IFA NEWS

Feirmeoirí Aontaithe na hÉireann • The Irish Farmers' Association •

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LAND LEASING SPECIAL

- Leased Land Income Tax Exemption Scheme
- Legal Security of Landowners where land is leased out
- Leasing Single Payment Entitlements
- What is Capital Gains Tax Retirement Relief?

President's Message

Tax Relief Makes Land Leasing Attractive

In the 2007 Budget and Finance Act, IFA has achieved substantial improvements in the policy measures supporting land leasing in Ireland.

There now is in place an attractive tax relief package to encourage and facilitate land owners who may wish to lease out their land on a medium-term basis. Landowners who have a substantial off-farm income but not enough time for farm work, or full-time farmers who wish to retire from active farming, can lease out their land for a set number of years and receive all or a substantial part of the lease income **tax free**. The terms of a lease maintain the security of land ownership, while also ensuring the upkeep of the land.

There is a steady demand for leased land as many commercial full-time farmers require access to more land on a secure basis for a fixed period to achieve necessary **scale and efficiency**. Most farmers who need to enlarge their holdings cannot afford the enormous cost of purchasing land.

Additional points for farmers to bear in mind are:

- Land rented-in for 5 years or more under a lease agreement is eligible for **REPS payments**.
- Under **Installation Aid**, young farmers who rent-in land must do so under a lease agreement.
- Under the **Early Retirement** scheme, a farmer who leases out his land must do so for the duration of the pension period but not less than 5 years.

This IFA newsletter is intended as an **information guide to both lessors and lessees** who may not be fully aware of the incentives and supports for the medium-term leasing of farmland in Ireland.

IFA recommends that potential lessors and lessees obtain **legal and taxation advice** before entering a lease. The ***IFA Master Lease*** document is available as a useful framework in preparing a lease agreement.

Padraig Walshe

Padraig Walshe

Improved Land Leasing Incentives

The Chairman of the IFA National Farm Business Committee Eddie Downey has been centrally involved in the preparation of IFA's 2007 pre-budget submission and in lobbying the Minister for Finance Brian Cowen and the Department Officials.

Eddie Downey said, "IFA's objective in the budget and finance bill has been to achieve a comprehensive package of measures to encourage and promote **structural reform and competitiveness** in Irish agriculture, particularly through a greater role for medium and long term leasing. I believe very good progress has been made."

The main changes in 2007 are as follows. Firstly, there is a substantial improvement in the **Land Leasing Income Tax Exemption scheme**, whereby landowners who lease out their land for a period of **10 years or more qualify for an income tax exemption of €20,000 per year.** In the case of leases of 5 – 7 years the annual tax exemption is €12,000, and for 7 – 10 year leases the annual tax exemption is €15,000. In certain circumstances where a husband and wife are joint lessors, each can qualify for the tax exemption.

Secondly, up to now land that had been leased out did not qualify for **Capital Gains Tax Retirement Relief.** This is changed by the 2007 Finance Act, which means that land leased out at any time in the previous 15 years prior to the disposal is eligible for retirement relief provided that certain conditions are met.

IFA National Farm Business Committee Chairman Eddie Downey

The details of the Leased Land Exemption scheme, the changes to CGT Retirement Relief and other relevant aspects of land leasing are set out in this special edition of IFA News.

Legal Security of Landowners where Land is Leased Out

The legal advice from James Staines of O'Hare O'Connor Walshe, Solicitors to IFA, is summarised as follows.

Where land is leased out and payment received for the lease, there is no threat to the ownership of the land irrespective of the length of the lease. However, in certain circumstances tenants may have a right to claim renewal of the lease when the lease agreement ends.

The Landlord and Tenant Act of 1994 provides tenants with a **right to claim renewal** of a lease at market value, where the property leased consists predominantly of buildings or where the land attached to buildings is considered to be "subsidiary and ancillary" to buildings. Also, under the Landlord and Tenant Act of 1980, a tenant is entitled to seek renewal of a lease where they have been in occupation for more than 20 years, or where they make substantial improvements to the property. However, under most lease agreements there is a prohibition on the tenant carrying out investments or improvements without the permission of the owner.

