

Capital Acquisitions Tax

Part 11

Agricultural Relief

This document should be read in conjunction with section 89 Capital Acquisitions Tax Consolidation Act 2003

Document last reviewed July 2019

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11.1 Introduction

Agricultural property, such as farmland, has benefitted from tax relief since the introduction of CAT in 1975. The purpose of the relief is to encourage the productive use of agricultural land and to prevent the sale or break-up of farms in order to pay the CAT liability.

Prior to Finance Act 2014, the availability of relief was essentially determined by the proportion of a person's overall property/assets that was accounted for by 'agricultural property' (as defined) following a relevant gift or inheritance. Arising from recommendations made as part of the Agri-Taxation Review¹, additional measures were introduced in Finance Act 2014 to ensure the productive use of 'tax-relieved' farmland.

11.2 Legislation

The main provisions are contained in section 89 CAT Consolidation Act (CATCA) 2003. Section 82 Finance Act 2014 made several changes to this section in relation to gifts and inheritances taken on or after 1 January 2015. Section 102A CATCA 2003 deals with a clawback of agricultural relief in relation to 'development' land'.

11.3 The relief

Agricultural relief applies in respect of both gift tax and inheritance tax. It operates by charging the tax on a reduced market value (referred to as 'agricultural value') of the particular agricultural property. Market value is reduced by 90%. It should be noted that this calculation method is not necessarily equivalent to charging CAT on 10% of the market value as deductions from the (90%) reduced agricultural value may be allowed in respect of certain items.

11.4 Qualifying conditions

To qualify for the relief, the following conditions must be satisfied:

- The property/assets received must constitute 'agricultural property' (as defined) at the date of the gift or at the date of death, in the case of an inheritance. They must also constitute 'agricultural property' on the valuation date, if this is different from the date of the gift or inheritance.
- The beneficiary must satisfy the '80% agricultural property' test on the valuation date after taking the property/assets.

¹ This was a joint initiative by the Ministers for Finance and Agriculture, Food and the Marine. The Working Group's report was published as part of Budget 2014.

- The beneficiary, or lessee where the beneficiary leases the agricultural property, must satisfy the various 'active farmer' requirements.

11.5 Agricultural Property

11.5.1 What constitutes agricultural property?

Property that qualifies as agricultural property includes:

- Agricultural land,* pasture and woodland situated in the European Union;
- Crops, trees and underwood growing on such land;
- Farm buildings and dwelling houses (and the land on which they are situated) that are proportionate in size and character to the requirements of the farming activities;
- Farm machinery situated on such property;
- Livestock and bloodstock situated on such property;
- European Union 'single farm payment' entitlements.
- Milk quotas where transferred together with agricultural land (Revenue practice)

Market gardens, 'factory' farms used for intensive rearing/production and fish farms do not constitute agricultural property unless they are part of the agricultural land. However, they may qualify for a similar type of relief known as 'business relief'.

*Land on which solar panels are installed is regarded as agricultural land for the purposes of the definition of agricultural property provided that the area of land occupied by the solar panels and ancillary equipment does not exceed half of the land comprised in the gift or the inheritance.

11.5.2 Separation of buildings from land

It is agricultural land that determines whether the relief applies. A building, without the land, is not agricultural property. Therefore, a farmhouse transferred to a farmer on its own does not qualify for agricultural relief. On the other hand, if the farmland is then subsequently transferred to the same beneficiary, thereby 're-joining' the house and land, the farmhouse is treated as agricultural property in relation to any **subsequent** gift or inheritance taken by that beneficiary. If the land is gifted to the beneficiary and the donor separately retains the house, the house will not be 'agricultural property' on its own assuming it is later gifted or devised to the same beneficiary and although it may re-join the agricultural property and become, again, agricultural, it was not agricultural property at the date of the gift/inheritance.

11.5.3 Small parcels of land

Claims for agricultural relief in relation to small parcels (acreages) of land are determined by reference to the particular circumstances of each case. Whether the agricultural activities make the land 'agricultural property' is a question of fact and degree. The purpose of the relief is to benefit agricultural property, not to give relief to a private residence with agricultural activities attached. The relief applies to land or pasture used to grow crops or to rear animals. In general, Revenue considers that small parcels of land of less than two acres may be too small to constitute agricultural property.

