

[23.01.23] Exemption of certain income from leasing of farm land

Section 664 TCA 1997

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1. Introduction

Section 664 TCA 1997 provides for a relief to be applied where farm land (*paragraph 2*) is let -

- (a) under a “qualifying lease” (*paragraph 3*),
- (b) by a “qualifying lessor” (*paragraph 4*),
- (c) to a “qualifying lessee” (*paragraph 5*).

The amount of the relief is subject to certain limitations (*paragraph 6*).

2. Farm land – *section 664(1)(a)*

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 this 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.¹

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.

3. Qualifying lease – *section 664(1)(a)*

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 the Inspector should request a memorandum or note in writing 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 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.

¹ The definition of farming, contained in section 654, specifically does not apply for the purposes of section 664.

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).

With effect from 1 January 2016, a lease will not be a qualifying lease in circumstances where lessors and lessees enter into arrangements to effectively swap land. 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 – section 664(1)(a)

A qualifying lessor must be an individual.

A lessor is a qualifying lessor if he has not after 30 January 1985 (the budget date on which the relief was announced) himself leased the land from a connected person on favourable terms. This is an anti-avoidance measure to prevent a qualifying lessor being interposed between a non-qualifying lessor and his lessee.

Example 1

C wishes to lease land off A Ltd under a five-year lease for an annual rent of €12,000. A Ltd, instead of giving a direct lease to C, gives a lease for the same period to its shareholder, B, (who would otherwise satisfy the provisions of the section) for €8,000 p.a. B, in turn, leases the land to C for €12,000 annually. Thus A Ltd has attempted to create €4,000 tax free income for B.

In this example B would not be a qualifying lessor because he has leased the land from A Ltd (a connected person) at less than the arm's length rent and he would not be entitled to any relief in respect of the letting to C. B would be charged to tax on €4,000 (€12,000 from C less the €8,000 paid to A Ltd) and the A Ltd on €8,000 thereby ensuring that the full rent of €12,000 is charged to tax.

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

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

With effect from 1 January 2015 the definition of qualifying lessor was amended by removing the lower age limit of 40 and the reference to permanent incapacity.

Requirement to farm the land?

Clarification has been sought on eligibility for exemption in situations where a lessor has never farmed the leased land e.g. inherited land.

Unlike a qualifying lessee, a qualifying lessor is not required to be carrying on a trade of farming. As long as the definition of farm land is satisfied, that is wholly or mainly occupied (by anybody) for the purposes of husbandry at the relief can be claimed. (The age and incapacity conditions applied up to 31 December 2014).

5. Qualifying lessee – section 664(1)(a)

For periods up to 31 December 2014 a qualifying lessee had to be an individual, who met certain other conditions. From 1 January 2015 a company may also be a qualifying lessee provided certain conditions are met.

The lessee must carry on a trade of farming (within the meaning of “husbandry” set out at paragraph 2 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 he would be so regarded for the purposes of *Section 10 TCA 1997*.

Effectively this means that a lessor is not entitled to relief where land is let to -

- (a) immediate family (e.g. grand parents, parents, brothers, sisters, children, grand-children, 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 control² 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.

² Refer to section 432 TCA 1997 for more details of when a person has control of a company

6. The amount of the relief – section 664(2)

6.1. How the relief is given

The relief is given as a deduction in computing the total profits or gains chargeable to tax under Case V of Schedule D. The income is charged as normal under Case V of Schedule D and the amount of the profit from the letting of farmland is included in the total from all lettings. The qualifying lessor is then entitled to a deduction which is the lower of:

- the overall Case V profits or gains (after capital allowances) or
- the specified amount.

The relief in effect is a reduction (subject to a maximum) in the amount of the rent from the qualifying lease on which the lessor would otherwise be chargeable to tax. Only one reduction is made irrespective of the number of qualifying leases that a lessor has.

6.2. How much the relief is given

To qualify for the appropriate exemption a lease must be for a definite period of at least five years. It should be noted that two 4-year leases between the same parties will not entitle the lessor to any exemption. 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.

