Business

Tax break: Agricultural Relief and Favourite Nephew/Niece Relief may significantly reduce or eliminate a tax liability altogether on some farm transfers.

Keeping it in the family: the inheritance tax relief that can save farmers up to €100,000

Unmarried farmers or farmers who are married without children can avoid a serious tax burden by availing of the tax relief available if they intend passing the farm on to a favourite nephew or niece

Martin O'Sullivan

There is a significant cohort of farmers out there who are unmarried or are married without children.

For these people, the question of handing on the farm can pose serious questions in terms of tax planning and avoiding a serious tax burden for the eventual successor, be they niece, nephew, distant relative or unrelated person.

Thankfully, there are two major reliefs available that may significantly reduce or indeed eliminate a tax liability altogether. These are Agricultural Relief and Favourite Nephew/Niece Relief.

In this article I will deal with Favourite Nephew/Niece Relief which is available to nephews or nieces of the landowner or his/her spouse.

The case study set out below shows how this very valuable relief can be currently worth up to an additional €99,835 in tax savings as compared to the standard relief that applies to gifts or inheritances to nieces or nephews.

There are however conditions to be met and these conditions may require a deal of forward planning.

Conditions

Qualifying for the relief means that the beneficiary will be entitled to the same threshold that applies from parent to child, namely €335,000 (this is known as the Group A threshold).

The relief applies to gifts or inheritances of business (farm) assets only, so for example, it will not include a farm dwelling, nor will it cover any cash or shares;

The nephew or niece must be a child of the disponer's brother or sister, or a child of that brother or sister's civil partner'

The nephew or niece must have worked substantially on a full-time basis for a period of five years prior to the gift or inheritance.

For the nephew or niece to be treated as working substantially on a full-time basis in the business, he or she must work for at least 24 hours per week on the farm where there are more than the farmer and/or his spouse and the niece or nephew involved in working the farm.

Alternatively, where there is only the farmer (and or his spouse) involved along with the niece or nephew, the time required to assist the uncle or aunt is 15 hours per week.

Many prospective beneficiaries are unsure if their circumstances qualify them for this relief.

This applies specifically with people who have other employment, be it full-time or part-time.

The position in this regard is that Revenue will look favourably on cases where it can be clearly shown that a person's circumstances are such that they would be available to assist for the required hours in the week.

For example, a person living and working locally in employment or self-employment that grants the flexibility to devote the required hours should qualify.

I am aware of people in full time occupations such as teachers or shift workers who have been granted approval by Revenue.

People living and working in a distant location will be unlikely to qualify as it may be difficult to convince Revenue that their circumstances are such that they could conceivably devote the required hours assisting on the farm.

Forward planning

It is important that the uncle or aunt should make their intended successor aware of their intentions as this might enable the successor to put the necessary steps inn place that would entitle them to the available reliefs.

For example, they might decide to alter their working arrangements to facilitate them devoting the required hours on the farm. Such hours do not necessarily have to be remunerated.

Furthermore, where the farm is willed to the niece or nephew, having prior knowledge of their impending inheritance may ensure that they also qualify for Agricultural Relief.Case Study

CASE STUDY: Uncle transferring 120ac farm worth €1.5m to his nephew

Joe Farmer intends to transfer his 120 acre farm to his nephew John along with all stock and equipment. He also intends to transfer his dwelling but will retain a life interest. Joe has no other help on the farm and John has been assisting Joe for at least 15 hours per week for the past five years.

The value of the farm assets is €1.5m and the value of the dwelling is €150,000.

Joe is also giving John his Co-op shares worth €35,000 as he will need these to supply milk. John qualifies for Agricultural Relief on the farm assets which includes the farm dwelling. The following is John's Capital Acquisitions Tax position after the transfer has been executed.

Taxable value of land, stock and equipment (after claiming Agricultural Relief) **€150,000**

Less: *Exempted amount (Group A threshold)***€335,000**

Tax due on land, stock and equipment **0**

Taxable value of dwelling after claiming Agricultural Relief and after adjusting for life interest for uncle **€13,500**

Taxable value of Co-op shares **€35,000**

Less: *Exempted amount (Group B threshold)*	**€32,500**
Less: *Small gift allowance*	**€3,000**
TAXABLE BALANCE	**€13,000**
TAX DUE @33%	**€4,290**

N.B If John had not been entitled to Favourite Nephew Rrelief his liability would have been €53,790.

If he also had not been entitled to Agricultural Relief his liability would have been €539,385.

Martin O'Sullivan is the author of the *ACA Farmers Handbook*. He is a partner in O'Sullivan Malone and Company, accountants and registered auditors: www.som.ie