

# **Notes for Guidance - Taxes Consolidation Act 1997**

## **Finance Act 2021 edition**

### **Part 23 Farming and Market Gardening**

**December 2021**



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Part 23 Farming and Market Gardening

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### PART 23 FARMING AND MARKET GARDENING

#### CHAPTER 1

#### *Interpretation and general*

#### **Overview**

This Chapter is concerned with the taxation of profits from farming and market gardening. These are charged to tax under Case I of Schedule D (*section 655*). Provision is made for a scheme of 3 year income averaging in the case of farming profits (*section 657*) and for the granting of capital allowances for capital expenditure on farm buildings and other works (*section 658*) and on farm buildings needed for the control of pollution (*section 659*). Measures are included to deal with the valuation of farm trading stock on the discontinuance of farming (*section 656*), to deem wear and tear allowances in respect of machinery or plant to have been made in certain cases (*section 660*) and to restrict relief in respect of losses in various cases (*sections 661, 662 and 663*). Finally, exemption for certain income from long-term leasing of farm land is made available (*section 664*).

#### **654 Interpretation (Part 23)**

This section defines a number of terms for *Part 23* other than *section 664*.

“farming” is defined to mean farming farm land, that is, land in the State which is wholly or mainly occupied for husbandry, other than market garden land.

“market garden land” is land in the State which is occupied as a nursery or garden for the sale of the produce (but excluding land used for growing hops), and “market gardening” is to be construed by reference to this meaning.

“occupation” of land, other than market garden land, is having the use of the land or the right to graze livestock on it.

#### **655 Farming and market gardening profits to be charged to tax under Schedule D**

#### **Summary**

This is a general charging section under which farming and market gardening are to be treated in the same way as any other trade with profits being charged to tax under Case I of Schedule D.

#### **Details**

Farming is to be treated as the carrying on of a trade, or part of a trade, and farming profits are chargeable to tax under Case I of Schedule D. (1)

Farming activities of a person, even though derived from different holdings or in different capacities (for example as sole owner of his/her own land and as a partner in other farming) are treated as a single trade. This is to apply despite anything to the contrary in *Part 43* which deals with the taxation of partnerships. However, a farmer (2)

moving into or out of a farming partnership is subject to the same treatment as any other trader – that is, the commencement and cessation provisions in *Chapter 3* of *Part 4* apply.

Market gardening is, in relation to the person by whom it is carried on, also treated as a trade and profits from market gardening are chargeable to tax under Case I of Schedule D. (3)

## **656 Farming: trading stock of discontinued trade**

### **Summary**

This section provides for a special method of valuing farm stock which is transferred to another farmer by a farmer who is ceasing farming. The parties to the transfer have the option of electing to have the stock transferred at its book value (instead of at market value which would be the normal valuation used).

Under the terms of *section 89*, trading stock which is transferred on the cessation of a trade – otherwise than on a sale or a transfer for valuable consideration – must be valued at market value. This can give rise to a significant additional income tax liability for the farmer who is retiring. For example, a retiring farmer who has trading stock with a book value of, say, €50,000 transfers this stock to his/her successor for no consideration. If the market value of the stock was, say, €80,000, this is the figure used in computing his/her trading profits on cessation and he/she is, therefore, deemed to have made a taxable profit of €30,000 even though the stock is gifted to the successor. As a result of *section 656*, however, the parties involved in the transfer have the option of electing to have the farming stock transferred at its book value, thereby cancelling the profits that would otherwise have arisen to the transferor.

### **Details**

#### **Definition**

“specified return date for the chargeable period” has the meaning set out in *section 959A*. (1)

#### **Transfer of trading stock of a trade of farming**

Where trading stock of a trade of farming is transferred by a farmer to another farmer, both the transferor and the transferee may jointly elect — (2)

- to have the “market value” provisions of *section 89(2)(b)* set aside, and
- instead, to have the stock valued at book value.

Any such election must be made in writing on or before the specified return date for the chargeable period in which the transfer takes place.

## **657 Averaging of farm profits**

### **Summary**

This section provides that, instead of being charged to tax on their farming profits in the normal way (that is, on the profits of a 12-month period ending in the year of assessment), up to year of assessment 2014, individual farmers may elect to be charged on the basis of the average of the aggregate farming profits and losses of the 3 years ending in the year of assessment. In effect, one-third of the profits for the 3 years is charged for a year. Prior to 1 January 2019, farmers could not avail of income averaging

where the farmer or their spouse/civil partner, carried on another trade or profession, unless that trade or profession related to on-farm diversification conducted on the farmland. In addition, a farmer could not elect for averaging if the farmer, or the farmer’s spouse/civil partner, was a director of a company carrying on a trade or profession and the farmer, or the farmer’s spouse/civil partner, was the beneficial owner or was able to control, either directly or indirectly, more than 25% of the ordinary share capital of the company. Finance Act 2018 removed these restrictions with effect from 1 January 2019.

Once an election for averaging is made, a farmer must remain on averaging for a minimum of 3 years. If the farmer wishes to revert to the normal basis of assessment, the 2 years of assessment immediately before the final year of averaging are reviewed and, if necessary, additional assessments are made to ensure that the amount charged for each of those 2 years is not less than the amount charged for the final year of averaging.

For the years of assessment 2015 onwards the period of income averaging is increased from three to five years.

For the years of assessment 2015 onwards a farmer must remain on averaging for a minimum of 5 years. If the farmer wishes to revert to the normal basis of assessment, the 4 years of assessment immediately before the final year of averaging are reviewed. Special transitional measures are provided for those farmers who elect to opt out of averaging in 2015 and 2016.

For the years of assessment 2016 onwards, a farmer may elect to step-out of the income averaging regime, and revert to the normal basis of assessment, for a single year.

An option is given to farmers to step out of income averaging for the year of assessment 2020, notwithstanding that the farmer may also have stepped out of income averaging in one of the four preceding tax years.

In the case of a farmer entering a Registered Farm Partnership which might otherwise mean the cessation of a previous sole trade of farming, the cessation will be ignored solely for the purpose of applying the income averaging rules and averaging can continue to apply.

## Details

### *Definitions*

(1)

“deferred tax” means the amount of income tax determined by the formula -

$A - B$

Where –

A is the amount of income tax which would, apart from subsection (6A), be charged on an individual as a result of income averaging in the year of assessment,

B is the amount of income tax which would, apart from this section, be chargeable in accordance with Chapter 3 of Part 4 in respect of a year of assessment in which an election is made in accordance with subsection (6A) i.e. based on current year profits.

“specified return date for the chargeable period” has the same meaning as in section 959A.

### *Election for income averaging by full-time farmers*

A farmer may by written notice elect for income averaging within 30 days of the date of an assessment to tax in respect of farming profits and the assessment is amended as (4)(a)

necessary as a result so as to give effect to the election.

**Income averaging – tax treatment**

The farmer opting for income averaging is charged to tax for a tax year on the average of the aggregate farming profits and losses (before deduction of capital allowances which are not subject to averaging) over 5 years, that is, of the tax year in question and the 4 tax years immediately preceding that year. **(5)(a)**

**Example election in 2015**

1	2	3	4
Year of assessment	Profit/Loss in year of assessment	Aggregate of Profit/ Losses for year of assessment and 4 previous years	Average profit for assessment in year (1/5th. Col. 3)_
2011	15,000		
2012	18,000		
2013	21,000		
2014	24,000		
2015	21,000	99,000	19,800
2016	(18,000)loss	66,000	13,200
2017	33,000	81,000	16,200

Provision is made that for the short “year” of assessment 2001, a farmer who is to be assessed to tax on the income averaging basis is assessed on 74% (and not 100%) of the average of the farming profits and losses of the appropriate 3 year period ending in that year of assessment. **(5)(aa)**

A mechanism is provided to deal with the case where a farmer customarily makes up annual accounts to a date in the period from 1 January to 5 April. In such a case there is no account period ending in the short “year” of assessment 2001 as the period 1 January to 5 April 2002 falls in the calendar year of assessment, 2002. To deal with such a case, it is provided that annual accounts made up to a date in the period in question are, in addition to being accounts made up to a date in the year of assessment 2002, treated as accounts made up to a date in the short “year” of assessment 2001. The result of this is that the one set of accounts comes into play for the 3 year look back for averaging purposes in the case of both the short “year” of assessment 2001 and the year of assessment 2002. This is consistent with the approach provided for in the case of self-employed taxpayers taxed in the normal way on the profits of a 12 month period ending in the year of assessment. **(5)(ab)**

Both profits and losses of the 5 years concerned in the averaging process are aggregated; losses are, in effect, treated as negative profits. **(5)(b)**

Once an election for averaging is made, the farmer continues to be assessed on that basis for subsequent years unless the farmer ceases to farm. **(6)**

A farmer may elect out of the averaging regime for a single year and revert to the normal basis of assessment for that year. The deferred tax due will be payable in **(6A)**

instalments over the subsequent 4 year period. An individual will only be entitled to make such an election once every 5 years. The election is available for the tax year 2016 and subsequent years of assessment.

This paragraph sets out two definitions.

**(6B)(a)**

The “Covid-19 period” is defined as the period beginning on 1 January 2020 and ending on 31 December 2020.

The term “Covid-19 deferred tax” is defined an amount of tax determined by the formula ‘A – B’. ‘A’ is the amount of income tax which would, apart from this subsection, be charged on an individual as a result of income averaging in the year of assessment. ‘B’ is the amount of income tax which would, apart from this section, be chargeable in accordance with Chapter 3 of Part 4 in respect of the year of assessment 2020, i.e. if it would chargeable on current year profits.

Subsection (6B) applies to an individual who stepped out of averaging regime under subsection (6A) in the year of assessment 2019 or one of the three years of assessment immediately preceding it and sustains a loss in the Covid-19 period (i.e. 1 January 2020 to 31 December 2020).

**(6B)(b)**

Where this subsection applies to an individual and the individual is chargeable to income tax as a result of income averaging in the year of assessment, the individual may elect to defer payment of the Covid-19 deferred tax.

**(6B)(c)**

Where an election is made under paragraph (c), the Covid-19 deferred tax for that year of assessment may be paid in four equal instalments.

**(6B)(d)**

The first instalment will be due by the specified return date for the year of assessment following the year of assessment in respect of which the election was made. The remaining three instalments will be due on or before the following three anniversaries of the date on which the first instalment was due.

**(6B)(e)**

### ***Reversion to normal basis of assessment***

A farmer may elect to revert to the normal (current year) basis of assessment for a year of assessment provided that averaging has been used for the 5 immediately preceding tax years. A notice to this effect is to be given with the return of income for the year in question. Prior to 1 January 2019, a farmer who became a trader/ farmer (and thus no longer qualified for averaging) was deemed to have elected to revert to the normal basis of assessment.

**(7)**

### ***Transitional measures for farmers who wish to opt out of averaging in 2015 or 2016***

A farmer who wishes to opt out in 2015 can do so if he has been charged on the basis of averaging for the each of the 3 years immediately preceding this year. A farmer who wishes to opt out in 2016 can do so if he has been charged on the basis of averaging for each of the 4 years immediately preceding this year.

**(7A)(a)**

**(7A)(b)**

Where a farmer elects to no longer be assessed under averaging, the normal, current

**(8)(a)**



year basis of assessment applies for the year in respect of which the election to opt out is made.

Where a farmer elected to opt out of averaging permanently or was deemed to have so elected in 2015, the years 2012 and 2013 were reviewed to ensure that the amount charged for each of those years was not less than the amount charged on the basis of averaging for 2014. **(8)(b)**

Where a farmer who first opted to average in 2014 subsequently elects or is deemed to have elected to opt out of averaging permanently, the 3 years immediately preceding the year of opt out will be reviewed to ensure that the amount charged for each of those 3 years is not less than the amount charged on the basis of averaging for the year preceding the year of opt out. **(8)(c)**

Where any other farmer elects to opt out of averaging permanently, the 4 years immediately preceding the year of opt out will be reviewed to ensure that the amount charged for each of those 4 years is not less than the amount charged on the basis of averaging for the year preceding the year of opt out. **(8)(d)**

Where a farmer elects to opt out of averaging permanently, any deferred tax and Covid-19 deferred tax which remains outstanding shall become due and payable. **(8)(e)**

For the purposes of *subsection (8)*, there is a mismatch between the length of the short “year” of assessment 2001 (270 days from 6 April to 31 December 2001) and the previous and subsequent years of assessment (12 months). As a consequence, in the case of farmers opting out of income averaging in the first 3 calendar years of assessment, 2002, 2003 and 2004, appropriate adjustments are made where the 2 years of assessment immediately before the final year of averaging are being reviewed. Separate rules are, therefore, provided for each of the 3 years, 2002, 2003 and 2004.

In the case of the farmer opting out of income averaging in the year of assessment 2002, the last year of assessment for which averaging applies is the short “year” of assessment 2001 for which only 74% (and not the normal 100%) of the average of 3 years profits is chargeable to tax. Accordingly, in order to ensure a fair comparison when reviewing the 2 immediately preceding years of assessment for which income averaging applied, the years of assessment 2000–2001 and 1999–2000 (for which the normal 100% of the 3 year averaged profits are charged to tax), it is provided that an assessment may, if necessary, be made to secure that the profits charged to tax for each of those 2 years of assessment are not less than 135% ( $100/74 \times 100$ ) of the profits charged under income averaging for the short “year” of assessment 2001. **(8A)**

In the case of the farmer opting out of income averaging in the year of assessment 2003, the last year of assessment for which averaging applies in the year of assessment 2002 for which the normal 100% of the average of 3 years profits is chargeable to tax. The 2 immediately preceding years of assessment for which income averaging applies are the short “year” of assessment 2001 (for which only 74% of the 3 year averaged profits are charged to tax) and the year of assessment 2000–2001 (for which the normal 100% of the 3 year averaged profits are charged to tax). Again, to ensure a fair comparison when reviewing those 2 years of assessment, it is provided that an assessment may, if necessary be made, to secure that the profits charged to tax for each of those years are — **(8B)**

- in the case of the year of assessment 2000–2001, not less than, and

- in the case of the short “year” of assessment 2001, not less than 74% of, the profits charged under income averaging for the year of assessment 2002.