Thus where a lease involves only land, or land together with some buildings but the buildings are subsidiary and ancillary to the land, the landowner can give a lease for up to 20 years without the tenant having any right of renewal.

In a situation where the farm being leased involves a substantial amount of buildings and the landowner is concerned that the land may be deemed to be subsidiary and ancillary to the buildings, the landowner can protect his interests by having **a lease for the land only**, and either a licence or a letting for the temporary convenience of the land owner for the buildings on the land. In these circumstances the tenant would not have a right of renewal on the buildings or the land.

If the farm predominantly comprises of **buildings** such as intensive pig or poultry units, because the tenant would have a right to renewal if the lease is 5 years or longer, the Income Tax Exemption is effectively not available.

IFA advises landowners to raise any concerns they may have with their Solicitor before entering a lease agreement.

Leasing Single Payment Entitlements

Under EU regulations, the single payment entitlement can be leased out only if the equivalent area of land is leased to the same person. At the end of the lease period the entitlement reverts to the land owner.

When entitlements are leased, **a transfer form** (SPS/TE 2007) must be completed and returned to the Department of Agriculture and Food, together with a copy of the lease agreement, both signed by the land owner and the lessee.

The Land Leasing Income Tax Exemption Scheme was extended under the 2006 Finance Act **to cover income under qualifying leases of single payment entitlements** for 2005 and later years.

As regards the longer-term status of the single payment after 2013 (or other direct payments to replace the single payment), there is as yet no clear policy direction from the EU.

Tax Benefit of Leasing versus Annual Letting

If a land owner with an off-farm income who is liable to pay tax at 40% leases out his land and entitlements for 7 years for €10,000/year, all this €10,000 is exempt from income tax. If, on the other hand, he decides to let it on the 11 months system for €10,000/year, he keeps €6,000/year and pays €4,000/year in tax. Over the 7 years, he is better off by €28,000 under a leasing agreement.

What is Capital Gains Tax Retirement Relief?

Capital Gains Tax (CGT) applies to disposal of assets, including land, by sale or by gift during lifetime. (CGT does not apply to assets disposed of on death). However, CGT Retirement Relief **applies to persons who have reached the age of 55,** and wish to dispose of their business or farm. Under retirement relief, disposal to a son, daughter or favoured nephew/niece are fully exempt from CGT; in the case of other disposals, lifetime disposals of up to €750,000 are exempt from CGT.

Prior to the 2007 Finance Act if the land had been leased out prior to disposal it did not qualify for retirement relief. In response to IFA's pre-budget submission, this constraint has been removed by the 2007 Act which means that **land leased out at any time in the previous 15 years** prior to the disposal is eligible for retirement relief provided that (a) the land was owned and farmed by the individual for not less than 10 years prior to the first letting and (b) the disposal is to a child of the individual.

IFA Master Lease

The ***IFA Master Lease*** is a standard draft lease document. It can be downloaded from the IFA website as follows: Go to www.ifa.ie. Then click on "Rural Development" and then on "Leases and Services". Your Solicitor can amend the text of the master lease as required for your particular situation.

Leased Land Income Tax Exemption Scheme

The main elements of the scheme are set out under the following headings.

The Income Tax Exemption

The level of annual tax exemption depends on the length of the lease as set out in the table. (See also following point on husband and wife as joint lessors).

Term of Lease	Maximum Amount of Tax Exemption/Year
5 – 7 years	€12,000
7 – 10 years	€15,000
10 years or longer	€20,000

These maximum exemptions apply from 1/1/2007. For 2006, the first €12,000 is exempt for 5-7 year leases, and the first €15,000 is exempt for leases of 7 years or more.

Qualifying Lessor and Qualifying Lease

A **qualifying lessor** is a person aged 40 years or over, or a person incapacitated by physical or mental infirmity from carrying on the trade of farming.

A **qualifying lease** must be for a period or at least 5 years. It should be in writing, setting out the terms of the lease, for example the guaranteed tenure of the lessee for a minimum time period of 5 years. It must not be between family members (see: Qualifying Lessee following).

