farming **finance**

Take a 'belt and braces' approach on land leasing

Landowners need to err on the side of caution when leasing farmland, writes **Martin O'Sullivan**

Significant issues can arise when a decision has been made to actually take the plunge and lease one's farm or part of it.

Such issues might include:

- How will your BPS entitlements be dealt with in the lease
- Including farm buildings in the lease
- Permitting the tenant to erect buildings on your farm
- Identifying special conditions to include in the lease
- Income tax and capital tax implications

BPS ENTITLEMENTS

Most landowners who have entitlements will lease them out with the land generally for their full payment value including Greening.

It is important to mention Greening in the lease as I have encountered a case where the tenant refused to pay over the Greening element because it was not specifically mentioned in the lease.

Predicting the future for leased entitlements requires a degree of crystal ball gazing as the detail of the next incarnation of what was originally the Single Farm Payment Scheme and lateraly the Basic Payment Scheme is not yet known.

The only thing that is known is that there will be a follow-on scheme. The big unknown question is whether lessors will be permitted to hold on to their entitlements.

On the last occasion those who retained their farmer status did hold on to their entitlements so if one were erring on the side of caution it might be worthwhile continuing to farm a small parcel. Applying the perfect science afforded by the aforementioned crystal ball I would suggest retaining five hectares. If this proves a futile exercise one can incorporate the five hectares into the lease when the outcome becomes apparent.

As a further 'belt and braces' measure I would recommend incorporating a clause into the lease to the effect that in the event of the payment benefit of the entitlements passing to the farmer due to EU/Department of Agriculture rule changes, the annual rent shall be reviewed to reflect part or all of the payment benefit passing to the farmer.

If such a provision is clearly agreed and understood by the landowner and tenant at the outset, it is unlikely to cause a problem when and if such an event occurs.

I would also recommend including a clause to the effect that the entitlements revert to the landlord at the end of the lease notwithstanding the possibility that rule changes in the meantime may not permit this.

LEASING FARM BUILDINGS

Most leases will include a provision for emergency access to a crush or temporary holding facility which is not a problem.

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However, including farm buildings in the lease is a matter that will require some consideration in terms of privacy, access, maintenance etc.

Increasingly, farms are being leased which include milking facilities and animal housing which can be an attractive proposition for both landowner and tenant. Generally, including farm buildings in a land lease is not fraught with any particular risk.

However, leasing buildings for medium to long terms may fall uuder the 1994 Landlord and Tenant Act which provides tenants with a right to claim renewal of a lease at market value in situations where the property being leased consists predominately of buildings where the land element of the lease is considered to be "subsidiary and ancillary" to the buildings.

In other words, if the lease is more a farm buildings lease than a land lease the tenant may be entitled to renew the lease, albeit at market rent.

TENANT ERECTING FARM BUILDINGS

Where a long term lease, say 15 years, is entered into, it may be the case that the tenant will want to erect buildings on the farm.

The terms of any such concession will have to be fully agreed in advance and documented in the lease. I have dealt with a number of such situations and typically the ownership of the buildings will fall to the landowner at the end on the lease.

However, the cost of any developments will be amortised over the term of the lease whereby an early termination may result in the landowner having to compensate the tenant for any residual written down value.

My advice to both parties in this instance is to seek out the best available legal and agricultural advice before committing to anything.

SPECIAL CONDITIONS

Most intending lessors will have certain conditions that they will want to include in the lease.

Such conditions could be, for example a prohibition on using certain entrances to the farm, the right to any fallen timber, the right to access the land to remove growing timber, the right of use of certain farm roadways or indeed any reasonable right that the landowner should require.

The time to identify any special conditions in a lease is prior to commencement in order that they can be documented in the lease.

TAXATION

Arguably, the greatest incentive towards leasing land in the tax relief. Tax savings of up to €16,000 can be made by an individual landowner in any one year. Table 1 sets out the relief available for the various lengths of lease for an individual landowner. Table 2 sets out the lessees that will qualify the lease income for tax relief. It should be noted that the relief applies to Income Tax only and not PRSI or Universal Social Charge.

A spouse or civil partner is also entitled to the relief so if the land happens to be in joint names or if the spouse/civil partner has land to lease separately, both parties are entitled to the relief. Such a move may have future Capital Gains Tax implications so good tax advice should be sought before embarking on such a route.

Also, transferring the land into joint names may have State Pension implications as it may render a spouse ineligible for the Qualified Adult Allowance. This is also a matter requiring good professional advice.

Finally, if one intends to transfer or sell the farm at the end of the lease it is important that the land has not been leased or rented for a continuous period of more than 25 years. If that is the case there may well be a Capital Gains Tax exposure.

- **Further information: Teagasc have produced a useful booklet titled Guidelines for Long Term Leasing. It can be accessed at www.teagasc.ie**

Land leasing rates have reached €350 an acre this spring with the demand underpinned by dairy farmers looking for grazing and fodder

TABLE 1

Lease Term	Exempt Income	Maximum Tax Saving
5 years or more but less than 7	€18,000	€7,200
7 years or more but less than 10	€22,500	€9,000
10 years or more but less than 15	€30,000	€12,000
15 years or more	€40,000	€16,000

TABLE 2

Eligible Tenants	Non-eligible Tenants
Unrelated persons	Parent or Grandparent
Limited Companies (unconnected)	Uncle or Aunt (or their spouses)
Niece or Nephew	Children (or their spouses)
Cousins	Brother or Sister (or their spouses)
	Farming partners

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