

Tax Angles when Planning a Farm Transfer

Transferring the Family Farm

November 2020

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Farm Transfer – Tax angles for the TRANSFEROR

- Transferor is the current owner of the farm asset to be transferred
- Main tax potentially applying to the Transferor is **Capital Gains Tax (CGT)**
- May also be some income tax implications where the Transferor is ceasing farming completely

Retirement Relief from Capital Gains Tax (CGT)

- You **do not** have to **retire** after availing of this relief
- Main conditions and limits applying to Retirement Relief
 - Transferor must be **at least 55 years of age**
 - Must have **OWNED and USED** the assets for the business for **at least 10 years**
 - No upper relief limits on value where the transfer is to a child and transfer takes place **before** the Transferor reaches **66 years**
 - » Transfer to **other than a child** of the transferor **before 66 - €750,000 limit**
 - Upper limits on the maximum value of assets transferred that can qualify for this relief if the transferor is **over 66 years of age** and transfer is to either a child or other than to a child of the transferor
 - Child transferee must retain assets for at least **6 years to avoid clawback** of relief

Capital Gains Tax – other reliefs

- Annual Exemption - €1,270
- Indexation Relief
- Entrepreneurial Relief
- Site to Child Relief
- Principal Private Residence relief
- Transfers between Spouses

Farm Transfer – Tax angles for the TRANSFEREE

- Transferee is the receiver of the farm asset(s)
- Potential taxes liable on the Transferee
 - **Capital Acquisitions Tax (CAT)**
 - **Stamp Duty**

Capital Acquisitions Tax (CAT)

- Capital Acquisitions Tax could potentially apply on either
 - **Gifts** - transfers by Transferor (without full consideration) during their **lifetime**
 - **Inheritances** - transfers either by Will or otherwise on **death** of Transferor
- CAT potentially applies to total value of land, buildings, BPS entitlements and other assets received less any consideration given to Transferor
- Rate of Capital Acquisitions Tax is **33%**
- Tax free thresholds and Reliefs are available >>>>>>

Capital Acquisitions Tax (CAT)

– Tax Free Thresholds

- Every transferee is entitled to a tax-free threshold
 - Tax free threshold depends on relationship with Transferor
 - All acquisitions within Transferee lifetime and within threshold are grouped

	Group	2021 Threshold
A	Son/Daughter, minor child of deceased child	€335,000
B	Lineal Ancestor/ Descendent, brother, sister, niece, nephew	€32,500
C	Any other person	€16,250

Agricultural Relief - Capital Acquisitions Tax

- Agricultural relief – main relief to look at for farm transfers
- Reduces the taxable value of what is received to **10%** of its value before comparing to the relevant tax free threshold
- Conditions applying – 2 main tests
 - Financial Farmer Test - 80% of transferee's assets must be classed as Agricultural
 - Active Farmer Test – transferee or a lessee must have agricultural qualification or must commit to spend 50% of working time farming
- To avoid clawback must retain assets received for 6 years

Example Case on Agricultural Relief : Parent transferring 100 acres valued at €900,000 to a child

Capital Acquisitions Tax Calculation

	<u>Scenario 1</u>
Value of Ag Assets Transferred	900,000
Value of Non-Ag Assets held by child	100,000
Total Assets	<hr/> 1,000,000
Farmer Financial Test Result (80% test)	90% Ag Assets
Agricultural Relief Available	YES

Capital Acquisitions Tax – other reliefs

- Annual Small Gift Exemption - €3,000
- Business Relief
- Favourite Nephew/ Niece Relief

Stamp Duty

- Potentially liable on Transferee where Transferor gives a **lifetime gift**
- Does NOT apply on inheritances
- Where Stamp Duty applies it is calculated on total value of land & buildings received
 - Not applied to Basic Payment entitlements received
- Rate of Stamp Duty
 - 7.5% on non-residential assets such as farm land & buildings
 - 1% on residential assets (2% on excess over €1 million)
- Reliefs are available >>>>>>

Stamp Duty - Reliefs

■ Young Trained Farmer Relief

- Transferee under the age of **35** at date of transfer
- For relief at the time of transfer must have achieved Level 6 Ag Qualification
- Must have Business Plan certified by Teagasc
- Transferee applicant must **actively farm** the land for **5 years** after claim
- **Potential full relief from Stamp Duty**

■ Consanguinity Relief

- Where Transferee is a blood relation of Transferor
- **Imposes maximum potential Stamp Duty rate of 1%**
- Farmland only and must be actively farmed after transferring (by anyone)
- No age limits on either party to the transfer at present

Final Messages

- Talk early – talk often.....
 - To your accountant; to your solicitor; to your farm adviser
 - And your family members
 - The tax reliefs are there but you must comply with their conditions to benefit
- Pay attention to taxes and **maximise** reliefs to **minimise** tax

BUT don't let taxes completely dictate what is right for you and your family when it comes to farm transfer

**Transferor
(The Giver)**

**Capital
Gains Tax
(CGT)**

**Transferee
(The Receiver)**

**Capital
Acquisitions Tax
(CAT)**

Stamp Duty

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