



# LAND AND FOREST TRANSACTIONS AND THE EMISSIONS TRADING SCHEME

## TRANSACTIONS AND RESPONSIBILITIES OF PARTICIPANTS

There are five types of transaction for land registered in the Emissions Trading Scheme (ETS) that affect your participation. These are:

- land sale;
- assignment of a registered forestry right or registered lease;<sup>1</sup>
- creation of a registered forestry right or registered lease;
- expiry of a forestry right or lease;
- transmission.

Examples of these transactions are shown in the tables below.<sup>2</sup> A participant registered in the ETS is referred to as the “existing participant”. The “new participant” is the person to whom the post-1989 forest land or interest in that land is being transferred.

Existing participant	Entered into:	New participant
Landowner	Registered forestry right	Registered forestry right holder
Landowner	Registered lease	Registered leaseholder

Existing participant	Transfer of:	New participant
Landowner	Post-1989 forest land	New landowner
Registered forestry right holder	Registered forestry right	New forestry right holder
Registered leaseholder	Registered lease	New leaseholder

Existing participant	Expiration or termination of:	New participant
Registered forestry right holder	Registered forestry right	Landowner
Registered leaseholder	Registered lease	Landowner

Before completing a transaction, you need to establish:

- who the existing and new participants are; and
- the type of transaction.

Once this is clear you must follow the steps below for all transactions, except for an expiry or termination of a forestry right or lease.

### STEP 1: COMPLETE THE TRANSFER OF PARTICIPATION FORM

Within 20 working days of the date of any transfer both the existing and new participant must notify the Ministry for Primary Industries (MPI) of the transfer by submitting a Transfer of Participation (Transfer) form.

The form needs to be completed by both parties.

### STEP 2: SUBMIT AN EMISSIONS RETURN

The existing participant must complete and submit a Mandatory Emissions Return (Transmission) form. This return calculates any units to be issued to, or paid by, the existing participant. The calculation is made from the start of the current commitment period to 31 December of the year before the transfer (please see example below). The end date of the return period on the Mandatory Emissions Return (Transmission) form should be the date of transfer as shown on the Certificate of Title.

#### Example: Sale of land registered in the Emissions Trading Scheme

A landowner registered 50 hectares of *Pinus Radiata* in the Emissions Trading Scheme in 2014. On 27 June 2017 a land sale takes place. The return period recorded on the Mandatory Emissions Return (Transmission) is 1/01/2013 – 27/06/2017 (the start of the commitment period to the date of transfer).

When calculating the forest’s carbon stock changes the landowner should use the age of the trees in 2013 (the start of the period) and the age of the trees in 2017 (as the calculation is made to 31 December 2016).

Any changes in the carbon stock after the transfer date are the responsibility of the new participant.

<sup>1</sup> Examples of an assignment may refer to a piece of land being subleased and transmission may refer to land being inherited.

<sup>2</sup> Refer to Section 192 of CCRA for further information.

### THINGS TO CONSIDER WHEN BUYING LAND

When buying land with the intention to register it in the ETS and earn New Zealand Units (NZUs), buyers should investigate the history of the land to confirm it is eligible post-1989 forest land.<sup>3</sup> Buyers of land registered in the ETS should also be aware that:

- Purchase or sale transactions themselves do not affect the ETS registration.
- With the consent of the landowner, prospective buyers can request information from MPI about how many units have previously been issued for that land.
- If the land is not withdrawn from the ETS before the date of transfer then ETS participation and the unit balance (see below) transfers to the new participant.
- If post-1989 forest land registered in the ETS is transferred and then withdrawn from the ETS by the new participant, it is the new participant's responsibility to pay units to restore the unit balance to zero.
- If the existing participant withdraws the land before the land transfer is completed, it is the existing participant's responsibility to pay units to restore the unit balance to zero.
- If the existing participant has withdrawn land from the ETS, that land will not have ETS obligations for the new owner.

### UNDERSTANDING CARBON AREAS, RECORDS AND BALANCES

When transferring land or an interest in land that is registered in the ETS, careful consideration must be given to Carbon Accounting Areas (CAAs), Carbon Accounting Records (CARs) and unit balances.

#### CARBON ACCOUNTING AREA (CAA)

This is an area of post-1989 forest registered in the ETS. It must be at least 1 hectare in size.

#### CARBON ACCOUNTING RECORD (CAR)

This is a permanent record kept by MPI for each CAA. It records the change in carbon stocks over time through information contained in emissions returns. It records the number of units issued or paid for that CAA.

#### UNIT BALANCE

The unit balance is the current balance of units recorded in a CAR. The unit balance is important because:

- while the post-1989 forest land is registered in the

ETS, the unit balance stays with the land regardless of who the participant is;

- when a CAA is withdrawn from the ETS, a mandatory emissions return is required and the participant must pay the unit balance;
- when part of the land within a CAA is withdrawn from the ETS, a mandatory emissions return is required to bring the unit balance for that CAA up to date; the unit balance is then allocated proportionately between the part remaining and the part withdrawn. The participant must pay the unit balance of the part withdrawn;
- when a registered forestry right or registered lease expires while the forest land is still registered in the ETS, the unit balance and responsibility transfers automatically to the landowner as the new participant.

#### LIABILITY CAPS – A LIMIT ON THE NUMBER OF UNITS A PARTICIPANT MUST PAY

The number of units to be paid by a participant for a CAA (for example, due to deforestation) can never be more than the amount of units issued for that CAA.

Tables 1 and 2 provide examples of how the CAR, liability cap and unit balance work.

