

## Farm Restructuring Guidelines

### Relating to the application for, and the issue of, Farm Restructuring Certificates by Teagasc

These Farm Restructuring Guidelines are introduced in accordance with the provisions of Article 15 of Commission Regulation (EU) No 704/2014<sup>1</sup>. These Guidelines do not purport to give a legal interpretation of Section 604B Taxes Consolidation Act 1997, as inserted by Section 48 Finance Act 2013 and amended by Section 49 of the Finance Act 2014. The issuing of a Farm Restructuring Certificate does not give an automatic entitlement to relief under that section. It is the individual's responsibility to familiarise him or herself with the broader criteria that must be met in order to avail of Capital Gains Tax relief on farm restructuring and persons are strongly encouraged to seek the advice of a specialist tax expert before claiming the relief. Teagasc cannot provide definitive advice regarding an individual's eligibility for the relief other than certifying that certain transactions undertaken qualify as farm restructuring.

#### Background

Section 604B Taxes Consolidation Act, 1997 (TCA) as inserted by Section 48 of the 2013 Finance Act introduced provision for relief on Capital Gains Tax on the purchase and sale (or exchange) of agricultural land in certain instances<sup>2</sup>. Section 49 of the Finance Act 2014 extended the "relevant period" by one year and restricted relief to agricultural land only. These Guidelines, issued under the provisions of Section 604B(1)(b) TCA, are for the purposes of regulating the manner in which applications for Farm Restructuring Certificates are to be made to Teagasc, and the conditions necessary for the issue of such Certificates by Teagasc.

To be eligible to claim the Capital Gains Tax relief, the first sale or purchase must occur between 1 January 2013 and 31 December 2019. The next sale or purchase must occur within 24 months of the first sale or purchase. You may also be able to claim relief where you exchanged land with another person.

Where there is a sale and purchase of qualifying land(s) within the relevant time frame that satisfy Farm Restructuring (see Paragraph 2 below), then Capital Gains Tax is only payable on the sale price to the extent to which it exceeds the purchase price. Where the sale price exceeds the purchase price then the chargeable gain (i.e. the difference between sale and purchase price less allowable deductions) that accrues shall be reduced in the same proportion that the purchase price bears to the sale price.

If the purchase takes place before the sale, then the relief will be given at the time of sale subject to both transactions meeting the eligibility criteria for the restructuring relief. However, where the sale takes place before the purchase, Capital Gains Tax will have to be paid in the normal manner. In such a case a claim for the relevant refund of the Capital Gains Tax paid can be made to the Revenue Commissioners at the time of the subsequent purchase, subject to both transactions meeting the eligibility criteria. Where land has been exchanged simultaneously the relief will be given at the time of the exchange, subject to the transaction meeting the eligibility criteria.

### 2) What is Farm Restructuring for the purposes of the capital gains tax relief?

Farm Restructuring is the sale and purchase of qualifying land(s):

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<sup>1</sup> Dated 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union

<sup>2</sup> All references to sale and purchase of land also include the exchange of land as defined in Section 48 of the Finance Act 2013.

Where a parcel of land is sold by an individual<sup>3</sup> farmer<sup>4</sup> (or, where sold by more than one individual jointly, at least one of the individuals is a farmer);

Where a parcel of land is purchased by the same individual farmer (or where purchased by more than one individual jointly, at least one of the individuals is the same farmer);

Where the sale and purchase occur within 24 months of each other and the initial sale or purchase of land took place in the period 1 January 2013 – 31 December 2019;

The interaction of the sale and purchase together result in an overall reduction in the distance between parcels comprised in the farm, including land that has been leased for at least 2 years<sup>5</sup> with a minimum of 5 years to run;

Thereby leading to a reduction in the fragmentation of the farm and an improvement in the operation and viability of the consolidated farm.

