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Agri-Taxation Review
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Agri-Taxation Consultation

Dear Sir/Madam

We welcome the opportunity to make this submission in response to the joint Department of Finance and Department of Agriculture, Food and the Marine "Agri-Taxation" Public Consultation Paper issued on 11 February 2014.

In preparing this submission, we have engaged extensively with our members who advise the farming community and agri-business and have also engaged with representatives of the farming and agri sectors.

Executive Summary

Food Harvest 2020 has set ambitious growth targets for the Irish agri-food sector including increasing the level of agri-food exports by €2 billion. The global demand for food is expected to increase significantly as a result of continued global population growth and economic development, presenting significant opportunities for the Irish agri-food sector. In addition, the EU is set to abolish milk quotas in 2015 creating further expansion and market opportunities for the sector.

The next few years are therefore a crucial time for these industries and an efficient and highly productive farming sector is vital. Increased investment in farming will be required for these opportunities to be realised and targets met.

The consultation document highlights a number of the significant challenges facing the Irish farming sector including:

- The increasing age profile of farm holders and the need to encourage new entrants to farming.
- Wide fragmentation in Irish farm holdings and the inefficiencies this causes.
- The need to facilitate alternative farming models.

- The need for investment to encourage increased innovation and best practice.

In addition, farm income has become increasingly volatile in recent years due to fluctuating global commodity prices. Like other small businesses, farmers continue to struggle in the current environment and access to bank credit is very limited.

It is important that these challenges are addressed if the ambitious targets for the sector are to be met. Tax policy plays an important role in tackling these challenges and in supporting and encouraging activity and investment in the farming sector. It is vital to ensure that the tax regime does not act as a barrier or unnecessary impediment to the expansion of the sector.

In the detail of our submission below, we have set out comments on the key tax reliefs and measures which can drive the government's policy objectives for the sector. We have structured our comments around the following key policy objectives:

1. Increasing land mobility, earlier lifetime transfers and encouraging new entrants to farming.
2. Facilitating new approaches to farming focusing on farm leasing and partnerships.
3. Facilitating an increased level of farm investment to improve efficiency, innovation and best practice.

1. Increasing land mobility, earlier lifetime transfers and encouraging new entrants to farming

Capital Acquisitions Tax (CAT) Agricultural Relief

CAT Agricultural Relief reduces the market value of agricultural property by 90% for the purposes of calculating CAT. The relief is important in ensuring that CAT does not create a barrier to the transfer of agricultural property by way of gift or inheritance which could otherwise result in farmland having to be sold to pay a CAT liability.

CAT Agricultural Relief is a corner-stone of the tax regime for farmers and it is essential that relief at the 90% level is retained to help support the policy of farm transfers into the future.

Stamp Duty Relief for Young Trained Farmers

Stamp Duty Relief for Young Trained Farmers provides an exemption from stamp duty on transfers of farm land and buildings to young trained farmers. A young trained farmer is defined as a person under 35 years of age who has a relevant agricultural qualification. The farmer must subsequently work as a farmer for the 5 years after the transfer in order for the relief to apply.

Without this exemption, a significant upfront stamp duty cost could arise on the transfer of land until it can pass by inheritance. This would have the effect of reducing the level of capital available to the new farmer to invest in the farm. It is therefore important that this relief is retained to avoid creating an additional barrier to farm land mobility.

Furthermore, some farm businesses are carried out by companies who farm land owned by the shareholder. The farmers in question spend the majority of their time engaged in the farming activities as employees of the company.

The availability of young trained farmers stamp duty relief in such circumstances is not certain and clarity would be welcome on this issue. Otherwise, the uncertainty could serve as a disincentive to making some transfers of land to young trained farmers when the land is farmed by a young trained farmer as an employee of the farming company.

Stamp Duty Consanguinity Relief

Stamp Duty Consanguinity relief provides for a 50% reduction in stamp duty payable on the transfer of non-residential property between family members. The relief is currently due to expire at the end of 2014.

Presently, farmers above the age limit to qualify for stamp duty relief for young trained farmers can avail of consanguinity relief to halve the stamp duty cost on receipt of farm land from relatives. To reduce the potential for stamp duty to discourage lifetime transfers of farmland, this relief should be extended beyond 2014 – if necessary, for a further fixed period, during which the continued effectiveness of the relief could be monitored.

