Farm Finance

10 steps to a more tax-efficient and hassle-free farm succession plan

Analysis
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Over half of Irish farmers are over 58 years so succession is high on many farmer's minds. Those who have an identified successor will at some stage have to face and deal with the matter of handing on their farm during their lifetime.

Succession ultimately involves the transfer of the ownership and management of the farm but this can be a phased process if preferred. The successful outcome of any succession process should meet the needs of all family members and ensure a viable and sustainable outcome for all parties involved.

In this article, I set out a succession road map and in a follow on article I will address the case of those who currently may have no identified successor, but who would like to and indeed should make a will

Key considerations

- Timing
- Taxation
- Spouse's opinion
- Suitability of prospective successor
- Consulting other family members
- Part or entire transfer of assets and/or management
- Dealing with the farm dwelling.
- Conditions associated with transfer
- Post succession income sources for transferor
- The future care needs question

1 Timing

The timing of handing on the farm should not be solely about your age or your successor's age. Timing will depend on a number of factors apart from your respective ages such as your preferences, your financial profile, your family circumstances, your successor's circumstances and the risk of adverse changes in taxation legislation.

2 Taxation

Taxation in certain instances can present an obstacle to transferring the family farm so this is best

Do the sums: It's important to consider that part of the transferor's income may still have to come from the family farm. This could take the form of a wage, a partnership salary or perhaps rent for lands which were not transferred.

addressed at the outset. The taxes that need to be considered are Income Tax, Capital Gains Tax (CGT), Capital Acquisitions Tax (CAT) and Stamp Duty. In the vast majority of cases neither CAT or CGT will arise due to availability of Agricultural Relief and Retirement Relief, but the tax legislation as it applies to farming is far from simple and tax advice from a specialist in this area should be sought in all cases. A Stamp Duty cost will be dependent on whether the successor is under 35, has a Green Cert or equivalent and is in a position to farm full-time as defined..

3 Spouse's input

Ideally where the landowner is married the decision should be arrived in consultation with his/her spouse. Your spouse may have very definite preferences and ignoring their views may sow the seeds of discord in later years. Both parties should attend all meetings with your accountant, tax advisor solicitor or agricultural advisor.

4 Successor's suitability

The day is long gone where succession fell to the oldest son or to the least academically inclined member of the family. Modern day farming demands commitment, dedication and a desire to succeed along with the necessary agricultural education. Your successor should possess all these traits. If you are unsure about your successor having the necessary commitment maybe you should wait or reconsider.

Rushing succession or yielding to pressure should be resisted if you are not sure. Your intended successor needs to be fully involved in the succession planning process and needs to understand what responsibilities and obligations he/she is undertaking and that they are fully in agreement with same.

They may not particularly like some of the conditions associated with the transfer, such as making provision for other family members. Such issues should be discussed maturely and if discussion does not yield a satisfactory outcome the opinion of the family accountant or agricultural advisor should be sought as to whether the suggested provision is reasonable and workable.

5 Consulting with other family members

The choice of successor is generally a foregone conclusion and seldom generates acrimony from the other siblings. However, it is important that all members of the family are on board with the succession plans. Oftentimes, there may be some level of expectation among the siblings such as the provision of a site or something more and it is important that they are given an opportunity to air these expectations. Their inclusion in the process may avoid disharmony in later years. There will of course be situations where it may be more prudent to proceed without their involvement in the process.

6 Part or entire transfer of management

Increasingly farmers are choosing to enter a partnership or form a limited company with their successor whereby they maintain a meaningful involvement in the running of the farm business even though they have transferred some or all of the main farming assets. Such arrangements have a lot to recommend them and can be beneficial from a labour and management point of view and also from a taxation and grant aid access perspective. It also enables the parent to retire on a phased basis at whatever pace they so choose.

7 Part or entire farm transfer

Assuming that if it is your ultimate intention that all of your farming assets go to your successor, whether you transfer all or part at the outset may be determined by your personal financial resources. If you are satisfied that you have sufficient resources to grant you a comfortable retirement, you may be happy to transfer the entire.

If on the other hand you are unsure of having sufficient resources to meet your retirement needs it might be wise to retain some portion of the farm and perhaps specify in your will that it goes to your successor.

Another valid reason for retaining a portion of the farm might be as a hedge against your successor running into matrimonial or financial difficulty. On the other hand, you may consider the possibility of future nursing home care as a potential burden that you do not wish to impose on your successor in which case you choose to transfer all of the farming assets.

8 The farm dwelling

Where the farm dwelling is an integral part of the farmyard it is usual that it would go to the successor, whether that be at the time of the transfer of the farm or it may be left in a will. There may be taxation or future care need issues to be addressed in this decision and the recommended approach in most cases is that the parent(s) actually transfer the house but retain a right of residence for their lifetime.

9 Conditions associated with transfer

A deed of transfer may contain whatever conditions one chooses to include and such conditions can be registered as a charge on the title deeds to the farm. Such conditions could be a lifetime right of residence in the farm dwelling or a right of maintenance or income for the transferor. However care needs to be exercised in terms of the variety and extent of charges on title deeds as such charges may render the title deeds unacceptable to banks for securing loans or may preclude one from entitlement to means tested state benefits such as the Old Age Pension Qualified Adult Allowance.

10 Post succession income and future care needs

In the vast majority of cases the transferor will have entitlement to the contributory old age pension but this may not be sufficient to meet their needs. Assuming that they have no personal pension entitlement, income supplementation may have to come from the family farm.

This could take the form of a wage, a partnership salary or perhaps rent for lands which were not transferred. Persons in receipt of a contributory pension are not subject to means testing and may receive unlimited income from any source. However, the Qualified Adult Allowance (spouses' allowance) is subject to a means test.

Finally, While one hopes the need will never arise, eligibility for future nursing home care cannot be ignored. Retaining assets such as land or your dwelling or retaining a right of income will have a bearing on the means assessment for qualifying for the Fair Deal Scheme and accordingly this needs careful consideration.

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