The Appeal Commissioners, in February 2012, determined that a small parcel of land of 0.14 acres was not agricultural property. Also of interest is the UK case of **Starke (executors of Brown deceased) v IRC [1996] 1 All ER 622** and the circumstances in which 2.5 acres of land with a farmhouse and other buildings was held not to be agricultural property. The use of the property is fundamental to agricultural relief. In **Rosser v IRC (2003) SPC 368**, two acres with a barn on them was regarded as agricultural while a house on the same holding was not agricultural.

11.5.4 Crops, trees and underwood

Crops, trees and underwood **growing** on agricultural land constitute agricultural property, but not where they have been harvested or cut down.

11.5.5 Machinery, livestock and bloodstock situated on agricultural land

Farm machinery, livestock and bloodstock **physically situated on** agricultural land qualify for agricultural relief. Such assets owned, for example, by a dealer in livestock, bloodstock or farm machinery, would not qualify for agricultural relief unless they were situated on agricultural land. (They may, however, qualify for business relief – see Part 12 Manual on Business Relief) Revenue accepts that it is not necessary that the agricultural land on which the farm machinery, livestock or bloodstock is situated be part of the gift or inheritance or be owned by the disponent.

11.5.6 Development land

Agricultural relief is available for land with development potential that is agricultural land. The development potential is not taken into account in deciding whether land is agricultural or not but the market value to be reduced by 90% must include any development potential.

11.6 Qualification as a 'farmer'

In relation to gifts and inheritances taken **before 1 January 2015**, the only 'farmer' test that applied was the '80% agricultural property' test. There was no requirement for the 'farmer' to actually be a farmer. However, in the case of gifts and inheritances taken **on or after 1 January 2015** the 'active farmer' tests also apply (see section 11.6.3 below).

11.6.1 '80% agricultural property' test

To be treated as a 'farmer, at least 80% of the gross market value of the property to which a person is beneficially entitled in possession, including the relevant gift or inheritance, must comprise agricultural property (as set out in section 11.5.1 above). This test is applied on a once-off basis on the valuation date of the gift or inheritance. The valuation date in the case of a gift is the date of the gift. In the case of an inheritance, it is normally the date on which the grant of probate or administration issues in the estate. The agricultural property must be retained for a period of at least 6 years from the date of the gift or inheritance.

A beneficiary may qualify for agricultural relief on non-agricultural property (such as cash) where a gift or inheritance is made subject to the condition that it be invested in agricultural property and that condition is satisfied within 2 years after the date of the gift or inheritance. Any part of the non-agricultural property that is not invested in agricultural property does not qualify for relief and may impact the satisfaction of the '80% agricultural property' test.

A person is treated as beneficially entitled in possession to an interest in expectancy; for example, if he or she is a 'remainder-man' following a life interest trust in favour of another person, the value of the remainder interest is taken into account for the '80%' test. However, Revenue accepts that a future entitlement to a pension fund need not be included in the '80%' test.

The '80% agricultural property' test is not applied to property that comprises trees or underwood.

11.6.2 Expenses and deductions

The general CAT principle is that liabilities, costs and expenses are deductible in calculating taxable value where they are properly payable out of a benefit. In line with the 90% reduction in the market value of agricultural property, the relevant liabilities, costs and expenses must also be reduced by 90%. Where a benefit comprises both agricultural and non-agricultural property, the deductible items must be apportioned between the agricultural and non-agricultural components. The market value of the agricultural property is reduced by 90% to give the agricultural

value of the property and then 10% of the relevant liabilities, costs and expenses are deducted from the agricultural value to give the taxable value of the agricultural property.

Generally, no deduction from the market value of agricultural property is allowed in respect of any debts or encumbrances (such as a mortgage or other charge on property). However, Revenue accepts that where a person's principal private residence is an off-farm dwelling house that is not agricultural property, any mortgage or charge attaching to this property is deductible where the relevant loan was used to purchase, improve or repair the dwelling house.

