

A photograph of a rural landscape featuring a large herd of cows grazing in a green field. In the background, there are trees and rolling hills under a clear sky. A decorative horizontal bar with segments of green, yellow, orange, and brown is positioned across the middle of the image.

Rural Economy
& Development
Programme

Guidelines for Long-term Land Leasing

This document is intended as an information document for farmers and landowners who are considering long-term land leasing.

Foreword



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This booklet on long-term land leasing is one of a series of booklets on farm business structures produced by the Farm Management Unit in Teagasc. Other booklets in the series are: Guidelines to Contract Heifer Rearing and Guidelines to forming a forming a Registered Farm Partnership.

Long-term land leasing has operated in Ireland since the mid 1990's. As a farm business structure, land leasing is growing in importance year on year. The enhanced income tax incentives and security of tenure for the lessee are proving to be key drivers. Recent data from Revenue show that the number of long-term land leases has increased from 3,590 in 2011 to 10,820 in 2018.

Teagasc has developed template legal agreements and also provides training for professionals in all of the collaborative structures including: contract heifer rearing, registered farm partnerships, share farming and cow leasing. These templates provide the framework by which farmers can create collaborative business arrangements that are robust enough to deal with all eventualities. This enables farmers to enter into agreements with confidence.

Template legal agreements for long-term land leasing are available from your solicitor. The IFA have also produced a master lease template. As with all templates, they must be tailored to reflect an individual's own circumstances. Land leases should not be entered into without the independent legal advice of your solicitor and advice on taxation from your accountant.

Further information on Collaborative Farming Options is available on www.teagasc.ie at the following link:

<https://www.teagasc.ie/rural-economy/farm-management/collaborative-farming/>

Guidelines for Long-term Land Leasing

This document is intended as an information document for farmers and landowners who are considering long-term land leasing.

(as of Publication date December 2020)*

Why Landowners (lessors) should consider long-term land leasing?

- Enhanced income tax relief incentives
- Poor profitability of existing enterprise.
- Stable long term income from farm assets
- Opportunity for land improvement, through increase in soil fertility status, establishment of farm roadways, drainage etc.
- Qualify for Capital Gains Tax relief on transfer or sale of the farm
- Successors not yet ready to farm
- No identified Successor
- Retiring from farming.

Why active farmers (lessee) should consider Long-term land leasing?

- Security of tenure.
- Enables longer-term planning of the farm business.
- May provide opportunities for expansion or change of enterprise
- Provides the opportunity to invest and improve the land.
- Farm buildings may come with the land that will reduce capital investment in housing, slurry and silage storage facilities.
- More cost effective than purchasing land.

* Note: Although the author and Teagasc have made reasonable efforts to ensure that the information in this book was correct at time of going to press, the author and Teagasc do not assume and hereby disclaim any liability to any party for any loss, damage, or disruption caused by errors or omissions, whether such errors or omissions result from negligence, accident, or any other cause. Reasonable efforts have also been made to ensure the reliability of websites listed in this publication but inclusion of these cannot be taken as an endorsement of these sites.

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1. Land Leasing

A land lease is a written legal agreement between a lessor (landowner) and lessee (active farmer). A lease agreement must be signed by both parties. The lease sets out the obligations of the parties involved during the period of the lease and so provides useful legal protection to everyone concerned.

Lessor (Owner): The lessor is the person who owns the land and wishes to lease it out to another person.

Lessee (Tenant): The lessee is the person who leases in the land with a view to farming it.

For a lease to be a certified legal agreement it must be signed by all parties. Signatures on the lease must be witnessed by an independent person(s) and in order to avail of the enhanced income tax incentives, the Lease must be stamped by Revenue.

A lease is a written document that specifies the terms and conditions of the lease arrangement only for the period set out in the lease. While template lease agreements are widely available, it is advisable to seek the advice of a solicitor to tailor the lease agreement to the needs of both the lessor and the lessee.