Where a farmer opts out of income averaging in the year of assessment 2004, the last year for which averaging applies is the year of assessment 2003 for which the normal 100% of the average of 3 years profits is chargeable to tax. The 2 immediately preceding years of assessment for which income averaging applies are the year of assessment 2002 (for which the normal 100% of the 3 year averaged profits are charged to tax) and the short “year” of assessment 2001 (for which only 74% of the 3 year averaged profits are charged to tax). To ensure a fair comparison when reviewing those 2 years of assessment, it is provided that an assessment may, if necessary, be made to secure that the profits charged to tax for each of those years are — (8C)

- in the case of the short “year” of assessment 2001, not less than 74% of, and
- in the case of the year of assessment 2002, not less than, the profits charged under income averaging for the year of assessment 2003.

### ***Capital allowances***

Where a farmer’s profits are charged using income averaging, capital allowances, balancing allowances and balancing charges are dealt with as they would have been if the normal, current year basis applied, that is, on the basis of expenditure incurred in the particular year. (9)

### ***Permanent discontinuance of a trade***

The cessation rules of *section 67* – which deal with the assessment of profits where a trade is permanently discontinued – operate even where an election has been made for averaging. (10)

However, where the commencement of a Registered Farm Partnership would have meant the cessation of a previous trade of farming, then the cessation will be ignored solely for the purposes of income averaging. The cessation and commencement rules will still apply however income averaging can continue. (10A)

### ***Losses arising on income averaging***

In the case of a farmer who first elects to average in 2014, where in any year a loss is aggregated with profits under subsection 5(b) of section 657 and the amount of the loss is in excess of the profits then one quarter of the amount of such excess will be treated as a loss sustained in the trade of farming for the final year of the 4 years. This is the amount of loss that can be relieved under Chapter 1 of Part 12. (11)

In the case of any other farmer, where in any year a loss is aggregated with profits under subsection 5(b) of section 657 and the amount of the loss is in excess of the profits then one fifth of the amount of such excess will be treated as a loss sustained in the trade of farming for the final year of the 5 years. This is the amount of loss that can be relieved under Chapter 1 of Part 12.

### ***Losses in short tax “year” 2001***

In order to take account of the short “year” of assessment 2001, provision is made that where a loss is determined under income averaging for that “year”, only 74% (and not 100%) of one-third of that loss is available for set-off against other income of that “year”. The balance of 26% of one-third of the loss is, however, available for carry forward against farming income in subsequent years of assessment. (11A)

### ***Profits calculated under income averaging***

The profits from farming calculated in accordance with the averaging provisions are deemed to be the farmer's profits for tax purposes. In addition, the provisions of the Income Tax Acts relating to the delivery of returns, accounts, statements, etc. apply as if this averaging provision had not been introduced, thereby preserving the penalty provisions in relation to the submission of such documents on the normal basis to the Revenue Commissioners. (12)

## **657A Taxation of Certain Farm Payments**

### **Summary**

**Section 657A** puts into effect certain changes providing for a particular tax treatment of certain farm payments which arise because of the temporary increase in farm incomes brought about by the decoupling of farm income supports in 2005.

This decoupling, which takes the form of a Single Farm Payment, payable annually in December of each year, replaces a whole variety of FEOGA payments schemes which farmers have received up until 2005. Typically these payments were made partly in the year to which they relate and partly in the following year.

In the year 2005, many farmers will have received income both under the old schemes and under the new scheme. In future years, only the single payment will apply. This measure provides all farmers with the opportunity to average these FEOGA payments, received in 2005 over 3 years.

Many farmers can already avail of farm income averaging under **section 657** and, therefore, **section 657A** does not apply to them. However, for those categories of farmers, such as part-time farmers and farmers with spouses with off-farm income, that cannot avail of income averaging, this section works in the following way —

- If a farmer elects for this treatment, any payments received in 2005 under any of the FEOGA schemes set out in the Table to the section which are chargeable for that year or for 2006 are treated as arising in 3 equal tranches, commencing in the the year in which it would otherwise be chargeable and in the following 2 years of assessment. This means that the burden of taxation is spread over 3 years instead of concentrated in the same year.
- Once a farmer has elected for these arrangements, he or she cannot opt out until they run their course, unless that person ceases farming altogether, in which case the balance of any outstanding tax is collected in that year.

The election for this treatment is to be made on or before the tax return date for the year of assessment in which the payments would otherwise have been chargeable.

### **Details**

**Section 657A** comprises 6 subsections.

Two definitions are set out for the purposes of this section. (1)

“Relevant individual” means a person who is farming in the year 2005 and who receives both a relevant payment AND a payment under the new Single Payment Scheme, both of which are charged to tax as farming income for the same year of assessment. Individuals who are already on income averaging under **section 657** are excluded.

“Relevant payment” means a payment received at any time in the calendar year 2005 under any of the schemes specified in the Table to the section.

A relevant individual can elect that any relevant payments received by him/her will be subject to the income averaging arrangements. The election is to be in a form required by the Revenue Commissioners. (2)

Where an individual has elected under *subsection (2)*, the relevant payment is deemed to have been received in 3 equal instalments, commencing in the year in which it would otherwise be chargeable and in the following 2 years of assessment, and taxed accordingly. (3)

Where a trade of farming has been permanently discontinued, then the payments, which have yet to be charged, are chargeable under Case IV of Schedule D for the year of the discontinuance. (4)

The election must be made on or before the normal return date for the year in which the payment is received and must be included with the normal return of income for that year. (5)

Other than the circumstances set out in *subsection (4)*, once the election is made it cannot be unwound or altered. (6)

The Table sets out the Farm Income Support Schemes to which this section applies.

## **657B Restructuring and diversification aid for sugar beet growers**

### **Summary**

This section deals with the taxation of payments, made in 2007 and expected to be made in 2008 to certain sugar beet growers, under the EU Restructuring and Diversification Aid for the sugar industry.

These payments to abandon sugar beet production are based on an estimate of lost income streams extending up to 12 years into the future and although the payments are correctly chargeable to income tax some growers could be pushed into the higher rate bands in the year these payments are made.

This section ensures that the payments can be averaged over 6 years, beginning in the year in which the payment is made. The beet grower makes an election for the averaging tax treatment with his/her tax return for that year. Once the grower has opted in they cannot subsequently opt out. This is to ensure that all the income received will eventually be taxed.

### **Details**

This section is concerned with the taxation arrangements for the restructuring aid being paid to certain sugar beet growers.

The section comprises 6 subsections as follows:

The following 2 definitions are set out: (1)

“specified individual” essentially means a person who is engaged in farming for 2007 or a later year of assessment,

“specified payment” means a payment to a specified individual under EU Council Regulation 320/2006 (as amended by EU Council Regulation 1261/2007) which would, apart from this section, be chargeable to tax as part of the trade of farming for 2007 or a later year of assessment.

A specified individual must elect to have any specified payment treated in accordance (2)

with **subsections (3) to (6)** instead of being chargeable to tax in the year of receipt. The election will be in such form and contain such information as the Revenue Commissioners may require.

Once the election is made, then any specified payment which would otherwise be chargeable for that year of assessment will be ignored and instead be treated as arising in 6 equal instalments, the first in that year and the balance spread over the following 5 years. (3)

Where a trade of farming is permanently discontinued then any uncharged amounts are immediately chargeable under Case IV of Schedule D in the year of discontinuance. (4)

The election must be made by notice in writing on or before the normal return date for the year of assessment. In other words by 31 October 2008 for 2007. (5)

Once the election is made it cannot be altered or varied during the 6 year period to which it relates. (6)

## **658 Farming: allowances for capital expenditure on construction of buildings and other works**

### **Summary**

Persons chargeable to tax on their farming profits may claim a farm buildings allowance for capital expenditure on the construction of farm buildings (other than buildings used as a dwelling) and certain other works. The cost is written off at the rate of 15 per cent of the cost in each of the first 6 years with the remaining 10 per cent in year 7.

### **Details**

#### ***Application***

Farm buildings allowances are available to persons whose farming profits are taxable by virtue of **section 655**. (1)

#### ***Allowances***

A farm buildings allowance is made, over a 7 year period, to a farmer who incurs capital expenditure on the construction of farm buildings (excluding a building used as a dwelling), fences, roadways, holding yards, drains, land reclamation and other works such as walls, water and electrical installation and sewerage. (2)(a)

The rate of the farm buildings allowance is 15 per cent of the capital expenditure for each of the first 6 years of the 7 year period with the balance, 10 per cent, allowed in year 7. (2)(b)

Certain transitional rules apply for dealing with expenditure incurred before 27 January, 1994 (see **paragraph 23** of **Schedule 32**). (2)(c)

For the purposes of the allowances under this section, the “basis period” for income tax purposes is the period on the profits or gains of which the income tax liability is calculated. (3)

#### ***Deemed allowances***

An allowance under this section is deemed to have been made for any year of assessment for which an individual is not chargeable to tax on farming profits and in which, if the person had been chargeable, the person could have claimed a farm buildings allowance. (4)

### ***Pre-trading expenditure***

Capital expenditure on farm buildings which was incurred by a person about to start farming but before farming begins is regarded as being incurred when the farming actually begins. (5)

### ***Claims***

Farm buildings allowance is claimed by being included in the person's annual tax return. The balance of the allowance not granted in any year of assessment (because there were insufficient profits to absorb it) may be carried forward to later years. (6)

### ***Transfers of farms***

If a person who is entitled to a farm buildings allowance transfers the farm to another person, the transferee becomes entitled to whatever allowance is due for chargeable periods after the transfer. (9)

If only part of the farm is transferred, the transferee may claim so much of the allowance as relates to that part of the land. (10)

### ***Apportionment of expenditure, prevention of double relief and exclusion of grants***

Capital expenditure that relates only partly to farming purposes is to be apportioned. Farm buildings allowances only apply to the part that relates to the farming trade. (11)

A farm buildings allowance is not granted if the expenditure qualifies for an industrial building initial or writing-down allowance under *Chapter 1 of Part 9*. (12)

Only net expenditure qualifies for farm buildings allowances – any State or other subsidy is excluded. (13)

## **659 Farming: allowances for capital expenditure on the construction of farm buildings, etc for control of pollution**

### **Summary**

The scheme applies in respect of expenditure incurred between 6 April 1997 and 31 December 2010. For expenditure incurred before 6 April 1998 a special year 1 allowance of the lesser of 50 per cent of expenditure incurred or €12,700 is provided for. For expenditure incurred on or after 6 April 1998 but before 6 April 2000 the 1 year allowance is the lesser of 50% of expenditure incurred or €19,050. In both cases the balance of the expenditure is written off over 7 years at the rate of 15% for each of 6 years with 10% in the final year.

As regards expenditure incurred between 6 April 2000 and 31 December 2004 the allowances are given over 7 years, 15% for each of the first 6 years and 10% in the final year. A person may elect, however, for the following approach:

- an allowance (known as the “residual amount”) equal to the lesser of 50% of expenditure or €31,750 can be taken in whole or in part at any time over the 7 year writing-down period. The balance of the allowance is spread over the 7 years at the rate of 15% for each of 6 years with 10% in the final year.

As regards expenditure incurred on or after 1 January 2005 the allowances are given over 3 years in equal amounts. A person may elect for the following approach:

- an allowance (residual amount) equal to the lesser of 50% of expenditure or €50,000 (€31,750 for capital expenditure incurred prior to 1 January 2006) can be

taken in whole or in part at any time over the 3 years writing-down period. The balance of the allowance is spread over the 3 years at the rate of 33⅓% for each of the 3 years.

The aggregate of allowances available in any one year cannot exceed the “residual amount” and once the election is made it cannot be altered during the writing-down period.

To qualify for any of the schemes, a farmer must have a farm nutrient management plan in place which is drawn up by an agency or planner approved by the Department of Agriculture and Food.

## Details

### *Application*

The section applies to a person who — (1)

- is engaged in farming,
- has a farm nutrient management plan drawn up in respect of his/her farm by an agency or planner approved by the Department of Agriculture and Food, and
- incurs capital expenditure between 6 April 1997 and 31 December 2010 on buildings or structures of the type listed in the Table to the section.

The farm nutrient management plan must accord with either guidelines issued by the Department of Agriculture, Food and Forestry (currently Agriculture and Food), or a Rural Environment Protection Scheme (REPS) or Erne Catchment Nutrient Management Scheme plan. The buildings or structures must be constructed in accordance with the farm nutrient management plan and must be certified as being necessary for the control of pollution by the agency or planner who drew up the plan.

### *Allowances*

Before any expenditure is incurred, a farmer must deliver a copy of his/her farm nutrient management plan to the Department of Agriculture and Food. Subject to Article 6 of Council Regulation (EEC) No. 2328/91 of 15 July 1991 a farmer is then entitled to the allowances (known as “farm pollution control allowances”) in respect of that capital expenditure incurred. (2)(a)

The writing-down periods over which the “farm pollution control allowances” are given are as follows: (2)(b)

- 8 years where the expenditure was incurred before 6 April 2000,
- 7 years where the expenditure was incurred on or after 6 April 2000 and before 1 January 2005,
- 3 years where the expenditure was incurred on or after 1 January 2005.

The rate at which the allowances are to be given are set out in *subsections (3), (3A) and (3AA)*.

