

# Share Farming

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## Table of Contents

1	Introduction .....	3
2	Income Tax .....	4
2.1	The Basic Payment Scheme .....	4
2.2	Green, Low-Carbon, Agri-Environment Scheme ('GLAS') .....	5
2.3	Area of Natural Constraint Scheme .....	5
2.4	Sharing of payments .....	5
2.5	Livestock .....	7
2.6	Stock Relief .....	9
3	VAT .....	9
3.1	Production and Sale of crops .....	9
3.2	Purchase and Sale of livestock .....	11
3.3	Basic payment scheme, GLAS or Area of Natural Constraint .....	13
3.4	Sale or transfer of Basic payment scheme entitlement .....	13

# 1 Introduction

Share farming is the term used to describe an arrangement where two parties, the landowner, and a share farmer, carry on separate farming businesses on the same land without forming a partnership or company. Each party makes separate contributions to the arrangement, for example, land, machinery, labour and expertise, and takes a share in the produce or gross output. Likewise, each party contributes their own costs of production. The share farmer and landowner keep their own accounts and calculate their own profits as separate and independent businesses, notwithstanding that each business is closely linked to the other.

In general, share farming arrangements take the form of written agreements. While the agreement will finally be determined by the requirements of the parties involved, it will typically include clauses relating to:

- The start and finish dates of the agreement.
- The provision of assets by the parties.
- Income & cost sharing arrangements.
- The rights and responsibilities of each party.
- Procedures for dealing with disputes.

Before entering a share farming arrangement, it is advisable that the parties seek advice from their professional advisors on all aspects of the proposal, including the relevant legal, financial and taxation implications.

It should be noted that capital gains tax (CGT), capital acquisitions tax (CAT) and stamp duty provisions apply as normal to assets sold or transferred under a share farming agreement. For example, the sale of land or entitlements under the basic payment scheme will have CGT and stamp duty implications for the parties.

Of note:

- Each party, the landowner and share farmer, are free to sell their shares of the produce as they feel fit.
- Each party is responsible for their own costs of production.
- Each party calculates their individual profits.
- The share farmer and landowner are two business equals, not master and servant. They are also risk takers.
- The share farmer and landowner are jointly responsible for annual planning, including cropping, rotations, stocking, breeding policy and purchase and sales.
- No rent is paid for the land.
- The share farmer is not paid for his or her labour.

- A contractor hire cost is not paid to the share farmer for the use of his or her machinery.
- If registered for VAT, each party is separately registered and accounts for their own VAT returns.

A share farming arrangement **does not exist** where the relationship between the parties is that of landlord/tenant, employer/employee or partners.

The existence of a written share farming agreement is not, in itself, sufficient evidence of a proper share farming arrangement being in place. The carrying on of the arrangement on a day to day basis must comply with the principles of share farming. An arrangement that is found to operate as something other than share farming will be taxed on the basis of the actual arrangement that is in place. This may have implications for the participants under categories such as income tax, CGT, PAYE, VAT and stamp duty.

For example, the parties to an arrangement that purports to be share farming but is, in fact, a partnership, will be taxed as partners. This means, inter alia, that each partner becomes liable for the debts of the partnership. Similarly, if an arrangement is, in fact, a tenancy agreement, the income arising to the landlord is rents rather than trading income. This will have immediate implications for income tax purposes and may also impact on the availability of CGT, CAT and stamp duty reliefs if the land is sold or transferred on retirement.

The ownership of livestock in a share farming arrangement will depend on the terms of the agreement between the parties. Livestock may be solely owned by one or both parties, they may be jointly owned or there may be a mix of sole & joint ownership. Further information on this aspect is provided in the sections dealing with income tax and VAT.

## 2 Income Tax

As noted in the introduction, the parties to a share farming arrangement pool certain resources by agreement. Each party conducts their own farming trade and pays tax on their own profits which are calculated in accordance with Schedule D Case I rules.

