

FEATURING

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LOCKFinance



Word from the GM

As this is our first correspondence for 2014 I should say Happy New Year although we are already at the end of the third month of the year. I can see that this year will be a very busy one with the level of enquiry that we are already

receiving. I hope that you all are also experiencing what seems to be a general lift in the market.

Before I get into the "Business stuff" I thought I would congratulate Brendon McCullum on his NZ Test Batting record. What a great Captains knock, I think he is showing a "follow me" leadership quality that the NZ cricket team is thriving under. It certainly made writing my comments a bit more exciting flicking between my "Word document" and "Cricinfo" as he was scoring his runs.

Leadership is certainly one of the major qualities that we all need to be mindful of in whatever role we may be in within our organisations. This is based on a positive attitude. Talking to a lot of Accountants and Bankers they all seem to be very positive about how 2014 will pan out.

However there will still be a reluctance by the Bankers to write all of the deals that businesses will be requiring. So what will happen in those situations? Where will those clients of yours get their funding?

Here are just a couple of comments from our industry:

A February media release from the Debtor & Invoice Finance Association of Australia & New Zealand has advised that the Debtor Finance market witnessed strong growth in the 2013 calendar year.

Their research advised the 3 main benefits given for this growth were:

- The freeing of cash within 48 hours allowing businesses to accelerate growth.
- Utilizing improved cashflow to obtain early settlement discounts from suppliers.
- Reduction in management time spent on chasing slower payers (under a factoring arrangement) allowing more time spent on the business.

The two largest industry segments that make up 55% of the total business are the Wholesale trade 35% and Manufacturing 20%.

The above benefits show that a number of business owners are looking at more than just a set overdraft limit (which is very helpful). They are looking at a flexible funding facility and the speed of access to those funds together with the most appropriate use of their time. A traditional Bank Overdraft or Term Loan may not be the only option these days.

After four or five newsletters now where we have tried to provide some useful and relevant business related articles it would be good to hear from you as to what you would like to read about or see included in our future newsletters.

Craig Brown
General Manager Lending

New Mixed Use Assets Rules

New mixed use assets rules have come into effect for Income Tax and Goods and Services Tax ("GST") purposes.

Who do the new rules apply to?

The rules apply to land, (including improvements), boats, and aircraft. The general rules apply to a natural person, a trustee, and a close company. A close company is a company where there are 5 or fewer natural persons or trustees, the total of whose voting or market value interests in the company is more than 50% (treating all natural persons or trustees associated at the time as 1 natural person or trustee).

The rules apply when the asset in question is used by the person in the income year:

- Partly to derive income, and
- Partly for private use, and
- Must not be in use for at least 62 days in the income year, or when the asset is used only on working days for at least 62 working days in the income year.

Previously, where an asset was available for business use (and actively marketed as such) but not used, the period of inactivity was treated as business use. Only when the asset was actually used privately was an adjustment required. For many significant assets, such as land, boats and aircraft, the amount of "business" use may have been negligible yet because it was "available" for business use, the private use adjustments were insignificant.

The new rules now focus on actual income earning use rather than availability for use. The main purpose of the new rules is to more fairly apportion costs incurred in relation to assets where the use of the assets is split between business and private use.

Motor vehicles are specifically excluded from the application of the mixed use assets rules. Mixed use of motor vehicles will continue to be dealt with through the FBT regime, apportioned expenses or reimbursement as each case warrants.

When do the rules apply from?

For income tax, the rules have effect from 1 April 2013 for land and improvements, and 1 April 2014 for boats and aircraft. For GST, where the mixed use asset is land or improvements, the rules apply from 17 July 2013. For boats and aircraft, the rules apply from 1 April 2014.

What is the impact of the rules?

Once the asset is subject to the rules, the rules limit the deduction that is available for income tax purposes for all mixed use expenses incurred in relation to the asset.

The amount of GST that can be claimed on the purchase of the asset and the expenses will also be limited.

Example 1

Graham owns a holiday home that is rented out for short-term stays but is also used by him and his family for nine weeks of the year in total (usually on weekends but also over the school holidays). He has rented the home out for a total of 10 weeks of the year. The rest of the time the house is vacant, but is available for rent.

