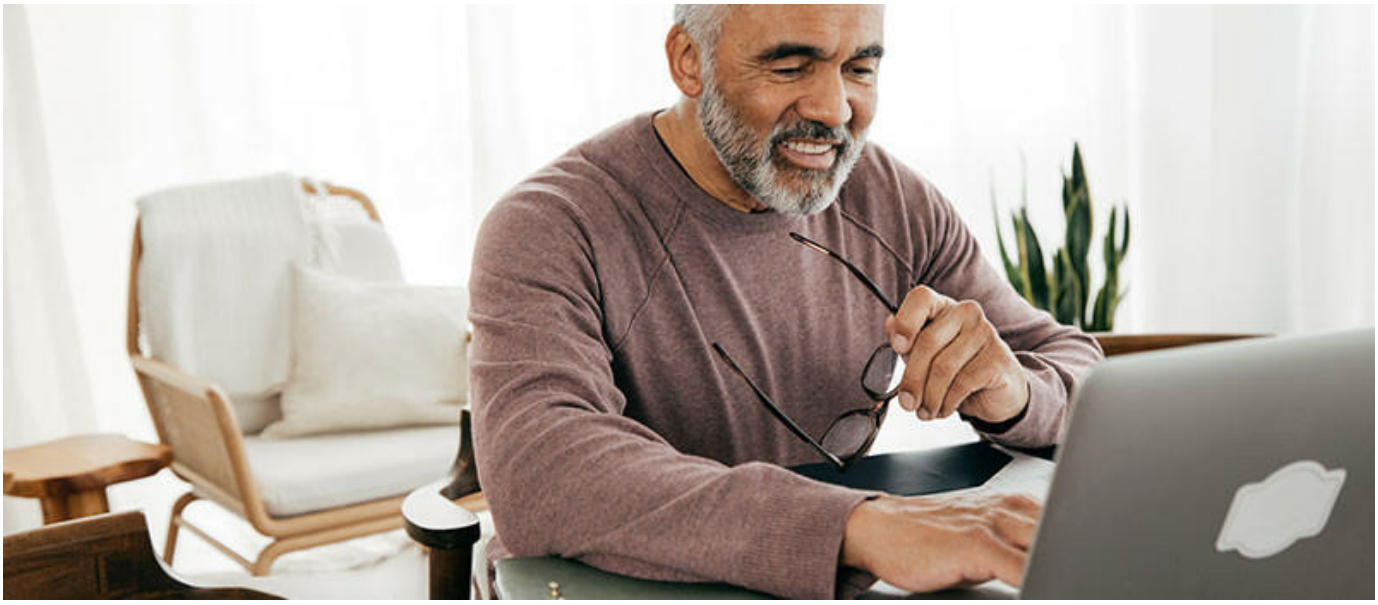
Taxation of environmental land management and ecosystem service markets

Environmental Personal tax



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The ATT and CIOT have responded to the HMRC/HMT consultation on the taxation of carbon and nutrient credits and biodiversity units, as well as potential changes to Agricultural Property Relief.

The ATT and CIOT have responded to the HMRC/HMT consultation the ‘Taxation of environmental land management and ecosystem service markets’. The ATT responded to both parts, highlighting the pressing need for clarity on the taxation position of these schemes, while the CIOT response focused on part 2 which outlined potential changes to Agricultural Property Relief (APR).

The first part of the consultation was a call for evidence looking at the tax issues around carbon credits (primarily the woodland and peatland codes), nutrient neutrality and biodiversity net gain. At present, there is little to no guidance in this

area and no consensus on the treatment of some quite fundamental questions. This is preventing landowners from engaging with confidence in these environmentally beneficial schemes.

Uncertainties include whether disposals of credits should be treated as income or capital and whether the woodlands exemption can apply to income from woodland carbon credits schemes. The first credits generated from the Woodland Carbon Code have now been verified, but landowners looking to sell these units are unsure how HMRC expect the proceeds to be taxed.

In England, more certainty on the non-carbon schemes is needed, as planning applications for residential properties in England may be affected if developers are not able to find enough landowners willing or able to put land into nutrient neutrality or biodiversity net gain schemes due to uncertainties around tax. Nutrient neutrality requirements already apply to areas covered by 74 local authorities, while biodiversity net gain requirements are expected to come into force for most residential developments from November.

The ATT response included a number of examples provided by members to illustrate the difficulties and highlighted how some of the problems around treatment of process as income or capital is being addressed through the use of corporate structures.

Part 2 of the consultation looked at potential changes to inheritance tax (IHT). A major concern highlighted by most of the contributors to the ATT's response was whether or not land held in these schemes can continue to benefit from favourable APR for IHT purposes. HMRC have published some helpful guidance in this area recently, but we do not believe it goes far enough to cover all the situations where entering a scheme might put the availability of reliefs in question. The risk of increased IHT liabilities is a major disincentive for many landowners.

The consultation specifically excluded VAT, but the ATT's response concluded with feedback from members concerned that HMRC's current guidance is out of date and does not reflect the commercial realities of the current schemes.

The CIOT response endorsed the ATT's comments on part 1. On part 2 we emphasised that having a clear and comprehensive approach to the IHT issues is essential to unlock the willingness of landowners and farmers to commit their land to long-term environmental schemes. In addition to considering the availability of APR

on the specific land being considered for any scheme, the wider impact on the availability of APR for other assets needs to be addressed. For example, the availability of APR on farmhouses, farm cottages and farm buildings is currently dependent on whether they are of a character appropriate to the land being farmed and are occupied for the purposes of agriculture.

CIOT pointed out that the consequence of government policy not to expand APR beyond land currently used for agricultural purposes is that in the future two otherwise identical blocks of land, used for identical environmental purposes, may have different IHT statuses because block A was previously used for agricultural purposes and block B was not (it was always used for environmental or non-agricultural purposes).

This is likely to lead to significant future difficulties: compliance costs in maintaining records of historic usage; extensive due diligence needed (for example when land is sold) to prove its historic usage; and significant valuation differences (as IHT-free land is likely to command a premium). This is likely to lead to future calls for reform – either to bring more land into scope of relief from IHT, or claims that giving relief to block A over block B just because, say, 30 years ago it was used for agricultural purposes is unjustified and that the relief should be withdrawn.

CIOT considers that the proposal to restrict 100% APR to tenancies of at least eight or more years is likely to reduce the amount of agricultural land available to tenants. The probable response of many landlords would be to bring the land in-hand or enter into a contract-farming arrangement.

We understand that HMRC have received a substantial number of responses to this consultation and we look forward to engaging further in discussions. We remain keen to hear from members about their experiences with natural capital. Please contact us on atttechnical@att.org.uk or technical@ciot.org.uk.

The ATT's response can be found at: www.att.org.uk/ref421

The CIOT's response can be found at: www.tax.org.uk/ref1105

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