**Table 1: Example of unit balance and liability cap when forest is harvested**

Activity	Unit balance New Zealand Units (NZUs) Participant A
Participant A registers post-1989 forest land in the Emissions Trading Scheme (ETS)	Opening balance: 0
Year 1: emissions return completed and issue of NZUs	Opening balance: 0 Units received: +100 Unit balance: +100
Year 2: emissions return completed and issue of NZUs	Opening balance: +100 Units received: +100 Unit balance: +200
Year 3: emissions return completed and issue of NZUs	Opening balance: +200 Units received: +100 Unit balance: +300
Participant A harvests the forest. The mandatory emissions return shows liability to pay 500 units, however, only 300 NZUs were issued for this carbon accounting area. Participant A has to pay 300 units to meet their liability.	Opening balance: +300 Emissions return: -500 Units paid : -300 Closing balance (A): 0

<sup>3</sup> See the factsheet What is forest land in the Emissions Trading Scheme? for definitions of post-1989 forest land.

**Table 2: Example of unit balance and liability cap when forest is sold**

Activity	Participant A	Participant B
Participant A registers post-1989 forest land in the Emissions Trading Scheme (ETS)	Opening balance (A): 0	
<b>Year 1:</b> Emissions return completed and issue of New Zealand Units (NZUs)	Opening balance: 0 Units received: +100 Unit balance: +100	
<b>Year 2:</b> Emissions return completed and issue of NZUs	Opening balance: +100 Units received: +100 Unit balance: +200	
<b>Year 3:</b> Emissions return completed and issue of NZUs	Opening balance: +200 Units received: +100 Unit balance: +300	
Participant A sells the land to participant B. Participant A notifies MPI and completes a Mandatory Emissions Return (Transmission).	Opening balance: +300 Units received: +50 Closing balance: +350	
Participant B is the new participant. The unit balance goes with the land in the ETS. Participant B's opening balance = Participant A's closing balance.		Opening balance (B): +350
Emission return completed and issue of NZUs		Opening balance: +350 Units received: +150 Unit balance: +500
Participant B harvests the land, completes an emissions return and pays units.		Opening balance: +500 Units surrendered: -500 Closing balance (B): 0

Note that the 350 NZUs issued up to the date of transfer are retained by Participant A. Participant B has only been issued 150 NZUs and will have to buy an additional 350 units to meet the 500 units required to be paid after harvest.

## TERMINATION AND/OR EXPIRY OF FORESTRY RIGHTS OR LEASES

When a registered forestry right or registered lease expires or is terminated, the landowner automatically becomes the participant in the ETS. The unit balance transfers to the landowner with the same implications as with a sale of land shown in the example in table 2.

If the forest is harvested before the expiry date, a landowner who doesn't replant the land within four years of harvest or converts the land to another use, such as grazing, would have to withdraw from the ETS and pay the unit balance. If the forest is replanted either before or after expiry, the landowner is responsible for any ongoing emissions from the decay of harvesting residues.

Landowners who do not want to be ETS participants should seek professional advice on ways to protect themselves and limit the risk of becoming an unintended participant (for example, by requiring the post-1989 forest land to be removed from the ETS before the registered lease or registered forestry right expires).

When a registered forestry right or registered lease is terminated or expires, the following steps must be taken within 20 working days of the date of termination or expiry.

### STEP 1: COMPLETE THE TRANSFER OF PARTICIPATION (EXPIRY/TERMINATION) FORM

The existing participant must complete the Transfer of Participation (Expiry/Termination) form.

### STEP 2: COMPLETE THE EMISSIONS RETURN FORM

The existing participant must complete a Mandatory Emissions Return (Transmission) form. They are entitled to NZUs for an increase in the carbon stock and must pay units for any decrease in carbon stock. See above for further information on how to calculate this emissions return.

## PRE-1990 FOREST LAND

If the land to be sold or transferred is pre-1990 forest land<sup>4</sup> it is subject to ETS obligations if it is deforested, unless it has an exemption.

When a pre-1990 forest landowner is granted an exemption, or an allocation was issued for the land under the Forestry Allocation Plan, a notice is lodged against the certificate of title. These notices do not show the exact area affected but simply indicate that some or all of the land within that certificate of title contains pre-1990 forest land. Importantly, if there is no notice on a certificate of title this does not necessarily mean that the land or any part of it is not pre-1990 forest land.

### DEFORESTATION OF LAND BEING TRANSFERRED

The status of pre-1990 forest land that has been harvested or cleared and not re-established in forest should be confirmed:

- If the land was deforested before the transfer date, any ETS obligation to pay units for the deforestation lies with the person who owned the land when it was deforested; the person receiving the land is not receiving forest land and has no ETS obligations.
- If the land transferred is temporarily unstocked, the person receiving the land is receiving unstocked pre-1990 forest land and is liable for the deforestation if the land is not re-established in forest species within certain timeframes.

<sup>4</sup> See What is forest land in the Emissions Trading Scheme? for information on pre-1990 forest land.

Both parties to a land transfer should have a clear understanding of the land's ETS status.

### DEFORESTATION WITHOUT OBLIGATIONS

Deforestation of up to two hectares of pre-1990 forest land per landowner within any specific five-year period is allowed without ETS obligations. If a previous landowner deforested less than 2 hectares in any five-year period beginning 1 January 2008 and the land is sold, the new landowner can also deforest up to 2 hectares before the end of the same five-year period.

When an exemption is granted, for example a tree weed exemption, there are no obligations for deforesting the land.<sup>5</sup>

Other minor exemptions from deforestation obligations apply in relation to deforestation on forest edges and land affected by a natural event that permanently prevents it from being re-established in forest.<sup>6</sup>

<sup>5</sup> See Pre-1990 Tree Weed Exemptions under the Emissions Trading Scheme.

<sup>6</sup> See Deforestation: Definition and obligations under the Emissions Trading Scheme.

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