Some basic details need to be included.

- Term of the lease
- Annual payment and payment procedure
- Rent review clause
- Details of the land use and the upkeep of the land
- Insurance
- Treatment of Basic Payment Entitlements
- Clause preventing subletting
- Lease must be stamped by Revenue
- Farm Buildings should be dealt with separately (renunciation clause) so that the tenant does not accrue an automatic right for renewal. It is important to seek detailed legal advice from a solicitor in relation to this.

Property Services Regulatory Authority

All land leases must be registered by the lessee with the Property Services Regulatory Authority. This process can be completed by the lessee or by a solicitor or auctioneer. There is no charge on registering the lease. Further information is available at <https://www.psr.ie>

Stamp Duty

The lease must be stamped by Revenue and registered with the Property Services Regulatory Authority.

Where the lease is six years or greater the lease is stamped at a zero value and no stamp duty is payable, subject to the lessee meeting the active farmer requirements see page 14.

Where the lease is five years the stamp duty is charged at a rate of 1% of the annual lease fee (please see Section 101A(3)SDCA 1999 for more details). This fee is paid by the lessee. This should be paid within 30 days of the commencement of the lease. A solicitor can complete the stamping process on the Revenue website (ROS) and attach the certificate to the lease.

Lease Duration

The duration of a lease can be long-term for a period of more than 5 years or short-term for a period of less than 5 years. However, in order to qualify for the income tax incentives, land must be leased for a minimum of 5 years but can be leased for up to 25 years. The lease duration determines which income tax threshold will apply.

Where a landowner is entering into a lease of greater than 15 years, legal advice should be sought from a solicitor. For further information, see Property Registration Authority of Ireland at <http://www.prai.ie/leases>.

Note: that where leases are entered into to meet conditions associated with certain other tax reliefs or schemes then the minimum lease term may be longer than 5 years

Ineligible Leases

In situations where two or more farmers exchange lands by way of long-term leasing, this land exchange is not eligible for the income tax incentives under the regulations. E.G. Farmer A, leases a block of land to Farmer B and in return Farmer B leases a separate block of land back to Farmer A. Because both leases involve the same two farmers, the exchange is not eligible. (See Section 664 (b) (iii) of Taxes Consolidation Act).

Connected Person Rules

A condition of the Land Lease Income Exemption (s664 TCA 1997) is that a qualifying lessee (a person who enables the lessor to be eligible for the income tax incentives) cannot be connected to the lessor or with any of the lessors if there is more than one.

This means that a lessor is NOT entitled to relief where he lets land to -

- His/her immediate family (e.g. grand-parents, parents, brothers, sisters, children, grand-children, etc.),
- The spouse of the lessor or the immediate family of the spouse,
- A daughter-in-law is connected with her father-in-law; a son-in-law is connected with his father-in-law
- A person with whom the lessor is in partnership or spouse of that person or the immediate family of that person or spouse of that person,
- A company which the lessor, or the lessor and persons connected with him, controls
- 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.
- A husband and wife in divorce proceedings are regarded as connected until the divorce is final.
- A niece/nephew is **NOT** connected with an aunt/uncle for the purposes of this relief, but where leases from uncle to nephew who is in partnership with uncle's brother (father-son partnership) is also not eligible.

Favourite Niece/Nephew Status

As can be seen from the previous section, land that is leased between an aunt/uncle and niece/nephew can qualify for the tax incentives in accordance with the regulations. This is because a niece or nephew is deemed not to be connected to their aunt or uncle.

However, it is important to note that where this occurs, it may have consequences in relation to Capital Acquisitions Tax and qualification as "favourite niece or nephew". A favourite niece or nephew has the same status as a son or daughter in relation to life-time gift allowances against Capital Acquisitions Tax.

Where the leased land is likely to be transferred at a future date (by gift or inheritance) from the aunt/uncle to the niece/nephew, it may jeopardise their ability to qualify as "favourite niece/nephew".

