Tax and the Woodland and Peatland Codes: March 2023

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The Natural Capital Working Group is now in dialogue with HMRC on tax issues around the Woodland and Peatland Codes and is now looking at other similar schemes.

It has a been a little over a year since our first article in January 2022 inviting feedback from members with clients involved in the Woodland and Peatland Codes and a lot has happened since then. The Natural Capital Working Group, of which the ATT was a founder member, first met in July last year, and now boasts members across the spectrum of tax, accountancy and law, as well as specialist consultants and representatives from the Woodland and Peatland Codes. We are now meeting regularly with HMRC, HMT and the Department for Environment, Food and Rural Affairs and are in the process of setting up two sub-groups to look more closely at the issues with VAT and accounting.

As a quick recap, the Woodland and Peatland Codes enable landowners who plant trees or restore peatbogs to earn income in the form of carbon credits. Each credit, which is recorded on a central registry, represents one tonne of carbon dioxide removed from the atmosphere (or the avoidance of a tonne of emissions in the case of peatland). The credits can be kept to offset the landowner's own emissions or sold to third parties. The schemes are voluntary and distinct from the rules applying to those businesses within the Emissions Trading Scheme.

A number of tax issues have arisen in connection with these credit schemes. They include uncertainties about how income from the sale of credits is taxed, whether the commercial woodlands exemption applies and the consequences for inheritance tax reliefs, such as agricultural property relief or business property relief, given the change in land use. There are also issues with VAT, where we consider that HMRC's guidance, which says that credit income from voluntary carbon schemes is outside the scope of VAT, is out of date.

However, woodland and peatlands are not the only way to remove or reduce greenhouse gas emissions. Schemes involving hedgerows and also so-called *blue carbon* – consisting of carbon capture in marine landscapes – are in development. Wider than just carbon capture, there are also similar schemes looking at improving biodiversity and minimising nutrient run-off into watercourses. From some point later this year, all planning permissions will require the developer to leave land in a measurably better state in respect of biodiversity than it was prior to the development. This *biodiversity net gain* must occur either onsite, or through buying credits from other landowners who have taken specific actions to improve biodiversity.

We are keen to hear from members about the sort of situations they are seeing in practice involving any of these schemes. In particular, if tax uncertainties are providing a barrier to engaging with these schemes, we would be happy to feed this back to HMRC.

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