The mixed use assets rules will apply to Graham. It does not matter that the home may have been available for business use during the remaining 232 days. It was not actually used during that time.

Example 2

Graham determines that he has incurred total expenditure of \$50,000 throughout the income year in relation to the property. Of that expenditure, \$15,000 relates specifically to the period of use by people renting it, and \$5,000 relates to the period of use by Graham and his family. The remaining \$30,000 of expenditure, being interest, rates and insurance relates to a combination of business use, private use and the period when the property is not being used. Therefore, apportionment must be undertaken.

Adopting the relevant formula, the following result is obtained:

$$\$30,000 \times 70 / (70 + 63) = \$15,789$$

The deduction that Graham will be allowed for income tax will be \$15,000 + \$15,789 = \$30,789. The remaining \$19,211 is non-deductible. The deduction may be further reduced in some circumstances.

What should I do now?

If you have a mixed use asset which is likely to be subject to the new rules, either from an income tax or GST perspective we recommend that you talk to a specialist taxation advisor to ensure you fully understand the implications of the new rules on your tax position. For some taxpayers the impact is negligible, but for others, the impact can be significant.

Tony Marshall

Principal – Tax Advisory
Crowe Horwath

<http://www.crowehorwath.net/nz/>



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How driven are you?

In asking this question, I'm not referring to the quotient of energy that you are committing on a daily basis to be successful in your business. I am however referring to your commitment to maximising the value of customer data within your business and thereafter being data driven.

We would all agree that the most valuable asset in our businesses are our customers and therefore the data that represents them. However from your interaction with businesses that you deal with, how evident is it that you are recognised and valued as a customer or potential customer? While no one in business would dispute the importance of quality customer data, the acknowledgement of its importance and the profitable execution of database marketing initiatives is a different story.

Historically business structures dominated by centralized IT departments, overly 'creative' marketing departments, coupled with the lack of a coherent business wide customer retention and acquisition strategy has limited the percentage of budget most companies allocate to reinforcing the relationship with their most valuable asset - their potential, current or potentially forever customer who's life time value to your business may surprise you.



The growth of digital technology, the transparency of competitive offerings and increased digital and data literacy means that what was once too hard, not glamorous enough, or just considered unimportant is now front and center of progressive business thinking. Customer interaction and feedback is now possible, cost effective and essential for even the smallest of companies.

In both product and service industries, parity is frequently the norm. This parity has become even more transparent to customers with the help of Mr Google. Therefore, smart marketers are now putting a greater emphasis on all aspects of the customer experience. However, this effort is largely wasted if the data emanating from every communication and every transaction is not appropriately captured, managed and leveraged.

In my spare time, I lecture MBA students on Integrated Marketing and one of the questions I am frequently asked is what is the difference between junk mail and direct mail (think the real thing or the email version or catalog in this context). The answer is simple. Whether or not this information is relevant to me determines its junk or non junk status without a commitment to data analysis, customer profiling and a real commitment to putting the customer first all direct marketing is junk.

The affordability of databases and CRM packages suitable for every level of business means that technology is no longer a barrier and with the appropriate integration of the digital component into the marketing mix with other tried and proven marketing initiatives means that being data driven is no longer a sentence but rather a commitment to the short and long term health of every business in New Zealand.

Finally remember the proverb – “What gets measured gets done”. In a marketing context how does your business measure up?

John Dawson

Managing Director
COO'EE
www.cooee.co.nz



Financial commentary

Good news about economic growth prospects keeps rolling in, but this increases the upside risk to interest rates and the exchange rate, while the diverse factors at work mean there will be some major differences in regional economic growth.

There is plenty to celebrate: surging net migration has doubled population growth to close to 1.5% per annum; despite the bank lending restrictions having a reasonably negative impact on the housing market, consumer confidence has improved; employment growth is strong; Canterbury rebuilding continues to pick up; especially dairy farm incomes are booming and this will fuel off-farm spending; and global growth prospects have improved.

Aided by the post-drought rebound in agricultural production, economic growth could hit 4.5% by mid-year. The stronger economic growth will further reduce the fiscal deficit and put the government in a better position to justify some handouts in the 15 May Budget.

