

TILHILL FORESTRY

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# WOODLAND TAXATION GUIDE

The UK tax system provides valuable incentives to encourage investment in commercial forestry.

These, together with the basic provisions which are likely to be applicable to individual woodland owners, are set out in this guide.

The fundamental criteria for commercial woodlands is that they should be in the UK, or EEA, and 'managed on a commercial basis and with a view to the realisation of profits'.

### Summary of the UK tax provisions as they apply to commercial forestry

**Income and Corporation Tax:** There is no tax chargeable on income and profits arising from the occupation of commercial woodlands.

**Capital Gains Tax:** The increase in value which is attributable to standing or felled timber is free from CGT.

**Inheritance Tax:** After two years of ownership/occupation the value of a commercial woodland is excluded from IHT as business property, some woodland qualifies for Agricultural Property Relief instead.

**VAT:** VAT is charged on all services and many woodland owners register.

**Stamp Duty Land Tax:** Payable at varying rates on purchases over £150,000.

### References

|      |                                  |
|------|----------------------------------|
| FA   | Finance Act                      |
| TA   | Income and Corporation Taxes Act |
| IHTA | Inheritance Tax Act              |
| TCGA | Taxation of Chargeable Gains Act |
| VATA | Value Added Tax Act              |

### Tax Simplification

Annex N of The Office of Tax Simplification's Review of tax reliefs final report March 2011 considered the status of woodland taxation which is that (N.67), "From 15 March 1988 profits or gains arising from **commercial woodlands are outside the scope of corporation tax or income tax.**" The report concluded that (N.75), "As excluding commercial woodlands from tax is critical to controlling the risk of tax avoidance, we consider that **this relief should be retained.** In addition it is not possible to consider this relief in isolation from the rules that apply to commercial woodlands for both inheritance tax and capital gains tax."

### Income Tax for woodland owners

TA 1988 s.53(4)

1. An occupier of commercial woodlands will not be charged income tax on any income arising from such occupation (for example, standing timber sales), nor on the increase in value of the trees during ownership. However, rents and revenue receipts resulting from other activities – e.g. sporting rents – are taxable.

2. No income tax relief is available for the cost of assets used in forestry, nor any woodland expenditure, nor interest on loans for the purchase and or management of woodlands.

3. Grants for woodlands are not taxable, but grants which are considered to be a substitute for farming income, which is given up on a change of land use to forestry, are taxable.

4. If the land is predominantly occupied for farming and not commercial woodland, the receipts from timber sales may fall outside the income tax exemption for woodland income.

### Capital Gains Tax

TCGA 1992 s.250

1. The increase in value attributable to standing or felled timber is free from CGT.

2. Thus when a commercial woodland is sold, the proceeds of the sale in respect of standing timber are not subject to CGT and the proceeds are not brought into charge to income tax as stock in trade.

Note: the publication date is April 2016. For subsequent financial years you should check the threshold levels for the various taxes.

### TCGA 1992 s.38

3. Capital Gains Tax (CGT) is assessable on any net increase in value on the disposal of forestry land, excluding the crop, after deducting the expenses of purchase and sale and capital expenditure (for example permanent works on roads, fences drains etc.) incurred during occupation.

4. CGT is not payable in respect of disposals on death.

### TCGA 1992 s.35 and s.53

5. The base date for CGT is the date of acquisition with the acquisition cost being the base cost. For assets acquired prior to 31 March 1982 or acquisition date if later, that date is the base date. This means that all assets acquired before 31 March 1982, including land containing growing timber, are deemed to have been acquired, for CGT purposes, at their market value on 31 March 1982 and only gains arising after that date are subject to CGT. Furthermore, for companies only, there is a form of indexation to exclude from CGT the inflationary part of any post 31 March 1982 gains.

6. For 2013/2014 the first £10,900 (2012/2013 £10,600) of capital gains arising to any individual from his total realisation of assets is exempt from liability. As of 23 June 2010, any gains are taxed at a flat rate of 18% for basic rate tax payers and 28% for those with total income and taxable gains above the higher rate threshold. In some cases this rate can be significantly reduced through Entrepreneurs Relief charged at 10% on the first £10 million of chargeable gain over an individuals lifetime, subject to strict considerations.

