

Guide to Farming Taxation Measures in Finance Act 2014

Income Tax

1.1 Income Averaging (section 657 Taxes Consolidation Act 1997)

For the years of assessment 2015 onwards the period of income averaging is increased from three to five years. Special transitional measures are included for those farmers who first elect to average in 2014. Special transitional measures are also included for those farmers who elect to opt out of averaging in 2015 and 2016.

At present a farmer cannot elect to average if he or his spouse/civil partner carry on another trade or profession. This is changed to allow averaging of farming profits by a farmer where he or his spouse/civil partner carries on another trade provided that trade represents on-farm diversification.

1.2 Relief for Certain Income from Leasing of Farm Land (section 664 Taxes Consolidation Act 1997) With effect from 1 January 2015 the amount of income that may be exempted under a qualifying long term lease is increased and a fourth threshold is introduced for lease periods of 15 or more years with income of up to €40,000 being exempted.

Where one or more qualifying leases are entered into, some on or after 1 January 2015 and some at any other time (i.e. prior to 1 January 2015), then the amount of the exemption is limited, in aggregate, to the following:

- €40,000 where all the qualifying leases are for 15 years or more,
- €30,000 where all the qualifying leases are for 10 but less than 15 years,
- €2,500 where all the qualifying leases are for 7 but less than 10 years, and
- €8,000, where all the qualifying leases are for 5 or 6 years.

The lower age threshold of 40 years of age for lessors is removed and in consequence the reference to lessors who are permanently incapacitated is also removed.

A company may be an eligible lessee provided it is not connected to the lessor.

1.3 Stock Relief (sections 667B and 667C Taxes Consolidation Act 1997)

A new third level course, Bachelor of Science (Honours) in Sustainable Agriculture, is added to the list of qualifications, contained in the Table in section 667B, which an individual may attain, in order to meet the criteria necessary to be a qualifying farmer.

From 1 January 2014 the maximum amount of stock relief that can be claimed for registered farm partnerships is increased to €15,000 over 3 years.

Capital Gains Tax

2. Farm Restructuring Relief (Section 604B of the Taxes Consolidation Act 1997)

2.1 Heretofore relief from capital gains tax for farm restructuring could be claimed where the first transaction in the restructuring, for example, the sale, purchase or exchange of farm land, was carried out on or before 31 December 2015 and where the restructuring was completed within 24 months. This deadline is now extended to 31 December 2016. However, in order to comply with EU State-aid requirements, the relief is now confined to agricultural land only – it does not apply to buildings on the land.

2.2 Retirement Relief (Section 598 Taxes Consolidation Act 1997)

Section 598 of the Taxes Consolidation Act 1997 grants CGT retirement relief to farmers in respect of, among other things, the disposal of land – including land that has been let in certain circumstances.

In the case of land that is let, the Agri-Taxation Review recommended subject to certain conditions, that land that has been let for up to 25 years in total (increased from 15 years) ending with the disposal of that land should qualify for the relief. The Finance Act gives effect to this recommendation. The letting can be to an individual, a partnership or a company.

Since Finance (No 2) Act 2013, farmers who let their land under conacre agreements were not eligible for retirement relief when the land was ultimately disposed of, except where the disposal was to a “child” of the disponent*.

Finance Act 2014 gives farmers who let their land on conacre and who ultimately dispose of their land to a third party (other than a “child” of the disponent*) a once-off opportunity to avail of CGT retirement relief, provided they satisfy the other requirements of the relief, where they either:

- dispose of their land on or before 31 December 2016, or
- lease their land on or before 31 December 2016 for minimum periods of 5 years (up to a maximum of 25 years) and ultimately dispose of the land.

An overriding condition in relation to eligibility for retirement relief is that the land ultimately being disposed of must have been owned and farmed by the retiring farmer for a period of not less than 10 years, immediately before the land is leased (or let on conacre up to 31 December 2016).

*** A farmer who ultimately disposes of the land to his or her “child” can let the land on conacre after 31 December 2016 pending that disposal, without losing eligibility for retirement relief.**

2.3 **EU Single Farm Payment Entitlements** (Section 604C Taxes Consolidation Act 1997)

This amendment gives effect to the announcement by the Minister for Finance earlier in 2014 that he would provide for an exemption from CGT on chargeable gains arising from the disposal by farmers of payment entitlements under the EU Single Payment Scheme.