**Note 1:** From 29 January 2015 the sale of the whole agricultural land holding and the replacement of it by the purchase of another agricultural land holding is Farm Restructuring for the purposes of the relief, subject to the transactions also meeting conditions 2(d) and 2(e) set out in this section. Therefore an agricultural land holding must consist of a minimum of two separate land parcels in order to be considered eligible for the relief.

**Note 2:** The change of ownership of land by virtue of a Compulsory Purchase Order (CPO) is not the sale or purchase of qualifying land for Farm Restructuring purposes.

### **3) What is stamp duty relief for Farm Consolidation?**

Stamp Duty Relief for farm consolidation allows for a 1% rate of stamp duty (as opposed to the general rate of 6%) where the land transactions qualify for a “Farm Restructuring Certificate” for the purposes of Capital Gains Tax Relief on Farm Restructuring. It will apply in relation to instruments conveying or transferring agricultural land that are executed on or after 1 January 2018 and on or before 31 December 2020. Where there is a purchase and sale of land within 24 months of each other that satisfy the conditions of consolidation, then stamp duty will only be paid to the extent that the value of the land that is purchased exceeds the value of the land that is sold. In addition both the purchase and sale must occur between 1 January 2018 and 31 December 2020.

### **4) The main conditions for both reliefs are;**

There must be a valid consolidation certificate issued by Teagasc in relation to the purchase and sale of land, occurring within 24 months of each other. The Minister for Agriculture, Food and the Marine has made the necessary guidelines detailing how applications for consolidation certificates are to be made to Teagasc under capital gains tax and also setting out, amongst other things, the conditions of consolidation.

The purchaser or purchasers must retain ownership of the land for a period of five years.

The conveyance must contain a certificate stating that the purchaser is entitled to the relief

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<sup>3</sup> To include an individual member of a registered farm partnership.

<sup>4</sup> A “farmer” means an individual who spends not less than 50% of that individual’s working time farming as defined in Section 604B (1) TCA 1997. It is accepted that an individual who carries on farming through a limited company, is a working-director in the company and is either a qualified farmer or devotes not less than 50% of his or her normal working-time farming will be treated as a “farmer” for the purpose of the relief. The individual concerned must be the main shareholder in the company or own all the shares in the company equally with his or her spouse or civil partner.

<sup>5</sup> Farmland that has been leased must have been leased for a period of at least two years immediately prior to the submission of an application to Teagasc for a farm restructuring certificate.

A clawback of the relief will apply where the land or part of the land purchased is disposed of or partly disposed of before the end of the 5 year holding period. Such a clawback will not occur where the land purchased is compulsorily acquired

**5) What is a parcel of land for the purposes of the relief?**

A parcel of land means an entire field or group of fields, but does not include buildings on the land.

**6) What land can be sold and purchased in a Farm Restructuring?**

Land sold and purchased as part of a Farm Restructuring must comply with the following conditions:

The land must be in the State;

The land must be agricultural land as defined in Section 604B TCA. As the definition of agricultural land does not include afforested land, peat land, or any buildings on the land, the value of these should be deducted by the individual claiming relief when the relevant chargeable gain is being calculated.

**7) What is a Farm Restructuring Certificate?**

A Farm Restructuring Certificate is a certificate issued by Teagasc to the farmer restructuring his/her holding. It identifies the lands sold and purchased and it certifies that Teagasc is satisfied, on the basis of information available at the time of so certifying, that the sale and purchase of lands complies with the conditions of restructuring as set out in these Guidelines. Teagasc cannot provide definitive advice regarding an individual's eligibility for the relief other than certifying that certain transactions undertaken qualify as farm restructuring. Teagasc's remit is to certify whether the transactions undertaken fulfil the farm restructuring criteria set out in sections 2 and 3.

This relief is available only in respect of deeds of transfer executed within 24 months of each other with the initial transfer having taken place in the period 1 January 2013 – 31 December 2019.

