

Long-term land leasing makes lots of sense

Landowners are moving away from conacre and entering more permanent arrangements like long-term land leasing

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Why are landowners favouring long-term land leasing?

• **Profitability of existing enterprise**

Depending on their farming system and scale, some traditional farming enterprises are struggling to deliver an adequate family farm income. Many beef, sheep and tillage farmers work part-time away from the farm to provide an adequate income to support their families. Many of these farmers are seeking new ways to optimise income from their assets.

• **Successor's situation**

On some farms, there is no identified successor, or possibly the successor is not yet ready to take over the running of the farm. The person currently farming may want to cut back on their workload to enjoy a better work life balance or retire altogether.

• **Enhanced tax relief**

Income tax incentives introduced by Revenue and the Department of Agriculture in 2014 made leasing more attractive to landowners who did not

Table 1: Income Tax Incentives for Long-term Land Leasing

| Term of Lease (yrs) | Max tax-free income/year |
|---------------------|--------------------------|
| 5 - 7 | €18,000 |
| 7 - 10 | €22,500 |
| 10 - 15 | €30,000 |
| >15 | €40,000 |

wish to farm the land themselves.

These tax incentives are still in place, as per Table 1.

Land can now be leased for up to 25 years without impacting on the landowner's ability to qualify for Retirement Relief from Capital Gains Tax provided all other requirements are met.

Payments received under the Basic Payment Scheme can be leased with the land to the lessee, (ensure to seek advice from your agricultural advisor in relation to the correct transferring of these entitlements for draw down). These entitlements should be detailed in the lease agreement.

The value of the Basic Payment Scheme Entitlements leased with the land can be added together with the agreed fee per acre/hectare and qualify as a tax-free income under the relevant threshold.

If the income from long-term leasing of lands that is qualifying for income tax relief is the only income on the farm, then this is regarded as non-reckonable income for the purposes of PRSI contributions and the individual may be best advised to make voluntary contributions to Revenue in order that their requirements for social insurance benefits, including the state pension (contributory) are met.

It is therefore essential that the landowner should discuss with their accountant/Department of Employment Affairs and Social Protection, and Revenue, PRSI contributions and Universal Social Charge payable on this income.

The amount of income involved often determines the length of the lease agreement. If land is co-owned between a husband and wife, the relevant thresholds shown in Table 1 can be doubled. Legal proof of co-ownership such as land registry folios naming both parties as co-owners will be required.

To qualify for the income tax incentives, land must be leased to non-relatives. The only exception to this is where an uncle/aunt leases to a nephew/niece. If leasing to a niece/nephew, it is very important to seek taxation advice, as transferring the land to this person down the line could have significant tax implications.

Where the lessee is farming through a limited company, the company can now qualify the landowner for the

income tax incentives. A person connected with the company cannot lease to their connected company and avail of the income tax exemptions.

• **Opportunity for improvements/investment in the land.**

The landowner is providing the opportunity to the active farmer to invest in the land during the term of the lease. Due to security of tenure, there is now an incentive for the lessee to develop the lands and make them more productive by the end of the lease. There is generally a willingness to apply lime, improve soil fertility, reseed the land, and maintain fences etc. where a long-term commitment is in place.

• **Qualify for retirement relief from Capital Gains Tax on transfer or sale of the farm***

Where land is let on conacre for more than 10 years, the landowner may not qualify for Retirement Relief on Capital Gains Tax if the farm is sold or transferred to a family member. Leasing the land long-term provides the structure to avoid this happening.*

• **What are the advantages from the lessee's (active farmer) perspective of a long-term land lease?**

1 Security of tenure

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

2 Better financial justification for the required investment

With a long-term lease, the active farmer (lessee) can justify financial investment in any improvement works that are necessary to the land in order to farm it productively. Such investments may include: reclamation, soil fertility, reseeding, roadways, fencing and the provision of adequate water supply.

3 Farm buildings may come with the land, potentially reducing the need for capital investment

Where the active farmer is expanding their farm business, making use of existing facilities can greatly reduce any capital investment required in buildings. Such investment may



include: the provision of animal housing, slurry storage and silage facilities.

What does a long-term land lease involve?

A land lease is a written legal agreement between a landowner (lessor) and an active farmer (lessee) utilising the land. The lease is signed by both parties, witnessed by an independent person, and stamped by Revenue.

The basic details that are included in a lease are:

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

Stamping of the lease

The lease must be stamped by Revenue and registered with the Property

Services Regulatory Authority. Where the lease is six years or greater the lease is stamped at a zero value and no stamp duty is payable. Where the lease is five years the stamp duty is charged at 1% of the annual lease fee. This should be paid within 30 days of the commencement of the lease.

Legal advice

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

Farm buildings should generally be dealt with in a separate agreement to avoid any issues with the Landlord Tenant Act.

Alternatively, a separate renunciation clause may be signed by both parties where the tenant waives any

rights under the Landlord Tenant Act at the outset of the lease. As all lease agreements are different, each agreement should be tailored to suit both the lessor and lessee.

Summary

Long-term leasing can be very beneficial for both the landowner and the active farmer in terms of land use and maintaining the land in a good productive state. It also makes sense financially for both parties as it allows the active farmer to better justify any required investments and the landowner benefits from the income tax incentives.

For further information, a booklet on long-term land leasing is available on the Teagasc website.

*Ensure to seek legal and financial advice to ensure that all requirements will be met to avail of Capital Gains Tax relief in the future. Like with any major decision involving land and/or buildings, independent legal advice from a solicitor and taxation advice from an accountant should be sought before entering into any long-term land leasing agreement.



James Croke.

Case study: Alfred Sweetnam and James Croke

Farming outside of Mullinahone, Co Tipperary, Alfred Sweetnam traditionally calved 100 suckler cows each autumn. All heifers and steers from the herd were sold the following September/October as yearlings. In 2017, with the profitability of the beef enterprise coming under pressure and with the uncertainty of beef production into the future, Alfred started to look at ways to generate income from the farm while also reducing workload.

Largely farming on his own, Alfred looked into the benefits of long-term leasing. "The tax-free income on long-term lease is very attractive," says Alfred, who decided in 2018 to lease out 40 acres to his neighbour James Croke, a young dairy farmer. Suckler cow numbers were reduced to 65 and Alfred still had plenty of lands left to farm himself and sustain this stocking rate.

On asking Alfred what were the

main decisions arrived at when deciding whether to lease to James or not, he answered that "Knowing the farmer in question and the way he operates his own farm left me in no doubt that James would treat and work the land the same way I would do so myself.

Asking about the benefits of taking on 40 acres, James replied that: "Having the security of a 10-year lease allowed me to develop a business knowing that I had the land in the long term."

As all the lands leased in were adjoining James' own land, it was all additional milking platform, enabling him to increase his dairy cow numbers from 140 to over 200.

"I was delighted to increase to this stocking level as it allowed me to employ one full time labour unit and another person part-time," says James. "I was busier with 140 cows than I am now with over 200. The

added advantage is that my work-life balance has dramatically improved with more time available to spend with family; time to do other tasks on the farm that may have been left on the long finger in the past."

Having the security of tenure allowed James to develop the infrastructure of the leased ground with the development of new farm roadways etc. Similar to Alfred, James also reiterated the point of knowing the lessor, as James knew the quality of the lands, the good fertility status and the well maintained nature of the parcels.

Both agreed that having a proper written agreement from the start was an excellent way to ensure that every party knew where they stood and what was required. "This arrangement is having multiple benefits for everyone involved," concluded James with Alfred nodding in agreement.