

Farm Tax

Planning Guide

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CHARTERED ACCOUNTANTS

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Income Tax



MAKING EFFICIENT USE OF TAX BANDS

Where tax returns are being made in the sole name of the farmer and where tax is being paid or is likely in the future to be paid at the high rate, a partnership between the two spouses may be beneficial. A married person with a non-earning spouse can earn a maximum of €43,550 at the 20% rate whereas a couple in partnership can earn up to €69,100. For younger couples there may be the added benefit of having the spouse pay PRSI contributions (which will be at no added cost as the contribution is a percentage of profit) whereby he/she secures future entitlement to a contributory pension and possibly maternity benefit.



PAYING A WAGE TO YOUR SPOUSE

As an alternative to creating a partnership with your spouse, it may be equally beneficial to pay your spouse a wage in order to extend the 20% tax band. In the vast majority of cases, farming spouses are involved in the farming operation and can well justify a wage. Generally, a wage of this nature can be legitimately funded out of drawings thereby creating no additional drain on the farm cash flow.

TIP: Making your spouse a partner in the business or paying her a wage can save up to €5,000 in tax. However, where income averaging is being availed of, this approach may not be beneficial and in fact could increase the overall tax bill in the first two years.

TAX CREDITS

Many people take it for granted that they are being granted all available tax credits: have you ever checked. A tax credit is a euro for euro offset against tax due.

PERSONAL TAX CREDITS

Personal tax credits reduce the amount of tax that would otherwise be payable. The currently available tax credits for a single self-employed person (with no PAYE income) allows them earn €14,000 (€28,000 for married couple in partnership) free of tax. If that person is in receipt of PAYE income or a state or private pension, they would also be entitled to the difference between the Earned Income Credit and the Employee Tax Credit worth a further €2,500 tax free.

CAUTION: A spouse in receipt of a Contributory Old Age Pension Qualified Adult Allowance is not entitled to the Employee Tax Credit or the extended low tax band.

EARNED INCOME CREDIT

This is available to taxpayers earning self-employed trading or professional income, such as farmers. **It will not be available to persons in receipt of the full Employee Tax Credit.**

HOME CARERS' CREDIT

A credit of up to €1,200 is available to married persons who are jointly assessed and where one spouse works at home to care for children, the aged or incapacitated persons. The Carer's income cannot exceed €7,200 to avail of the full credit. This tax credit is not available to Married Couples or Civil Partners who are taxed as single persons or is the tax credit available to Married Couples or Civil Partners with combined income of over €43,550 and who claim the increased standard rate tax band for dual income couples.

TIP: It is only in very rare circumstances that there is any advantage in spouses or civil partners being singly assessed.

TUITION FEES

Tax relief at the standard rate is granted in respect of fees paid to a college or Institute of Higher Education within the state or to publicly funded or duly accredited universities or similar third level colleges in the EU

Year	Full Time Student (amount not allowed)	Part Time Student (amount not allowed)
2018	€3,000	€1,500

or outside the EU. Undergraduate courses, full or part time must be of at least 2 academic years duration, and in the case of courses carried out in colleges and institutions that require approval by the Department of Education and Science, the course must be approved by that Department. Postgraduate courses must be carried

out in an approved college and be of at least 1 academic year but no more than 4 academic years in duration, and lead to a postgraduate award based on either a thesis or an examination. The person taking the course must already have a primary degree or equivalent qualification. The maximum limit on qualifying fees is €7,000 per year.

Relief is not available in respect of any part of the tuition fees that are or will be met directly or indirectly by grants, scholarships, by an employer or otherwise and also relief is not available for administration, registration or examination fees.

Tax relief at 20% is allowable in respect of tuition fees including the Student Contribution and only applies where expenditure exceeds certain limits as follows:

FEES PAID FOR TRAINING COURSES

Relief for fees is available to individuals who partake in approved courses of less than two years duration in the areas of information technology and foreign languages subject to the conditions that the course will result in the awarding of a certificate of competence. Relief at the standard rate is available for fees in excess of €315 to a maximum of €1,270.

RENT A ROOM RELIEF

Rent a room relief entitles home owners to up to €14,000 rent free of tax, USC and PRSI when they rent a room as residential accommodation in their principal primary residence. No deductions are allowed and if the gross rent exceeds €14,000 no relief is available.

TIP: This relief is not available in respect of a son or daughter.

MEDICAL EXPENSES

Tax relief is available on non-recoverable medical expenses incurred by the tax payer, his/her spouse and children. Certain items are not allowed such as ophthalmic or routine dental treatment. This relief is confined to the 20% rate.

NURSING HOME CHARGES

Nursing home charges are allowable against tax at the marginal rate whether they relate to you or another person.

CHILD MINDING INCOME RELIEF

Earnings from child minding up to €15,000 per annum are tax free. However if the earnings exceed €15,000 the entire amount earned is subject to tax. The child minding must be done in the carer's home and a maximum of three children can be minded.

HEALTH EXPENSES: DEPENDENT RELATIVE

Medical expenses incurred by an individual in respect of a dependent relative can be claimed against tax at the 20% rate provided such expenses cannot be recouped. Where a dependent relative is being maintained at a nursing home or hospital, the allowable amount is reduced by 60% of the dependent's old age pension.

MEDICAL INSURANCE

Tax credits are available at the standard rate (20%) towards payments made to recognised medical insurers. These credits are granted by the insurance provider at source. For all persons, including persons over 60, a

maximum credit of €200 in the case of an adult is available while the maximum is €100 in the case of a child.

PERMANENT HEALTH INSURANCE

Payments made to a Revenue approved health insurance scheme which provides regular income in the event of sickness or disability are fully allowable against tax. The premiums being paid must not exceed 10% of current income.



DEEDS OF COVENANT

A possible means of a family member supporting a parent in a tax efficient manner is to covenant money, particularly if you are a higher rate taxpayer. The person to whom you covenant must be 65 or over or be permanently incapacitated. If the conditions are met, you can claim tax relief on an amount up to 5% of your taxable income; however, there is no limit if the person is permanently incapacitated.

Covenants are most effective if the recipient does not have a taxable income. The amount you covenant may be taxable in the hands of the recipient. It is important to note that money covenanted to people receiving a non-contributory pension or a means-tested allowance may affect their entitlement to the allowance in question.

As a general rule tax relief on covenants to children is not allowable. The types of covenant payments that are allowed are as follows:

- ☐ payments to permanently incapacitated adults.
- ☐ payments to permanently incapacitated nieces, nephews or other unrelated children.
- ☐ payments to elderly individuals who are not incapacitated but the amount allowable is restricted to 5% of the income of the person making the payments.
- ☐ payments which are part of a maintenance agreement between separated spouses.

TAX RELIEF ON EMPLOYING A CARER

If you employ a carer for yourself or on behalf of a family member, you can claim the tax relief on the cost of that care. A family member is a spouse, civil partner, child or a relative, including a relation by marriage or civil partnership. The cared for person must be totally incapacitated for the complete tax year (January to December) in which you are claiming the tax relief but the carer does not have to be employed for the full tax year. The term totally incapacitated means the person is disabled and requires a carer. The maximum allowance is €75,000. Relief for employing a carer is allowable at your highest rate of tax.

EMPLOYEE TAX CREDIT - FAMILY MEMBERS

Family members who are full time employed on the farm are entitled to the Employee Tax Credit provided they earn a sufficient farm wage to incur a tax liability. This tax credit in 2018 is €1,650 which means that when added to the single person's tax credit an unmarried employee with no other earnings can earn up to €16,500 before incurring any tax.

TIP: Where the parent is paying tax at the high rate but is not paying the son or daughter (who is full time employed on the farm) the full tax free amount, it would be well worth considering paying the balance into a bank account in their name in order to make provision for a future non allowable expense such as the construction of a dwelling.

TAX ALLOWABLE LIFE ASSURANCE

Tax relief on life assurance premiums is available on certain policies known as Section 72 policies. Such policies that can be stand-alone policies or be included in a personal pension contract. Payments to these policies are allowable against income tax up to 5% of relevant income. However, where tax relief is also being claimed for personal pension payments the overall limit which applies to pension premiums also covers the combined payments. Certain restrictions apply to these policies:

- ☐ The policy is straightforward life cover and cannot include any savings

- ☐ Cover must be taken on a single life basis only
- ☐ The term has to end between age 60 and 70
- This type of policy is non-assignable i.e. it cannot be assigned to a bank as security against borrowings

Where a 40% tax paying farmer is contributing say €1,000 per annum towards straight life cover he would save €400 on this type of policy.

TIP: Ask your life assurance advisor to assess your existing policies to see if such a policy is a suitable option. It could reduce your net premium cost by 40%.

BEING OVER 65 HAS ITS TAX ADVANTAGES

A married couple where one or both spouse are over 65 can earn up to €36,000 free of income tax as compared to €16,500 for their counterparts who are under 65. This is known as the 'Low Income Exemption Limit for people over 65'. If they happen to have dependent children the exemption is increased by €575 each for the first two children and €830 each thereafter. Additionally, where the individual's or couple's income is sufficiently high so as to render the exemption limit of no benefit, an age tax credit of €245 applies to single/widowed people over 65 or in the case of couples the credit is €490 if one spouse is over 65. A further concession to persons over 65 is that they are exempted from paying DIRT (Deposit Interest Retention Tax) where their income (including their spouse or civil partner's income) is less than the low income exemption limits for people over 65 **or** their tax liability (including their spouse or civil partner's income) for the year is less than their tax credits (including their spouse's) for that year.

Case Study - Availing of the Age Exemption

We will compare a couple (couple A) who are both under 65 whose total income of €38,000 is derived from farming with couple B where one or both parties are over 65 also earning €38,000 between them comprising a state pension including a qualified adult allowance along with rent.. The first couple will need to use their tax credits in the normal way and will pay income tax of €3,150 but the second couple by being over 65 they will pay €800 i.e. €2,000 @ 40%.

	Couple A	Couple B
Income	€38,000	€38,000
Income Tax @20%	€ 7,600	€ 7,600
Less:		
Personal tax credit	€ 3,300	€ 3,300
Earned income/employee credit	€ 1,150	€ 1,150
Age tax credit		€ 490
Marginal relief		€ 1,660
Net Income Tax due	€ 3,150	€ 800

TIP: In a family farm situation it may be possible for the son/daughter to pay the parent(s) a wage to use up their tax free threshold where the parent has some active involvement on the farm. Such payments could be a tax efficient means of augmenting the parents income.



	Credit € 2018	Tax Free
Single person	1,650	8,250
Married Couple / Registered Partnership	3,300	16,500
Widowed person (in year of bereavement)	3,300	16,500
Widowed person (subsequent years)	2,190	10,950
Widowed person with dependent children	1,650	8,250
<i>Widowed person with dependent child (additional)</i>		
First year after bereavement	3,600	18,000
Second year after bereavement	3,150	15,750
Third year after bereavement	2,700	13,500
Fourth year after bereavement	2,250	11,250
Fifth year after bereavement	1,800	9,000
Incapacitated child	3,300	16,500
Single parent	1,650	8,250
Dependent relative	70	350
Blind person	1,650	8,250
Both spouses blind	3,300	16,500
Age Credit- Single / Widowed	245	1,225
Age Credit - Married couple	490	2,450
Home Carer	1,200	6,000
Employee Credit	1,650	8,250
Earned Income Credit	1,150	5,750

AVERAGING OF FARM PROFITS

A concession is available whereby a farmer can opt to be taxed on an average of five years' profits (3 years up to and including 2014), the current year and four previous years. This means that an unusually high profit in a given year could be reduced by adding it to the profit of the four previous years and taking an average figure for the five years. The problem with the system is that once you opt onto it, it is not easy to opt out again. A farmer is obliged to remain in the system for a minimum of five years and thereafter opting out may result in the benefit that was gained in the four previous years being clawed back.

