Relief for leases of farmland

Part 7: Section 81D

This document should be read in conjunction with Section 81D SDCA 1999

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Revenue
Cáin agus Custaim na hÉireann
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1 Introduction

Section 81D SDCA 1999 provides for relief from Stamp Duty in respect of certain leases of farmland executed[1] on or after 1 July 2018, subject to certain conditions being met.

The relief is available in respect of leases of farmland that are for a term of between 6 and 35 years. Stamp Duty is chargeable on such leases at the rate of 1% of the average annual rent that is payable under the lease (Schedule 1 SDCA 1999). Where the qualifying conditions are met, an exemption will apply in respect of the Stamp Duty that is chargeable on such a lease (section 81D(2)). However, this is subject to an upper limit.

The relief, which is intended to encourage more productive use of farmland, constitutes an EU State aid and therefore must comply with EU State aid rules. The relevant State aid rules are contained in Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector. The Regulation is designed to cater for schemes involving small amounts of grant aid, including tax relief. In accordance with the Regulation, an upper limit on the amount of relief that may be granted under section 81D applies (see section 4 below).

2 Qualifying conditions

The relief is available where certain conditions are met in relation to both the lease and the lessee(s).

In accordance with section 81D(3), the relief is available in respect of a **lease** which:

- is for a term of between 6 and 35 years, and
- is of any lands which are used exclusively for farming carried on by the **lessee** on a commercial basis and with a view to the realisation of profits.

The requirement to farm the leased land on a commercial basis with a view to making a profit can be satisfied in a situation where the lessee makes a loss in a particular year. However, the consistent making of losses year on year may indicate that farming is not being carried out on a commercial basis with a view to making a profit. EU single farm payments are to be included as farming income in the computation of profits or losses in the normal way.

In addition to the conditions set out in section 81D(3), section 81D(4) sets out certain conditions which must be met by the **lessee**, who may be an individual or a company.

[1] In accordance with section 1 SDCA 1999, "executed", in relation to an instrument not under seal, mean signed.

Where the lessee is an individual, he or she must, from the date on which the lease is executed:

- be the holder of, or within the 4-year period from the date of the lease, become the holder of, a relevant agricultural qualification (see section 2.1 below), **or**
- spend not less than 50% of his or her normal working time farming land (including the leased land) (see section 2.2 below).

Where the lessee is a **company**, there must be at least one individual who, from the date on which the lease is executed:

- holds not less than 20% of the **ordinary share capital** of the company,
- is a director of the company,
- has the ability to participate in the financial and operational decisions of the company, **and**
- who:
    - is the holder of, or within the 4-year period from the date of the lease, becomes the holder of a relevant agricultural qualification (see section 2.1 below), **or**
    - spends not less than 50% of his or her normal working time farming land (including, as an employee of the company, the leased land) (see section 2.2 below).

The **ordinary share capital** of a company means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate, but have no other right to share in the profits of the company (subsection (1)).

2.1 Agricultural qualifications

A relevant agricultural qualification for the purposes of the relief is a **trained farmer qualification** (as defined in section 654A Taxes Consolidation Act (TCA) 1997[2]), or a qualification listed in **Schedule 2** or **Schedule 2A** SDCA 1999.

A **trained farmer qualification** is:

- any qualification that is listed in the table to section 654A TCA 1997, and
- any additional qualification which Teagasc certifies as being equivalent to a qualification that is listed in the table and as being deemed by the Qualifications and Quality Assurance Authority of Ireland to be at least at a level equivalent to that qualification.

[2] Further information on section 654A TCA 1997 is available in Part 23 TCA Notes for Guidance.

Teagasc is responsible for publishing the list of all trained farmer qualifications on its website and for keeping it up to date. The up-to-date list can be accessed through the information page on the Teagasc website.

The qualifications listed in Schedule 2 and Schedule 2A SDCA are reproduced in the Appendix.

The date of the award of the qualification is the date the person becomes the holder of the qualification.

If not already held by the lessee at the date of execution of the lease, the agricultural qualification must be obtained within a period of 4 years from that date. This allows the relief to be claimed by a person who has started a relevant course or who intends to do so in time to obtain the qualification within the required 4-year period. This contrasts with the operation of the Stamp Duty relief for transfers of farmland under section 81AA where the agricultural qualification must actually be held before the relief can be claimed.

