



Farming Through A Company

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A company is..

- A separate legal entity
 - The company becomes the farmer
 - Business profits belong to the company first!
 - Company will have its own bank account
 - All business expenses invoiced to the company

Farmer becomes a...

- Shareholder
- Director (with Director duties)
- Lender
- Landlord
- Employee

Incorporating – the tax angles!

- How much of your income is subject to the top rate of personal tax?
- Personal Tax Rates (2018)

Assumed Taxable Income >	Marginal Rate Applied	
	> €75,000	> €100,000
Income Tax <small>(Married income above €69,100)</small>	40%	40%
PRSI	4%	4%
Universal Social Charge	8%	11%
Final Marginal Rate	52%	55%

Company Tax Rates (2018)

Two rates of tax apply to companies

- Basic corporation tax rate – **12.5%**
 - Applies to **trading** profits
- Passive Income tax rate – **25%**
 - Applies to passive income – investment and rental income
 - This income can't be allowed build up in the company indefinitely – 20% surcharge applies if not distributed within 18 months
- **VAT** – company can remain unregistered and claim **5.4%** flat rate addition

Forming a company to reduce tax - Key Questions

- Are you maximising all available reliefs and allowances to reduce your tax liability?
- How much of your annual business profit do you need to withdraw as personal drawings?
- Are there building capital allowances still to be claimed?

Key questions

- Are you looking at sustained (& increasing) high business profits?
 - A short period of high profits may not justify forming a company
 - These short term rises can be smoothed out with income averaging & still remain a sole trader
- Are you looking at borrowing to buy land?
 - No capital allowances available on land purchase

Company Profit V Drawings

- How much of your annual business profit do you need to withdraw as personal drawings?
- Any regular income taken out of a company is taxable at personal rates (31% / 55%)
- Is there off-farm income which reduces demand on farm cash for personal use?
- Future farm profits & personal drawings
Higher or Lower??

Repaying Debt

Sole Trader

- Paying 52% (tax + PRSI + USC) before capital repayment
- To repay €20,000 principle requires **€41,666** profit

Company

- Pay 12.5% tax before capital repayment
- To repay €20,000 principle requires **€22,857** profit

- If planning business expansion then high company **retained earnings** (after paying corp. tax of 12.5%) can be used to fund this

Before considering incorporating look at maximising Available Reliefs

- Claim all Capital Allowances
- Use Stock Relief
 - Young Trained Farmer, Farm Partnership
- Examine Income Averaging Option
- Paying wages to children / spouse
 - Child earns €8,250 free of tax – tax deductible
 - Spouse can earn up to €23,800 taxable at 20%
 - Care Needed!

Tax Planning as a Sole Trader

- Use off-farm tax planning incentives –
 - Pension Payment
 - Film Relief
 - Employment & Investment Incentive (EII)
- Research / Good advice needed!

Current age	Sole trader limits	Limited company pension (% of salary)*
35	20% x up to €115,000	45-63%
40	25% x up to €115,000	54-76%
45	25% x up to €115,000	68-95%
50	30% x up to €115,000	91-126%
55	35% x up to €115,000	136-189%
60	40% x up to €115,000	272-379%

Assets used by the Company

- Land

- Land leased by farmer to the company
 - No immediate CGT implications
 - No leased income exemption available
- Land Sold to the company (CGT & Stamp Duty?)
 - Company borrows money and pays farmer
 - » Often used if large personal debt exists
 - » Subject to lender agreement
 - Directors loan created on company balance sheet
 - » Farmer can draw down on this as cash builds up in the company

Assets used by the Company

- Keep land in owners name and lease to company
 - Entitlements can also be leased (or part lease part transfer)
 - Avoids Stamp Duty issues on transfer
 - Relief from Capital Gains Tax only if **ALL** business assets transferred
- Basic Payment Entitlements can be either leased or “sold” to the company
 - There may be CGT implications for transferring in BPS entitlements

Company Leasing Land

- Land currently leased by sole trader farmer
 - **Company can take over leases**
 - **A Company is also a qualifying lessee to qualify the land owner for farmland leased income exemption**
 - **BUT NOT if leasing the land from company directors (connected to the company so not eligible)**