INCOME AVERAGING CASE STUDY

The important message on Income Averaging is that an appraisal needs to be done on the likely future benefits. In this case study Joe farmer makes a profit of €65,000 before deduction of capital allowances in the year ended 31st December 2017. His capital allowances are €12,000. His wife is a PAYE worker and paying tax at the 40% rate. As his tax bill is considerably increased on the previous year he is considering income averaging as a means of reducing the liability. The following calculation sets out his position;

Year	Profit
2013	€58,000
2014	€55,000
2015	€35,000
2016	€55,000
2017	€65,000
Average	€53,600

By opting for averaging he will reduce his profit by €11,400 thereby effecting a saving in tax, PRSI and USC of €5,557. If his profit in 2018 were to amount to a similar figure of €65,000 his average profit for 2018 would be €55,000 thereby reducing the amount taxable by €10,000 resulting in a saving in that year of €4,875. If we project forward to 2019 and assume a profit of €70,000, his average would be €58,000 again reducing the taxable amount by €12,000 with a projected tax saving of €5,850. Joe makes an overall saving of €16,282 over the first three years of averaging.

Averaging - POINTS TO NOTE

- ☐ Averaging may effect a permanent saving in tax only if profits continue to rise in the years subsequent to opting in to the system.
- ☐ Capital Allowances: Capital allowances are not subject to averaging.
- ☐ Stock Relief: As stock relief is treated as if it were a trading expense, profits for averaging purposes are the profits after deduction of stock relief.
- ☐ Farmers are excluded from averaging where either he/she or their spouse also carries on another trade or profession at any time in the year of assessment, or where they or their spouse is a director of a company carrying on a trade or profession where they control more than 25 per cent of the ordinary share capital of the company.
- ☐ Opting out of Averaging: A farmer may opt out of averaging only if he has been on averaging for the five years prior to the year he wants to opt out. No revision will be made to the last year of averaging but the four years prior to the last year are reviewed and if the existing assessment for either year is less than the amount of the assessment for the last averaged year, an additional assessment is made for the difference.
- ☐ Where a farmer who has been on income averaging ceases as a sole trader and enters a partnership, or vice versa, he/she will continue to be subject to the normal income averaging rules.
- ☐ Where a farmer ceased as a sole trader or partnership to form a Limited Company he must cease income averaging but normal cessation of business rules apply (not cessation of averaging rules).



- Where profits are falling, income averaging will result in a profit that is higher than the income for the current year. In a year of small profits this may have serious cash flow implications as the resources may not be present to pay a tax bill which is in effect the result of a postponement of an earlier tax liability. To accommodate such situations arising, a concession was introduced in Budget 2017 whereby from 2016 onwards it will be possible to step out of averaging for one year and revert to being taxed on the normal single year basis.

However, profits will continue to be assessed on a averaging basis in the subsequent years and any tax saved by stepping out will be payable over the following four years.

***TIP:** Averaging will provide a permanent saving where profits continue to rise. Only agree to enter averaging if you are confident that there is good chance that profits will not fall over the next five years. Income averaging requires forward planning. It may be useful to have a nine month appraisal of your profit carried out in respect of the current year's accounts in order to determine if it is beneficial to remain in, or opt out of averaging in respect of the previous years' accounts before they are submitted to the Revenue.*

STOCK RELIEF

Stock relief, which is only available to the trade of farming, can represent a worthwhile saving in tax for expanding enterprises. Stock relief applies to stocks of livestock, bloodstock, crops, feed, fertiliser and seeds. There are currently three systems of stock relief in place which are due to run until 31 December 2018 and more than likely will be extended beyond that date.

GENERAL RELIEF

Under this scheme, a deduction of 25% of the increase in value in trading stock is allowed against trading profits in the accounting year. There is no claw-back provision which in effect means that the main benefit is that a farmer is only taxable on three quarters of his increased stock value. However, if he were to dispose of his stock he would be taxed only on the amount by which the sale proceeds exceed the actual value that had been placed on those stock for tax purposes.

CAUTION; *Stock relief cannot be claimed to create or increase a loss and stock relief is not available in the year in which a farmer ceases to farm. Furthermore, where Stock relief is claimed, any excess capital allowances or losses forward will be lost.*

RELIEF FOR YOUNG QUALIFYING FARMERS

A system of stock relief claimable at 100% for young qualifying farmers under 35 years of age is available for four years from commencement. Relief is limited to the cash equivalent amount of stock relief at the 100% rate which a young trained farmer can receive where he or she first qualifies in the tax year 2012 or a subsequent tax year to €40,000 in a single year and €70,000 in aggregate over the four years of the scheme. Qualifying farmers must meet the following conditions:

- ☐ have commenced farming in the year in which the claim is made.
- ☐ satisfies the required academic and training standards.
- ☐ submit a business plan to Teagasc unless a business plan has otherwise been submitted to Teagasc or the Minister for Agriculture, Food and the Marine.

It should be noted that the 100% relief for young trained farmers is also permanent and cannot be clawed back if stock levels subsequently reduce.

RELIEF FOR REGISTERED FARM PARTNERSHIPS

A system of stock relief for registered farm partnerships, claimable at 50% runs until the 31st. December 2018. There is a limit of €15,000 in aggregate on the cash equivalent of the amount claimed over the three year to 31 December 2018.

TIP: the existing schemes of stock relief offer farmers an opportunity to secure significant savings particularly in light of the fact that the relief is never clawed back. These relief's, particularly the 100% relief for young trained farmers makes a strong case for leasing or transferring a part of the farm to the son or daughter working on the farm for the purpose of maximising the benefits of stock relief and possible benefits from certain Department schemes.

CAPITAL ALLOWANCES ON FARM BUILDINGS AND MACHINERY

Expenditure on farm machinery, motor vehicles and farm buildings are not allowed as deductible expenses in the way that direct costs such as feedstuff's or fertilisers are. They are allowable over a number of years



and the amount that is allowed is called a 'writing down allowance'. In the case of farm buildings and land improvement, the allowance is commonly referred to as a Farm Buildings Allowance and amounts to 15% of the cost over 6 years and 10% in the seventh year. In the case of plant and machinery or motor vehicles the allowance is called a Wear and Tear Allowance which is allowed at 12.5% of the cost over 8 years (subject to the emissions category in the case of motor vehicles). So, if a farmer spent say €60,000 on a new tractor he/she would be allowed €7,500 per year as a write off against profits which would save a lower rate tax payer €2,325 in tax PRSI and USC. If he/she were a higher

rate tax payer, the saving would be €3,825.

MOTOR VEHICLES

Capital allowances on Motor vehicles first registered on or after 1 July 2008 depend on the emissions category. Categories A, B & C are allowed at 12.5% of the cost but subject to a maximum cost of €24,000 regardless of whether the vehicle cost more. Categories D & E are restricted to 12.5% of 50% of the cost of the car subject to a maximum expenditure of €24,000. Categories F & G will not be entitled to any capital allowances. So, in any given year the maximum amount of tax that can be saved by a typical lower rate tax payer by purchasing a car, irrespective of its cost is €697.50 (assuming 25% is deducted for personal use) or, €1,170 for the higher rate tax payer.

LEASING, HIRE-PURCHASE OR OUTRIGHT PURCHASE

Where a farmer buys a machine by outright purchase or on Hire Purchase, there is no difference in terms of the tax relief in that the relief is allowed at 12.5% of the net cost over eight years. A lease is different in that, technically you don't own the machine during the primary term of the lease (typically 3-7 years) and the amount of lease premium you pay to the lease company each year is fully allowed against your profits. However, when the lease ends, typically you buy out the machine for a nominal sum, say €100 but in actual fact the machine might have a significant market value. The difficulty is that you will be taxed on the difference between the market value and the nominal sum paid to buy it out from the leasing company. It is not possible to roll over this gain on to a replacement machine. For example, a tractor costing €60,000 may

be deemed to have a value of €20,000 at the end of a 5 year lease term by the finance company. This figure is then added to the annual profit in that final year and the €20,000 can be written off in the form of a Wear & Tear allowance at 12.5% per year over the next eight years or for however long the farmer retains the tractor.

TIP: Under current taxation rules for sole traders or partnerships, lease finance has little to recommend it and should be avoided if at all possible.

LEASING OUT FARM LAND AND ENTITLEMENTS

Land leases of 5 years or more duration are free of income tax subject to certain limits. This concession applies to all landowners of any age and also includes the lease of Basic Payment Entitlements. For qualifying leases made on or after 1 January 2015, the first €22,500 is exempt for leases of 7 years or more



and €18,000 between 5 and 7 years. For qualifying leases of 10 years or more the first €30,000 is exempt and for leases of 15 years or more the first €40,000 is exempt. The exemption also includes lease income from the Basic Payment Scheme entitlements where leased with the land. A qualifying lease must be in writing or evidenced in writing. If a lease is not in writing a memorandum or note should exist in writing which:

- ☐ contains the names and addresses of the lessor(s) and lessee(s), specifies the acreage, address, location etc. of the land which is the subject of the lease and sets out the terms of the lease
- ☐ is signed by all parties.
- ☐ is for a definite term of five years or more and is expressly set out in the lease or memorandum.

TIP: Where the leased lands are in joint names, both joint owners (including spouses) are each eligible for up to €40,000 in exempt income

A qualifying lessee cannot be:

- the lessor's immediate family (e.g. grand-parents, parents, brothers, sisters, children, grand-children, etc.), however nephews or nieces are eligible.
- ☐ the spouse of the lessor or the immediate family of the spouse,
- ☐ a person with whom the lessor is in partnership or the spouse of that person or the immediate family of that person or of the spouse of that person,
- ☐ a company which the lessor, or the lessor and persons connected with him, controls, otherwise leases to farming companies are eligible, and
- a person who is the settlor of a settlement of which the lessee is a trustee and the land is let in the course of the lessor's capacity as a trustee.

Caution: Transferring land into joint names may have consequences if a sale of the land is contemplated in the future. (see Capital Gains Tax)

TAXATION OF HORSES

Horse breeding is a taxable activity in the same way as any other form of livestock farming. However,



when a horse is transferred to a racing stable the winnings or indeed any sale proceeds are not taxable but the costs are not tax allowable. The animal is transferred out at a cost equivalent to what it cost to bring the horse to that stage which should result in a nil transfer cost.

***TIP:** The farm accounts must reflect the removal of the horse from the accounts and there must be evidence of having incurred training fees.*

FORESTRY

All profits from forestry including grants, premiums and timber sales are exempt from income tax but may be subject to other taxes as follows;

- ☐ All profits & premiums are liable to Universal Social Charge;
- ☐ All profits & premiums are liable to PRSI;
- ☐ Sales of afforested land are subject to Stamp Duty on the land value only and not the standing crop.
- ☐ Woodlands that are inherited or gifted are liable to CAT (Gift/Inheritance Tax) but are eligible for agricultural relief.
- ☐ Gains on the sale of standing trees are exempt from Capital Gains Tax but the underlying land is liable. However, it is unlikely that the underlying land will show any gain as afforestation will generally devalue the underlying land.

