The CPD Fest 2020

Farm Tax Issues - Key Areas for Discussion

Presenter:
Declan McEvoy - IFAC

OmniPro Education & Training
Main Street, Ferns, Enniscorthy, Co. Wexford
053 910 0000
www.omnipro.ie info@omnipro.ie

ACCOUNTANCY | PLANNING | ADVICE

Farm Tax Issues – Key Areas for Discussion

December 2020

Presented By:
Declan McEvoy, Head of Tax

1

Topics -

- Structures including farm company
- VAT as it affects farms
- Solar/Renewable update
- Reliefs specific to farming
- Back to basics
- Bloodstock
- Retirement relief
- Stamp Duty
- Forestry

2

2. Structures

ACCOUNTANCY | PLANNING | ADVICE 3

3

Structure is Important

4 Ifac.ie

4

Structures

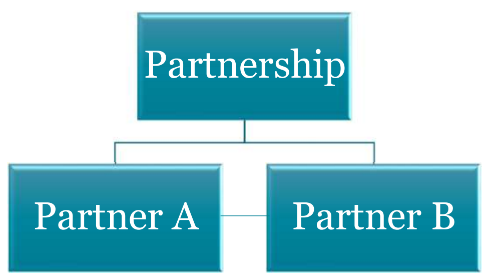
- Sole Trade
- Partnership
- Limited Company
- Hybrids – Company farming in a partnership

5 Ifac.ie

5

Partnerships

- Tax reporting entity - Partners taxed
- Partners
- Partner salary = profit shift
- Tax status of each partner is looked at
- Main reason –Succession/Tams



6 Ifac.ie

6

Why Company?

- Loan Repayments

  Increase repayment ability as loans repaid out of income taxed@ 12.5%
- Pension planning
- Wealth creation
- Tax on retained profits @12.5 %

7 Ifac.ie

7

Issues on Entry to Companies

- Dept Grants Clawback
- Old CGT rollover relief
- Potential transfer within 10 years
- Vat Registration
- ER -10% relief
- Other family members
- Site to children
- Stamp duty
- Banking –Guarantees
- Restrictions on directors loans
- Directors loans

8

Directors Loan

- What makes up the directors loan
- Assets transferred in company
- Stock/machinery
- BPS
- Farm yard /underlying land
- Non farm assets –e.g. property
- Land

9 Ifac.ie

9

DIRECTORS LOAN

- Transfer of land to a company is a sale
- Company buying the land
- Company will be the borrowing entity
- The company looking for a loan over the longest term possible
- Director may use proceeds to pay off non-company farm debt

10 Ifac.ie

10

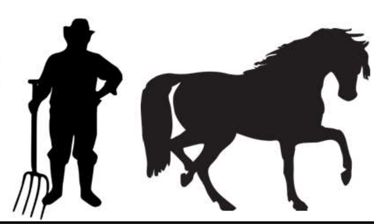
Vat issues

DM

11

Flat-Rate Farmers

- A **“Flat-Rate Farmer”** is a farmer who is not registered for VAT,
- Farmers are not obliged to register unless their turnover exceeds thresholds (with exception of EU acquisitions & racehorse training– ring-fenced registrations), or they elect to registered,
- In order to compensate farmers who are not registered for VAT incurred on purchases a “flat-rate addition” is added to their sales of agricultural goods and services to VAT registered persons,
- The VAT registered recipient can reclaim the VAT incurred
- The Flat Rate is currently 5.4%./5.6% from January 2021.



12

VAT 58

VAT recovery mechanism for Flat-Rate Farmer re;

- Construction extension and alteration of farm buildings,
- Farm Land reclamation or drainage and,
- The construction, erection or installation of micro-generation wind turbines installed in or after 01/01/2012.

- Expenditure must be capital and not repairs,
- Claim must be made within 4 years of VAT incurred,
- Clawback if ceases to be used for farming within 12 months of VAT incurred

Examples;

Allowable; construction of stables.
Not Allowable; Gallops – refused by Revenue in the past.

