Taxation Issues for Registered Farm Partnerships

Part 23-02-09

This document should be read in conjunction with section 667C of the Taxes Consolidation Act 1997

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The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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Executive Summary

A farm partnership is where two or more farmers come together to combine their farming operations into one business. The partners share the profit that the farm partnership makes on the basis of an agreed ratio.

Section 667C of the Taxes Consolidation Act 1997 (TCA 1997) provides for enhanced stock relief at the rate of 50% for farmers who are partners in a "Registered Farm Partnership". A Registered Farm Partnership is a farm partnership that is registered on the Register of Farm Partnerships maintained by the Department of Agriculture, Food and the Marine in accordance with section 667C TCA 1997 and the Registration of Farm Partnership Regulations 2015 (S.I. No. 247 of 2015).

This manual explains the principal features of the Irish tax system as it relates to farmers establishing, registering and maintaining a Registered Farm Partnership.

1 What is a Registered Farm Partnership?

A farm partnership is where two or more farmers come together to combine their farming operations into one business. The partners share the profit that the farm partnership makes on the basis of an agreed ratio. A Registered Farm Partnership is a farm partnership that is registered on the Register of Farm Partnerships maintained by the Department of Agriculture, Food and the Marine (DAFM) in accordance with section 667C TCA 1997 and the Registration of Farm Partnership Regulations 2015 (S.I. No. 247 of 2015). The main benefit of establishing and maintaining a Registered Farm Partnership from a tax perspective is the availability of enhanced stock relief for the members of the partnership.

1.1 Conditions for entry on the Register

In order for a farm partnership to be eligible for entry on the Register, the following conditions must be satisfied:

- The partnership must exist wholly for the purpose of carrying on a trade of farming.
- The farm partnership agreement must be in writing and must include the identity of the partners and the land, the ratio of the partners share in the partnership and the details of the operation of the partnership. The agreement must also commit the partners to a period of operation as a farm partnership for at least 5 years.
- The partnership must consist of at least 2 persons but not more than 10 persons.
- Of the members of the farm partnership at least one member must be an 'experienced farmer'. The experienced farmer (which can be an individual or a company) must have been engaged in farming at least 3 hectares of useable farm land for at least 2 years prior to the formation of the partnership. In the case of a partner who is a farming company, the company itself, as opposed to its officers/employees, must have been carrying on the farming trade for

the requisite 2-year period. Of the other partners in the partnership, at least one must be an individual who is an 'experienced farmer' or an individual who has an appropriate farming qualification who is entitled to at least 20% of the profits of the partnership.

- All partnership members must be active partners. This means that the partners must spend at least 10 hours per week on average personally engaged in the activities of the partnership during the accounting period. Where the partner is a company, the officers and employees must, between them, spend an average of at least 10 hours per week personally engaged in the activities of the partnership.
- Aside from certain excluded farm assets, all partners are required to contribute all of their farm land, entitlement to agricultural payments, livestock and farming machinery to the partnership and may not have an interest in any such agricultural assets outside of the partnership. Partners are not however obliged to transfer ownership of their farm land to the partnership and may licence the land concerned to the partnership and the partners will not be treated as having an interest in land outside of the partnership in such circumstances. Land which is jointly owned by a proposed partner must also be contributed / licenced to the partnership even where the other co-owner(s) do not wish to join the partnership. In such circumstances, the other co-owner(s) must seek a specific exemption from the Minister for Agriculture, Food and the Marine in order to remain outside of the partnership. Commonage land held by a proposed partner must also be licenced to the partnership. However, the other commonage rights holder(s) are not required to become partners or seek an exemption from the Minister from joining the partnership. Farm assets used for the purpose of pig farming, poultry farming, mushroom farming, forestry, bloodstock farming, intensive horticultural cropping, on-farm milk processing or fuel / electricity generation enterprises may remain outside of the partnership and be farmed separately.
- Any payments arising to a partner from the trade of farming for the purposes of the farm partnership must be paid by the partner to the farm partnership. This includes, for example, agricultural sales and common agricultural payments but does not include payments received by a partner from the Department of Social Protection or rental income.

1.2 Interests in multiple partnerships

A farmer may not, at any one time, be a partner in or have an interest in more than one Registered Farm Partnership. This also means that a farmer cannot be a partner, as a natural person, and at the same time be a shareholder or director of a company that is also a partner in the same Registered Farm Partnership. Similarly, a farmer may not be a shareholder or director in more than one company which are partners in the same Registered Farm Partnership.

1.3 Application to the Register

Farmers wishing to have their farm partnership placed on the Register should submit their application to DAFM's Farm Partnership Unit - see Department's website for further information.

Once the farm partnership is placed on the Register, a Farm Partnership Registration Number (FPRN) will be issued. The partnership must continue to meet the requirements set out in section 1.1 above in order to remain on the Register. In addition, the precedent partner must notify DAFM of any alterations to the partnership within 21 days of the change including changes to the area of land, the status of the partners or the profit-sharing ratio. An amended Farm Partnership Agreement should be submitted to DAFM in such circumstances with the partnership changes included. Partnerships which fail to continue to satisfy the conditions or who fail to alert DAFM of changes may be removed from the Register with effect from the date they ceased to meet the conditions or altered the partnership agreement and the stock relief will not be available for that accounting period. DAFM are also authorised to appoint officers to carry out investigations into the operation of Registered Farm Partnerships and such officers are permitted to exercise certain powers, including the power to inspect, examine and search any land and / or any records relating to the partnership, in order to ensure that the relevant legislative requirements are being adhered to.