FARM LABOUR

EMPLOYING FAMILY MEMBERS

Registering family members who help out, or indeed work full time on the farm, can be very beneficial from a tax point of view and generally will not incur a liability to PRSI for either the employer or employee. A farmer who is trading as a sole trader (but not a company or partnership) and pays wages to a son or daughter for their assistance on the farm will be entitled to full tax relief. Where the son/daughter's total earnings in the year are less than €8,250 they will have no liability to tax, PRSI or Universal Social Charge. So, a farmer paying tax at the 40% rate could save a total of €4,207 by paying a wage of €8,250 to his son or daughter. Where that son or daughter is full time employed on the farm they are entitled to an Employee Tax Credit which means they can earn up to €16,500 tax free.

Most employees are liable to pay PRSI but exceptions to this general rule apply in the case of certain family employment. A family employment describes a situation in which a farmer either employs, or is assisted in the running of the business, by other family member(s). However, if the business does not operate on a sole trader basis, for example if it is a Limited Company or a Partnership - it is not family employment. The following categories of family employment are not liable to PRSI:

- If you are employed as an employee by a prescribed relative i.e. a parent, grandparent, stepparent, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, or half-sister and the family employment relates to a private dwelling house or a farm in or on which both you and the employer reside

FARMERS' GUIDE TO SAVING TAX

- If you assist or participate in the running of the family business but not as an employee. For example, a son/daughter who is attending full-time education who participates in the business (e.g. farm) after school hours or a spouse who carries out book-keeping work for the business, but is not an employee.

Where the annual income of an individual is less than €13,000 they are exempt from Universal Social Charge, However, where annual income is in excess of that figure all of that income is liable to USC.

Under labour law, a young person between 14 and 15 years may be employed for light work provided it does not interfere with their schooling. Young people of between 15 and 16 may be employed for up to 8 hours a day or 37½ hours a week.

TIP: Wages to children which are claimed against tax must be seen to be paid. However, it is perfectly in order for that wage to be put into a bank account in the child's name for future use or in joint names of the child and parent if preferred.

CASE STUDY – PARTNERSHIP WITH SPOUSE

Farmer Joe earns a taxable profit on the family farm of €60,000. His wife Mary is working full time in the home and on the farm. They have two school going children. Joe has been advised by his accountant to create a partnership with his wife as there is a distinct tax advantage in so doing. The following case study details the extent of the tax savings.

	Joe - Sole Trader	Partnership with Mary
Taxable farm profit	€60,000	€60,000
Tax @ 20%	€ 8,710	€12,000
Tax @ 40%	€ 6,580	nil
PRSI	€ 2,400	€ 2,400
USC	€ 2,136	€ 1,424
Less:		
Personal Tax Credit	€ 3,300	€ 3,300
Earned Income Credit	€ 1,150	€ 2,300
Home Carer Credit	€ 1,200	nil
Tax due	€14,176	€10,224

Creating the partnership represents a saving of €3,952. There is no need for a formal partnership agreement but it is advisable that a joint bank account be set up. Cases where the farmer is participating in income averaging need to be appraised before a partnership is entered into as it may not be possible to continue with or to exit averaging without incurring a greater cost than the savings that might accrue.

EMPLOYING NON-FAMILY MEMBERS

Wages paid to non-family members will incur a liability to PRSI. The amount of PRSI will depend on the amount of weekly wages paid. Weekly amounts less than €356 attract a rate of 8.5% and amounts over €356 attract a rate of 10.75%.

Example of Net Cost of person employed by a high rate tax payer

Annual Wage	€31,200 i.e €600 per week
Employers PRSI	€ 3,354
Total Cost	€34,554
Less: Tax relief	€17,968 (Tax @40%, PRSI @4% and USC @8%)
Employee net cost	€16,586 (€319 p.w.)

PERSONAL PENSIONS

Payments to approved personal pension schemes for persons with non-pensionable incomes, subject to certain limits are allowable against tax at the marginal rate (40% if you are liable to tax at the high rate). The income ceiling for tax relief on pension contributions is €115,000. In other words, you are only allowed claim relief on income up to €115,000. For those fortunate enough to have a pension fund of €800,000 or more, the maximum tax free lump sum is €200,000. Above that amount any excess up to €375,000 is subject to income tax at 20%. Above that amount, tax is charged at the taxpayer's marginal rate. Contributions towards Personal Pension Schemes are fully tax allowable subject to certain limits as follows (see table).



Retirement Options

When your pension fund matures you will be faced with a number of options depending on the size of your fund. Typically, there are three main options but it should be noted that you can elect to put the pension in joint names with your spouse or you could seek an extended guaranteed period for which the pension is guaranteed irrespective of whether you live or die, however any such elections will reduce the amount of your pension. The three main options are as follows;

- Take 25% of the fund tax free and take an annual pension based on the balance of the fund. The pension will typically amount to between 3.5% and 4.5% of your remaining fund after taking the tax free lump sum and will be guaranteed until death or 5 years, whichever comes later. If the pension is in your sole name, once you die the pension generally dies with you.
- Where your fund is €84,666 or less you can take 25% of the fund tax free and invest the balance in an Approved Minimum Retirement Fund (AMRF). The AMRF has to remain invested until you are age 75 after which point you can withdraw it subject to income tax.
- Where your fund is in excess of €84,666 you can take 25% of the fund tax free, invest €63,500 in an AMRF and invest the balance in an Approved Retirement Fund (ARF). Withdrawals from the ARF can be made at any time subject to deduction of income tax.

Tax treatment of an AMRF or ARF

ARF/AMRF owned by/ inherited by	Income Tax & USC due	Capital Acquisitions Tax due
Self	All withdrawals liable	None
Surviving spouse	None where transferred into an ARF of the surviving spouse.	None
Child aged 21+ at date of your death	Income tax at 30%.	None
Child aged less than 21 at date of your death	None	Normal inheritance tax rules will apply.
Non-blood relative (anyone else not being your surviving spouse or children)	This will be treated as a distribution by the deceased in his/her year of death.	Normal inheritance tax rules will apply.

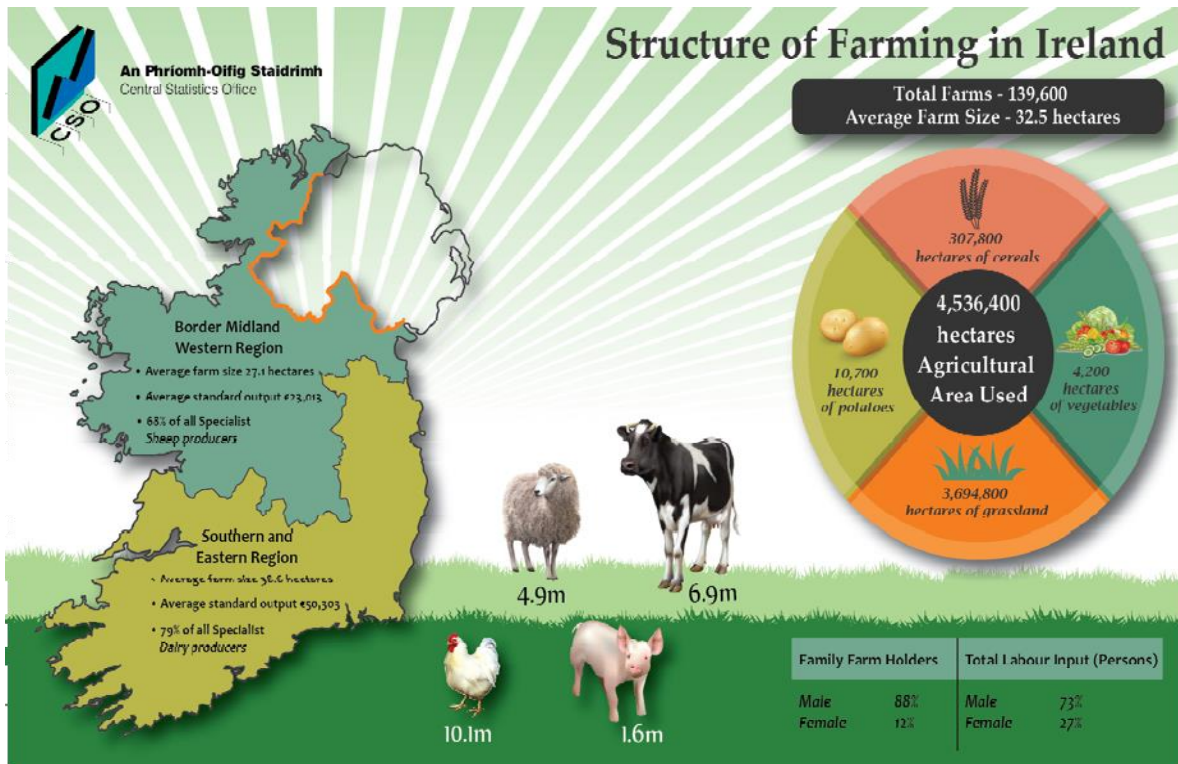
Personal Pension Allowable limits

Contributions can be made right up to the filing date for your annual tax return which means that you have at least 10 months in which to determine how much you could or should pay to minimise your tax liability. When your pension matures it depends on which option you take with your fund as to how and when you will be taxed. If you opt for the straight forward pension (annuity) route and assuming you take your 25% tax free lump sum, you will be liable for income tax and Universal Social Charge at the normal rates on the balance of the fund.

Age	% of Income
Under 30 years	15%
30 to 40 years	20%
40 - 50 years	25%
50 - 55 years	30%
55 - 60 years	35%
60 years and over	40%



ALTERNATIVE FARMING STRUCTURES



ALTERNATIVE FARMING STRUCTURES

The traditional and most common farming entity is the sole trader. However, in recent years alternative structures are growing in popularity such as partnerships and limited companies. With restrictions on production more or less a thing of the past it is likely that alternative structures will be adopted such as share farming and share milking which are quiet common in New Zealand. Such collaborative farming arrangements can be tax effective as well as having many other potential benefits such as providing the opportunity for younger farmers to establish a meaningful involvement in the running of a farm while also providing landowners with the opportunity to remain involved but without the pressures and constraints of being a sole trader.

LIMITED COMPANIES

The formation of a limited company is a very real option as an operating structure for farmers. This option has always existed for tillage and drystock farmers but only more recently for dairy farmers due to milk quota restrictions.

WHAT'S INVOLVED?

In practically all cases, only the farming activity and not the actual farmland is transferred to the company. Generally, only the stock and farm implements will be sold into the company. This can be an attractive spin-off of incorporation as it creates a tax free lump sum from the assets sold to the company, which can be repaid to you over time from the company. This is called a director's loan account and can be illustrated as follows:



Example of Director's Loan Account

Livestock (at book value)	€200,000
Plant & Machinery (at tax written down value)	€ 50,000
Debt transferred in	(€70,000)
Creditors transferred in	(€15,000)
Opening Directors Loan	€165,000

TAX SAVINGS

The single greatest attraction in forming a company is the likely tax saving that can result. By way of example, a married farmer earning a taxable profit of €75,000 with his spouse working¹ off the farm could in theory save in the region of €13,000 assuming he paid himself a gross salary of €42,000 per annum which would fund personal drawings of €32,000 from the farm net of tax. The following example illustrates the possible saving in 2018:

	Sole Trader	Limited Company
Farm Taxable Profit	€75,000	€33,000
Salary from company		€42,000
Income Tax & Levies	€26,300	€9,952
Corporation Tax		€4,125
Total Tax & Levies	€26,300	€14,077
Net saving		€12,223

Note 1 Wife is earning in excess of €33,800 and therefore there is no unused lower tax band.