The terms of the share farming agreement may require that payments received under schemes administered by the Department of Agriculture, Food and the Marine ('DAFM') be divided between the landowner and the share farmer. Examples of such schemes are:

### 2.1 The Basic Payment Scheme

The Basic payment scheme (BPS) commenced in 2015. It replaces the Single Payment Scheme (SPS) as the main EU income support for farmers. A new set of entitlements was allocated in 2015 to those eligible for an allocation under the BPS, payments may only be made where the department is satisfied the applicant is "an active farmer".

Receipts are chargeable to tax as income. In the hands of a farmer they are taxed under Schedule D Case I.

## 2.2 Green, Low-Carbon, Agri-Environment Scheme ('GLAS')

GLAS is the successor to the Rural Environment Protection Scheme (REPS) and Agri-Environment Options Scheme (AEOS) schemes designed to reward farmers for farming in an environmentally friendly manner. Payments under the GLAS scheme constitute income for tax purposes as they are paid to compensate farmers for income losses caused by reductions in output and for increases in costs of a revenue nature. The payments should therefore be included as trading receipts when preparing annual accounts. Where a payment has been made specifically to compensate the farmer for identifiable capital expenditure, it will not be treated as part of the farming income. It will, however, fall to be deducted in arriving at qualifying expenditure for capital allowances purposes.

## 2.3 Area of Natural Constraint Scheme

Payments under this scheme are made to farmers in less favoured areas. They are chargeable as income under Schedule D Case I.

## 2.4 Sharing of payments

The following scenarios deal with the sharing of payments from the above schemes between the parties. For income tax purposes, the party who is entitled to receive the payment from DAFM should include the full amount received as part of his farming income and deduct the amount paid to the other party on the basis of the agreement.

### For example:

Basic Payment Scheme (BPS)	10,000
**Less payments out of BPS to other party to Share Farming Agreement	<u>6,000</u>
Net basic payment scheme	4,000
Other farming income	<u>5,000</u>
Total	9,000

The sum of €9,000 forms the basis for the farmer's Case I computation.

\*\*For VAT purposes where the payment is made from one farmer to another it is likely to be considered payment for a supply and may be liable to VAT.

**Scenario 1**

A landowner who is not in GLAS provides all or part of his land and associated BPS entitlements. The share farmer provides no land or BPS entitlements towards the share farmed land and the land, in this instance, is used for growing crops only.

The landowner claims the basic payment under his own herd number/identifier. The BPS payment drawn by the landowner is then shared with the share farmer as set out in the share farming agreement. As each party is conducting their own farming trade, they are chargeable under Schedule D Case I on their respective share of the BPS payment.

**Scenario 2**

As for scenario 1, except that the landowner is in GLAS.

The landowner could continue with his GLAS plan and draw GLAS payments. Both the GLAS and basic payment drawn by the landowner are then shared between the landowner and the share farmer as set out in the share farming agreement. As each party is conducting their own farming trade, they are chargeable under Schedule D Case I on their respective share of both payments.

**Scenario 3**

As for scenario 1 or 2, with the addition that the landowner wishes to draw payments under area of natural constraint scheme.

The landowner could claim area of natural constraint scheme payments. As with Scenarios 1 & 2 all payments are split between the participants in accordance with the agreement. As each party is carrying on their own farming trade, they are chargeable under Schedule D Case I on their respective share of each payment.

**Scenario 4**

A landowner who is not in GLAS provides all or part of his land without entitlements. The share farmer provides entitlements without land towards the share farm arrangements. In this instance the share farmed land is used for growing crops only.

The share farmer could submit the landowner's land that is being share farmed on his BPS application and hence draw down the payment. The BPS payments are then divided between the share farmer and the landowner as set out in the agreement.

## 2.5 Livestock

As noted earlier, the ownership of livestock in a share farming arrangement is determined by the terms of the agreement between the parties.

### Sole Ownership

There are no income tax implications for either of the parties. Each has full ownership of their respective animals and these are dealt with for tax purposes in the normal manner.

### Joint Ownership

Animals which are subject to a share farming agreement are typically held in undivided shares. This means that the parties to the agreement own an agreed share of each animal rather than each party having sole ownership of specific animals.

For income tax purposes, each party is treated as having sole ownership of the equivalent number (units) of whole animals, which is determined by applying the agreed ownership ratio to the number of jointly owned animals.

