue in farming for farmers with no family or no successor.

In the context of succession, collaborative farming arrangements provide options to farmers of all enterprises, in two ways. Firstly as the interim step before full transfer of the farm to a son or daughter and secondly it gives the option of collaboration with another farmer through partnership, share farming, contract rearing or cow leasing. In simple terms, farmer collaboration is where two or more farmers come together in an arrangement that is of benefit to all those involved. Details of information on collaborative farming arrangements can be found on www.teagasc.ie. This chapter will outline the main characteristics of each of the collaborative arrangements.

Registered Farm Partnerships

Transferring the family farm to the next generation can be a difficult process with many questions and concerns that need to be addressed. It is often complex and therefore needs early and careful planning. A registered family partnership is the first step to consider as part of this planning process. In many cases, parents are not in a position to transfer the farm to a son or daughter that has returned home after completing their agricultural education. There are genuine reasons for this and they are often based around concerns

such as: family farm income, security for the parents and other family members who still have to be provided for. These concerns can be alleviated by forming a registered partnership between the parents and the son or daughter as an interim step before considering full succession. There are very strong advantages to forming a partnership for both the parents and the young son or daughter.

Benefits to Parents

In a registered partnership, the parents are not giving up control of the farm; they are sharing it with their son or daughter. They retain ownership of assets such as land, buildings, quotas and entitlements. These assets are licensed to the partnership for use. Assets such as stock and machinery are transferred to the partnership and as a result, they become partnership assets. This structure gives security and reassurance to parents that they are not handing over the farm through a partnership. A partnership gives the parents the opportunity to see how their son or daughter will get on, while working on the farm with a level of control and input into management decisions. It also allows the parents to have a “guiding hand” and share their experience and knowledge with their future successor. A profit sharing ratio is agreed between the parents and the son or daughter. It is entirely up to the family to decide what is equitable and fair in their own situation. At the beginning of the partnership arrangement, the parents generally receive the larger share of the profits to meet with family and financial commitments. As the years go on, this changes by agreement in favour of the son or daughter as they assume more control and take on more responsibility for the farming business.

Benefits to the Young Farmer

Being a partner in an arrangement where daily duties and management is shared between the parents and a son or daughter is of great benefit to the next generation in the development of their farming career. The key benefit of partnership to the son or daughter is that they have an input into decision making and the management of the farm. This allows them to put the knowledge and experience that they have gained from their agricultural

education into practice on the home farm. It allows them to express themselves and show their ability to their parents. It also increases their confidence and farming ability and gives them experience of running the farm as a business. It helps to make the connection between the work that goes on outside with the strategic and financial management of the farm.

Responsibilities are shared on an agreed basis through the on-farm agreement and a profit share for both the parents and the son or daughter is also agreed as above. This ensures that both parties have a vested interest in the farm business.

Benefits to the Partnership Business

When two or more people come together in a partnership, they each bring a set of skills and knowledge base with them. This means that there is often a better and broader range of knowledge and skills available to the partnership business. These can include husbandry skills, financial management skills, computer skills, machinery expertise, farm buildings expertise amongst others. It generates an ability to make better and more informed decisions on a wider range of subject areas. Discussion among partners often generates better decision making as ideas are teased out and explored between the parties. In a family situation the partnership can provide the platform to blend the experience of the parents with the youthful enthusiasm and modern thinking of the future successor. This will be of great benefit to the younger farmer when they takeover full responsibility for the farm on their own as there will not be a sudden change in management with the consequent pressure that responsibility can bring.

Incentives for the Formation of Registered Farm Partnerships

There are a number of incentives in place to encourage families to consider partnerships as an interim step to full transfer. These are related to grant schemes, the basic payment scheme and taxation benefits.

On-Farm Investment Schemes

Under the present on-farm investment schemes, registered partnerships may

receive a number of benefits. They may qualify for a doubling of the grant investment ceiling in a partnership where there are two or more partners. A young trained farmer who is less than five years farming and under forty years of age with the required level 6 in agricultural education may qualify for a 60% grant in the current on-farm investment scheme.

Basic Payment Scheme

Under the new basic payment scheme, there is a 25% top-up for young qualified farmers under 40 years of age and who have set-up farming in their own right in the previous 5 years. The payment is made for a maximum of 5 years. Young trained farmers in partnership with their parents qualify for this top-up on the number of eligible hectares declared each year subject to a maximum of 50 hectares. This 25 % top-up is based on the national average payments and equates to approximately €60 per hectare. This gives a potential of €3,000 per year for 5 years where the maximum of 50 hectares applies.

Taxation Benefits

Stock relief is a pre-tax adjustment to farm profits and can be of great value where stock numbers are increasing on the farm. It is a relief on the uplift in stock values between the opening and closing inventories and is subject to an overall limit of €70,000. The current normal rate for farmers is 25%. Young trained farmers are eligible for 100% stock relief in the first four years after initial set up. A registered partnership allows a young trained farmer to avail of 100 % stock relief for the first four years after the partnership is set up. In addition to this, and enhanced stock relief may be claimed by the other partners in a registered partnership at the rate of 50%. If a son or daughter comes home and works on the home farm as an employee, they cannot avail of stock relief unless they set up on their own.