The economic forecasters are paying little attention to the government housing initiatives that have the potential to significantly boost residential building over the next several years in the nine areas of the country earmarked for housing accords by the Minister of Finance.

Unfortunately, just when prospects for the majority of firms are looking really good, the threat of interest rate increases arrives.

The Reserve Bank's focus has been on cooling house price inflation. But with leading indicators of employment growth surging (see the chart) and little spare capacity in the labour market, labour cost inflation threats aren't far away and will become a focus for the RB.

The RB incorrectly predicted upside in interest rates over the last several years but may finally be on the money in predicting around 2% upside in the cheapest available mortgage interest rates over the next two years.

For the parts of the country that won't benefit from housing accords boosting residential building, the threat of significant upside in interest rates is particularly concerning.

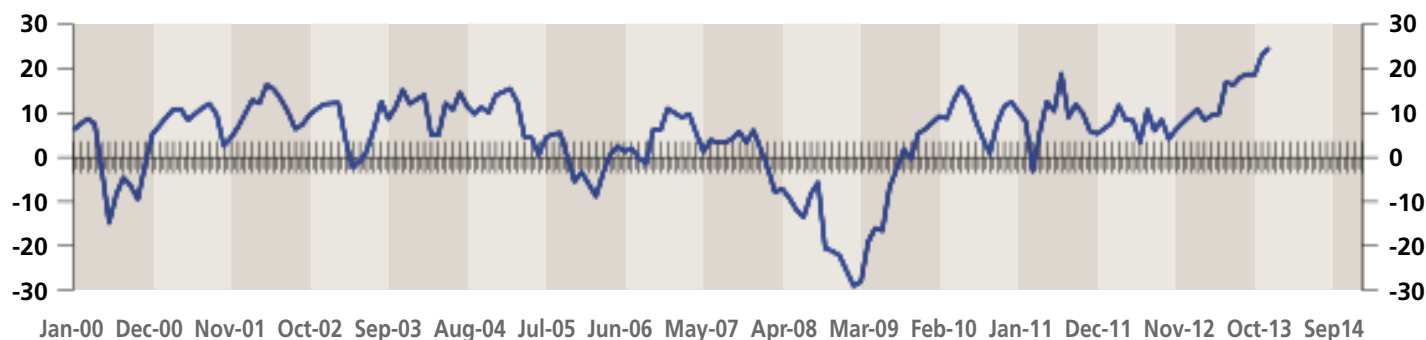
The prospects of robust economic growth and interest rate increases generally results in upside in the exchange rate, so for exporters and firms competing against imports international competitiveness could become more of a challenge.

Rodney Dickens

SRA

www.sra.co.nz

The chart shows the ANZ survey of employment intentions that is measured as a net percentage positive or negative reading.



New Zealand Directors & Officers Feel The Heat

If you have been giving thought lately to the risks you face as a director or officer you are right to do so – there are unlikely to be many people who have not in present conditions. It is no secret that the legal environment facing directors and officers in New Zealand has never been more challenging: one only has to look at headlines over recent times, e.g. prosecutions, investigations, inquiries, regulatory civil action, not to mention the Steigrad (Bridgecorp) High Court and now Supreme Court decisions overturning decades of liability insurance practice and the growth of compliance requirements to know that things are becoming more complex and that the performance of boards and senior management is under scrutiny here like never before. Consider some of the changes already implemented, afoot or being evaluated in the regulatory space alone:

- financial services sector overhaul;
- revamp of securities law;
- impending and proposed changes to the health and safety regime following on-going concern (focused by high profile deaths in mining, construction and forestry) regarding NZ's high level of worker fatalities and serious harm incidents. A new regulator (Worksafe) is already with us
- cartel conduct under the spotlight – potential for criminalisation under new Bill;
- new anti-bribery, corruption and money laundering legislation in force with respect to certain businesses set to widen to include other industries;
- proposed consumer law reform;
- proposed amendments to privacy legislation - many of which reflect the digital perils businesses now navigate on a daily basis;
- changes to national environmental standards.

