

## Relief for leases of farmland

### Part 7: Section 81D

This document should be read in conjunction with Section 81D SDCA 1999.

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## 1 Introduction

Section 81D SDCA 1999 provides for relief from Stamp Duty in respect of certain leases of farmland executed (signed, sealed or both) on or after 1 July 2018.<sup>1</sup> The relief, which is intended to encourage more productive use of farmland, constitutes an EU State aid and therefore must comply with EU State aid rules. The relevant State aid rules are contained in **Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector**. The Regulation is designed to cater for schemes involving small amounts of grant aid, including tax relief. In accordance with the Regulation, an upper limit on the amount of relief that may be granted under section 81D applies (see section 4).

## 2 Qualifying conditions

Certain conditions relating to the lease, the land being leased, and the lessee must be met for the relief to apply.

### 2.1 Lease

The term of the lease must be for a period of at least 6 years and must not exceed 35 years.

### 2.2 Leased land

The land must be wholly **non-residential** and used **exclusively** for farming carried on by the lessee. For the purposes of this relief, farming includes the occupation of woodlands on a commercial basis.

### 2.3 Lessee

The lessee must be a farmer (of any age) from the date on which the lease is executed. For the purposes of this relief, a farmer is a person who holds a relevant agricultural qualification (see section 2.3.1 below) **or** who spends a specified amount of time farming (see section 2.3.2 below). A farmer can, of course, satisfy both these conditions. A further condition is that the farmer must carry on farming on a commercial basis with a view to making a profit.

Revenue accepts that the lessee may be a company or a partnership. In the case of a company, the main shareholder and working director must be a farmer for the purposes of this relief and must farm the land on behalf of the company. In the case of a company that is owned equally by an individual and that individual's spouse or civil partner, at least one of them must satisfy the working director and the farming conditions. In the case of a partnership, at least one of the partners must satisfy the farming conditions.

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<sup>1</sup> The commencement date of 1 July 2018 was provided by Ministerial Order (S.I. No. 185/2018).

### 2.3.1 Agricultural qualifications

A relevant agricultural qualification for the purposes of this relief is a **trained farmer qualification** (as defined in section 654A Taxes Consolidation Act (TCA) 1997<sup>2</sup>), a qualification listed in **Schedule 2** SDCA or a qualification listed in **Schedule 2A** SDCA.

A **trained farmer qualification** is:

- any qualification that is listed in the table to section 654A TCA 1997, and
- any additional qualification which Teagasc certifies as being equivalent to a qualification that is listed in the table and as being deemed by the Qualifications and Quality Assurance Authority of Ireland to be at least at a level equivalent to that qualification.

Teagasc is responsible for publishing the list of all trained farmer qualifications on its website and for keeping it up to date. The up-to-date list can be accessed through the information page on the Teagasc [website](#).

The qualifications listed in Schedule 2 and Schedule 2A SDCA are reproduced in the [Appendix](#).

If not already held by the lessee at the date of execution of the lease, the agricultural qualification must be obtained within a period of 4 years from that date. This allows the relief to be claimed by a person who has started a relevant course or who intends to do so in time to obtain the qualification within the required 4-year period. This contrasts with the operation of the Stamp Duty relief for transfers of farmland under section 81AA where the agricultural qualification must actually be held before the relief can be claimed.

The date of the award of the qualification is the date the person becomes the holder of the qualification.

As an alternative to having a relevant agricultural qualification, the lessee must spend a specified amount of time farming (see section 2.3.2 below).

### 2.3.2 Active farming

As an alternative to having a relevant agricultural qualification (see section 2.3.1 above), a farmer must farm the leased land for at least 50% of his or her normal working time. Revenue accepts that normal working time (including on-farm and off-farm working time) approximates to 40 hours per week. This enables farmers with off-farm employment to qualify for the relief where they spend at least 20 hours per week, averaged over a year, farming. Where a farmer works more than 40 hours per week, the minimum requirement for 20 hours of farming still applies. Where a farmer's normal working time is somewhat less than 40 hours per week, then the 50% requirement can be applied to the actual hours worked, subject to the leased land being farmed on a commercial basis with a view to making a profit.

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<sup>2</sup> Further information on section 654A TCA 1997 is available in [Part 23 TCA Notes for Guidance](#).

The requirement to farm the leased land on a commercial basis with a view to making a profit applies regardless of the agricultural qualification held or the number of hours spent farming. This requirement can be satisfied in a situation where a farmer makes a loss in a particular year. However, the consistent making of losses year on year may indicate that farming is not being carried out on a commercial basis with a view to making a profit. EU single farm payments are to be included as farming income in the computation of profits or losses in the normal way.

