

Relief for certain income from leasing of farm land

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. Farm land

Farm land 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.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.

2. 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).

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

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.

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)).

3. Qualifying lessor

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 farm 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.

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

For periods up to 31 December 2014, a lessor was a qualifying lessor if he/she 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 restrictions set out at (i) and (ii) above were removed.

4. 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, 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

Example

John is in a registered farm partnership with his son. John's brother leases farm land to John's son. John's brother will not be entitled to the relief because John's son is connected to him. This is because John's son is in partnership with John and John is his immediate family.

5. 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 surpluses³ 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) (I) 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

³ Guidelines on how to calculate a surplus or surpluses arising in respect of rents are set out in Tax and Duty Manual [Part 04-08-02](#).

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 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 2016. The term of the lease is 10 years and it is a qualifying lease. For the year 2016, 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 2016. The leases are for 8 years and 15 years respectively. For the year 2016, her profit from the 8-year lease is €27,850 and her profit from the 15-year lease is €39,000.

Therefore, her total profits 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 ⁴

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

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

6. “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.

7. Spouses, civil partners and joint lessors

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.

⁴ 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).

Example

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.

8. 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.

9. 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.

Appendix I

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.