Where a family goes into a registered partnership, the profit is split between the parents and the son or daughter. This can result in a net tax gain for the family as it maximises the income declared at the lower rate of tax. Both the parents and the son or daughter make separate tax returns and therefore the tax limits

apply separately. Due to the profit share with the son or daughter, the parents are not declaring as much profit in the high tax bracket.

Partnerships between Families

Two or more farmers can combine their respective farming operations into one through a registered farm partnership. There are many benefits to doing this. Farming in partnership with another farmer can greatly improve lifestyle by freeing up time for family. It may also help to generate the ability to achieve greater scale. The improvement in lifestyle and the ability to achieve scale comes about through the combining of management, land, labour, facilities, stock, machinery and capital.

With two full-time farmers working together, there is a saving on labour as there are two people to share the workload and when one partner needs to take time off the other partner is there to keep the farming operation running. The sharing of the workload is done by agreement between the partners in the partnership. There is also a saving in labour through the amalgamation of farming operations. This cuts out the duplication of work on two similar farms. Combining the land areas of the two farming operations through the partnership may increase the grazing platform for stock and thereby facilitate expansion. Existing facilities can be utilised by the new farming venture. Where facilities are adequate, there may be no need for additional facilities. Where additional facilities are required, they may be either solely or jointly funded depending on the preference of the partners involved.

Requirements for Successful Partnerships

In order for partnership to work effectively, both parties must clearly understand and be committed to the concept of partnership. The arrangement must be to the benefit of all the parties involved. There cannot be one dominant partner who makes all the decisions. Both parties must have an input into the management of the farm on a daily basis. That is the essence of a good partnership. To achieve this, a lot of preparation work is required by the potential partners and it is during this period that they get to know one

another and trust begins to build as they decide that a partnership is what they want. Trust builds continually even after the partnership begins in the way that each partner conducts themselves. Both parties must be willing to work side by side on a daily and weekly basis.

In preparing to form a partnership or any other collaborative arrangement, the bulk of the discussion will be between the parties involved. However, the process will also require the input of outside help in the form of professionals. The first person to engage with may be your Teagasc advisor or consultant to discuss the issues in relation to your current business, the potential for the partnership and areas such as the impact on scheme payments. Following on from that, each party involved will need to talk with their respective accountants and solicitors. All of these professional people will play a vital role in the bringing together and the formation of the partnership. But, this process must be driven by the farmers themselves and at a pace that they are happy to progress it at.

Forming a Farm Partnership

Here are five steps to help you form and maintain a sound legal agreement.

1. Your accountant will need to register the partnership with Revenue using the TR1 form and make an annual report to Revenue using the FIRMS 1 form. This is an important but relatively straightforward process. It is generally advised that partnership should begin in-line with the end of the previous tax year. That means if the previous tax year ended on the 31st of December, the partnership should begin on the following 1st of January.
2. The accountant must create a capital account for each partner in the partnership where the initial capital contribution (value of livestock, machinery and cash) of each partner is recorded and updated on a yearly basis. This is the mechanism that can be used to dissolve the partnership, if needs be. Without it, there may be no record of the capital invested first day or over time and this is when the problems start with poorly constructed partnerships.

3. While template agreements are available from Teagasc they are only templates. Legal advice must be sought from a solicitor to tailor the template agreement to suit the particular circumstances in any situation. This may include the addition of clauses in some situations and the removal of clauses in others.
4. Once the written agreement is completed and signed, it needs to be kept up to date. Any change to the original circumstances on which the agreement was signed requires an amendment in the written agreement. For example, in a partnership where the profit-share has been changed over the time. The written agreement must be amended each year to reflect this.
5. Ask yourself, what difference will the partnership make to the day to day work on the farm? To answer this, you should complete the template “On-farm Agreement” to cover the day to day practicalities.

There are three key areas to this document.

- a. Roles/Responsibilities/Record Keeping/Decision making
- b. Structure the labour input/weekends off/holidays
- c. Profit Share/Salaries/monthly drawings

Succession Farm Partnerships

Succession farm partnerships are a new income tax incentive under Section 667D of the Taxes Consolidation Act 1997 to encourage Farmers to transfer the farm business to their identified farming Successor (s) in a planned way. This incentive has received EU state aid approval and can be availed of for the 2017 and subsequent income tax years. It applies only to partnerships that are registered on the register of succession farm partnerships maintained by the Department of Agriculture, Food and the Marine (DAFM).

