

Forestry In The Emissions Trading Scheme

In this article we summarise the obligations, entitlements and exemptions that will apply to farm forestry blocks planted both pre 1990 and post 1989. Any of our farming clients who have forestry blocks need to make some decisions and act now, as do our forestry clients.

Pre 1990

Introduction

Pre 1990 forest land is defined as land covered by forest species (either exotic or indigenous, including manuka and kanuka) on 31 December 1989 that remained in forest species, and was predominantly exotic forest species on 31 December 2007.

The current crop of trees is classified as pre 1990 forest because the land was covered by forest species on 31 December 1989. The critical factor is not the age of the current crop of trees; rather it is the status of the land on 31 December 1989.

Even land that was covered in manuka (scrub) in December 1989 and the manuka was cleared in 1991 and pine trees planted in 1992, the area qualifies (under the definition) as pre 1990 land forest. There are specific and important definitions of forest land, and deforestation that we will not cover in this article, however, these can be found on the MAF website www.maf.govt.nz

Obligations

When landowners deforest more than two hectares of pre 1990 forest land in any five year period,

they are mandatory participants in the ETS and incur liabilities for carbon emissions from those forests. The first five year period commenced 1 January 2008, and therefore covers the five calendar years 2008 to 2012 inclusive.

(There is an exemption available – see below).

Harvesting of pre 1990 forest, followed by replanting or natural regeneration within certain timeframes, is not considered to be deforestation and therefore does not incur carbon emissions liabilities.

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If the forest land owner (pre 1990 forest land) can see a situation where the forest will be harvested at some future date, and not replanted/allowed to regenerate, then they really need to do something now. There are two choices :

- **Exemptions**

There is a one-off opportunity where land owners hold less than 50 hectares of pre 1990 forest land. They can apply for an exemption from the ETS which allows the exempt land to be deforested (and the land use changed) at any time, without incurring deforestation liabilities under the Scheme. The exemption is permanent and runs with the land if it is sold. There is a deadline. Applications for a less than 50 hectare exemption **close on 30 September 2011.**

Consideration needs to be given whether to apply for an exemption.

Most hill country farm forest blocks tend to be on areas of land that were not suitable for farming and are likely to be replanted in pine trees after harvest. Any farmer in this situation should seriously look at applying for an allocation of New Zealand Units (NZU's).

NZU's are currently worth about \$20.00. As they are a tradeable unit, the dollar value will change based on the demand for units by carbon emitters and the supply of units that are available in the market.

- **Applying For An Allocation of NZU's**

The allocation of NZU's for pre 1990 forest land is a one-off allocation from the Government to partially compensate land owners for the potential loss in value of their forest land which is compulsorily dragged into the ETS.

Land owners can choose whether they will hold the NZU's to offset future deforestation liabilities (if any) or whether they will sell the units.

This allocation of NZU's is GST exempt and income tax free, and at current NZU prices is potentially worth up to about \$1,200/hectare. So a farmer with say 20 hectares of pre 1990 forest land could collect the allocation of units and convert them to about \$24,000 cash-tax free. There will be no future liability, provided the land is not deforested.

There are different levels of allocation depending on how long the land has been owned.

The deadline to apply for an allocation of NZU's is **30 November 2011.**

Post-1989

Introduction

Participation in the NZ ETS is voluntary for forest owners with post-1989 forest.

Post-1989 Forests are defined as forests established after 31 December 1989 (either exotic or indigenous) on land that was not forested on 1 January 1990.

Post 1989 forest land is eligible to earn NZUs for carbon sequestered in the forest from 1 January 2008,

or 1 January 2013 if registration is not completed prior to 31 December 2012. To generate and obtain NZUs from post-1989 forest land the forest owner (or forest right holder) must elect to 'opt-into' the NZ ETS.

If the forest owner does not opt in they are able to deforest their post 1989 forest land without any NZ ETS liabilities and have no obligation to participate in the NZ ETS. If Forest owners do not

register their post-1989 forest in the ETS, the change in carbon stocks defaults to the Crown.

Post-1989 forest owners who choose to opt-into the NZ ETS are referred to as 'voluntary participants'.