The exemption applies in circumstances where, because of the change in Common Agricultural Policy regulations, land owners whose entitlements were fully leased in the Scheme year 2013 would lose their entitlements

unless they disposed of them by transferring them to an “active” farmer on or before 15 May 2014.

The owners affected were advised by the Department of Agriculture, Food and the Marine, of the need to transfer their entitlements on or before 15 May 2014.

Farmers whose single payment entitlements were fully leased in the Scheme year 2013 and who disposed of them in the scheme year (from 16 May 2013 to 15 May 2014) are exempt from capital gains tax on the proceeds of the disposal.

Capital Acquisitions Tax

3. Agricultural Relief (Section 89 of the Capital Acquisitions Tax Consolidation Act 2003)

3.1 Capital Acquisitions Tax relief is available in respect of gifts and inheritances of agricultural property, as defined in Section 89(1), subject to certain conditions being satisfied. This relief has been amended in Finance Act 2014 to take account of recommendations of the Agri-Taxation Review, designed to ensure productive use of agricultural property.

3.2 Conditions

In addition to the existing conditions, including the requirement that a farmer’s agricultural property must comprise 80% by value of the farmer’s total property **at the valuation date**, the following conditions also apply to gifts or inheritances taken on or after 1 January 2015 where the valuation date also arises on or after 1 January 2015.

The beneficiary must:

- Farm the agricultural property for a period of not less than 6 years commencing on the valuation date or
- Lease the agricultural property for a period of not less than 6 years commencing on the valuation date. The agricultural property may be leased to a number of lessees as long as each lease and lessee

satisfies the conditions of the relief. Revenue will accept that a lease may be to another individual, to a partnership or to a company whose main shareholder and working director farms the agricultural property on behalf of the company. [Where land is leased to a company that is owned equally by an individual and that individual's spouse or civil partner, and at least one of them satisfies the working director and the farming requirements, the relief will apply.].

In addition, the beneficiary (or the lessee, where relevant) must

- Have an agricultural qualification (a qualification of the kind listed in Schedule 2, 2A or 2B of the Stamp Duties Consolidation Act 1999) or
- Farm the agricultural property for not less than 50% of his or her normal working time.

The agricultural property must also be farmed on a commercial basis and with a view to the realisation of profits – thus confining the relief to genuine farmers.

If during the 6 year period a beneficiary farms the agricultural property and then decides to lease it, relief will not be withdrawn, provided the lease and the lessee satisfy the conditions of the relief (for the remaining period of the 6 years). Similarly, if a beneficiary initially leases the agricultural property and decides, within the 6 year period, to end the lease (provided the lessee agrees) and to personally farm the agricultural property, relief will not be withdrawn.

3.3 “Normal Working Time” Test.

Revenue will accept, for the purposes of this relief, that “normal working time” (including on-farm and off-farm working time) approximates to 40 hours per week. This will enable farmers with off-farm employment to qualify for the relief provided they spend a minimum of 20 hours working per week, **averaged over a year**, on the farm. If a farmer can show that his or her “normal working time” is somewhat less than 40 hours a week, then the 50% requirement will be applied to the actual hours worked –

subject to being able to show that the farm is farmed on a commercial basis and with a view to the realization of profits.

It is expected that in the majority of situations it should be clear from the level of farming activity being carried on that the normal working time requirement is satisfied. If there is any doubt Revenue will consider all information (including farming records) provided by a farmer in relation to his or her normal working time and farming activities.

If in exceptional situations if it can be shown that, on an on-going basis, certain farming activities, e.g. farming involving the occupation of woodlands on a commercial basis, are carried out on a commercial basis and with a view to the realisation of profits, but do not require 50% of normal working time / 20 hours per week to be spent on such farming activities, Revenue will take this into consideration in deciding whether the relief is due.

3.4 Farming on a Commercial Basis

Whether a person is farming on a commercial basis and with a view to the realisation of profit can only be determined by reference to the facts in each case. It is expected that based on the facts, it will normally be clear whether this requirement is satisfied.

The fact that a farmer may make a loss in any year will not in itself result in relief being refused or withdrawn. Clearly, if a farmer continuously makes losses year on year, the circumstances would have to be examined carefully to see whether that person is farming on a commercial basis and with a view to the realisation of profit.