### TCGA 1992 s.152 & s.158

7. If a person carrying on a trade disposes of relevant business assets and reinvests the proceeds in commercial forestry land (not the crop), in the period of twelve months before and three years after the sale, roll-over relief is available meaning that the gain on the disposal of business assets can be deferred until the forestry land is sold. If the full proceeds applicable to the business assets sold are not reinvested then the roll-over relief is reduced proportionally by the amount not reinvested.

8. Similarly roll-over relief is available in full to defer the gain arising on the sale of a commercial woodland if the proceeds of sale relating to the land (as distinct from the crop) are reinvested in any business assets within the

period of twelve months before and three years after the sale. If the full proceeds applicable to the land are not reinvested the roll-over relief is reduced proportionally by the amount not reinvested.

### TCGA 1992 s.165(9)

9. Hold-over relief on gifts of business assets is available where land containing commercial woodland is gifted. Thus if the appropriate election is made CGT arising when commercial woodlands are gifted is deferred until the gift is subsequently sold by the donee.

10. Woodlands which are not managed on a commercial basis are subject to the normal CGT rules for non-business assets.

## Inheritance Tax

### IHTA 1984 ss.1-4

1. The IHT threshold on which no tax is payable is frozen at £325,000 until 2017-2018. For estates valued over this threshold the rate of tax is 40% on death and 20% on lifetime transfers.

2. Inheritance Tax (IHT) is payable on certain lifetime transfers and on the value of one's estate on death.

3. Lifetime transfers to individuals, known as Potentially Exempt Transfers (PETs), do not give rise to an immediate tax charge but could become chargeable should the donor die within seven years of making such a transfer. These are tapered after four years.





#### **IHTA 1984 s.18(1 and 2)**

4. Transfers between spouses, if UK domiciled, or civil partners are exempt from tax. From 6 April 2013 gifts to UK non-domiciled spouses are subject to an exemption limit equal to the IHT threshold (£325,000 until 2017-18).

#### **Business Property**

##### **IHTA 1984 s.104-106 and 115**

5. If woodlands managed on a commercial basis have been owned for at least two years immediately preceding a transfer, business property relief will be available in respect of both PETs where the donor dies within seven years and also transfers on death. Proof of commerciality could be required by the Tax Office.

6. The effect of business property relief is that the value transferred is reduced by 100% in respect of both land and standing timber or plantations so that no inheritance tax liability ensues on that transfer.

#### **IHTA 1984 s.117**

7. With regard to PETs which become chargeable, the original property forming the gift, or qualifying replacement property, must still be owned by the donee at the date of the donor's death and the property concerned must still be eligible for business property relief at that date.

#### **IHTA 1984 s.227 and 229**

8. Should a liability arise due to a transfer within the two year qualifying period, as a result of death or otherwise, the donee should be able to pay any tax due over ten years in equal instalments.

#### **Deferment for non-commercial forestry, 'woodland relief'**

9. There is a special provision for transfers by individuals on death for the deferment of tax on timber growing in the UK which does not qualify for business property relief or agricultural property relief.

## IHTA 1984 s.125-130

10. An election to defer tax on growing timber may be made by the deceased's personal representatives within two years of death, provided that the deceased was beneficially entitled throughout the five years preceding death or became so entitled by gift or inheritance.

11. Where such an election has been accepted, various provisions may apply.

## IHTA 1984 s162A-C and s175A (Draft)

12. Finance Bill 2013 brings in provisions designed to ensure that a liability must be deducted from the asset on which it is secured. So where a liability is attributable to financing the acquisition or maintenance of property which qualifies for business property relief or woodland relief, it is to be matched with that property.

