

## **Relief for certain income from leasing of farmland**

### **Part 23-01-23**

This document should be read in conjunction with section 664 of the Taxes Consolidation Act 1997.

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## Introduction

Section 664 of the Taxes Consolidation Act 1997 ("TCA") provides for a relief to be applied where "farm land" is let –

- (a) under a "qualifying lease",
- (b) by a "qualifying lessor",
- (c) to a "qualifying lessee".

The amount of the relief is subject to certain limitations.

### 1. Lease, lessee, lessor, and rent

In section 664(1) TCA 1997 "lease", "lessee", "lessor" and "rent" have the same meanings respectively as in Chapter 8 Part 4.

A lease includes an agreement for a lease and any tenancy, but does not include a mortgage, and lessee and lessor shall be construed accordingly. Lessee and lessor include respectively the successors in title of a lessee or a lessor.

Rent is defined to include any rent charge, fee farm rent and any payment in the nature of rent, notwithstanding that the payment may relate partly to premises and partly to goods or services, and any payment made by the lessee to defray the cost of work of maintenance of or repairs to the premises, not being work required by the lease to be carried out by the lessee.

### 2. Farmland

Farmland is defined for the purposes of the relief and there are a number of conditions applying to it.

The land must be in the State.

It must be wholly or mainly occupied for the purposes of husbandry. In this context husbandry may be taken as including normal farming, market gardening, horse breeding, cattle dealing, fruit growing and any other form of husbandry, intensive or otherwise, which involves the use of the land or its produce.<sup>1</sup>

Any building on the land used for the purpose of farming that land, other than a building or part of a building used as a dwelling, should be treated as part of the land.

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<sup>1</sup> The definition of farming, contained in section 654, does not apply for the purposes of section 664.

### 3. Qualifying lease

In order to promote the proper maintenance and development of the land, provision is made in the definition of a qualifying lease for the lessee to have a guaranteed tenure of reasonable duration.

A qualifying lease must be in writing or evidenced in writing. If a lease is not in writing, a memorandum or note in writing should be requested, which:

- (a) contains the names and addresses of the lessor(s) and lessee(s),
- (b) specifies the acreage, address, location etc. of the land which is the subject of the lease,
- (c) sets out the terms of the lease, and
- (d) is signed by the lessor(s).

The lease must be for a definite term<sup>2</sup> of five years or more. The term of the lease should be expressly set out in the lease or memorandum. A lease should not be regarded as satisfying this requirement if there is no direct reference to five years or more notwithstanding that there is provision for renewal or there is a possibility that it may last five years.

The terms of the lease must be on an arm's length basis and the lessee (or all the lessees) must be a qualifying lessee(s) in relation to the lessor (or in relation to all of the lessors) who must be a qualifying lessor(s).

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. For example, if A's son leases land from B, and B leases land from A or A leases land from B's son, and B leases land from A. In addition, the relief is not allowed if the person who leased the land out farms that land. This is aimed at preventing use of a partnership or company structure to circumvent the rental relief rules (section 664(8)).

### 4. Qualifying lessor

A qualifying lessor must be an individual.

A lessor is a qualifying lessor if he/she has not, after 30 January 1985, himself/herself leased the farmland from a connected person on favourable terms. This is an anti-avoidance measure to prevent a qualifying lessor from being interposed between a non-qualifying lessor and his/her lessee.

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<sup>2</sup> A lease for a definite term is one whose term can be ascertained at the time of grant. For example, the lease must be for a specific period of time, such as 10 years. If at the end of that period the lease is renewed, then it is a new lease. If a lease is extended, for example by 5 years, then that is a new 5 year lease.

An individual is not required to be carrying on a trade of farming to come within the definition of qualifying lessor.

It is not a statutory requirement that the lessor, i.e. the landowner, is resident in Ireland.

For periods up to 31 December 2014, a lessor was a qualifying lessor if he/she was either:

- (a) 40 years of age or over, or
- (b) permanently incapacitated by mental or physical infirmity from carrying on a trade of farming,

With effect from 1 January 2015, the restrictions set out at (i) and (ii) above were removed.

## 5. Qualifying lessee

A qualifying lessee may be an individual or a company provided certain other conditions are met. For periods up to 31 December 2014, a qualifying lessee had to be an individual.

The lessee must carry on a trade of farming (within the meaning of “husbandry” set out in section 1 above) on the leased land either solely or in partnership with a person or persons who is or are also qualifying lessees. A trade of farming for the purpose of section 664 means that the lessee is required to farm the land on a commercial basis and with a view to the realisation of profits.