11.6.3 'active farmer' requirements

In addition to the requirement that a person's agricultural property must comprise 80% by value of the person's total property at the valuation date, the following requirements (set out in sections 11.6.3.1 to 11.6.3.5 below), introduced by Finance Act 2014, must also be satisfied in relation to gifts and inheritances taken on or after 1 January 2015 where the valuation date is also on or after 1 January 2015.

In summary, there are **three** ways to be an 'active farmer':

- Farm the land as an active farmer (see sections 11.6.3.3 to 11.6.3.5 below) ,
- Be a qualified farmer and farm the land (see section 11.6.3.4 below), or
- Lease the land to an active farmer or to a qualified farmer

11.6.3.1 Qualifying period

A beneficiary, or a lessee where the beneficiary leases the agricultural property, must farm the agricultural property for a period of at least 6 years, commencing on the valuation date. Where farming commences between the date of the gift or inheritance and the valuation date, Revenue will accept that the 6-year period commences from the earliest time that the agricultural property is first farmed, whether by the beneficiary or a lessee. Where a beneficiary intends to start farming but is genuinely unable to do so immediately from the valuation date because of existing work commitments or other personal circumstances, Revenue will accept that the 6-year period can commence from the time that farming is taken up. In general, this 6-year period also applies in relation to the requirements set out in sections 11.6.3.2 to 11.6.3.5 below, subject to any specific exceptions mentioned in these sections.

11.6.3.2 Leasing of agricultural property

Instead of personally engaging in farming activities, a beneficiary may lease the agricultural property to a 'farmer'. The same 'qualifying period' conditions that are set out in section 11.6.3.1 above apply in a lease situation. The agricultural property

may be leased to a number of lessees as long as each lease and lessee satisfies the requirements for the relief. Revenue will accept that a lease may be to another individual, to a partnership or to a company. In the case of a lease to a company, the main shareholder must be a working director of the company and must farm the agricultural property on behalf of the company. Where land is leased to a company that is owned equally by a person and his or her spouse or civil partner, at least one of them must satisfy the working director and farming requirements to qualify for the relief.

In circumstances where a beneficiary, who takes a gift or inheritance of agricultural property that includes land and a farmhouse, leases the land but retains the farmhouse and resides in it as his or her only or main residence, the agricultural relief referable to the farmhouse will be allowed provided that the land leased comprises the whole, or substantially the whole, of the agricultural property. Similarly, if the agricultural property includes plant and machinery or livestock, but a lessee requires only the land, agricultural relief will not be restricted where the land comprises substantially the whole of the agricultural property. Revenue will accept that substantially the whole of the property means at least 75% of the property by value.

If, during the 6-year period, a beneficiary farms the agricultural land and then decides to lease it, relief will not be withdrawn, provided the lease/lessee satisfies the requirements for the relief for the remainder of the 6-year period. Similarly, if a beneficiary initially leases the agricultural land and decides, within the 6-year period, to end the lease (provided the lessee agrees) and to personally farm the agricultural land, relief will not be withdrawn.

Where the agricultural property is already subject to a lease to an active farmer prior to it being gifted or bequeathed to a beneficiary, the beneficiary cannot personally actively farm the land or grant a qualifying lease. In these circumstances the beneficiary can still qualify for the relief provided the land is actively farmed for not less than 6 years from the valuation date whether by the beneficiary or by the qualifying lessee. If the pre-existing lease ends within the 6-year period the beneficiary can either commence personally actively farming the land or grant a qualifying lease for the remainder of the required period.

Solar panels

The 'active farmer' requirement will be met where a beneficiary leases land for the installation of solar panels provided that-

- not more than half of the land comprised in the gift or the inheritance is occupied by the solar panels and ancillary equipment, and
- the beneficiary actively farms the land not occupied by solar panels or leases it to a lessee who will meet the active farmer requirements set out in sections 11.6.3.1 to 11.6.3.5 above.

Where a beneficiary has leased land for the installation of solar panels and both of these conditions are met, the beneficiary will be treated as having leased the 'whole or substantially the whole' of the agricultural land even though a lesser amount has actually been leased and the lessee will be regarded as having met the 'active farmer' requirements in respect of the land occupied by the solar panels.