Where the expenditure was incurred prior to 6 April 2000 the rates at which the allowances are given are as follows: (3)

- for expenditure incurred before 6 April 1998 the first year allowance is set at the lesser of €12,700 or 50% of the expenditure with the balance being set off over the next 6 years at the rate of 15% per annum with the remaining 10% of the balance in the final year (year 8),
- for expenditure incurred on or after 6 April 1998 but before 6 April 2000 the first year allowance is set at the lesser of €19,050 or 50% of the expenditure with the

balance being set off over the next 6 years at the rate of 15% per annum with the remaining 10% of the balance in the final year (year 8).

Where expenditure was incurred between 6 April 2000 and 31 December 2004 the allowances are given at the rate of 15% of the expenditure in each of the first 6 years with the final 10% in year 7. (3A)

Where expenditure was incurred on or after 1 January 2005 the allowances are given at the rate of 33⅓% in each of the 3 years. (3AA)

A person who incurs expenditure and who is entitled to the allowances provided for in *subsection (3A)* may elect to have the allowances available in the following manner: (3B)

- the writing-down period remains at 7 years,
- the person may specify an amount of allowances to be available in any or all years. This amount (known as the “residual amount”) in aggregate is limited to the lesser of 50% of the expenditure incurred or €31,750,
- the balance of the allowances (known as the “specified amount”) is available over 7 years at the rate of 15% of the “specified amount” for each of 6 years with 10% of the “specified amount” available in year 7,
- the amount of allowances available in any one year may not exceed the “residual amount”.

A person who incurs expenditure and who is entitled to the allowances provided for in *subsection (3AA)* may elect to have the allowances available in the following manner: (3BA)

- the writing-down period remains at 3 years,
- the person may specify an amount of allowances to be available in any or all years. This amount (“residual amount”) in aggregate is limited to the lesser of 50% of the expenditure incurred or €50,000 (€31,750 for capital expenditure incurred prior to 1 January 2006),
- the amount of allowances available in any one year may not exceed the “residual amount”.

The election to opt for the allowances provided for in *subsection (3B)* or *subsection (3BA)* must be made on or before the specified return date for the chargeable period in which the expenditure was incurred. (3C)(a)

Once the election is made, it cannot be altered or varied during the writing-down period to which it refers. (3C)(b)

For the purposes of these allowances, the “basis period” for income tax purposes is the period on the profits or gains of which the income tax liability is calculated. (4)

### **Claims**

A claim for the farm pollution control allowance is to be included in the farmer’s annual tax return. The balance of the allowances not granted in any year of assessment (because of an insufficiency of profits to absorb them) may be carried forward to later years. (5)

A claim for a farm pollution control allowance is made to, and determined by, the taxpayer’s inspector. If a claimant is dissatisfied with the inspector’s determination, an appeal may be made to the Appeal Commissioners. (6)

The Appeal Commissioners deal with such an appeal as if it were an appeal against a tax assessment. The provisions of the Income Tax Acts covering rehearing by the Circuit Court and a statement of a case for the opinion of the High Court on a point of law also apply. (7)



### ***Transfers of farms***

If a person who is entitled to a farm pollution control allowance transfers the farm to another person, the transferee becomes entitled to whatever balance of allowance is available for chargeable periods after the transfer. (8)

If only part of the farm is transferred, the transferee may claim so much of the allowance as relates to that part of the land. (9)

### ***Apportionment of expenditure, prevention of double relief and exclusion of grants***

Capital expenditure that relates only partly to farming pollution control purposes is to be apportioned. Farm pollution control allowances only apply to the part that relates to pollution control. (10)

A farm pollution control allowance is not granted if the expenditure qualifies for an industrial building initial or writing-down allowance under **Chapter 1** of **Part 9** or a wear and tear allowance under **Chapter 2** of **Part 9** or a farm buildings allowance under **section 658**. (11)

Net expenditure only qualifies for farm pollution control allowances – any State or other subsidy is excluded. (12)

### ***Qualifying expenditure***

Only expenditure attributable to building work actually carried out in the period 6 April 1997 to 31 December 2010 will benefit from the farm pollution control allowance. (13)

## **660 Farming: wear and tear allowances deemed to have been made in certain cases**

### **Summary**

This section deems a wear and tear allowance to have been given for certain previous chargeable periods when a wear and tear allowance, a balancing allowance or a balancing charge is being calculated for a particular year of assessment in respect of machinery or plant used by a farmer.

### **Details**

#### ***Definitions***

The expressions “balancing allowance”, “balancing charge” and “wear and tear allowance” are explained by reference to various other provisions of the Act. (1)

#### ***Notional wear and tear allowances deemed to have been made***

In determining whether a wear and tear allowance, a balancing allowance or a balancing charge is to be made to or on a farmer in respect of machinery or plant, a wear and tear allowance is deemed to have been made for previous chargeable periods in which the farmer owned the item and as if the following conditions were met — (2)

- the farming profits had been taxed in the normal way,
- those profits were taxed on an actual (not notional) basis,
- farming had been carried on by that person since the machinery or plant was acquired,
- that machinery or plant had been used solely for farming since its acquisition, and
- an appropriate claim for wear and tear had been made by that person for each chargeable period.

### ***Previous chargeable periods to be taken into account***

The deemed wear and tear allowance applies for every previous chargeable period in which the farmer owned the machinery or plant and — (3)

- did not use it for farming,
- was taxed under the former notional basis (under which farming income was related to the valuation of the land),
- did not engage in farming, or
- was not fully charged on the farming profits.

In the case of companies not within the charge to corporation tax, a year of assessment is taken as a chargeable period of the company. (4)

### ***Limit on balancing charge***

This section does not affect *section 288(4)* which provides that a balancing charge cannot be greater than the capital allowances granted in respect of the machinery or plant. (5)

## **661 Farming: restriction of relief in respect of certain losses**

Farming losses incurred when a farmer was not chargeable to tax in respect of farming profits may not be carried forward for use against chargeable profits in later years.

The section relates to losses incurred by a farmer in a year in which the farmer was outside the scope of a tax charge on farming profits – it refers to a time when certain farmers were not chargeable to tax because of the rateable valuation of their farms. (1)

Such losses may not be carried forward to be relieved in later years. (2)

## **662 Income tax: restriction of relief for losses in farming or market gardening**

### **Summary**

A loss incurred in farming or market gardening may not be allowed against other profits unless the claimant can show that the farming or market gardening was being carried on on a commercial basis and with a view to profit. In addition to, and independently of, this test, loss relief is not allowed if losses have been incurred in each of the 3 preceding years.

### **Details**

#### ***Definitions***

“prior 3 years” means the 3 years before the year of loss. (1)

“prior period of loss” means the prior 3 years or a longer period if losses were incurred in successive years over a greater period.

#### ***Treatment of losses***

A farming or market gardening loss does not qualify for loss relief unless it is shown that, for the year in which the loss was incurred, the farming or market gardening was being engaged in on a commercial basis and with a view to being profitable. (2)(a)

Any farming or market gardening loss does not qualify for loss relief if a loss was also (2)(b)

incurred in each of the prior 3 years.

Where, exceptionally, the farmer or market gardener can point to activities which could reasonably be expected to produce a profit but might, nevertheless, find it difficult to maintain that the conditions in *subsection (2)(a)* were satisfied, it will be accepted that the trade was being carried on with a view to being profitable. (2)(c)

Relief may exceptionally be continued even where losses had been incurred for 3 years or more. This is designed to meet the genuine case of the farmer or market gardener who sets out on an undertaking realising that losses will be incurred for a substantial initial period but with a justifiable expectation of building up a profitable operation in the long run (for example, a farmer trying to regenerate marginal land over a long period). (2)(d)

The restriction on loss relief does not apply if the loss-making farm or market garden is part of and ancillary to a larger trading undertaking. (2)(e)

The rules of Schedule D, Case I, apply to establish if a loss has arisen in any tax year. (3)

Where a trade of farming or market gardening is carried on for only part of a year, because the trade may have been commenced or discontinued within that year, the 3 year rule operates in relation to the trade for that part of that year. (4)

#### ***Trade commenced within 3 years preceding the year of claim***

The loss relief restriction does not apply where the trade was commenced in the 3 years preceding the year of claim. If any event is treated under the Income Tax Acts as equivalent to a discontinuance and setting up of a trade (for example, the sale of a farm by one person to another), the purchaser is treated as having commenced to trade on that date. (5)

#### ***Anti-avoidance***

As an anti-avoidance measure to counter attempts to secure more than one run of 3 years, where a trade of farming or market gardening changes hands, the relieving provision of *subsection (5)* does not apply if the persons carrying on the trade immediately before and immediately after the change are connected. (6)

### **663 Corporation tax: restriction of relief for losses in farming or market gardening**

#### **Summary**

This section applies to corporation tax a restriction on loss relief similar to that applied to income tax under *section 662*. It provides that relief in respect of farming or market gardening losses by way of set-off against other profits does not, broadly speaking, be granted where the farming or market gardening is not carried on on a commercial basis and with a view to the realisation of profits or where a loss was incurred in each of the 3 years preceding a given accounting period.

#### **Details**

##### ***Definitions***

“prior 3 years” means the 3 years before the year of loss. (1)

“prior period of loss” means the prior 3 years or a longer period if losses were incurred in successive years over a greater period.

### ***Treatment of losses***

A farming or market gardening loss does not qualify for loss relief unless it is shown that, for the accounting period in which the loss was incurred, the farming or market gardening was being engaged in on a commercial basis and with a view to being profitable. (2)(a)

Loss relief is not given for a farming or market gardening loss in any accounting period if a loss (computed without regard to capital allowances) was incurred in that accounting period and in each accounting period wholly or partly within the prior 3 years. The rules of Schedule D, Case I, apply to establish if a loss has arisen in any tax year. (2)(b)

Where, exceptionally, the farmer or market gardener can point to activities which could reasonably be expected to produce a profit but might, nevertheless, find it difficult to maintain that the conditions in **subsection (2)(a)** were satisfied, it will be accepted that the trade was being carried on with a view to being profitable. (2)(c)

Relief may exceptionally be continued even where losses had been incurred for 3 years or more. This is designed to meet the genuine case of the farmer or market gardener who sets out on an undertaking realising that losses will be incurred for a substantial initial period but with a justifiable expectation of building up a profitable operation in the long run (for example, a farmer trying to regenerate marginal land over a long period). (2)(d)

The restriction on loss relief does not apply if the loss-making farm or market garden is part of and ancillary to a larger trading undertaking. (2)(e)

Where a trade of farming or market gardening is carried on for only part of an accounting period, because the trade may have been commenced or discontinued within that period, the 3 year rule operates in relation to the trade for that part of that accounting period. (4)

### ***Trade commenced within 3 years preceding the year of claim***

The loss relief restriction does not apply where the trade was commenced in the 3 years preceding that year of claim. If any event is to be treated under the Tax Acts as equivalent to a discontinuance and setting up of a trade, for example, the sale of a farm by one person to another, the purchaser is treated as having commenced to trade on that date. This does not apply if, in relation to company reconstructions, the event is not to be treated as a discontinuance for the purpose of capital allowances and charges. (3)

### ***Anti-avoidance***

As an anti-avoidance measure to counter attempts to secure more than one run of 3 years, where a trade of farming or market gardening changes hands, the relieving provision of **subsection (3)** does not apply if the person carrying on the trade immediately before and immediately after the change are connected. (5)

## **664 Relief for certain income from leasing of farm land**

### **Summary**

This section exempts from income tax certain income arising from leasing of farm land. The amounts may vary depending on when the lease was made. Prior to 1 January 2015 a “qualifying lessor” related to an individual who aged 40 years or more or was permanently incapacitated by reason of mental or physical infirmity from carrying on a trade of farming and who had not leased the land after 30 January 1985 from a connected person on terms other than terms that would have been included on a lease

concluded on an arm's length basis. With effect from 1 January 2015 the lower age limit of 40 and the reference to permanent incapacity is removed from the definition of a "qualifying lessor". In addition, with effect from 1 January 2015 a "qualifying lessee" includes a company. The lessee must not be "connected" (see *section 10*) with the qualifying lessor or lessors.

Where a lease period covers part of a full year, the exemption limit is apportioned on a time basis.

Any increased rent payable under such leases which reflects the fact that an EU Single Payment has been transferred with the land, will be treated as rent from farm land. This means the tax exemption can apply to these amounts also.

## Details

### Definitions

"EU Single Payment Scheme" means the scheme administered by the Minister for Agriculture, Food and the Marine under Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013, amended by Commission Delegated Regulation (EU) No. 639/2014 of 11 March 2014, Commission Delegated Regulation (EU) 994/2014 of 13 May 2014, Commission Delegated Regulation (EU) 1001/2014 of 18 July 2014, Commission Delegated Regulation (EU) 1378/2014 of 17 October 2014 and Commission Delegated Regulation (EU) 2015/851 of 27 March 2015.

"farm land", in addition to its general meaning for income tax purposes as land in the State wholly or mainly occupied for husbandry, also includes farm buildings situated on the land, other than buildings or parts of a building used as dwellings. This extended definition is intended to cater for leases relating to both land and farm buildings covered by the same lease.

"lease", "lessee", "lessor" and "rent" derive their meanings from *Chapter 8 of Part 4 (1)* which deals with the taxation of rental income. Thus, "lease" includes an agreement for a lease and any tenancy, but does not include a mortgage, and "lessee" and "lessor" are construed accordingly. The terms "lessee" and "lessor" include, respectively, the successors in title of a lessee or a lessor. The term "rent" includes any payment in the nature of rent and also any payment made by the lessee to defray the cost of work of maintenance or repairs for which the lessor is responsible.