Single farm payments will be included as farming income in the computation of profits or losses in the normal way.

3.5 Withdrawal of Relief

Agricultural relief is subject to withdrawal if the agricultural property is disposed of within 6 years from the date of the inheritance or gift and the proceeds of disposal are not reinvested as required within Section 89(4)(a).

In relation to gifts and inheritances taken on or after 1 January 2015, the relief is also subject to withdrawal if, within a period of 6 years from the valuation date, any of the conditions governing the relief introduced in Finance Act 2014 cease to be satisfied.

In this regard, if a beneficiary who inherits or is gifted agricultural property disposes of it within 6 years but reinvests the proceeds in other farmland used by him or her for farming or leases it in the qualifying manner, the beneficiary will not be regarded as having ceased to use the agricultural property for the purposes of the relief. In effect Section 89(4), CATCA 2003, which provides for the replacement of agricultural property with other agricultural property within 6 years of the inheritance or gift, will be regarded as applying.

It should be noted, in relation to gifts and inheritances taken on or after 1 January 2015, that the 6 year period of the use of agricultural property for farming by the beneficiary or by a lessee runs from the valuation date. Accordingly, if any of the following events occurs within 6 years of the valuation date agricultural relief may be withdrawn:

- Cessation of farming by the beneficiary without leasing the land to a lessee who farms the land for the remainder of the 6 year period
- Disposal of the agricultural property without reinvestment in further agricultural property that is farmed by the beneficiary or by a lessee for the remainder of the 6 year period.

Where a taxable gift or a taxable inheritance is taken by a beneficiary subject to the condition that the whole or part of that taxable gift or taxable inheritance will be invested in agricultural property and such condition is complied with within 2 years after the date of the gift or the date of the inheritance, then the gift or inheritance is deemed to have consisted at the date of the gift or at the date of the inheritance and at the valuation date of agricultural property to the extent to which the gift or inheritance is subject to such condition and has been so invested.

The 6 year period of the lease/use of farming by the beneficiary will run from the date of the investment by the beneficiary in the agricultural property.

In accordance with self assessment principles it is the taxpayer's duty to make any necessary amendment to returns / self assessments to ensure relief is withdrawn where appropriate.

3.6 As the additional requirements applied to this relief by Finance Act 2014 relate to carrying on of farming activities – intended to ensure productive use of the agricultural property – they apply from the valuation date.

In the case of a gift of agricultural property, the date of gift **is** the “valuation date”, whereas in the case of an inheritance the valuation date can be as early as the date of inheritance – where for example the person inheriting farms the agricultural property from the date of death of the deceased – or in other situations from the date of grant of probate or administration.

The focus of the amendments to Section 89, Capital Acquisitions Tax Consolidation Act 2003 is to give the relief to **active farmers**. As farmers cannot actively farm the agricultural property until they are in a position to commence farming, the reference in Section 89(4B) to “valuation date” is to give individuals who inherit land an opportunity to commence farming or, where relevant, to make arrangements for the agricultural property to be leased under the amended wider relief – as it can take time for a person to do so from the date of inheritance. The existing 80% asset “farmer” test applies at the valuation date and not at the date of inheritance and as such gives a window of opportunity, time wise, for a beneficiary to arrange his or her affairs so as to meet that 80% test. A similar window of opportunity, time wise, will be allowed to a beneficiary to meet the new active farmer test.

Where farming commences between the date of the gift or inheritance and the valuation date, Revenue will accept that the 6 year period will commence from the earliest time that the agricultural property is first farmed, whether by the person who inherits or is gifted the farm or by a lessee.

3.7 Where a beneficiary inherits agricultural property and intends to farm it, but is genuinely unable to do so immediately from the valuation date because of existing work commitments or other personal circumstances, the relief will not be refused where the beneficiary otherwise fulfils the requirements of the relief on taking up farming i.e. where the conditions of farming continue for 6 years from the date the farming is taken up. Examples of such situations include:

- The beneficiary may have existing work commitments that may take time to complete.
- The beneficiary may be living and working abroad, such that it may take time to organise a return to Ireland – including completion of existing work commitments.
- The beneficiary may be a full-time student whose studies are not completed.