With a self-assessment basis of taxation, it is up to individual farmers to satisfy themselves when claiming the relief that they meet the conditions relating to the number of hours spent farming and the commercial basis for their farming. This will depend on the facts and circumstances of each individual case. Should Revenue decide to do a follow-up compliance check on a claim for relief, it will consider all relevant information (including farming records) when deciding on whether relief was correctly claimed or not. 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 making a profit but do not require 50% of a farmer's normal working time, Revenue will take this into account in deciding whether the relief was correctly claimed.

### 3 Claiming the relief

The relief is claimed on a self-assessment basis where the qualifying conditions for the relief are satisfied. The claim is made on a Stamp Duty return that must be filed through Revenue's online system (ROS). While supporting documentation in relation to the claim is not required to be included with the return, it should be retained for 6 years from the later of the date of the Stamp Duty return or the day the Stamp Duty was paid as it may be requested by Revenue in the event of a follow-up compliance check.

#### 3.1 Agricultural qualification – claims and refunds

Where a relevant agricultural qualification (see [section 2.3.1 above](#)) is required for a lessee to be treated as a farmer for the purposes of this relief, the relief can be claimed where the lessee does not yet hold the qualification but will do so within a period of 4 years from the date of execution of the lease. However, if the lessee does not become the holder of the qualification within this period, the relief no longer applies. Where this happens, the Stamp Duty that would have been payable in the absence of the relief, together with interest accrued from the date of execution of the lease to the date of payment, is payable to Revenue. See [section 5.1 below](#) in relation to amending the Stamp Duty return and arranging for payment.

Alternatively, a lessee may choose to pay the Stamp Duty up front and then claim a refund if, and when, he or she becomes the holder of the qualification within the required 4-year period. This is subject to a valid claim for a refund being made to Revenue within the period of 4 years from the date on which the lease was stamped, the lessee became the holder of the qualification.

Information on how to claim a refund is available on the [Revenue website](#).

## 4 State aid implications

This relief constitutes an EU State aid and therefore must comply with EU State aid rules. It is granted in accordance with **Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector.**

In accordance with the Regulation, a ceiling is imposed on the amount of *de minimis* aid that any one farmer or farming entity can receive over a 3-year period. The ceiling is currently set at €20,000.<sup>3</sup> Prior to 14 March 2019, a ceiling of €15,000 applied. The 3-year period operates on a rolling basis so that, for each new grant of aid, the total amount of aid granted in the particular year and in the preceding two years is to be taken into account. In relation to section 81D relief, the amount of aid granted is the amount of Stamp Duty that would be payable if the relief did not apply.

The ceiling applies to the amount of *de minimis* aid that is received in respect of **all** State aid granted in accordance with the Regulation, whether given by way of tax relief or direct grants. The relevant tax relief schemes are this Stamp Duty relief and relief given under section 667C Taxes Consolidation Act 1997 (registered farm partnerships).

## 5 Loss of relief

### 5.1 Failure to satisfy qualifying conditions

There is no entitlement to the relief where qualifying conditions that were required to be satisfied when the relief was claimed were not satisfied or where a lessee fails to become the holder of a relevant agricultural qualification within the permitted 4-year period. Where relief was claimed in these circumstances, the Stamp Duty return should be amended to withdraw the claim for relief. The Stamp Duty and interest, at the usual rate charged for late payment of tax, should be paid. Any amount of relief claimed that exceeds the allowable ceiling of €20,000 as set out in section 4 above is also repayable to Revenue with interest chargeable from the date on which the ceiling was breached.

Information on how to amend a Stamp Duty return is contained on the [Revenue website](#).

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<sup>3</sup> The ceiling was increased from €15,000 to €20,000 following the amendment of the 2013 Regulation by [Commission Regulation \(EU\) 2019/316 of 21 February 2019](#).

## 5.2 Clawback of relief

Relief that has been claimed can be clawed back where any of the qualifying conditions set out in section 2 above cease to be satisfied in the 6-year period commencing on the date of execution of the lease. Stamp Duty that would have been payable had the relief not applied becomes payable on the date on which any of the qualifying conditions cease to be satisfied. Interest, at the usual rate charged for late payment of tax, is chargeable from the date on which any of the qualifying conditions cease to be satisfied to the date on which the Stamp Duty is paid. An exception to the clawback of relief is made in circumstances where the failure to continue satisfying the qualifying conditions is due to the lessee's death or the lessee's incapacity to continue to farm because of mental or physical infirmity.