"qualifying lease" is a lease of farm land which —

- is in writing or evidenced in writing,
- is for a definite term of 5 years or more, and
- is made on an arm's length basis between one or more qualifying lessors and one or more qualifying lessees.

"qualifying lessee" is intended to exclude from relief leases made between family members and near relatives. The lessee must not be "connected" (see *section 10*) with the qualifying lessor or any one of the qualifying lessors where there is a letting by persons in multiple-ownership of the farm land. The definition ensures that relief is available only if the leased land is actually used by the lessee or lessees for the purposes of a trade of farming.

"qualifying lessor" is an individual who has not leased the land after 30 January 1985 to a connected person other than on an arm's length basis.

"the specified amount" is the maximum exemption allowed. It is the lower of the surplus

from the farm rental income or an amount which varies depending on when the qualifying lease was made.

For leases made beginning 1 January 2007 and ending on 31 December 2014, the specified amount is

€20,000 for a lease of at least 10 years or more,

€15,000 for a lease of 7 or more years but less than 10 years and

€12,000 in any other case.

For qualifying leases taken out on or after 1 January 2015 the specified amount is:

- €40,000 in the case of a qualifying lease or leases where the leases/leases are for a definite period of 15 years or more,
- €30,000 in the case of a qualifying lease or leases where the leases/leases are for a definite period of 10 or more years but less than 15 years,
- €22,500 in the case of a qualifying lease or leases where the leases/leases are for a definite period of 7 or more years but less than 10 years, and
- €18,000 in any other case.

Where a lease period covers part of a full year, the exemption limit apportioned accordingly on a time basis.

### ***The relief***

Where the total income of a qualifying lessor consists of rental income chargeable to tax under Case V of Schedule D and includes income from the leasing of farmland let under a qualifying lease, the qualifying lessor is entitled to a deduction which is the lower of the overall Case V income or the specified amount. (2)

Where a husband and wife or civil partners are jointly assessed (*section 1017/1031C*) or separately assessed (*section 1023/1031H*) and both are involved in qualifying leasing, each is entitled to a separate exemption. This is arrived at as if they were not married or in a civil partnership. Unused balances of the relief are not, therefore, transferable from one spouse or civil partner to the other. (3)

Where a single qualifying lease covers both farm land and other property, only the rent as is properly attributable to the farm land is to benefit from the exemption. (4)

A Revenue officer may, by notice in writing, call for information from the lessor to enable the officer to determine the amount of relief to be given. (5)

### ***Miscellaneous***

The various provisions that apply to the granting of personal allowances and reliefs apply to the deduction. (6)

With effect from 1 January 2005, any payments received by a lessor of farm land to compensate him or her for the loss of any EU Single Payments which have been transferred to the lessee along with the leased land will be treated as rent from farm land. This means that, subject to the overall limits, the exemption can apply to these payments. (7)

### ***Anti-avoidance*** (8)

As an anti-avoidance measure to prevent the exploitation of relief available under the

section, a lease shall not be a qualifying lease in circumstances where a person effectively swaps land with another person or where the land is farmed, in whole or in part, by the qualifying lessor.

This section exempts from income tax certain income arising from leasing of farm land. The amounts may vary depending on when the lease was made. Prior to 1 January 2015 a “qualifying lessor” related to an individual who aged 40 years or more or was permanently incapacitated by reason of mental or physical infirmity from carrying on a trade of farming and who had not leased the land after 30 January 1985 from a connected person on terms other than terms that would have been included on a lease concluded on an arm’s length basis. With effect from 1 January 2015 the lower age limit of 40 and the reference to permanent incapacity is removed from the definition of a “qualifying lessor”. In addition, with effect from 1 January 2015 a “qualifying lessee” includes a company. The lessee must not be “connected” (see *section 10*) with the qualifying lessor or lessors.

Where a lease period covers part of a full year, the exemption limit is apportioned on a time basis.

Any increased rent payable under such leases which reflects the fact that an EU Single Payment has been transferred with the land, will be treated as rent from farm land. This means the tax exemption can apply to these amounts also.

## Details

### Definitions

“EU Single Payment Scheme” means the scheme administered by the Minister for Agriculture, Food and the Marine under Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013, amended by Commission Delegated Regulation (EU) No. 639/2014 of 11 March 2014, Commission Delegated Regulation (EU) 994/2014 of 13 May 2014, Commission Delegated Regulation (EU) 1001/2014 of 18 July 2014, Commission Delegated Regulation (EU) 1378/2014 of 17 October 2014 and Commission Delegated Regulation (EU) 2015/851 of 27 March 2015.

“farm land”, in addition to its general meaning for income tax purposes as land in the State wholly or mainly occupied for husbandry, also includes farm buildings situated on the land, other than buildings or parts of a building used as dwellings. This extended definition is intended to cater for leases relating to both land and farm buildings covered by the same lease.

“lease”, “lessee”, “lessor” and “rent” derive their meanings from *Chapter 8 of Part 4 (1)* which deals with the taxation of rental income. Thus, “lease” includes an agreement for a lease and any tenancy, but does not include a mortgage, and “lessee” and “lessor” are construed accordingly. The terms “lessee” and “lessor” include, respectively, the successors in title of a lessee or a lessor. The term “rent” includes any payment in the nature of rent and also any payment made by the lessee to defray the cost of work of maintenance or repairs for which the lessor is responsible.

“qualifying lease” is a lease of farm land which —

- is in writing or evidenced in writing,
- is for a definite term of 5 years or more, and
- is made on an arm’s length basis between one or more qualifying lessors and one or more qualifying lessees.

“qualifying lessee” is intended to exclude from relief leases made between family members and near relatives. The lessee must not be “connected” (see *section 10*) with the

qualifying lessor or any one of the qualifying lessors where there is a letting by persons in multiple-ownership of the farm land. The definition ensures that relief is available only if the leased land is actually used by the lessee or lessees for the purposes of a trade of farming.

“qualifying lessor” is an individual who has not leased the land after 30 January 1985 to a connected person other than on an arm’s length basis.

“the specified amount” is the maximum exemption allowed. It is the lower of the surplus from the farm rental income or an amount which varies depending on when the qualifying lease was made.

For leases made beginning 1 January 2007 and ending on 31 December 2014, the specified amount is

€20,000 for a lease of at least 10 years or more,

€15,000 for a lease of 7 or more years but less than 10 years and

€12,000 in any other case.

For qualifying leases taken out on or after 1 January 2015 the specified amount is:

- €40,000 in the case of a qualifying lease or leases where the leases/leases are for a definite period of 15 years or more,
- €30,000 in the case of a qualifying lease or leases where the leases/leases are for a definite period of 10 or more years but less than 15 years,
- €22,500 in the case of a qualifying lease or leases where the leases/leases are for a definite period of 7 or more years but less than 10 years, and
- €18,000 in any other case.

Where a lease period covers part of a full year, the exemption limit apportioned accordingly on a time basis.

### ***The relief***

Where the total income of a qualifying lessor consists of rental income chargeable to tax under Case V of Schedule D and includes income from the leasing of farmland let under a qualifying lease, the qualifying lessor is entitled to a deduction which is the lower of the overall Case V income or the specified amount. (2)

Where a husband and wife or civil partners are jointly assessed (*section 1017/1031C*) or separately assessed (*section 1023/1031H*) and both are involved in qualifying leasing, each is entitled to a separate exemption. This is arrived at as if they were not married or in a civil partnership. Unused balances of the relief are not, therefore, transferable from one spouse or civil partner to the other. (3)

Where a single qualifying lease covers both farm land and other property, the rent applicable to the farm land which is to benefit from the exemption would not be separately identifiable. A Revenue officer may determine the rent attributable to the farm land in such circumstances. The amount so determined can be appealed in the normal way to the Appeal Commissioners or to the Circuit Court. (4)

A Revenue officer may, by notice in writing, call for information from the lessor to (5)



enable the officer to determine the amount of relief to be given.

### *Miscellaneous*

The various provisions that apply to the granting of personal allowances and reliefs apply to the deduction. (6)

With effect from 1 January 2005, any payments received by a lessor of farm land to compensate him or her for the loss of any EU Single Payments which have been transferred to the lessee along with the leased land will be treated as rent from farm land. This means that, subject to the overall limits, the exemption can apply to these payments. (7)

### *Anti-avoidance*

As an anti-avoidance measure to prevent the exploitation of relief available under the section, a lease shall not be a qualifying lease in circumstances where a person effectively swaps land with another person or where the land is farmed, in whole or in part, by the qualifying lessor. (8)

## **664A Relief for increase in carbon tax on farm diesel**

### **Summary**

This section allows farmers an income tax deduction in computing the profits of their farming trade for the increased costs of farm diesel used in that trade which are attributable to the increase in the rate of carbon tax on such diesel from 1 May 2012.

Farm diesel used by a farmer in the course of a farming trade is a deductible cost and, as carbon tax is included in the cost of that diesel, a farmer obtains a deduction for the amount of the carbon tax incurred on the purchase of farm diesel.

As the deduction provided for in this section is in addition to the deduction for the cost of farm diesel, farmers are entitled to a double deduction for the increased carbon tax they incur on farm diesel purchased on or after 1 May 2012.

### **Details**

#### *Definitions*

Subsection (1) sets out the definitions underpinning the section. The following should be noted. (1)

“carbon tax” means the carbon charge referred to in section 96(1A) of the Finance Act 1999. The carbon charge on mineral oils was introduced by section 64 of the Finance Act 2010 and is included in the rate of mineral oil tax charged on mineral oil.

“farm diesel” is not defined in mineral oil tax legislation but falls within the heading “Other heavy oil” in schedules 2 and 2A of Finance Act 1999, which also includes home heating oil. Home heating oil is, however, specifically excluded from the definition of “farm diesel” for the purposes of this section.

“relevant carbon tax” means the additional amount of carbon tax included in the cost of farm diesel as a result of the increase in the rate of carbon tax from 1 May 2012. It is determined by the formula “A – B” where “A” is the actual amount of carbon tax included in a farmers tax-deductible farm diesel costs and “B” is the amount of the carbon tax that would have been included in the cost of the same quantity of farm diesel if the carbon tax had been charged at the rate of €41.30 per 1,000 litres, (i.e. the rate which applied to farm diesel immediately prior to 1 May 2012).

#### *Deduction for additional carbon tax*

(2)

A person entitled to a deduction for farm diesel in computing the profits or gains of their farming trade is entitled to a further deduction in computing those profits or gains of an amount equal to the additional carbon tax charged on that farm diesel as a result of the increase in the rate of the tax from 1 May 2012 (i.e. the relevant carbon tax described in subsection (1)).

## CHAPTER 2

### *Farming: relief for increase in stock values*

#### **Overview**

This Chapter relates to stock relief which is available only to farmers and is a relief given in respect of increases in the value of farm trading stock. It is calculated by reference to the increase in value of the stock between the beginning and end of an accounting period. The relief takes the form of a deduction, to be allowed in computing the trading profits of an accounting period, of 25 per cent of the amount of the increase in value of trading stock and work-in-progress at the end of the accounting period over and above the opening value. Enhanced rates of stock relief are also provided for in certain circumstances – 100 per cent instead of the normal 25 per cent for certain young trained farmers and 50 per cent for farmers who are partners in registered farm partnerships

#### **665 Interpretation (Chapter 2)**

This section defines a number of words and terms used throughout the Chapter.

“accounting period”, in the case of a company, is determined having regard to **section 27** which contains rules for establishing when an accounting period of a company begins and ends. For any other person, it means a one-year period ending on the date to which the person’s accounts are made up. Where there are no accounts or where accounts have been prepared for more or less than one year, the accounting period is determined by the Revenue Commissioners.

“chargeable period” is an accounting period (of a company) or a year of assessment (individuals).

“company” essentially means any body corporate – with certain exceptions (for example, health boards, VECs, etc.).

“specified return date for the chargeable period” means, in relation to a year of assessment, the date by which the return must be made.

“trading income” means —

- in the case of a company, its farm trading income, and
- in any other case, a person’s farm trading profits.

“trading stock” is defined by reference to **section 89**, (that is, property of any description which is sold in the course of a trade or materials used in the trade).

#### **666 Deduction for increase in stock values**

##### **Summary**

Provision is made in **section 666** for stock relief, that is, for a deduction from farming trading income of an accounting period of 25 per cent of the increase in the value of trading stock in that accounting period. Stock relief may not be used to create or

augment a loss.

The relief must be claimed in writing on or before the return filing date for the period to which it relates and it applies to partnerships as well as to companies and individual farmers. The relief is only available in the case of a company for accounting periods ending on or before 31 December 2024 and in any other case for years of assessment up to and including 2024.

## Details

### *The relief*

If —

- a person is carrying on the trade of farming, and (1)
- the person’s closing trading stock value is greater than the opening stock value,

the person can claim a deduction of 25 per cent of the increase in computing the taxable profits from the trade of farming.