Legal action being brought against the former directors of the failed finance companies and certain other well-known corporate failures has captured headlines in the last few years. The presence of litigation funding firms in the

New Zealand market working in conjunction with local lawyers also represents a potentially worrying development for New Zealand directors as it signals we may be one step closer to the far more litigious environment that exists in certain other places in the world, including across the Tasman. Whilst our legal system does not yet support the volume and size of class actions that feature in other jurisdictions, these could become more common over time if public attitudes to litigation continue to change, litigation funders raise their profile and the government continues to have a desire to review all manner of aspects of regulation.

At a time when company directors and officers need to be confident that the liability insurance arranged to respond to their personal liability exposures will work for them if and when they need it, it seems that many directors and officers take only limited comfort from their policies despite being increasingly concerned regarding their personal exposures.

In a recent survey of New Zealand directors conducted by Marsh in partnership with the Institute of Directors, participants ranked their greatest concerns in terms of personal risk as:

- Reputational Risk;
- Personal liability for a legislative breach;
- Loss of personal assets if found liable.

When it came to Directors and Officers Liability insurance, the underlying concern that came through from respondents in their top four responses was lack of certainty that the insurance cover would assist them if and when they ever needed to call on the insurance. The cost of the cover came in at number five.

So what can you do to maximise the protection afforded by personal liability policies like Directors and Officers Liability insurance?

1. Check the company constitution for indemnity and insurance provisions.
2. Seek a deed of indemnity from your company and have it reviewed by legal counsel acting on your behalf.
3. Educate yourself regarding the scope of any insurance covering your exposures, particularly your Directors and Officers Liability policy (including D & O Defence Costs) as this type of policy (often in conjunction with Statutory Liability insurance) is the “core” of your insurance cover for personal liability. Ways to do this include:
 - requesting a copy of the insurance policy/ies that affect you and taking the time to read them;

- be aware that policies like Directors and Officers Liability insurance can (and often do) provide a mix of balance sheet protection to the company and personal liability cover for insured persons. This makes it very important to understand the structure of your program and where it falls in the spectrum of potential permutations of balance sheet vs individual protection. Suitable Limits of Liability are also critical.
 - Seek clarity regarding how the cover will respond when the interests of the corporate insured and natural persons are in conflict.
 - Take particular interest in the pre-renewal procedure for any insurance that is arranged to cover your liability exposures as you have personal obligations of disclosure to potential insurers (whether they are a new insurer or your current one).
 - Be cautious about any proposed change in insurer at renewal that does not highlight any risks associated with the transfer as well as potential positives.
 - Ask your insurance broker to explain what expertise they have in negotiating this kind of contract and if appropriate, have them (not just the underwriters) present to you for a “one on one” explanation of cover. Take the opportunity to ask questions.
 - Pay particular attention to any Steigrad/Bridgecorp solutions (whereby the limit for defence costs has been separated from the limit applicable for third party compensation) to provide certainty of access in the event of a statutory charge.
 - If you have not heard of Bridgecorp/Steigrad and/or do not know how your liability policies might be affected you need to take urgent attention. Failure to have separated defence costs cover in some form could mean that you have no ability to access defence costs cover if the policy has been frozen by a statutory charge.
4. Understand your obligations under any deed or insurance policy. You will need to comply in order to maximise your entitlement to benefit from them.
 5. Regularly review your insurance and deed of indemnity – do it before you need to call on them!

In summary, whilst no director or officer ever plans or hopes to call on a company deed or insurance policy; it has never been more important to take the time to understand their operation, benefits and limitations just in case. Risk and the threat of personal liability from legal action will continue to evolve – your insurance and indemnity arrangements must do the same.

For more information about this topic please contact Marsh at www.marsh.co.nz or call 0800 627 744 and ask to speak with Heidi Axtell or Xavier Marguinaud.

Disclaimer: Statements concerning legal matters should be understood to be general observations based solely on our experience as insurance brokers and risk consultants and should not be relied upon as legal advice, which we are not authorised to provide. All such matters should be reviewed with your own qualified legal advisors.

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MARSH

S.H. Lock (NZ) Limited
 Level 14, Tower Centre
 45 Queen Street, Auckland 1010
 PO Box 106 054
 Auckland 1143
 Phone: 09 375 8500
 Fax: 09 375 8529

0800 ASK LOCK