

# Finance

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## Avoid Capital Gains Tax on family transfers

Retirement Relief can sidestep a huge tax liability if you are over 55 — even if you are not retiring. But there are conditions



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**W**hen it comes to transferring the farm to a relative, many of my clients feel that the main hurdles to be jumped are stamp duty and possibly gift or inheritance tax.

Not necessarily so. Increasingly I am encountering problems with Capital Gains Tax (CGT) in a variety of situations.

Generally, a potential CGT liability can be avoided by availing of Retirement Relief (S599), which is available to farmers over 55.

Despite its name, the farmer does not have to retire to avail of it.

### Situations where CGT can arise on family transfers

- Farmer transferring has not owned all the land for 10 years or more.
- Farmer transferring did not farm the land for 10 continuous years prior to transferring or first letting.
- Some or all the farm has been let or leased for more than 25 years.
- The farm is in joint names with

a spouse who has never had any involvement in the running of the farm.

- The farm is worth more than €3m and the farmer is over 66.

### Conditions

Family transfers refer to transfers to a son, daughter or a niece/nephew who has worked full-time on the farm for the previous five years.

A child of a deceased child will qualify for this relief.

Provided the land has been owned and farmed for 10 consecutive years at any stage prior to transfer or first letting, the transfer will be free of CGT where the transferor is over 55 years.

However, where the transferor is over 66, an upper limit of €3m will apply and any value being transferred over that figure will be subject to CGT at 33pc.

If the land was rented or leased out prior to transfer, the maximum period in which the land can have been leased is 25 years, unless the transferor was a participant in the Early Farm Retirement Scheme.

In the case of family transfers where the land has been rented out for a number of years, or where the transferee has had the use of the land, it is not necessary to have a formal lease in place at the time of transfer, unlike transfers or sales to unrelated parties.

### Use by a spouse

Where the farm is jointly owned by a husband and wife or where both spouses enjoy separate ownership but the farm accounts are in one spouse's name only, a question may arise as to whether that spouse satisfies the '10 years farmed' condition.

Alternatively, the farm may have only been placed in joint names within the last 10 years whereby the '10 years farmed' rule on the part of one spouse may not be satisfied.

The 10-year ownership requirement for a spouse in joint ownership is not a problem as his/her spouse's period of ownership will cover both spouses.

However, the '10 years farmed' requirement is a different matter and must be satisfied. Such situations should be approached with caution and good tax advice sought.

**Family transfers refer to transfers to a son, daughter or a niece/nephew who has worked full-time on the farm for the previous five years**

CGT, like most other taxes, is subject to self-assessment and these issues may not raise their heads until Revenue decide to do an audit, which could be several years after the transfer had occurred.

### Surviving spouses

The period of ownership and use of the land by a deceased spouse will be considered in satisfying the 10-year rule where the surviving spouse decides to dispose of that land.

In other words, the surviving spouse stands in the shoes of the deceased spouse.

### Shares in a family company

To qualify for Retirement Relief in disposing of or transferring shares in a family company, the person disposing of the shares must have been a working director for a minimum period of 10 years during which time he/she was a full-time working director for not less than five years.

This is an important point for spouses who are not working directors in a family company but who have a shareholding in that company.

The relief also applies to land and buildings which the individual has personally owned for at least 10 years, provided such assets were in use by the company and were

disposed of at the same time and to the same person as the shares.

### Transferring land into joint names

While transfers between spouses are exempt from tax, any such transfers will eat into their €750k/€500k threshold depending on the value of the property transferred.

So if Joe places the farm worth €1m in joint names with his wife Mary, he will have used up €500k of his tax-free threshold that might have been available for offset against a future sale of land.

### Clawback of relief

There is a provision for a clawback of the relief where the assets transferred are disposed of by the recipient within six years.

The tax which would have been payable by the transferor if the relief had not applied is then assessed and payable by the transferee, in addition to the tax on any further gain made on the disposal of the assets.

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