

FORESTRY TAXATION

8th OCTOBER 2013

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AGENDA

- Income Tax
- Relevant Contracts Tax
- Capital Gains Tax
- Stamp Duty
- Gift & Inheritance Taxes
- Value Added Tax

INCOME TAX

INCOME TAX EXEMPTION Conditions

- Profits/Gains
- From OCCUPATION of woodlands
- Managed on a COMMERCIAL basis
- With a **view to realisation of profit**
- Must be included in Annual Tax Return

- Who occupies?
- Profit from sale of trees
 - Standing or felled,
 - Cut up or not,
 - By a land owner,
 - Who planted the trees,
 - Managed on a commercial basis.

- Not all tree sales are tax exempt.
- Evidencing of “commercial basis”
- Evidencing – “view to realising a profit”
- What about losses?
- What about woodland expenses?

CHRISTMAS TREES

- UK position – Case Law
- Woodlands implies production of timber
- Christmas Trees implies “Nursery”
- Nursery not woodlands
- Irish position to date

WOODLANDS TAX EXEMPTION

- Not strictly correct
- Profits liable to PRSI
- Profits liable to Universal Social Charge
- High Earners Exemption

- Applies where the answers to all three questions is YES.
 1. Is adjusted income greater than €125K?
And
 2. Were specified reliefs used > €80K?
And
 3. Did specified reliefs exceed 20% of adjusted income?

- Stallion Fees
- Greyhound Stud Fees
- Occupation of woodlands
- Corporate distributions from the above
- Writers, composers and artists exemption
- Film, BES and EIS relief
- Donations to approved bodies
- Donations to sports bodies

EXAMPLE

Farm Profits (T)	€50,000
Rental Income (T)	€30,000
Woodland Profits (S)	€85,000
Film Relief (S)	€10,000

*T = Taxable
fenced*

S = Specified

R = Ring-

CALCULATING SPECIFIED RELIEFS (S)

Woodlands Profit	€85,000
Film Relief	<u>€10,000</u>
Total of specified <u>reliefs</u>	€95,000 (S) =====

CALCULATE THE ADJUSTED INCOME (A)

Specified Reliefs	€95,000
Farm Profit	€50,000
Rental Income	€30,000

Adjusted income(A)	€175,000
	=====

THE 3 QUESTIONS

1. Is adjusted income > €125K?

YES, it is €175K, and,

2. Were the specified reliefs used > €80K?

YES, they were €95K, and,

3. Did specified reliefs exceed 25% of adjusted income?

Is €95K > (20% x €175K) €35K

The answer is YES.

THE HIGH EARNERS RESTRICTION APPLIES

Does not impact on Universal Social Charge or PRSI i.e. no recalculation.

EXAMPLE 2.

Mr. Beech has taxable farm profits of €100,000 and exempt woodland income (specified reliefs) of €75K.

The restriction does not apply. While his adjusted income is €175K (taxable income of €100,000 + specified reliefs of €75K) is greater than the Income Threshold Amount of €125K, the use of specified reliefs of €75,000 is less than the Relief Threshold Amount of €80,000.

EXAMPLE 4

Mr. Wood has exempt woodland income of €240,000 and also has taxable income of €100K.

The restriction applies.

The adjusted income of €340K (specified income €240,000 + farming profits €100,000) is greater than the Income Threshold Amount of €125K. The use of specified reliefs (woodland exemption) is greater than the Relief Threshold Amount of €80,000 and also greater than 20% of the adjusted income ($20\% \times €340,000 = €68,000$). Calculation of the restriction which results in the recalculated taxable income €260,000 is as follows:

EXAMPLE 4 contd.

Adjusted Income	€	Recalculated Taxable Income	€
T – Taxable Income	100,000	T – Taxable Income	100,000
S – Specified Reliefs	240,000	S – Specified reliefs	240,000
R – Ring fenced Income	(0.00)	Y – greater of €80,000 and 20% of Adjusted Income	(80,000)
Adjusted Income	340,000		
20% of Adj. Income	68,000	Recalculated Taxable Income	260,000

The restricted amount of “excess relief” of €160,000 (€240K - €80K) arising in 2011 is carried forward to 2012 and allowed under section 485F TCA 1997. It will be a specified relief to the extent that it is used in 2012 (or subsequent years).