11.6.3.3 Normal working time

A beneficiary or a lessee, who does not have an agricultural qualification referred to in section 11.6.3.4 below, must farm the agricultural property for at least 50% of his or her normal working time. Revenue will accept, for the purposes of this relief, that a person's normal working time (including on-farm and off-farm working time) approximates to 40 hours per week. Therefore, farmers with off-farm employment may qualify for agricultural relief where, averaged over a year, they work on the farm for at least 20 hours per week. If a farmer can show that his or her normal working time is somewhat less than 40 hours per week, the 50% requirement will be applied to the actual hours worked, subject to the farmer being able to show that the farm is farmed on a commercial basis and with a view to the realisation of profits.

In the majority of situations it should be clear from the level of farming activity being carried on whether the normal working time requirement is satisfied. If there is any doubt, Revenue will consider all information (including farming records) provided by a farmer in relation to his or her normal working time and farming activities. 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 the realisation of profits, but do not require 50% of a person's normal working time/20 hours per week, Revenue will take this into consideration in deciding whether the relief is due.

Where the agricultural property is already subject to a lease to an active farmer prior to transfer to the beneficiary and the beneficiary cannot therefore personally actively farm the land or grant a qualifying lease, the beneficiary will still qualify for the relief provided the farmland is actively farmed for not less than 6 years from the valuation date whether by the beneficiary or by a qualifying lessee. If the existing lease comes to an end within the required 6-year period, the beneficiary can either commence actively farming the land themselves or lease it to an active farmer for the remainder of the required period.

11.6.3.4 Agricultural qualifications

A beneficiary or a lessee, who does not farm the agricultural property for at least 50% of his or her normal working time, must have an agricultural qualification (for example, awarded by Teagasc) of the kind listed in Schedule 2, 2A or 2B of the Stamp Duties Consolidation Act 1999 in relation to stamp duty relief on transfers of farms to 'young trained farmers'. If not already held, the qualification must be achieved within the period of 4 years commencing on the date of the gift or inheritance

11.6.3.5 Commercial basis

The agricultural property must be farmed on a commercial basis and with a view to the realisation of profits. Whether a person satisfies this requirement can only be determined by reference to the facts in each case. It is expected that based on the facts, it will normally be clear whether this requirement is satisfied. The fact that a farmer may make a loss in any year will not, in itself, result in relief being refused or withdrawn. Of course, if a farmer continuously makes losses year on year, the circumstances would have to be examined carefully to see whether the person is actually farming on a commercial basis and with a view to the realisation of profit. Single farm payments are to be included as farming income in the computation of profits or losses in the normal way.

11.7 Disposals and clawback of relief

11.7.1 Gifts or inheritances taken before 1 January 2015

Agricultural relief is clawed back where there is a disposal or compulsory acquisition of the agricultural property (with the exception of crops, trees and underwood) within six years of the date of the gift or inheritance. This can be avoided if the proceeds of the disposal or compulsory acquisition are reinvested in other agricultural property within one year of the sale or within six years of the compulsory purchase. The extent of the clawback depends on the amount of the proceeds that are not reinvested. If the full proceeds are reinvested there is no clawback of relief; if only part of the proceeds are reinvested, there is a partial clawback of relief.

The usual clawback provisions apply to disposals of development land in the first 6 years after the date of the gift or inheritance. However, agricultural relief attributable to such land is partially clawed back where the land is disposed of in the period commencing on the 6th anniversary of the date of the gift or inheritance and ending 4 years after that date. The amount of the clawback relates to the development potential of the land and not its full value. Unlike non-development land, a clawback of relief cannot be avoided by reinvesting the proceeds.

11.7.2 Gifts or inheritances taken on or after 1 January 2015

In relation to the 'active farmer' requirements described in sections 11.6.3.1 to 11.6.3.5 above, separate clawback conditions apply. Agricultural relief is clawed back if any part of the agricultural property is not farmed by an active farmer, or by a lessee who is an active farmer, for at least 50% of the person's normal working time, or is not farmed on a commercial basis, **throughout** the 6-year qualifying period from the valuation date or if earlier, the date the activity started. Where, alternatively, the relief was given because a beneficiary/lessee had a relevant

farming qualification, a clawback of relief occurs where the agricultural property is not farmed on a commercial basis **throughout** the 6-year qualifying period. A partial clawback of the relief applies where, for example, only part of the land is not actively farmed throughout the 6-year qualifying period.