CGT Farm Restructuring Relief

The Consultation Paper notes that farm holdings in Ireland are very fragmented with the average holding consisting of up to 3.8 separate parcels of land.

CGT Farm Restructuring Relief was introduced in Finance Act 2013 as a measure to support farmers consolidating their farm holdings. It provides for an exemption from CGT on disposal of agricultural land as part of a farm restructuring. The exemption applies where the proceeds are used within a two year period to purchase different agricultural land which results in consolidating or improving the efficiency of the farmer's holdings. The relief also applies to qualifying exchanges of land by farmers. The relief is due to expire on 31 December 2015.

Currently:

- The sale by a farmer of an entire farm (Farm A) and the replacement of Farm A with the purchase of another farm (Farm B), does not qualify for the relief; and
- The exemption does not apply if the farmer reinvests the proceeds from the sale of part of his farm holding into equipment or buildings to improve production on his remaining holdings.

In many cases, it may make commercial sense for a farmer to dispose of peripheral farm holdings but it may not be possible for the farmer to purchase land that is closer to his existing farmland. As a result, the relief is currently unavailable in circumstances where a farmer is attempting to operate a more efficient and consolidated farm.

The Institute suggests that consideration be given to extending the Farm Restructuring Relief beyond 2015 and broadening its terms to cover both scenarios a) and b) above.

Capital Gains Tax Retirement Relief

CGT Retirement Relief provides for an exemption from CGT on the disposal of a business by persons over 55 provided certain criteria are met. These conditions include a requirement that the person making the disposal must have used the assets for business purposes (or been a director in the company) and owned the business assets for a minimum period of time prior to the transfer.

The relief encourages the lifetime transfer of farm land by farmers to the next generation rather than leaving the land to pass by inheritance. It is a very important relief which removes or reduces the potential CGT charge on the transfer.

However, 2 key issues should be addressed to ensure the improved operation of the relief.

1. Where assets pass between spouses/civil partners by way of **inheritance**, the legislation provides that the recipient spouse can rely on the other spouse's 'period of ownership' and 'period of use of the asset' in determining retirement relief on a subsequent disposal. Where a **lifetime transfer** of the assets occurs between spouses, the recipient spouse cannot rely on the other spouse's period of use of the asset for this purpose. A similar distinction occurs when shares of a company are passed between spouses.

   This less favourable treatment for lifetime transfers should be amended to help facilitate the lifetime transfer of lands between spouses/civil partners.

2. It is common for farmers to lease part of their farm holdings to other farmers on short term lease arrangements (or conacre arrangements). However, where land has been leased out by a farmer, the farmer may lose the entitlement to claim CGT retirement relief on any subsequent disposal of that land. A welcome amendment was introduced in Finance (No. 2) Act 2013, to provide that land leased for up to 15 years can remain eligible for retirement relief.

   Clarification is required that the temporary informal leasing of land by a farmer to an active farmer does not result in the loss of retirement relief.

2. Facilitating alternative farming structures – leasing and partnerships

Promotion of the practice of farm leasing and farm partnerships could play a key role in achieving the identified objectives for the sector. Such measures could help to increase the number of young farmers actively farming and greatly increase land mobility. Below we have outlined some proposed reforms which could support this objective.

Farm Land Leasing Income Tax Exemption

The farm land leasing income tax exemption provides that landowners who lease farm land for a period of 10 years or more are entitled to an exemption from income tax on rental income of up to €20,000 per annum. A limited version of the exemption is available where the lease granted is between 5 and 10 years in duration. The lessor must be over 40 years of age to avail of the relief. Additionally, the lessee must not be connected to the lessor and must use the land as part of a farming trade.

This exemption is an important measure in facilitating more widespread long term leasing of farm land. Encouraging long term land leasing to active farmers also helps to ensure that farm land is actively used for agricultural purposes.

Incentivising long term leases to family members could encourage the earlier transfer of land with the parent having the security of a guaranteed income stream. To achieve this objective, the extension of the land leasing exemption to family members should be considered and we believe this could be achieved without under-mining the objective of ultimate transfer to the child.

Additionally, the relief is currently not available where the lessee operates the farm through a company. This restriction limits the potential pool of lessees available to a lessor. Amending the relief to allow leases to corporate lessees to qualify for the relief (provided that the land is used for a farming trade), would help to facilitate more widespread long term leasing of farmland.