For example, A and B are share farming and own 200 animals on a 60:40 basis. For income tax purposes A and B are treated as owning 120 and 80 units respectively.

The following examples examine some of the situations likely to be encountered.

#### **Example 1**

A & B enter into a share farming arrangement. A owns 500 animals, each with a book value of €800, which he provides on the basis that they are to be jointly owned 80% by A and 20% by B. B pays €100,000 to A.

For income tax purposes A is treated as selling, and B is treated as buying, 100 units (i.e. 20% of 500 animals) for €100,000.

The book value of the animals is €800 per unit for A and €1,000 per unit for B.

#### **Example 2**

Shortly after the agreement commences A & B jointly purchase 100 animals for €1,200 each. The effect of this purchase for income tax purposes is that A & B have acquired 80 and 20 units respectively and they may need to adjust their respective book values accordingly.

**Example 3**

C & D enter into a share farming arrangement. C owns 150 animals with a book value of €1,000 each. D owns 75 animals with a book value of €800 each. All animals are contributed on a 2:1 basis in favour of C.

Both parties now hold undivided shares in 225 animals which equates, for income tax purposes, to 150 and 75 units for C & D respectively. The book value of each unit is €1,000 for C and €800 for D.

**Example 4**

E & F enter into a share farming arrangement on a 70:30 basis. E owns 200 animals of which 100 are contributed and F owns 80 animals which are all contributed. Under the agreement each of the parties now has an undivided share in 180 animals which is equivalent, for income tax purposes, to 126 units for E and 54 units for F.

For income tax purposes E & F are respectively treated as having purchased and sold 26 animals and E may need to adjust his book value accordingly.

**Example 5**

As Example 4 but the agreed share ratio is adjusted to 60:40 during the term of the agreement and a payment is made by F to E. Prior to this E and F owned 126 and 54 units respectively (ignoring the animals E did not contribute). As a result of the adjustment E has disposed of 18 units and F has a corresponding acquisition. Each party should take their respective transaction into account for income tax purposes.

**Example 6**

G & H jointly own 300 animals under a share farming agreement on a 70:30 basis. For income tax purposes this is equivalent to sole ownership of 210 and 90 units respectively. They agree to terminate the arrangement, but both continue farming. The animals are transferred into sole ownership based on the agreed ratio. G and H now own 210 and 90 animals respectively. No adjustments are required as there is no cessation of either farming trade.

On cessation of the share farming arrangement, both may continue to use their established book values.



## 2.6 Stock Relief

Part 23 Chapter 2 of the Taxes Consolidation Act 1997 provides for stock relief which is a relief given in respect of increases in the value of farm trading stock. It is based on the increase in value of the stock between the beginning and end of an accounting period. The relief takes the form of a deduction, to be allowed in computing the trading profits of an accounting period, of 25% of the amount of the increase in value (with enhanced relief for “qualifying farmers”, i.e. Young Trained Farmers, as defined in Chapter 2). In a share farming context, the relief will be computed on the basis of each party’s stock values.

## 3 VAT

A farmer who is registered for VAT must account for VAT on his supplies and is entitled to deductibility in relation to VAT on purchases to the extent that the VAT was incurred for the purposes of making taxable supplies. A farmer who is not VAT registered is not entitled to deductibility and does not charge VAT on his supplies. She or he is, however, entitled to a [flat-rate addition](#) on supplies made to VAT registered persons.

A share farming arrangement does not result in the formation of a separate legal entity so the question of VAT registration of the parties in respect of the arrangement does not arise. Each party retains his or her existing VAT status and the VAT treatment of any supplies by or between the parties will be determined by the VAT status of the party making the supply.

Whether either or both parties are making supplies and/or incurring VAT on purchases in relation to the share farming agreement will depend on the terms of that agreement. It is important to remember that the VAT registered farmer is only entitled to deductibility where she or he incurs VAT in the course of making his or her taxable supplies. There are several scenarios that may arise, and the following examples deal with some of these. However, it may be necessary to seek guidance from your local tax office on specific arrangements.

