Agri-Taxation

Introduction

Finance Act 2014 complicated the conditions of agricultural relief considerably by introducing an activity test to supplement the 80% financial test which must be met to qualify as a farmer.

The new farmer test is discussed in detail on pages 2 and 3.

The Revenue indicate that the new provisions are not anti-avoidance measures introducing a barrier to claiming the relief, but that they are intended to encourage the active use of agricultural land. The Revenue have published a useful "Guide to Farming Taxation Measures in Finance Act 2014".

A new clawback trigger has been introduced to ensure that the land is actively farmed for 6 years after the gift or inheritance. It is important to note that post FA14 there are 2 clawback periods of 6 years which commence on different dates.

The clawback triggers are discussed in detail on pages 4 and 5.

FA14 also introduced a stamp duty relief for the transfer of farmland and a stamp duty exemption for certain leases of farmland. The income tax exemption for leases of farmland was widened by removing the age and incapacity restrictions and the level of income which is exempt was increased.

The stamp duty and income tax changes are discussed in detail on pages 6 and 7.

Succession Planning Pitfall

If a farmer wants to transfer the farm and keep the farmhouse for his life and that of his spouse, Revenue's view (set out in the CAT Manual) is that a later transfer of the farmhouse, without the land, is not a transfer of agricultural property and therefore, it will not qualify for agricultural relief.

The issue would not arise if the farmer, transferred the house subject to a right of residence for himself and his wife, as the house would then be passing with the land. The right of residence should not be exclusive (as an exclusive right is treated as a life interest).

Application of New Rules

The Finance Act 2014 legislation applies in respect of gifts or inheritances which are taken on or after 01 January 2015. The date of inheritance is generally the date of death, but there are exceptions to this general rule. For example, where a benefit is taken from a discretionary trust the date of inheritance is not the date of death but the date of appointment from the discretionary trust.

If a disponer dies in 2014 and the valuation date is the date of grant of probate which is in 2015, the new farmer test does not apply. If the deceased died in 2014 and the property passes into a discretionary trust and is appointed to a beneficiary in 2015 or later, the new farmer test will apply.

Farmer Test

A farmer is defined as an individual in respect of whom not less than 80% of the market value of the property to which he is beneficially entitled in possession (following the taking of the gift or inheritance) consists of agricultural property.

For the purposes of the farmer test an individual is deemed to be beneficially entitled in possession to an interest in expectancy, so if an individual is the remainderman of a life interest trust in favour of another person, the value of the remainder interest would be taken into account for the farmer test.

However, Revenue accept that a future entitlement to a pension fund need not be included in the farmer test.

Generally, no deduction is made from the market value of property for any debts or encumbrances (such as a mortgage or other charge on a property), but if an individual's principal private residence is an off-farm dwelling which is not agricultural property, any mortgage attaching to the property is deductible.

Where the agricultural property consists of trees or underwood, the beneficiary does not have to be a "farmer" for the purposes of claiming relief on the woodlands. The trees or underwood must be growing on land and cannot be cut or harvested. The underlying land would also generally be agricultural property, but the beneficiary would need to qualify as a farmer to avail of agricultural relief on the land.

The Finance Act 2014 changes to the legislation can be read as importing a requirement that the 80% test must be met throughout the 6 years following the valuation date, but Revenue have confirmed that this test only has to be met on the valuation date.

Activity Test

S.82 Finance Act 2014 introduced an activity requirement for agricultural relief, to encourage beneficiaries to ensure that the land is actively farmed.

From 01 January 2015 in order to qualify as a "farmer" for CAT relief purposes, the beneficiary will need to hold one of the "trained farmer" qualifications required for stamp duty relief on farmland or be in a position to show that he is an active or a trained farmer.
Broadly speaking there are three ways to meet this new test, as follows:

- Farm the land as an active farmer
- Be a trained farmer and farm the land, or
- Lease the land to an active farmer or a trained farmer

Active Farmer

To be an "active farmer" you must spend no less than 50% of your normal working time farming agricultural property, for a period of not less than 6 years, starting on the valuation date.

The farming activity must be on a commercial basis, and carried on with a view to the realisation of profits.

Revenue have indicated that they will accept that "normal working time" (including on farm and off farm working time) approximates to 40 hours per week. They confirmed that farmers with off farm employment would qualify for the relief if they spend a minimum of 20 hours working on the farm each week, averaged over a year.

If a farmer can show that his "normal working time" is less than 40 hours a week, then the 50% requirement may be applied to the actual hours worked provided that the farm is being farmed on a commercial basis with a view to the realisation of the profits.

If it can be shown that (in exceptional situations) 50% of normal working time is not needed to farm the land on a commercial basis and realise profits, Revenue will take this into consideration in deciding whether the relief is due. Revenue recognise in the CAT Manual that this may apply to forestry.

