

FORESTRY AND THE EMISSIONS TRADING SCHEME- THE CHOICE OWNERS OF PRE-1990 FOREST LAND UNDER 50 HECTARES NEED TO MAKE.

The Emissions Trading Scheme is now in full effect in New Zealand.

The Climate Change Response Act 2002 separates forest land into two categories:

Pre-1990 forest land consists of forests planted in exotic species (such as Pinus Radiata) prior to 1 January 1990 and not deforested as at 31 December 2007; and

Post-1989 forest land consists of forests planted in either exotic or indigenous species on that was not forested on 1 January 1990.

Pre-1990 forest land -less than 50 hectares

If the size of the pre-1990 forest land was less than 50 hectares as at 1 September 2007, then the landowner has two choices:

1. Apply for an exemption from the Scheme if, at 1 September 2007, they owned less than 50 hectares of pre-1990 forest land in total; or
2. Apply for a free allocation of New Zealand Units as compensation for becoming a mandatory participant in the Scheme.

If the landowner does nothing it will automatically become a participant of the Scheme.

This means that the parcel of land will be permanently 'locked in' to forestry unless

the landowner is willing to pay the costs of deforesting (i.e. surrendering the units or

paying a fee to the government). We would advise land owners to carefully consider

the implications of becoming a participant to the Scheme.

If the landowner chooses to apply for an exemption, a notice will be placed on the title. The exemption is permanent and runs with the land if it is sold. The exemption cannot be traded or transferred to another area.

The deadline for applying for an exemption from the Scheme is **30 September 2011**.

Pre-1990 forest land- more than 50 hectares

If the size of the pre-1990 forest is 50 hectares or more then the landowner is automatically part of the Scheme, this means that if the land owner decides to permanently deforest their forest land they will need to either surrender sufficient units to the government or until 2012 pay a cash liability of \$25.00 per unit.

In this case, our best advice to the landowner would be to apply for the free allocation of New Zealand units. These units are given to the landowner as compensation for the liability that now attaches to the forests. These units will be the only units received by the landowner in relation to the parcel of land as this classification of forest land cannot generate emissions units.

The government will place a certain number of units into the landowner's account on the Emissions Unit Register. The landowner can then sell the units to other participants, or they can retain them in the event that they wish to permanently deforest the land at which time the landowner will then return the units back to the government to help cover the costs of deforesting.

The deadline for applying for a free allocation of units is **30 November 2011**.

Allocation of free units

If the landowner was the owner of the forest land on or before 31 October 2002, they will receive 60 free units per hectare of forest land.

If the land was transferred to the landowner after 31 October 2002, they will receive 39 free units per hectare of forest land. The government considers that anyone who purchased forest land after 31 October 2002 would have been aware of the proposal to impose costs for permanently deforesting forest land and therefore should not be entitled to the full 60 units.

We stress that it is important that land owners take action on either applying for an exemption or free allocation prior to the deadlines.

Our best advice for owners of pre-1990 forest land

If the forest land is more than 50 hectares, then the landowner is a mandatory participant of the Scheme and we would advise them to apply for the free allocation prior to 30 November 2011.

If the landowner owns less than 50 hectares then they will need to carefully consider the future use of the land.

If the landowner intends to keep the land in forestry for the foreseeable future then it may be a better option for them to apply for the free allocation of units. However, this option is risky as the landowner may face significant liabilities

(i.e. the costs may end up exceeding the free allocation) if they wish to permanently deforest the land in the future.

If the landowner intends to change the use of the land in the foreseeable future (e.g. for farming or property development) then we would advise the landowner to apply for an exemption so as to ensure they are free to do what they wish with the land.

Post 1989 forest land

Unlike pre-1990 forest land, post 1989 land is able to earn New Zealand Units for carbon sequestered in the forest from 1 January 2008. In order to generate and obtain the units, the landowner must 'opt-in' to the Scheme.

Unless the landowner 'opts-in', they are able to deforest their land without any liability under the Scheme. There is no obligation on the land owner to participate in the Scheme.

Conclusions

We strongly advise owners of pre-1990 forest land that is less than 50 hectares to seek professional advice as to the benefits and implications involved in the Scheme.

It is very important that they make a decision to either apply for an exemption or free allocation of units within the applicable deadlines. Owners who do nothing will be faced with mandatory participation in the Scheme.

Owners of post 1989 forest land should seek professional advice as to the benefits and implications of the Scheme before considering opting in.

We trust that this information has been useful to you. Please do not hesitate to contact us should you require any further information or should you wish to meet with us to consider these matters.