



Consultation on extending inheritance tax relief to land managed to deliver environmental benefits

The CLA has for several years been lobbying the government in relation to the tax consequences of environmental land use. Two of our major requests have been for the expansion of inheritance tax reliefs and greater clarity on the tax treatment of payments for such activity. We believe that both are needed in order to avoid tax deterring landowners from entering into environmental schemes.

HM Treasury and HM Revenue & Customs have now launched [a call for evidence and consultation paper](#) that covers both of these issues. The first part is a call for evidence on the taxation of ecosystem service markets. The second part is a consultation on the expansion of agricultural property relief from inheritance tax.

This represents a major success for the CLA's lobbying efforts.

Responding to the Call for Evidence and Consultation

The CLA will respond but members may wish to respond too.

We have provided a template that provides guidance as to how to respond to the consultation. You do not have to answer every question, only those that you have a view on.

Our experience is that if we provide you pre-drafted answers that lead to many responses looking alike, they will be disregarded by government. So, we would encourage you to use your own wording in the answer the questions. Please copy us into the response, sending it to: advice@cla.org.uk

Comments and guidance

Part 1: Call for evidence on the taxation of ecosystem service markets

The call for evidence examines areas of uncertainty around ecosystem service payments. The government aims to provide greater certainty in this area, as we have requested.

This is the fact-finding part of the paper. It is about how the markets are operating, how agreements are structured and what tax uncertainties they give rise to. The focus is more about income tax than inheritance tax: how are payments from the sale of the units (carbon, biodiversity net gain or nutrient neutrality) accounted for and recognised from a tax perspective. For example, if a large upfront payment is received under a 30-year agreement, how is this taxed when there is a timing difference between this and upfront and ongoing project costs?

In your response it would be helpful to set out if you are considering entering into or have entered into an agreement to sell carbon units, biodiversity net gain units or nutrient neutrality units, or a conservation covenant. The information you should provide is

- How is the deal structured?
- What are you agreeing to do on the land?



- How long is the agreement for?
- How are the payments made - one-off at the outset or in stages?

Part 2: Consultation on agricultural property relief from inheritance tax and environmental land management

The consultation is focused on a proposed extension of agricultural property relief (APR) to cover environmental land management. It acknowledges the concerns that have been raised by us and others that the current scope of agricultural property relief is one potential barrier to some agricultural landowners and farmers making long-term land use change from agricultural to environmental use.

The tone of the consultation suggests that the government accepts in principle the CLA's arguments that this extension is needed, and that the aim is to clarify the precise boundaries of the extended relief. The CLA's response will therefore aim to ensure that the boundaries are drawn sufficiently widely that members diversifying into environmental land management are not disadvantaged.

The government is not currently proposing to make an extension to business property relief. This may be because government thinks this can be dealt with by guidance alone. HMRC have confirmed in their manual (and it is repeated in the consultation) that land in the woodland carbon code and peatland carbon code can qualify for business property relief. We are working with HMRC so that they understand biodiversity net gain and nutrient neutrality agreements, so that they can produce similar guidance for these agreements and hopefully ELM too. However, our preference is still that there should be a statutory change to confirm that the activity will be considered a trading activity as one of our concerns is that minimal activity may mean that an officer of HMRC could take the view that there is insufficient management of the land to be truly regarded as a trading activity.

Scale of the Problem

The first question in the consultation asks about the areas of concern in respect of agricultural property relief and environmental land management. It requests evidence and scenarios, including the relative scale of the concern by explaining where decisions about land use change have and have not been influenced by the cope of agricultural property.

If concerns about losing inheritance tax relief have had an impact on your decision making, does that mean that you:

- (a) are not taking land out of agriculture for environmental/ecosystem services; or
- (b) are restricting how much you are doing and would do more if APR was available?

You should answer the question to explain this and please provide details of what you would do and how much land would be used for environmental/ecosystem services management if not for the risk of inheritance tax consequences. With government targets to be met, understanding how many people are deterred because of the risk of an inheritance charge helps to support the case for a change in the tax rules.



