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# LAND USE CONSULTATION

## Response by Association of Taxation Technicians

### 1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the Department for Environment, Food and Rural Affairs Land Use consultation document ('the Consultation') issued on 31 January 2025<sup>1</sup>.
- 1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.3 As a tax body, we have not responded to all the questions posed in the consultation. The purpose of this response is to highlight to Government the importance of considering the tax implications of any policy changes connected to land and property. Tax is a key driver in decision making for landowners, yet it only receives an isolated mention in the consultation document. Land use changes which result in negative or uncertain tax consequences could discourage landowners from engaging with schemes that the Government considers desirable.
- 1.4 Our members tell us that some of their clients have been put off from engaging in natural capital projects involving Biodiversity Net Gain (BNG) or carbon credits due to uncertainty in the tax treatment of related income and expenses. HMRC is currently working on guidance following a consultation under the previous administration in 2023 but we first raised concerns back in 2022 and, in the meantime, opportunities may have been missed.

### 2 QUESTION 4: What are the policies, incentives and other changes that are needed to support decision makers in the agricultural sector to deliver this scale of land use change, while considering the importance of food production?

- 2.1 Tax reliefs are mentioned briefly under 'context' on page 20 of the report, as a factor that may influence behaviour. There are two aspects to this. Some tax reliefs are dependent on how land is used, with landowners unlikely to engage with schemes where the required use changes have negative tax consequences. Secondly, where new incentives are introduced, the tax position needs to be clear from the

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<sup>1</sup> <https://consult.defra.gov.uk/land-use-framework/land-use-consultation/>

start so that landowners have the confidence to engage. As yet, there is significant uncertainty surrounding the tax impact of new schemes such as the Woodland Carbon Code, Peatland Carbon Code, BNG and Nutrient Neutrality.

## 2.2 The relevance of land use to specific reliefs

Agricultural Property Relief (APR) and Business Property Relief (BPR) are Inheritance Tax (IHT) reliefs which have traditionally been valuable to farmers and landowners. It is important that the Government continues to keep the definition of what can qualify for APR and BPR under review where land use changes are considered to ensure that a loss of tax reliefs does not disincentivise take-up. Alternatively, the Government could consider introducing another method of preserving reliefs such as a specific Conservation Property Relief (CPR) which could cover a range of environmentally desirable uses of land, whether or not it has been previously farmed.

- 2.3 Where APR applies, it can exempt up to 100% of the agricultural value of qualifying property from IHT. The qualifying property must meet minimum ownership periods depending on whether it is occupied by the landowner or others for the purposes of agriculture. *Agricultural property* is defined for the purposes of the relief as “*agricultural land or pasture and includes woodland and any building used in connection with the intensive rearing of livestock or fish if the woodland or building is occupied with agricultural land or pasture and the occupation is ancillary to that of the agricultural land or pasture; and also includes such cottages, farm buildings and farmhouses, together with the land occupied with them, as are of a character appropriate to the property.*”
- 2.4 BPR is a wider relief which broadly applies to the value of assets used in a business which is wholly or mainly trading.
- 2.5 From April 2026, the benefits of both reliefs will be restricted as a cap of £1 million will be applied to the amount of assets qualifying for full APR or BPR. Relief will be restricted to 50% once the individual’s allowance has been exceeded. Despite these changes, landowners are still likely to want to retain both reliefs and will be disincentivised from taking part in schemes if a change of use means either that the land ceases to qualify as agricultural for APR purposes or as a business asset (for which we broadly mean trading asset) for BPR.
- 2.6 Land can cease to qualify as agricultural property for APR purposes when it is taken out of production. APR legislation has been amended over the years to ensure that landowners engaging in new schemes which require land use change are not disadvantaged. In the 1990s, a clause was added to extend APR to land used in habitat schemes (the old ‘set aside’ schemes where land was left fallow) to prevent land placed in those schemes falling outside of APR when it was not being actively farmed. In April 2025, this clause was replaced with a new clause which allows land which was previously agricultural property, but which has since become subject to an environmental management agreement, to retain qualification for APR even if it is not being actively farmed. These amendments are welcome and help to ensure that tax does not conflict with the Government’s aims for land use.
- 2.7 Further amendments to the APR provisions may be necessary as the current amendments only make provision for relief where the environmental management agreement is between the landowner and a public authority, defined as the UK government, devolved governments, public bodies, local authorities, or approved responsible bodies. Schemes such as those involving carbon credits are not obviously within the exemption. The provisions also exclude any land which was not previously farmed from the relief, even if it now comes within an environmental management agreement and is providing an environmental benefit.

2.8 Changes have also been made to guidance on BPR as there was uncertainty over whether HMRC would view the generation of carbon credits by the growing of trees or restoration of peat as a trading activity.<sup>2</sup> This additional guidance is welcome, but it came some years after the introduction of the Woodland and Peatland Carbon Codes, and meant that prior to the guidance being published, landowners were making long term decisions without any indication of HMRC's view of the position. Not all landowners are prepared to take such risks, and tax uncertainty can limit the range of landowners prepared to engage in environmentally beneficial schemes.

## 2.9 The importance of for clarity of tax treatment

The emergence of new schemes such as BNG and those relating to carbon credits has caused a number of tax issues and a good deal of tax uncertainty for landowners looking to bring land within these arrangements. We have previously commented to Government that this uncertainty has slowed down the uptake of these schemes.<sup>3</sup>

2.10 We and others have been seeking clarity on a range of tax issues since 2022, including questions such as whether VAT is due on the sale of credits, if VAT can be recovered on upfront expenditure and how lump sum payments received for agreements that can span anything from 30 to 120 years should be taxed. We look forward to the guidance promised by HMRC this year. At present, there is little to no consensus across the accounting and tax profession on the treatment of some quite fundamental questions. The lack of consideration of tax issues to date has therefore hindered the ability of many land managers to engage with these schemes. This affects not only the UK's ability to achieve its net zero goals by 2050, but also has direct impact on areas such as house building, where developers have to meet obligations in respect of BNG and Nutrient Neutrality before development can commence

2.11 When considering tax, it would be helpful if DEFRA and HMRC could communicate at an early stage and provide a consistent message. In February 2023, DEFRA issued guidance which stated that biodiversity units will be subject to VAT when they were sold but HMRC was not prepared to support that statement. This caused much unhelpful confusion and various HMRC forums are still considering VAT issues around BNG, over a year since BNG requirements came into force.

## 3 Contact details

3.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact our relevant Technical Officer, Helen Thornley on 07773 087125 or [hthornley@att.org.uk](mailto:hthornley@att.org.uk).

22 April 2025

The Association of Taxation Technicians

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<sup>2</sup> <https://www.gov.uk/hmrc-internal-manuals/inheritance-tax-manual/ihtm25253>

<sup>3</sup> <https://www.att.org.uk/technical/submissions/taxation-environmental-land-management-and-ecosystem-service-markets>

## 4 Note

- 4.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has more than 10,000 members and Fellows together with over 7,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.