FARMERS BEST POSITIONED TO INCORPORATE

Incorporation will best suit but is not exclusive to farmers who:

- Are currently paying tax at the 40% rate
- Have moderate to low levels of debt
- Have moderate levels of personal drawings
- Have used up most of their Farm Buildings Allowances
- Have plans for significant expansion.

Caution: Farmers considering significant capital investment may bring forward the decision to incorporate and accordingly careful tax planning is required to ensure optimum use of capital allowances

TIMING

You should not wait until you have an unmanageable income tax bill. Have your tax advisor assess the likely savings based on the most recent tax return and draw up a medium term profile of your likely tax liabilities bearing in mind your expansion plans. Your tax advisor should also assess the capital tax implications bearing in mind your age profile and succession plans. If the assessment yields a positive outcome and if the tax savings are worthwhile there is no reason to delay incorporation.

Caution: For farmers on income averaging the timing of the transfer from being a sole trader to a limited company is of critical importance. Applying the correct timing can ensure benefits previously achieved under income averaging remain permanent

CAPITAL ACQUISITION TAX (CAT) IMPLICATIONS

In general CAT rules do not militate against incorporation. Land, buildings, BPS entitlements etc., continue to qualify for Agricultural Relief for transfer purposes. Shares in a farming company will not qualify for Agricultural Relief but may qualify for Business Property Relief, subject to certain conditions where the entire farming operation is being transferred as a going concern.

CAPITAL GAINS TAX IMPLICATIONS

Farmers will continue to be eligible for Retirement Relief in the case of family transfers subject to the 25 year letting rule. The transfer of shares in a farming company will also qualify providing the farmer is over 55 and has held the shares for 10 years or more.

VAT IMPLICATIONS

Similar rules apply to VAT registration as for sole traders. Accordingly, VAT registration is optional. Companies are entitled to the 'Flat Rate Refund' and are also eligible to VAT refunds on items of capital expenditure on buildings, fixed plant and land improvement.

TO-DO LIST ON INCORPORATION

Following incorporation it will be necessary to do the following:

- Register herd number in company name.
- Lodge Basic Payment Scheme application in company name
- Lease / Transfer / Sell Basic Payment Entitlements to the company
- Where it is intended to engage in capital expenditure on farm buildings it will be necessary to prepare a formal lease of the farmyard (or site) to the company.
- Notify banks & finance companies of loans transferring to the company.
- Notify merchants, Co-op's etc., of the change of trading entity.
- Open a bank account in the name of the company.
- Cancel existing PAYE/PRSI registration, register company as employer and transfer employees.

ADVANTAGES OF INCORPORATION

- w Potential for substantial tax savings resulting in opportunity to invest in the farm business.
- w No PRSI and no Universal Social Charge on company profits
- w Suitable structure for involvement of family members
- w No audit requirement (turnover less than €8.8m)
- w Can release a substantial amount of tax free cash from sale of stock and machinery to company
- w Increased pension opportunities.
- w May be a suitable vehicle to accommodate personal debt resolution in a tax efficient manner.
- w A company may become involved in a registered partnership

DISADVANTAGES OF INCORPORATION

- w Access to retained profits for personal use may have an income tax cost.
- w No tax savings if profits do not exceed personal drawings. Accordingly, in years of low or nil profits, a liability to personal tax will still arise that could be greater than if the farmer had remained as a sole trader.
- w Farm Buildings Allowance cannot be claimed on buildings which are not owned by the company.
- w Where large debt exists, it may be difficult to effect worthwhile savings.
- w Exiting or ceasing a limited company may have Capital Gains Tax implications where the company has accumulated some value.
- w Future eligibility for Agricultural Relief for sons or daughters who are shareholders may be threatened where the company share value has grown.
- w Ceasing as a sole trader could have additional income tax consequences for farmers availing of income averaging.
- w Disposals of land to unrelated parties may not be eligible for retirement relief unless a formal lease agreement to the company is in place.
- w Increased accountancy/ compliance charges.



Caution: Whilst incorporation presents many opportunities, it is a decision that demands expert professional advice not alone in regard to taxation but also in regard to Basic Payment, herd number and farm scheme issues.

FARM PARTNERSHIPS

A farm partnership is essentially a farming operation that is owned and operated by more than one person (i.e. the partners). Typically, the partners could be spouses, children or unconnected persons or a combination of all three. Limited Companies may also be partners. The partners are responsible for the farming operations and will be subject to income tax on any profits the farm generates. Under the partnership structure, all farming assets acquired by the partnership are owned by the partnership and the individual partners own an interest in the partnership rather than a direct interest in each underlying farming asset, such as stock and equipment. Assets such as land and buildings will remain in the ownership of the individual partners but will be made available for use by the partnership. Subject to the agreement of the partners, such use may or may not be charged to the partnership.

In the case of family participation, partnerships improve the ability to split taxable profits between family members who are partners in the partnership based on their contribution of time and/or capital to the partnership, potentially reducing overall income tax. Furthermore, a farm partnership is also a flexible tool that can be utilised to introduce new family members to the partnership at any time in the future to help facilitate the succession of farming operations to the next generation. Farm partnerships between unconnected parties offer an opportunity to develop larger farm enterprises and increase scale by managing

two previously independent enterprises together. Partnerships can also yield a worthwhile social dividend in reducing isolation in farmers' working lives.

HOW PARTNERSHIPS OPERATE

Two or more parties decide to enter into a partnership arrangement that will have a comprehensive set of operating rules set down in the form of a partnership agreement. The partnership will start out having no assets or liabilities but the partners may provide the use of land, buildings, machinery and equipment for use by the partnership. The partnership agreement will set out the terms, if any, for the provision of such assets. The partners will agree at the outset how profits are to be shared and how much annual remuneration each partner shall receive and will be written in to the partnership agreement. The partners may agree that individual partners may charge a rent or payment for the use of their assets such as land, buildings or machinery and such matters will be clearly covered in the written agreement. A partnership agreement will generally set down a minimum term such as five years but will also spell out the terms and conditions under which a partnership may be dissolved which could be at any time with the agreement of the partners.



BENEFITS OF A PARTNERSHIP

- Accommodates farm enterprise expansion
- Sharing of equipment and facilities
- Antidote to the solitary nature of farming
- Economies of scale
- Brings new skills and abilities to the farming operation
- Partners may be able to concentrate on their preferred activity
- Stepping stone to succession in family partnerships
- Improved access to farm schemes and grant assistance
- Taxation benefits
- Better lifestyle/work life balance.

CONCERNS FOR INTENDING PARTNERS

- Loss of independence
- Intrusion on family privacy
- Risk of incompatibility and disagreements with partners
- Dealing with the eventual dissolution
- Possible loss of CGT Retirement Relief if lands are rented to the partnership.

TAXATION OF PARTNERSHIPS

The partnership of itself is not a taxable entity but rather, the partners are taxable as individuals at normal personal tax rates on their respective salaries and profit shares and rents if applicable. In family situations where both spouses and perhaps a son or daughter are in partnership, the tax savings can be quite significant if all three low tax bands can be substantially utilised. Under current tax bands where three family members are in partnership, the combined low tax band would amount to €101,400 meaning that it is possible for that partnership to earn up to that amount and remain in the low tax bracket.

A system of stock relief for registered partnerships¹, claimable at 50% was introduced in 2011 and runs until the 31st. December 2018. Similar rules apply to VAT registration as for sole traders. Accordingly, VAT registration is optional. Partnerships are entitled to the 'Flat Rate Refund' and are also eligible to VAT refunds on items of capital expenditure on buildings, fixed plant and land improvement. registered partnership is a partnership registered with the Department of Agriculture

SUCCESSION FARM PARTNERSHIPS

Partners who form a Registered Farm Partnership may apply for admission to the Succession Farm Partnership Scheme whereby, subject to certain conditions as outline hereunder, they can jointly qualify for

an annual income tax credit of €5,000 for up to five years. The credit is split in proportion to the profit sharing ratio of the partnership between the Farmer and the Successor. For example, if a father and son had a 50:50 partnership they would each save themselves €2,500 in tax providing they had a tax liability of or exceeding this amount in the first instance. It is important that the partnership is structured in a way that will make best use of the tax credit. Potentially, the scheme is worth up to €25,000 over a five year period.

Conditions

The key conditions to be met to qualify for the income tax credit are as follows:

Make a valid application to be placed on the register of succession farm partnerships maintained by the Department of Agriculture, Food and the Marine.

At least one partner in the Succession Farm Partnership must be a natural person (not a company) who has farmed at least 3 hectares in his/her own right for the two previous years. This person is defined as the “Farmer”.

Aside from the Farmer as referred to above, the other partner(s) must be a young trained Farmer who is in receipt of at least 20% of the partnership profits. This Partner is defined as the “Successor”.

The year of transfer must be after 3 years and before 10 years of registering on the succession register to claim the tax credit.

The farmer and the successor must sign a succession agreement which contains an undertaking that a minimum of 80% of the farm assets outlined in the succession agreement must be transferred.

The income tax credit cannot be claimed in the calendar year where the Successor reaches 40 years of age so in other words the successor can only claim the relief up to age 40.

A full clawback of all tax credit claimed will occur where the transfer does not go ahead.

Tip: In the first instance consult a farm advisor or consultant who is regarded as expert in this area and ensure that a comprehensive partnership agreement is drawn up. Secondly consult your tax advisor to ensure that the partnership agreement is constructed in the best possible way to maximise the tax benefits.

SHARE FARMING

Share farming arrangements involve two parties on the same area of land (the landowner and the share farmer) carrying out separate farming enterprises in the one unit, without forming a partnership or company. Both parties share the benefits and the risks. There is no fixed annual payment for the land. The respective parties can independently sell their share of output and equally cover their input costs. Share Farming is approved by the Department of Agriculture and can be fully compliant with support schemes including the Basic Payment Scheme, AEOS, GLÁS etc.

TAXATION OF SHARE FARMING PARTICIPANTS

Revenue classify participating landowners in a legitimate Share Farming Agreement as “farmers” so there is no change in their tax status and each prepares separate farm accounts. A legal agreement ensures both parties are protected in the event of difficulties arising.

BENEFITS FOR THE LANDOWNER

- Retains control of the land to ensure it is farmed to the highest standards while also giving greater security and reward from farming.
- The initiative can be compliant with all support schemes.
- Provides increased buying and selling power as part of a larger unit.
- Higher returns when yields, weight gain and prices increase.
- Agreed proportional stake in sales (animals, grain and/or straw) ensures farm returns.

- The share farmer can buy/sell all produce and then invoice/pay the landowner his/her own share if that is the preferred approach.
- The share farmer is responsible to maintain fences, structures etc in good order and condition excluding fair wear and tear.
- The land cannot be used for any other purposes by the share farmer.

BENEFITS FOR THE SHARE FARMER

- A tailored agreement allows flexibility to suit individual landowner situations. No up front and/or other flat rate payments.
- Input costs shared.
- Increased area/scale allows more competitive purchasing and selling and can also reduce costs.
- An improved and stable land base facilitates better planning in both the short and long-term.

OPERATING A SHARE FARM

Trust is an essential part of the agreement. VAT registered farmers/growers and non-VAT registered landowners can successfully operate a Share Farming Agreement.