### Example

	€
Opening stock at 1 January 2019	20,000
Closing stock at 31 December 2019	25,000
Increase in value of trading stock	5,000
Farming profits of year ended 31 December 2019	6,000
Less stock relief (25% of increase in stock value)	1,250
Revised farming profits for 2019	4,750

### *Relief not to create a loss and restriction of other reliefs*

A company’s stock relief deduction cannot create a loss, that is, it cannot exceed the company’s trading income for the accounting period as reduced by trading losses and excess charges (*section 396*) and terminal losses (*section 397*) and after taking into account any capital allowances and balancing charges (*sections 307* and *308*). (2)(a)

In addition, certain capital allowances and loss relief provisions do not operate where stock relief is granted to a company for an accounting period (“the relevant period”). The company is not entitled to a deduction under *section 307* or *308* for any accounting period later than the relevant period in respect of any capital allowance treated as a trading loss of the trade before the commencement of the relevant period, or to a set-off under *section 396* for any accounting period later than the relevant period in respect of a loss sustained in the trade before the commencement of the relevant period, or to a set-off under *section 397* (terminal losses) for any accounting period earlier than the relevant period in respect of a terminal loss sustained in the trade. (2)(b)

Similar provisions are provided for in relation to individuals who obtain stock relief for a year of assessment (“the relevant year”). Such individuals are not entitled to relief under *section 382* for any year of assessment later than the relevant year in respect of a loss sustained in the trade before the commencement of the relevant year, or under *section 385* (3)

(terminal losses) for any year of assessment earlier than the relevant year in respect of a loss sustained in the trade. Moreover, **section 304(4)** (carry forward of unused capital allowances) does not apply as respects capital allowances which are deemed to be capital allowances for the relevant year and to which full effect has not been given in that year, and **section 392** (option to treat capital allowances as creating or augmenting a loss) does not apply to the capital allowances for the relevant year. Finally, stock relief cannot be used to create a loss for the relevant year.

### ***End dates for relief***

Stock relief will not be available, in the case of a company, for accounting periods ending after 31 December 2024 and, in the case of individuals, later than the tax year 2024. (4)

### ***Time limit for claims***

A written claim for the relief must be made on or before the specified return date for the chargeable period. (5)

### ***Partnerships***

Stock relief is also available where the trade of farming is carried on by a partnership. (6)

## **667 Special provisions for qualifying farmers**

### **Summary**

An enhanced rate of stock relief – at 100 per cent instead of the normal 25 per cent – is provided for by this section. It applies to certain young trained farmers, that is, to farmers who are under 35 years of age and who meet certain training requirements. Subject to **section 667A** this special stock relief is available to farmers qualifying in the year 1993–94 or any subsequent year for grant aid under the Scheme of Installation Aid for Young Farmers and also to farmers who first became chargeable to income tax on their farming profits for 1993–94 and later years. This section applies to young farmers qualifying up until 31 December 2004. **Section 667A** applies to young farmers fully qualifying in the period beginning on or after 1 January 2004 and ending on or before 31 December 2008. **Section 667B** applies to young farmers qualifying in the period beginning on or after 1 January 2007 and ending on or before 31 December 2021.

### **Details**

#### ***Qualifying farmers***

A qualifying farmer is an individual who —

- first qualifies for grant aid under the Scheme of Installation Aid for Young Farmers in 1993–94 or any later year of assessment, or (1)
- first becomes chargeable to income tax in respect of profits or gains from farming in 1993–94 or any later year of assessment, was under 35 at the start of that year and, at any time in that year, meets the specific training/education requirements which are spelt out in the Table to the section.

#### ***Enhanced stock relief***

Stock relief at 100 per cent (instead of 25 per cent) is granted to a qualifying farmer and is available for 4 years in the case of young farmers qualifying on or before 31 December (2)

2004. **Section 667A**, and not **section 667** applies to young farmers qualifying in the period beginning on or after 1 January 2004 and ending on or before 31 December 2008. **Section 667B** applies to young farmers qualifying in the period beginning on or before 1 January 2007 and ending on or before 31 December 2021.

## **667A Further provisions for qualifying farmers**

### **Summary**

This section replaces the relief provided for in **section 667** for young farmers who fully qualify on or after 1 January 2004 and before 31 December 2008. The relief is the same as that provided for in **section 667**, i.e. a deduction is allowed of 100% of the year on year increase in stock values for 4 years instead of the usual 25%, beginning in the year in which the individual commences farming. Thereafter the rate reverts to 25% annually. The principal changes relate to the academic and training requirements necessary to qualify.

The specific changes are as follows:

- The list of acceptable academic qualifications is changed to reflect the fact that many of the older courses, referred to in the Table to **section 667** are no longer available. In addition, the accreditation body for courses in the non-university sector is henceforth the National Qualifications Authority of Ireland (NQAI) in the form of either the Further Education and Training Awards Council (FETAC) or the Higher Education and Training Awards Council (HETAC).
- The Teagasc training courses in Farm Management and Agriculture/Horticulture have been revamped and in circumstances where these courses are required, it is necessary to successfully complete them as against simple attendance which was all that was previously required.
- Similarly a 2 year attendance requirement at 3rd level education, which previously satisfied the conditions in certain circumstances, is replaced with a requirement to pass the appropriate exams.
- Provision is made to enable Teagasc to certify individuals with disabilities who complete a special course of training also to qualify. While such individuals may be capable of being successful farmers, they may have difficulty in achieving the necessary academic qualification requirements for the purposes of qualifying for this relief.

Provision is also made to ensure that individuals, who were partially qualified prior to 1 January 2004, may carry the elements of the qualification achieved before 1 January 2004 through into the new scheme. This would mean for example, that an individual who had achieved an academic qualification some years ago but who was only proposing to begin farming this year will not have to go back and obtain any of the updated qualifications.

## Details

### *Qualifying farmer*

“Qualifying farmer” is defined as —

- an individual who in 2004 or a subsequent year of assessment first qualifies for the Scheme of Installation Aid for Young Farmers operated by the Department of Agriculture and Food under EU Regulations, or (1)(a)
- first becomes chargeable to tax under Case I of Schedule D from farming in 2004 or a subsequent year of assessment, (1)(b)(i)
- is under 35 at the start of that year, and (1)(b)(ii)
- at any time in that year satisfies the conditions set out in *subsections (2), (3) or (4)*. (1)(b)(iii)

### *Qualifications*

To qualify the individual to be the holder of a qualification set out in the Table to the section, and (2)

- Where the qualification is set out in *paragraph 1(f) or 2(h)* of the Table, the individual also has a FETAC certificate confirming success in a Teagasc approved course in Farm Management of at least 80 hours and in Agriculture/Horticulture of at least 100 hours, or (2)(a)
- where the qualification is set out in *paragraph 3(b), 3(c) or 3(d)* of the Table, the individual also has a FETAC certificate confirming success in a Teagasc approved course in Farm Management of at least 80 hours. (2)(b)

### *Requirement to pass exam or hold FETAC certificate*

The individual must have passed the first 2 years exams in a full time third level course in any discipline, and (3)(a)

The individual must hold a FETAC certificate confirming success in a Teagasc approved course in Farm Management of at least 80 hours and in Agriculture/Horticulture of at least 100 hours. (3)(b)

### *Letter of confirmation from Teagasc*

The individual must have a letter of confirmation from Teagasc confirming satisfactory completion of a Teagasc approved course of training in the case of persons with a physical, sensory, mental health or intellectual disability. (4)

### *Corresponding or equivalent qualifications*

For the purposes of *subsection (2)*, where Teagasc certifies that another qualification corresponds to one set out in the Table and where the National Qualifications Authority of Ireland deems that qualification to be at least at an equivalent standard to the qualification set out in the Table, then that qualification will be treated as the qualification so set out in the Table. (5)

### *Stock relief available*

Stock relief (*section 666*) is given at the rate of 100% each year instead of the normal 25%. (6)(a)

*Paragraph (a)* is applied in computing farming income in the case of an individual who becomes a qualifying farmer on or after 1 January 2004 and before 31 December 2008. In (6)(b)

such circumstances the 100% stock relief applies in that year and in each of the succeeding 3 years of assessment.

### ***Transitional arrangements***

Provision is made for individuals who, as of 1 January 2004, had already some or all of the qualifications/courses necessary but who had not yet begun farming by that day. (7)

- An individual, who had already acquired a qualification set out in the Table to **section 667** or one certified by Teagasc as corresponding to such a qualification, is deemed to have acquired a corresponding qualification as set out in the Table to this section. This means that if the qualification acquired under the old scheme did not require any further course of training by Teagasc then neither does the qualification that individual is deemed to have acquired under the new scheme. (7)(a)

- Similarly, if the qualification under the old scheme required an 80 hour course of training in farm management, then the individual is deemed to have acquired a qualification under the new scheme which also requires this course.

- If the individual had satisfactorily attended a third level course for 2 years in any discipline (which was accepted under the old scheme) then that individual would be treated as having passed the second year examinations of a third-level course of at least 3 years' duration for the purposes of the new scheme. (7)(b)

- If an individual had already got a certificate from Teagasc for satisfactory attendance at — (7)(c)

- (i) an 80 hour course in Farm Management, or

- (ii) a 180 hour course in Agriculture/Horticulture,

then that individual was regarded as having been successful in the comparable course for the purposes of the new scheme.

The Table sets out the list of qualifications which are acceptable for the purposes of the relief.

### **667B New arrangements for qualifying farmers**

#### **Summary**

Any individual who achieves a level of academic training set out in the Table to this section and who commences farming in the period beginning on or after 1 January 2007 and ending on or before 31 December 2022 (**but refer to notes on subsection (5)(b)**) is entitled to the enhanced stock relief of 100% for four years instead of the normal rate of 25%. Any person who achieved the academic and training standards under either **section 667** or **667A** is deemed to satisfy the requirements of this section.

The names of the awarding bodies have been changed arising from the enactment of the Qualifications and Quality Assurance (Education and Training) Act 2012. This is effective from 6 November 2012 as provided for by that Act

#### **Details**

This section comprises 7 subsections as follows:

“qualifying farmer” is defined as an individual who —

- in 2007 or a subsequent year of assessment first qualifies for the Scheme of Installation Aid for Young Farmers operated by the Department of Agriculture, Food and the Marine under EU Regulations, or
- first becomes chargeable to tax under Case I of Schedule D from farming in 2007 or

- a subsequent year,
- is under 35 at the start of that year, and
- at any time in that year satisfies the conditions set out in *subsection (2)* or *(3)*.

and

- submits a business plan to Teagasc for the purposes of *section 667B* or, to Teagasc or the Minister for Agriculture, Food and the Marine for any other purpose, on or before 31 October of the year of assessment following the year of assessment in which the individual first becomes a qualifying farmer.

The individual is required to be the holder of a qualification set out in the Table to the section.

The individual is also required to have a letter of confirmation from Teagasc confirming satisfactory completion of a Teagasc approved course of training for persons with a physical, sensory, or intellectual disability, or are restricted in their learning capacity due to mental health.

For the purposes of *subsection (2)*, where Teagasc certifies that another qualification corresponds to one set out in the Table and where the Qualifications and Quality Assurance Authority of Ireland deems that qualification to be at least at an equivalent standard to the qualification set out in the Table then that qualification will be treated as the qualification so set out in the Table.

Where this section applies, stock relief (*section 666*) is given at the rate of 100% instead of the normal 25% rate.

Paragraph (a) is applied in computing farming income in the case of an individual who becomes a qualifying farmer on or after 1 January 2007 and on or before 31 December 2022. In such circumstances the 100% stock relief applies in the year of assessment in which the individual qualifies and in each of the succeeding 3 years of assessment.

The amount of the relief received by a qualifying farmer, who first qualifies in the year 2012 or in a subsequent year, cannot exceed €40,000 in a single tax year or in aggregate €70,000 over 4 years.

A lifetime ceiling of €70,000 applies for State Aid purposes to the amount of aid granted to a young trained farmer under the Agricultural Block Exemption Regulation (paragraph 7 of Article 18 of the Commission Regulation (EU) No. 702/2014). This means that the amount of tax relief received by a qualifying farmer must be aggregated across the relevant schemes: i.e. *section 667B*, *section 667D* and *section 81AA SDCA 1999*. The cash equivalent of the tax relief received cannot exceed €70,000.

Provision is made for individuals, who at any time before 31 March 2008 satisfy the educational/training requirements referred to in *paragraph (b)(iii)* of the definition of “qualifying farmer” in *section 667A(1)*, to be deemed to have satisfied the corresponding conditions of “qualifying farmer” as required by subsection (1).

The 100% rate of stock relief applies for the year of assessment 2012 or any subsequent year of assessment only where the qualifying farmer falls within the definition of microenterprise or small enterprise in Article 2 of Annex I to Commission Regulation (EU) No. 702/2014 for the year of assessment in question.

### **667C Special provisions for registered farm partnerships.**



## Summary

This section provides stock relief generally at the rate of 50% for farmers who are partners in registered farm partnerships and 100% for certain “qualifying farmers” within the meaning of **section 667B** (often referred to as young trained farmers), who are partners in such partnerships. It applies to accounting periods which commence on or after 1 January 2012 and which end on or before 31 December 2022.

This relief is subject to a maximum limit.

**Sections 666 and 667B** continue to apply to farmers who are not partners in registered farm partnerships.

## Details

### *Definition*

“common agricultural payments” means any payment arising directly to a partner under the Common Agricultural Policy.

“excluded farm asset” means farm land or livestock or machinery used for a farming activity left out of the partnership by the terms of the partnership agreement, but cannot include beef, dairy or sheep farming.

“farm asset” means all farm land, entitlement to common agricultural payments and assets used for farming, but does not include excluded farm assets or farm land which is to be disposed of to an authority possessing compulsory purchase powers.

“farm land” means land in the State and includes a building situated on that land, other than buildings or parts of a building used as dwellings, occupied by a partner for the purpose of farming the land.

“Minister” means Minister for Agriculture, Food and the Marine.

“non-active partner” means, in the case of an individual, a person who spends not more than an average of at least 10 hours per week engaged in the activities of the several trade of the partnership during the accounting period or in the case of a company, a company whose officers and employees between them spend an average of not more than 10 hours per week engaged in the activities of the several trade during the accounting period.

“partner” means a person who is a partner in a registered farm partnership.

“primary participant” means the precedent partner, within the meaning of **section 1007**.

“Qualifying farmer” has the meaning assigned to it by **section 667B**.

“register” means the register of farm partnerships established and maintained by the Minister under and in accordance with this section and the regulations under **subsection (4A)**.

“register of succession farm partnerships” shall be construed in accordance with **section 667D(1)**.