Relief will not be clawed back where solar panels are installed on the agricultural land during the 6-year qualifying period provided the conditions set out at section 11.6.3.2 above are met.

11.7.3 Calculation of clawback amount

A formula contained in section 89(4)(aa) CATCA 2003 is used to calculate the tax that is payable arising from a clawback of relief.

11.7.4 Disposal and reinvestment (miscellaneous points)

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

It is not necessary that reinvestment is made in the same type of agricultural property. For example, the proceeds from the sale of livestock could be reinvested in land or machinery without losing the relief.

If there is a partial reinvestment where the proceeds from a disposal or compulsory acquisition are not fully used to acquire other agricultural property, relief is clawed back in respect of the proceeds not reinvested.

If CGT is paid on a disposal, only the net proceeds available after payment of the CGT need be reinvested.

A gift of the agricultural property, with no proceeds received, is not treated as a disposal so agricultural relief is not clawed back.

As an anti-avoidance measure, land that is acquired from a spouse does not qualify as the replacement of property.

11.7.5 Self-assessment of clawback

In accordance with self-assessment principles, the person who has availed of agricultural relief is required to make any necessary amendments to his or her previous self-assessment returns by submitting amending or correcting returns to reflect any necessary clawback of relief and pay any tax due arising from the clawback.

CAT Agricultural Relief – Q & A's

Q.1 What constitutes 50% of a person's normal working time?

A. A 40-hour working week is taken as indicative of normal working time. So, a farmer who works 20 hours per week on the farm satisfies the requirement, even if he or she spends more than 20 hours per week in an off-farm employment.

Q.2 I work 30 hours per week in an off-farm employment. I also work 10 hours per week on my farm. Do I satisfy the 'working time' test?

A. No. Revenue will accept that a person's normal working time (including on-farm and off-farm) approximates to 40 hours per week. As a person is required to spend at least 50% of his or her working time on farming activities, the test is not satisfied.

Q.3 I get occasional part-time off-farm work that averages out over the year at 15 hours per week. My on-farm work averages out over the year at 18 hours per week. Do I satisfy the 'working time' test?

A. Possibly. If a person can show that his or her normal working time is somewhat less than 40 hours per week, the 50% requirement will be applied to the actual hours worked, subject to the farmer being able to show that the farm is farmed on a commercial basis and with a view to the realisation of profits.

Q.4 In the event of an audit what types of records will Revenue typically seek as evidence that the 'active farmer' test is being met?

A. It is not envisaged that any additional records, over and above those required for tax purposes generally, should be necessary to establish that a person actively carries on farming activities. It should normally be clear from the level of farming activity carried on and the normal books and records of the farm, including purchases, sales, livestock records, (where relevant), etc. A farmer is not expected to keep a timesheet of hours worked on the farm.

Q.5 What factors will Revenue consider in determining whether relief is available in respect of forestry land?

A. The farming of forestry land is generally less labour intensive than other farming activities. Revenue recognises that such land can be actively farmed on a commercial basis with a view to making a profit even though it may not require 50% of a person's normal working time. If a farmer can demonstrate that the forestry is actively managed on a commercial basis - even if much of the work is subcontracted to third parties - this, together with the normal books and records required for tax purposes, should normally be adequate to enable Revenue to determine whether relief is due.

Q.6 If a beneficiary cannot meet the 'active farmer' requirements immediately because of existing work commitments or other personal circumstances, will the relief be refused?

A. Where a beneficiary intends to start farming but is genuinely unable to do so immediately from the valuation date because of existing work/study commitments or other personal circumstances such as living/working abroad, the relief will not be refused once the beneficiary begins actively farming the land within one year after the valuation date of the gift or inheritance.

Q.7 What happens where a beneficiary/lessee has not achieved the required agricultural qualification when the agricultural property is inherited but is still engaged in a course of study leading to such qualification?