**8) What documentation is required by Teagasc in support of an application for a Farm Restructuring Certificate?**

**In order to consider whether a Farm Restructuring Certificate should be issued Teagasc will require the following:**

An application form (FR1.2) completed by the applicant farmer;

Single/Basic Payment Scheme maps indicating the total area farmed by the farmer with the farm hub identified as declared in the most recent Single/Basic Payment Scheme application;

Copies of maps for all land owned, indicating the land parcel(s) sold, together with copies of maps of the land parcel(s) purchased;

Copies of folios, deeds or other evidence of ownership (including maps) for all land owned;

Certified copies of the deeds of transfer (including maps) in respect of the land parcels sold and purchased;

Copies of lease agreement(s) for farmland that are relevant in relation to the application for a farm consolidation certificate, i.e. lease agreements for farmland that have been leased for at least 2 years immediately prior to the submission of the application for a farm restructuring certificate with a minimum of 5 years to run.

**9) What is the procedure for obtaining a Farm Restructuring Certificate?**

The farmer restructuring his/her holding will submit the documentation referred to at paragraph 8 to Teagasc.

On the basis of information supplied at a), Teagasc will consider the application and whether the sale and purchase of the parcels of land is bona fide and complies with the conditions of Farm Restructuring as stipulated in these Guidelines.

Where the outcome of b) is positive, Teagasc will issue to the farmer concerned a Farm Restructuring Certificate on the basis of the information available to it at that time. If the outcome of b) is negative, Teagasc will not issue a Farm Restructuring Certificate and will give reasons in writing for not doing so.

Incomplete applications will not be considered and will be returned to the applicant.

**10) Withdrawal of Farm Restructuring Certificates.**

Teagasc may by notice in writing, withdraw any Farm Restructuring Certificate already issued. The reason for withdrawal of a Certificate will be stated.

**11) Right to Appeal.**

A farmer has the right to appeal a decision within 14 days where he/she is refused a Farm Restructuring Certificate or where such a certificate already issued is withdrawn. Any such appeal will be considered by a panel comprised of one officer from Teagasc and one officer from the Department of Agriculture, Food and the Marine. The officers on this panel will not have been decision makers on the original decision. Any appeal should be forwarded to the original decision making officer in Teagasc for transmission to the panel.

**Further information can be obtained from your local Teagasc Office.**

**Exclusion of individual aid subject to an outstanding recovery order**

In accordance with Article 1(5) of Regulation (EU) No 702/2014, aid granted under this measure shall exclude the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission Decision declaring an aid illegal and incompatible with the internal market.

**Farm Restructuring Guidelines, Version 1.3 – Updated with effect from 1<sup>st</sup> August 2018.**

**FR 1.2 APPLICATION FORM:**

**Farmer's Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone No:** \_\_\_\_\_

**Mobile No:** \_\_\_\_\_

**PPS No:** \_\_\_\_\_

**Herd No:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Is the sale or purchase of lands in respect of which this application is made the subject of a previous Farm Restructuring application? (Yes/No):** \_\_\_\_\_

**If yes, please state the previous Farm Restructuring reference:** \_\_\_\_\_

**CHECKLIST:**

- a) Are SPS/BPS maps showing the total area farmed by you attached and correct?
- b) Are copies of maps indicating all land owned by you, indicating the parcel(s) of land sold as part of the restructuring attached and correct?
- c) Are copies of maps indicating the parcel(s) of land purchased or exchanged by you as part of restructuring attached and correct?
- d) Are copies of folios, deeds or other evidence of ownership (including maps) for all land owned attached and correct?
- e) Are certified copies of the deeds of transfer (including maps) in respect of the land parcels sold and purchased or exchanged attached and correct?
- f) Are copies of lease agreement(s) for farmland leased for 2 years immediately prior to the submission of this application with a minimum of 5 years to run attached and correct?

**Farmer:** The information contained within this application is correct: **Signed:** \_\_\_\_\_

**Teagasc:** Does this application **comply** with the conditions of farm restructuring as stipulated in the farm restructuring guidelines?      **YES**       **NO**

**Is a Farm Restructuring Certificate being issued?**      **YES**       **NO**