To qualify as a favourite niece or nephew, they must work in the business of the aunt/uncle for either 15 or 24 hours per week depending on the scale of the farm enterprise. Therefore, where the aunt or uncle has leased their entire farm business to the niece or nephew, it cannot be said that they work for their aunt or uncle as they will have ceased farming by leasing out the land. That is to say, by leasing in the land, the farm business is now the business of the niece or nephew rather than the aunt or uncle.

Limited Companies

Where the lessee is farming through a limited company, the company qualifies the lessor for the income tax exemption. A person connected with the company cannot lease land to his/her connected company and avail of the leased income exemption.

Age Limit

There is no age limit on the lessor or lessee.

Capital Gains Tax (CGT)

CGT is a tax on the gain in value of land from when a person takes first possession of it to the value when they sell or transfer the land. The rate of CGT is subject to change and should be checked with www.revenue.ie. One of the main tax reliefs for CGT is Retirement Relief, the rules of which are not outlined here but can be viewed on the Revenue website.

Long-term land leasing is treated more favourably than short term renting (conacre) for CGT purposes when it comes to transferring the land by sale or gift. Leasing land using a minimum 5 year lease potentially ensures that the owner will qualify for Retirement Relief against CGT provided he/she has farmed the land for the 10 years prior to the first lease. It is important to note, that the maximum lease period is 25 years to ensure that the owner qualifies for retirement relief on the subsequent transfer or sale of the farm.

Where land has been rented on the conacre system for more than 10 years, the owner will not qualify for Retirement Relief when the farm is sold or transferred by way of gift other than to a child of the owner.

Capital Acquisitions Tax & Agricultural Relief

A person who inherits land through a will or through a life-time transfer may be liable to pay Capital Acquisitions Tax (see Appendix 2). The main relief against this tax is called Agricultural Relief. The relief is primarily based on an asset test where 80% of the assets owned on the date of transfer (including the gift received) must be agricultural assets.

Having availed of Agricultural Relief, landowners who inherit land but do not wish to farm it themselves, can lease the land to a third party to satisfy the requirements of claiming Agricultural Relief. The lease must be for a minimum period of 6 years.

Where the active farmer condition for Agricultural Relief is being fulfilled by leasing the land then the section dealing with Agricultural Relief (section 89(1)

CATCA) specifically provides that the *whole or substantially the whole of the agricultural property, comprised in the gift or inheritance* is to be leased. Revenue accepts that substantially the whole of the property means at least 75% of the property by value.

In effect this means that if leasing is used at all as an option then the total asset value of the land leased must be at least 75% of the total value of the agricultural assets on which Ag relief was claimed. Therefore, you could only farm less than 25% of the total assets received where the option to lease some land is chosen.

Capital Acquisitions Tax & Business Asset Relief

In situations where the beneficiary of a land transfer or inheritance of land is unable to meet the requirements of Agricultural Relief, they may apply for Business Asset Relief against Capital Acquisitions Tax. In order to avail of Business Relief the transferor must have been operating the farm assets as a business. Where the land is rented out by the transferor on a conacre arrangement, then the lands may be regarded as relevant business property as per Section 93(3) of CATCA 2003. In contrast, the leasing of the lands on a long term lease may be regarded as falling within the exclusion of “making or holding investments” and the land may therefore not be regarded as “relevant business property” for the purposes of Business Relief.

Potential lessors of land whose future intention is to transfer the land via gift or inheritance would be advised to consult their tax adviser on the tax implications for this transfer of the proposed land lease.

