



# NEWSLETTER

Issue 4  
November 2012 – January 2013

## INSIDE THIS EDITION

**BUSINESS SURVEY REVEALS ADAPTATION TO BE THE NEW NORM.....1**

**PROPERTY DEVELOPER WINS GST CASE.....2**

**TAX UPDATE.....3**

**MANAGING THE MILLENNIALS .....3**

**SNIPPETS.....4**

*Qantas loses battle over GST on missed flights ....4*

*IRS rewards information on tax evasion .....4*

## BUSINESS SURVEY REVEALS ADAPTATION TO BE THE NEW NORM

The ANZ 2012 Privately-Owned Business Barometer was released in June this year and is considered the most in-depth study of the private business sector in New Zealand. This year’s survey had input from about 4,800 business owners, most of whom were smaller business owners (with annual turnover of less than \$1 million). Outlined below are some of the key concerns and trends business owners in the private business sector are currently facing.

Generally, businesses have now reached a point where they are ready to adapt and are optimistic about future growth, with 88% of respondents expecting growth in the next 12 months and 96% expecting growth in the next three years.



*All information in this newsletter is to the best of the authors' knowledge true and accurate. No liability is assumed by the authors, or publishers, for any losses suffered by any person relying directly or indirectly upon this newsletter. It is recommended that clients should consult a senior representative of the firm before acting upon this information.*

**Red Tape** - for most small businesses, compliance obligations are completed by the owner because they cannot afford to pay someone to do these for them. This was reflected with 23% of small businesses citing government regulations and procedures as an issue of concern. One survey respondent stated:



*“Every 11 days one government department or another wants you to work something out, fill out a form, pay money and you get penalised if it’s late. On top of this there are a lot of random requests for information from IRD, social welfare, ACC etc. for information that is already available through the Government. Every year Statistics NZ also wants forms filled out for information that is already available. This takes an enormous amount of time and effort and is very frustrating....”.*

**Skilled Staff** - access to and retention of skilled staff was identified as an issue by respondents. While most want to hire young people and train them, the cost involved is not realistic for businesses that are already under financial strain. What’s more, those that manage to get skilled staff onboard have competition from

overseas labour markets luring their key employees away with the prospect of higher salaries. A solution suggested by some survey respondents is to encourage trade training and trade apprenticeships as a way to equip young people with the skills businesses need.

**Technology** - the use of technology depends largely on the sector in which the business operates. The hospitality, tourism, rental and realty sectors tend to use more technology than, for example, the agriculture and construction sectors. With technology becoming increasingly affordable, businesses have started to explore, embrace and utilise technologies such as cloud computing, social media, and tablet devices to improve efficiencies and give staff a flexible working environment.

**Planning** - planning is important to business owners, with 65% of businesses reporting that they have some kind of formalised plan. The survey indicates that while there is a desire to plan, for some there is uncertainty as to where to start. For those without a plan,

accountants, business advisors, business mentors and coaches can make a difference by providing useful insights.

**Advisors** - around half of all business owners surveyed indicated that they have used an advisor in the last 12 months. As businesses adapt to accommodate growth so have their business advisors. The survey indicates business owners are looking to advisors for different thinking and strategic planning.

In summary, the survey results reflect that a slow economic environment is now the new “norm”. However, business has adjusted by embracing opportunities for maximising efficiencies and new avenues for growth - crystallising a need for advisors who have the skills to help them do so. The downside is the Government doesn’t appear to have adapted; as the cost of “red tape” still remains. For further details, please visit [www.anz.co.nz/commercial-institutional/banking-business/private-business-sector/](http://www.anz.co.nz/commercial-institutional/banking-business/private-business-sector/), and click on the “ANZ Privately-Owned Business Barometer” link.

## PROPERTY DEVELOPER WINS GST CASE

Whether a person can register for and recover GST from the IRD is a question faced at the start of any taxable activity. The answer to the question is typically a relatively straight forward “yes”, however the IRD has been known to take a contrary view. One such situation recently made its way through the Taxation Review Authority (TRA), with the decision in favour of the taxpayer. In reaching its decision, the TRA made some very helpful comments along the way.