“Registered Farm Partnership,” means a farm partnership entered on the register.

“several trade” has the meaning given to it by **section 1008**.

### *Register of farm partnerships*

In order to be placed on the register, a farm partnership must satisfy the following

conditions:

- (i) the farm partnership must exist wholly or mainly for the purpose of carrying on a farming trade.
- (ii) the farm partnership must operate in accordance with a written partnership agreement which:
  - (I) complies with the Partnership Act 1890;
  - (II) includes the identity of the partners and the land, the ratio of the share in the partnership and the details of the operation of the partnership;
  - (III) is for a minimum of 5 years.
- (iii) the farm partnership must have at least 2 members but no more than 10.
- (iv) no member of the farm partnership may be a non-active partner.
- (v) the members of the partnership must consist of:
  - (I) at least 1 partner in the farm partnership must be a person who has been engaged in the trade of farming on land owned or leased by that person consisting of at least 3 hectares of useable farm land for at least 2 years immediately preceding the date of formation of the partnership, and
  - (II) if there are partners not covered by (I) above, then at least 1 of those other partners must be an individual who is a trained farmer who is entitled to at least 20% of the profits of the partnership.
- (vi) the partners cannot hold farm assets, other than excluded assets, outside of the partnership. Where a farmer holds an interest in farm land that land must be either licenced or leased into the farm partnership.
- (vii) any payments arising to a partner from the trade of farming for the purposes of the farm partnership, shall be paid by the partner to the farm partnership.

### ***Changes to farm partnership***

The primary participant must notify the Minister of any change to the partnership within 21 days of the change. Failure of the primary participant to do so may result in the partnership being removed from the register from the date of the change, unless:

- (i) the partnership remains eligible to be on the register; and
- (ii) the failure to notify is neither careless nor deliberate and is rectified as soon as it is realised.

The primary participant must notify the Minister prior to a new partner joining or an existing partner ceasing to be a partner and shall request the Minister to amend the relevant entry on the register accordingly. The Minister shall not approve such an alteration unless the Minister is satisfied that it is for bona fide commercial purposes.

### ***Anti-avoidance***

A farm partnership which is formed between a farmer and a company of which that farmer is a director or has a shareholding, shall not be eligible to be a registered farm partnership.

### ***Entry to and removal/suspension of farm partnerships from the register***

The Minister shall only enter a partnership on the register if he/she is satisfied that the farm partnership has met the conditions set out in ***subsection (1A)***. If the Minister is not

satisfied that the partnership is continuing to meet those conditions, the partnership shall be removed from the register with effect from the date it ceased to meet those conditions. A farm partnership may be suspended where an order has been made under section 9 of the Animal Health and Welfare Act 2013

### ***Relief – where partner is not a “qualifying farmer”***

This subsection, which is subject to subsection (3), amends a number of the provisions in **section 666** for the purpose of this section. **Section 666** provides for stock relief at the rate of 25% for farmers, other than certain qualifying farmers.

Firstly, it provides that stock relief at the rate of 50%, rather than 25% as provided for in **section 666 (1)**, applies where a farmer, other than certain qualifying farmers, is a partner in a registered farm partnership.

Secondly, it substitutes a new **subsection (4)** in **section 666** for the purposes of this section. This provides that the earlier stock relief deadlines in **section 666 (4)** of 31 December 2012 for companies and the year 2012 for individuals are extended to 31 December 2022 and the year 2022 respectively for the purposes of this section.

### ***Relief – where partner is a “qualifying farmer”***

A qualifying farmer, within the meaning of **section 667B**, who is a partner in a registered farm partnership, is entitled to the enhanced rate of relief of 100% for a four-year period as provided for in that section. Where appropriate, the qualifying farmer reverts to the 50% rate provided for in this section for registered farm partnerships, rather than to the standard rate of 25%.

The cash equivalent of the relief is limited to €7,500 over a three year period.

For a qualifying period commencing on or after 1 January 2014 the maximum amount of stock relief that can be claimed is increased to €15,000 in the aggregate in the qualifying period (3 years.)

### ***Time Limits***

The 50% rate of stock relief applies in respect of accounting periods commencing on or after 1 January 2012 and ending on or before 31 December 2022.

### ***Register***

This subsection allows for the establishment of a register of farm partnerships as part of the process of extending the meaning of “registered farm partnership” for the purpose of this section.

Firstly, it provides that the Minister for Agriculture, Food and the Marine, after consulting with and with the approval of the Minister for Finance, may establish and maintain a Register of farm partnerships by regulations, and that such regulations may provide for a number of matters including:

- different divisions of the register relating to different classes of farm partnerships,
- the form and manner of, and information and documentation required for, an application for entry on the register,
- the form and manner of registration,
- the assignment of unique identifiers to partnerships included on the register and purposes for which and conditions subject to which, the identifier may be used,

- procedures where *subsection (1B)* or *subsection (1D)(b)* applies,
- the agricultural qualifications required by a person,
- conditions relating to the distance between farm land to be used by partners, and
- such supplemental, transitional and incidental matters that appear necessary and appropriate to the Minister.

Secondly, it provides that every regulation made under *subsection (4A)* must be laid before the Dáil and such regulations may be annulled by resolution of the Dáil.

## **667D Succession farm partnerships**

### **Summary**

This section provides a “succession tax credit” of €5,000 per annum in respect of succession farm partnerships. This is a succession planning initiative to encourage farmers to form partnerships with young trained farmers and to transfer ownership of the farm, within a specified period, to that young trained farmer. This provisions applies only to individuals, a company cannot enter a succession partnership.

### **Details**

#### ***Register***

A primary participant may apply to enter a registered farm partnership on the register of succession farm partnerships and shall comply with all requirements relating to such application.

#### ***Conditions***

A registered farm partnership must comply with the following conditions in order to be entered on the register:

- only individuals may be partners, of which there are at least two,
- at least one partner is a person who has been farming on at least 3 hectares of farming land owned or leased by that person for at least 2 years immediately preceding the date of formation of the partnership. Each of the other partners must be under 40 years of age, a trained farmer and entitled to at least 20% of the profits of the partnership,
- a business plan in respect of the farm partnership must have been submitted to, and approved by, the Minister,
- the farmer shall agree to sell or transfer at least 80% of the farm assets to one or more of the successors within 3 to 10 years from the date an application is made to enter the partnership on the register,
- the terms of the succession agreement, which may or may not be legally binding, shall include:
  - details of the farm assets of the partnership,
  - any conditions to which the transfer or sale will be subject,

- the year in which the transfer or sale will take place, and
- any other terms which the successor and farmer agree to, including any terms in relation to the farm assets, the conduct of the farming trade or the creation of any rights of residence in dwellings on the farm land.

### ***Jointly owned or farmed farm assets***

This subsection sets out certain rules where farm assets are jointly owned or farmed prior to the formation of the succession farm partnership. Each person who jointly owns or holds an interest in the farm assets must agree to the transfer of those assets in accordance with the agreement under **subsection 2(d)**. Each individual who jointly farms the land which is to be transferred may become a partner in the partnership notwithstanding that the individual may be a non-active partner.

### ***Joint transfer to successor and spouse/civil partner***

A farmer may form a succession farm partnership to transfer or sell farm assets jointly to a successor and the successor's spouse/civil partner even if the spouse/civil partner would be a non-active partner.

### ***Register***

The Minister will only register a succession farm partnership where the partnership has satisfied all the qualifying conditions.

### ***Succession tax credit***

Each partner in the succession farm partnership shall be entitled to a tax credit, referred to as a succession tax credit, for the year of assessment in which the registration takes place and each of the 4 years immediately following that year, which is the lesser of

- (i) €5,000 per year of assessment divided between the partners in accordance with their profit sharing ratio under their partnership agreement, or
- (ii) The assessable profits (after deducting any capital allowances related to that trade) of that partner's several trade.

No partner in a succession farm partnership can claim the succession tax credit once a successor has reached the age of 40.

If the agreed transfer of the farm assets does not take place the succession tax credit claimed by all partners will be clawed back from the farmer. However where it is shown to the satisfaction of a Revenue officer that the farm assets were not transferred as the successor would not complete the transfer, the succession tax credit will be clawed-back from the successor. Where the farm assets were not transferred due to mutual agreement between the parties, the succession tax credit may be clawed back from the party who claimed the credit.

### ***Power to make regulations***

The Minister may make regulations to provide for the establishment and maintenance of a register of succession farm partnerships.

### ***EU Requirements***

A lifetime ceiling of €70,000 applies for EU State Aid purposes to the amount of aid granted to a young trained farmer under the Agricultural Block Exemption Regulation (paragraph 7 of Article 18 of the Commission Regulation (EU) No. 702/2014). This means that the amount of tax relief received by a partner in a succession farm partnership must be aggregated across the relevant schemes: i.e. **section 667D**, **section 667B** and **section 81AA SDCA 1999**. The cash equivalent of the tax relief received cannot exceed €70,000.

### **667E Authorised officers**

#### **Summary**

This section enables the Department of Agriculture, Food and the Marine to appoint authorised officers to carry out investigations into the operation of registered farm partnerships.

#### **Details**

#### ***Definitions***

“relevant statutory provisions” means **sections 667C** and **667D**.

“person in charge” means the owner, the person who controls the activities at that place, the person whom an authorised officer has reason to believe is in control of the activities at that place or the driver of a vehicle.

“place” includes a vehicle or any attachment to a vehicle.

#### ***Authorised officers***

The Minister may appoint persons to be authorised officers for the purpose of enforcing the provisions dealing with registered farm partnerships, which appointment may be revoked at any time by the Minister.

#### ***Powers***

An authorised officer is authorised to exercise certain powers for the purpose of the relevant statutory provisions.

An authorised officer is not permitted to enter a dwelling other than with the consent of the occupier or in accordance with a warrant of the District Court issued under **subsection (6)** authorising such entry.

Where an authorised officer is prevented from entering any place or lands, an application for a warrant of the District Court under **subsection (6)** may be made authorising such

entry.

### ***Warrant***

A judge of the District Court may issue a warrant authorising an authorised officer to enter a place or lands within one month from the date of issue of the warrant if the judge is satisfied that there are reasonable grounds for believing that there is information, records or evidence held at the place or lands in relation to the relevant statutory provisions.

### ***Other authorised officers***

An authorised officer may be accompanied by other authorised officers or persons when performing any of the functions conferred on him or her under the relevant statutory provisions where the officer has reasonable grounds for apprehending any serious obstruction in the performance of those functions.

## **667F Appeals officer**

### **Summary**

This section enables the Minister for Agriculture, Food and the Marine to appoint an appeals officer to hear appeals under *section 667G* and, subject to a commencement order to be made by the Minister for Finance, *section 285D*. The qualifications required and the role of the appeals officer are defined.

### **Details**

#### ***Appointment of appeals officer***

The Minister may appoint an appeals officer for the purposes of hearing an appeal under *section 667G* and, subject to a commencement order to be made by the Minister for Finance, *section 285D*.

#### ***Appeals officer***

An appeals officer must be either a practicing solicitor or barrister with at least 5 years experience and must not be in the full-time service of the State.

An appeals officer shall:

- (a) hold office for a term of 3 years at the end of which term he or she will be eligible for reappointment,
- (b) be independent in the performance of his or her functions,
- (c) be paid such fees and allowances for expenses as the Minister may determine,
- (d) submit a report in writing to the Minister in relation to the performance of his or her functions as an appeals officer at such intervals and in relation to such periods

as are specified by the Minister.

### ***Resignation or removal from office***

An appeals officer may resign from office in writing to the Minister and the resignation shall take effect on the date on which the Minister receives the letter. Where, in the opinion of the Minister, an appeals officer has become incapable of performing his or her functions as an appeals officer due to ill-health or has committed stated misbehaviour, an appeals officer may be removed from office.

### ***Term of office***

An appeals officer may not serve more than two consecutive terms of office.

### ***Procedures***

An appeals officer may establish procedures to be followed by him or her in performing certain functions in his or her role as an appeals officer.

### ***Indemnity***

Aside from an act or omission committed in bad faith, the Minister shall indemnify an appeals officer in respect of any act done or omitted to be done by him or her in the performance or purported performance of his or her functions as an appeals officer.

## **667G Appeals**

### **Summary**

This section provides for an appeals mechanism in relation to decisions of the Minister for Agriculture, Food and the Marine.

### **Detail**

#### ***Decisions of the Minister***

The Minister will give notice in writing to the primary participant of his or her decision:

- to refuse to enter the farm partnership on the register of farm partnerships or the register of succession farm partnerships,
- to remove the farm partnership from the register of farm partnerships as a result of the failure of the primary participant to notify the Minister within 21 days of any change to the farm partnership,
- not to amend an entry on the register of farm partnerships as a result of an alteration to the farm partnership,
- to refuse to approve the business plan of a farm partnership,

to remove the farm partnership from the register of farm partnerships or the register of succession farm partnerships.



### ***Notice***

The notice of the Ministers decision shall include reasons for the decision. Should the primary participant wish to appeal a decision, a written notice specifying the grounds for appeal, must be submitted within 21 days of the date of the Minister’s decision. The decision of the Minister is deemed to be suspended until the decision becomes final or an appeal is disposed of.

### ***Final decision***

Provided no appeal is made by the primary participant under this section, the decision of the Minister shall become final 21 days after the date of the notice under ***subsection (1)***.

### ***Notice of appeal***

A notice of appeal must comply with ***subsection 2(b)*** and must be accompanied by the appropriate fee.

### ***Procedure on appeal***

For the purpose of an appeal the appeals officer:

- (a) must notify the Minister of the appeal,
- (b) must request submissions from the parties to the appeal which must be furnished to the appeals officer within the required period,
- (c) may hold a hearing, and
- (d) may request additional information from the parties to the appeal or other persons which must be furnished to the appeals officer within the required period.