3.8 Where a beneficiary who takes a gift or inheritance of agricultural property, that includes agricultural land and a farm house, leases the land to an individual, a partnership or a company (that will farm the land for the minimum requisite 6 year period and will satisfy the farming conditions outlined above) but retains the farm house and resides in it as his or her only or main residence, Revenue will not seek to restrict any part of the agricultural relief, granted to the beneficiary on the gift or inheritance, referable to the farmhouse itself in those circumstances.

Similarly, if the agricultural property includes plant and machinery or livestock, but a lessee only requires the land, agricultural relief will not be restricted where the land comprises substantially the whole of the agricultural property.

Stamp Duty

4. Leasing Farmland (Section 81D, of the Stamp Duties Consolidation Act 1999)

Note: This relief is subject to a commencement order by the Minister for Finance

- 4.1 One of the recommendations of the Agri-taxation Review intended to encourage more productive use of farmland is that stamp duty relief be given in relation to certain leases of farmland to encourage more productive use of land.

This recommendation is now reflected in Section 81D of the Stamp Duties Consolidation Act 1999. The section provides, subject to certain conditions, for relief from stamp duty to encourage the long-term leasing of land to active farmers.

4.2 **The conditions that must be satisfied are:**

The term of a lease must be for a period of not less than 6 years and not more than 35 years.

The land must be used exclusively for farming carried on by the lessee.

The land must be farmed on a commercial basis and with a view to the realisation of profits –thus confining the relief to genuine farmers.

Revenue will accept that the lease may be to an individual, to a partnership or to a company whose main shareholder and working director farms the land on behalf of the company. [Where land is leased to a company that is owned equally by an individual and that individual's spouse or civil partner, and at least one of them satisfies the working director and the farming requirements, the relief will apply.]

The lessee (be it an individual, partners or a main shareholder and working director) must also:

- Have an agricultural qualification (a qualification of the kind listed in Schedule 2, 2A or 2B of the Stamp Duties Consolidation Act 1999) or

- Farm the land for not less than 50% of his or her normal working time – see Paragraph 3.3 (above) regarding the meaning of “normal working time”.

4.3 The section also provides that the stamp duty that would have been chargeable on the grant of the lease, becomes payable with interest in the event that the conditions of the relief are not fulfilled for the first 6 years of a lease.

Failure to fulfil the conditions of the relief due to the death or incapacity of the lessee by reason of mental or physical infirmity, will not give rise to assessment.

In accordance with self assessment principles it is the taxpayer’s duty to make any necessary amendment to returns / self assessments to ensure relief is withdrawn where appropriate.

5. Consanguinity Relief (Paragraph 5, Schedule 1 to the Stamp Duties Consolidation Act 1999)

5.1 Conveyances and transfers of certain properties between close relatives are currently subject to stamp duty at one-half the normal rate of stamp duty. The reduced stamp duty is payable by the individual to whom the land is conveyed or transferred. This relief is commonly known as consanguinity relief and was due to expire in relation to instruments executed prior to 1 January 2015.

The Agri-taxation Review recommended that this stamp duty relief be extended for three more years – but confined to conveyances or transfers of farmland, in order to encourage more productive use of farmland.

5.2 Conditions

Between 1 January 2015 but before 1 January 2016, a conveyance or transfer by a person of any age can qualify for relief.

Between 1 January 2016 and before 1 January 2018, only a conveyance or transfer by a person under 67 years of age can qualify for relief.

The individual to whom the land is conveyed or transferred must either farm the land or lease it for a period of not less than 6 years to an individual, who farms the land. Revenue will accept that a lease may also be to a partnership or to a company (whose main shareholder and working director farms the land on behalf of the company). [Where land is leased to a company that is owned equally by an individual and that individual's spouse or civil partner, and at least one of them satisfies the working director and the farming requirements, the relief will apply.]

The person who farms the land (including partners or working director as appropriate) must–

- be a farmer with an agricultural qualification (a qualification of the kind listed in Schedule 2, 2A or 2B of the Stamp Duties Consolidation Act 1999) or
- Farm the land for not less than 50% of his or her normal working time – see Paragraph 3.3 (above) regarding the meaning of “normal working time”.

The land must be farmed on a commercial basis and with a view to the realisation of profits – thus confining the relief to genuine farmers.

5.4. The relief is subject to withdrawal if any of the conditions are not satisfied.

In accordance with self assessment principles it is the taxpayer's duty to make any necessary amendment to returns / self assessments to ensure relief is withdrawn where appropriate.

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