SETTING UP A SHARE FARMING AGREEMENT

As trust is a key element of the arrangement the identification of a suitable landowner/share farmer is key. An existing understanding between a landowner and a farmer can be developed into a Share Farming agreement. Discussion on all elements of the agreement is essential before commencement. The agreement document should be in place before farming commences and the practicalities of the arrangement should mirror the agreement. When setting up an agreement the people involved should sit down with their advisors and clarify the exact farming activity they are going to carry out (cropping or livestock or both). Other details to be discussed at this stage include:

- The exact lands involved should be agreed.
- Any machinery necessary and who will provide it.
- If livestock are involved, the livestock should be listed.
- Input and ongoing costs should be worked out.
- A basis of division of produce and costs should be agreed.
- If EU Government Supports are being made part of the agreement, those being contributed by each party should be listed.
- How produce is to be stored and disposed of should be worked out.
- The maintenance of Department of Agriculture and any other statutory records that are required to be kept, e.g. records for Cross Compliance and records of purchases and sales etc.
- How dispute resolution will be dealt with.

Caution: Share farming should not be viewed as a means of 'renting through the back door'. Farmers who participate in bogus share farming arrangements are liable to suffer severe penalties under the Basic Payment Scheme

SHARE MILKING

This is a proven business model which has been, and continues to be, the backbone of the New Zealand dairy industry, and it may have appeal to Irish dairy farmers in the post quota era. In share milking, a farmer operates a dairy farm on behalf of the farm owner for an agreed share of income and expenses. Share milking is one of the common entry mechanisms for young people to enter dairying in New Zealand (and facilitates older farmers to retire). In share milking, a young farmer operates a farm for an agreed share of farm income and expenses. The arrangement offers young farmers a way to build assets without requiring a large amount of capital input at the beginning of their careers.

TAXATION OF SHARE MILKING ARRANGEMENTS

As share milking is a concept that is new to Ireland no formal taxation guidelines have issued. Currently any such arrangements are operated as a lease of land and stock in order to avail of the land lease tax exemption.



CAPITAL GAINS TAX



CAPITAL GAINS TAX

Where a farmer disposes of certain assets such as land, buildings, shares, quota or entitlements he or she may be liable to capital gains tax but there may be ways to avoid it.

ITEMS LIABLE TO CAPITAL GAINS TAX

- Land and buildings (whether sold or transferred during the owner's lifetime).
- Assets of a business carried on in the state. This would include Single Farm payment Entitlements.
- Company shares.

RATES OF TAX AND TAX FREE AMOUNTS & EXEMPTIONS

The current rate of Capital Gains Tax is 33%. The tax free amount in any year amounts to €1,270 for an individual. Where the asset is in joint names or where both spouses individually make a disposal, they will each be entitled to the €1,270 exemption but it is not transferable from one spouse to the other.

ENTREPRENEURIAL RELIEF

This relief is available to the individual owners including farmers of a trade or business (companies or sole traders) in respect of the disposal of all or a part of that trade or business which they have owned and worked for at least 3 out of the previous five years. A Capital Gains Tax Rate of 10% will apply to the net chargeable gains arising on disposals of assets comprising the whole or part of a trade or business, subject to a lifetime limit of €1m on such gains. While the relief applies to share holdings in unquoted companies such as farming companies, it will not be available to the actual company in respect of business asset disposals by such entities. In other words, the company can only avail of the relief if its shares are sold rather than its individual assets. The effect of the relief is to reduce the rate of tax on a disposal of chargeable business assets from the standard rate of 33% to 10% for qualifying gains of up to €1m in a vendor's lifetime. The value of the relief can be up to €230,000. There is no age limit associated with this relief.

TRANSFERRING THE FAMILY FARM

Transferring the family farm can give rise to capital gains tax in certain circumstances. Such circumstances might arise if the period of ownership was not very long or the farmer transferring was under 55 years or over 66 years. However, where a farm is being transferred within the family, by a farmer who is over 55 to a qualifying son, daughter or a favourite niece or nephew, no capital gains tax will arise provided that the farm was owned, and was used by the transferor for farming purposes in the ten years prior to disposal. An exception applies where the land had been leased or rented prior to disposal. In order for such disposals to qualify, the following three conditions must be met:

- the land in question must have been leased for no longer than 25 years prior to disposal,
- the land must have been owned and used by the farmer for ten years prior to the initial letting of the land
- the transferee does not dispose of it within six years.
-

Where the farm is being transferred by somebody over 66 years there is an upper limit of €3m in value, above which Capital Gains Tax may apply.

Tip: The ten year requirement to have owned and farmed the land is vital. If at all possible do not lease or rent the land until you have satisfied this requirement

SELLING A SITE OR PART OF A FARM

Typically, where a farmer is over 55 years and has owned and farmed the land for 10 years (See Retirement Relief below), there will be no liability to Capital Gains Tax on the sale. However, where a farmer is under 55 years, selling a site is regarded as a part disposal and the calculation of gain will take account of the fact that the site had a greater value to start with when compared to an equivalent area of land elsewhere on the farm. In other words, the cost value of the site will reflect the impact that the sale of the site will have on the value of the remainder of the farm and this will reduce the gain and the resultant tax liability. While the sale proceeds of a typical rural site may not vary hugely, the tax liability will depend on a number of issues such as the valuation of the entire farm when acquired and the impact of the site sale on the value of the remaining lands.



SELLING THE FAMILY FARM

In the case of farmers under 55 years, where part or all of the family farm is sold, a liability to capital gains tax may arise. Whether or not this will occur will depend on a number of factors, principally:

- w Period of ownership
- w Sale proceeds
- w Valuation of farm at the time of acquisition
- w Amounts spent on capital improvements and additions during the period of ownership

The period of ownership is relevant as account is taken of inflation being a factor in the increased value of the land from the date of acquisition to 31 December 2003. To adjust the original cost or valuation of the farm to take account of inflation the original value is multiplied by the relevant indexation factor.

CASE STUDY – CAPITAL GAINS TAX COMPUTATION

Farmer Joe, a married man of 50 years of age who sold his 90 acre farm in late December 2016. He originally purchased the farm in May 1986 for €145,000. The following calculation sets out how his liability to Capital Gains Tax is arrived at.

	€
Sales proceeds	980,000
Less: Cost as adjusted for Inflation i.e. €145,000 x 1.637	<u>237,365</u>
Gross Gain	742,635
Less: allowable costs	<u>6,200</u>
Net Gain	736,435
Less: Personal exemption	<u>1,270</u>
Taxable	735,165
Tax @ 33%	242,604 (if not eligible for Entrepreneurial Relief – see above)
Tax @ 10%	73,516 (if eligible for Entrepreneur Relief)

Caution: If John had transferred the farm to his son/daughter the same liability would have arisen because he is not over 55.

TRANSFERRING A SITE TO A FAMILY MEMBER

No liability to Capital Gains Tax will arise on the transfer of a site to a son or daughter subject to the following conditions:

- it is for construction of the son or daughter's principal private residence.
- the market value of the site does not exceed €500,000
- the total area of site transferred must not exceed 1 acre
- the house is occupied for a minimum period of three years prior to sale.
- a parent can only transfer one site to each child for this exemption.

RELIEF FOR FARM RESTRUCTURING

A relief from Capital Gains Tax is available to encourage farm restructuring whereby the proceeds of a sale of farm land are reinvested for the same purpose. The sale and purchase of the farm land must occur within 24 months of each other and the initial sale or purchase transaction must occur within the period commencing 1 January 2013 and ending on 31 December 2019. The relief will also apply to farm land swaps subject to certification by Teagasc for all transactions seeking relief. The following points should be noted:

- Where there is a sale and purchase of qualifying land(s) within the relevant time frame that satisfy Farm Restructuring, then Capital Gains Tax is only payable on the sale price to the extent to which it exceeds the purchase price. Where the sale price exceeds the purchase price then the chargeable gain (i.e. the difference between sale and purchase price less allowable deductions) that accrues shall be reduced in the same proportion that the purchase price bears to the sale price.
- Where the sale takes place before the purchase, Capital Gains Tax will have to be paid in the normal manner. In such a case a claim for the relevant refund of the Capital Gains Tax paid can be made to the Revenue Commissioners at the time of the subsequent purchase, subject to both transactions meeting the eligibility criteria.
- Lands in joint names are eligible provided one of the joint owners is a farmer.
- The sale and purchase together must result in an overall reduction in the distance between parcels comprised in the farm, including land that has been leased for at least 2 years with a minimum of 5 years to run.
- The farmer availing of the relief must spend not less than 50% of his/her working time farming.
- Afforested land, peat lands and habitable dwellings do not qualify and the value of these should be deducted by the individual claiming relief when the relevant chargeable gain is being calculated.

Tip: The sale of an existing farm and the replacement of it by the purchase of another farm is considered Farm Restructuring for the purposes of the relief.

RETIREMENT RELIEF

This relief, which has already been referred to above, is available to farmers over 55 years and, despite the fact that it is called retirement relief, it does not mean that the farmer has to retire to avail of it. The principal condition of the relief is that the land was owned and farmed for the ten consecutive years prior to transfer or prior to entering into a letting/lease agreement. However, the following should be noted;

- in the case of transfers to a child (son, daughter, favourite niece or nephew) where the land was leased out or rented prior to transfer the maximum period in which the land can have been leased is 25 years prior to transfer. A child of a deceased child will qualify as a child for the purposes of relief,
- Where an individual is disposing of land used for farming to his or her child and the



consideration for its disposal consists of other land, the individual acquiring this other land will be treated as having acquired the land at the time and for the consideration that the “child” originally acquired it and to have farmed it for the same period that the “child” farmed it. In other words, no gain arises.

- In the case of a transfer or sale to unrelated parties, relief will also apply where the land has been leased for the purposes of farming and each such letting to the same person is for a minimum period of at least 5 consecutive years subject to a maximum of 25 years.
- For transfers post 1 January 2015, land which had been let under one or more than one conacre agreements in the previous 25 years shall not affect entitlement to retirement relief, where a letting of the land for a period of not less than 5 consecutive years commences on or before 31 December 2016. This rule does not apply to family transfers.

Retirement relief falls under two headings as follows;

Family Transfers: Providing the conditions as set out above are met, family transfers are free of Capital Gains Tax where the transferor is over 55 years. However, where the transferor is over 66 years an upper limit of €3m in respect of Retirement Relief will apply.

Non Family Transfers: Providing the conditions as set out above are met and, where the sale proceeds are less than €750,000, a farmer over 55 years may dispose of part or all of his farm free of capital gains tax. For individuals who have reached 66 years the limit of €750,000 is reduced to €500,000. Where disposal proceeds exceed €750,000 (or €500,000) there is marginal relief which is based on the excess being subject to 50% tax. This applies up to the point whereby taxing the actual gain at 33% (or 10% if entitled to Entrepreneur Relief) becomes more beneficial. In this context it is important to note that a subsequent disposal may result in a clawback of relief already gained. The €750,000/€500,000 is a lifetime limit.

Where an individual disposes of 'qualifying assets' within 12 months of his/her 55th birthday, Revenue will consider claims for relief where all the following conditions are present.

- The claimant is, due to severe or chronic ill health, unable to continue farming
- On cessation the claimant disposes of 'qualifying assets' and at that time the conditions for relief, other than the age requirement, are satisfied

An individual claiming relief on these grounds should provide medical evidence of the illness and outline the circumstances in which the relief is being claimed.

Retirement relief - surviving spouses

The period of use of the land by a deceased spouse will be taken into account in satisfying the ten year rule.