Assets used by the Company

- Entitlements / Livestock/ Machinery

- Entitlements can also be leased (or part lease/ part transfer)
- Livestock & machinery transferred at **book value** – no additional income tax on transfer
- No stamp duty or CGT applies on these transfers
- Plan in advance of company set up to increase the value of these transferred assets to maximise directors loan
- May need to get 3rd party valuations

Unused Capital Allowances

- If significant **building** capital allowances still unused at time of incorporation
 - May be advisable to stay as sole trader until the bulk of these used up
 - Company can't claim capital allowances unless it has ownership of the building
 - Transferring building means transferring the land it stands on – possible capital tax issues

Directors Loan

- If director-owned assets are transferred for no payment then **Directors Loan** created in favour of the owner
- Assets transferring into the company go in at maximum levels to maximise the directors loan
- The directors loan may be drawn out of the company at any time as tax free income for the owner
- This loan should be protected as it provides an exit fund if required in the future
- The directors loan should not be used to fund drawings

Getting money out

- Annual salary
 - Subject to PAYE, PRSI & USC
- Company repaying directors loans
 - Loans are created when director transfers assets to the company for no payment
 - These loans can be withdrawn tax free at any time

Loans & Security

- Can existing loans be transferred to the company?
 - Yes but the underlying asset may also have to be transferred (Stamp Duty & CGT??)
- Loans kept outside the company
 - Repayments will have to be made out of company transfers/ payments to the owner
 - These transfers will be subject to personal tax rates
 - Repayments will have to be covered from after-tax cash – benefits of low company tax will be lost

Pension Payments

- Company can make contributions to directors pension
 - Small Self Administered Pension
 - Less restrictions on maximum amounts that can be contributed by a company to the pensions of a director
- Pension contributions made are generally fully deductible against company profits

Forming a company

- Who needs to be informed
 - Department of Agriculture, Food & the Marine
 - » Herd Number
 - » Basic Payment Entitlements
 - Milk Processor
 - Suppliers
 - Insurance

Company Paperwork

- Annual accounts to be prepared
 - Usually higher accountancy cost
- Accounts filed with Companies Registration Office
 - Form B1 – accounts summary attached
- Annual Tax Returns
 - Corporation Tax Return CT1
 - Directors must file a separate return Form 11

Future Ownership Plans

- What are the future plans for transferring the farm?
- Capital taxes are an issue here
 - Capital Gains Tax (CGT)
 - Capital Acquisitions Tax (CAT)
 - Stamp Duty

Succession & Farming Company - CGT Retirement Relief issues

- CGT Retirement relief available on land leased to the company if company shares + the land are disposed of to the same person
- Transfer of company shares – retirement relief available but watch 10 year rule

Succession & Farming Company

- Capital Acquisitions Tax

- Farming company shares are not “agricultural property”
 - creates problems for Farmer Test for Agricultural Relief
 - The value of the shares themselves also do not qualify for Ag Relief
- Business Relief may be available on the shares

Succession & Farming Company

- Stamp Duty - Young Trained Farmer Relief issues

Declaration by young farmer to the effect that for the 5 years after the transfer

- Will retain ownership of the land [CLAWBACK]
 - Can dispose of land but must replace within 1 year
 - Short term lease of land is NOT a disposal
- Will spend not less than 50% of normal working time farming the land [PENALTY]
 - The test here is ‘At the time the declaration was signed was there evidence that the young farmer could comply’
 - Subsequent leasing of land to the applicant’s company may be OK

Incorporating – the advantages

- Ability to build up after tax funds within company (after tax at 12.5% Versus 55%)
- Extra funds can be used for
 - Future investment
 - Repaying current debt
 - Making contributions to directors pensions
- Directors have the ability to tailor their salary to match own requirements for funds

Incorporating

– the disadvantages

- Maybe tax complications if you want to sell the business (or the assets of the business)
 - Purchasers may want assets (land) but not company
 - Double charge to tax on the sale of company assets – CGT for the company and CGT for the individual
- Extra paperwork and regulation to be complied with
- Annual company accounts and also tax returns for directors required
- May be additional tax bill on ceasing as sole trader and moving to company