In circumstances where DAFM refuse to enter the partnership on the Register or decide to remove the partnership from the Register or refuse to amend an entry on the Register, DAFM will issue a notice to the precedent partner informing them of the reason for the decision. Should the precedent partner wish to appeal such decision, a written notice specifying the grounds for appeal, must be submitted within 21 days of the date of the notice to the Agricultural Appeals Office.

2 Stock Relief

The primary benefit from a tax perspective of establishing and maintaining a Registered Farm Partnership is the availability of enhanced stock relief for the members of the partnership.

Stock relief reduces farm profits by reference to the increase in stock values for an accounting period. It is granted to farmers whose profits are calculated on the strict earnings basis (i.e. taking account of debtors, creditors and stock on hand) where there is an increase in the level of stock-on-hand by the end of the accounting period. Broadly speaking, the relief takes the form of a deduction of a defined percentage, to be allowed in computing the trading profits of an accounting period.

2.1 Enhanced relief for Registered Farm Partnerships

All farmers are allowed a relief of 25% on the increase in value of trading stock and work-in-progress at the end of the accounting period over and above the opening value.

However, in the case of a partner in a Registered Farm Partnership, for accounting periods ending after 1 January 2012 and ending before 31 December 2024, stock relief at the rate of 50% applies. The amount of stock relief which may be claimed by a partner over each 3 year period is subject to an aggregate cap. Prior to 1 January 2014, the maximum cash equivalent of the relief a partner was entitled to receive was limited to €7,500 over a 3 year period. For a period commencing on or after 1 January 2014, the cap is increased to €15,000 over 3 years. For periods commencing on or after 1 January 2024, the cap is further increased to €20,000 over 3 years (further information on State aid is outlined below).

2.1.1 Claiming stock relief

In order to calculate the stock relief deduction for an accounting period, it is necessary to identify the trading stock of the farming trade and then to value it at the beginning and end of the accounting period. The values used to determine the increase (if any) of the trading stock are generally to be taken as the valuation figures used in the accounts. A written claim for the relief must be made before the return filing date for that tax year. This means that the stock relief claim for a year (e.g. 2023) must be made no later than 31 October 2024 or the extended November 2024 deadline if filing via ROS.

The partnership will be required to enter the total amount of relief being claimed by the partners in the partnership when filing the annual partnership return.

In addition, the individual partners will also be required to indicate the amount of stock relief being claimed by them individually when filing their individual tax returns. In the individual Income Tax Return (Form 11), the following fields should be completed in the “Farm details” section:

- Tick box to indicate that taxpayer is in a Registered Farm Partnership, and
- enter amount of stock relief used by taxpayer under section 667C TCA 1997.

The exception to this is if a partner is entitled to increased stock relief for qualifying young farmers, in which case the following fields should be completed in the “Farm details” section:

- Tick box to indicate that taxpayer is in a Registered Farm Partnership, and
- enter amount of stock relief used by taxpayer under section 667B TCA 1997.

Increased stock relief for qualifying young farmers is discussed in greater detail in section 2.2 below.

Stock relief cannot be used to create or augment a loss. In addition, certain capital allowances and loss relief provisions do not operate where stock relief is granted for an accounting period. This includes a restriction on the carry forward of unused losses from previous years. In addition, unused capital allowances in the year of the claim, including any capital allowances brought forward and treated as capital allowances for the year of claim, are also not available to carry forward to subsequent years.

2.1.2 State aid

The scheme of enhanced stock relief constitutes an EU State aid and as such must comply with EU State aid rules. The legal basis for the 50% stock relief was Commission Regulation (EC) 1535/2007 on the application of the EC Treaty to *de minimis* aid in the sector of agricultural production. Regulation (EU) No.1408/2013 replaced the 2007 Regulation. In line with the Regulation, section 667C(3A) TCA 1997 provides the total *de minimis* aid to any individual farmer could not exceed €7,500 over any three year period, with the total increasing to €15,000 over 3 years from 1 January 2014 and €20,000 over 3 years from 1 January 2024.[1] The net effect of these EU requirements is that stock relief claims by individuals in Registered Farm Partnerships must comply with the *de minimis* €20,000 rolling three-year limit for assessment years 2024 onwards.

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 relief and relief from stamp duty under s81D Stamp Duty Consolidation Act 1999 (leases of farm land).

In addition, where a specified person constitutes a 'single undertaking' in accordance with the *de minimis* Regulation, de minimis aid granted under the Regulation shall not exceed €20,000 in a three-year period[2].

All entities controlled on a legal, or de facto, basis by the same entity are considered a 'single undertaking'. A single undertaking includes all enterprises having at least one of the following relationships with each other:

a) one enterprise has a majority of the shareholders' or members' voting rights in another enterprise;

b) one enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;

c) one enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;

d) one enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

If enterprises have any of the relationships referred to in (a) to (d) above through one or more other enterprises, they are also considered to be a single undertaking.

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[1] The 2007 Regulation was replaced by Commission Regulation (EU) No. 1408/2013. Regulation 1408/2013 was amended by Commission Regulation (EU) 2019/316 of 21 February 2019 which increased the maximum amount of relief to €20,000.

[2] 'Single undertaking' is defined in Article 2 Commission Regulation (EU) No. 1408/2013.