Design of relief

The consultation states that the policy objective for changing the inheritance rules would be to prevent the potential loss of the relief being a barrier to landowners/farmers putting agricultural land into environmental land management schemes in England or their equivalents in other parts of the UK.

Environmental land management scheme

The consultation confirms it is not intended to include land in all elements of the government's environmental land management scheme, only that in Countryside Stewardship and landscape recovery. Their reasoning is that land in Sustainable Farming Initiative (SFI) will still be used for farming and so will qualify for relief in any event. We have always been clear in our discussions with Treasury and Defra that the availability of inheritance tax relief is only an issue for land that is taken out of agricultural use. We would be concerned if the definition of qualifying government schemes is too narrow to take into account future changes. For example, if in the future there are elements of SFI which are 'non-agricultural' (such as field corner management). There may also be complexity with an overlap between land parcels in both SFI and Countryside Stewardship.

The consultation proposes that in order for environmental land management to qualify for agricultural property relief, there would need to have been undertakings given, and ongoing adherence to those undertakings at the point of transfer. This means the relief would not apply where undertakings had been terminated, expired, or were not being adhered to.

It is hard to argue that agricultural property relief should be available for land that is registered in a government environmental land management scheme, but where the landowner is failing to comply with the conditions of that scheme. However, we would not want a situation where relief would be denied due to a minor breach of the scheme's rules, especially if this may occur outside the control of the landowner.

The government is proposing to remove relief for historic habitat schemes. However, it does not know whether any land is still subject to these schemes. If you are managing land under any of these historic habitat schemes you should provide this information in the response. These historic schemes are:

- (a) regulation 3(1) of the Habitat (Water Fringe) Regulations 1994;
- (b) the Habitat (Former Set-Aside Land) Regulations 1994;
- (c) the Habitat (Salt-Marsh) Regulations 1994;

Prior agricultural use

The government wants to design the policy in a way that ensures that land taken out of agricultural production permanently or for an extended period for this reason does not lose relief. However, they want to ensure that this does not lead to unintended consequences, such as land that has never been agricultural or used for agricultural purposes receiving relief. The government gives the example of waste land bought to go into a scheme. However, this approach seems unnecessarily narrow.



Surely if the government want to hit their net zero and biodiversity targets it should protect all land that qualified for inheritance tax relief before it was put into environmental management, not just former agricultural land. This would mean that land that would have qualified for business property relief before its use was changed should also qualify.

Any restriction on the previous use of land must allow for the relief to apply to land that was previously in agricultural use but had been changed to environmental land management prior to any change in the law to expand the scope of the relief. Otherwise, the legislation would penalise those who acted earlier to put their land to environmental use.

It would not be helpful if any limitation gave rise to evidential issues as to proof of prior agricultural use or makes it difficult for HMRC to assess claims for relief.

Rock review - Limitation of agricultural property relief

The consultation also seeks views on the recommendation in the Rock Review of agricultural tenancies that 100% agricultural property relief should be restricted to Farm Business Tenancies of at least 8 or more years and secure agreements under the Agricultural Holdings Act 1986.

The CLA position is that there is real concern that this will make short-term letting unattractive to landowners altogether, and they will seek other joint venture agreements instead. It is a big step for landlords who currently let for 3 or 4 years to suddenly let for 8 years. In many cases there are good reasons for letting for the short term (specialist cropping, new entrants, development, estate planning for future viable holdings etc). The use of break clauses is commonplace in Farm Business Tenancies and provides flexibility to the tenant too. There is a real risk that HMRC will have to start looking at a long list of exclusions and then the detail of individual agreements to ascertain how agricultural property relief is applied.

The consultation gives you an opportunity to comment on what you think of the proposal to limit agricultural property relief so that it only applies where land is let for a term of eight years or more. It would be helpful in the response for you to explain why it is not always practical of to grant longer term tenancies. If you rent land for shorter terms comments from a tenants perspective as to why that is preferable would demonstrate that the proposal is not necessarily in tenants interests.