The following table gives the maximum reduction allowed (Specified amount)

For leases entered into:		Between 1 January 2007 and 31 December 2014	On or after 1 January 2015
Lease Term		€	€
5 years or more	but less than 7 years	12,000	18,000
7 years or more	but less than 10 years	15,000	22,500
10 years or more		20,000	
10 years or more	but less than 15 years		30,000
15 years or more			40,000

Example 2

A lessor is in receipt of rents from a non-qualifying 2 year letting (a conacre letting) and a qualifying 5-7 year lease. After the normal Case V deductions the profit on the 2 year letting is €5,000 and profit on the qualifying lease is €20,000. The reduction in chargeable rent is the specified amount

Profit on 2 year letting	€5,000
Profit on qualifying 5/7 year lease	<u>€20,000</u>
Total rental profit	€25,000
Reduction (specified amount for 5 year lease)	<u>€18,000</u>
Chargeable	€7,000

Example 3

A lessor is in receipt of rents from two qualifying leases, an 8 year lease and a 5 year lease. After allowing the normal Case V deductions there is a profit on the 8 year lease of €19,000 and on the 5 year lease of €3,000. The amount of the reduction is

Profit 8 year lease	€19,000
Profit 5 year lease	<u>€3,000</u>
Total Case V profit	€22,000
Reduction (Total Case V is less than specified amount for 8 year lease)	<u>€22,000</u>
Chargeable	Nil

Example 4

The position is the same as in Example 3 but there is a loss of €2,000 on the 8 year lease and a Case V loss carried forward of €4,000.. The reduction is –

Loss 8 year lease	(€2,000)
Profit 5 year lease	<u>€3,000</u>
Total farm leasing profit	€1,000
Reduction (Total Case V is less than specified amount for 5 year lease)	<u>€1,000</u>
Chargeable	Nil

The purpose of the various restrictions on the reduction is to ensure that it will not operate to create a loss. In the case of a 5 year lease (post 1/1/2015) the reduction will either decrease a Case V charge to NIL where it would otherwise be €18,000 or less, or will reduce a Case V charge by €18,000 where it would be in excess of that amount.

6.3. Leases for part of a year of assessment (*section 664(1)(a)(iii)*)

Where the rent from a qualifying lease on which a lessor is chargeable for any year of assessment does not represent a full year's letting (i.e. on commencement or cessation of the lease) the specified amount is reduced in the proportion which the gross rent received for the part of the year bears to the total gross rent receivable for a full year. This rule applies irrespective of the number of qualifying leases

For example a 5 year lease with annual rent of €24,000 ending on 1 May.

$$\begin{array}{rcccl} \text{Full Year Threshold} & & \text{Rent (5 mths)} & & \text{Reduced Threshold} \\ \hline \text{€18,000} & \times & \frac{10,000}{24,000} & = & \text{€7,500} \end{array}$$

7. "Old" and "new" leases – *section 664(1)(b)(vii)*

Where a person has income from a qualifying lease entered into on or after 1 January 2015, and a qualifying lease made at any other time, the maximum combined exemption is €18,000, €22,500, €30,000 or €40,000 as appropriate.

The following examples illustrate the operation of the provision.

Example	"Old Leases" for at least 5 years before 31/12/2014 Maximum Exemption €12,000	"New Leases" for at least 5- 6 years from 1/1/ 2015 Maximum Exemption €18,000	Gross rent received	Maximum Exemption to be allowed from 2015 onwards
A	€10,000	€7,000	€17,000	€17,000
B	€12,000	€750	€12,750	€12,750
C	€12,000	€23,000	€35,000	€18,000
D	€11,000	€17,500	€28,500	€18,000

If, in examples C and D, the “new leases” were for seven or more years the proviso would operate as follows:

Example	“Old Leases” for at least 5 years before 31/12/2014 Maximum Exemption €12,000	“New Leases” for at least 7- 10 years from 1/1/ 2015 Maximum Exemption €22,500	Gross rent received	Maximum Exemption to be allowed from 2015 onwards
E	€12,000	€23,000	€35,000	€22,500
F	€11,000	€17,500	€28,500	€22,500

8. Spouses, civil partners and joint lessors – section 664(3)

Entitlement to relief is on an individual basis. Where two or more persons are interested in a qualifying lease as lessors and are each entitled to receive rent under the lease, the relief is available to all 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.

It may be expected that, particularly in marriage or civil partnership situations, attempts may be made to exploit this position 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 *paragraph 4*) 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 5

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. The wife pays no rent to the husband. Relief should be resisted on the grounds that as the wife has no title she cannot give a lease and if she has title it can only have been received from her husband (who is a connected person) on non-arm’s length terms.

9. Information and apportionments – section 664(4) and (5)

The Inspector is entitled to request in writing from the lessor such information as he considers 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) the inspector may make such apportionment of the rent payable under the lease and the Case V deductions to be made from that rent so as to determine the amount of the profit rent 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 the Inspector's apportionment to the Appeal Commissioners.

10. Leasing of land and associated Basic Payment Entitlement– section 664(7)

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.