In addition, the lessee must not be connected with the lessor or with any of the lessors if there is more than one. Where there is more than one lessor, all of the lessees must be unconnected with all of the lessors. A lessee is regarded as connected with a lessor if the lessee would be so regarded for the purposes of section 10 TCA. Effectively this means that a lessor is not entitled to relief where land is let to -

- (a) immediate family (e.g. grandparents, parents, brothers, sisters, children, grandchildren, etc.),
- (b) a spouse or civil partner or the immediate family of the spouse or civil partner,
- (c) a person with whom the lessor is in partnership or the spouse or civil partner of that person or the immediate family of that person,
- (d) a person who is the settlor of a settlement of which the lessee is a trustee, or any person who is connected with the settlor applying the tests in (a) to (c) above, and the land is let in the course of the lessor’s capacity as a trustee.
- (e) a company which is under the control of the lessor or under the control of a person who is connected with the lessor applying the tests in (a) to (c) above.  
A company is under the control<sup>3</sup> of a person if that person:

- (i) exercises,
- (ii) is able to exercise or
- (iii) is entitled to acquire

control of the company's affairs, whether directly or indirectly. This is usually evidenced by shareholdings, voting rights or rights on a winding up.

**Example 1 (lessee connected with lessor)**

John is in a registered farm partnership with his daughter Deirdre. John's brother Peter leases farm land to Deirdre. Peter (the lessor) will not be entitled to the relief because Deirdre (the lessee) is connected to him. This is because Deirdre is in partnership with John and John is Peter's immediate family.

**Example 2 (lessee not connected with lessor)**

Mary inherits 20 acres of farm land from her late husband Jack. She now wants to lease the land on a fifteen-year lease to Jack's brother Mick. Prior to Jack's death, Mary was connected to Mick through her marriage to Jack (there was no other connection between Mary and Mick). However, after Jack's death, Mary is no longer connected to Mick through her marriage to Jack.

To avail of the relief, the lessee must be a qualifying lessee. Where the lessee's rights under the lease are assumed by a successor in title, that successor in title must also be a qualifying lessee. Where the successor in title to the lease is not a qualifying lessee, the lessor ceases to be entitled to relief.

**Example 3 (lessee dies and his rights under the lease are assumed by a successor in title)**

Pat (the lessee) enters a fifteen-year lease with Nigel (the lessor). Pat dies and, on his death, his son Sean assumes the rights under the lease. Sean is a qualifying lessee and, therefore, Nigel is entitled to relief.

If Sean was not a qualifying lessee, Nigel would not be entitled to relief.

**Example 4 (lessee retires and he assigns his rights under the lease)**

Pat (the lessee) enters a fifteen-year lease with Nigel (the lessor). Pat retires and his rights under the lease are assigned to Sean (with the necessary paper work in relation to the assignment of the rights being in place and signed). Sean is a qualifying lessee. Nigel is entitled to relief throughout the period as both Pat and Sean are qualifying lessees in relation to the lease.

If Sean was not a qualifying lessee, Nigel would not be entitled to relief.

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<sup>3</sup> Refer to section 432 TCA 1997 for more details of when a person has control of a company

## 6. Calculation of the relief

Where the total income of a qualifying lessor consists of, or includes, rental profits or gains chargeable to tax under Case V of Schedule D, including profits or gains arising from the leasing of farmland let under a qualifying lease, the qualifying lessor is entitled to a deduction in determining that total income. The deduction is the lower of:

- the total amount of Case V profits or gains (after capital allowances) or
- the “specified amount” in relation to the surplus or surpluses<sup>4</sup> arising in respect of the rent(s) from any farm land let under a qualifying lease(s).

The **specified amount** in relation to the surplus or surpluses arising in respect of the rent(s) from any farm land let under a qualifying lease(s) is defined in Section 664(1)(a) and **is the lesser of:**

- (i) the amount of that surplus or the aggregate of those surpluses;
- (ii) For qualifying leases made on or after 1 January 2015:
  - (A) €40,000, in a case where the qualifying lease or qualifying leases is or are for a definite term of 15 years or more,
  - (B) €30,000, in a case where the qualifying lease or qualifying leases is or are for a definite term of 10 years or more, other than a case to which clause (A) applies
  - (C) €22,500, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, other than a case to which clause (A) or clause (B) applies, and
  - (D) €18,000, in any other case.

**and**

- (iii) Where the rent or rents were not receivable in respect of a full year’s letting or lettings (i.e. on commencement or cessation of the lease), the limits set out in (ii) reduced in proportion to which the rent or the aggregate amount of the rents received for the part of the year bears to the rent or aggregate amount of the rents which would be receivable for a full year’s letting or lettings.

