

TAXATION AND LAW AFFECTING PRIVATE FORESTRY IN NEW ZEALAND

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INTRODUCTION

This paper takes a broad view of the subject and there is some discussion of law restricting the sale or removal of indigenous forest on private land and the statutes affecting local body forestry. Where possible an historical approach has been adopted in the hope that this may help to explain some present-day anomalies and possibly add some interest to this rather specialized aspect of private forestry.

THE HISTORY OF CONTROL OVER FELLING IN NEW ZEALAND

Forestry is, of course, a use of land and before it can be practised effective and permanent control of the land is necessary, together with rights of ownership in produce of the land. A freehold title to rural land in New Zealand has always given the owner a very wide discretion in what he does with his land—or neglects to do with it—and pressure on the land in these islands has not yet reached the stage where the landowner is restricted and directed in how he uses his land as he is in some older countries.

In the early years of settlement, most of the land which passed into private ownership was forested and the new owners' main interest was to get rid of as much of the bush as possible and put the land down in grass. This desire of the owner was shared by the State and the extent of land clearing was regarded as the index of progress for a district. Maori land had (and still has) the same legal status as European freehold land and could be dealt with at the owners' discretion with the approval of Maori Land Boards or Courts. These statutory bodies, of course, directed their attention to the interests of the owner; they had no function in protecting the national interest.

Thus, the cutting and burning of indigenous forest on private land was subject to no legal control at all until a remarkable piece of legislation in 1918.

Sir Francis Bell

In 1918, the office of Commissioner of State Forests was separated for the first time from that of Minister of Lands and was taken over by the then Attorney-General, Sir Francis Dillon Bell. The new broom swept quickly, and the result was section 34 (6) of the War Legislation and Statute Law Amendment Act 1918. This section amended the State Forests Act 1908 and it was passed without any discussion in Parliament; Sir Francis Bell later explained that "there was no time".

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The new clause read as follows:

In addition to the powers conferred upon the Governor-General in Council by section fifteen of the principal Act, the Governor-General in Council may from time to time, by Order in Council, make regulations for limiting the export from New Zealand of timber, whether logs or sawn, and *prohibiting the sale of standing timber or the grant of licences to cut standing timber on public or private lands of any tenure except* subject to such conditions as may be prescribed.

In March, 1919, regulations were duly gazetted requiring a licence from the Governor-General to sell cutting rights or cut timber on private land. These regulations were not rigorously enforced, indeed there was no machinery for enforcing them. Their principal purpose seems to have been to prevent large sales of bush to Australian interests, although it is doubtful whether they achieved this.

There were those, however, who were affected by this 1918 legislation — the Maori forest owners. Maori-owned forest comprised the last large resource of timber not in public ownership and the Maori Land Court system was a handy way of policing sales. It is possible to trace a continuity from this 1918 wartime legislation through a number of statutes to clauses affecting the sale of standing timber in the Maori Affairs Act today, although the emphasis is now clearly on ensuring a fair deal for the Maori owners.

During the Second World War, the sale of timber cutting rights was again subject to control as part of the wartime economic controls under Emergency Regulations but these purely wartime measures lapsed soon after the war.

The Soil Conservation and Rivers Control Amendment Act 1959

Recent Legislation affecting the felling of indigenous forest (and possibly planted trees) is Part II of the Soil Conservation and Rivers Control Amendment Act 1959. This enactment enables the Soil Conservation and Rivers Control Council to prohibit any action "declared to be likely to facilitate soil erosion or floods or cause deposits in watercourses". This Act has been used to control felling on Maori-owned land of difficult topography in the Urewera country.

The position is therefore that there is today no control over the felling of forests (indigenous or exotic) except for the prevention of erosion.

ENCOURAGEMENT OF PLANTING

Although, in most parts of New Zealand, agricultural development has been associated with the felling and burning of bush, in the treeless districts settlers were well aware of the importance of establishing trees for shelter and timber supply. The early provincial governments, however, had little cash for encouraging planting and the early planting was, of necessity, unassisted. However, an interesting example of early legislation to encourage tree planting without the province having to find any cash is a Canterbury

Provincial ordinance passed in 1858. This ordinance provided that tenants in occupation of 10 acres or more were to be allowed to retain the value of trees planted by them.