13

VAT on Property – Farm Buildings

- Subject to same VAT rules as sales of other property
- Vatable if sold within 5 years of completion/development – whether VAT registered or not
- VAT registered - Clawback if exempt sale ***or use*** within 20 years – NB cancellation of election, exempt sale or lease to company
- Non VAT Registered - No 20 year look-back for flat rate farmers but remember the clawback under vat 58 within 12 months of invoice date

14

VAT - Farm Leases

- Subject to same VAT rules as leases of other property,
- Lease is VAT exempt with opt to tax – landlords option,
- Generally Farmland is leased VAT exempt,
- Lease of Farm Buildings may be vatable where farmer is VAT registered,
- On exercising the option to tax the tenant must be informed in writing – generally include an "opt to tax" clause in the lease,
- Cannot be back-dated.

15

Solar Panels

- Prior to 2017 no relief
- FA 2017 brought changes to definition to agricultural land
- Less than 50% of land comprised in gift or inheritance were occupied
- What is 50%
- Definition " solar panels installed on more than half the total area of agricultural land concerned "
- On 100 acres does this mean if 51 acres under solar the no relief ?

16

Business Relief

- Business relief available to farm business
- Not to an individual asset
- If land leased out no relief
- Potential for tax for beneficiaries

17

Income Tax

Option to lease

Merges into Lease

Land Transferred

Beware of taxes:

- Income /Corporation tax
- CGT
- Stamp Duty

18 Ifac.ie

18

Option Payments

Not taxable on receipt

If abandoned…

- CGT = 33% at date of option

If used…

- Payments merge into a lease premium payment at exercise of option

19 Ifac.ie

19

Value Added Tax

No VAT on lease income

Land transferred within 5 years?

=

Potential VAT exposure

20 Ifac.ie

20

Capital Gains Tax

No additional issues

Lease premium – a mix of IT/CGT

Entrepreneur Relief may not apply if sold to third party

Retirement Relief:

- Conditions apply
- Less than 50% gift/inheritance

21 Ifac.ie

21

Land leasing

- S 81 SDCA- relief for duty on leases of farm land
- State aid
- Ceiling of 15k to any individual over a 3 year period
- Reminder
- 5 year €18000
- 7 year €22000
- 10 year €30000
- 15 years €40000
- ROS

22

Reliefs Specific to Farming – Tax 1

- Stock relief
  - *25% - Standard*
  - *100% - Young Trained Farmer*
  - *50% - Partner in a Registered Farm Partnership*
- Increase from year to year

Example:

- Farmer increased stock by €5,350 in a year
- Receiving standard stock relief @ 25% = €1,338 (€5,350 x 25%)

	€
Adjusted Profit	19,319
Less Stock Relief @ 25%	(1,338)
Adjusted Farm Profit	17,981

23 lfac.ie

23

Stock Valuation-Sole Trader

- Livestock -60%
- Sheep/pigs -75%
- Harvested Crops 75%

24

Farming Reliefs

Income Averaging;

- A farmer can elect to have his/her taxable profits assessed based on the average of the profits in the current tax year and the immediate four prior years. The profits for the 5 years are aggregated and divided by five to determine the assessable profit in the current tax year.
- Must have traded in the immediate 4 prior tax years in order to be eligible to elect for income averaging
- The election for income averaging is only available to individuals. A company cannot elect to apply income averaging.
- Beneficial when profits are increasing year on year
- Falling Profits – Not so good

25

25

Income Averaging

- Changes in 2018
- Election S65(1) tca 97
- Newly commenced –when can they opt in
- Revenue position is that where a loss averaging not allowed
- We have a circuit court appeal ruling that a loss is a nil profit
- Capital allowances
- Cessation of trade –s 67 tca 97

26

26

Income Averaging

- Pay tax on average 5 year term
- Some exceptions
- Must be managed on in or out
- Should be assessed on the likely future benefits

Example: Tom Farmer

Year	Profits
2014	€58,000
2015	€55,000
2016	€35,000
2017	€55,000
2018	€65,000
5 year Average	€53,600

By opting for income averaging in 2018, he will reduce his profit by €11,400 (€65k-€53.6k) thereby effecting a saving in tax, PRSI and USC of €5,280