2.2 Increased relief for qualifying young farmers in Registered Farm Partnerships

There is also an enhanced scheme of stock relief available to qualifying young farmers (also known as young trained farmers) who hold a trained farmer qualification within the meaning of section 654A TCA 1997.[3] A qualifying young trained farmer, who is a partner in a Registered Farm Partnership, is entitled to stock relief at the rate of 100% for four years instead of the usual 50% deduction, beginning in the year in which the individual begins farming. The cash equivalent amount of stock relief at the 100% rate which a qualifying young trained farmer can receive will be limited to €40,000 in a single year of assessment and €100,000 in aggregate over the four years of the scheme. This is subject to an overall €100,000 limit imposed under Article 18(7) of Commission Regulation (EU) 2022/2472 on the aggregate amount of relief which may be claimed under the 100% stock relief provisions in section 667B TCA 1997, relief for partners in succession farm partnerships under section 667D TCA 1997 and stamp duty relief for young trained farmers under section 81AA of the Stamp Duties Consolidation Act 1999.[4] Once a farmer has claimed the available relief under the enhanced 100% stock provisions, the rate drops to the 50% rate annually while trading in a Registered Farm Partnership.

In the case of a partnership, the practice has been to deduct the stock relief due in arriving at the partnership profit. This practice can continue where all the partners come within the same stock relief regime within a Registered Farm Partnership. However, where some partners in the partnership are entitled to 100% stock relief being young trained farmers, while others are entitled to the 50% rate of stock relief for Registered Farm Partnerships, stock relief should be given by way of deduction from the individual partner's share of the allocated profits.

3 Calculating the profits / losses of a Registered Farm Partnership

3.1 General

Farmers who commence trading in a partnership should be aware that separate rules apply in calculating the assessable profits of partnerships. The total profit of the partnership is calculated and is then divided between the partners in accordance with the agreed profit-sharing ratio in the Partnership Agreement. The individual partners then file their own self-assessment tax returns reporting the tax due on their share of the net partnership profit. This is referred to as the partner's "several trade". The partners cannot be taxed on more than the partnership profit.

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[3] Refer to Tax and Duty Manual [TDM] 23-02-01 for further information on educational qualifications.

[4] See Commission Regulation (EU) 2022/2472 of 14 December 2022

3.2 Sharing the profits / losses between partners

The partnership should compute its business profits each year using the income tax rules as they apply to individuals. Partnership income is calculated as if the partnership is a separate person. This means that a statement of income and expenses is prepared showing the total income and expenses of the partnership. The same addbacks / restrictions that apply for sole traders will apply to a partnership in arriving at the tax adjusted profit / loss. It is the net partnership profit that is then divided between the partners.

Each partner is also entitled to his or her share of the capital allowances attributable to the partnership trade and is liable to tax on his or her share of the partnership's balancing charges (if any) for each year of assessment in which he or she is a partner.

For tax purposes the allocation of profits or losses for an accounting period cannot be varied retrospectively after the end of that accounting period. The computation of a farmer's taxable profits (or tax loss) for any relevant period of account is, in principle, made in exactly the same way as for any other trade.

3.3 Claims for deductions in arriving at net profit / loss

Expenses incurred wholly and exclusively in operating the partnership farming trade

will be deductible in arriving at the tax adjusted profit / loss. No deduction can be made in respect of appropriations of profit such as partner's salary and interest on partners' capital accounts.

3.3.1 Personal expenditure

The claim for relief for any expenditure incurred by a partner on behalf of the partnership must be included in the computation of the partnership's business profits. It is not possible for individual partners to make personal claims for expenses. This is because expenses incurred by a partner only qualify for relief if they are made 'wholly and exclusively' for the purposes of the partnership business. The only legal basis for giving relief for such expenses is as a deduction in the calculation of the profits of the partnership business. This does not mean that expenses incurred by a partner can only be relieved if they are included in the partnership accounts. Revenue will accept adjustments for such expenses to the tax computations included in the partnership return provided the adjustments are made before apportionment of the net profit between the partners. Once the adjustments have been made the expenditure is treated, for all practical purposes, as if it had been included in the partnership's accounts.

Payments made by a partnership towards the personal or domestic expenses of a partner are disallowable. However, in some cases expenses paid may be partly personal and partly business. These may include amounts paid for petrol or diesel, oil and fuel, electricity, insurance and interest. An allocation of these mixed expenses may be made to exclude the personal element of them which is not deductible as a business expense.

3.3.2 Interest

Interest on money borrowed by the partnership for the purpose of earning partnership income is deductible in computing the profit / loss of the partnership. A partner who has borrowed money to buy land which is licenced to the farm partnership, can deduct interest on the loan against his or her portion of the partnership profit. Similarly, a partner who has borrowed money to purchase farm assets which are contributed to the partnership, where the debt is not transferred to the partnership, can deduct the interest on the loan against his or her portion of the partnership profit.

3.3.3 Insurance premiums on partnership assets

Where a partnership asset forms part of the circulating capital of the partnership and it is insured, the expense of insuring the asset is deductible against the partnership's profits.

3.3.4 Employees' remuneration

Remuneration paid to employees by way of salary or pension is deductible in computing partnership profits. However, farm wages, if they are capital in nature, e.g. if the partnership uses some of its farm employees to carry out fencing improvements as opposed to repairs and renewals of fences, such wages are not allowed as a deduction. In this situation, the partnership may be entitled to claim capital allowances having regard to the nature of the expenditure. Payment of wages to family members which appear excessive will be challenged under the "wholly and exclusively" rule.