The central government first took an interest in afforestation in 1871 and again the formula used avoided any actual pay out of cash. The Forest Trees Planting Encouragement Act of 1871 provided for a land grant of 2 acres for every 1 acre planted and established and healthy after two years. The grants were to be not less than 20 acres or more than 250 acres. In 1872, the Act was amended to provide for a "land order" of £4 for every acre planted and regulations were gazetted laying down the conditions of the grant and declaring the Act to be in force in the provinces of Canterbury, Nelson and Otago. Consequent on the abolition of the provinces, amending regulations were enacted in 1877 and the Act was declared to be in operation throughout the colony. Parliament again amended the Act in 1879 and the provisions were applied to local bodies who were also authorized to appropriate funds for tree planting.

The Forest Trees Planting Encouragement Act 1871 was repealed in 1885 when the first effective State Forests Act was passed and this marked the end of a period of limited encouragement to private forestry. Presumably it was thought that forestry would be adequately dealt with by the State.

COMPANY FORESTRY

The 1920's saw the great forestry boom in New Zealand, to which loose company legislation contributed not a little. Hundreds of thousands of acres were planted by afforestation companies financed by the sale of bonds. Many rash promises were made by the promoters of these companies and many small investors lured on by the prospect of early riches lost their money and augmented the commissions of itinerant bond salesmen. But the trees were planted and today we have a great industry and sound and prosperous companies.

Following this early planting spree, however, there was a disenchantment which has persisted and no new planting ventures have been financed by public issues of capital. This is not surprising as, considered in the cold light of economics, company afforestation under the existing tax structure is not attractive.

The Taxation of Forestry Companies

The forestry companies managing forests now earning income have their complaints about the incidence of taxation on their activities, which are referred to later, but the tax disincentives to a new company starting to plant a new forest from scratch would be much greater. In 1950, in a work entitled "Forest Taxation in Europe and New Zealand" (*N.Z. For. Serv. Inf. Series No. 11*), M. B. Grainger spelled out the damaging effects of our tax system on afforestation as an investment; there has been little progress since then.

Income Tax on New Afforestation Projects

A new afforestation company is faced with a long wait during which money must be available first for establishment and later for maintenance and silviculture. The usual practice has been to invest a substantial part of the capital to provide income for these essential purposes. However, the proceeds of these investments are taxed as income in the hands of the afforestation company, thus reducing the amount available for forestry purposes and adding to the costs of establishment. It should be borne in mind that this tax is levied years before the company as such makes any profit at all. The present rates of company income tax are:

- (a) On so much of the income as does not exceed £3,600 the rate of tax for every £1 is 2s. 6d. increased by 1/100d. for every £1 of so much of the income as does not exceed £3,600.
- (b) On so much of the income as exceeds £3,600 the rate of tax for every £1 is 8s. 6d.
Social security income tax is paid in addition at 1s. 6d. in each £1 of income.

Non-income Taxes

In addition to this burdensome incidence of income tax, there are three taxes not based on income which erode the companies' capital before the forest reaches the utilization stage, the Land Tax payable to the State, Rates payable to the county and the Annual Company Licence Duty. None of these taxes is high, but when they have to be met out of capital raised for a long-term investment such as forestry the consequences for the economics of the enterprise are most damaging.

A few brief notes on these non-income taxes are set out below for reference.

(a) *Land Tax*: Land tax is charged on the unimproved value of land. Recent rises in valuations have so increased tax as to make it a heavy burden, particularly on primary industry. A 50% rebate was therefore granted commencing from the last financial year. Rates of land tax from April 1, 1962, and *subject to rebate of 50%* in the assessment are as follows (on unimproved values):

| | <i>Rate of tax per £1</i> | | | | |
|-----------------------|---------------------------|-------|-------|-------|-----|
| Not exceeding £10,000 | | | | | 1d. |
| £10,000 to £15,000 | | | | | 2d. |
| £15,000 to £20,000 | | | | | 3d. |
| Over £20,000 | | | | | 4d. |

Exemption is £6,000 reducible by £1 for each £1 of excess, disappearing at £12,000. Mortgages may be deducted up to £10,000 and in excess of that in part up to £20,000.