### 3.1 Production and Sale of crops

#### **Example 1**

A share farmer (VAT registered) and a landowner (VAT unregistered) are in a share farming arrangement involving the growing of cereals. On the basis of the agreement, the costs of the chemicals are to be divided between them on a 50:50 basis and the sale proceeds are to be divided in the ratio 60:40 in favor of the landowner. The VAT registered share farmer purchases all of the chemicals on behalf of himself and the landowner. He is also responsible for selling the produce and the proceeds are then divided with the landowner.

The VAT registered share farmer:

- Invoices the landowner for the landowner's share of the cost of the chemicals (plus VAT [at the standard rate](#)) and accounts for the VAT in his return.
- Is entitled to VAT deductibility on the purchase of the chemicals.
- Invoices the merchant for the produce sold (VAT 0%).
- Passes on the landowner's share of the proceeds. The sharing of the proceeds of the sale is not subject to VAT.

The landowner (not VAT registered):

- Is not entitled to VAT deductibility on his costs.
- Is not entitled to the flat rate addition on his share of the proceeds.

### Example 2

The terms of the share farming agreement are the same as in Example 1 except that it is the unregistered landowner who sells the produce and then divides the proceeds with the registered share farmer.

The VAT registered share farmer:

- Invoices the landowner for the landowner's share of the cost of the chemicals (plus VAT [at the standard rate](#)) and accounts for the VAT in his return.
- Is entitled to a portion of deductibility in relation to VAT on the chemicals to the extent that they are used for his taxable activities.

The landowner (not VAT registered):

- Is not entitled to deductibility.
- Is entitled to receive the [flat-rate addition](#) when selling the produce to a VAT registered customer.
- Passes on the share farmer's share of the proceeds. The sharing of the proceeds of the sale is not subject to VAT.

### Example 3

The terms of the sharing farming agreement are the same as in Example 1 except that the division of ownership of the crop takes place after harvesting and each party sells his own crop.

The VAT registered share farmer:

- Invoices the landowner for the landowner's share of the cost of the chemicals (plus VAT [at the standard rate](#)) and accounts for the VAT in his return.
- Is entitled to deductibility in relation to VAT on the chemicals.
- Invoices the customer for the sale of his produce (VAT 0%).

The landowner (not VAT registered):

- Is not entitled to deductibility.
- Is entitled to the [flat-rate addition](#) on the sale of his produce to a VAT registered person.

#### Example 4

A share farmer (VAT registered) and a landowner (VAT unregistered) are in a share farming arrangement involving the growing of cereals. On the basis of the agreement, the costs of the chemicals are to be born 100% by the share farmer, the landowner sells 100% of the produce and then divides the proceeds with the share farmer.

The VAT registered share farmer:

- Is not entitled to deductibility in respect of the VAT on the chemicals as the VAT was not incurred for the purposes of his taxable supplies.

The landowner (not VAT registered):

- Is not entitled to deductibility.
- Is entitled to the [flat-rate addition](#) on the sale of the produce.
- Passes on the share farmer's share of the proceeds. The sharing of the proceeds of the sale is not subject to VAT.

### 3.2 Purchase and Sale of livestock

Ownership of the livestock and the sharing of costs will be determined by the terms of the share farming agreement. Each party may have full ownership of their respective animals or the livestock may be held in undivided shares. Whether each party has full ownership of their respective animals or whether the animals are held in undivided shares, the requirement to charge VAT, entitlement to deductibility or entitlement to flat rate addition of each party will depend on that party's VAT registered status.

Where both parties to a share farming agreement are VAT registered each will apply VAT in the normal manner to any costs invoiced to the other party. Both are entitled to deductibility subject to the normal conditions and must account for VAT on the sale of the animals.

Where neither party is VAT registered neither is entitled to deductibility. The VAT borne on costs and any flat rate addition paid on the sale of the animals should be built into the sharing of costs and proceeds.

Where one party is VAT registered and the other is not, it would be advisable to stipulate in the agreement that the sharing of costs and of proceeds should be calculated on amounts that are exclusive of VAT and flat-rate addition. This would prevent double taxation or double recovery of VAT by either party.

