



3 November 2011

FORESTRY AND CARBON CREDITS

30 NOVEMBER 2011 DEADLINE – REGISTRATION FOR ALLOCATION OF CREDITS

30 November 2011 is an important date for owners of pre-1990 forest land who want to apply for a free allocation of carbon credits from the Government.

If you satisfy the definition of pre-1990 forest land you could get up to 60 NZU's per hectare of pre-1990 forest. Currently, NZU's are trading at around \$18-\$20 per unit. However, 30 November 2011 is approaching quickly! If you are considering applying for an allocation, we suggest you start the process immediately.

DO I HAVE A FOREST?

Even if you don't consider yourself to be a forester, you might fall under the Emissions Trading Scheme (ETS). Having one or more hectares of "forest land" on your land could impose significant liabilities on you in the future if you decide to deforest. So what is "forest land"?

'Forest land' is defined as an area of at least 1 hectare of forest that:

- Has forest species capable of reaching at least 5 metres in height (but excludes trees grown for the production of fruit, eg, orchards);
- Has canopy cover of at least 30%;
- Has an average width of at least 30 metres.

DO I HAVE PRE-1990 OR POST-1989 FOREST LAND?

This is where things start to get a bit more complicated. The following paragraphs only give a basic outline of the difference between pre-1990 and post-1989 forest land. Please contact us if you want to know more about the classification of your forest.

There are two very distinctive ETS regimes depending on whether you have pre-1990 or post-1989 forest. Essentially, if you have pre-1990 forest land then there are real disincentives against changing the use of the land (eg, from forest to grazing).

If you have post-1989 forest land you can elect whether to be in the regime or not. If you elect to join the regime you will get credits every year that your forest grows and collects carbon. However, you will have a liability when you come to fell the trees (regardless of whether you replant).

PRE-1990 FOREST

This scheme applies where 'forest land' existed prior to 1990. However, this does not mean that the same trees that existed at 31 December 1989 need to exist now. If you had an existing forest at 31 December 1989 (even if it was native) and felled and replanted that forest in, say, 1994 with exotics (eg, Pine) then you would probably have a pre-1990 forest even though the current crop was planted after 31 December 1989. The forest has continued over the years, by way of a new rotation of trees.

Owners of pre-1990 forest will have a carbon credit liability if they deforest. Deforest does not mean to merely fell the trees, but instead means to change the use of the land all together (eg, change it to grazing land). If you fell and then replant the current crop you probably won't have a liability.

So, for those pre-1990 farmers who intend on ultimately moving out of the forestry industry, the ETS scheme could impose quite a financial burden. The free allocation of carbon credits mentioned at the start of this article will not compensate you for the liability incurred at the time of deforestation.

It doesn't matter if you apply for the free allocation of credits or not. ***If you own pre-1990 forest land you will have a liability when you deforest.*** Therefore, it makes sense to apply for the free credits.

The number of free credits you can apply for this year depends on when you purchased the land. If you owned the land on or before 31 October 2002 then you may be entitled to as many as 60 credits per hectare. If you purchased the land after 31 October 2002 then you may only be entitled to 39 credits per hectare.

Carbon credits are a tradable commodity, and are just one type of carbon credit available on international markets. The person who owned the land on 20 July 2010 is eligible for the allocation.

While pre-1990 owners did have the opportunity to elect out of the scheme if they had less than 50 hectares of forest land, the deadline to elect out was 30 September 2011. For those foresters with small forests there is an option to avoid any deforestation liability by deforesting 2 hectares every five years. For most owners of forest land, this is not a realistic option.

POST-1989 FOREST

There is no obligation to join up to the ETS scheme if your forest was planted after 31 December 1989 (and was not a replanting of an existing forest). If you elect to join up to the ETS scheme you will not receive a one-off allocation of carbon credits like pre-1990 landowners, but you can receive carbon credits annually based on the variety and age of the forest as it grows.

As mentioned above, you will have a carbon credit liability every time you harvest the trees. This can be compared to the liability of a pre-1990 landowner who has a liability when they deforest (change of

land use). So, a post-1989 landowner will have cycles of receiving carbon credits as the forest grows, then a liability when they chop down the trees.

Post-1989 landowners will have the option of holding onto the carbon credits they receive or trading them. Post-1989 landowners who do not elect to be a part of the ETS scheme will not be able to receive annual carbon credits, but will not have a liability when the trees are felled.

Stu Barraclough is a Lawyer at Govett Quilliam with a particular interest in the Emissions Trading Scheme. If you have any questions regarding the scheme please feel free to contact Stu.



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