



# farming **finance**

## Partner ship

# Succession partnership tax relief clashes with Stamp Duty exemption

### advice

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**T**HE 2016 Finance Act introduced a farm succession initiative to encourage farmers to form partnerships with young trained farmers and to transfer ownership of the farm, within a specified period, to that young trained farmer.

Despite the fact that the measure was first announced in the October 2015 Budget it still has not been implemented due to delays in acquiring E.U. approval.

I understand that such approval has now been granted and the measure will apply for the tax year 2017 with a launch date targeted for early June. The Department of Agriculture intend to establish a Succession Partnership Register alongside or as part of the Registered Partnership Register.

The initiative's centrepiece is a "succession tax credit" of €5,000 per annum which is available for 5 years and is shared between the partners in proportion to their partnership shares. This is a very valuable measure and is worth up to €25,000 in tax savings.

Needless to say the partners must have a liability to tax in the first instance in order to benefit. To qualify for the tax credit, the partnership must be a registered succession partnership and the land owning partner must undertake to transfer

80% of the agricultural assets between years 3 to 10 after first registering.

This is where the scheme seriously conflicts with the Stamp Duty Exemption relief which I will deal with later in this article.

I will firstly deal with the terms and conditions of the scheme which, notwithstanding the Stamp Duty exemption issue, is a very attractive concession in its own right.

#### TERM & CONDITIONS

Participants will be partnerships, typically but not necessarily, family partnerships who will apply to the Department of Agriculture to be entered on to the registry of succession farm partnerships.

This will require a formal partnership being prepared in accordance with the requirements set down by the Department.

Typically this will be done by your farm advisor/consultant who will prepare the paperwork and lodge it with the Department.

In some more complicated cases it may be wise to consult the family solicitor. In the case of succession farm partnerships, as distinct from registered farm partnerships, there is also a requirement for a business plan, details of which are not yet available. The

following are the general rules of the measure:

■ only individuals may be partners, of which there are at least two. Limited Companies are not eligible.

■ at least one partner is a person who has been farming on at least 3 hectares of farming land owned or leased by that person for at least 2 years immediately preceding the date of formation of the partnership.

■ each of the other partners must be under 40 years of age, a trained farmer and entitled to at least 20% of the profits of the partnership,

■ a business plan in respect of the farm partnership must have been submitted to, and approved by, the Minister,

■ the farmer shall agree to sell or transfer at least 80% of the farm assets to one or more of the successors within 3 to 10 years from the date an application is made to enter

the partnership on the register,

■ the terms of the partnership agreement shall include details of the farm assets of the partnership and shall detail any conditions to which the transfer or sale will be subject and the year in which the transfer or sale will take place. The terms also include any other terms which the successor and farmer agree to, including any terms in relation to the farm assets, the conduct of the farming trade or the creation of any rights of residence in dwellings on the farm land.

#### JOINTLY OWNED OR FARMED FARM ASSETS

Where farm assets are jointly owned or farmed prior to the formation of the succession farm partnership, each person who jointly owns or holds an interest in the farm assets must agree to the transfer of those assets in accordance with the agreement.

Each individual who jointly farms the land which is to be transferred may become a partner in the partnership even though the individual may be a non-active partner. Additionally, a farmer may form a succession farm partnership to transfer or sell farm assets jointly to a successor and the successor's spouse/civil partner even if the spouse/civil partner would be a non-active partner.

#### THE SUCCESSION TAX CREDIT

Each partner in the succession farm partnership shall be entitled to a tax credit, referred to as a succession tax credit, for the year of assessment in which the registration takes place and each of the 4 years

immediately following that year, which is the lesser of €5,000 per year of assessment divided between the partners in accordance with their profit sharing ratio under their partnership agreement.

It should be noted that no partner in a succession farm partnership can claim the succession tax credit once a successor has reached the age of 40.

#### TRANSFER FAILS TO HAPPEN

If the agreed transfer of the farm assets does not take place, the succession tax credit claimed by all partners will be clawed back from the farmer (landowner).

However where it is shown to the satisfaction of the Revenue Commissioners that the farm assets were not transferred as the successor would not complete the transfer, the succession tax credit will be clawed-back from the successor.

Where the farm assets were not transferred due to mutual agreement between the parties, the succession tax credit may be clawed back from the party(s) who claimed the credit.

The 3-10 year transfer obligation anomaly

As I mentioned at the beginning of this article, there is an apparent conflict between the Succession Tax Credit measure and the Stamp duty exemption for young trained farmers.

The requirement that 80% of the farming assets cannot be transferred until at least year 3 may have serious implications for young trained farmers who are 32 years or older and hoping to avail of the Stamp Duty

exemption.

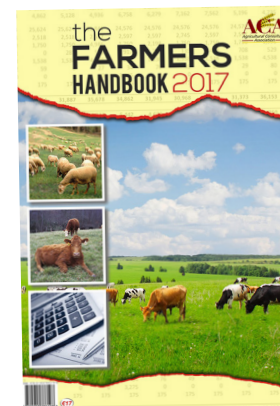
In order for such farmers to avail of the Stamp Duty exemption, the transfer has to take place before they reach their 35th birthday.

However if they are 32 or older, the terms of the Succession Tax Credit measure requires that the farm cannot be transferred until at least three years have elapsed since first registering which means it cannot be transferred until they are over 35.

The net effect of this apparent anomaly is that young trained farmers who are 32 or over cannot qualify under both measures. It makes no sense to discriminate against such persons.

Clearly this aspect of the measure was not thought through and can only be described at best as unfair and at worst as completely daft.

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