Revenue have indicated that a farmer may make a loss in any year and that in and of itself would not result in relief being refused or withdrawn. However, the circumstances would need to be reviewed if the loss is being made continuously, year on year.

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

If a beneficiary cannot meet the active farmer requirements immediately because of existing work commitments or other personal circumstances, the relief will not be refused where the other requirements of the relief have been fulfilled.

Revenue have given the following as examples of situations where the relief will not be refused:

- The beneficiary may have existing work commitments that may take time to complete.
- The beneficiary may be living and working abroad.
- The beneficiary may be a full time student whose studies are not completed.

The Revenue CAT Manual indicates that relief would not be refused in such circumstances once the beneficiary begins actively farming the land within a year of the valuation date.

Trained Farmer

Another option is to be a trained farmer (a farmer who holds one of the specified farmer qualifications). These are the same qualifications that are specified for stamp duty relief purposes.

The “trained farmer” qualification need not be held at the date of the benefit; it is sufficient if the beneficiary or tenant achieves the qualification within 4 years of the date of the gift or inheritance.

In addition to holding the relevant qualification, the land must be used by the individual or tenant for the purposes of farming with a view to profit.

Revenue have confirmed in the CAT Manual that the relief can be claimed at the outset and that an individual does not need to complete the relevant course before claiming relief. However, the relief would be clawed back if a relevant course is not completed within 4 years.

Leasing to an Active or Trained Farmer

Alternatively, if the beneficiary is not farming, or is involved in other activities which take up a good deal of his working time, he can opt to rent the land on a long term lease (not less than 6 years) to an “active” farmer or a “trained” farmer.

The farming activity must be on a commercial basis, and carried on with a view to the realisation of profits.

The lease must cover the whole (or “substantially the whole”) of the agricultural property for a period of not less than 6 years starting on the valuation date, and the tenant must hold one of the stamp duty “trained farmer” qualifications or must spend not less than 50% of his normal working time farming agricultural property.

The lease should contain a clause requiring the lessee to meet the “active” or “trained” farmer test and the lease should terminate if the lessee ceases to be a “active” or “trained” farmer.

If an existing lease to an “active” farmer is in place on the date of the gift or inheritance, then the taxpayer can rely on that lease in claiming relief.

Revenue have indicated that they will accept that retention of the farmhouse as a family residence (when land is leased), or the retention of some plant, machinery or livestock will not preclude relief if “substantially the whole” of the benefit is leased.

Revenue have confirmed in the CAT Manual that “substantially the whole” of the property means at least 75% of the property, by value.

If the beneficiary farms agricultural property as an “active” farmer, and then decides to lease it, Revenue have confirmed that relief will not be withdrawn provided that the lease and the lessee satisfy the conditions of the relief. Conversely, if a beneficiary decides to farm the property as an “active” farmer, relief will not be withdrawn.

Revenue will accept that a lease may be to another individual, a partnership or to a farming company whose main shareholder is a working director and farms the agricultural property on behalf of the company.

Revenue have also confirmed that agricultural property may be leased to a number of lessees as long as each lease and lessee satisfies the conditions of the relief.

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Clawback Triggers for Agricultural Relief

There are 3 separate clawback provisions, as follows:-

1. The 6 year disposal clawback - agricultural relief is clawed back where the agricultural property is disposed of or compulsorily acquired within six years of the gift or inheritance and the proceeds are not reinvested in other agricultural property within one year of the sale or within six years of the compulsory purchase.

2. The 6 year activity clawback - agricultural relief is clawed back if the agricultural land is not actively farmed, or leased to an "active" farmer throughout the 6 year period beginning on the valuation date.

3. The development land clawback – if development land is sold during the period running from the 6th to the 10th anniversary of the date of the benefit, relief is claimed back. During this time there is no reinvestment option to avoid a clawback of relief.

Strictly read, the revised legislation requires the 80% financial test to be met throughout the 6 year "clawback" window. Revenue have confirmed that in practice the 80% farmer test only needs to be met on the valuation date.

The clawback periods listed at points 1 and 2 above begin on two different dates. The 6 year clawback window for disposal of the property (point 1 above) starts on the date of the gift or inheritance, but the 6 year clawback window for the activity test starts on the valuation date (or if earlier the date the activity started).

Disposal and Reinvestment

Example:

Michael dies on 01 March 2015 and Michael's son, John, inherits his farm under his Will. The Grant of Probate issues on 10 July 2015 and John starts work on the farm on 10 July 2015.There is no development value in the land. John claims agricultural relief on the basis that he is an "active" farmer.

The clawback "window" for a sale or disposal will run from 01 March 2015 to 01 March 2021, whereas, the activity clawback period will run from 01 July 2015 to 01 July 2021. If John were to sell all the land in April 2021, a clawback would still arise as John would cease farming the land.