Retirement relief - shares in a family company

To qualify, the person disposing of the shares must have been a working director for a minimum period of 10 years during which he/she was a full time working director for not less than 5 years. The relief also applies to land, buildings and machinery which the individual has owned for at least 10 years provided that such assets were used by the company throughout the transferor's period of ownership and were disposed of at the same time and to the same person as the shares in the company.

Caution: Where land is in joint names of both spouses it will be necessary for both to satisfy the requirement that they owned and farmed the land for 10 years prior to transferring. Where either spouse does not meet one or both of these conditions it may be necessary to transfer the land back to the spouse who does satisfy the conditions in order for the full relief to apply.

COMPULSORY PURCHASE ORDER COMPENSATION

All compensation under a CPO, including injurious affection, is subject to Capital Gains Tax. The proceeds will be entitled to indexation relief which takes account of the fact that inflation will have accounted for some of the increased value of the land since it was acquired. It should be noted that the indexation factors applicable to disposals from the tax year 2003 onwards remains fixed for disposals in all future years. CPO

proceeds resulting from road construction or widening are assessable to tax in the year in which the CPO proceeds are received. The payment date for all other CPO disposals is the earlier of the time the authority concerned enters the land and the time at which the compensation is agreed.

SALE OF BASIC FARM PAYMENT ENTITLEMENTS

Gains made on the disposal of Basic Payment Entitlements are subject to Capital Gains Tax. However, where a person is eligible to avail of Retirement Relief, the sale proceeds will qualify for relief where sufficient land is disposed of at the same time and to the same person, that would support a claim to payment in respect of the number of entitlements disposed of. Where entitlements are sold without land and where the proceeds of sale exceed €37,500, the entire transaction will be liable to VAT

PAYMENT DATES FOR CAPITAL GAINS TAX

Disposal	Tax Due by
On or before 30 November in the tax year - Initial Period	15 December in that tax year
From 1 December to 31 December in the tax year -Later Period	31 January in the following tax year

SOME GENERAL POINTS ON CAPITAL GAINS TAX

- Where the land was acquired prior to 6 April 1974 the deemed cost is the market value that obtained on 6 April 1974.
- A farmer who owns land that was valued at £750 (€952) per acre on 6 April 1974 (which would have been a typical value for good land at that time) and now decides to sell, will only incur capital gains tax on sale proceeds in excess of €7,170 per acre. This is because of indexation relief. It should be noted that the indexation factors applicable to disposals from the tax year 2003 onwards remains fixed for disposals in all future years.
- Practicing farmers who are between 55 and 66 years can dispose of lands up to €750,000 in value without incurring any Capital Gains Tax. This limit is reduced to €500,000 for persons who are 66 or over.
- Capital Gains Tax does not arise in relation to assets owned at the time of death, regardless of who inherits such assets.
- There is no Capital Gains Tax on the sale of standing timber but the underlying land is liable
- Land purchased between the 6th. December 2011 and the 31st. December 2014 is exempt from Capital Gains Tax for any gain made after 4 years.
- Transfers between husbands and wives are not liable to capital gains tax.
- Losses can be transferred from one spouse to another.

SAME EVENT RELIEF

Where a liability to Capital Gains Tax and Capital Acquisitions Tax arise on the same event, a tax credit for the Capital Gains Tax paid is available against the CAT due. In certain circumstances a farmer could incur a Capital Gains Tax liability by gifting property while at the same time the recipient could also incur Capital Acquisition Tax. In such situations one tax can be offset against the other resulting in the liability being confined to the higher of the two taxes. The tax credit granted will be clawed back where the beneficiary disposes of the asset within 2 years.

Tip: In some circumstances it may not be feasible to transfer a farm during one's lifetime for tax reasons. The alternative is to will the farm to your chosen successor as assets acquired by inheritance are not subject to Capital Gains Tax.

CAPITAL ACQUISITIONS TAX



CAPITAL ACQUISITIONS TAX

Capital Acquisitions Tax (CAT) is the broader term covering gift tax and inheritance tax. Inheritance tax arises on the value of property passing to somebody on the death of another person. Gift tax arises on the value of gifts received from a living person.

WHO IS TAXABLE ?

With the exception of gifts or inheritances between husbands and wives and for certain charitable or public purposes, all persons can be liable. Inheritances from a son or daughter are also exempt provided that the son or daughter had taken a non-exempt gift or inheritance from a parent within five years prior to death.

RATE OF TAX

The current rate of tax is 33%.

SMALL GIFTS EXEMPTION

The first €3,000 of the taxable value of a gift (not an inheritance) is exempt from tax. The exemption does not apply to an inheritance. The exemption is limited to one gift per donor in a calendar year. In effect, a beneficiary can take €3,000 from the same donor in different calendar years and these gifts will be exempt from CAT. A beneficiary can take gifts from several donors in the same calendar year and the first €3,000 of each of those gifts will be exempt.

TAX FREE THRESHOLDS

The amount that can be received tax free will depend on the relationship to the donor. However, this tax free amount is not an annual allowance, it is a lifetime allowance, and all gifts and/or inheritances received since 5 December 1991 are aggregated. Gifts or inheritances received prior to 5 December 1991 are ignored.

Tax free amounts applying since 11th October 2016

Relationship to the donor/testator	Tax free amount
Husband or Wife	All
Child or Favourite Nephew/Niece or Parent ¹ (Group A)	€310,000
Brother, Sister or Child of a Brother or Sister (Group B)	€32,500
Any Other Person (Group C)	€16,250

¹If a parent takes an absolute inheritance from a child, that parent has a Group A threshold. However, if in the previous five years that child had received a non-exempt gift or inheritance from either parent, the inheritance taken by the parent will be exempt if it is taken on the death of that child

AGRICULTURAL RELIEF

Normally, tax is based on the market value of the property comprising the gift or inheritance, and allowance is given for all liabilities, costs and expenses that are properly payable out of the gift or inheritance. However a special concession known as **agricultural relief** applies where the recipient is a farmer as defined hereunder.

THE FARMER TEST

A farmer is defined as someone where, 80% of his or her gross property on receiving the gift or inheritance is “**agricultural property**”. In this case ‘gross property’ means the value before taking into account any debts. Since the 31st. March 2006 the individual does not necessarily have to be of Irish domicile, however from 1 January 2015 the individual must be and remain an active farmer for six years following receipt of

the gift or inheritance or alternatively lease the acquired land to an active farmer. People who cannot satisfy the 80% rule will still be eligible for the 90% reduction if the farm is being transferred as a going concern (i.e. is being actively farmed by the owner) and has been so for the past five years in the case of a gift or two years in the case of an inheritance. This relief is known as 'Business Relief'.

AGRICULTURAL PROPERTY

For the purposes of agricultural relief "agricultural property" includes the gross value of farm land and woodland situate in any member state of the E.U., crops or trees growing on such land, farm buildings, farm houses and mansion houses (as are of a character appropriate to the property), livestock, bloodstock and farm machinery. The definition of "Agricultural Property" also includes the capital value of the Single Farm Payment. In calculating the gross value of agricultural assets, a deduction is allowed in respect of any mortgage associated with the construction or renovation of the farmer's off-farm principal private residence which did not qualify as agricultural property. Shares in a company deriving their value from agricultural property do not qualify for agricultural relief but may qualify for 'business relief'.

To qualify for the relief the gift or inheritance must consist of agricultural property both at the date of the gift or inheritance and at the Valuation Date. The Valuation Date is the date at which the property is valued for tax purposes. In the case of a Gift, the Valuation Date is normally the date of the gift.

In the case of an Inheritance, the valuation date is normally the earliest of the following dates:

- the date the subject matter of the inheritance can be retained for the benefit of the beneficiary
- the date it is actually retained for the benefit of the beneficiary
- the date it is transferred or paid over to the beneficiary

EXTENT OF RELIEF

Agricultural relief entitles a farmer to a reduction of 90% in respect of the market value of all eligible farm assets being gifted or inherited. The availability of agricultural relief will ensure a nil tax liability in the vast majority of cases so it is vital that a person about to receive or inherit a farm should have as few non agricultural assets as possible.

AGRICULTURAL RELIEF CASE STUDY

Joe & Kathleen Farmer are planning to transfer their jointly owned farm and farm dwelling worth €800,000 in total to their daughter Kate. Kate is living with her husband in a house which they built on a site on the farm. Their house which is in joint names is worth €300,000 but has a mortgage currently standing at €120,000. In addition Kate and her husband have a rental property in Dublin worth €440,000 with a mortgage of €220,000. For the purposes of calculating Kate's entitlement to Agricultural Relief she is allowed her share of the mortgage to offset against her share of the family dwelling but she is not allowed deduct the mortgage from the rental property value. Kate has a car worth €20,000 and a joint savings account with her husband of €30,000. For the purposes of the calculation it is assumed that her parents house qualifies as a farmhouse and as such is classed as an agricultural asset but their own house does not qualify as a farmhouse. The following is the calculation of her gross asset value if one includes the farm:

Farm and farmhouse	€ 800,000
Share of dwelling (value net of mortgage)	€ 90,000
Share of rental property (gross value)	€ 220,000
Savings ½ share	€ 15,000
Car	€ 20,000
Total assets	€1,145,000

Total farm assets as a percentage of total assets is 69.86%. Accordingly, Kate does not meet the 80% requirement. The only realistic option open to her are to transfer her share in the rented property to her husband and this would get her over the 80% limit. Transferring her share in the family home would not be sufficient to get her over the line.

ENSURING ENTITLEMENT IN ADVANCE

A farmer who is considering willing or gifting his farm and cash reserves to his successor should establish that the successor will be eligible for agricultural relief after receiving the gift or inheritance. The successor may avoid a substantial tax liability if some or all of the cash reserves are converted to agricultural assets prior to receiving the gift or inheritance.

Tip: The person making the will or gift could direct that after his/her death (or granting the gift) such cash reserves be invested in whole or in part in qualifying farm assets which includes expenditure on renovation or reconstruction of the farm dwelling within a two year period.

ALLOWABLE DEDUCTIONS

Given that the full market value of the agricultural property is reduced by 90% in order to arrive at the agricultural value, any liabilities, costs and expenses properly payable on foot of the gift or inheritance must be similarly scaled down, i.e. by 90%, before being deducted from the agricultural value.

CLAWBACK OF RELIEF

Relief will be withdrawn;

- w where land acquired is sold or compulsorily acquired within 6 years from the date of gift or inheritance and is not replaced within one year or six years in the case of compulsorily acquired lands. Acquiring replacement land from a spouse to whom the said land had previously been transferred, is not permitted.
- w where land is disposed of between 6 - 10 years after the date of gift or inheritance and which had qualified for agricultural (or business) relief, the relief granted will be clawed back in respect of any development value relating to the land at the time of gift or disposal.

The extent of clawback is confined to the amount of proceeds not reinvested in qualifying assets within the reinvestment or replacement period.

Caution: Having qualified for Agricultural Relief there is an obligation on the recipient to become/remain an active farmer or alternatively lease the land to an active farmer.

BUSINESS PROPERTY RELIEF

Where a beneficiary is ineligible for Agricultural Relief, he/she may qualify for Business Property Relief which is similar in nature to Agricultural Relief in that it reduces the value of the business assets being transferred (including land but excluding the farm dwelling) to 10% but **there is no 80% agricultural asset test as referred to above**. However, in the context of farming assets, the relief is conditional on the transfer of the farming business as a going concern. This would exclude a situation where the farming had ceased in the five years prior to the transfer (two years in the case of an inheritance) and the land had been rented.