Reducing exposure to restriction on woodland income

- **Replanting** – Replanting of trees is a revenue expense
Wilson-Wright v Connolly (1976)
- **Staggered Sales**
- **Joint Ownership** – Avail of additional €80K specified reliefs. *If each spouse has specified reliefs of less than €80K in that year, no restriction will apply even though combined reliefs may exceed €80K.*

RELEVANT CONTRACTS TAX

RELEVANT CONTRACTS TAX & FORESTRY

- Forestry Operations
- Obligation to deduct tax from sub-contractors
- 0%, 20%, 35%
- Who is the principle contractor?

CAPITAL GAINS TAX

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- Sale of trees exempt for individuals
- Insurance compensation for trees – exempt for individuals.
- Sale of land and trees
 - Trees exempt
 - Land taxable

CAPITAL GAINS TAX

Sale of Land and Trees

- Identify sales proceeds of trees
(not taxable)
- Identify land sale proceeds
(taxable)
- What can be deducted from the land sale proceeds?
- Determine date of acquisition of land
- Determine cost/valuation at date of acquisition

CAPITAL GAINS TAX

Sale of Land and Trees contd.

- If part of larger parcel
 - Part disposal
 - Today's valuation of remaining portion not disposed of
- Cost of trees to be excluded
- Capital Gains Tax Retirement Relief allowability?
- Anti-avoidance/valuations

STAMP DUTY

STAMP DUTY

- Land liable to Stamp Duty
- Trees not liable to Stamp Duty
- Necessary to split the cost
- 2% rate
- Agreement between vendor/purchaser
 - Purchaser's stamp duty exemption amount
 - Seller's capital gains tax trees exempt amount

GIFT & INHERITANCE TAXES

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- Trees **growing on the land** qualifies as “agricultural property”.
- Agricultural property qualifies for “Agricultural Relief”
- Agricultural Relief allows 90% write-down in value subject to asset test.
- Trees qualify for “Agricultural Relief” **without asset test.**
- Trees with market value of €1m
 - Taxable value €100K

GIFT & INHERITANCE TAX contd.

- No clawback of relief on subsequent tree sales.
- Land is subject to the “Agricultural Relief” asset test.
- Split value of gift/inheritance between growing trees and land (Form CA6).

VALUE ADDED TAX

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- Forestry deemed to be “farming activity”
- “Farming Activity” of vat unregistered farmer qualifies for 4.8 % flat rate refund.
- “Normal” farming activity carried on by a “normal” farmer – the farmer can remain vat unregistered.
- “Normal farmer” – a person who engages in agricultural production on land he owns or occupies and whose turnover from non-agricultural activities does not exceed €37,500 per annum.
- Being forced to register
- Carrying on another vatable business e.g. pub etc.

See separate note on agricultural services

VAT INCLUSIVE/EXCLUSIVE PRICING

	VAT INCLUSIVE	VAT EXCLUSIVE
Cash to farmer	100,000	104800
VAT (4.8%)	4,580	4800
Cost to merchant	95,419	100,000 =====

- It is vitally important to speak with the merchant prior to the deal being struck.
- For vat unregistered farmer the difference is €4800 on each €100,000 sale.

VAT REFUNDS - Unregistered Farmer

- VAT 58
- Vat refund on fixed capital costs
- Forestry is farming
- Vat refund on fencing and roadways
- Invoice must be in the name of the farmer

VAT RATES FOR Vat Registered Farmers

- Timber Sales 23%
 - For both cut or standing timber (including Christmas trees)
- Firewood 13.5%
- Forest and Land 23%

VAT on Inputs

- Plantation stock sold by nursery 13.5%
- Contractors charges for planting and harvesting 13.5%
 - Includes lopping, tree felling, pruning, hedge trimming, and similar forestry services (including sowing and planting)

FARMERS SUPPLY TO GENERAL PUBLIC

- *All retailers of horticultural produce including Garden Centres and flat rate farmers whose annual retail sales of horticultural produce exceeds €75K (including Christmas trees and firewood) – subject to VAT registration.*
- *Farmers supplying combination of above and agricultural services – the registration threshold is €37,500*

ENTERPRISES WITH CLOSE ECONOMIC TIES

- *Two enterprises, one vat registered the other not, having close economic ties could be deemed to be a VAT group thereby leading to compulsory registration.*
- *VAT de-registration*