Farm succession – putting a plan together

'Better three hours too soon than a minute too late' – William Shakespeare

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Farm retirement, transfer of property and the family conversations around this topic are difficult and tend to be put on the long finger, otherwise the average age of farmers would not be creeping up as quickly as it is. With the average age of the Irish farmer now close to 60, some farmers are well beyond 65.

Planning farm retirement is so much more than just a simple business transaction. There are a number of complex issues to be addressed, including the fact that the family home is normally inseparable from the business, and there are usually a number of family members to be catered for fairly. Farmers are self-employed so there is a huge amount to consider.

Over the course of this article I will look at some aspects of succession that are of concern for you, your family and successor:

- Income post retirement – pension and other income needed to sustain your desired lifestyle.
- The Fair Deal Scheme.
- Money for long-term care in retirement should you need it.
- Taxes due on completion of transfer.
    - Capital Gains Tax (transferor).
    - Capital Acquisitions Tax (transferee).
    - Stamp Duty (transferee).
- Complying with tax relief conditions.
- Costs associated with transfer.
- Is there a successor in position to farm?
- Treatment of the family home (to pass with farm and reserve right to reside).
- Business partnership with child (with assets to be transferred later).
- Treatment of siblings not getting the farm.
- Common Agriculture Policy and Government policy.
    - What schemes can help, and what will be in the next CAP?
    - Will the Young Farmer Scheme and National Reserve continue?
    - Could there be a new installation aid and/or retirement scheme in the near future?
- Educational qualifications of the transferee.

First step – make a will

This becomes the backstop, if something unforeseen happens before the final plan is put in place. Many people put off this job as they probably do not want to think about their own death. In some cases, there is total denial, but it is important that a conversation is started about making the will. If there is no will the State will decide what happens to your estate using the Succession Act of 1965.

Common situation

I've come across a common situation, where the lack of early discussion results in no successor. For example the farming parents (mid 50's) with a child (early 20's) eager to start farming. But parents are not ready to hand over (as they have not reached pension age; other children to look after etc.) so no conversation takes place.

The potential successor goes away and gets a job in the city. The farming parents review the situation again in ten years (when they are close to retirement age) but the successor has settled away and no has no intention of farming.

The family conversation

Planning the transfer of the family farm to the next generation can be a difficult task for any parent. There are good tax incentives to promote early farm transfer, but this is a personal decision for every land owner.

To complete this task, while looking after all of your dependants fairly and your own future income in the most tax efficient way, is not easy. Many people delay for as long as possible, but if the process is started promptly and combined with careful planning, pitfalls can be avoided.

Family involvement in planning for succession is essential. A key aim must be to have an open conversation with the people involved so that misunderstandings can be avoided.

Effective communication is the key ingredient to successful succession planning. It allows for family members to share concerns, decide on options available and what actions to take. It also allows for effective planning and helps prevent disputes, misunderstandings and unnecessary anger.

Typically, when it comes to discussions around succession and inheritance, farmers are "passive" communicators. This means that there is a lot of assumptions around who is getting the farm and the plans for the future but these are not always explicitly communicated to the people involved.

Remember: once the farm is transferred, it cannot be taken back, so you must be happy with the transfer plan before executing it.

Fair and equal

Farmers are seen as wealthy individuals owning valuable assets. Unfortunately, due to the nature of farming, the annual cash returns are often low. Where there are a number of children to be "looked after", there is sometimes an expectation that the farm should be divided equally in monetary terms, meaning if one child is getting the farm a cash payment must be made to other siblings.

This approach could put the farm out of business as the debt-carrying capacity of the business may be very low. So how then can a parent treat all the children fairly? Fair may not always mean equal. Providing one child with a decent education and another with a site and a third with the farm may be a fair result. The child getting the education may end up with a better salary than the farmer.

What is fair? Is a fair share an equal share? It all depends on the situation.

The only way to be truly fair and equal is to sell the assets and divide the proceeds between the successors. This is rarely an option for farming families.

Nursing home support scheme (Fair Deal)

The Fair Deal Scheme always comes up in conversation with farmers approaching retirement. If nursing home care is needed in the future, it is better to have the farm transfer

Owen Power of Teagasc, Dungarvan, and Tom Power work closely but are not related!

completed at least five years prior to making an application to join the Fair Deal Scheme. Nobody can see into the future, and time spent thinking about or ignoring the problem, is often time wasted.

Nobody knows if they need care, so it is best to think about care, should you need it and try to have some idea of how the cost will be funded, or if a child will take on the responsibility. The plan needs to be shared with all involved, so there are no disagreements.

Policy

Both the Irish government and the EU have land mobility/ farm family support structures built into policy. The Government of Ireland largely dictates the tax policy; part of this policy is to encourage early transfer of land to a younger generation.

Stamp duty exemptions are granted to those who start farming before the age of 35 and have a certain minimum agricultural education. Agricultural relief can be claimed against Capital Acquisitions Tax and the retiring parent can claim Retirement relief against Capital Gains Tax.

The recent review of the agricultural taxes and the retention of the working group were significant positive steps to enable farming families to plan succession in a staged process.

Although in recent years there has been no specific financial payment to help with the costs of transfer, a new incentive introduced as part of the new CAP commenced in 2015. A 25% top-up on the Basic Payment Entitlements will be paid to qualifying young farmers for up to five years. This could potentially provide a payment of up to €15,000 to a young farmer.

Further information

Teagasc has a booklet available to download called *A Guide to Transferring the Family Farm* – it is available at this web address https://www.teagasc.ie/media/website/publications/2019/Transferring-the-Family-Farm-web-2019.pdf

Teagasc also plans to hold an online event called "Transferring the Family Farm" on Tuesday 17 November. Keep an eye on the events page of the website for further details.

Final point

Don't delay: Benjamin Franklin once said "nothing in this world is certain except death and taxes"

Trying to avoiding taxes and family conversations only gets more difficult the longer you leave it.

Nobody knows the time or date when they will pass on and taxes can only be avoided if planned for correctly.

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Tom and Jim Power.

Profile

The Power family, Waterford

"The most important thing is to communicate so that everyone knows where they stand," says Tom Power, a dairy farmer at Ballymullala, Cappagh, Co Waterford. "In that regard, my parents Jim and Brid got it exactly right."

By 1997, Tom had finished agricultural college at Rockwell and spent a year working on dairy farms in New Zealand. "We knew Tom was passionate about farming and interested in coming home," says Jim. "I think it's vital that young people can see their future in the family business as early as possible."

"The first thing they did was to offer me a weekly wage," says Tom. "This meant I was completely responsible for my personal outgoings. This was important after the experience of complete independence when abroad and I always felt my work at home was valued."

Not long after, Jim and Brid, still only in their fifties, sat down with Tom and laid out the long-term plan. They would transform the business into a partnership with Tom and they would transfer ownership of the business in two phases to him, the first almost immediately with the second by the time he was 33.

"This wasn't just a conversation over the dinner," smiles Tom."I could see they had it all thought out before we sat down."

"Our other four children were moving up in their careers and I felt Tom should have the opportunity to progress too," says Jim. "You may be transferring a lot of assets but really what you are handing over is just a way to make a living."

"The way my parents managed the succession was hugely motivating for me," says Tom. With Jim still fully involved in the business, the family have substantially grown their dairy business and Tom is now married to Moya and they have four children.

Jim offers some advice to farmers handing over the business. "You have to accept that there is a new boss and that while you are always ready to advice, you can't be in the background making decisions."

Tom concludes: "By deciding what they wanted to happen, and then communicating that to me at an early stage we all knew where we stood and could concentrate on building the business together."

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