Income Tax Planning – Keys

- Repairs versus Capital
- Family Wages
- Income / Expenditure Timing
- Private versus Business Expense Allocation
- Leased Land Exemption
- Motor Capital Allowances
- Stock Relief & Stock Valuation
- Partnerships / Spouse Wages
- Income Averaging
- Outside the Farm Gate

  – Pensions / EIIS

Expenditure

- For expenditure to be allowable in arriving at taxable income it must be -
  - Revenue and not capital expenditure
  - Wholly and exclusively for the purpose of the trade/profession
  - Not statutorily prohibited

Capital v Revenue;

Capital;

- Acquisition of item for use in business (fixed asset)
- Damages and compensation paid for capital assets
- If expenditure on an asset is capital, legal fees incurred in connection will be capital

Revenue;

- Acquisition of item to be consumed by business
- Expenditure to enable taxpayer carry on business more efficiently
- Insurance, interest to acquire asset

29

29

Repairs v Improvements

- Repairs - revenue
- Expenditure incurred in improving an asset - capital
- Replacement of an asset in its entirety – capital
- Replacement of a component part of an asset - revenue

30

30

Capital Allowances

- Relief for capital expenditure on acquisition of assets
- Expenditure written off over predetermined period

Plant & Machinery;

Includes

- Furniture & fittings
- Motor vehicles
- Lifts
- Electrical installations
- Computer software

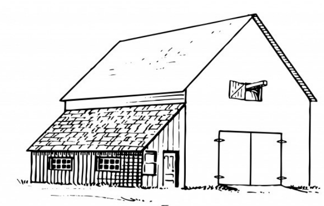
Rate of Capital Allowances - 12.5% per annum, straight line

Farm Buildings

Rate of Capital Allowances - 15% per annum, straight line, 10% in Year 7

Energy Efficient Equipment

Rate of Capital Allowances – 100% Year 1



31

31

Farm Building Allowance

- S 658 makes provision for FBAA
- Any person carrying on the trade of farming
- 15% -years 1 to 6
- 10%- year 7
- Where buildings transferred no balance allow/charge
- Transferee steps into shoes for remaining allowances
- Where less than full interest transferred –transferee not entitled to allowances
- Not allowable v rental income

32

32

Family Wages

- A single individual can earn €8,250 Tax Free plus the earned income credit bringing it up to €16500 – The employee gets the money Tax free but the employer gets a deduction as follows:
  - *High Tax rate €8,250 @ 52% = €4,290 saved*
  - *Low Tax rate€8,250 @ 31% = €2,557 saved*

Conditions for tax deduction;

- Employee under 16
- Employee Over 16
- Employer registered for PAYE / PRSI
- Actual Evidence of Payment
- Payment should Reflect the commercial contribution

33

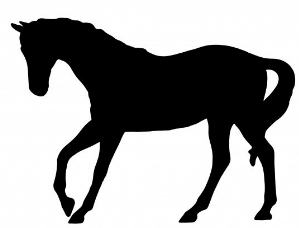
33

Bloodstock Industry – Trade vs. Hobby

Trade versus Hobby;

- Trade = taxable
- Hobby = non-taxable
- Consider;
  - *Are mares & foals bred & bought & sold on an annual basis – frequency?*
  - *Is the intention to make a profit from the activity or only have a hobby interest – motive?*

Case by Case consideration required



34

34

Bloodstock Industry – Income Tax

Sport Horse Breeding = ***Farming Activity*** for Tax purposes

Stallion or Syndicate owners who are not farmers = ***Investment Activity*** for tax purposed

Hobby;

- Profits not taxable
- Losses not allowable

Trading;

- Profits Taxable
- Losses allowable to can be offset against other income in year of loss or carried forward and offset against future income of the same trade – subject to 4 year loss rule.

Investment;

- Profits Taxable
- Losses allowable to can only be offset against horse breeding income

35

35

Bloodstock Industry – Income Tax

- Horses in Training – profits exempt from Income Tax (costs/losses not deductible)
- Stallion Stud Fees and profits from bloodstock – subject to Income Tax
- Cost of Stallion is allowed as a deduction for tax over 4 years i.e. 25% per annum – if stallion sold or dies unclaimed amounts can be claimed in years of death/sale

Stock Values;

- ***Mares;*** Cost + cost of unborn foal (incl. stallion fees and keep to year end)
- ***Foals;*** Cost of production at birth + keep
- ***Yearling & Other horses;*** AS foals and keep up to 3 years old

All of the above is subject to general accounting rule to recognise stock at lower of cost or net realisable value so could be valued lower in accounts.