Caution: Where the farm is being operated as a limited company but the farmer owns the land, transferring the land without the shares in the limited company will not qualify the recipient for relief.

FAVOURITE NEPHEW RELIEF

In certain circumstances a nephew or niece of the donor who has worked on a full time basis on the farm will be deemed to have a relationship to the donor as that of a child. To be eligible the following conditions must be satisfied;

- w The donee or successor must be a child (including a step child or adopted child) of a brother or a sister.
- w The donee or successor must have worked 'substantially on a full time basis' for a period of five years prior to taking the gift or inheritance. 'Substantially on a full time basis' has been defined as to mean more than 15 hours per week where the farming is carried on exclusively by the donor, his spouse and the donee or successor. Otherwise the lower limit is 24 hours per week.

Caution: Favourite nephew treatment means that only the farm assets attract the Group A threshold. Other non farm assets attract the Group B threshold.

FAMILY HOME RELIEF

There is an exemption from Capital Acquisitions Tax (CAT) in certain circumstances where a dwelling house is acquired by gift or inheritance. In the case of an inheritance the relief applies to an individual where-

- he/she (the person inheriting) has no beneficial interest in any other residential property at the date of the inheritance.
- it was occupied by the beneficiary as his or her only or main residence for the 3 years preceding the date of the inheritance or, where the dwelling house for which the exemption is claimed is replaced by another dwelling house as the beneficiary's only or main residence. The combined period of occupation must have been at least 3 years of the 4 years preceding the date of the inheritance. Similar to a disponent, a successor who is absent from his or her principal private residence because of physical or mental ill health is deemed to have lived in the dwelling house at that time.
- it was occupied as the 'only or main' residence (Principal Private Residence) of the person bequeathing the house at the date of his or her death. A person can have only one 'only or main residence'. An exception to the residency requirement is made where a disponent is absent from his or her only or main residence, such as residing in a nursing home, because of physical or mental ill health at the date of death.
- A successor cannot claim the dwelling house exemption if he or she has an interest in another dwelling house at the date of the inheritance. Such an interest includes both full ownership or part ownership and applies to dwelling houses situated either in the State or abroad. Even a part share in another dwelling house, however small the share, would make a successor ineligible for the exemption. This is the position irrespective of whether the successor already owned or had an interest in another dwelling before the date of the inheritance or acquired the interest as part of the same inheritance.

The exemption also applies to residential properties that are gifted. Following the 2016 Finance Act changes, there are a number of important conditions that apply to gifts which do not apply to inheritances as follows;

- the property gifted does not necessarily have to be a Principal Private Residence.
- the recipient must be a dependent relative of the donor, i.e. individuals who are incapacitated to such an extent that they are unable to maintain themselves by earning an income from working.
- If not incapacitated, the dependent relative must be aged 65 or over.

A dwelling house will cease to be exempt in the following circumstances where,

- within the period of 6 years beginning on the date of an inheritance it is sold or otherwise disposed of by a successor subject to certain exclusions such as where the full proceeds of sale are invested in a replacement principal private residence or where the beneficiary was 65 years of older at the date of the inheritance or due to physical infirmity.

For the purposes of the relief a "Relative" is defined as a lineal ancestor, lineal descendant, brother, sister, uncle, aunt, niece or nephew of the disponent or the spouse or civil partner of the disponent.

Tip: Where the gift/inheritance will result in some level of liability, it is important to claim Family Home Relief, if available, as it grants 100% relief whereas Agricultural Relief will grant only 90% relief.

JOINT DEPOSIT/SAVINGS ACCOUNTS

Where a joint deposit or savings account holder dies and the balance in the account exceeds €50,000, it will not be possible for the surviving account holder to withdraw money until such time as he/she furnishes the financial institution with a certificate from the Revenue Commissioners certifying that there is no outstanding claim for inheritance tax for the deceased.

INHERITANCE TAX INSURANCE

For larger holdings the possibility of significant capital tax liabilities still exists. It is possible to make provision for such future liabilities by taking out a special type of insurance policy known as a Section 72 policy. The proceeds from such policies will only be subject to CAT to the extent that they are not required to pay tax. However, where such policies exist their necessity should be re-appraised by a tax consultant on a regular basis, as they can in certain situations render a beneficiary ineligible for agricultural relief, thereby creating a liability where no such liability would have arisen in the first place.

CAT PAYMENT DATES

<i>Date of Gift/Inheritance</i>	<i>Return & Tax Due by</i>
1 st Jan – 31 st August in the tax year	31 st Oct in that tax year
From 1 st September to 31 December in the tax year	31 st October in the following tax year nnnnn



CAT - GENERAL POINTS TO NOTE

- w If a person dies within two years of making a gift, it becomes an inheritance.
- w Agricultural relief will be withdrawn if the recipient or successor does not remain an active farmer (or the lands remain leased to an active farmer) for 6 years following the gift or inheritance.
- w There is no limit to the availability of Agricultural Relief regardless of the number of gifts or inheritances one receives.

- w People who do not qualify for Agricultural relief may qualify for Business Relief
- w Agricultural Relief is clawed back if the property is sold within 6 years of acquiring it. If the property is replaced within one year no clawback arises.
- w In the unfortunate circumstances of a farm reverting back to the parent as an inheritance where the son or daughter dies, no tax is payable provided the farm was transferred to the son or daughter within the previous five years. If the five year period has been exceeded the same allowance is available as would be available to a son or daughter providing the parents had not received any gift or inheritance since 5 December 1991, in which case the value of all gifts or inheritances are aggregated.
- w The value of Basic Payment entitlements may be reflected in the value of the holding and as such are entitled to Agricultural Relief.
- w No tax will arise on gifts of up to €3,000 from any one individual in any year regardless of the number of gifts received from different people.
- w Agricultural relief is not available where the property passing is shares in a company owning agricultural land, but Business Relief may apply.
- w If somebody has the use of land rent-free from another person the commercial rental value of the land is deemed to be a gift received by the person who is using the land and therefore may attract gift tax.
- w All gifts and/or inheritances received since the 5th. December 1991 are aggregated for the purposes of applying the individual's tax exemption threshold.
- w Woodlands that are inherited or gifted are liable to CAT but are eligible for agricultural relief provided the recipient satisfies the farmer test.



Other Taxes



Statutory Deductions

> Deductions that **must** be made:

- ☐ **PAYE**
- ☐ **PRSI**
- ☐ **USC – Universal Social Charge**

STAMP DUTY

Stamp duty is a tax by any other name that arises on instruments i.e. written documents, conveying certain assets from one person to another.

STAMP DUTY ON TRANSFER OF FARMING ASSETS

Duty is payable on the value of the land only. The transfer of livestock, machinery are not liable.

RATES OF DUTY ON LAND TRANSFERS

Transfers between closely related persons will attract a rate of 1% subject to the condition that the individual to whom the land is conveyed or transferred must, from the date of execution of the transfer, farm the land for a period of not less than 6 years, or leases it for a period of not less than 6 years to an individual who will farm the land. There is no Stamp Duty on transfers between spouses.

STAMP DUTY ON LEASES

Leases of agricultural land are currently subject to a rate of 1% of the first year's rent applies. The 2017 Finance Bill sets down that the 1% rate is due to be reduced to zero subject to Government order. Where the rent payable is considered by Revenue to be less than the market rent they will calculate the gift element of the lease over the entire term and charge the appropriate rate of stamp duty that would apply between non relatives, currently 6%.

Example:

Farmer Joe leases his 100 acres of land to his son for ten years at an annual rent of €6,000. However, because the market rent is known to be €170 per acre (€17,000 in total) Farmer Joe is deemed to be giving his son a gift to the value of €110,000 over the next ten years. The rate of stamp duty applicable to a gift of this amount is 6% or €6,600 in total.

STAMP DUTY -RESIDENTIAL PROPERTY

The rate of duty on residential property is 1% up to €1m and 2% above €1m.

INHERITANCES

Where property is acquired by way of inheritance, no stamp duty is payable

SPECIAL RELIEF FOR 'YOUNG TRAINED FARMERS'

A zero rate of stamp duty applies to farmers who are under 35 years of age and who have satisfactorily attended a course as set down by the Revenue Commissioners. The relief applies to sales and gifts where no power of revocation exists and runs until 31 December 2018. The exemption applies to the following categories of transferee:



- at the date of transfer, must be under 35 years of age and be the holder of a qualification as set down.
- at the date of transfer, must be under 35 years of age and be the holder of a letter confirming satisfactory completion of a course of training approved by Teagasc for persons who, in the opinion of Teagasc, are restricted in their learning capacity due to physical, sensory, intellectual disability or to mental health.
- where Teagasc certifies that any other qualification corresponds to a qualification as set down and that other qualification is deemed by the National Qualifications Authority of Ireland to be at a level on the National Framework of Qualifications, equivalent to that of the listed qualifications, then that other qualification will be treated as a qualifying one by the Revenue Commissioners for the purposes of the relief.

There are a number of important conditions worth noting:

- The young trained farmer must spend not less than 50% of his or her time farming the land for at least five years subsequent to the transfer or conveyance.
- He or she must not dispose of all or part of the lands for a period of five years unless such lands are replaced within one year of disposal.

REFUNDS OF STAMP DUTY - YOUNG TRAINED FARMERS

Where the education requirements have not been met at the time of transfer, stamp duty will be payable, however, a refund may arise where:

- the deed of transfer was executed and stamped and all the conditions for granting the relief are met.
- the minimum education requirements have been met within a four year period of the date of signing of the transfer.
- a claim for a refund is made within four years of attaining the education qualification.

POINTS TO NOTE

- No stamp duty arises on inheritances
- No stamp duty arises in transfers between husbands and wives
- No stamp duty arises on transfers made to former spouses under an order of the Family Law or Family Law Divorce Acts.
- No stamp duty arises on the sale of commercial timber but the underlying land is liable.
- The zero rate for young trained farmers continues until the 31 December 2015

UNIVERSAL SOCIAL CHARGE (USC)

The Universal Social Charge is applied to income after deduction of normal expenses including capital allowances. People over 70 years earning less than €60,000 per annum and people on medical cards will pay a maximum rate of 2.5%. Otherwise the maximum rate for everybody including persons over 70 is 8% (or 11% on self-employed earnings over €100,000).

Rates of Universal Social Charge

Income after Capital Allowances	Rate of Levy	Amount	Cumulative
€0 - €12,012	0.5%	€60.06	€60.06
€12,013 - €19,372	2%	€147.20	€207.26
€19,373 - €70,044	4.75%	€2,406.92	€2,614.18
€70,045 - €100,000	8%	€2396.48	€5,010.66
Over €100,000	11%	+11% of excess	+11% of excess

The following persons and sources of income are exempted from the charge:

- All Department of Social Protection Payments
- Income subject to DIRT.
- Legally enforceable maintenance payments made.
- People with an income of €13,000 or less.

The following sources of income are chargeable to the Universal Social Charge:-

- Income from farm or other profits (after deduction of Capital Allowances),
- Forest Premium
- Rent from any property in Ireland (before deduction of any Land Leasing exemption or designated area relief's),
- Income from share dividends from companies based in Ireland,
- Income from a Personal Pension Scheme,
- Income from legally enforceable maintenance payments received.

VALUE ADDED TAX (VAT)

Farmers, including farmers who trade as Limited Companies, who engage in Agricultural production, for example supply of milk, supply of livestock, sale of certain crops etc. are not obliged to register for VAT irrespective of their turnover. In turn, no credit is allowed for VAT incurred on purchases and expenses in relation to the trade, instead farmers receive what is known as a 'flat rate refund' of VAT amounting to 5.4% (from 1st. January 2017) on the sale of farm produce as a form of compensation for not being able to claim input VAT on purchases.