The incentive at the time of compilation of this booklet is in the form of an annual income tax credit of €5,000 for up to five years. The credit is split annually based on the profit sharing ratio of the partnership between the Farmer and the Successor. The credit cannot be offset against off-farm income and to be

of benefit, the farm must make a taxable profit. The key criteria to be met to qualify for the income tax credit are as follows:

1. Make a valid application to be placed on the register of succession farm partnerships maintained by the Department of Agriculture, Food and the Marine.
2. At least one partner in the Succession Farm Partnership must be a natural person who has farmed at least 3 hectares in his/her own right for the two previous years. This person is defined as the “Farmer”.
3. Aside from the Farmer at 2 above, the other partner(s) must be a young trained Farmer who is in receipt of 20% of the partnership profits. This Partner is defined as the “Successor”. The income tax credit cannot be claimed in any year where the Successor reaches 40 years of age at the beginning of the tax assessment year.
4. The Teagasc My Farm My Plan Booklet must be completed for the partnership. Teagasc is the certification body for this farm plan. This is freely available to download from the Teagasc website www.teagasc.ie.
5. A legally binding agreement (such as the one within, adapted to the needs of the parties), separate to the farm partnership agreement must be signed by the “Farmer” and “Successor” who are partners in the same registered farm partnership.
6. The succession agreement must specify the year of transfer and outline the assets to be transferred. The agreement must clearly identify the lands which will be transferred on the transfer date. The year of transfer must be within 3 to 10 years of registering with the DAFM to claim the tax credit and a minimum of 80% of the farm assets outlined in the agreement must be transferred. This booklet is an

example of a specimen template legal agreement for a Succession Farm Partnership. It also includes a practical example of a typical farm transfer situation such as may meet the needs of the income tax incentive.

Moving from an Existing Registered Farm Partnership

Partnerships that are already in existence and registered with the DAFM Partnership Registration Office may also opt to register as a Succession Farm Partnership. The partners must submit to the Departments' Farm Partnership Registration Office the following: A completed Teagasc My Farm My Plan business planning booklet; a legally binding Succession Agreement; A completed Succession Farm Partnership Application Form; the Successor's Birth Certificate and evidence of satisfactory agricultural educational qualification of the Successor.

The main partnership agreement may need to be amended to reflect changes made by the Farmer and the Successor when signing up to the Succession Agreement. In any case the main partnership agreement must be updated to ensure it is kept up-to-date and current at all times during the lifetime of the Succession Farm Partnership. The Partnership Registration Office must be informed within 21 days of any changes and amended and updated documents furnished to them.

Limited Companies

Farmers who are farming through a limited company are not eligible to form a Succession Farm Partnership. Both the Farmer and Successor must be natural persons.

Registration Procedure:

The succession farm partnership must apply for entry on to the Succession Farm Partnership Register by completing the appropriate application form. The application form must be accompanied by the following documents:

- A Farm Partnership Agreement & On-Farm Agreement
- Evidence of land ownership (Folios) or possession (Lease)
- Evidence of appropriate Agricultural Education level completed.
- Teagasc certificate for the My Farm My Plan Booklet.

- Legally binding Succession Agreement
- Birth Certificates as evidence that “Successor” is under 40 year of age at time of application

Clawback

A clawback of the amount of tax credits claimed will apply where the farm assets do not transfer as specified in the Succession Agreement (A clawback of €25,000 will apply where the full tax credit has been previously claimed). The Succession Agreement must also be legally binding to afford a level

Contract Dairy Heifer Rearing

If a dairy farmer wishes to retire from dairy farming, contract rearing of dairy heifers can provide an ideal opportunity to use the skills of rearing replacement dairy heifers in collaboration with another dairy farmer. It may also provide an opportunity for drystock farmers to get involved in a complimentary or an alternative enterprise with the potential for increased profit.

For contract rearing to be successful, it is critical that the rearer gets paid adequately to cover direct costs and make a margin on the enterprise to cover their labour input. The advantages to the rearer are that cash flow is more favourable as payment is generally paid by direct debit on a monthly basis. Another advantage to the rearer is that there is no money tied up in stock, as ownership does not transfer to the rearer. Essentially the rearing period can be broken down into five stages:

- Calf Rearing
- First Grazing Season
- First Winter
- Second Grazing Season
- Second Winter

The various rearing periods need to be borne in mind when calculating and agreeing a rate of payment between the parties. Rearing the calves to twelve weeks of age and keeping the animals over the winter periods are the most expensive rearing stages in terms of cost and they also require a high labour

input. The grazing seasons are by far the least expensive and require less labour. In setting up these arrangements the parties need to agree the start date and finish of the term of rearing. If this is to be extended, then the payment rate needs to be increased, especially where this leads further into the second winter when the heifers are approaching eighty per cent of maturity. Each party should draw up a budget to plan their own finances. A recording system should be used to monitor costs as the year goes on. This can be done very simply by using a written system or through computers using programmes such as the Teagasc Cost Control Planner. Agreement must be reached at the start on which costs are to be incurred by each party. This will determine the rate of payment per head per day.

The priority for the rearer is to cover costs and get adequately paid for his or her labour, but this comes with responsibilities. The heifers must reach their targets weights (see Table 1) at housing after the first grazing season, at mating and approaching calving after the second grazing season.

