Habitat banking: R&D relief for farmers and landowners

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We look at habitat banking in the context of research and development relief, which can only be claimed through the legal entity of a limited company.

Farmers have to be participating in research and development to be able to claim the new grants for farming for the environment and the Environmental Land Management Scheme, together with all areas of carbon capture and moving towards net zero.

Habitat creation, enhancement and ongoing management

Biodiversity net gain will be mandatory for most housing developments in England, with a phased introduction that started in November 2023 and which is subject to much debate.

In England, biodiversity net gain is required under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990. The mandatory requirement came into place on 12 February 2024 for all development under the Town and Country Planning Act 1990, with a temporary exemption for non-major developments until 2 April 2024.

Developments will need to deliver at least a 10% uplift in biodiversity compared to the impacts to habitats within their site boundaries. Habitats must be replaced on a 'like for like' or 'like for better' principle.

If habitat creation has not yet started, work to create habitats or enhance existing habitats can begin. Any habitats will then need to be managed and monitored for at least 30 years in line with the legal agreement and agreed habitat management and monitoring plan. Guidance on these steps will be published at tinyurl.com/2s3v425p in the coming months.

Habitat banking

Where biodiversity net gain cannot be delivered on the site, developers can buy off-site biodiversity units on the off-site market. Landowners can create or enhance habitats to sell biodiversity units. The first action point is to carry out a baseline habitat survey to determine what habitats are present on their land and what condition they are in.

Landowners can then decide what habitats they want to create or enhance. They may agree to create or enhance certain habitats to sell the units to a specific development, or they may create habitats and sell the units to a developer later (known as habitat banking). With all the uncertainties that farmers are faced with, one certainty is starting to review the suitability of habitats.

The habitat baseline and planned enhancements for the site that has been chosen can be entered into the 'biodiversity metric', which uses habitat features to calculate a biodiversity value, to give landowners an idea of unit outputs. The number of units generated will vary depending on the timing of the habitat creation and the location of the development they are sold to.

More information about the impact of these factors can be found in The Biodiversity Metric 4.0 user guide at Natural England Publications (see tinyurl.com/ycxnxbyy).

In the last resort, if developers cannot achieve on-site or off-site biodiversity net gain, they must buy statutory biodiversity credits determined by a metric tool (see tinyurl.com/4tuubp9p). Statutory credits are priced in tiers, determined by the value of the habitat, and are currently priced between £42,000 and £650,000 per credit. Prices will be reviewed every six months.

Research and development relief

Whilst we all await the results of the Budget 2023 Consultation on the taxation of environmental land management scheme, tax advisers must still look at opportunities for research and development (R&D) relief.

In addition to habitat banking, other examples of R&D that might be considered by landowners include: trials to pioneer the net zero production of crops through sustainable fertilisers; reduced cultivation; improved soil health; and improvement to storage and transfers. Some of the work will be carried out centrally through organisations like the Centre for High Carbon Capture Cropping with funding from Defra's farming innovation programme.

Possible errors on R&D claims

Given the current high profile of R&D errors, impartial expert reviews of all R&D claims made by farmers and landowners are a sensible precaution, particularly where the claim was made by a separate claim handling business.

The type of errors that arise could be based on published generic findings:

- When claims are made for commercial activity, rather than scientific or technological advances, farmers and landowners must still be commercial around these advances.
- Farmers taking insufficient care to check claims or not providing the right information on the specifics of the claims to advisers.

The checking of claims can be difficult, for example:

- The farm operation may fail to properly explain complex technology or engineering, creating a situation where the HMRC inspector does not fully

understand a business or its activities. Some farming operations are very specialist and appear complicated to the outsider who is not used to farming.
- No or insufficient documentary evidence is provided to support an R&D claim to demonstrate compliance with the rules.
- Fraudulent claims are made; for example, knowingly claiming the whole cost of an asset that has continuing value to the business. Obviously, farmers and farm advisers must avoid such claims.

Additional information form for R&D

The new additional information form that must be submitted in support of R&D claims from 8 August 2023 onwards is considered by many to be overly bureaucratic. Farming companies should take greater interest and ownership of their R&D claims, given that a named company officer must sign the claim off.

HMRC hopes that this will drive higher quality and consistency of R&D claims. However, farmers must not rule out valid R&D claims because of the increasingly bureaucratic nature of the tax relief.

It is considered that providing HMRC investigators with all the detail they need will go a long way to limit the overall impact of an enquiry and is often reciprocated by HMRC. It will always be better for a forensic analysis of the original claim submitted by farming companies to be undertaken to both identify mistakes and build a case to support a corrected claim.

With all the other changes that farmers face, farmers and the farming industry must always consider R&D claims as an integral part of tax planning. For individual farming projects, there must also be a limited company for R&D which must be considered by the tax adviser in context.

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