3.3.5 Capital allowances

Please refer to section 7 below for detail on capital allowance claims.

3.4 Calculating Partnership losses

The tax loss of the Registered Farm Partnership is calculated in the same way, and is allocated between the partners in the same manner, as the Registered Farm Partnership's taxable profits. However, each partner is responsible for claiming the loss relief appropriate to their own personal circumstances. The partner makes the same form of loss relief claim as if he or she were a sole trader and each partner can make his or her own decision as to the form of loss relief, i.e. current year or carry forward loss claim. Farming loss relief claims can also be restricted in certain circumstances. Please refer to TDM Part 12-01-02 and section 4.5 below for additional information on loss relief claims by individuals.

There are special rules which apply to partnership losses. No partner can have a taxable profit if there has been a taxable loss for the partnership, irrespective of the partnership agreement. In addition, the aggregate of tax losses allocated to the partners several trades cannot exceed the adjusted trading profits. In other words, where a partnership makes a profit, no partner can claim relief for any loss. In addition, the loss relief claimed by the individual partners cannot exceed the total partnership loss.

Example

Tom and Billy are in partnership sharing profits and losses equally. For the year ended 31 December 2020 the partnership shows an adjusted profit of €14,000 after adding back salary for Tom of €15,000.

	Total	**Tom**	**Billy**
Loss	(1,000)	(500)	(500)
Salary	15,000	15,000	--
Adjusted profit	14,000	14,500	(500)

As there is an overall partnership profit of €14,000, Billy will not be entitled to relief for his loss of €500. Tom's assessment will be on €14,000 (the overall partnership profit).

3.5 Filing the Partnership tax return

The precedent partner is required to make the partnership's return of income for any tax year on the Form 1 (Firms) before the latest return filing date for that year, whether or not the partnership is sent a notice or return form by the Inspector. This is essentially a return of information as no income tax is payable by the partnership itself.

The precedent partner is usually the person who is the first named in the partnership agreement. He or she should ensure that the Registered Farm Partnership is registered as a partnership with Revenue for all relevant taxes. This is because some legal obligations remain with the partnership. Although income tax is charged on the individual partners rather than on the partnership, the partnership is still required to make a return of partnership income and an allocation of that income between the individual partners.

The partnership may also be required to register as an employer or as a principal contractor for Relevant Contracts Tax (RCT) and make PAYE and RCT returns and be liable for the tax deducted in respect of the payments it makes as employer or as a principal contractor.

4 Taxation of Partners in a Registered Farm Partnership

4.1 Basis of assessment

Once the profits / losses of the partnership have been calculated and have been apportioned between the partners in accordance with the agreed profit-sharing ratio, the normal Case I assessment rules apply to the individual partner. As stated above, the individual partner's share of the partnership profits (or losses) is treated as arising from a separate trade – their several trade. The income tax basis of assessment rules (as distinct from the partnership profit computational rules) are

then applied separately to the portion of profit allocated to each partner to determine the amount of his or her taxable profit for the purpose of his or her Schedule D Case I assessment for each tax year in which he or she is a partner.

In general, farming activities carried on by a person, whether solely or in partnership, are treated as the carrying on of a single trade. This means that any farmer who has more than one farm or who may, for example, farm on his own account in one place and at the same time be a partner in a farming partnership with other farmers, must combine the profits from all of these farming activities in order to determine the farming profits on which he or she is taxable for any year of assessment or, if a company, for any accounting period. In general, the single trade rule means that a farmer who has an existing farming activity and who then commences a second or subsequent farming activity continues to be assessed on all his farming activities as an ongoing trade, i.e. the rules of commencement are not applied again in relation to the new farming activities. Similarly, the special cessation rules only apply where all farming has ceased entirely.

However, there is an exception to the above commencement and cessation rules in that a farmer, ceasing as a farming sole trader and moving in or out of a farming partnership, is subject to the same treatment as any other trader - that is, the commencement and cessation rules apply. Consequently, if there is a commencement or cessation of a partnership trade by a farmer, the commencement or cessation rules apply in determining the basis periods to be used in assessing each partner, irrespective of whether or not the partner has any other ongoing farming activities.

It should be noted however, that the single trade rule prevails and the commencement and cessation rules will not be triggered where a person with other farming activities is admitted to or retires from a continuing farming partnership, i.e. where a person already carries on a farming activity, the commencement and cessation rules only apply where the partnership trade itself is set up and commenced or is permanently discontinued.

Example

Farmer A commenced farming for the first time on his own account in August 2019. In March 2021, Farmer A established a Registered Farm Partnership with Farmer B.

Since a partnership trade is deemed to be set up and commenced when a person who has traded on his own account takes in one or more partners, the rules of commencement (see below) will be applied to determine Farmer A’s assessable profits from the partnership for 2021 and 2022 (the first two tax years of the partnership trade).

Example

Farmer C commenced farming on his own account on 1 October 2020. He had not previously carried on any other farming activities in the State so that he was assessed on his farming profits under the rules of commencement for the first two years.

On 1 May 2022, Farmer C was admitted as a new partner into an existing farming partnership with Farmer D and Farmer E who had been farming in partnership since 2012. Since no question of a commencement (or cessation) of the partnership trade is involved, Farmer C's share of the farming partnership profits from 1 May 2022 are attributed to his single trade of farming and his assessment for the year 2022 is made on the basis of a continuing business.