Table 5.1 Target weights for pure bred and crossbred Replacement Heifers at different stages during the 24 month rearing period

	Month	% Mature liveweight	Holstein Friesian	New Zealand/Br. Friesian	Jersey X Holstein Fr.
Birth	February		41	38	34
6 Weeks	March		63	56	56
3 Months	April		90	80	80
6 Months	July	30%	155	148	138
8 Months	September		175	170	160
9 Months	October	40%	220	210	196
12 Months	February		280	267	250
15 Months	March	60%	330	315	295
19 Months	September		450	425	390
21 Months	November		490	470	437
24 Months (pre-calving)	February	90%	550	525	490

Achieving these weight targets along with getting the heifers in calf are the dairy farmers' priority. The rearer also needs to be aware of the age spread and the average starting weight for the group of heifers and have realistic expectations for weight gain during the rearing period. Regular weighing of heifers is a recommended practice to monitor the progress of the group during the agreed rearing period.

Good communication and trust are essential to the success of contract rearing or any other collaborative arrangement. The parties involved should be in regular contact to discuss the progress of the heifers and make key decisions on issues such as breeding and health.

Share Farming

The key distinguishing feature of share farming from a partnership is that two completely separate farming businesses operate on one area of land. The concept remains the same across all enterprises. In a share farming agreement, the farm produce (grain, beef or milk) is sold and each person gets an agreed proportion of the sale proceeds. In addition to this, each person in the agreement pays a proportion of the variable costs such as feed, fertiliser, veterinary. Some of the fixed costs may also be divided such as machinery running. For all the people involved, the starting point for this venture is a financial budget to cover potential income and expenditure from the enterprise. The share farmer generally provides the labour and in many cases the machinery. The land owner provides the land and the facilities required by the enterprise to be carried out.

The current Irish share farming model was developed to accommodate share farming in tillage and beef enterprises. It is growing in popularity in the tillage sector where it gives security to both the landowner and the share farmer. Since the abolition of milk quotas, a share farming model has been developed for dairy farming.

Benefits to Landowners

Share farming provides an opportunity for older farmers who want to continue farming and do not want to retire. They may or may not have family or a successor to the farm. Through share farming, they can enter into an arrangement with a younger person to share the workload, income and costs of production. It is an opportunity for the landowner to get involved in a business arrangement with a young motivated person who will bring attributes that can include new skills, a strong work ethic, modern technology and a desire to develop a profitable enterprise. This comes about as share farming by its nature, means that both parties have a vested interest. Therefore, in this type of arrangement the physical and financial performance of the farm increases rather than winding down.

Benefits to Share Farmers

Share farming opens up the agricultural industry to new talented people who choose to have a career in farming. For the share farmer, this type of arrangement provides a career opportunity or a ladder of entry into farming. It allows a young person to build their own independent business and with the potential to grow their own income from farming. It provides an opportunity to reward ability and efficiency. This provides motivation to the share farmer and will benefit both parties in a successful agreement. When compared to being an employee on a farm, share farming is more tax efficient as the share farmer can benefit from the various income tax measures, for example stock relief, that apply to sole traders.

For further information on collaborative farming arrangement, go to www.teagasc.ie

Chapter 6: Availing of a Pension on Retirement



Chapter 6: Availing of a Pension on Retirement

Summary

- Securing an income from a pension after retirement from farming can ease money worries and also ease the cash flow burden on the successor
- Both the State pensions and private pensions have a role to play in supplying disposable income to the retired person
- There are many rules, deadlines and conditions around the setting up and draw down of pensions so you should get professional advice in this area

Most farm families look on the idea of involving the younger generation in the running of the farm business as a positive one– it brings in a fresh pair of hands to take on some of the work and responsibility and it helps ensure that the farm business has a greater chance of continuing as a going concern in the hands of a family member.

One area of concern that often exists is that the older generation need some assurances that they will continue to have access to sufficient income to look after their needs during their retired years.

In order to step back from the farm and forgo whatever farming income this generated they must have access to an alternative income from elsewhere. This may be of particular concern if there are minor dependent children, at school or third level, who still have to be provided for. It can be a case that although the parents want to involve their son or daughter in a meaningful way in the business, the scale of the farm is such that it could not supply enough income to support two families.

It is also a well known fact that people are living longer as a result of changes in lifestyle and advances in medicine. The older generation will therefore have a requirement for income and support for a much longer period than they would

have had in the past. To ease some of the concerns in this area it is important for the retiring generation to consider the possibility of ensuring that they have access to an alternative income source for their retirement years. A pension is one such source of income and so it is recommended that pension planning is part of the long term succession plan for the farm business.

Pension Planning in Action

When looking at planning for the future receipt of income on retirement you are essentially looking at two main sources – the state pension scheme and private pensions. It is important to note that you can be in receipt of both types of pensions at the same time, subject to certain conditions. A key factor in availing of pension income is to plan for the pension start early, that is, find out what the qualifying conditions are for the relevant pension, make an early decision what you want to do and start the process of planning for your pension in time. There are rules and conditions involved and in some cases if you have not paid an appropriate amount into a pension fund over a period of years you may find that your pension entitlements are less than you would have hoped for.