Stamp Duty on Land Transfers

Stamp duty on non-residential land transfers is charged at 7.5% (October 2019) of the value of the asset. One of two reliefs can be claimed against this tax depending on the circumstances. They are: *Young Trained Farmer Relief* and *Consanguinity Relief*. Both of these reliefs have specific qualifying criteria (see Appendix 2) that must be adhered to and these may impact on the ability to long-term lease the land to a third party in order to avail to the income tax incentives. A landowner who has received land in a life-time transfer and claimed the Young Trained Farmer Relief is bound by the terms of the relief to farm the land for 5 years from the date of transfer. Therefore, landowners who receive land in a life-time transfer and wish to lease land out to active farmers to avail of the income tax exemption, may have to pay the Stamp Duty on the land transfer in order not to be bound by the conditions of claiming the Stamp Duty relief.

2. Income Tax Incentives

The Leased Income Tax Exemption tax free thresholds as set out in the Taxes Consolidation Act 1997 are shown in Appendix 1. These enhanced thresholds provide further encouragement for landowners and retiring farmers to consider long-term land leasing over short-term renting (conacre). If land is co-owned between a husband and wife, the relevant thresholds shown in Appendix 1 can be doubled. Legal proof of co-ownership, such as a land registry folio naming both husband and wife as co-owners is required to support an application for a doubled threshold.

Included Income

Subject to the income thresholds in Appendix 1 and the duration of the lease, the annual leasing income and the Basic Payment Scheme entitlement value can be added together as included income. A lessor (landowner) who is availing of the income tax incentives is still liable for the payment of universal social charge (USC) and pay related social insurance (PRSI).

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

It is therefore essential that the landowner should discuss with their Accountant/ Dept. of Employment Affairs and Social Protection and Revenue in relation to PRSI contributions and Universal Social Charge payable on this income.

More details on the rules and procedure for making Voluntary PRSI Contributions is available on the DEASP website here - <http://www.welfare.ie/en/Pages/Voluntary-Pay-Related-Social-Insurance-PRSI-Contributions.aspx>

Basic Payment Entitlements

Basic payment entitlements can be leased with the land to the lessee. Where entitlements are to be leased with land this should be detailed in the lease agreement. An on-line Transfer of Basic Payments Scheme Entitlements Form will need to be completed by the lessor and the lessee in order to facilitate the transfer of entitlements for the duration of the lease. This on-line form is available through the Department of Agriculture & Food website AgFood.ie and can be completed with the help of your agricultural advisor.

Under the current CAP scheme, Basic Payment Scheme Entitlements can be leased with land or leased without land to a different party to the person leasing

the land. Where this occurs the lessor cannot avail of the income tax incentive on the value of the entitlements.

Protecting your Basic Payment Entitlements

It is advisable to insert a clause in the lease agreement to cover the compensation of the lessor if for any reason the lessors basic payment is forfeited to the National Reserve by the lessee under the 2 year use it or lose it rule.

Greening is part of the basic payment entitlements from 2015 onwards and it is important to discuss this element of the payment and if this part of the BPS epayment is to be returned to the lessor, a clause should be inserted in the lease to account for this.

It is also worth considering inserting a clause into the Lease that in the event of the tenant not receiving his or her basic payment entitlements that this should not affect the agreement in place and that the monies are still due and owing to the lessor.

A clause should also be inserted into the lease that the tenant is to process and lodge all paperwork with the Department of Agriculture, Food and the Marine by the required deadline for the purposes of triggering any entitlements payable and to deal with any queries that the DAFM may raise in connection with the application quickly.

In relation to the treatment of leased land and the drawing down of basic payment entitlements it should be noted that basic payment entitlements may be subject to change under future CAP reviews or agreements.

A new CAP budget is due to be agreed in the near future. This may alter terms and conditions of the usage of entitlements, their value and ownership.

3. Examples

Example 1*:

John and Mary are looking at leasing the land out to a third party on a long-term basis to avail of the income tax incentives. John is the sole owner of the 32 hectare farm. The following table illustrates the potential income tax due on leasing the land long-term and availing of the income tax incentives.

