

## **CAT Agricultural Relief – Finance Act 2014 changes – Q & A's**

### **1. Q. 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.

### **2. Q. 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.

### **3. Q. 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.

### **4. Q. 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.

### **5. Q. 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.

**6. Q. 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.

**7. Q. 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.

**8. Q. 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.

**9. Q. 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.

**10. Q. 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.

**11. Q. 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.

**12. Q. 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.

**13. Q. 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.

**14. Q. 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.

**15. Q. 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.

**16. Q. 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.

**17. Q. 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.

**18. Q. 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.

**19. Q. 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.