The State Pension Schemes

The state pension schemes are administered by the Department of Social Protection (detailed information can be obtained from their website www.welfare.ie).

If you qualify as eligible for one of the State pensions then the pension payments can be paid from the age of 66. An important issue for those people not reaching retirement age for a number of years is that this qualifying age limit is being eventually increased to 68 by the year 2028 for those born after 1st January 1961.

There are two main categories of state pension

- The Contributory State Pension
- The Non Contributory State Pension

The Contributory State Pension

This pension is paid to people who have made Pay Related Social Insurance or PRSI contribution payments as part of their annual tax payments during their pre-retirement working life. You must have started making these PRSI payments before the age of 56. The final pension payment entitlement is affected by the total number of paid contributions (the normal requirement is 10 years' worth of contributions) as well as the average number of contributions paid during your working life. PRSI is currently paid at the annual rate of 4% on all farming income. You can be earning other income and still qualify for the contributory pension since it is not means tested and so does not change regardless of what other income you earn or assets you own.

The current (September 2017) maximum personal rate for the contributory pension is €238.30 per week with a potential increase for a qualified adult dependant aged under 66 of €158.80 or if over 66 years - €213.50 per week. The qualified adult dependant payments are means tested (any income earned by your dependent will affect their payment). The pension is taxable but you are unlikely to be liable for tax if it is your only source of income.

Until this year spouses of self-employed farmers who assisted in the farm work, but who were not operating a partnership structure, did not qualify to make PRSI contributions. This prevented spouses from building up an entitlement to a contributory pension in their own right. At the moment, pension payment for a qualified adult is means tested and potentially a lot less than getting your own contributors pension as ownership of land or other assets might reduce or remove eligibility altogether.

Under the recent change spouses of self-employed farmers will be entitled to make PRSI contributions, provided their income from all sources exceeds the minimum insurability threshold of €5,000. Payment is at the PRSI class S rate of 4%, subject to a minimum of €500. This will be of benefit for individuals who between now and their turning 66 years can make sufficient contributions to bring them up to a minimum of 10 years of contributions (520 full PRSI contributions), thereby qualifying for a contributory pension.

The Non-Contributory State Pension

This pension is also paid from the age of 66 years but unlike the previously outlined contributory pension there is no requirement to have made PRSI contributions. It is however means tested so any cash income or assets such as savings & property will reduce the chances of you being able to avail of this pension. The total income of a married couple is divided in half to calculate the means of each individual so your spouse's income is also taken into account.

The current (September 2017) maximum personal rate for the non-contributory pension is €222 per week with a potential increase for a qualified adult dependant up to the age of 66 of €146.70. To enquire about your state pension entitlements you should contact:

Department of Social Protection,
Social Welfare Services,
College Road,
Sligo, Ireland.

Tel: (071) 915 7100 | Locall: 1890 500 000 | Web: www.welfare.ie

Private Pensions

Farmers like other self-employed people also have the option to pay into a private pension. Many people take the option to pay into a private pension to avail of the tax relief on the pension payments while they are earning income while also expecting to bolster their post-retirement income when they eventually start to draw down their pension. Most pension schemes involve making regular payments which are paid to a pension provider who invests the money in an investment fund. On reaching the relevant retirement age the fund is then used to pay out a pension to the retiree.

The tax relief available on the payment contributions made to a personal pension scheme vary with age as shown in the table overleaf:

Age	Amount which qualifies for tax relief
Under 30 years	15% of net relevant earnings
30 - 39 years	20%
40 - 49 years	25%
50 - 54 years	30%
55 - 59 years	35%
60 and over	40%

The tax relief referred to here is relief from income tax only since you will still be liable for PRSI and the Universal Social Charge on the regular payments into a pension.

By making the regular contributions the aim is to build up a potential fund which will later be available to draw down against when you “retire” according to the rules of the fund which is normally between the ages of 60 & 75.

Depending on the particular scheme and if you have the income to do so, you can continue to make contributions to a personal pension or Personal Retirement Savings Account (PRSA) and avail of the tax relief on the contributions until you reach the later retirement age of 75 and then begin to draw it down. There are complex rules governing how you may draw down your pension fund on retirement but generally you can withdraw a certain percentage of the total fund tax-free on retirement with the remainder of the fund being used to fund a regular pension payment.

The issue of what happens your pension fund when you die is also something you should clarify but the recent pension plans called Approved Retirement Funds usually pass into your estate for distribution and will be subject to the normal taxes on distribution.

To set up a private pension you should talk to your financial adviser (usually your accountant) who will advise how to start the application process. He/she

may direct you to a pension provider who will assist in picking the correct pension fund based on your requirements and profile.

General Information on Pensions

General information on pensions is also available from The Pensions Authority (www.pensionsauthority.ie or 1890 656565).