REGISTERING FOR VAT

Although not required, farmers are allowed register for VAT and claim VAT on purchases from suppliers and service providers at 23% and 13.5%. When a farmer registers for VAT they then cease to be a flat rate farmer and are liable to account for VAT on sales of livestock, milk and grain along with most services provided by them regardless of turnover. Farmers registered for VAT are obliged to:

- Prepare and keep proper VAT records in order to make a regular Revenue return
- Issue invoices to customers for all sales
- Obtain invoices for all purchases to claim Vat credits



SUPPLYING SERVICES

Many farmers also supply agricultural services, such as agricultural contracting, in addition to carrying on a farming business and are obliged to register and account for VAT if the receipts from such agricultural services exceed or are likely to **exceed €37,500 in a 12 month period**. A full list of services can be found on Revenue website www.revenue.ie.

Caution:

Once a farmer is VAT registered he/she ceases to be entitled to receive the 'Flat Rate Addition' and should notify his co-op, grain merchant or meat factory of the fact that he is registered. VAT refunds can only be claimed for up to four tax years prior to the year in which the claim is made.

VAT CLAIMS BY UNREGISTERED FARMERS (VAT 58)

Unregistered farmers are entitled to a refund of VAT incurred on capital expenditure (not repairs) on buildings and land improvement and also on certain items of fixed plant such as bulk tanks, milking facilities, automatic scrapers etc. Vat refunds are not allowed on items that constitute repair of a building or machine. Refunds can be claimed by submitting a form VAT 58 which can be downloaded from the Revenue Commissioners website at www.revenue.ie. You must also submit the original invoices with your claim.

LOCAL PROPERTY TAX

The Local Property Tax (LPT) is collected by the Revenue Commissioners and all owners of residential properties, including rental properties, are responsible for payment of the tax. The rate of the tax is 0.18 per cent of market value up to €1 million and 0.25 per cent on values above that level.



UNINHABITABLE/UNOCCUPIED PROPERTIES

If a residential property is suitable for use as a dwelling but is unoccupied, it is liable for LPT. However, if the property is not suitable for use as a dwelling, it is not liable for LPT and you do not need to make an LPT return but you should contact Revenue if you have not already done so. You should include relevant supporting documentation, for example, an engineer's report. Revenue will consider your claim and make a decision using the documentation you provide.

CAUTION: *If you have not paid your LPT you may incur a surcharge for the late submission of your income tax return, regardless of whether the income tax return is submitted on time and/or you may be refused a tax clearance cert.*



TAX PITFALLS



PITFALLS TO BE AVOIDED

SURCHARGE ON LATE SUBMISSIONS

Where a tax return is submitted less than two months after the return filing date, currently the 31st. October (or mid November in the case of returns filed on line), there is a surcharge of 5% of the tax liability, subject to a maximum surcharge of €12,695. Where a tax return is made two months or more after the return filing date, a higher surcharge of 10% of the tax liability will apply.

Caution: Even though the income tax return may be filed on time, this surcharge may also apply where a person has not filed all outstanding Local Property Tax (LPT) returns or has not paid whatever LPT is due.

INTEREST ON LATE PAYMENT OF TAX

Interest on late payment of tax is chargeable at 0.0219% per day or 8% per annum. In the normal course of events in order to avoid interest charges, the amount of preliminary tax paid for a tax year must be equal to or exceed the lower of:

1. 90% of your final liability for the tax year, or
2. 100% of your final liability for the previous tax year, or
3. 105% of your final liability for the pre-preceding tax year. (This option is only available where preliminary tax is paid by direct debit and does not apply where the tax payable for the pre-preceding year was nil).

Where you are in the happy position that Revenue owe you a tax refund, interest amounts to 0.011% per day or 4.0% per annum and must be made within four years of the year in which the refund arises



REVENUE ENQUIRIES, AUDITS & INVESTIGATIONS

Most people have a fear of any form of communications from Revenue, however nowadays a letter from the Revenue audit section may not automatically mean an audit. In many instances Revenue may request a meeting with the tax payer to clarify certain aspects of a prior tax return and determine if an audit is actually necessary. This is described as an 'aspect review' and if the tax man is satisfied with the answers and information provided an audit will be avoided. Such reviews generally arise from omissions or inconsistencies in the annual return.



Where an audit does arise, the Revenue auditor will always insist on holding the audit at the farmer's residence, which in itself will reveal a certain style and standard of living. He/she will always have some work done on the returns submitted and will have targeted certain areas for particular attention. He/she will require sight of all the documents from which the

accounts were prepared and will not be happy if all purchases and sales are not supported by evidence of receipt or payment. Particular attention will be paid to the following:

- Casual wages claimed – such claims will not be allowed
- Family wages claimed – evidence that wages are actually paid
- Purchases made prior to the year-end date – substantial feed or fertiliser purchases made towards the end of the accounting year may be scrutinised to see if such purchases are reasonable and could have been consumed or used before the year end.
- Stock values – must conform with Revenue rules.
- Stock movements – Department of Agriculture herd profile will be required.
- Drawings – the pattern and extent of actual cash and household expenditure will be scrutinized
- Claims under the heading 'Repairs & Maintenance' must be just that and not capital expenditure.
- Creditors – verification will be sought

NOTIFICATION OF AN AUDIT

You will be notified of an upcoming audit with an official Letter from your local tax office that must contain the following Information in order to be valid:

- Include wording "Notification of Revenue Audit"
- State Date, Time and Location of Audit
- State Scope of Audit, Relevant tax heads to be inspected and Relevant Years
- Name of person Audited
- Details for making a prompted Voluntary Disclosure
- State whether an e-audit will take place
- Name of Auditor

COPING WITH AN AUDIT

As already stated, the revenue auditor will always insist on holding the audit at the farmer's residence. It is always a good idea to have your accountant or Tax advisor present and ensure a pre-audit meeting is held with them. Points to cover at meeting:

- The format of the Audit
- Identify any problem areas of concern
- Deciding whether a Voluntary Disclosure is required
- Calculation of any tax due along with Interest and Penalties if required

DEALING WITH PROBLEMS

If you know that your tax return for the year that is subject to audit is not correct you have the option of making a **Prompted Voluntary Disclosure**. This option is available to the Farmer after a Notice of Revenue audit has been received. It does not absolve you from interest but may result in a reduction in penalties. It will also avoid publication. A notice of intention to make a Prompted Disclosure should be made within 14 days of the Notice of Audit. The farmer will be allowed a further 60 days to prepare the disclosure. A Prompted Voluntary Disclosure can also be made at the time of the first meeting of the audit process before books and records are inspected.

Caution: A disclosure will not qualify if the Audit has started after the initial meeting or the disclosure is incomplete.

SANCTIONS

Where a tax payer is found to have under paid tax, various sanctions may be applied. Interest on late payment will be due in all circumstances, penalties will depend on the seriousness of the offense and publication will depend on the amount of tax, interest and penalties imposed.

PENALTIES

Penalties will not be applied in all cases and will depend on the seriousness of the offense or on whether a **Qualifying Disclosure has been made**. If in the course of the audit the auditor finds an error that they believe to be innocent and the liability is less than €6,000 and based on the taxpayers record no penalty will apply, only interest. Similar provisions will apply if a difference is found due to a technical adjustment on an interpretation by the taxpayer or his agent.

PUBLICATION

If a taxpayer is discovered to have underpaid tax and the settlement (including tax, interest and penalties) totals €33,000 or more, the taxpayer will face having the result of the audit published in Iris Oifigiúil, (Irish State Gazette), national newspapers and the Revenue website. Publication can be avoided where a qualifying disclosure is made and accepted before the audit has commenced or where the penalty does not exceed 15% of the tax ultimately due or where the total of tax, interest and penalty is less than €33,000.

Tip; Where a tax payer has not had a notification of an audit and is worried about some deficiency in a prior tax return, they may make an Unprompted Qualifying Disclosure which will minimize penalties on underpaid tax.



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QUALIFYING FOR A STATE PENSION

Most farmers will qualify for the Contributory Old Age Pension which is currently worth €243.30 per week at 66 years and is not means tested. Additionally, the farmer's spouse may be entitled to an adult dependent



allowance which is worth a further €162.10 per week if the spouse is under 66 years or €218.50 if 66 or over, however this benefit is means tested. Entitlement to the pension is conditional on having paid PRSI. With the exception of persons claiming Unemployment Assistance or Farm Assist on a continuous basis, any self employed person with an income of €5,000 or more per annum is liable to pay PRSI on their profits which apart from entitling them to the old age pension may also entitle them to a

Widows Pension, Maternity Benefit, Bereavement Grant or Contributory Orphans' Pension.

INCOME LIABLE TO PRSI

The following income is liable to PRSI:

- income from farm or other profits (after deduction of Capital Allowances),
- rent from any property in Ireland (before deduction of lease exemption),
- income from which tax has already been deducted such as, annuities, bank or building society interest, maintenance payments,
- income from share dividends from companies based in Ireland
- Forest Premium.

PAYMENT OF PRSI

PRSI is chargeable at 4% subject to a minimum payment of €500 per annum. There is no upper income limit.

VOLUNTARY CONTRIBUTIONS

Once five years PRSI has been paid, a person may become a voluntary contributor if they cease to be compulsorily insured because of giving up farming or because of earning less than €5,000 per year. To be eligible to make voluntary contributions you are required to already have made 10 years (520) contributions when applying. Applications to become a voluntary contributor should be made within one year of the end of the tax year in which you ceased to be compulsorily insured. This may not be possible in some cases as it could not have been known in time that income had fallen below the €5,000 limit. In such circumstances a case should be made to the Department of Social Protection. Where no contributions are made because of any of the circumstances outlined, a person may be missing out on vital contributions to ensure full entitlement to contributory old age and survivors pensions or guardian's payment. It is generally not possible to back pay such contributions as the time limit for applying is strictly adhered to. The rate of voluntary contribution is €500.

PRSI PAYMENTS FOR THOSE EXEMPTED FROM MAKING A TAX RETURN

Where a self employed individual on low income is notified by the Inspector of Taxes that he or she is not



required to make a tax return, they are obliged to apply to Social Welfare to become contributors to PRSI which will safeguard their eventual entitlements. This type of contributor is described as a '**no net liability contributor**' and the total annual contribution is currently €310. This amount can be paid quarterly, half yearly or annually. For people who are in arrears, there is no time limit in operation in which to bring their contributions up to date. It will of course mean

paying all arrears applying to any contribution years missed out since 1988/89 which can in certain circumstances attract an interest charge. Further information on voluntary or 'no net liability contributions' can be had from the Department of Social Community and Family Affairs, Government Buildings, Cork Road, Waterford. Tel: 1890 690 690.

PENSIONS FOR BOTH SPOUSES

Farming spouses may be entitled to a pension in their own right which could be worth an additional €1,290 per annum when they are both aged 66 or over. If the spouse can claim to have been effectively in partnership with her husband in the running of the farm, he/she can make an application to be granted PRSI credits in her own right. This will not affect her/his spouse entitlement to the pension.

Tip: In certain cases where there is an age difference between the two spouses, it may prove more costly for a farming spouse to apply for a pension in her/his own right as she/he will not be entitled to the Adult Dependent Allowance in the years prior to them reaching 66 years.