Agricultural relief is clawed back where the agricultural property is disposed of or compulsorily acquired within six years of the gift or inheritance and the proceeds are not reinvested in other agricultural property within one year of the sale or within six years of the compulsory purchase.

Revenue have confirmed in the CAT Manual that a beneficiary would also have a period of one year to let the land to an "active" farmer if the original "active" farmer tenant ceases renting the land.

The Revenue Commissioners accept that if CGT is paid on a disposal, only the net proceeds available after payment of the CGT need to be invested.

The expenditure of sale proceeds on the construction of new agricultural buildings on other

land owned by the farmer or the expenditure of sale proceeds on the demolition of old agricultural buildings on such other land and their replacement by the construction of new agricultural buildings will not result in a clawback of the relief. This is on the basis that the construction of the new or replacement agricultural buildings improves the value of the agricultural lands on which they are built.

An anti-avoidance provision was included in the legislation so land that is acquired from a spouse will not qualify as replacement property.

If there is a partial re-investment so the proceeds from a disposal or compulsory acquisition are not fully used to acquire other agricultural property, relief will be clawed back in respect of the proceeds not re-invested. The legislation dealing with disposals sets out a formula to calculate the clawback which operates by reference to the proceeds of sale, so if there is a pure gift (with no payment being received) the clawback amount is nil and no CAT liability arises on the gift.

Ongoing Activity Test

The legislation sets out 2 separate options for activity;-

- the beneficiary may opt to actively farm the land for 6 years, or
- the beneficiary may lease the land for 6 years to an active farmer.

Revenue will allow beneficiaries to move from one option to another in the 6 year period.

The legislation does not have any exclusions from this clawback for situations beyond the beneficiary's control such as ill health or the death of a lessee.

> *"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".*

The stamp duty relief for leased agricultural land which was also introduced in Finance Act 2014 (new S. 81D Stamp Duty Consolidation Act 1999) has a statutory "saver" so that 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.

Revenue have indicated that they would be willing to extend this "saver" to CAT agricultural relief for consistency.

Strictly speaking the activity test involves farming the agricultural land which was inherited for 6 years, and there is no provision for replacement property in the activity test provision.

Revenue have indicated that in general if the beneficiary sells agricultural property and reinvests the sales proceeds in agricultural property within a year the fact that the property has been replaced will not trigger a clawback on the basis of the activity test. This scenario has not been included in the Revenue FAQs but they indicate that if a lease comes to an end, the general one-year replacement rule applies, which may indicate that a one-year period would be allowed after a sale to meet the activity test. Practitioners may wish to confirm the position by sending a submission to Revenue.

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Stamp Duty & Income Tax Changes

Stamp Duty

Finance Act 2014 introduced some relief for the transfer of farmland and an exemption for certain leases of farmland.

Prior to this the main stamp duty relief available to farmers was the relief for young trained farmers and this also remains in place for 2015.

Young Trained Farmer Relief

To avail of this relief the farmer must be under 35 years of age on the date of execution of the deed of transfer and hold a relevant trained farmer qualification.

The young trained farmer must also, for a period of five years from the date of execution of the deed of transfer:

- spend not less than 50% of his normal working time farming the land, and
- retain ownership of the land.

The relief provides for a full stamp duty exemption where the relevant conditions are met, and this relief continues to apply to transfers made up until 31 December 2015. The 5 year clawback period is out of sync with the 6 year clawback period that applies to many tax reliefs.

If a transferee actively farms the land and retains ownership of the land, but does not have a relevant trained farmer qualification when the land is transferred to him, he can still avail of the relief by obtaining a relevant qualification in the 4 years following receipt of the land.

If a qualification is obtained within the 4 year period from the date of execution of the Deed of Transfer, a refund of the stamp duty would be payable to the transferee. In such a case, the 5 year clawback period commences from the date the refund claim is made.

Consanguinity Relief

Finance Act 2014 introduced a stamp duty relief (similar to consanguinity relief) for 2015 reducing the stamp duty by 50% if the transferee is actively using the farm.

This relief will also be available in the tax years 2016, 2017 and 2018 provided that the transferor is aged 66 or under.

In order to claim the relief, the transferee needs to:

- Be a trained farmer who farms the land on a commercial basis with a view to the realisation of profits for at least 6 years after the transfer,
- Be an active farmer who farms the land on a commercial basis with a view to the realisation of profits for at least 6 years after the transfer, or
- Lease the land to a trained farmer or an active farmer who farms the land on a commercial basis with a view to the realisation of profits for the 6 year period.

The relevant qualifications are the same as those required to avail of young trained farmer relief, but there is no age restriction.