### ***Hearing***

If a hearing is held, each of the parties to the appeal is entitled to be heard at the hearing and the appeals officer may adjourn the hearing at any stage until a date specified by the appeals officer.

### ***Consideration of an appeal***

When considering an appeal under this section the appeals officer shall consider the submissions from the parties to the appeal, the evidence presented at any hearing of the matter and all information furnished to the appeals officer.

### ***Decision of appeals officer***

On completion of his or her consideration of an appeal, and within 42 days from the date of the notice of the appeal, the appeals officer shall make a decision determining the appeal. The appeals officer shall notify the parties to the appeal of his or her decision as soon practical after the decision is made.

### ***Application to the High Court***

Following the appeals officer’s decision, a party to an appeal may apply to the High Court on a point of law. The determination of the High Court is final and conclusive. An application to the High Court must be made not later than 14 days after the appeals officer has notified the parties of the decision.

## **668 Compulsory disposals of livestock**

### **Summary**

This section provides for special tax treatment for farmers in respect of profits accruing as a result of the disposal of stock under statutory disease eradication measures. This special treatment can be availed of by both individuals and companies. Profits arising from such disposals are excluded in computing income for tax purposes for the accounting period in which the disposal takes place and are deemed to arise in equal instalments in each of the next 4 accounting periods (or, if the farmer wishes, in the period in which the profits arise and the following 3 periods). Furthermore, in place of the normal 25 per cent stock relief, a farmer is entitled to elect for stock relief of 100 per cent in the 4 year deferral period. In all cases, however, the option to defer does not apply where a permanent discontinuance of the farming trade occurs. The section also provides that a farmer is deemed to be entitled to stock relief for an accounting period equal to the instalment of profit from the disposal which is treated as arising in that period. In these circumstances the farmer must fully re-invest or intend to fully re-invest the compensation which was received, in replacement stock, by the end of the 4 year period. However, if the compensation is not fully re-invested by the end of this period, the aggregate stock relief for the 4 years will be reduced to an amount that bears the same proportion to the aggregate stock relief as the expenditure actually incurred in the 4 year period bears to the compensation received. This reduction is to take place, as far as possible, in the later years of the 4 year period.

Finally, the section also clarifies the interaction of the relief under this section with the introduction of the calendar tax year.

### **Details**

#### ***Definitions***

“excess” is, in effect, the profit arising on the compulsory disposal; it is the difference between the “relevant amount” and the book value of the stock at the start of the accounting period in which the disposal takes place. **(1)**

“relevant amount” is the income received by the farmer on foot of the compulsory disposal.

“stock to which this section applies” means —

(a) Cattle forming part of the trading stock of the farming trade where such animals are compulsorily disposed of under statutory disease eradication measures. Such disposals occurring since 6 April, 1993 are covered.

(b) Animals and poultry of a kind specified in Parts I and II of the first Schedule to the Diseases of Animals Act, 1966 which form part of the trading stock of the trade

of farming. Relief is available where a farmer disposes of all animals or poultry of the particular kind on or after 6 December 2000 in circumstances where compensation is paid by the Minister for Agriculture, Fisheries and Food.

### ***Deferral of tax charge on profits from compulsory disposals***

A farmer, who has been obliged to dispose of livestock under any statutory disease eradication measure, may elect to have his/her profit resulting from the disposal dealt with under the subsequent provisions of the section. Such an election must be made in such form and contain such information as the Revenue Commissioners require to ensure that the measure can be implemented in a satisfactory manner (for example, valuation of the farmer's stock, details of stock disposed of, etc.). (2)

Where a farmer has so elected but subject to **subsection (3A)**, the profit arising from the disposal is ignored in the accounting period in which it arises. Instead, that profit is treated as arising in equal instalments in each of the 4 accounting periods immediately after the period in which it arises. This has the effect of deferring the tax charge on the profit arising from the disposal. Again, subject to **subsection (3A)**, the farmer can further elect to have the profit in question treated as arising in 4 equal tranches, in the accounting period in which it arises and in the 3 immediately succeeding periods. (This is to facilitate farmers who might wish to start replacing their stock in the disposal period rather than wait until the following 4 periods). (3)

### ***Permanent discontinuance of the trade***

Where a permanent discontinuance of a farming trade arises, then an assessment under Case IV of Schedule D is made in relation to any profits which but for the discontinuance, would have been treated by **subsection (3)** as arising in an accounting period or periods ending after the discontinuance. This assessment is to be made in the chargeable period in which the permanent discontinuance arises. (3A)

### ***Reinvestment of proceeds of compulsory disposals***

Subject to **subsection (4A)** a person is deemed to be entitled to a stock relief deduction under **section 666** for each of the 4 accounting periods over which the excess profit is treated as arising under **subsection (3)**, provided the person incurs or intends to incur expenditure on replacement stock, in an amount not less than the relevant compensation amount, before the end of the 4 year period. This deduction is in substitution for a stock relief deduction which the person might otherwise be entitled as a result of re-investing an amount of expenditure, equal to the relevant compensation amount, in replacement stock. (4)

The amount of the deduction for each accounting period is an amount equal to the amount of the excess profit which is treated as arising in that period under **subsection (3)(a)** or **(3)(b)**. Provision is made that **section 666** applies with any necessary modifications in order to give effect to the subsection.

Where it subsequently transpires that the expenditure on replacement stock which was actually incurred, by the end of the 4 year period over which the excess profit is treated as arising under **subsection (3)**, was less than the relevant compensation amount, then: (4A)

- the aggregate stock relief deduction, to which the person is deemed by **subsection (4)** to be entitled under **section 666**, in respect of the 4 accounting periods involved is to be reduced to an amount that bears the same proportion to that aggregate deduction as the expenditure actually incurred in those 4 accounting periods bears to the relevant compensation amount, and
- the reduction shall be made, as far as possible, in a later accounting period in priority to an earlier accounting period.

#### ***Time limit for elections***

An election under the section must be made in writing on or before the person's return filing date for the chargeable period (accounting period of a company or year of assessment of an individual) in which the compulsory disposal takes place. (5)

#### ***Interaction with the calendar tax year***

Where an instalment of excess profits is treated as arising in an accounting period of one year ending in the period from 1 January 2002 to 5 April 2002 and, by virtue of section 65, the profits or gains of both the year of assessment 2001 and the year of assessment 2002 are computed on the basis of that accounting period, then notwithstanding any other provision of the Tax Acts: (6)

- an amount equal to 74 per cent of that instalment shall be taken to be part of the profits or gains of the trade of farming for the year of assessment 2001, and
- an amount equal to 26 per cent of that instalment shall be taken to be part of the profits or gains of the trade of farming for the year of assessment 2002.

Where, by virtue of **subsection (4)**, a person is deemed to be entitled to a stock relief deduction under **section 666** in respect of the accounting period referred to in **subsection (6)**, then: (7)

- 74 per cent of such deduction shall be granted for the year of assessment 2001, and
- 26 per cent of such deduction shall be granted for the year of assessment 2002.

## **669 Supplementary provisions (Chapter 2)**

### **Summary**

Measures of a technical nature are contained in **section 669**. These are needed to underpin the stock relief scheme. Included, for example, are provisions to ensure that stock valuations are computed on a uniform basis and that cases in which accounting periods and periods of account do not coincide are catered for.

### **Details**

#### ***Stock valuations to be computed properly and on a uniform basis***

An inspector is empowered to vary a claim for stock relief in whole or in part where it is considered that part or all of the increase in the value of stock has arisen by reason of acquisitions or disposals otherwise than in the normal conduct of business. The inspector (1)(a)

can compensate for an abnormal increase or decrease by adjusting the value of the opening or closing stock to such value as appears to be just and reasonable having regard to all the circumstances of the case.

Where there is a change in the basis of valuation of stock, the value of the opening stock has to be recomputed on the same basis as the value of the closing stock. (1)(b)

***Accounting period not coinciding with period of account***

The situation where an accounting period does not coincide with a period of account (that is, a period for which the accounts of the person have been made up), or with 2 or more consecutive periods of account, is addressed. In such a case, the accounting period lacks a properly certified opening stock value or closing stock value or both. A period, called a reference period, is established which encompasses one or more periods of account and which, therefore, has actual opening and closing stock values. These values are used to ascertain the increase in stock value in a reference period and this increase, by means of the formula in **subsection (3)(a)**, provides the basis for determining the increase in stock value in an accounting period for the purpose of computing a deduction under **section 666**.

Where a person’s accounting period does not coincide with a period of account or with 2 or more consecutive periods of account, the person’s increase in stock value in the accounting period is to be determined by reference to a period, referred to as “the reference period”, determined by this subsection. (2)(a)

Where the beginning of an accounting period does not coincide with the beginning of a period of account, the reference period is to begin at the beginning of the period of account which is current at the beginning of the person’s accounting period. (2)(b)

Similarly, where the end of an accounting period does not coincide with the end of a period of account, the reference period is to end at the end of the period of account which is current at the end of the person’s accounting period. (2)(c)

Where **paragraph (b)** does not apply, the reference period runs from the commencement date of the person’s accounting period and, where **paragraph (c)** does not apply, the reference period ends at the end of the person’s accounting period. (2)(d)

A formula is used to enable the increase in stock value in a reference period to be applied to an accounting period. The formula requires that the increase in stock value (C–O) in the reference period is to be multiplied by the fraction — (3)(a)

$$\frac{A}{N} \frac{\text{Number of months in the persons accounting p}}{\text{Number of months in reference period}}$$

in order to obtain the increase in stock value appropriate to the accounting period.

References to closing stock value in **section 666** and in the remaining provisions of the section are adapted to the concept of a reference period. (3)(b)

***Bar on entitlement to stock relief in certain cases***

The circumstances in which a person is not allowed a stock relief deduction under **section 666** are spelt out. These are if an accounting period ends because the person ceases — (4)(a)

- to farm,
- to be resident in the State, or
- to be chargeable to tax on the farming profits.

This provision also applies to a case within *subsection (3)(a)*. (4)(b)

***Claims where before accounting period begins the trade was not being carried on***

Where a person claims stock relief and immediately before the beginning of the accounting period the person was not carrying on the trade to which the claim relates, then, unless certain conditions are fulfilled, the person's opening stock value is to be deemed to be such amount as appears to the inspector to be just and reasonable. (5)(a)

The considerations to which the inspector must have regard in so determining the person's opening stock value are indicated, namely, all relevant circumstances of the case and in particular movements in the costs of items comprised in the trading stock and changes in the volume of trade. (5)(b)

In a case where an accounting period does not coincide with a period of account, references in *paragraphs (a) to (c)* to an accounting period are to be taken as references to a reference period. (5)(d)

***Miscellaneous***

Finally, a reference in the section to the number of months in an accounting period or reference period is to be construed, where appropriate, as including a fraction of a month. (6)

CHAPTER 3  
*Milk Quotas*

**Overview**

This Chapter provides for a scheme of tax relief for the purchase of a milk quota. Capital allowances are granted in respect of expenditure incurred on the purchase of a milk quota under the National Milk Quota Restructuring Scheme which the Minister for Agriculture and Food introduced from 1 April 2000 or any other milk quota purchased after that date. The allowances are granted on a straight line basis over a seven year period.

With effect from 1 April, 2000 milk quotas no longer transfer with land with some exceptions such as in the case of family transaction and the sale of a holding as a going concern. Instead, the transfer of milk quota is operated by way of a pooled system at co-operative/dairy level. Under this scheme, quota holders may, at the end of each milk quota year, offer all or part of their milk quota for sale to their co-operative/dairy. The co-operative/dairy in turn may only sell milk quota to eligible producers attached to that concern under detailed rules determined by the Minister for Agriculture, Food and Rural Development (currently Agriculture and Food). While all producers are entitled to purchase milk quota under this scheme, priority is accorded to small and medium sized producers.

The allowances regime applies to purchases of a quota on or after 1 April, 2000, and was activated by Ministerial Order with effect from 6 April 2000. Where milk quota is

subsequently sold or disposed of the normal balancing allowance or charge provisions will apply.

### **669A Interpretation**

This section contains the definitions of terms used throughout the Chapter.

“levy” means the levy referred to in Council Regulation (EEC) No. 3950 of 28 December, 1992 establishing an additional levy in the milk and milk products sector.

“milk” means the produce of the milking of one or more cows and “other milk products” includes cream, butter and cheese.

“milk quota” is the quantity of milk or other milk products which may be supplied, sold or transferred free for direct consumption by a person carrying on the trade of farming, in a milk quota year, without that person having to pay a levy.

“milk quota restructuring scheme” is the scheme introduced by the Minister for Agriculture, Food and Rural Development (currently Agriculture and Food), under the provisions of Article 8(b) of Council Regulation (EEC) No. 3950 of 28 December, 1992 as amended.

“milk quota year” is the 12 month period beginning on 1 April and ending on 31 March.

“purchaser” has the meaning given to it under Council Regulation (EEC) No. 3950 of 28 December 1992.

“qualifying expenditure” is:

- the amount of the capital expenditure incurred on the purchase after 1 April, 2000 of a milk quota by a milk producer under the Milk Quota Restructuring Scheme, or
- where the quota is not purchased under the Milk Quota Restructuring Scheme, the lesser of —
  - the amount of the capital expenditure incurred on the purchase of the quota, or
  - the amount of the capital expenditure which would have been incurred if the price paid was limited to the maximum price set locally in each co-op area, for a milk quota under the Milk Quota Restructuring Scheme.

“qualifying quota” is —

- a milk quota purchased by a person after 1 April 2000 under a Milk Quota Restructuring Scheme, or
- any other milk quota purchased after 1 April 2000.

“writing-down period” is set out in *section 669B(2)*.