4.2 On commencement

The trade of the Registered Farm Partnership is deemed to have commenced on the date on which the activity is first carried on by two or more persons in partnership (or when there is a complete change in the partners carrying on the trade). The partnership is regarded as continuing until the date the partnership itself is permanently dissolved, when it ceases to be carried on by at least two persons or when there is a complete change in the partners carrying on the trade. Where a farmer ceased activity as a sole trader before commencing in the partnership, the cessation rules apply to the cessation of activity as a sole trader. This will cause a review of the final years of the sole trade.

The general rules for taxation of profits in commencement years are:

First Year

The farmer is taxed on the profits of the trade from the date the farmer's several trade commenced to the following 31 December.

Second Year

The farmer is taxed on the profits for the twelve-month period from the date the several trade commenced.

Third Year Onwards

The farmer is taxed on the profits of the accounting year ending in that year.

Second Year Excess

If the profits assessed for the second year are greater than the actual profit for the second year (that is, from 1 January to the following 31 December) a reduction for the excess profits will be made. When a taxpayer is sending in a tax return for the third year, they should ask the Revenue Branch to reduce the profits to be taxed in the third year by the amount of the excess for the second year, where this applies.

See Appendix 1 for a worked example of the general rules for taxation of profits on commencement.

4.3 What rules apply where the trade is continuing?

Once the Registered Farm Partnership trade has been established for such a period that the commencement provisions no longer apply, the basis period for the year of assessment is normally the accounting year ending in that year of assessment. The current year basis of assessment rules are the same rules that apply to a person carrying on business as a sole trader.

Example

If the partnership accounts are prepared for twelve months ending on 31 July, the assessable profits for the year to 31 July 2022 will be taken as the profits for the tax year 2022. The amount assessed in respect of any other income e.g. investment income, rental income etc. is based on the actual income in the tax year i.e. 1 January to 31 December.

4.4 On Cessation

Where there are two partners in a Registered Farm Partnership, the withdrawal of any one of those persons terminates that partnership. Subject to any agreement among the partners, a partnership may be dissolved by the death or bankruptcy of a partner, or the expiry of the venture it was formed to undertake, or by one partner giving notice to their fellow partners of their intention to dissolve. Such events may trigger the taxation cessation rules.

Where a Registered Farm Partnership ceases to trade permanently, the normal taxation cessation rules will apply. This could result in a penultimate year adjustment. The following general rules apply in relation to the assessments for the final years.

Last Year

The farmer will be taxed on the profits of the partnership from 1 January in the final year to the date the partnership ceases.

Second Last Year

The farmer will be taxed on the higher of the following figures:

- The profits of the twelve-month period ending on the normal accounting date in the second last tax year, or
- The profits of the twelve-month period from 1 January to the following 31 December in the second last tax year.

Example

A partner permanently ceases business on 31 May 2022. His results for the following periods have been made up as follows:

Year ended 30/9/2020 Profits	€20,000
Year ended 30/9/2021 Profits	€24,000
8 months ended 31/5/2022 Profits	€32,000

Year of cessation assessment 2021

(Basis period 1/1/2022 to 31/5/2022) = €32,000 x 5/8 = €20,000

Penultimate year assessment 2020

Original assessment (basis period y/e 30/9/2021) = €24,000

Actual profits 2020

Profits 1/1/2021 to 30/9/2021 = €24,000 x 9/12 =	€18,000
Plus Profits 1/10/2021 to 31/12/2021 = €32,000 x 3/8 =	€12,000
Total	€30,000

As the originally assessed profits for 2021 of €24,000 are less than actual profits of €30,000, the assessment must be revised to the actual profits of €30,000.

4.5 Loss relief claims by partners

As mentioned above, the tax loss of a partnership is calculated in the same way and is allocated between farmers in the same manner as taxable profits. Relief for a farming loss may be obtained by a farmer by:

- Setting the loss against other income which the farmer (or spouse or civil partner, if jointly assessed) may have for the tax year provided losses were not incurred in each of the three preceding years, or
- Carrying the loss forward to the following year and setting it against any profit from farming made in that year.

Relief for farming losses, except where losses arise by utilising capital allowances, may be restricted in two ways. Firstly, no loss relief is available unless the farmer can show that the loss was incurred in a year when the farming trade was carried out on a commercial basis and with a view to the realisation of profits. In addition to and independently of the commercial test, loss relief is also not allowed if losses have been incurred in each of the 3 preceding years (unless the trade was commenced within the prior 3 years). Exceptionally, this restriction will not be applied where the farmer proves that the farming trade has a justifiable expectation of generating a profit in the future, notwithstanding that losses have been incurred in the prior 3 years.

4.5.1 Terminal loss relief in respect of a Registered Farm Partnership Loss

A partner can claim terminal loss relief when they leave a continuing business. A terminal loss is where a trade or profession is permanently discontinued and in the twelve months to the date of discontinuance a loss has been sustained. This terminal loss may be set off against the trading profits of the discontinuing partner for the three years of assessment prior to cessation provided that relief is not claimed for the loss under any other tax provision.

Conversely, the remaining partners' trading losses are preserved so that they can carry forward their share of the loss against their share of future partnership profits arising from the same trade.