Alternatively, a lessee may choose to pay the Stamp Duty up front and then claim a refund if, and when, he or she becomes the holder of the qualification within the required 4-year period. This is subject to a valid claim for a refund being made to Revenue within the period of 4 years from the date on which the lease was stamped, the lessee became the holder of the qualification. Information on how to claim a refund is available on the Revenue website.

2.2 Active farming

Revenue accepts that normal working time (including on-farm and off-farm working time) approximates to 40 hours per week. This enables individuals with off-farm employment to qualify for the relief where they spend at least 20 hours per week, averaged over a year, farming. Where an individual works more than 40 hours per week, the minimum requirement for 20 hours of farming still applies. Where an individual’s normal working time is somewhat less than 40 hours per week, then the 50% requirement can be applied to the actual hours worked.

If, in exceptional situations, it can be shown that, on an ongoing basis, certain farming activities, such as the occupation of woodlands, are carried out on a commercial basis and with a view to making a profit but do not require 50% of a farmer’s normal working time, Revenue will take this into account in deciding whether the relief was correctly claimed.

3 Claiming the relief

The relief is claimed on a self-assessment basis. The claim is made on a Stamp Duty return that must be filed through Revenue's online system (ROS). While supporting documentation in relation to the claim is not required to be included with the return, it should be retained for 6 years from the later of, the date of the Stamp Duty return or the day the Stamp Duty was paid, as it may be requested by Revenue in the event of a follow-up compliance check.

With a self-assessment basis of taxation, it is up to lessees to satisfy themselves when claiming the relief that they meet the qualifying conditions. Should Revenue decide to carry out a follow-up compliance check on a claim for relief, they will consider all relevant information (including farming records) when deciding on whether or not relief was correctly claimed.

4 State aid rules

This relief constitutes an EU State aid and is granted in accordance with [Commission Regulation (EU) No 1408/2013 of 18 December 2013] on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector.

In accordance with the Regulation, a ceiling is imposed on the amount of *de minimis* aid that any one farmer or farming entity can receive over a **3-year period**. The ceiling is currently set at **€20,000**.[3] Prior to 14 March 2019, a ceiling of €15,000 applied. As stated in section 81D(7), relief granted under section 81D is available only to the extent that it does not exceed this ceiling of aid.

In relation to relief granted under section 81D, the amount of aid granted is the amount of Stamp Duty that would be payable if the relief did not apply.

The 3-year period operates on a rolling basis so that, for each new grant of aid, the total amount of aid granted in the particular year and in the preceding two years is to be taken into account.

The ceiling applies to the amount of *de minimis* aid that is received in respect of **all** State aid granted in accordance with the Regulation, whether given by way of tax relief or direct grants. The relevant tax relief schemes are this Stamp Duty relief and relief given under section 667C Taxes Consolidation Act 1997 (registered farm partnerships).

[3] The ceiling was increased from €15,000 to €20,000 following the amendment of the 2013 Regulation by Commission Regulation (EU) 2019/316 of 21 February 2019.

5 Clawback of relief

In accordance with section 81D(5), relief will be clawed back where, in the 6-year period commencing on the date of execution of the lease, **any** of the qualifying conditions (as set out in section 81D(3) and (4)) cease to be satisfied.

Where relief is clawed back, the Stamp Duty that would have been payable had the relief not applied will become payable. Interest, calculated at the daily rate of 0.0219% per day,[4] will be chargeable from the date on which any of the qualifying conditions cease to be satisfied to the date on which the Stamp Duty is paid.

Where there is more than a single lessee, each of the lessees is jointly and severally liable for the payment of the Stamp Duty and interest.

Guidance on how to pay Stamp Duty and interest where relief is clawed back is published on the Revenue website.

Section 81D(6) provides for an exception to this provision where the failure to continue satisfying the qualifying conditions is due to the death of the lessee or the lessee's incapacity to continue to farm because of mental or physical infirmity. In circumstances where the lessee is a company, this exception applies in relation to the individual who, until the date of his or her death or incapacity, satisfied the qualifying conditions in relation to the company.

Example

Carol executes a lease of farmland on 10 August 2018. The term of the lease is 10 years at an average annual rent of €60,000 (100 acres @ €600 per acre). Carol farms the leased land on a commercial basis and spends 25 hours per week working on the land. However, Carol's off-farm employment takes up more time than anticipated. This means that Carol's farming on a commercial basis effectively ceases in October 2019 with Carol spending only about 5 hours per week working on the land.