Similar to young trained farmer relief, a qualification can be obtained within 4 years of the transfer but the legislation is not clear cut in terms of whether a refund will issue after the qualification is obtained, or whether relief will be granted on the basis that the qualification will be obtained, and withdrawn if it is not obtained.

It is possible that although the legislation is silent on the matter, Revenue will only allow for a refund after the qualification is obtained, in line with the young trained farmer relief provisions.
The active farmer concept first arose when young trained farmer relief from stamp duty was introduced in 1994 and Revenue have issued some guidance on who will be treated as an active farmer.

Example:

Patrick (age 70) transfers farmland worth €400,000 to his son Robert on 31 March 2015. Stamp duty of 2% applies to land transfers but as Robert is a full time farmer and uses the land in his farming trade, the stamp duty payable by Robert is reduced by 50%. The stamp duty payable amounts to €4,000.

If Patrick waited until 2016 to transfer the land to Robert the 50% reduction would not be available as Patrick is older than 66 years of age. Stamp duty of €8,000 would be payable on a 2016 transfer.

If Robert ceases farming the land before 01 April 2021, then the stamp duty relief will be clawed and Robert will be liable to make the full stamp duty payment as if the relief was not due (an additional payment of €4,000).

The active farmer guidance for stamp duty is the same as the active farmer guidance for agricultural relief, which is detailed on pages 2 and 3.

Stamp Duty Relief for Certain Leases of Farmland

Finance Act 2014 introduced a stamp duty exemption for leases with a term of between 6 and 35 years, where the tenant is a trained farmer, or an active farmer who farms the land on a commercial basis with a view to the realisation of profits.

The tenant must hold one of the stamp duty "*trained farmer*" qualifications or be an "active" farmer.

The definition of active farmer is the same definition which applies for agricultural relief (see discussion of active farmer on pages 2 and 3).

If a lease comes to an end within the first 6 years, or the conditions of the relief are otherwise not met for the first 6 years, any relief given would be clawed back unless the conditions of the relief are not met as a result of the death or permanent incapacity of the tenant.

It should be noted that this exemption is subject to a commencement order.

Income Tax Exemption for Lease Income

If a beneficiary opts to lease the land in order to claim agricultural relief, he may be able to avail of an income tax exemption in respect of the rental income.

S. 664 of the Taxes Consolidation Act 1997 (TCA 97) provides for an exemption from income tax where income is derived from a qualifying lease of farmland. This section was amended in Finance Act 2014.

A qualifying lease must be made to an individual not connected to the lessor, using the farmland for the purposes of a trade of farming carried on by him.

Up to Finance Act 2014 "qualifying lessor" was defined to mean an individual who is aged 40 years or upwards, or is incapacitated, and who has not leased the land to a connected party on terms which are not arm's length. The age and incapacity restrictions were removed by Finance Act 2014.

Finance Act 2014 amended the income tax provisions, by providing that if a qualifying lease is made after 01 January 2015, the specified tax free amount would be:

- €40,000 for leases of 15 years or more,
- €30,000 for leases of 10 years or more,
- €22,500 for leases of 7 years or more or,
- €18,000 per annum in any other case.

Prior to Finance Act 2014, these limits ranged from €12,000 to €20,000.Therefore, if a beneficiary opts to lease the land for 6 years in order to claim agricultural relief, he may be entitled to claim an income tax exemption on rent of up to €18,000 per annum.

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Services

O'Hanlon Tax Limited provides Irish taxation services for a wide range of clients and intermediaries, including:-

- Tax on business profits (income tax and corporation tax),
- Tax on investments (capital gains tax "CGT"),
- Tax on gifts & inheritances (capital acquisitions tax "CAT"),
- Taxation issues for trusts (tax on investments and discretionary trust tax "DTT"),
- Tax on Property (VAT and stamp duty),
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- Tax compliance advice on UK inheritance tax ("IHT") and US federal estate tax ("FET"),
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We provide a practical approach to our clients' tax issues, and our tax consultancy services enable professional firms to enhance the range of services offered to their own clients.

Publications

OHT has a strong publication and presentation programme and provides tax lectures, tutorial and examination services to a range of bodies and firms including the Law Society, the Irish Taxation Institute (ITI), the Society of Trust & Estate Practitioners ("STEP"), the DSBA, and Stephenson Solicitors. Publications include:

- ITI book *"The Taxation of Capital Gains"*
- Law Society OUP Manual *"Capital Taxation for Solicitors"*
- Articles for the DSBA Parchment, the STEP Journal, and ITI's Irish Tax Review

Website

Our website has a range of articles on taxation matters, and useful tax tools and charts.

Any specific tax queries can be raised by phone or email to the address below.

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Caveat: These notes are intended as a general guide only. OHT has endeavoured to provide an accurate commentary but the notes cannot cover all circumstances. OHT strongly recommends that formal tax advice be obtained before any steps are taken that may have a tax effect.

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