A. Agricultural relief can be availed of where a required agricultural qualification is achieved within a 4 year period of the date of the gift/inheritance. The relief can be claimed on a conditional basis by the beneficiary/lessee. However, the beneficiary must recalculate his or her gift tax/inheritance tax if the qualification is not then obtained within the 4 year period.

Q.8 What happens if I enter into several leases of property subject to agricultural relief to active or qualified farmers ?

A. There is no restriction on the number of leases a beneficiary can enter into provided the qualifying conditions are met for each lease and for each lessee.

Q.9 Where a beneficiary leases farmland, is he or she required to monitor the lessee's use of the land or check his or her farming qualifications?

A. The beneficiary should establish that the lessee has the required farming qualification and the lease should provide for this. In addition the lease should contain a clause requiring the lessee to farm the land so as to satisfy the 'active farmer'/'working time' requirement for the duration of the lease. The lease should provide that any breach of these requirements will result in the termination of the lease.

Q.10 The farmland I have inherited is already subject to a long lease to an active farmer. Therefore, I am unable to personally farm the land or grant a qualifying lease from the valuation date. Can I still qualify for relief?

A. Yes, provided the land is farmed for a period of at least 6 years from the valuation date - whether by the beneficiary or by a lessee. If the existing lease ends within, say, 2 years of the valuation date the farmer can either farm the land or let it for qualifying farming purposes for the remainder of the required 6-year period.

Q.11 If the farm is leased for six years, but within this period the lease is terminated/surrendered, how long does the beneficiary have to find a new active farmer tenant before there will be a claw back of the relief?

A. The general one-year replacement rule that applies for agricultural relief purposes where assets are disposed of is acceptable in circumstances where the beneficiary has to re-let the farm. If the beneficiary re-lets the farm within the one year period after the termination or surrender of the lease a clawback will not arise.

Q.12 I have inherited farmland, animal stock, farm machinery and a farmhouse. I am leasing the farmland to an active farmer; however he has no requirement for the machinery and stock. I am also retaining the farmhouse to reside in. Can I still qualify for relief?

A. Yes, provided that substantially the whole of the agricultural property that was inherited is leased. Revenue will accept that substantially the whole of the property means at least 75% of the property by value.

Q.13 If I don't reside in the farmhouse I inherited, instead keeping it as a holiday home, or if I leave the house vacant, or allow a family member to live in it, and lease the farmland which formed part of the same agricultural property comprised in the inheritance to a qualifying farmer, do I still qualify for the relief?

A. Yes, provided that substantially the whole (i.e. at least 75%) of the agricultural property that was inherited is leased for qualifying farming purposes.

Q.14 I have been gifted/inherited agricultural property. If I lease the farmland to a company which carries on a farming trade will I qualify for relief?

A. Yes, provided you satisfy the required conditions. The relief applies where the farmland is leased to a company whose main shareholder is a working director who farms the agricultural property on behalf of the company and who meets the 'active farmer' conditions.

Q.15 Do 80% of my assets have to be agricultural assets throughout the 6-year period starting on the valuation date of the gift/inheritance?

A. No. The '80% test' applies on the valuation date only.

Q.16 If land is gifted to /inherited by a person and farmed by that person's spouse, what is the position in relation to the availability of agricultural relief on such land?

A. The land would not qualify for agricultural relief in this scenario. The beneficiary himself/herself must meet the conditions for the relief.

Q.17 Where land is gifted to/inherited by two or more persons jointly and a dispute arises between them as to the use of the land (for example, to let it or farm it or what type of farming to engage in) and deadlock occurs, what is the Revenue position with regard to the availability of agricultural relief on such land?

A. It is a matter for the owners themselves to resolve any such deadlock. If the land is neither farmed nor leased for qualifying farming purposes the relief does not apply.

Q.18 If a clawback of agricultural relief applies, how do I calculate the amount of the clawback?

A. Any necessary clawback should be calculated in accordance with the formula contained in section 89(4)(aa) CATCA 2003.

Q.19 Where a gift/inheritance is subject to the condition that it is invested in agricultural property and this condition is complied with within two years, can the beneficiary still qualify for agricultural relief?

A Yes, provided that the beneficiary or lessee farms the land for six years from the date of investment and the 'active farmer'/'normal working time' requirements are satisfied.