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TAXING TIMES FOR FARMERS

Maximise your Farms Cashflow and Issues to consider before Transferring Farm Ownership



In the current climate of lower property values, reduced incomes and increased taxes, there can be some good news. Any farmer will tell you that building a successful farming business takes a lot of hard work, dedication and sacrifice. Just like any farmer will tell you of their dislike in paying taxes.

Many of Ireland's family owned farms should therefore now look at the opportunities available to reduce their current and future taxes and improve their cashflow through putting in place some basic tax planning ideas. This can be as simple as maximising tax losses or looking at the longer term picture of transferring the family farm.

"Unfortunately, many farms, have moved from profit to loss making in the last year. Farmers are constantly looking at ways of reducing their costs" according to Mairead O'Grady, Taxation Partner with Russell Brennan Keane, they should look at the payment of taxes in a similar vein.

"Farmers should ensure they capture all business expenses incurred to maximise a farm tax loss, which can then be used to improve their cashflows. In many circumstances, a farm loss can be offset for tax purposes against other Income, for example, a salary of the farmer or spouse. This can be a significant cashflow benefit to them as they can get an immediate refund of PAYE paid. Where farmers carry on their business through a company, the benefit can result in a refund of corporation tax paid in the previous year" says Mairead.

It is important to remember that tax losses do not only arise from day to day trading activities, but may also arise from capital expenditure already incurred. "With a significant amount of expenditure incurred last year on farm buildings, land reclamation, roadways, new fencing, etc, this area is very topical. Normally, a tax allowance for this expenditure can only be claimed over seven years, however, where this expenditure was incurred prior to 31 December 2008 and qualified under the farm pollution control scheme; allowances can be accelerated and deducted against profits over three years" continued Mairead.

Ms. O'Grady highlights the absolute importance of preparing their tax returns early so that they make the most use of claiming these allowances in order to reduce their tax bill. Invariably all claims to do so must be made by the due date for filing the tax return i.e. by 31 October 2009 in respect of Income Tax for 2008.

Passing on the Family Farm

The above are basic mechanisms of improving a farmers' cashflow but there are other ideas which should be seriously considered, like ceasing to trade and passing the farm over to the next generation. Whilst the issue of when is often fraught with much debate, from a tax perspective, now may be the ideal time to act for two main reasons.

Passing on the farm is probably the most significant decision in the life-time of all farmers and they need to be happy that the timing is right for them and the child. Are the parents happy to pass it on? Does the child want it and has he sufficient interest in it? What about providing for other children? Have the parents looked at other issues like their own retirement position and ensure they have sufficient future income to live on and security etc.

Whether the right time to transfer the farm is now will depend on the family's circumstances. However, now is the time to start planning for it before any possible budgetary changes and ensure that the many conditions to the various relief's are met. In times of financial pressure due to reduced after tax income and cash flow constraints, the focus should be on reducing costs and maximising all available relief's essential to ensure the continued survival of the family farm.

Firstly, we are all too aware that asset values have fallen significantly and agricultural land values are no exception. This in itself is useful as it means that the lower the value of the farm the lower the associated tax cost on transferring it.

Secondly, there is much media speculation that the Minister for Finance wants to eliminate "unnecessary reliefs" in the next budget and one wonders whether the various relief's on transferring a family farm or business will cease to apply. Also the fact that Capital Gains Tax and Gift Tax have been increased from 20% to 22% and then to 25% in the last two budgets could signal an upward trend in capital taxes.

It is useful to recap on how these capital taxes apply on the gift of a farm from a parent to a child. There are three main taxes that can arise, namely Capital Gains Tax (CGT), Capital Acquisitions Tax (CAT) (i.e. gift tax) and Stamp Duty. With a little planning, the current tax regime contains reliefs which can significantly reduce or even eliminate the tax costs arising. This can be seen as follows:

1. Capital Gains Tax is payable at a rate of 25% by a parent on the disposal or transfer of a family farm or business. However, if some conditions are met for "Retirement Relief" such as being over 55 and having farmed for the previous ten years, there is an exemption from this tax.
2. Gift Tax or CAT is also payable at a rate of 25% by the child on the receipt of the gift. However, each child can receive €434k tax free from their parents in their lifetime and, in addition, if the transaction qualifies for either Agricultural Property

Relief (“APR”) or Business Property Relief (“BPR”), the maximum effective rate of tax can be reduced to a little as 2.5%.

There is often a misplaced fear that a child may not qualify for APR if the conditions are not met, for example, if the child being left the farm has other valuable non-farming assets, however, as an alternative to APR, agricultural property can now qualify for BPR. This can be very beneficial once the conditions like owning and farming for the previous number of years have been met.

3. Finally, Stamp Duty arises at rate of up to 6% - however, this can be reduced to 3% on a transfer between family members and in fact can be fully abolished where the child qualifies for Young Trained Farmers Relief.

“If saving capital taxes is not enough, there is also another cashflow advantage to passing the farm now when trading losses are being incurred. For income tax purposes, the transfer of the farm will be treated as a permanent cessation of the trade for the parent and the commencement of a new business for the child. Where losses arise in that final year, the farmer can set them off against profits made in the previous three tax years in order to secure an income tax refund of taxes already paid in those years” said Mairead.

Again, a successful farming business takes a lot of hard work, dedication and sacrifice, and it is now more important than ever to ensure it is not crippled by paying too much tax. However, whilst the tax advantages might look desirable, the timing must be right for all parties and it should be considered in the context of an overall succession plan. Careful planning should alleviate concerns and ensure that the farm continues as a successful business through the next generation.

For further information or to discuss your specific requirements confidentially, please contact Mairead O’Grady on (090) 6480600 or (01) 6440100 or by email mogrady@rbk.ie

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About RBK

Russell Brennan Keane is one of Irelands leading business advisory and accountancy firms. With 50 years experience providing professional advisory services to a range of clients in the mid to large corporate market in Ireland, from offices in Dublin, Athlone and Roscommon.

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