## Value Added Tax

### VATA 1994 Sch 1

1. Registration for VAT purposes is mandatory where taxable supplies exceed £90,000 in the previous 12 months.
2. Commercial woodlands are not exempt from registration and woodland sales can constitute a taxable supply.
3. Where the amount of taxable supplies is less than the mandatory registration limits, discretionary registration is possible if there will be future taxable supplies.
4. Voluntary registration by the occupiers of commercial woodlands is normally desirable, especially during the development of a plantation, as the effect of registration is that VAT incurred on expenditure in the woodlands may be recovered.
5. Only one VAT registration is allowed for each individual and if a person is registered already in connection with another trade or profession that VAT registration will then include the forestry operations.
6. On the sale or gift of a woodland by a registered trader the disposal of standing timber usually escapes a tax charge if the transfer is of the business as a going concern. Care must be taken if the transferor has opted for tax with respect to the land.

## Stamp Duty

In 2013, HMRC issued conflicting guidance regarding the charging of stamp-duty on growing timber. However, HMRC subsequently issued clarification to the effect that Stamp Duty is chargeable on standing timber. Only cut timber can be excluded.

Since April 2015 Scotland has had different arrangements from the rest of the UK.

## Scotland

In Scotland, the tax is now called Land and Buildings Transaction Tax (LBTT) and forestry is charged at the non-residential rate.

### LBTT rates in Scotland for forestry:

| Purchase Price             | LBTT Rate |
|----------------------------|-----------|
| Up to £150,000             | 0.00%     |
| Above £150,000 to £350,000 | 3.00%     |
| Above £350,000             | 4.50%     |

In Scotland, the charge is applied in progressive bands, in a similar way to income tax.

### Example

For a £465,000 forest LBTT is charged at;

- 0% for first £150,000
- 3% for the next £200,000 (i.e. £6,000)
- Then 4.5% for remaining £115,000 (i.e. £5,175)

This gives a total of £11,175.

## England, Wales and Northern Ireland

For the rest of the UK, the tax is called Stamp Duty Land Tax (SDLT) and is charged at the non-residential and mixed use land rate.

### SDLT rates for forestry in England, Wales and Northern Ireland from 1 April 2016:

| Purchase Price       | SDLT Rate |
|----------------------|-----------|
| Up to £150,000       | 0.00%     |
| £150,001 to £250,000 | 2.00%     |
| Over £250,000        | 5.00%     |

This is applied as progressive bands.

### Example

A £465,000 forest is charged at:

- 0% for first £150,000
- 2% for next £100,000 = £2,000
- 5% of remainder (£465,000 less £250,000 = £215,000) @ 5% = £10,750

This gives a total of £12,750.

Previously, the tax used single rates rather than progressive bands. However, in general the effect of the change is to reduce the tax for forests under £1m, but increase it for those over this price.



## The difference between Tax Planning and Tax Avoidance

*Tax planning* may be defined as an arrangement of one's financial affairs to take full advantage of all eligible tax exemptions, deductions, concessions, rebates and allowances permitted so that the tax burden is minimised. This is legal and commercial forestry can be used for this.

*Tax avoidance* is reducing or negating tax liability in legally permissible ways by structuring one's affairs. Any such transaction would be valid only if it has commercial substance and it is open for the tax authorities to go behind the transaction and examine the 'substance' and not merely the 'form'.

*Tax evasion* is the method or means by which the tax is illegally avoided through unacceptable means. It refers to a situation where a person tries to reduce his tax liability by deliberately suppressing the income or by inflating the expenditure, recording fictitious transactions etc. This is illegal.

## Terms of Use

This guide has been written by Tilhill Forestry for the use of Tilhill Forestry clients and their advisors. It is designed to inform readers regarding the tax position of commercial forestry in the UK. As such, it can be used to inform individuals in tax planning.

We have made enquiries to check the accuracy of this guide but remind users that this guide is *not definitive*.

Users should consult a qualified tax advisor on all matters affecting their own tax situation.

Tilhill Forestry does not offer tax advice. However, some aspects of our work, such as RICS Red Book Valuations can be used in tax calculations. In these circumstances Tilhill Forestry will comply with professional and legal standards to ensure that it does not assist tax evasion.

***This guide was last updated in April 2016 to take into account changes in Stamp Duty Land Tax.***





[www.tilhill.com](http://www.tilhill.com)

**Tilhill Forestry**

Kings Park House,  
Laurelhill,  
Stirling FK7 9NS  
Tel: 01786 435000  
Fax: 01786 435001