

New conditions for Agricultural Relief

Agricultural relief is a relief from Capital Acquisitions Tax (CAT), the relief reduces the taxable value of a gift or inheritance of agricultural property (as defined) by 90%. For a parent to child transfer, agricultural property valued up to €2.25m could be transferred without a charge to CAT arising for the child (assuming the full Group A CAT threshold, currently €225,000, is available). In this regard the relief is quite generous and has been widely availed of in the past by individuals engaged in farming and also those that simply happen to receive a gift or inheritance of land.

CONDITIONS

Prior to Finance Act 2014 (the Act), the main requirements to avail of the relief were that the beneficiary must have satisfied the farmer test and retain ownership of the land for six years (all the conditions of the relief are provided for in section 89 Capital Acquisitions Tax Consolidation Act 2003).

The farmer test solely related to the assets held by the beneficiary, as long as not less than 80% of the beneficiary's assets post taking



BY MARK DOYLE

Mark Doyle outlines the changes to agricultural relief made by Finance Act 2014 and also considers Revenue guidance on the relief.

the gift or inheritance consisted of agricultural assets then the farmer test was satisfied. There was no requirement for the beneficiary to actually farm the land themselves e.g. the land could be leased or farmed on a non-commercial basis.

FINANCE ACT 2014 CHANGES

The Act introduced some significant changes to agricultural relief, these changes impact a gift or inheritance taken on or after 1 January 2015 (where the valuation date of the gift or inheritance also arises on

or after 1 January 2015). The Act gave effect to some of the recommendations made by the Agri-Taxation Review, a joint initiative by the Minister for Finance and Minister for Agriculture, Food and the Marine. The aim of the changes is to target agricultural relief at individuals actively involved in farming, or to incentivise the leasing of land to such individuals. The new provisions will likely make it more difficult for an unqualified part-time farmer to avail of agricultural relief, such individuals may be in a position to avail of business asset relief from CAT which can also apply to certain agricultural assets (although not to a farmhouse).

In addition to the requirement that a farmer's agricultural property must comprise not less than 80% by value of the farmer's total property at the valuation date, the beneficiary must:

- (i) be the holder of a relevant farming qualification or achieve such a qualification within a period of four years commencing on the date of the gift or inheritance, and farm the land for not less than six years commencing on the valuation date on a commercial

- basis with a view to realising profits, or
- (ii) spend not less than 50% of their normal working time farming agricultural property (including the agricultural property comprised in the gift or inheritance) on a commercial basis and with a view to the realisation of profits from that agricultural property for not less than six years commencing on the valuation date of the gift or inheritance, or
 - (iii) lease the whole or substantially the whole of the agricultural property for a period of not less than six years commencing on the valuation date of the gift or inheritance to an individual who satisfies the conditions in paragraph (i) or (ii) above.

It is important to note that the six year period of the use of agricultural property for farming by the beneficiary or by a lessee runs from the valuation date, in addition to this the beneficiary must retain ownership of the land for six years from the date of the gift or inheritance. With regard to agricultural assets that pass by way of a gift, the date of the gift and the valuation date of the gift are on the same date (so in effect both six year requirements terminate at the same time). However, with regard to agricultural assets that pass by way of inheritance, the date of the inheritance is taken to be the date of death of the disponent while the valuation date will often be a later date (generally the date of the grant of probate), in practical terms for inheritances, this will extend the time period that a beneficiary must retain the land to six years from the valuation date.

REVENUE GUIDANCE

Revenue have outlined in their Guide to Farming Taxation Measures (“the Guide”) and Revenue e-Brief No. 68/15 (“the e-Brief”) details of how the new provisions will be treated by them in practice and also a number of concessions to allow the new provisions fit in with normal farming practices.

The main points to note from the Guide are:

- 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.
- If during the six 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 six years). Similarly, if a beneficiary initially leases the agricultural property and decides, within the six year period, to end the lease (provided the lessee agrees) and to personally farm the agricultural property, relief will not be withdrawn.
- 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.

- If a beneficiary who inherits or is gifted agricultural property disposes of it within six 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.

Following consultation with practitioners through the Tax Administration Liaison Committee (TALC) Capital subcommittee Revenue published the e-Brief which cover several different practical issues arising by way of FAQs. The main FAQs of interest are:

Q. I work 30 hours per week in an off-farm employment. I also work 10 hours per week on my farm. Do I satisfy the ‘working time’ test?

A. No. Revenue will accept that a person’s normal working time (including on-farm and off-farm) approximates to 40 hours per week. As a person is required to spend at least 50% of his or her working time on farming activities, the test is not satisfied.

Q. I get occasional part-time off-farm work that averages out over the year at 15 hours per week. My on-farm work averages out over the year at 18 hours per week. Do I satisfy the 'working time' test?

A. Possibly. If a person can show that his or her normal working time is somewhat less than 40 hours per week, the 50% requirement will be applied to the actual hours worked, subject to the farmer being able to show that the farm is farmed on a commercial basis and with a view to the realisation of profits.

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Q. In the event of an audit what types of records will Revenue typically seek as evidence that

the 'active farmer' test is being met?

A. It is not envisaged that any additional records, over and above those required for tax purposes generally, should be necessary to establish that a person actively carries on farming activities. It should normally be clear from the level of farming activity carried on and the normal books and records of the farm, including purchases, sales, livestock records, (where relevant), etc. A farmer is not expected to keep a timesheet of hours worked on the farm.

Q. Where a beneficiary leases farmland, is he or she required to monitor the lessee's use of the land or check his or her farming qualifications?

A. The beneficiary should establish that the lessee has the required farming qualification and the lease should provide for this. In addition the lease should contain a clause requiring the lessee to farm the land so as to satisfy the 'active farmer'/'working time' requirement for the duration of the lease. The lease should provide that any breach of these requirements will result in the termination of the lease.

Q. I have inherited farmland, animal stock, farm machinery and a farmhouse. I am leasing the farmland to an active farmer; however he has no requirement for the machinery and stock. I am also retaining the farmhouse to reside in. Can I still qualify for relief?

A. Yes, provided that substantially the whole of the agricultural property that was inherited is leased. Revenue will accept that substantially the whole of the property means at least 75% of the property by value.

FINAL POINT

Practitioners should review the legislation, the Guide and the e-Brief in detail to ensure a full understanding of the new provisions and Revenue practice relating to agricultural relief. Where agricultural relief is not available practitioners should consider whether the beneficiary could qualify for business asset relief as this relief may be more suitable for part-time farmers.

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