FARMWEEK –CROPS

Share Farming a new way forward together

Michael Hennessy
Crops Specialist
TEAGASC
Oak Park

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A couple of weeks ago Teagasc launched a new way for farmers to co-operate in business. The new Share Farm Agreement puts a legal basis to the existing practices of co-operation which is operating to some extent on many farms today. The Share Farming concept is not new and is widely practiced in the US, UK and France.
The concept adopted and incorporated into this agreement draws from the best of these international systems and marries elements unique to Irish agriculture.
Share farming should not be confused with a Partnership. Both concepts are very different. A Partnership is the operation of a single business entity which trades to make a profit. Decisions taken, both inside and outside the partnership, can have consequences for all involved in the partnership. The Partnership process involves joint ownership of fixed assets and has very specific tax laws designed for partnerships.
A Share Farming Agreement is an agreement by two individuals (or two businesses) to jointly manage a farming operation. At all stages both parties involved in the share farming agreement are treated as individual businesses and are taxed as such. The retention of individual status for each party in the agreement gives the scope and flexibility to each party especially how they are viewed by the Department of Agriculture and Revenue.
In the process of drawing up the agreement both the Department of Agriculture and Revenue were consulted on all aspects and both were happy to support Share Farming. This now means for the first time smaller growers or land owners can join forces with another grower and use the ensuing economies of scale to increase profits for both farms. Share Farming allows the landowner (in a share farm agreement) to continue to draw down the Single Farm Payment and REPS in the future. As the Revenue views each of the parties as individuals, or as two businesses working together, the landowner therefore preserves the status of a farmer. This protects the short and long term tax entitlements as a farmer. This can be very important if claiming retirement tax relief's down the line.
This agreement is not a defacto conacre system or a retirement mechanism for landowners and neither party should not go into it with this in mind. For the land owner the agreement offers the opportunity to participate in the farm and reap the rewards of the enterprise. The price to be paid for this is the landowner must also participate in the risk of growing the crop. Both parties must contribute some costs to grow the crop. The proportion each party take depends on the agreement. The output from the crop (produce and sometimes government supports) will also be shared between both parties.

The basis of any agreement is trust. Trust that both parties in the agreement are there with an honest view and with honest intensions. Trust is fundamental to a share farming agreement and if you have any doubts then avoid this arrangement.

The written Share Farming Agreement is a reasonably long document with clauses and schedules. The clauses are basic enough and their purpose is to spell out how the agreement will practically work. The clauses detail the responsibilities of each party from buying to selling, to land and boundary maintenance, etc.

There is a detailed section on the resolution of disagreements or problems including the appointment of a Facilitator and Arbitrator, indemnity in case of penalties and provision in case of the death of either party. As this is a legal agreement these provisions are quite standard and will serve both parties well in the event of bumps along the road.

The most important elements of the agreement are the schedules where the details of the agreement are filled out. These schedules are quite straight forward and prompt some taught as to the major aspects of the agreement. If the agreement if written correctly, it should be easily understood and can be filled in by farmers and should require little intervention from a solicitor. However we do encourage each party to take advice from their legal and financial council before finally signing the agreement.

Further information is available on the Teagasc website and the specimen Share Farming Agreement will be posted in mid December. The delay is due to final consultation with solicitors, growers and government departments. Next week I will outline some practical ways a Share Farming Agreement can work and function successfully on farms.