Farm Land

Farm land is defined for the purposes of the tax relief. The land must be in the State. It must be wholly or mainly occupied for the purposes of husbandry. This includes normal farming, market gardening, horse breeding, cattle dealing, fruit growing and any other form of husbandry, intensive or otherwise, which involves the use of the land or its produce.

Any building on the land, used for the purpose of farming that land, other than a building or part of a building used as a dwelling, is treated as part of the land.

Qualifying Lessee

A qualifying lessee is a person who is not connected with the lessor. Where there is more than one lessor or lessee, all of the lessees must be unconnected with all of the lessors. A lessor is not entitled to the relief where he/she leases land to:

- his immediate family (e.g. grandparents, parents, brothers, sisters, children, grandchildren, etc).
- the spouse of the lessor or the immediate family of the spouse,
- a person with whom the lessor is in partnership,
- a company which the lessor controls.

The lessee must carry on farming (within the broad meaning of "husbandry" set-out above) on the leased land either solely or in partnership with a person or persons who is or are also qualifying lessees.

Husband and Wife as Joint Lessors

Entitlement to tax relief is on an individual basis. Where two or more persons have an interest in a qualifying lease as lessors and are each entitled to receive rent under the lease, the tax relief is available to all of them.

Irrespective of the basis of assessment, a husband and wife who are **joint owners** of the land are **each** entitled to a maximum reduction of the appropriate amount in their separate assessable incomes from qualifying leases (whether as lessors under separate leases or as joint lessors under the same leases).

Thus a married couple in this situation could obtain an annual income tax exemption of up to €40,000. Similarly other joint lessors are entitled to separate maximum reductions of the appropriate amount against their respective shares of the rent from the qualifying leases.

IFA President Padraig Walshe and General Secretary Michael Berkery in discussion with Minister for Finance Brian Cowen.

Leasing Scheme Most Attractive to Landowners with Substantial Off-Farm Income

IFA Chief Economist Con Lucey

Con Lucey, IFA Chief Economist, states that the Leased Land Income Tax Exemption Scheme is likely to be most attractive to land holders who have a substantial off-farm income. The most recent CSO full census of agriculture which was taken in 2000 provides considerable data on this group of farmers. The census subdivides land holders into three groups based **on the importance of farmwork** – i.e. those for whom farmwork was (i) a sole occupation, (ii) a major occupation or (iii) a subsidiary occupation. Farming as subsidiary occupation is defined as a situation where the time spent on gainful non-farming activity exceeded that spent on farmwork.

The following table based on the CSO data summarises the situation in 2000.

Farms classified by importance of farmwork

	Number	Land Area (000 hectares)	% of total area	% of national farm income
Sole Occupation	78,723	2,842	64.2%	69.3%
Main Occupation	19,643	642	14.5%	14.7%
Subsidiary Occupation	42,976	940	21.3%	16.0%
Total	**141,342**	**4,424**	**100**	**100**

Farms where farming was a subsidiary occupation accounted for over 21% of the total farmed area nationally or **close to 1million hectares**. However, the farm income from these farms (as measured by the CSO on a standard gross margin basis) accounted for only 16% of national farm income. Thus incomes from farming on these farms are on average 25% lower than for all farms nationally.

The general picture which emerges for farmers for whom farming is a subsidiary occupation is that they are receiving a **relatively low economic return** from their farm work, while this farm work is conducted in addition to the person's main off-farm work, probably at evenings and weekends.

It is also probable that, in the context of the strong employment situation in Ireland in recent years, the number of landowners with well-paid off-farm jobs has increased since 2000.

The Land Leasing Income Tax Exemption Scheme should be particularly attractive to farmers/landowners who have a significant off-farm income and thereby are currently liable for income tax on their farm income as well as their off-farm income. They now have the option to free-up their off-time from the job and obtain a secure **rental income totally or substantially tax free** for a set number of years, while keeping all their options open as regards the longer-term ownership of the land or transfer of the land to a family member.

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