For qualifying leases made prior to 1 January 2015, lower limits apply. These are set out in [Appendix I](#).

Only one reduction is made, irrespective of the number of qualifying leases that a lessor has made. It should be noted that two 4-year leases between the same

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<sup>4</sup> Guidelines on how to calculate a surplus or surpluses arising in respect of rents are set out in Tax and Duty Manual [Part 04-08-01](#).

parties will not entitle the lessor to any exemption. Likewise, two 6-year leases entered into after 1 January 2015 between the same parties will not entitle the lessor to the increased exemption of €30,000.

### **Example 1 (one qualifying lease + other Irish rental income)**

Pat Quinn enters into an agreement to lease land to Carmel O'Brien on 1 January 2018. The term of the lease is 10 years and it is a qualifying lease. For the year 2018, Pat's profit from the qualifying lease is €25,000. He also receives Irish rental income in respect of other non-qualifying leases in the year. As a result, his total profits from Irish rental income are €62,000.

The specified amount is €25,000, being the lower of:

Surplus from qualifying lease	€25,000 and
Limit for 10-year lease	€30,000

The deduction allowed is €25,000, being the lower of:

Total Case V profits	€62,000 and
Specified amount	€25,000

### **Example 2 (two qualifying leases)**

Maureen Lynch enters into two qualifying leases on 1 January 2018. The leases are for 8 years and 15 years respectively. For the year 2018, her profit from the 8-year lease is €27,850 and her profit from the 15-year lease is €39,000. Therefore, her total profit from leasing land under qualifying leases is €66,850.

The specified amount is €40,000, being the lower of:

Surplus from qualifying leases	€66,850 and
Limit for 15-year lease	€40,000

The deduction allowed is €40,000, being the lower of:

Total Case V profits	€66,850 and
Specified amount	€40,000

### **Example 3 (rent receivable for part of year)**

John O'Neill enters into an agreement to lease land to Patrick Flanagan on 1 July 2017. The term of the lease is 7 years and it is a qualifying lease. The rent receivable for a full year is €32,000. For the year 2017, John receives €16,000 in rent from Patrick and his profit from the lease is €15,000. He has no other Irish rental income.

The specified amount is €11,250, being the lower of:

Surplus from qualifying lease	€15,000 and
Reduced limit for 7-year lease	€11,250 <sup>5</sup>

The deduction allowed is €11,250, being the lower of:

<sup>5</sup> The €22,500 limit for a 7-year qualifying lease is reduced in proportion to the gross rent received (€16,000) to the gross rent receivable for a full year's letting (€32,000).



Total Case V profits	€15,000 and
Specified amount	€11,250

## 7. “Old” and “new” leases

Where a qualifying lessor is in receipt of rents from a qualifying lease or leases made prior to 1 January 2015 and from a qualifying lease or leases made on or after that date, the limits set out for qualifying leases made from 1 January 2015 will apply.

## 8. Spouses, civil partners and joint lessors

Entitlement to relief is on an individual basis. Where two or more individuals are interested in a qualifying lease as lessors and each is entitled to receive rent under the lease, the relief is available to each of them. Irrespective of the basis of assessment, each spouse or civil partner is entitled to a maximum reduction of the appropriate amount in their separate assessable incomes from qualifying leases (whether as lessors under separate leases or as joint lessors under the same lease). Similarly, other joint lessors are entitled to separate maximum reductions of the appropriate amount against their respective shares of the rent from the qualifying lease.

### Example (farm land leased by spouses)

Joe and Maureen Lynch (spouses) are joint owners of 200 acres of farm land, which they have let to a third party for 18 years, starting on 01/01/2019. The gross rent receivable under the lease is €75,600 per annum. In 2019, the net rental profit is €70,000, which is split 50:50 between Joe and Maureen.

#### Joe’s deduction for 2019

The only rented property Joe has a legal interest in is the jointly owned farm land. His half of the rental profit is €35,000.

The specified amount in his case is €35,000, being the lower of:

Surplus from qualifying lease	€35,000 and
Limit for 18-year lease	€40,000

Joe can claim a deduction of €35,000.

#### Maureen’s deduction for 2019

Maureen has rental profit of €66,850 from two other qualifying leases (see Example 2 above) and her half of the rental profit from the jointly owned farm land is €35,000. Therefore, her total profit from leasing land under qualifying leases in 2019 is €101,850.