From a technical perspective, GST applies to a “taxable activity”, which is defined as an activity carried on continuously or regularly, involving the supply of goods and services for consideration. To the extent goods or services are acquired for making taxable supplies, the GST incurred can be recovered. If the IRD considers that a taxpayer is not conducting the activity on a continuous or regular basis, it can take the view that the taxpayer doesn’t qualify for registration or the refund. The GST Act defines anything done in the beginning or ending of the taxable activity to be part of the normal trading of the business. There is no capital/revenue distinction as exists for income tax. This allows GST incurred right through the “set-up” phase to be recoverable. The frustrating point for taxpayers is that previous court decisions require that a taxable activity must exist before the preparatory steps can be added to it and the GST incurred through that stage recovered.

The dispute before the TRA related to whether or not a property developer was entitled to a GST refund on costs associated with a development project. The developer intended to buy run-down properties, renovate them and on-sell them for a profit and to this end had purchased and claimed the GST on a property costing \$8.7m. Due to the downturn in the

property market and lack of working capital, the project was abandoned and the property sold back to the original vendor. The IRD refused the GST refund as it believed that the taxpayer’s activity was insufficient to constitute a taxable activity. It classed the developer’s activities as “preparatory steps, which realistically, were never going to amount to a taxable activity”.

The TRA referred to the activity required to select and finance the purchase of the property as being not merely preparatory steps, but instead the actual commencement of the activity. In the TRA’s view the developer was engaged in a continuous activity by purchasing the property, setting up the ownership structure, dedicating management time, having a detailed business plan, dealing with real estate agents, completing surveying, subdivisional, accounting, marketing, valuations, insurance, legal work, and by carrying out some refurbishment. The TRA considered that these activities were more than just preparatory or preliminary activities.

Although the case was in the context of property development, the judgement could be applied to other situations in which the IRD is disputing whether a taxable activity has commenced. These disputes are occurring more regularly of late, as the IRD appears to be taking a more hardline approach to GST refunds. From a practical perspective, taxpayers can reduce the risk of being denied a GST refund by diligently recording and keeping records of all work undertaken on a project; particularly preliminary work.



## TAX UPDATE

The Government has announced a number of tax changes in the past few months, resulting in media releases and draft legislation being tabled in Parliament. The draft legislation includes:

- Rules to limit deductions for land, such as the Kiwi bach, and assets costing more than \$50,000 (e.g. yachts) that are used both personally and to derive income. The changes don't come as a surprise, as they were first signalled in the Budget and have gone through a public consultation process. Although one element of the draft legislation that was not expected, is that of 'ring-fencing' losses in certain circumstances, i.e. some losses incurred from a "mixed-use" asset will only be able to be offset against income derived from the asset in future years, as opposed to being offset against other income of the taxpayer.
- Proposed changes will allow non-resident businesses to register for GST and claim input tax deductions; subject to meeting certain registration criteria. In general, if a GST registered taxpayer incurs GST on the acquisition of a good or service to make taxable supplies in New Zealand, that taxpayer can deduct that GST in their GST return. In contrast, non-residents are currently often unable to recover New Zealand GST because they don't sell goods or services in New Zealand, which hurts New Zealand's international competitiveness.



- When depreciation loading was removed from assets acquired after 20 May 2010, the rules relating to the agricultural and horticultural industries were overlooked. To correct the oversight, the amortisation rates that apply to taxpayers in those industries will be reduced for assets acquired from 13 September 2012.

Building on an Officials' Issues Paper released in April 2012 regarding the tax treatment of salary trade-offs, the Revenue Minister announced on 3 October 2012 that the provision of car parks on an employer's premises will be subject to FBT (currently exempt). FBT would only apply to car parks located in the Auckland and Wellington CBDs. Exclusions will also apply for after-hours shift work and disabled car parks. The changes are to apply from 1 April 2014.

Another Officials' Issues Paper released in July this year proposed to charge tax on lease inducement payments (paid by landlords to entice potential tenants to enter into a lease). These payments are generally non-taxable to the tenant and deductible to the landlord. The proposal sparked heated debate because it was made without warning and was to be effective from the date it was announced. However, on 27 September 2012 the Minister announced the application date will be 1 April 2013 and the form of the proposal will be altered to capture all lease payments. This is in response to criticism that the proposal as originally intended, only captured some lease payments and was therefore one-sided - favouring the Government.

## MANAGING THE MILLENNIALS

A recent global survey highlighted some intriguing facts and issues for employers when hiring, and managing employees born between 1980 and 2000. This demographic, known as the 'millennial' generation, is showing they have clear preferences for how they want to be employed and managed.