Net Lease Income			
32ha @ €500/ha (plus lease of 32 entitlements at €260/ha)	Total Lease Income (Land & Entitlements)	Lease Income Threshold for 10-15 year lease	Income Tax Payable With Lease income Exemption
Long term lease (10-15 years)	€24,320	€30,000	€0

Example 2*:

James and Denise want to lease out their 85 hectare farm for a 16 year period to a third party and avail of the income tax incentives. They are co-owners of the farm (they own the farm jointly between them).

Net Lease Income			
85ha @ €490/ha (plus lease of 85 entitlements at €320/ha)	Total Lease Income (Land & Entitlements)	Lease income Threshold for >15 year lease	Income Tax Payable With Lease income Exemption
Long term lease (>15years)	€68,850	€80,000	€0

**** NOTE:** The income tax exemption is doubled in this case as James and Denise are co-owners of the farm.

Example 3*:

Séan is a farmer who has reached his 60th birthday. He wishes to lease out part of his land to his nephew* Declan for 10 years and avail of the income tax incentives on the Lease Income (€445/ha) and the value of his entitlements (€450/ha). Sean's farm consists of 54 hectares. The main block of 40 hectares will be leased to Declan and he will continue to farm 14 hectares around the house himself.

Net Lease Income			
40ha @ €445/ha (plus lease of 40 entitlements at €450/ha)	Total Lease Income (Land & Entitlements)	Lease income Threshold for 10-15 year lease	Income from leased lands that will be taxable
Long term lease (10-15 years)	€35,800	€30,000	€5,800

*** NOTE 1:** Favourite nephew: A lease in this situation may compromise Declan's ability to qualify as a "favourite nephew" under capital acquisitions tax (agricultural relief) if Séan intended to transfer the land to Declan at a later date (see www.revenue.ie for the definition of favourite nephew).

Example 4*:

David is 33 years old and he has been gifted the family farm by his parents in a life-time transfer. He works full time as an engineer and paying tax at the high rate. The farm consists of 28 hectares of good quality grassland. A neighbour who is involved in dairy farming has approached him about leasing out the land for 15 years and he has decided to lease the land to avail of the tax relief incentives.

Net Lease Income			
28ha @ €470/ha (plus lease of 28 entitlements at €300/ha)	Total Lease Income (Land & Entitlements)	Lease income Threshold for 10-15 year lease	Income Tax Payable With Lease income Exemption
Long term lease (10-15 years)	€21,560	€30,000	€0

***NOTE 1:** In order to avail of the income tax exemption and not be bound by the terms and conditions of Young trained farmer relief, David had to pay the Stamp Duty (currently 1% having availed of consanguinity relief) on the land transfer.

Appendix 1: Income Tax Thresholds

Tax Incentives for Long-term Land Leasing	
Term of Lease	Max Tax Free Income/year
5-7 yrs	€18,000
7-10yrs	€22,500
10-15 yrs	€30,000
>15 yrs	€40,000

Section 664 Taxes Consolidation Act 1997

Appendix 2: Active Farmer Status Active Farmer Conditions

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

1. Capital Acquisitions Tax
2. Stamp duty

Capital Acquisitions Tax

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

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

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

OR

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

OR

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

Stamp Duty

When claiming Consanguinity relief (this relief reduces the stamp duty payable from 7.5% (October 2019) of the market value to 1% of the market value on the date of transfer).

- There is no upper age limit on the transferor. (The previous age limit of 67 years has been removed in the Finance ACT 2017).
- The transferee must, for a period of 6 years from the date of transfer **EITHER:**
- Farm the land on a commercial basis and hold (or within a period of 4 years obtain) a recognised agricultural qualification

OR

Spend 50% of their normal working time farming on a commercial basis (including the transferred land).

- Lease the land to a farmer who has a recognised agricultural qualification

OR

spends 50% of their normal working time farming on a commercial basis (including the transferred land).

As with all major decisions involving assets such as land and buildings etc, Land leases should not be entered into without the independent legal advice of a solicitor and advice on taxation and financial planning from an accountant.



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