### **669B Annual allowances for capital expenditure on purchase of milk quota**

#### **Summary**

This is the substantive section of the Chapter and provides that qualifying expenditure (see definition in *section 669A*) incurred on the purchase of a qualifying milk quota may be written off over a 7 year period at the rate of 15 per cent per annum over 6 years and 10 per cent in year 7. In the case of a short chargeable period, as in the case of commencements and cessations, the allowance will be reduced accordingly.

#### **Details**

A writing down allowance is given to a person engaged in the trade of farming in respect (I)

of qualifying expenditure incurred on the purchase of a qualifying quota.

The qualifying period is 7 years commencing with the chargeable period in which the qualifying expenditure was incurred. (2)

The amount of the qualifying allowance to be given is determined by the formula — (3)

$$A \times \frac{B}{C}$$

where

A = qualifying expenditure incurred on the quota.

B = length of the part of the chargeable period falling within the writing down period.

C = length of writing down period.

### 669C Effect of sale of quota

#### Summary

Where a person has incurred expenditure on the purchase of a qualifying quota, the grant of the writing-down allowance, provided for in *section 669B* would, if continued for the whole of the writing down period, completely write off that expenditure. It may happen, however, that before the end of that period has been reached the qualifying quota comes to an end or ceases to be used, or the person enjoying the annual allowance may sell part or all of the qualifying quota. This section provides for certain balancing allowances or charges in these circumstances.

#### Details

##### *Stop on further allowances*

If, before the end of the writing down period — (1)

- the qualifying quota is sold, or
- it comes to an end or ceases to be used, or
- part of it is sold for an amount not less than the unused allowance,

then no further writing down allowance is given for that or any subsequent chargeable period.

##### *Balancing allowances*

Where, before the end of the writing down period — (2)

- the qualifying quota comes to an end or ceases to be used, or
- the qualifying quota is sold for less than the unused allowance,

then the person is entitled to an allowance (balancing allowance) equal to the amount of the unused allowance, or in a case where the qualifying quota is sold, less the sale proceeds.

##### *Balancing charges*

Where, before the end of the writing-down period, all or any part of the qualifying quota is sold for an amount in excess of the unused allowances, then a charge (balancing charge) is applied for the chargeable period in which the disposal took place equal to the sale proceeds less the amount, if any, of unused allowances remaining at that time. (3)



### ***Part-sale***

Where there is a sale of part only of the qualifying quota and a balancing charge does not apply because the sale proceeds are less than the unused allowances, no balancing allowance is made. In addition, future writing down allowances for the seller (who retains part of the qualifying quota) over the remaining writing-down period are to be adjusted. They are computed by deducting the sale proceeds from the unused allowances and dividing by the number of years of the writing-down period remaining. (4)

### ***Expenditure remaining unallowed***

The expression “expenditure remaining unallowed” is defined for the purposes of this section as original expenditure, less any writing-down allowances already made and less also the net proceeds of any previous sale of a part of the qualifying quota. (5)

### ***Miscellaneous***

Provision is made that no balancing allowance is to be granted except where a writing-down allowance has been or could have been made. This ensures that balancing allowances are granted only to persons referred to in the section. There is also the stipulation restricting the amount on which a balancing charge may be made to the aggregate of the allowances already enjoyed in respect of the expenditure (in so far as there have not already been withdrawn by any previous balancing charge). (6)

## **669D Manner of making allowances and charges**

The allowances and charges provided for in this Chapter may only be given to a person in respect of the purchase of a qualifying quota where the person is taxed on the profits or gains of the trade of farming and the quota is used as part of that trade.

## **669E Application of Chapter 4 of Part 9**

### **Summary**

This section applies the provisions of *Chapter 4 of Part 9* to this Chapter. These are the miscellaneous and general provisions relating to the application of capital allowances for income tax and corporation tax purposes.

### **Details**

*Chapter 4 of Part 9* is applied as if this Chapter were contained in that Part. (1)

A minor modification is made to *section 312* (special provisions as to certain sales) to ensure that in certain circumstances where the seller and buyer of qualifying quota are under common control they may make a joint declaration to the inspector to have the sale of the quota treated as if it were made at the amount of original expenditure remaining unallowed instead of the open market price. (2)

## **669F Commencement (Chapter 3)**

*Chapter 3* comes into effect on such day as the Minister for Finance, with the consent of the Minister for Agriculture, Food and Rural Development (currently Agriculture and Food), may, by order, appoint. The order was made on 1 November 2001.

## CHAPTER 4

### *Taxation of stallion profits and gains*

#### **Overview**

This Chapter contains the framework of the taxation arrangements for stallion stud fee income earned after the tax exemption ends on 31 July 2008. *The Chapter was commenced by Order of the Minister for Finance on 27 May 2008.*

In broad outline the framework of the legislation is as follows:

- Stallions are to be treated as stock in trade. This means income from stud fees and profits or gains from the sale of stallions are fully taxable. Corporate owners of stallions will be taxable at 12.5%. Individual owners will be taxed at their marginal income tax rate, whether that is 20% or 41%.
- A full write-off over 4 years of the initial market value of the stallion is allowed for tax purposes. This includes stallions purchased for stud purposes as well as those transferred from racing. Even without this provision the cost of a stallion would be allowed as a deduction upon its disposal or death. Upon the disposal or death of a stallion the balance of any amounts not yet written-off will be immediately given with the full amount of any payments received on disposal being taxable.
- This write-off arrangement will be available to both stallion owners actively involved in bloodstock breeding as well as syndicate members, although in the latter case, losses from this business will be ring-fenced so that they may only be carried forward against future stallion stud fee income.
- Transitional arrangements provide for the valuation on 1 August 2008 of the existing stock of stallions at stud. The 4 year write-off is based on this valuation going forward for these stallions.
- The high earners restriction, introduced in the 2006 Finance Act, will apply to stallion stud fee income for 2007 and the period up to 31 July 2008. Any additional income tax paid in respect of stallion stud fee income will be available as a credit against future years' income tax. The corresponding deduction which would otherwise be available under the high earners restriction will be denied in these circumstances. After 31 July 2008 stallion stud fee income will be fully taxable.

The Chapter sets out the basis of charging profits and gains arising from the ownership of stallions, detailing the Cases involved, as well as specific deductions which are provided for in arriving at the amount chargeable to tax.

The mechanism for giving credit against future income tax as well as other miscellaneous matters are also addressed.

#### **669G Interpretation (Chapter 4)**

This section defines certain terms used in the Chapter:

“Excess relief” refers to the same term as defined in *section 485C* and means the amount which can be carried forward as a deduction against future income under the provisions of *Chapter 2A* of *Part 15*.

“Initial value” means the market value of a stallion on the later of 1 August or when it is purchased for /appropriated to stud activities.

“Market value” means the price the stallion would fetch on the open market. Where the purchase and vendor are not connected (within the meaning of *section 10*) and the

transaction is at arm's length, the purchase price is taken to be the market value.

“Relevant amount” is used elsewhere in the Chapter (*section 669J*). It means an amount calculated using the formula:

$$A - B,$$

Where:

A is the amount of income tax paid by an individual for the year, and

B is the amount of income tax payable by the same person if exempt income from stallion fees, either received directly or indirectly through dividends, were not included in the restriction for high earners. The references to these 2 forms of payment are in *Schedule 25B* and these are cross-referenced in the definition of B.

“Relevant excess relief” is also used in *section 669J*. Under the provisions of *Chapter 2A* of *Part 15* a certain amount is calculated, relating to tax paid under that Chapter, which may be carried forward and used as a deduction against future years income for the purposes of income tax. This is known as excess relief. For the purposes of determining relevant excess relief the following formula is used:

$$C - D,$$

Where:

C is the amount so carried forward, and

D is the amount which would be carried forward if exempt income from stallions, both received directly and indirectly through dividends were not included in *Schedule 25B*. The difference between the two is the amount of relevant excess relief. The specific items in *Schedule 25B* are cross-referenced in the definition of D.

“Residual value” means at any time that proportion of the initial value of a stallion which is as yet unallowed as a deduction. In other words in the 3<sup>rd</sup> year after purchase, the residual value of the stallion is 50% of the initial value since 50% has, by that time, already been allowed. In the 5<sup>th</sup> year the residual value is zero since the full amount of the initial value has already been allowed.

### **669H Charging provisions**

This section contains the basic charging provisions.

Any profits or gains arising in respect of stallion stud services are chargeable to income tax or corporation tax in accordance with *subsection (2)*. (1)

In circumstances where a stallion owner is otherwise chargeable under Case I of Schedule D in respect of the trade of farming, profits or gains from stallion stud services are treated as part of that trade and taxed accordingly. The consequence of this is that the normal trading deductions are allowed automatically and both losses arising in a year and those carried forward are treated in the normal way. (2)(a)

Profits or gains, arising in any other situation, are charged to tax under Case IV of Schedule D. (2)(b)

### **669I Provisions as to deductions**

This section provides for certain specific deductions.

All deductions (other than in accordance with *subsection (2)*) are denied in any circumstance in respect of expenditure incurred on the acquisition of a stallion. This is (1)

necessary since a scheme of deductions is provided for in **subsection (2)** and without this subsection an owner could conceivably get a second full deduction on the disposal or death of the stallion.

A 4 year write-off of the initial value of the stallion is allowed where the trade is chargeable under Case I of Schedule D, at the rate of 25% of the initial value per annum. The first chargeable period in which the deduction is given is — **(2)(a)**

- (i) the chargeable period which contains 1 August 2008, in the case of stallions already standing at stud on that day, and
- (ii) in any other case, the chargeable period which contains the day the stallion is either acquired or is transferred from racing.

Where the profits or gains from stallion stud fees are chargeable to tax under Case IV of Schedule D the same deduction as in Case I is allowed. Under normal circumstances no deduction would be allowed in determining income to be charged under Case IV. This subsection allows the computation to be done as if the income were chargeable under Case I (taking into account this Chapter) even though it is actually charged under Case IV. The effect of this is that, for example, expenses of upkeep of the stallion are allowed as a deduction as well as all the deductions and limitations imposed by the other provisions of this Chapter. **(2)(b)**

Provision is made for any balance of the annual 25% deduction to be given. In other words if the stallion is disposed of in the 3<sup>rd</sup> year, the remaining 50% write-off of the initial value is not given by further 25% writing down allowances but rather as a separate write-off of this residual amount (i.e. the balance of the initial value). See **paragraph (b)**. **(3)(a)**

A deduction is allowed in the chargeable period in which the death or disposal of the stallion takes place of the residual value of the stallion at that time. The combination of the annual deductions during the period of ownership, and the allowing of this deduction in respect of the residual value means that the full initial value of the stallion has now been allowed. **(3)(b)**

A charge to income tax or corporation tax, as the case may be, is imposed under Case I or Case IV of Schedule D, depending on the circumstances, on the full amount of any receipt on the disposal or death of the stallion. The charge applies whether the receipt is in money or money's worth. **(3)(c)**

Where the amount received on disposal is less than the price which the stallion might reasonably be expected to fetch in an open-market sale at arm's length between unconnected persons (within the meaning of **section 10**) then that market price is substituted for the actual receipt and tax is charged accordingly.

### **669J Credit for tax paid**

This section is concerned with allowing credit for certain income tax paid as a result of **Chapter 2A** of **Part 15** to be carried forward and used to reduce future years income tax. The section only applies up until 31 July 2008 since stallion stud fee income, will be fully chargeable after that time.

Provision is made for any individual who, in any year of assessment, has made a payment of tax by virtue of **Chapter 2A** of **Part 15**, which is deemed to include a relevant amount (see definition in **section 669G**). That person will be treated as having made a payment on account of income tax equal to that relevant amount. **(1)**

The payment on account of income tax (referred to in **subsection (1)**) will, in so far as is possible, be credited against income tax due in respect of the year of assessment immediately after the year in respect of which the tax payment (under **Chapter 2A** of **Part** **(2)**

15) was made.

Any excess payment on account of income tax remaining after the application of **subsection (2)** may be carried forward to be used in future years, against earlier, in priority to later, years of assessments. (3)

If any repayment of tax were to arise, such a repayment cannot include a repayment of income tax deemed to have been paid on account by virtue of this section. (4)

Where credit for income tax is given by virtue of this section, then a deduction against future years income, which would otherwise arise by virtue of **section 485F** will be denied but only to the extent of the amount of the relevant excess relief.

### **669K Miscellaneous (Chapter 4)**

This section is concerned with a number of miscellaneous matters connected with this Chapter.

Should the Revenue Commissioners need to determine the market value of a stallion for the purpose of this Chapter, they may consult with any person or body of persons, whom they consider may be of assistance to them. This provides a statutory basis, in these limited circumstances, to overcome the normal obligations that ensure confidentiality in respect of a person's tax affairs. (1)

Even though stallions, owned in circumstances in which this Chapter applies, are treated as trading stock, **section 666** does not apply to them. **Section 666** provides stock relief on the year-on-year increase in the value of trading stock in a farming context. (2)

Certain limitations on the use of losses incurred by the owner or part-owner of a stallion to which this Chapter applies are imposed where the owner is chargeable to tax under Case IV of Schedule D. Under normal circumstances losses incurred in a chargeable period in respect of which the person would otherwise be chargeable under Case IV may be set off against other Case IV income arising in that period. Furthermore if, after such a setoff there are still net losses, these can be carried forward to be set off against Case IV income arising in future years. This subsection denies the sideways setoff against other Case IV income arising in that year and limits these losses to being set off only against future years income to which **section 669H(2)(b)** applies. In other words, in a Case IV context stallion losses can only be setoff against future stallion income. This limitation does not apply where the stallion losses arise in a Case I context since these are treated in the same way as any other Case I losses. (3)