4.6 Claims and Elections Affecting Individual Partners' Tax Liability

Claims and elections, which only affect the tax liability of an individual partner, must be made by that partner. Each claim or election is considered independently of any claim made by the other partners.

4.7 Income Averaging

Where the farmer was previously taxed under the income averaging rules, the new partnership trade is treated as a continuation of the old farming trade, but only for the purposes of the income averaging scheme.

The reverse position also holds. The cessation of the partnership trade and the commencement to sole trade as an individual farmer will not affect an individual's entitlement to income averaging. However, a review will be necessary under the cessation rules of the partner's assessments as outlined above.

5 Valuation of livestock

5.1.1 On Commencement of a Registered Farm Partnership

The valuation of the partnership's trading stock, such as livestock, at the beginning and end of each period of account is an important element in arriving at the partnership's profits (or loss) for that period. The valuation of trading stock for tax purposes is primarily a matter of accounting practice. The normal basis for valuing trading stock is cost or market value, whichever is lower. Where a farmer is moving

into partnership, it is necessary to determine the valuation of the livestock to be contributed to the partnership. Where the trading stock is transferred to the partnership other than by sale or for valuable consideration, the transfer will generally be at market value for tax purposes. However, an election may be made to transfer the stock at the figure appearing in the farmer's accounts at the date of cessation of his or her sole trade. The election must be made in writing before the specified return date for the year of assessment in which the livestock is transferred (i.e. 31 October 2024 for tax year 2023 or the extended November 2024 deadline if filing via ROS).

This will ensure that no taxable profit arises to the farmer on the contribution of the livestock to the partnership. The livestock may be included in the partnerships opening stock valuation at the same figure. In the "Guidelines to forming a Registered Partnership" booklet published by Teagasc, which contains a specimen farm partnership agreement, it is recommended that livestock is reflected in the partnership balance sheet at commencement of the partnership at its market value so as to ensure a fair representation of the financial positions of each of the partners[5]. It may therefore be necessary to agree an adjustment on the partnership balance sheet to reflect the difference, if any, between the market value and the book valuation of the livestock contributed by each of the partners.

Provided there is no question of fraud, wilful default or neglect, the Revenue Commissioners will not normally seek to recover tax for past years as a result of a change in valuation basis nor will they allow a tax uplift. In other words, the valuations for previous years used by the individual partners prior to entering into a Registered Farm Partnership will not normally be revised for tax purposes whether the change is to a higher or lower level.

5.1.2 On Cessation of a Registered Farm Partnership

The general position for all traders is that where stock is sold for valuable consideration to a trader and that trader is entitled to deduct that cost in computing his or her profits, then the closing stock at the date of discontinuance of the trade is to be valued as follows:

- Where the persons are not connected, at the actual transfer price, and
- Where the persons are connected, at the arm's length price. However, if the arms length price exceeds both the original cost of the stock and the actual transfer price, both parties can elect to have the closing stock valued at the greater of acquisition value and actual transfer price.

Where stock is transferred for no consideration, for example, from a parent to a child who is commencing to farm, stock is to be valued at market value.

For stock transfers between farmers, where the partnership is ceasing to trade, there is an additional option. This allows the parties involved in the transfer to elect to

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[5] https://www.teagasc.ie/media/website/publications/2021/Teagasc_Guidelines_to_forming_a_Registered_Farm_Partnership_Dec_2020.pdf

have the farming stock transferred at its book value on the cessation of the Registered Farm Partnership.

6 How are Partnership Capital Allowances treated?

The Tax Acts stipulate that capital allowances in respect of partnership property are made to each partner in a partnership in accordance with the partner's appropriate share of the allowances. This means that capital allowances are computed at partnership level and are allocated to each partner.

The appropriate share of the allowances is the amount computed in accordance with the profit-sharing ratio included in the partnership agreement for the year of assessment. Profits for this purpose are the profits remaining after all partners' salaries, interest on capital etc. have been provided for.

If a partner has been unable to use his or her allocated partnership capital allowances due to insufficient income, the allowances cannot be used to create a loss and cannot be used against future assessments. The capital allowances are carried forward by the partnership as part of the "joint allowance" of the partnership to the next year of assessment. They are then apportioned on the basis of the profit-sharing ratio obtained in that year.

A farmer may claim the following capital allowances:

- Farm Buildings Allowances
- Farm Machinery & Plant (including tractors, ploughs, etc.)
- Balancing Allowance / Charges

6.1 Farm Buildings Allowances

A special Farm Buildings Allowance can be claimed on capital expenditure incurred on the construction or improvement of farm buildings (not dwellings), farmyards and land reclamation (including fencing and other works such as drainage, sewerage, water and electrical installation, walls and glasshouses on farm land). The allowance can be claimed over 7 years at the rate of 15% for the first 6 years, on a straight line basis, of the "Net Cost" of the works carried out i.e. Cost less VAT and Grants, and 10% in year 7.

Example

Cost of land drainage	€10,000
Less Grant	€2,500
Cost for capital allowances	€7,500
Allowance - year 1 to year 6 inclusive	(€1,125 for each year)
Allowance - year 7	€750

At the end of the seven years, the cost is fully written off for tax purposes.

6.1.1 … introduced into the Registered Farm Partnership as capital

If the farmer introduces the buildings as capital to the partnership, the capital allowances in respect of these buildings are available to the partnership.