The Citizens Information Board also provide useful summaries on pensions. They have offices in most major towns in the country and can also be contacted on (0761) 074000 or via their website www.citizensinformation.ie



Chapter 7: Education



Chapter 7: Education

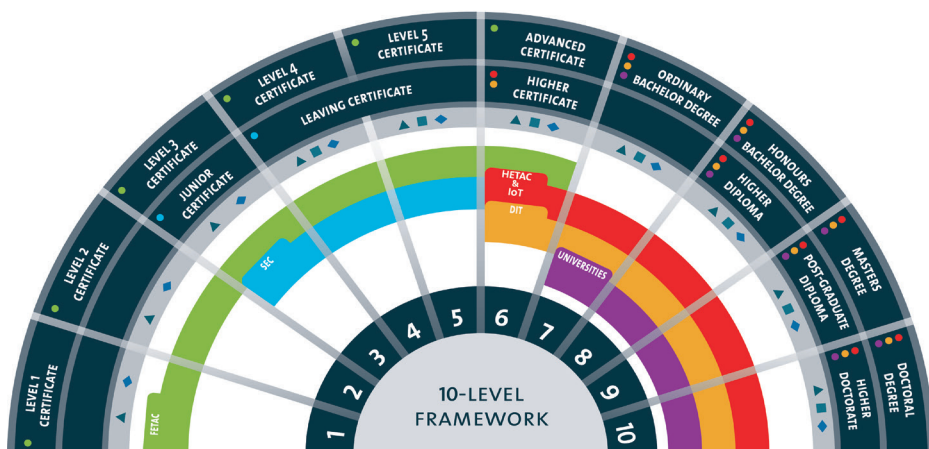
Summary

Education is a key consideration when planning the transfer of the family farm. The choice of educational programme is a very important decision. Succession planning should include adequate time to investigate the range of agricultural training programmes. Currently, there are a number of different types of courses covering a range of subjects in the land based sector and the duration of courses vary from 1 to 4 years. However, it is important to note that a person intending to avail of tax exemption from Revenue or additional payments from Department of Agriculture and the Marine (DAFM) must ensure that they select a course which is deemed eligible and approved for “Young Trained Farmer” status. In addition, it is preferable for the training to be completed in advance of land transfers and changeover of ownership/management.

Types of Courses

There are a number of different types of courses covering a range of subjects in the land based sector. Quality and Qualifications Ireland (QQI) has responsibility for the quality assurance of further and higher education and training, validating programmes and making awards. QQI is also responsible for the maintenance, development and review of the National Framework of Qualifications (NFQ). The NFQ was established in 2003 and provides a structure (a framework), for the Irish qualifications system. The NFQ is a system of ten levels, based on standards of knowledge, skill and competence. Qualifications achieved in school (SEC), further education and training (FETAC) and higher education and training (HETAC, the DIT, and the Universities) are all included.

The Irish National Framework of Qualifications



AWARDING BODIES

- FETAC - Further Education and Training Awards Council
- SEC - State Examinations Commission (Department of Education & Science)
- HETAC - Higher Education and Training Awards Council
- IoT - Institutes of Technology (make their own awards at specified levels under Delegated Authority from HETAC)
- DIT - Dublin Institute of Technology
- Universities

AWARDS IN THE FRAMEWORK

There are four types of award in the National Framework of Qualifications:

- Major Awards: are the principal class of awards made at a level
- ▲ Minor Awards: are for partial completion of the outcomes for a Major Award
- Supplemental Awards: are for learning that is additional to a Major Award
- ◆ Special Purpose Awards: are for relatively narrow or purpose-specific achievement

Awarding Bodies on the NFQ:

- School Qualifications are awarded by the State Examinations Commission (SEC)
- QQI awards qualifications listed as FETAC (Further Education and Training Awards Council), HETAC (Higher Education and Training Awards Council) and IoT (Institute of Technology)
- DIT (Dublin Institute of Technology) and the 7 Universities

Training programmes are available in the land based sector from Level 4 Certificates (e.g. Certificate in Horticulture) through to Level 10 Doctoral degrees (PhD).

There are a number of courses available across a broad area of specialisms such as:

- Agriculture
- Horticulture
- Equine
- Forestry
- Agri- Business

Further Education Courses

These courses are suitable for people who wish to develop a career in agriculture, horticulture, equine or forestry but who do not wish to complete a higher level course. Further Education training programmes are often focused on practical skills training and assessments in addition to theory based learning. There are no minimum educational entry requirements however those who have completed the Leaving Certificate are likely to benefit most. Many graduates of further education courses in agriculture will return to farming either in a full-time or part-time capacity. The Teagasc further education courses are nationally accredited by QQI and successful further education students are awarded FETAC Certificates.

The FETAC Level 6 Specific Purpose Certificate in Farm Administration is the minimum agricultural training requirement. This course is commonly known as the Teagasc Green Cert. Students must complete the FETAC Level 5 Certificate in Agriculture in order to gain entry to the FETAC Level 6 Specific Purpose Certificate in Farm Administration. There are three routes available for completion of this programme:

1. Full time (duration 2 academic years)
2. Part time (duration 2.5 to 3 years approx)
3. Distance Education (duration 18 months approx)*

See www.teagasc.ie/training for further details

*Note: Holders of major awards at Level 6 or higher on the NFQ in a non-agricultural discipline only are eligible to apply for the Distance Education option.