CGT Relief on dissolution of farming partnerships – s.598A TCA 1997

This relief was introduced to ensure that CGT does not arise on the dissolution of farming partnerships provided an asset was owned and used by the farming partnership for more than 10 years. The relief expired at the end of 2013.

Operating through a partnership can help farmers to improve efficiency and farm output. To encourage farmers to enter into and operate through farm partnerships, consideration should be given to reinstating this relief.

3. Facilitating an increased level of farm investment to improve efficiency, innovation and best practice

Food Harvest 2020 has set ambitious targets to increase the level of exports from the Irish agricultural sector. Furthermore, the abolition of milk quotas from 1 April 2015 creates an opportunity for the significant expansion of the dairy farming sector. It is vital that tax measures facilitate and support the increased capital investment by farmers that will be required if these objectives are to be met.

Additionally, tax measures which free up working capital for farmers are important to ensure that farmers have sufficient cash to invest to increase production capacity.

Tax incentives for farm investment

Section 658 TCA 1997 provides that farmers can claim capital allowances in respect of qualifying expenditure on farm buildings over a 7 year period. Farmers are also entitled to claim standard wear and tear allowances for farm plant and machinery over an 8 year period.

a. Accelerated capital allowances

As outlined above, the next 4 - 5 years are a crucial period for Irish farming. Food Harvest 2020 sets ambitious targets for increased farm exports and production. For these targets to be met, substantially increased levels of farm investment will be required over the next few years. If accelerated capital allowances were introduced for farm investment made before 2020, this could provide a significant incentive to encourage much needed investment. Allowing capital allowances to be claimed for farm buildings and for farm plant and machinery over a shorter time period would result in a beneficial tax cash flow saving for farmers.

b. Enhanced deductions / tax credits for farm investment

Enhanced deductions/tax credits for farm investment could also provide an important incentive to encouraging farm investment during this crucial period. We appreciate that EU State Aid provisions must be considered in this regard. However, the EU Commission's draft guidance on State Aid for the Agriculture Sector could be referenced to support this case[1].

This guidance makes clear at paragraphs 129 to 149 that targeted aid for "*the improvement of overall performance and sustainability of the agricultural holding*" is allowable within limits. Investment in

[1] http://ec.europa.eu/agriculture/stateaid/policy/feedback-gl/draft-gl-2_en.pdf

farm buildings and plant and machinery is listed as an allowable cost for such aid at paragraph 145. The guidance also suggests at paragraph 148, that aid can be given for up to 40% of the eligible costs.

An enhanced deduction or tax credit for eligible investments made before 2020 would provide important support and incentive to farmers to make investments in improving farm productivity.

c. Allowances for necessary investment following abolition of milk quotas

Part 23, Chapter 3 TCA 1997 currently provides that capital allowances can be claimed for capital expenditure on the purchase of milk quotas over a period of 7 years. From 2015 milk quotas are being abolished and one of the strategic objectives in Food Harvest 2020 is to achieve a 50% increase in the level of milk production in Ireland.

While farmers will no longer be required to purchase milk quotas after 2015, they may still face compulsory capital costs in order to increase their production of milk. For example, some dairy co-operatives may require members to make additional financial contributions as a pre-condition of supplying increased levels of milk. Where such costs have to be incurred to increase milk production, it is important that existing allowances for milk quota expenditure are extended to cover this compulsory expenditure. The absence of such relief could create a significant barrier to farmers increasing milk production sufficiently to meet the government's milk production targets.

d. Promotion of environmental stability

The Consultation Paper notes that promoting environmental stability is an important policy objective for the agricultural sector. Tax incentives in the form of accelerated capital allowances and enhanced deductions or tax credits could encourage investment by farmers to improve environmental stability. The Commission's draft EU State Aid guidance recognises 'aid for agri-environmental-climate commitments' at paragraphs 198 to 220, as being objectives for which targeted aid can be given. Consideration should be given to providing tax incentives such as accelerated allowances, enhanced deductions or tax credits to support this policy objective.

