



A fair deal?

The Fair Deal scheme for nursing home care pays scant attention to the complexity of land succession issues, writes **Martin O'Sullivan**



THE days are gone where ageing farmers can rest in the comfort of knowing that their family will take care of them in their autumn years when care is needed.

I have been advising farmers on succession matters for more than three decades and I have noticed in the past fifteen years or so that the issue of nursing home care, and qualifying for same, is not far from being top of the agenda whereas it was rarely on the agenda twenty years ago.

My typical succession consultation has two main topics for discussion; namely, does one hold back part of the farm as security in the event of things going awry for the successor, such as matrimonial or financial difficulties or does one transfer everything and throw caution to the wind but in the process make themselves eligible for free nursing home care.

This for many is a massive dilemma.

Regardless of which route you choose, you may be dammed if you do and dammed if you don't. Only time will tell.

The principal reason why such a dilemma exists in the first place is the unfairness of assessing the notional income from a farm at 7.5% of the current market value of that farm. So a 100 acre farm worth €1m is deemed to generate an income of €75,000 per annum.

Apart from highly profitable dairy farms the 2015 National Farm Survey would suggest that this is fantasy as the average family farm income was

€26,303 in that year and was less in 2016.

The following case study is based on a farm of 80 acres and highlights the difficulties that can arise in what is a relatively modest farming operation.

Unfairness

The most unfair aspect of the scheme is that it takes scant account of the nature of family farms in terms of succession.

Many farms have been in the family for generations and are not viewed to have a certain monetary value but rather as an asset that they are custodians of and that they hand on to the next generation to do the same.

The scheme does distinguish between situations where there is an obvious intended successor by way of limiting the farming asset assessment to three years, subject to certain conditions, to ensure (in the HSE's words) the financial sustainability of family farms.

In many situations this could still mean paying the full cost of nursing home care for three years which could be up to €200,000 or even more in certain cases.

In many other situations it will mean paying the full cost of care until the care recipient passes on.

It is difficult to see how this measure ensures the financial sustainability of family farms.

In addition to including the value of the family farm in the means assessment there are also other scheme conditions that could not be said to represent a Fair Deal such as;

■ The five year rule i.e. transfers of farms in the previous

five years are treated as if they never happened, is grossly unfair where the transferee is the natural and obvious successor.

■ The 7.5% deemed income based on farm value bears no relationship to reality. In the six years 2011 to 2016 the average return on investment from farming is typically less than 3% in terms of income and has been close to zero in the same period in terms of capital appreciation.

■ Where the farm is rented or leased out, both the rent and the 7.5% of farm value is assessed. This is double counting.

■ The assessment of savings and investments not alone includes the interest and dividends but also includes 7.5% of the capital value of those savings or investments. This is also double counting.

■ Assets/investments are assessed at their gross value with no account taken of taxation.

For example in the case study below, Joe's co-op shares are assessed on their market value of €50,000 but in reality if he is to cash them in to pay the nursing home charges, he will pay €16,081 in Capital Gains Tax.

Nursing home charges are not deductible against Capital Gains so assessing the gross value is unfair.

Action

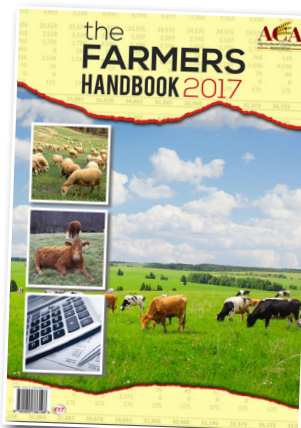
Recently there has been some political commentary about reviewing the scheme particularly in regard to the inclusion of family farms in the means assessment.

This talk had died away and probably will stay away until an election beckons.

While the political door is

ajar, it now behoves the farming representative bodies to ensure that the scheme is truly a Fair Deal when it comes to farmers and that the possibility of imposing financial hardship on family farms is removed.

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BUSINESS RELIEF AND AGRICULTURAL RELIEF

THE MOST recent article in this series (*Farming Independent*, March 7) looked at the potential taxation benefits of availing of Business Relief /Business Property Relief for land transfers. The headline referred to 'Agricultural Relief' but the main thrust of the article was concerned with Business Relief and Business Relief.

as it was not done 5 years prior to seeking care. There is provision in the regulations to confine the farm value being included in the assessment to three years where the farmer or his spouse suffers a sudden illness or disability and where there was insufficient time to put succession arrangements in place and where the successor continues to run the farm.

Even if Joe qualifies for this relief, which is far from certain, this still leaves the family in an impossible situation as they simply cannot afford €44,350 per year.

They can of course apply for the Nursing Home Loan Scheme from the HSE but this could mean having to repay up to €133,050 when the mother passes on which for most drystock farms of its size will prove extremely difficult.

The care cost is tax allowable, but this is of little use to Joe as he was not paying tax in the first place as his income is below the tax exemption limit. His meagre investments in the form of co-op shares will be subject to Capital Gains Tax at 33% and will scarcely cover the cost of nine months care.

CASE STUDY

JOE FARMER is 74 years of age and has 80 acres valued at €800,000. Joe is a drystock farmer. His dwelling is valued at €140,000. He has co-op shares to a value of €50,000 and both he and his wife have State pensions worth €23,500 in total.

Joe's wife has been suffering from dementia for some time and now needs nursing home care. Joe's son John is a qualified carpenter with a Green Cert and is currently in Australia but intends returning home in the coming months to take up employment with a local builder friend and also to take over the running of the family farm. It is his father's intention to transfer the farm to John before he is 35 years of age. He is currently 33.

Summary

The assessed income for Joe's wife is €44,350 which will be her contribution towards care.

So, if the nursing home is costing €62,000 per year the HSE will contribute €17,650 towards Joe's wife's care while Joe will have to contribute €44,350.

| Assessment of Assets | € |
|-----------------------------|---------|
| Land | 800,000 |
| House | 140,000 |
| Shares | 50,000 |
| Total assets | 990,000 |
| Less exempted amount | 72,000 |
| Assessable Assets | 918,000 |
| Assessed asset yield @ 7.5% | 68,850 |

| | |
|---|--------|
| Assessment of Pension and other income | |
| Pensions (OAP plus Qualified Adult Allowance) | 23,500 |
| Dividends on shares | 1,300 |
| Total assessable income (@80%) | 19,840 |
| Combined assessment of income and assets | 88,700 |
| Assessed income for one spouse (50%) | 44,350 |

The good news, if there is any, is that after 3 years the dwelling falls out of the calculation which will reduce Joe's contribution by €5,250.

The bad news is that transferring the farm to John straight away will not affect the means test



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