Without the relief, Stamp Duty of €600 (1% of average annual rent) would have been payable. Carol must now pay this amount of Stamp Duty to Revenue, together with interest on late payment calculated at the daily rate of 0.0219% from October 2019 to the date on which the Stamp Duty is paid.

[4] As provided for by section 159D SDCA 1999.

6 Failure to satisfy qualifying conditions

There is no entitlement to the relief where any of the qualifying conditions that were required to be satisfied when the relief was claimed were not satisfied or where a lessee fails to become the holder of a relevant agricultural qualification within the permitted 4-year period.

Where relief was claimed in these circumstances, the Stamp Duty return should be amended to withdraw the claim for relief. The Stamp Duty and interest, at the usual rate charged for late payment of tax, should be paid.

Any amount of relief claimed that exceeds the allowable ceiling of €20,000 as set out in above is also repayable to Revenue with interest chargeable from the date on which the ceiling was breached.

Information on how to amend a Stamp Duty return is available on the [Revenue website.]

Appendix - Relevant agricultural qualifications

A. 'Schedule 2' qualifications

1. Qualifications awarded by Teagasc:

(a) Certificate in Farming;
(b) Diploma in Commercial Horticulture;
(c) Diploma in Amenity Horticulture;
(d) Diploma in Pig Production;
(e) Diploma in Poultry Production.

2. Qualifications awarded by the Farm Apprenticeship Board:

(a) Certificate in Farm Management;
(b) Certificate in Farm Husbandry;
(c) Trainee Farmer Certificate.

3. Qualifications awarded by a third-level institution:

(a) Degree in Agricultural Science awarded by the National University of Ireland through University College Dublin, National University of Ireland, Dublin;
(b) Degree in Horticultural Science awarded by the National University of Ireland through University College Dublin, National University of Ireland, Dublin;
(c) Degree in Veterinary Science awarded by the National University of Ireland through University College Dublin, National University of Ireland, Dublin;
(d) Degree in Rural Science awarded by the National University of Ireland through University College Cork - National University of Ireland, Cork or by the University of Limerick;
(e) Diploma in Rural Science awarded by the National University of Ireland through University College Cork - National University of Ireland, Cork;
(f) Degree in Dairy Science awarded by the National University of Ireland through University College Cork - National University of Ireland, Cork;
(g) Diploma in Dairy Science awarded by the National University of Ireland through University College Cork - National University of Ireland, Cork.

4. Certificates awarded by the National Council for Educational Awards:

(a) National Certificate in Agriculture Science studied through Kildalton Agricultural College and Waterford Institute of Technology;
(b) National Certificate in Business Studies (Agri-business) studied through the Franciscan Brothers Agricultural College, Mountbellew, and Galway-Mayo Institute of Technology.

B. 'Schedule 2A' qualifications

1. Qualifications awarded by the Further Education and Training Awards Council (FETAC):

(a) Vocational Certificate in Agriculture — Level 3;
(b) Advanced Certificate in Agriculture;
(c) Vocational Certificate in Horticulture — Level 3;
(d) Vocational Certificate in Horse Breeding and Training — Level 3;
(e) Vocational Certificate in Forestry — Level 3;
(f) Awards other than those referred to in subparagraphs (a) to (e) of this paragraph which are at a standard equivalent to the standard of an award under subparagraph (a) of this paragraph.

2. Qualifications awarded by the Higher Education and Training Awards Council (HETAC):

(a) National Certificate in Agriculture;
(b) National Diploma in Agriculture;
(c) National Certificate in Science in Agricultural Science;
(d) National Certificate in Business Studies in Agri-Business;
(e) National Certificate in Technology in Agricultural Mechanisation;
(f) National Diploma in Horticulture;
(g) National Certificate in Business Studies in Equine Studies;
(h) National Certificate or Diploma awards other than those referred to in subparagraphs (a) to (g) of this paragraph.

3. Qualifications awarded by other third-level institutions:

(a) Primary degrees awarded by the faculties of General Agriculture and Veterinary Medicine at University College Dublin;
(b) Bachelor of Science (Education) in Biological Sciences awarded by the University of Limerick;
(c) Bachelor of Science in Equine Science awarded by the University of Limerick;
(d) Diploma or Certificate in Science (Equine Science) awarded by the University of Limerick.