

Pre 1990 Forest Exemption

In the last two issues of Country-Wide we have talked about Pre-1990 forests under the Emissions Trading Scheme (ETS) and the allocation of New Zealand Units. In this issue we discuss the criteria and process for exempting out the ETS. Exempting out of the ETS has the benefit of not incurring liabilities should you ever wish to harvest that land and not replant.

The less than 50 hectares exemption is a one-off opportunity available to landowners to exempt pre-1990 forest land from the ETS. The area of forest land must be less than 50 hectares, and must have been owned on 1 September 2007 by a person who owned less than 50 hectares of pre-1990 forest land in total.

If the landowner on 1 September 2007 included a body corporate (for example, a company, limited partnership, incorporated society or Māori incorporation) then the interest of any “associated person” must also be counted and be less than 50 hectares. Landowners are associated persons where they are bodies corporate with substantially the same shareholders/members or under the same control.

How the less than 50 hectare exemption works

A notice of the exemption is placed on the land title. The exemption means that the exempt land can be deforested (the land use can be changed) at any time without incurring deforestation liabilities under the ETS. The exemption is permanent and runs with the land if it is sold. It cannot be traded or transferred to another area.

An NZEUR holding account is not required for exemption applications.

What is the value of an exemption?

Because exempt land can be deforested without incurring a liability to surrender NZUs, the value of the exemption is the value of the liability not incurred, or the NZUs “saved”. This can be determined from carbon stock look-up tables.

Exempt land can be valued at its highest and best use as it is exempt from the ETS rules.

Deadline for applications

Applications for a less than 50 hectare exemption close on 30 September 2011.

Who can apply

The landowner on 20 July 2010 is eligible to apply for the less than 50 hectares exemption. For pre-1990 forest land deforested between 1 January 2008 and 20 July 2010, the landowner at the date of deforestation is eligible to apply.

Where land has been transferred to new owners since 1 September 2007, the applicant must obtain the required statutory declaration from each person who owned the land on 1 September 2007 that they owned in total, on that date, less than 50 hectares of pre-1990 forest land.

Eligibility of the land

For land to be eligible for the less than 50 hectares exemption, the land must:

- be an area of pre-1990 forest land of less than 50 hectares; and
- have been owned on 1 September 2007 by a person or persons who, together with any associated persons, owned in total less than 50 hectares of pre-1990 forest land across all land titles.

That is, the total individual interests in pre-1990 forest land of each landowner on 1 September 2007 must have been less than 50 hectares. If any one landowner owned 50 hectares or more of pre-1990 forest land in total on 1 September 2007, then their interests make all the pre-1990 forest land they have interests in ineligible for the exemption.

You cannot have an exemption and an allocation of NZUs on the same piece of land.

Determining landowners' interests

Where land is held jointly by more than one person or entity, the total individual interest of each joint owner is determined as:

- for joint tenants (where the shares of joint owners listed on the land title are not specified) – the equal share of the total area of eligible pre-1990 forest land (total area divided by the number of joint owners) excluding the interest of any professional trustee as a joint tenant; or
- for tenants in common (where the shares of joint owners are specified on the land title) – the total area of eligible pre-1990 forest land multiplied by their proportionate share as specified on the land title.

Trusts and trustees

Where land is held in trust, the trustees are the legal owners and are considered to have the interests, not the beneficial owners. Trustees' interests are counted as equal shares.

A professional trustee is a person or entity whose business or profession includes acting as a trustee. The interest of a professional trustee is only excluded from counting ownership interests as a joint tenant. Otherwise, all of the interests of professional trustees are counted.

A person or entity may act as trustee on multiple trusts without being a professional trustee. In this case also, all their interests in any role as a trustee (or in any other capacity) are counted.

Summary

It may be advantageous for you to exempt out of the ETS for Pre-1990 forests if you wish to one day clear that land for something other than forestry and not incur the associated liabilities. For the land to be eligible the pre-1990 forest must be less than 50 ha and all owners have less than 50 ha of pre-1990 forestry estate (as of 1 September 2007). Applications for exemption close 30 September 2011.