6.1.2 … acquired by the Registered Farm Partnership

If a building is acquired by the partnership, the capital allowances in respect of the buildings are available to the partnership.

6.1.3 … not introduced to the Registered Farm Partnership

Where a building in respect of which a Farm Building Allowance is due is licenced to the partnership and is used by the partnership for the purposes of its farming trade, then the Farm Building Allowance will be available to the partner who owns the building for set off against his or her share of the partnership profits.

6.2 Plant and Machinery

An annual allowance (known as a "wear and tear allowance") is available in respect of the cost of capital expenditure incurred on the provision of plant and machinery for the purposes of a trade.

The allowance is granted on a straight-line basis over 8 years at the rate of 12.5% per annum of the actual cost of the machinery or plant.

6.2.1 Plant Treated as Building or Machinery

Expenditure incurred on the provision of plant, which is integral to a building, for example expenditure on slatted units, may be included in the cost of the building.

6.2.2 Plant & Machinery Contributed as Partnership Capital

Other than certain excluded assets, partners in a Registered Farm Partnership are not permitted to own any farming plant or machinery outside of the partnership and are required to contribute all of their farming assets to the partnership. Excluded farm assets include assets used in certain farming activities such as pig, poultry and mushroom farming.

If a partnership takes over a trade from a farmer who was a sole trader, the income tax payable is computed as if the farmer's sole trade was permanently discontinued. The permanent discontinuance of a trade may give rise to a balancing allowance or charge on the individual farmer.

Plant and machinery taken over by a partnership in these circumstances which, without being sold, is used in the partnership trade, is treated as if it had been sold to the partnership at open market value for the purposes of capital allowances. Accordingly, any balancing adjustment will be based on market value. However, in this situation the sole trader farmer and Registered Farm Partnership have the option of jointly electing by notice in writing to the local Revenue office to transfer the plant and machinery at tax written down value. This avoids the possibility of a balancing allowance or charge.

The partnership will base subsequent wear and tear allowances claims based on an acquisition cost equal to the tax written down amount. Similarly, on the dissolution of the partnership where the plant and machinery passes back to the farmer, the partnership and the farmer also have the option to elect to transfer the plant and machinery at its remaining tax written down value.

6.2.3 Balancing Allowance / Charges

Example

A farmer purchased a trailer in 2019 for €4,000 and having used it for a number of years disposed of it for €500. He had claimed capital allowances of €2,000 on the trailer to the date of disposal. A balancing allowance arises

as follows:

Tax Written Down Value (€4,000 - €2,000)	€2,000
Proceeds	€ 500
Balancing allowance	€1,500

If, however, a farmer sells a machine for a sum greater than the written down value, a balancing charge is made. The excess is treated as an additional amount of income. The balancing charge is not to exceed, however, the amount of the capital allowances actually given. Wear and tear allowances deemed to have been given are not taken into account. The following example explains the position:

Example

A farmer purchased plant in 2019 for €10,000 and claimed 100% free depreciation on it. He sold it after a few years for €11,000. A balancing charge arises as follows:

Tax Written Down Value	Nil
Proceeds	€11,000
Excess	€1,000

The balancing charge is restricted to the amount of the allowances granted, i.e. €10,000

7 Capital Taxes Issues

7.1 General

In general, a partner's interest in a partnership is not a separate legal asset rather the partner holds a joint interest in each of the assets of the partnership. It is that interest in the underlying assets which are the chargeable assets for capital gains tax purposes. Accordingly, when a partnership interest is transferred, there is a disposal of the transferor's interest in the assets of the partnership (see TDM Part 02-03-03). Disposals of partnership assets are treated as a disposal by the partners themselves and not by the partnership as such. Any gains accruing on a disposal of partnership assets should be apportioned among the partners, in accordance with the terms of the Partnership Agreement, and assessed and charged on the partners separately.

In relation to Registered Farm Partnerships, the assets of the partnership will generally be the machinery and livestock. However, such assets are considered to be wasting assets for capital gains tax purposes meaning that they have a limited useful life and will gradually decrease in value over time. Wasting assets are exempt from capital gains tax, except where they are used as part of the business and are eligible for capital allowances. Therefore, the disposal of farm machinery on which capital allowances have been claimed are potentially chargeable to capital gains tax. However, given that the machinery will tend to decrease in value over time, there is unlikely to be any gain on a disposal. The disposal of livestock will be exempt from capital gains tax.

7.2 Capital taxes on formation of the partnership

When forming a Registered Farm Partnership, all farm assets owned by the members, e.g. machinery and livestock, must be contributed to the partnership. Where a farmer holds an interest in farm land, that land must be licenced into the farm partnership.

7.2.1 Licencing of farm land in the partnership

The licencing of the land in the partnership, assuming that no premium is payable under the licence agreement, will not attract an exposure to capital gains tax or stamp duty. However, where a premium is payable under the licence agreement, an exposure to capital gains tax and stamp duty will occur. The position is the same where land is leased by a partner to the partnership and where a premium is payable under the lease terms. An example of a premium would be a capital sum payable to the partner on the granting of the licence.

Partners have the option of licencing land for market value, agricultural value or nominal value. Where a licence agreement is used, the Revenue Commissioners will not challenge the use of nominal value for the purposes of the Registered Farm Partnership scheme where the agreement is entered into for bona fide reasons and not entered into for the sole or main purpose of avoiding tax.