36

36

Bloodstock Industry – Income Tax

Transfer to Training – i.e. register with relevant sport horse association, e.g. SJAI;

- Transfer at book cost incl. keep to date of transfer
- Horse returning to stud from training is transferred at the same value they went to training
- Horse purchased and put to training are valued at purchase price when transferred to stud

Sales by Trainers;

- Liable to Income Tax as part of their trade

37

37

Forestry

- Tax free but liable to USC and PRSI
- Only applicable if managed on a commercial basis
- Standing timber tax free
- Land liable to CGT
- Land not eligible for Young Farmer or blood relative SD relief

22

38

Stamp Duty

- Extension of consanguinity = blood relative
  - *Active farmer*
  - *Lease out*

Now aligns time wise with Consolidation Relief in CGT
Young Trained Farmer = rules apply

22

39

ACCOUNTANCY | PLANNING | ADVICE

ifac

Retirement Relief Overview

40

Retirement Relief

- Available to persons over 55 who have owned and used chargeable business assets for 10 years ending with disposal.
- There is no requirement on the person claiming retirement relief to actually retire.
- Available to sole trader, an individual partner in a partnership, or an individual who holds his business interests through a company (on disposal of shares)
- Chargeable business assets means an asset used for the purposes of farming, or a trade, profession, office or employment.

41 Ifac.ie

41

Form of Relief

- Two forms of retirement relief and the provisions are contained in s598 and s599.
- S598 applies to anyone other than children and favourite nieces/nephews
- Full relief from CGT is only available up to a limit of €750,000 reduced to €500,000 once 66.
- Marginal relief may apply if the limit is exceeded
- This is a lifetime limit. Clawback of relief previously claimed can occur if limit is breached

42 Ifac.ie

42

Transfers to children

- No limit where under 66
- Limit of €3m applies once age 66
- The relief can be clawed back from the child if they dispose of the asset within six years.
- Tax payable is the amount the parent would have paid.
- This could be nil if non family RR would have applied (recent appeal decision)
- Disposals to a child do not aggregate with disposals to third parties.

43 lfac.ie

43

Farm Land

- The relief applies in certain circumstances to disposals of farm land that had been let prior to its disposal
- Land let under the farm retirement scheme
- Land which was let during the 5 year period prior to its disposal under a compulsory purchase order
- Land let within the last 25 years and for disposals to other than children each letting is for a period of at least 5 years.
- For disposals to children the 5 year lease is not a requirement.

44 lfac.ie

44

Solar Panels

- Land will be treated as a qualifying asset for retirement relief purposes where solar panels are installed on less than half the total area of the land in question.

45 lfac.ie

45

Shares in family company

- Must have owned the shares for a minimum period of 10 years ending with the disposal
- Must have been a working director for a period of not less than 10 years,
- Must have been a full-time working director of the company for a period of not less than five years.

46 lfac.ie

46

Spouses-Transfer/inheritance

- Land/assets held in joint names. Do both spouses meet the conditions
- The ownership and use of an asset by a deceased spouse/civil partner will be taken into account for the purposes of determining whether the individual qualifies for the relief.
- On a lifetime transfer only the period of ownership by a spouse will be taken into account.
- A part disposal of qualifying assets between spouses is taken into account at market value for aggregation purposes under s598.

Other issues

- The annual exemption of €1,270 is not available in a year retirement relief is claimed
- Anti avoidance on goodwill transferred to a connected company (bone fide test)
- Losses carried forward will be used. RR relieves the CGT rather than the gain so losses have already been deducted before the relief is applied
- Disposal to child of owner – land “swap” -s599 provides no gain arises for child

ACCOUNTANCY | PLANNING | ADVICE

ifac

Presented by:

Declan McEvoy
Head of Tax
01-4551036

declanmcevoy@ifac.ie

49