The rate of VAT and the flat-rate addition used in the examples hereunder are those applying at a point in time and you should therefore check the [Revenue website](#) to ensure that you are applying the appropriate rate of VAT or flat-rate addition to a specific transaction.

### Example 1

A VAT registered share farmer and an unregistered landowner enter a share farming agreement to buy and sell stock. The stock is held in undivided shares with 60% of each animal owned by the share farmer and 40% by the landowner. The costs and sale proceeds are allocated in the same proportion. The share farmer is responsible for buying and selling the stock on behalf of both parties. He buys stock from the mart for the €30,000 bid price and later sells at the mart for the €40,000 bid price.

The VAT Registered share farmer:

- Purchases stock at bid price €30,000 (inclusive of 4.8% VAT).
- Is entitled to deductibility on purchase of €1,374, ( $€30,000 \times 4.8/104.8$ ).
- Issues VAT invoice to landowner for his share, i.e. €12,000, ( $€30,000 \times 40%$  (incl. 4.8% VAT)).
- Accounts for VAT charged to landowner, €550 ( $€12,000 \times 4.8/104.8$ ).
- Sells stock for €40,000 bid price (inclusive of 4.8% VAT).
- Accounts for VAT on sale to mart of €1,832, ( $€40,000 \times 4.8/104.8$ ).
- Issues settlement voucher to landowner for his share of sale i.e. €15,267 ( $€40,000 \times 100/104.8 \times 40%$ ) plus flat-rate addition of €855 ( $€15,267 \times 5.6%$ ).
- Is entitled to deductibility in respect of flat-rate addition of €855.

The landowner (not VAT Registered):

- Is entitled to the flat rate addition on his share of the sale.
- Is not entitled to deductibility.

## Example 2

Details are as per Example 1 but the unregistered landowner is responsible for buying and selling the livestock.

The landowner (not VAT registered):

- Buys stock at bid price €30,000 (inclusive of VAT 4.8%).
- Receives payment from VAT registered share farmer for his share of cost i.e. €17,175 ( $€30,000 \times 60\% \times 100/104.8$ ) plus flat rate addition of €962 ( $€17,175 \times 5.6\%$ ).
- Sells stock for bid price €40,000 (inclusive of flat-rate addition 5.6%).
- Pays share farmer for his share of stock i.e. €22,727 ( $€40,000 \times 60\% \times 100/105.6$ ) plus VAT €1,091 ( $€22,727 \times 4.8\%$ ).

The VAT registered share farmer:

- Is entitled to deductibility in respect of the flat-rate addition paid to the landowner - €962 ( $€17,175 \times 5.6\%$ ).
- Accounts for VAT invoiced to the landowner in respect of his or her portion of the proceeds of the sale - €1,091 ( $€22,727 \times 4.8\%$ ).

### 3.3 Basic payment scheme, GLAS or Area of Natural Constraint

Where a payment is made to a farmer by the State under any of the above schemes it does not represent consideration for any supply and is, therefore, outside the scope of VAT. Where a party to a share farming agreement retains his or her entitlement to receive such a payment from the State but agrees to share the payment with the other party this may give rise to a VAT liability. For VAT purposes, the payment by one party to the other is likely to be consideration for a supply of goods or services and, where the payment is made to a VAT registered farmer, may give rise to a VAT liability. Whether the payment is consideration for a supply of goods or of services will depend on the terms of the share farming agreement and each agreement would have to be examined on its own merit in this regard.

### 3.4 Sale or transfer of Basic payment scheme entitlement

If a share farming agreement provides for the sale or transfer of basic payment scheme entitlement without land, there may be VAT implications. The sale or transfer of basic payment scheme entitlement without land is a taxable transaction and the rate applicable is [the standard rate](#). A farmer who is not registered for VAT but who exceeds the threshold for registration (currently €37,500) by virtue of selling basic payment entitlements, will be obliged to register for VAT in respect of that single transaction. Non-registered farmers who purchase basic payment scheme entitlement and suffer VAT will not be entitled to register for VAT solely for that transaction. Where the sale or transfer of the payment entitlement for a nominal value is to a buyer who is not VAT registered, Revenue may determine that the open market value be used for the purposes of accounting for VAT.