Where there is more than a single lessee, each of the lessees is jointly and severally liable for the payment of the Stamp Duty and interest.

Information on how to notify and pay a clawback is contained on the [Revenue website](#).

### Example

A lessee who qualifies as a farmer for the purposes of this relief executes a lease of farmland on 10 August 2018. The term of the lease is 10 years at an average annual rent of €60,000 (100 acres @ €600 per acre). The farmer farms the leased land on a commercial basis. The farmer spends 25 hours per week working on the land. However, the farmer's off-farm employment takes up more time than anticipated. This results in farming on a commercial basis effectively ceasing in October 2019 with the farmer spending only about 5 hours per week working on the land. Without the relief, Stamp Duty of €600 (1% of average annual rent) would have been payable. The farmer must pay this amount, together with interest on late payment calculated at the daily rate of 0.0219% from October 2019 to the date on which the Stamp Duty is paid.

## Appendix - Relevant agricultural qualifications

### A. 'Schedule 2' qualifications

#### 1. Qualifications awarded by Teagasc:

- (a) Certificate in Farming;
- (b) Diploma in Commercial Horticulture;
- (c) Diploma in Amenity Horticulture;
- (d) Diploma in Pig Production;
- (e) Diploma in Poultry Production.

#### 2. Qualifications awarded by the Farm Apprenticeship Board:

- (a) Certificate in Farm Management;
- (b) Certificate in Farm Husbandry;
- (c) Trainee Farmer Certificate.

#### 3. Qualifications awarded by a third-level institution:

- (a) Degree in Agricultural Science awarded by the National University of Ireland through University College Dublin, National University of Ireland, Dublin;
- (b) Degree in Horticultural Science awarded by the National University of Ireland through University College Dublin, National University of Ireland, Dublin;
- (c) Degree in Veterinary Science awarded by the National University of Ireland through University College Dublin, National University of Ireland, Dublin;
- (d) Degree in Rural Science awarded by the National University of Ireland through University College Cork - National University of Ireland, Cork or by the University of Limerick;
- (e) Diploma in Rural Science awarded by the National University of Ireland through University College Cork - National University of Ireland, Cork;
- (f) Degree in Dairy Science awarded by the National University of Ireland through University College Cork - National University of Ireland, Cork;
- (g) Diploma in Dairy Science awarded by the National University of Ireland through University College Cork - National University of Ireland, Cork.

#### 4. Certificates awarded by the National Council for Educational Awards:

- (a) National Certificate in Agriculture Science studied through Kildalton Agricultural College and Waterford Institute of Technology;
- (b) National Certificate in Business Studies (Agri-business) studied through the Franciscan Brothers Agricultural College, Mountbellew, and Galway-Mayo Institute of Technology.



## B. 'Schedule 2A' qualifications

### **1. Qualifications awarded by the Further Education and Training Awards Council (FETAC):**

- (a) Vocational Certificate in Agriculture — Level 3;
- (b) Advanced Certificate in Agriculture;
- (c) Vocational Certificate in Horticulture — Level 3;
- (d) Vocational Certificate in Horse Breeding and Training — Level 3;
- (e) Vocational Certificate in Forestry — Level 3;
- (f) Awards other than those referred to in subparagraphs (a) to (e) of this paragraph which are at a standard equivalent to the standard of an award under subparagraph (a) of this paragraph.

### **2. Qualifications awarded by the Higher Education and Training Awards Council (HETAC):**

- (a) National Certificate in Agriculture;
- (b) National Diploma in Agriculture;
- (c) National Certificate in Science in Agricultural Science;
- (d) National Certificate in Business Studies in Agri-Business;
- (e) National Certificate in Technology in Agricultural Mechanisation;
- (f) National Diploma in Horticulture;
- (g) National Certificate in Business Studies in Equine Studies;
- (h) National Certificate or Diploma awards other than those referred to in subparagraphs (a) to (g) of this paragraph.

### **3. Qualifications awarded by other third-level institutions:**

- (a) Primary degrees awarded by the faculties of General Agriculture and Veterinary Medicine at University College Dublin;
- (b) Bachelor of Science (Education) in Biological Sciences awarded by the University of Limerick;
- (c) Bachelor of Science in Equine Science awarded by the University of Limerick;
- (d) Diploma or Certificate in Science (Equine Science) awarded by the University of Limerick.