7.2.2 Transfer of farm assets to the partnership

The transfer of farming assets by a partner on the creation of a Registered Farm Partnership by means of a capital contribution or sale may, in principle, amount to a part disposal by that partner of the assets in question equal to the proportion of the asset that passes to the other partners. Where there is no consideration or if the transfer is between connected persons, the consideration for the part disposal is the market value of the fractional share of the asset passing to the other partners. Otherwise the consideration for the part disposal will be the relevant proportion of the total consideration given by the partnership for the asset.

However, as noted in paragraph 7.1, livestock is considered to be a wasting asset for capital gains tax purposes and as such is exempt from tax on a disposal.

Similarly, given that the value of farm machinery will tend to decrease over time it is unlikely that a chargeable gain will arise on the transfer of the machinery to the partnership.

7.3 Licencing of farm land in Registered Farm Partnership and subsequent disposal of the land

7.3.1 Capital Gains Tax Implications

Land licenced in a partnership is strictly an investment and a gain on its disposal is excluded from capital gains tax retirement relief. However, where the farm land is associated with the whole or part of a partnership business and no rent /consideration has been paid by the Registered Farm Partnership to the partner owning the land, Revenue will regard the land as a chargeable business asset for capital gains tax retirement relief purposes. Consequently, retirement relief will continue to be available to the individual farmer on a disposal of the land.

7.3.1.1 Jointly owned land where spouse / civil partner is not a partner

In the case of land which is co-owned by a partner and his or her spouse / civil partner where the spouse / civil partner does not wish to join the partnership, a certificate should be obtained from the Minister for Agriculture, Food and the Marine exempting the spouse / civil partner from joining the partnership. Provided the other co-owner is in possession of such a certificate and used the land prior to the formation of the partnership, the period of usage of the land by the individual as a partner in the partnership will be treated as a period of use by the spouse or civil partner in determining whether the requisite ownership / usage requirements have been met for the purpose of claiming retirement relief on the subsequent disposal of the land.

7.3.2 Capital Acquisitions Tax Implications

Where an asset such as land is under licence to a Registered Farm Partnership this will not affect the availability of agricultural relief for the purposes of Capital Acquisitions Tax on a subsequent transfer of the land. Once the land is “agricultural property” as defined under Section 89 of the Capital Acquisitions Tax Consolidation Act 2003, and once the beneficiary of the subsequent gift or inheritance qualifies as a “farmer” under Section 89 of the Capital Acquisitions Tax Consolidation Act 2003, agricultural relief will be available in the normal way.

7.3.3 Stamp Duty Implications

For stamp duty purposes, where land is licenced in the Registered Farm Partnership this will not affect the availability of stamp duty relief on transfers of land to young trained farmers once the conditions set out for the granting of the relief are met.

7.4 Dissolution of partnership

A capital gains tax charge can arise on the dissolution of a Registered Farm Partnership. Any gains accruing will be charged on the individual partners.

7.5 Collaborative Farming Grant Scheme

The Department of Agriculture, Food and the Marine provides a “Support for Collaborative Farming Grant” scheme under the CAP Strategic Plan 2023-2027. The grant is aimed at covering part of the legal, advisory and financial services costs incurred up to 50% to the maximum of €1,500 in the setting up of the Registered Farm Partnership.

The tax treatment of grants which are received by traders depends on the nature of the grant involved. Where a grant has been made specifically to compensate the farmer for identifiable capital expenditure, it is not taken into account in arriving at trading profits but reduces the amount of expenditure which qualifies for capital allowances. Allowable costs for Capital Gains Tax purposes are also reduced by the amount of capital grants. Amounts expended on fees in setting up the partnership is considered to be capital expenditure and therefore will not be deductible by the partnership when calculating taxable profits. Similarly, the receipt of the grant will not be taken into account as taxable income when calculating the profits of the partnership.

Appendix 1

Example - Commencing Business as a Registered Farm Partnership

Farmer A started in business as a partner in a Registered Farm Partnership on 1 July 2020. The results for the first three years are as follows:

Year ended 30/6/2021 Profit	€12,000
Year ended 30/6/2022 Profit	€6,000
Year ended 30/6/2023 Profit	€10,000

Farmer A will be taxed as follows:

2020 First Year:

Profits from 1/7/2020 to 31/12/2020, take 6 months of the first 12 months profits: €12,000 x 6/12 = €6,000

2021 Second Year:

Profits from 1/7/2020 to 30/6/2021, take first 12 months profits from commencement: = €12,000

2022 Third Year:

Profits to 30/6/2022 = €6,000

Calculation of excess for 2nd year (2021):

Profits taxed in second year	€12,000
Actual profits of second year*	(€9,000)
Second year excess	**€3,000**

*actual profits 1/1/2021 to 31/12/2021	
6 months of year ended 30/6/2021: €12,000 x 6/12 =	€6,000
6 months of year ended 30/6/2022: € 6,000 x 6/12 =	€3,000
	€9,000

The excess for the second year, i.e. €3,000, will be deducted from the profits taxable in the third year as follows:

2022 Revised Assessment

Profits assessable	€6,000 *
Less second year excess	(€3,000)
Assessable	**€3,000**

*profits for the accounting year ended 30/06/2022

Note:

The claim in respect of the second year excess must be made in writing to the relevant Revenue Branch no later than 31 October following the third year of assessment i.e. in the above example the claim must be made by 31 October 2023 or the extended November 2023 deadline if filing via ROS.