The specified amount is €40,000, being the lower of:

Aggregate surpluses from qualifying leases	€101,850 and
Limit for 18-year lease	€40,000

The deduction allowed for Maureen is €40,000, being the lower of:

Total Case V profits	€101,850 and
Specified amount	€40,000

Attempts may be made to exploit the position of joint lessors' entitlement to a separate maximum reduction, by providing for joint entitlements to rent under a lease so as to obtain a double measure of relief. Unless each lessor has an individual entitlement to the rent stemming from factors other than the terms of the lease (e.g. joint ownership) such cases should be resisted. In particular it may be found that (b) of the definition of qualifying lessor (see [5. Qualifying Lessee](#)) may exclude the lessor who has no interest in the land on the grounds that he or she is leasing the land or a part of it from the other lessor on non-arm's length terms.

**Example (one spouse has exclusive title to land)**

A husband has exclusive title to land. He lets the land jointly with his wife to a qualifying lessee with a provision for entitlement to half the rent each. Relief should be resisted on the grounds that as the wife has no title, she cannot give a lease.

## 9. Information and apportionments

Revenue is entitled to request in writing from the lessor such information as considered necessary for the purposes of determining the relief due. Any such requests should be made in writing to the lessor.

If a qualifying lease covers farm land and other non-qualifying items (e.g. rental of a dwelling house on the land or rental of plant and machinery) an apportionment may be made of the rent payable under the qualifying lease and the Case V deductions to be made from that rent so as to determine the amount of the profit attributable to the lease of the farm land. Any relief due may be given only by reduction of the profit rent attributable to the land. The lessor may appeal Revenue's apportionment to the Tax Appeals Commission.

## 10. Leasing of land and associated basic payment entitlement

Direct payments to farmers under support schemes within the framework of the Common Agricultural Policy (CAP) were introduced in 2015 to replace the Single Farm Payment. The Basic Payment Scheme is the current regime for farmers, which replaces the Single Payment Scheme.

Where a farmer leases both his land and the basic payment entitlement, the entire amount received will qualify for relief under this section subject to the overall limits. It is not necessary to apportion the rent received between the land and the basic payment entitlement.

## 11. Leases of Farmland for solar energy development

The relief in section 664 TCA 1997 relates to income derived from the lease of farmland to a "qualifying lessee" as defined in section 664(1)(a) TCA 1997. The lessee is required to use the farmland "for the purpose of a trade of farming".

A trade of farming for the purpose of section 664 TCA 1997 means that the lessee is required to farm the land on a commercial basis and with a view to the realisation of

profits. Thus, in line with the intention of the legislation to increase the access to land for active farmers who wish to enlarge their farm holdings, relief under section 664 is only intended to apply to lessors who enter into leases of farmland with genuine farmers.

Income received by a lessor from a solar energy company is not income received relating to farmland used for the purpose of a trade of farming, notwithstanding that the solar energy company may agree to occupy some of the land around the solar panels for the purposes of husbandry.

Therefore, unless the solar energy company can demonstrate that they are carrying on two distinct commercial activities i.e. the solar panel activity and a farming activity and that the farm land is wholly or mainly occupied for the purpose of husbandry, a lessor who leases out land to a solar energy company would not be entitled to section 664 TCA 1997 relief in such circumstances.

## Appendix 1

The limits in respect of a qualifying lease or qualifying leases made prior to 1 January 2015 are as follows:

- (I) in the period beginning on the 6th day of April 1985, and ending on the 19th day of January 1987, €2,539.48.
- (II) in the period beginning on the 20th day of January 1987, and ending on the 31st day of December 1987, €3,555.27.
- (III) in the period beginning on the 1st day of January 1988, and ending on the 29th day of January 1991, €2,539.48.
- (IV) in the period beginning on the 30th day of January 1991, and ending on the 22nd day of January 1996 -
  - A. €5,078.95, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, and
  - B. €3,809.21, in any other case.
- (V) in the period beginning on 23 January 1996, and ending on 31 December 2003-
  - A. €7,618.43, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, and
  - B. €5,078.95, in any other case.
- (VI) in the period beginning on 1 January 2004 and ending on 31 December 2005 -
  - A. €10,000, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, and
  - B. €7,500, in any other case.
- (VII) in the period beginning on 1 January 2006 and ending on 31 December 2006 -
  - A. €15,000, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, and
  - B. €12,000, in any other case.
- (VIII) in the period beginning on 1 January 2007 and ending on 31 December 2014 -
  - A. €20,000, in a case where the qualifying lease or qualifying leases is or are for a definite term of 10 years or more,
  - B. €15,000, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, other than a case to which clause (A) applies, and
  - C. €12,000, in any other case.