Higher Education Courses

These courses are suitable for people who wish to gain a qualification at higher level in the land based sector. Courses are available in universities and some courses are conducted jointly with higher level institutions and agricultural/horticultural colleges. Graduates of the higher level programmes may return to farming while many will develop careers supporting the agri-food sector. Recruitment to these courses is through the CAO system.

HETAC and the universities are the awarding body at higher level. There are progression routes from Level 6 higher certificates and Level 7 Degree (Pass) awards to Level 8 (Honours) awards.

Stamp Duty Exemption

Stamp Duty Exemption is available on transfers of land to Young Trained Farmers. For the purposes of Revenue, a Young Trained Farmer must:

- Be under 35 years of age on the date of execution (signing) of the deed of transfer
- Be the holder of a recognised award/qualification

There are also additional conditions which Young Trained Farmers must comply with in regard to working time farming the land and retention of ownership. The terms and conditions for Stamp Duty Exemption on transfers of land to Young Trained Farmers are set out in the Revenue SD2B Leaflet (updated February 2014) which is available at www.revenue.ie

SD2B Qualifications are the listed/approved qualifications as recognised by Revenue for “Trained” status (See SD2B Leaflet- Pages 4 and 5).

Department of Agriculture, Food and the Marine Schemes

For the purposes of DAFM Schemes, the age limit for Young Trained Farmer status is under 40 years at time of submitting the application or year in which the application is submitted. The conditions in regard to age vary depending on the terms and conditions of each scheme.

DAFM Schemes which have educational requirements and benefits for Young Trained Farmers include:

- New Entrant in a Milk Production Partnerships and Registered Farm Partnerships
- Allocation of Milk Quota to New Entrants (in the past)
- Targeted Agricultural Modernisation Schemes
- Basic Payment Scheme (National Reserve)
- Young Farmers Scheme

The minimum educational requirement is the FETAC Level 6 Specific Purpose Certificate in Farm Administration (Teagasc Green Cert) or Equivalent Qualification.

The Teagasc Knowledge Transfer Directorate will decide on qualifications equivalence. Where relevant or appropriate Teagasc will consult with Quality and Qualifications Ireland (QQI) and/or the Department of Agriculture, Food & the Marine (DAFM) before making a decision.

Life Long Learning and Continuing Education

Initial training courses are a foundation on which a person can build on as their career progresses. As with any career, learning new knowledge, skills and competence is crucial and keeping up to date with new advancements and technology is very important.

In the agri-food sector, people can improve their skills and build on their existing knowledge on a continuous basis by continuing their learning. There are a number of ways to continue learning:

- Formally-
by taking on an accredited course e.g. Dairy Hygiene, Hoof Care, Animal Nutrition or Health and Safety
- Informally-
by attending discussion group meetings, open days, conferences and meetings

See www.teagasc.ie/events for upcoming events

Education will broaden a person's knowledge and opinions and will expand horizons for new opportunities. Teagasc training courses are provided across a very wide range of subject matter areas from leading edge technology and business courses to issues concerning the public good such as environment, food safety and occupational safety.

Teagasc offer a number of accredited courses and participants have the option of accumulating modules or progression to FETAC major awards. Further details regarding courses are available at www.teagasc.ie/training

Summary of Schemes and Minimum Educational Requirements

Scheme	Scheme Education Requirements (Minimum)
1. Stamp Duty Exemption (See attached list of qualifications from Revenue SD2B Leaflet)	FETAC Level 6 Specific Purpose Certificate in Farm Administration or *Equivalent Qualification
2. Stock Relief	FETAC Level 6 Specific Purpose Certificate in Farm Administration or *Equivalent Qualification
3. New Entrant in a Milk Production Partnerships and Registered Farm Partnerships (New DAFM Register from March 2015 onwards)	FETAC Level 6 Specific Purpose Certificate in Farm Administration or *Equivalent Qualification
4. DAFM - Allocation of Milk Quota to New Entrants	FETAC Level 6 Specific Purpose Certificate in Farm Administration or *Equivalent Qualification
5. DAFM - Targeted Agricultural Modernisation Schemes	FETAC Level 6 Specific Purpose Certificate in Farm Administration or *Equivalent Qualification
6. DAFM - Single Payment Scheme (National Reserve)	FETAC Level 6 Specific Purpose Certificate in Farm Administration or *Equivalent Qualification
7. DAFM - Young Farmers Scheme (commencing in 2015)	FETAC Level 6 Specific Purpose Certificate in Farm Administration or *Equivalent Qualification

* The Teagasc Knowledge Transfer Directorate will decide on qualifications equivalence (where relevant/appropriate Teagasc will require the evidence of the Quality and Qualifications Ireland (QQI) and/or the Department of Agriculture, Food and the Marine (DAFM) before making a decision).