(b) *Local Body Rates*: Local body rates of course vary from county to county, but the average figure for New Zealand approaches 2s. 6d. per acre. Forest land if it is poor land will, of course, pay less than this. It cannot be argued that land purchased by afforestation companies should be exempt from rates but, nevertheless, they

would constitute a serious drain on the capital of any new company until the forest becomes productive. In this connection it should be noted that in Scandinavia special procedures are used in the valuation of forest land for tax purposes.

(c) *Annual Company Licence Duty*: A company with share or stock capital cannot carry on business except in pursuance of an annual licence issued by the Registrar of Companies. The fee is 1s. 0d. per £100 of nominal capital with a maximum of £300 and a minimum of £1. Sawmills are exempt but not forestry companies.

Income Tax on Established Company Forests

When a company forest first reaches the utilization stage, the method of arriving at the company income is still discouraging to forestry as an investment as the tax authorities regard all expenditure on parts of the forest not yet in commercial production as a new investment not allowable against the income from other parts at the utilization stage. Present procedure is for the net expenditure incurred by forestry companies in growing trees to be capitalized each year and then to be claimed as a deduction when the trees are ultimately sold on the basis of the volume sold each year compared with the total estimated volume in the forest. As the first crop is cut out, however, the expenses of regeneration (if any) incurred by the original owner are allowed to be deducted annually from the current receipts.

FARM FORESTRY

Farm Forestry and Rating

Since the abandonment of the early efforts to encourage the planting of trees last century, many of the disincentives which have been referred to in discussing company forestry have applied in some measure to forestry on the farm. The legislature has, however, taken a more benevolent view of the farmers' lot and not only have most of the taxation problems been solved but some positive inducements have been provided.

As long ago as 1912, the value of planted trees was removed from the rating rolls. This was long before commercial forestry became important and the purpose was to encourage shelter and farm improvement planting. Whatever the original purpose, however, this provision remains important for all forestry in counties where rating is on the capital value.

Farm Forestry and Death Duties

A consideration which was often quoted as being a serious disincentive to farm forestry was the incidence of death duties on woodlots. Whatever may have been the facts about the undesirable effects of death duties, they certainly were often quoted as a reason for not planting trees. In his study referred to above, Mr Grainger urged that a tree crop should bear death duties only once but in 1960 trees were made completely exempt from death duties.

Farm Forestry and Income Tax

Until 1949, the Inland Revenue Department regarded all expenditure on the establishment of woodlots as in the nature of capital investment and not as a farm expense. In 1949, however, the Land and Income Tax Act was amended to allow farmers to claim as a deduction any expenditure incurred by the taxpayer to plant trees to provide shelter or to prevent erosion or otherwise for agricultural or pastoral purposes. This provision by implication excluded a purely commercial woodlot, but by and large it has been interpreted in a realistic way. This provision has, in effect, been extended by the Land and Income Tax Amendment Act 1962 as far as it applies to expenditure under a farm forestry agreement.

Although a farmer will not be able to claim as a deduction expenditure incurred in planting trees under a farm forestry agreement to the extent to which he is reimbursed by a loan under the agreement, he will be able to claim any expenditure in excess of the loan. A farmer will also be able to claim any interest payments or repayments of capital when they are made as a deduction from his income but income from the woodlot will, of course, be returnable.

One of the problems in utilizing a farm woodlot is the intermittent income received. In the absence of special legislation this would mean very high rates of tax in the year in which cutting takes place. However, since 1949 taxpayers have had the option of spreading the income over the next four succeeding years.

It seems fair to say that there is little in the taxation field for the farm forester to ask for so long as his forestry activities are within the scope of the Farm Forestry Act 1962.

