

The ETS is real - ask foresters

Since the Copenhagen Climate Conference, an air of rejection seems to have settled on businesses about the application of our Climate Change legislation. Some business leaders are lobbying hard for a delay in the implementation of the emission charges due on 1 July for the stationary energy, liquid fuels and heavy industry sectors.

We expect the start date to stay, but a review of the ETS next year could see a delay in the step up of the transitional arrangements for emitters if New Zealand's other major trading partners have not introduced their own greenhouse gas emission control schemes.

And foresters applaud the start date because they've been participants in the Scheme since 1 January 2008. The opportunities for doing good business in growing and supplying carbon credits are being assessed and sales are occurring. Likewise, the smarter emitters, who will pass the cost on to end users, are making their plans by budgeting to supply units or their equivalent at the \$25 or two-unit fixed price cap or buying units as part of their long term hedging programme.

Forestry divides into three main sectors, pre-1990 plantations of exotics, post 1989 plantations and the Permanent Forest Sink Initiative (PFSI). Until recently, the latter two sectors were the choices for foresters, either growing plantations or owning native bush blocks. However, the compensation allocation plan for pre-1990 forests is expected to be ready by 30th June. The Government has units to allocate to those foresters who apply in the 12 month application period from issue of the plan; 23 units per hectare for foresters who owned the land before 1 November 2002 are expected to issue fairly quickly after registration and some 15 units per hectare for land owned after that date.

Foresters with up to 50 hectares of pre-1990 forest who want to opt out of the scheme, and

its penalty provisions for deforestation, have until 1 July 2010 to submit their application to MAF.

Post-1989 foresters are being bombarded by forest managers and others seeking to amalgamate and fell carbon units earned since 1 January 2008. Forest credits can be sold on the international market without being affected by the "cap" applying to emitters. With sales at around \$20 per unit, an attractive cash flow option is developing.

Unfortunately, the pressure to register before 31 March for issue of credits this year caused a bureaucratic "log jam" and some applications missed the registration date despite being lodged well in advance.

The value of post-2008 carbon earnings can be quickly assessed by using MAFs "look up" tables, which assess the numbers based on location and species. The downside for post-1989 foresters who are taking the money now is that on harvesting of the trees the credits earned have to be replaced. It will be a fine point for many on whether to take advantage of the cash flow now and hope carbon unit values decline as the trees are harvested so that replacement cost is lower, or decide to keep the trees standing.

If an owner has opted into the PFSI then the covenant is to hold the trees for at least 50 years.

There will be further developments with forestry. Provided there is an international ETS regime after CP1 of Kyoto, UN committees are working on a proposal to allow "land use flexibility" or

offsetting of forest replanting and on a "harvest wood products" programme, recognising that wood harvested retains carbon. If these proceed the penalty regime for cutting down forests could be substantially mitigated.

While the ETS for forestry is now getting into full gear there are many legal questions that need to be addressed by a forester or landowner such as:

- Who owns the credits as between say a landowner and a forest rights owner?
- Who carries the deforestation or harvesting liabilities when forest land is sold or acquired?
- What special conditions should be included in agreements for sale or purchase of land, involving trees?
- What are the critical timing issues and the bureaucratic requirements to opt in (or out) of the Scheme?
- When does tax liability become an issue with carbon credits?
- How is "deforestation" judged given the three time periods offered in the Act?

These and many other questions need to be sorted out by getting good advice. Business needs to have its head around the responsibilities, the liabilities and the opportunities that this new business sector is providing.

If you need advice regarding these issues please contact us.

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