Note: The FETAC Level 6 Specific Purpose Certificate in Farm Administration is commonly known as the Teagasc Green Cert.

Appendix I:

Succession and Inheritance Checklist

Wills

Have you an up to date will made?

Are all of your assets mentioned (including CAP payment entitlements)?

Taxes

Do you know the taxation implications for -

- A) The Transferee
 - i. Stamp Duty
 - ii. Capital Acquisitions Tax (CAT)
- B) The transferor
 - i. Capital Gains Tax (CGT)

Legal Documentation

Have you discussed with your solicitor what legal documentation needs to be completed and how long the process will take?

Pension

Do you know if you will qualify for a pension and how much is will be worth?

Fair Deal Scheme

Have you considered the “Fair Deal Scheme” and its implications if you participate in it?

Fees

Do you know what it will cost (fees to professionals & tax) to compete “your succession plan”?

Collaborative Farming

Have you considered collaborative farming? (Partnership, contract rearing, share farming, etc.)

Department of Agriculture, Food and the Marine (DAFM)

If the farm is involved in any DAFM schemes and the herd owner/keeper is changing, all relevant sections of the DAFM should be notified and transfer forms completed so that any payments due are not lost. Is this completed?

Appendix II:

Useful Contacts

TO REQUEST YOUR SOCIAL INSURANCE RECORD

PRSI Records, Department of Social Protection, McCarter's Road,
Ardarvan, Buncrana, Co. Donegal
Tel: 1890 690 690 | Web: www.welfare.ie

You should contact the Scope Section if you believe that you were in a partnership in previous years.

Scope Section, Department of Social Protection, Oisín House,
Pearse Street, Dublin 2
Tel: 01 6732585 | Email: scope@welfare.ie

Department of Social Protection
Tel: 1890 66 22 44 | 071 919 3313 | Web: www.welfare.ie
Email: info@welfare.ie

Mediation Service, The Mediators Institute of Ireland, Pavillion house,
31/32 Fitzwilliam square south, Dublin 2
Tel: 01 6099190 | Email: info@themii.ie

The Law Society of Ireland, Blackhall Place, Dublin 7, Ireland
Tel: 01 6724800 | Fax 01 6724801 | Email: general@lawsociety.ie

Free Legal Advice Centre, 13 Lower Dorset Street, Dublin 1
Information & Referral Line: 1890 350 250
Tel: 01 8745690 | Fax: 01 8745320

Citizens Information Board, Ground Floor, George's Quay House,
43 Townsend St, Dublin 2
Tel: 076 1079000 | Fax: 01 6059099

Inheritance Enquiry Unit, Department of Agriculture, Food and the
Marine, Eircom Building, Knockmay Road, Portlaoise, Co Laois
Tel: 1890 252 238 | Fax: 05786 80457 | Email: inheritance@agriculture.gov.ie

Appendix III:

Active Farmer Conditions

The term “active farmer” has become a condition in relation to two of the taxes in a farm transfer situation:

1. Capital Acquisitions Tax
2. Stamp duty

1. Capital Acquisitions Tax

From 1st January 2015 the conditions for a donee (receiving a gift) or successor (receiving an inheritance) to avail of CAT agricultural relief are as follows:

They must continue to meet the Farmer Test (the 80% agricultural property test) that has applied up to now and in addition an individual must either:

- Hold (or obtain within 4 years of receiving the property) a recognised agricultural qualification (as listed for the young farmer stamp duty exemption qualifications listed in schedule 2, 2A or 2B to the Stamp Duties Consolidation Act 1999) AND who farms the property on a commercial basis with a view to the realisation of profits for a period of 6 years from the valuation date for the property

OR

- Spend 50% of that individual's normal working time* farming agricultural property (including the property received) on a commercial basis with a view to the realisation of profits for a period of 6 years from the valuation date for the property

OR

- Lease the whole or substantially the whole of the agricultural property, comprised in the gift or inheritance for a period of not less than 6 years commencing on the valuation date of the gift or inheritance, to an individual who satisfies either of the previous two criteria.

2. Stamp Duty

When claiming Consanguinity relief (this gives a 50% reduction on the rate payable between related parties)

- For transfers that are executed from 1st January 2015 and before 1st January 2016 then consanguinity relief will operate with no

restrictions on the age of the transferor. The transferee conditions still apply as detailed below.

- For transfers executed from 1st January 2016 and before 1st January 2018 then for the relief to apply:
- The transferor must be under the age of 67 at the date of the transfer
- The transferee must, for a period of 6 years from the date of transfer either:
 - Farm the land on a commercial basis AND either hold (or within a period of 4 years obtain) a recognised agricultural qualification OR spend 50% of their normal working time farming on a commercial basis (including the transferred land)
 - Lease the land to a farmer who has a recognised agricultural qualification OR spends 50% of their normal working time farming on a commercial basis (including the transferred land)

Notes

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Notes

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