Benefits of becoming a Voluntary participant

The principal benefit is the ability to earn NZUs from the Government. Provided the forest

owner opts in before 31 December 2012, NZUs can be earned for the total carbon sequestered by the relevant forest between 2008 and 2012. If the forest owner registers after 31 December 2012, NZUs can only be earned for carbon sequestered in the period after 2013.

Liability

Post 1989 forest owners are also liable for any reduction in carbon stocks that occur between carbon accounting reports (every 5 years).

Such reductions may result from intentional harvesting, or from losses arising from acts of nature including fire and wind throw. Any liability is capped at the maximum NZUs that the participant (or previous owner) had previously received for any carbon stock increases.

Obligations

Voluntary Participants are required to complete emissions returns which quantify the change in carbon stocks in a forest.

Although annual returns are voluntary, a mandatory return is required once every 5 years. If the forest's total carbon stocks reduce the landowners are liable to surrender NZUs (or pay cash) to account for that. The liability is however capped at the amount of NZUs previously claimed for that area of forest land.

In addition notification must be made if any part of the forest area is sold or transferred to another party.

Taxation

Different tax treatments apply to emissions units which relate to post-1989 and pre-1990 forestry land.

Pre-1990

Emissions unit transactions relating to pre-1990 forestry land are generally treated as being on capital account, which means that no income tax liabilities arise, and no tax deductions are created by transactions in NZUs.

There is an exception if the business holds pre-1990 forest land on

revenue account (i.e. property developers and land dealers). Their ETS transactions will also be on revenue account (i.e. taxable).

Post-1989

Emission unit transactions relating to post-1989 forestry land are generally treated as being on revenue account. This means that taxable income arises and tax deductions are created as a result of these transactions. Timing rules apply to these and of specific note is that no taxable income arises on receipt of units which are allocated

by Government. However, the subsequent sale of any units will give rise to taxable income.

GST

The supply of NZUs is generally zero-rated for GST purposes. This means that NZUs are treated as being subject to GST for the purposes of measuring taxable supplies made, but the amount of GST charged is zero.

Summary – ETS

We recommend that affected farmers engage a forestry consultant (for a fee) to work through the process for them.

We have some clients who are performing this work who we can refer if you wish. Alternatively the MAF helpline 0800 254 628 will

arrange to send copies of guide books, forms etc, and they are now quite helpful with answers to a wide range of questions.

Employment law changes 1 April 2011

Changes to both the Holidays Act and the Employment Relations Act came into effect on 1 April 2011. These changes are intended to reduce compliance costs, increase business confidence in recruiting new staff as well as speed up the resolution of workplace disputes. The main changes include:



- Employees will be able to cash in one week of their four weeks' leave
- Employees who have irregular working hours and pay will now have their holiday, sick and bereavement leave calculated on an average daily pay basis
- Employers and employees will be able to agree to transfer taking a public holiday to another working day
- The minimum wage will increase from \$12.75 to \$13.00 from 1 April, while the training and new entrants' minimum wage will rise from \$10.20 to \$10.40, effective as of the same date
- The 90-day trial period is being extended to all employers (currently limited to those with less than 20 employees). From 1 April employers and employees can enter into an employment agreement which provides for a trial period of 90 days or less. During the trial period the employer can dismiss the employee without risking a personal grievance
- Employers will have to keep detailed personal files for each employee. These files must contain signed copies of employment agreements, other terms and conditions, handbooks, as well as any intended agreements (even where these have not been agreed to by the employee). These documents must be available to employees on request. Employers have until 1 July to get their files up to the new standard.
- Union representatives will need an employer's permission to enter the workplace
- Employers will be able to communicate with employees during collective bargaining
- Minimum requirements establishing a fair and reasonable dismissal process will be set out in the Act and employers will have a much clearer process to follow. This is great news for our employer clients, who can be fearful of dismissal processes being scrutinised for minor defects

For more information visit dol.govt.nz

Tax Talk

Company tax rates dropping

The company tax rate will reduce from 30% to 28% from the 2011/2012 income year (for most companies, 1 April 2011).

GST Simplification

Sales of land now zero rated

In the past, whether GST should be added or not to the sale of land, has sometimes been a complex matter. From 1 April 2011 these transactions will be zero rated, as long as the following apply:

- The purchaser declares in writing that the property is to be used for a GST activity, and
- The purchaser is GST registered



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