Having grown up in the 'good times' between recessions, the millennial worker has little loyalty toward an employer and this contrasts markedly with the Baby Boomer generation and to a lesser degree with Generation X. The millennial worker will have a preference to work for more than five employers over their career and it is expected that this number of employers will only increase as current economic difficulties ease and more job opportunities become available.

Recent generations have placed increasingly greater significance on a good education, so it is not surprising that employers who provide opportunities for greater personal learning and development will

fare better in attracting and retaining a millennial worker.

As you might expect, the millennial generation is the most technologically savvy generation and so they are interested in working for employers who also share their love of technology. The challenge for any employer in this respect is that a millennial worker will want to communicate using technology and this is likely to cause friction with the Baby Boomers and Generation X who generally prefer to meet for discussion.



This new generation of workers also has a strong appreciation for lifestyle, and the opportunity to relax away from work will be even more appreciated under the current economic difficulties.

Career progression within a reputable business is also high on their list of employment motivators and is surprisingly slightly more important to them than a competitive salary.

We also know that in a global economy, the opportunity to travel and work will be a strong attraction to working for an employer. This preference will continue to be a drain on New Zealand's workforce.



Finally, the 'millennials' will value the opportunity to be mentored by the older generation so the challenge of managing the generation gap will continue to exist as it has done for previous generations.

In summary, here are some key points to assist employers with managing the generation newest to

the workforce:

- Ensure your policies and practices enable you to communicate effectively,
- Assess the degree of flexibility that you are able to give employees in a job and align the practices of the business to match. The more flexibility you are able to offer, the better,
- Develop career plans that interest these employees in your business and focus on developing the skills the business needs in the future,
- Consider development opportunities that extend the skills of these workers, what are sometimes referred to as 'stretch' assignments are where individuals learn the most,
- Review the range of employment benefits on offer to attract and retain these employees,
- Provide mentoring opportunities to share the experience of older generations.

## SNIPPETS

### QANTAS LOSES BATTLE OVER GST ON MISSED FLIGHTS

In a 4-1 decision the High Court in Australia recently ruled against Qantas in a long-running case regarding the application of GST to "no-shows". As a result of the decision Qantas will have to pay AU\$34 million of GST on tickets sold to passengers even though no travel occurred. The Court held that the tickets provided travellers with the right to fly and in doing so it had made a promise to use its best endeavours to carry passengers, which under Australia's GST legislation constitutes a supply. The decision can't be appealed as the High Court is Australia's highest appeal Court.

What does this mean for New Zealand? The Australian definition of "supply" is different to New Zealand's, as Australia's includes the creation of rights or the entry into an obligation to do anything. Given that the term supply is given a different meaning in New Zealand, the Australian decision should have limited precedential effect here. A New Zealand court is therefore likely to take a different view, as our courts have traditionally given "supply" a practical meaning.

NEW DELHI	S03088
PERANG	S0198
JAKARTA	S0868
PERTH	M0215
TUCHING	M0378
ONG KONG	S0868
ALI	S0948
HONGKONG	M1978
KUALA LUMPUR	M0616
DAN	M1238
	S0523
AKA/KANSAI	S0626
RISTCHURCH	S0297
	NZ438
KET	M178
LA LUMPUR	S011

This case serves as a reminder to New Zealand businesses that they need to ensure they are only paying GST on amounts received for the supply of goods and services. If no supply has taken place it is worth questioning whether GST needs to be paid.

### IRS REWARDS INFORMATION ON TAX EVASION

The US Internal Revenue Service (IRS) has a whistleblower programme aimed at encouraging and incentivising people to provide information that identifies instances of tax fraud. Whistleblower payments can range from 15% to 30% of tax recovered, with the payment reduced if the informant had involvement in the crime. A payment was recently made under the programme totalling US\$104 million for co-operation in a tax evasion case. The whistleblower was a former banker and employee of UBS (a Switzerland based bank, the tax evader) who had received a prison sentence for involvement in conspiracy to commit fraud, by helping a former wealthy client avoid tax.



The information provided led to US\$5 billion in taxes being recovered and a US\$780 million fine against UBS. The information provided also sparked suspicion of further tax evasion by individuals linked to UBS. UBS was required to provide names of over 4,900 US taxpayers with illegal offshore accounts, who are believed to be guilty of tax evasion.

The IRD operates a hotline for people to provide anonymous information but does not have a policy of rewarding whistleblowers...maybe it should.



*If you have any questions about the newsletter items, please contact me, I am here to help*