Finance

The financial pros and cons of joint land ownership for farming couples

Analysis
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Retirement Plan
Pension

Planning: Transfers that are done without due planning can prove costly in terms of exposure to Capital Gains Tax and the possible loss of State pension income.

Some years ago, I wrote an article for this paper where I highlighted some of the benefits of joint ownership of the family farm between spouses. In response, I received numerous queries that outlined scenarios where transferring into joint ownership could prove a costly move.

It is quite common for farming spouses to decide to place all or part of the family farm in joint names.

This can be done for a number of reasons. Sometimes it is motivated by a gesture toward spousal equality. Sometimes it is for tax-related reasons and sometimes for no particular reason at all other than that it was considered a good thing to do at that time.

In principle, I have no difficulty with inter spousal transfers provided that such transfers take account of all of the taxation and state benefit consequences.

However, transfers that are done without due consideration of possible future consequences can prove costly. These negative consequences include an exposure to Capital Gains Tax and the possible loss of State pension income.

Capital Gains Tax

Placing the farm in joint names can have substantial benefits where there is a possibility of a future sale as both spouses may be in a position to avail of the tax exemption on up to €750,000 in sale proceeds – this is known as Retirement Relief.

However, where the transfer happens when the transferor is over 55 years, he/she can lose their €750,000 exemption as the transfer is regarded as a disposal for Retirement Relief purposes.

There will not be a liability on the actual transfer because it has occurred between spouses, but the €750,000 exemption will all have been used up if the value of the transferred share is more than €750,000.

A consequence of this is that if the transferor was contemplating a future sale of other land, the Retirement Relief has been used up. It seems unfair, but that is the regulation.

State Pension Considerations

In the context of State Pensions there is generally no compelling reason to transfer as it is not necessary for a farm to be in joint names for both spouses to be eligible for a full contributory pension.

One of the more common problems that I encounter is where a farm has been placed in joint names, but the farm accounts remain solely in the husband's name whereby his spouse has no Class S PRSI credits and only discovers this fact when she is over 66 at which point it is too late to do anything about it.

In most situations where the land is in the farmer's sole name, his wife will qualify for the Qualified Adult Allowance.

This allowance is means-tested and provided the wife is not otherwise entitled to any pension or benefit or has no significant income or means, she should qualify.

However, in cases where the land is in joint names they may find that she is not eligible for the Qualified Adult Allowance because of her half share in the farm, nor is she eligible for a pension in her own right because she has no Class S contributions established before she reached 66.

In cases where the land is in joint ownership, they may find that she is not eligible for the Qualified Adult Allowance, no is she eligible for a pension in her own right

The important message if you are not sure of your PRSI contribution status is to check your PRSI contributions history which can be requested on line by visiting www.mywelfare.ie.

Another common problem that I encounter is where a couple placed the farm in joint names with one of the intended benefits being that both spouses would qualify for a State pension.

However, in cases where, let us say, the wife is some years younger she will not qualify for the pension until she reaches pension age whereas had the farm never been transferred to joint names she might have qualified for the Qualified Adult Allowance when her husband qualified for the State pension.

The bigger the age gap the bigger the loss. The case study below illustrates the point.

Case study: Spouses need to weigh up tax efficiency gains against potential pension losses

JOE Farmer is 55 and his wife Mary is 49. Mary works full time in the home and also helps out on the farm.

They are considering placing the farm in joint names and creating a partnership between them as they have been advised that it would be more tax efficient.

The partnership would ensure that Mary would qualify for a State Contributory Pension in her own right when she reaches pension age which for the purpose of this example will be on her 68th birthday under existing legislation.

Mary has no means of any consequence and would otherwise be entitled to a Qualified Adult Allowance when Joe reaches pension age which we will also assume to be his 68th birthday.

If we assume that Joe will live until he is 84 and that Mary will survive him, we will compare how they would fare in the following scenarios;

(1) The farm remains in Joe's name and Mary receives the Qualified Adult Allowance when Joe reaches pension age, or

(2) The farm is placed in joint names and Mary qualifies for the full pension when she reaches pension age.

In the first scenario, Joe will receive a total of 16 years pension and Mary will receive a total of 16 years Qualified Adult Allowance amounting to a combined total of €381,080 at current rates.

In the scenario, Joe will again receive 16 years pension while Mary will receive only 10 years pension amounting to a combined total of €342,157 at current rates.

This means they would have been better off to the tune of €38,923 by opting to leave the farm in Joe's sole name and not transferring the farm into joint ownership.

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