The Forests Act 1949

Section 15 (2), (i) of the Forests Act 1949 authorized the Minister of Forests to "Advance moneys by way of grants, loans, subsidies or otherwise for the encouragement of tree planting and the establishment, protection, maintenance, and management of forests by persons, local authorities and companies".

This provision is still on the statute book but as yet Parliament has not voted any funds for use under this section. It is worth noting that it is a very wide section and if at any time Government decided on further assistance to private, company or local body forestry, legislation would probably not be necessary.

The Farm Forestry Act 1962

In the light of what has been said about the Forests Act 1949, it may be wondered why special legislation was necessary last year to implement the farm forestry scheme. The answer is to be found in the fact that the scheme is a loan scheme, and it was desired to secure the advances made against the land on which the woodlot is planted with as little disturbance as possible to normal farm financing.

The scheme is that the Minister of Forests will enter into an agreement with the farmer under which the Minister agrees to

make advances to the farmer to finance the planting and tending of farm woodlots in accordance with a plan which is part of the agreement. The agreement provides that simple interest is payable on the advances until the woodlot yields forest produce when the principal sum owing may be reviewed and reduced and the balance of the principal then becomes payable on a table mortgage basis.

A Farm Forestry Agreement can be registered against the title to the land on which the woodlot is planted and it then runs with the land. A Farm Forestry Agreement is not a mortgage and the registration of the agreement does not secure the advances against the land. However, in the event of repayments of interest or principal falling into arrears, a "certificate of charge" can be registered against the land. This will secure all amounts due or to become due and the charge will rank for priority from the date of registration of the agreement. Once a certificate of charge is registered, the Farm Forestry Agreement becomes very similar to a mortgage.

The Farm Forestry Act does not set out the detail of the amounts of loans or the arrangements for the repayment of them. These particulars are set out in the Farm Forestry Notice 1963 (published in the *Gazette* on February 21, 1963, page 243). This notice is issued by the Minister of Forests and can be revoked, varied or replaced at any time as experience dictates changes in the scheme.

As a matter of record, the scheme as prescribed in the notice referred to is set out below:

- (a) The minimum area of planting or tending in respect of which an advance will be granted is 5 acres.
- (b) The maximum area of planting or tending in respect of which an advance will be granted is 100 acres in any five-year period.
- (c) The maximum advance in respect of planting, with subsequent tending, will be £40 an acre and, in respect of tending of existing stands, £15 an acre.
- (d) Interest on advances will be charged at £5 per cent. per annum inclusive of an insurance charge and will be payable annually.
- (e) The owner or lessee will be required to enter into an agreement with the Minister and the repayment or remission in part of the amounts advanced will be in accordance with the agreement and the plan of operations which shall form part of the agreement.

LOCAL BODY FORESTRY

Both the Municipal Corporations Act and the Counties Act permit the local bodies they control to spend the ratepayers' money on planting trees, and the Electric Power Boards Act authorizes power boards to grow trees for the production of poles. However, some Local Acts provide further authority for forestry purposes.

There are at least two statutory boards representing a number of local authorities which have authority to carry on forestry—the Wellington City and Suburban Water Board and the Selwyn Plantation Board.

Some of the local Acts and the Wellington City and Suburban Water Supply Act 1926 require the local authority concerned to prepare working plans for the approval of the Minister of Forests but there is no uniformity in this provision.

CONCLUSION

Recent years have seen great changes in the law affecting farm forestry, and, by and large, the farmer now has every incentive to establish woodlots. Similar changes have not taken place in the law regarding company forestry but most company forests are now at the utilization stage where the burdens of rates and taxes are less heavy. However, if further afforestation by companies is desired in the national interest, some changes in tax procedures and other incentives will be needed.

The present state of the law affecting private forestry in New Zealand is simple and is mainly directed to providing incentives at least to the farm forester. In older countries the forest laws are more complex and are restrictive and regulatory as well as providing some incentives. When one looks at these overseas forestry laws and at our own maze of statutes on agricultural subjects, one hopes that we can keep our forest legislation in its present relatively simple form.