Working Capital supports

Working capital is a crucial issue for farmers. If farmers are concerned about having sufficient working capital to operate their day to day business, they will be reluctant or unable to make capital investments to improve the farm. The significant cashflow impact on famers of any proposals to bring forward the Pay & File date for income tax returns should also be considered. This would have a significant cashflow impact for farmers as many farm entitlement payments are received in October and December each year.

A number of tax measures provide important support to farmers in managing their cashflow and working capital and it is important that these are retained.

a. Stock relief

Stock relief is a relief given to farmers in respect of increases in the value of farm trading stock. It is given as a deduction equal to 25% of the increase in the value of the stock between the beginning and end of an accounting period. This relief helps to reduce the cash flow cost for a farmer of having to account for tax on increases in stock value that have not yet been realised. It is very important that this measure is retained, particularly as farmers seeking to expand are likely to invest heavily in stock in the next few years.

b. Stock Relief for Young Trained Farmers

An enhanced version of stock relief is available for 'young trained farmers'. These farmers can claim a deduction for the full 100% of the increase in stock value. A young trained farmer is defined as a person under the age of 35 with a relevant farming qualification. The relief applies for the first 4 years in which the farmer is engaged in farming.

The relief provides an important incentive for new farmers who are likely to invest heavily in stock early in their farming career. In the absence of the relief, the resulting tax charge could create significant cash flow issues for farmers and hamper their ability to invest in their farms.

There is some inflexibility inherent in the relief at present. It applies automatically in the first 4 years of farming. During this period the farmer may also be making significant capital investments which may not leave them in a position to invest in stock until subsequent years. Greater flexibility could be introduced so that a young farmer could elect to claim the relief in any 4 of the first 6 years of the farming trade. This would provide greater flexibility to the farmer in deciding commercially whether to invest in stock or capital improvements to the farm without losing the benefit of this relief.

Additionally, where a farmer begins farming just after the age limit to be a young trained farmer, enhanced stock relief is not available. For example a 36 year old qualified farmer who just begins to farm is not entitled to claim any enhanced relief. By contrast a 36 year old qualified farmer who has been farming for 2 years is entitled to claim the enhanced relief for two further years. We believe that transitional measures should be introduced to allow farmers who narrowly miss out on being eligible for the relief to claim the enhanced stock relief for a limited time period.

c. Income Averaging

Income averaging provides that, instead of paying tax on their farming profits that arise in the year, farmers can elect to pay tax on the average of aggregate farming profits over the previous 3 years. Commodity prices have been increasingly volatile in recent years which has resulted in farm profits and losses varying significantly from year to year. Income averaging provides important tax stability for farmers and should be retained.

Income averaging legislation is prescriptive in defining certain individuals to whom the relief does not apply. Where a farmer, or their spouse, carries out another trade or profession or owns more than 25% of the share capital of a trading company, income averaging is unavailable. The scope of the restriction is quite broad and excludes individuals from the relief in circumstances that can create hardship. We believe that the availability of the relief should be broadened within certain defined criteria.

We understand that there are a number of other schemes operated internationally to deal with farm income volatility. Given the increasing volatility of farm income in Ireland in recent years, it might be useful to explore whether similar schemes could or should be introduced in Ireland.

VAT issues for bloodstock industry

The bloodstock industry is facing challenges from the proposed VAT rate increase on the supply of certain horses as provided for in Section 66, Finance (No. 2) Act 2013. The 4.8% rate of VAT will continue to apply to the supply of horses normally intended for use in the preparation of foodstuffs or in agricultural production. The 9% rate of VAT will apply to the supply of all other horses.

Greater clarity is needed as to the exact circumstances in which the 9% VAT rate will apply. As the VAT rate on horses used in agricultural production (i.e. stallions and mares) will remain at 4.8%, we believe that the 9% VAT rate should only apply to racehorses. A horse should first be regarded as a racehorse when that horse is transferred to training/returned in training with the racing authorities.

A Racehorse Owners VAT Registration Scheme should also be considered. Such a scheme already exists in the UK and would be vital to the horse breeding industry as a whole.

The commencement date of the new provisions should be postponed until 1 January 2015 to allow time for proper consultation on this important development.

The Institute would be happy to engage further in this consultation through stakeholder meetings or direct discussions. Please contact Cora O'Brien at cobrien@taxinstitute.ie or (01) 6631719 if you require any further information.

Yours truly

Helen O'Sullivan
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