

## **Commercial Legislation Update**

In February 2009, the Government introduced to Parliament two significant Bills to assist businesses both large and small to respond to the current economic conditions. The proposed measures include a tax assistance package aimed at smaller businesses and proposals for streamlining the raising of capital for larger businesses.

### **Tax assistance measures**

The tax assistance measures, which are in the main due to take effect from 1 April 2009, are aimed at assisting smaller businesses to manage their cash flows and reduce compliance costs.

Significant tax measures within this package include:

1. Eliminating the 5% baseline uplift rate that businesses pay in advance on provisional tax instalments throughout the year. The current provisional tax uplift rate (105% of last year's provisional income tax) will be removed for the rest of this year and the 2009-10 income year.
2. Reducing the penalty interest for underpayment of tax. By Order in Council passed in February 2009, the penalty rate applied on unpaid tax has been reduced from 14.24% to 9.73% with effect from 1 March 2009 (the rate for overpayments has also been reduced from 6.66% to 4.23%).
3. Allowing businesses with total legal expenses of \$10,000 or less to fully deduct those legal expenses in the year in which they were incurred, regardless of whether those expenses are capital in nature or not. (Note: This deduction does not apply to businesses with legal expenses greater than \$10,000 per income year.)

In light of these changes businesses should review the present level of their provisional tax payments. While the reduced penalty rates remain significant, businesses may wish to consider whether to reduce provisional tax payments in preference to increasing overdraft borrowings. Businesses may also wish to ensure that legal expenses on capital purchases are fully expensed rather than capitalised.

The tax package also includes other changes regarding GST thresholds and PAYE and FBT thresholds.

The Taxation (Business Tax Measures) Bill which sets out the tax assistance package was introduced to Parliament under urgency on 10 February 2009. The Government is aiming to have it enacted before 1 April 2009.

### **Streamlining the raising of capital**

The Capital Market Developments Taskforce (CMDT) and the NZX have been working closely on a series of proposed amendments to the Securities Act and the NZX Listing Rules which will allow listed issuers greater flexibility to raise capital and reduce the associated compliance costs. On the recommendation of the CMDT the Government introduced to Parliament on 18 February 2009 the Securities Disclosure and Financial Advisers Amendment Bill.

The proposed amendments to the Securities Act principally provide for the use and regulation of a simplified disclosure prospectus. This new type of prospectus will, in connection with new regulations, enable stock exchange listed issuers to offer certain debt

and equity securities without the need to duplicate information that they have already publicly disclosed pursuant to their continuous disclosure obligations under the Securities Markets Act and NZX Listing Rules. Existing penalties under the Securities Act for false or misleading disclosures will continue to apply as will the existing due enquiry defences. The contents of the new simplified form of prospectus will be set out in regulations which have yet to be finalised.

The Bill also amends the provisions of the Securities Act regarding non-public offers (offers to certain classes of persons which do not require an investment statement/prospectus). A single offer may now be made to both “eligible persons” (ie “wealthy” or experienced” persons) and persons who are deemed not to be members of the investing public (ie relatives or close business associates, habitual investors and persons who have previously paid a minimum subscription of \$500,000). This will enable NZ businesses to raise capital more cost effectively by ‘shoulder tapping’ known investors.

As part of the same series of measures, the NZX has proposed amending the Listing Rules to enable listed issuers to raise unlimited equity and debt pro-rata from existing shareholders without the need for a full-length investment statement/prospectus. Changes to the Listing Rules regarding rights issues and debt issues, which were to come into effect from early March 2009, have been deferred until the exact nature of the relevant legislative changes are known. The aim is to provide an integrated disclosure regime.

The NZX has indicated it intends to redraft the Listing Rules in 2009 to provide a set of rules allowing for more flexible integration with legislative amendments.

The devil will no doubt be in the detail once the new disclosure regime has been finalised.

NB: The Taxation (Business Measures) Act 2009 was enacted and received Royal Assent on 30 March 2009 and came in to force on 1 April 2009