Issue Two: Twenty Twenty Two

BESPOKE | SPECIALISED | CUSTOM

Covisory Connect

MAGAZINE

About us

[but really all about how we can assist you with your issues and concerns]

Covisory

Are you looking to understand what is important to you from your perspective?

We partner with you to help you understand what is truly important to you. We help individuals, families, and their businesses to exceed their expectations for what matters most to them.

Have a problem?

We work with you to transform how you conduct your businesses and trusts. We help you to build enduring, resilient systems and capabilities across all that you do.

Our team defines us

Covisory is a team that are united by a strong set of values, with a deep commitment to making a positive impact through our work and how we connect with you, our client.

With an expert team with significant technical and commercial experience based in both New Zealand and Australia, we combine local insight and global expertise and contacts to help you turn your goals into reality.

Our consultants include accountants, lawyers, designers, business managers, entrepreneurs, strategists, researchers, and writers. We can provide you with the right team, with the right expertise and experience when you need it.

All our people have been drawn to Covisory for the opportunity to apply their expertise to important complex challenges that you face.

Our reputation is defined by our interactions with our clients

- We help clients build strong systems to achieve better performance through data.
- We work with you to build positive outcomes for your future, and for future succession.
- We create solutions that are always in partnership with you, that uniquely combine our expertise and the particular resources of your business and family circumstances. We deliver innovative solutions that create immediate results and a strong framework to sustain your progress into the future.

OUR PURPOSE

To be innovative customer centric advisers exceeding your expectations for your business, trust, wealth & tax needs

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NIGEL SMITH
Founder -
Covisory Group

2022 is certainly not the year we were all expecting

Welcome to our latest Covisory Connect. It's a similar look and feel to past editions, but while we aim to maintain the magazine look and feel of past editions, we have also chosen Connect to show case more of the issues and assignments we have been working on with and for you over the recent months. We have concluded that often what we have done for one of you will be relevant for many more of you.

2022 has certainly not been the year we wished for, with the continued impact of COVID, added to by a bad flu season, worse than average weather and the inability of the All Blacks to win, it has not turned out to be a prosperous or indeed happy one. Add to that worsening supply chain and labour issues and businesses are also facing strong head winds.

The Governments reaction to the reality of spiralling domestic and international inflation has been to choke the life out of the economy thanks to never ending interest rate increases. Banks are not sure if they should lend, let alone who to. Even gold star clients are being put through the ringer when they seek finance, sometimes unsuccessfully.

The Government should be looking at increasing the productivity of the NZ economy. There have been three recently completed (or nearly) large roading projects, but what next? Nothing planned and a lot of heavy equipment and expertise moving on or overseas. It's time to double lane our highways in each direction from Marsden Point to Tauranga, and to increase rail capacity. We also need to future proof NZ with the likes of better infrastructure and even a second harbour bridge for Auckland.

While we have talked about businesses being resilient in past issues of Connect, it is now time to be patient but to look for opportunities. Markets have fallen and there will be better buying and prices as this period continues. It is also time to review your businesses and investments to see which parts are relatively more or less profitable/valuable so that focus can be put into the right areas.

As a group of highly experienced chartered accountants, trustees and business advisers, our strategic goal remains more relevant than ever.

Our aim at Covisory is to provide solutions providing maximum value and benefit to clients. We are uniquely placed to do this through the pool of experience we have available.

So please contact us if we can help you with the headwinds that you, your family, business or investments are facing. Just because 2022 is not going to be a great year overall, it does not mean that there are not opportunities for you to take advantage of.

Look forward to talking to you soon.

Nigel

As said by Winston Churchill

"never waste a good crisis"

Has Covid been an opportunity for your business? What do you want 2023 to look like for you?

Covid has been hugely disruptive. However, as we are now in a stage of increasing stability, and remaining issues such as disruption when staff test positive, supply chain problems and most of all skill shortages are working themselves out. Some but not all businesses have grown. This is a good time to reflect on what has happened and plan for the future getting ahead of the game.

Six ways our clients have embraced disruption lessons from Covid:

- **Digital business is mainstream**

Whether its NZ Post or a cheese maker in Oamaru all sorts of products and services can be purchased and delivered online, even perishables. Kiwi companies selling directly to consumers in Sydney are taking an order on Sunday and seeing it delivered 48 hours later in Sydney on Tuesday. This has become the new norm. Customer expectations have changed – is your business leading, responding, or missing out on this change?

- **It has provided an impetus for innovation**

Clients are telling us that they have made more progress on innovation, especially in the digital space through Covid; one said more than in the past decade. Covid has provided a sense of urgency to get things done, finding new and different ways to service clients and create new products. How has your business changed? What is your new next product? Have you celebrated and recognised what you have achieved?

INTRODUCTION:

- **The need for new people skills and capability**

We have seen that people within businesses have just gone on and got things done. In a new environment with increasing levels of digital business, changing the way things get done have your staff; and more importantly the owners, kept their skills and capability up to date.

Do you have a development plan for the key people in your organisation? How are you keeping up with change?

- **Productivity is up**

I was speaking with a CEO of a business doing most of his business offshore. They booked the same sales, but he travelled 65 fewer days than before Covid. There are some real trade-offs here with a desire to have staff back in the office but also the realisation that the way in which businesses operate can be changed. From digitally delivering invoices and signing documents to recruiting staff was done virtually for many companies, pretty much unheard of but now very accepted. The pool of candidates has increased as taking time off to go an interview is not so problematic. What is important for your business to grow and develop? How can you capture increased productivity?

- **Costs are down in some areas**

A mixed blessing as costa are up in places, obvious ones such as travel is being questioned but also moving functions offsite, once the luxury of large corporates, has become doable. It is possible to contract in a variety of services as sea-change/tree-changers are now in all parts of the country and beyond. What costs can be permanently reduced? Can you lower the break-even point of your business?

- **There is a renewed sense of community**

We all seem to have got to know our neighbours better. Customers have been extraordinarily pleased to have dealt with supportive businesses and everyone has been a bit kinder. As we dust ourselves off from Covid what are the good things we can take forward?

How can Covisory help?

While many of you know us through our tax work for your business and family, I have a small team of colleagues who are skilled and experienced in strategy and business planning. We undertake strategic reviews, business valuations and assist clients to grow their businesses from cost benchmarking to identifying acquisitions. If this resonates for you, please call me if you would like a confidential discussion.

Nigel

Moving from survive to thrive.
Nah, yeah – we can do this!

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Income Insurance Scheme

The Labour Government has introduced and passed law under urgency to create the new statutory income insurance scheme.

This will be mandatory, and we will all be paying for it if we receive employment income.

Details are as follows:

- The scheme will provide employees (and those in other working arrangements) with up to 80% of their previous income (capped at $130,911) for up to 6 months following loss of employment due to redundancy or loss of capacity to work due to a health condition or disability.
- Where an employee is made redundant, their employer will need to give 4 weeks' notice and make a "bridging payment" of 80% of the employee's wages during the notice period. Payments under the scheme will begin after the end of the notice period.
- Employees will be able to earn up to 20% of their previous income, without abatement of payments made under the scheme.
- The costs of the scheme will be funded by levies on wages and salaries, with both employees and employers paying an estimated 1.39% each.
- The levy will apply on income up to $130,911 and for employees will be collected through the PAYE system. The employer levy will be collected by ACC which will also manage the scheme. The scheme would operate 2 funds to meet claims: one for loss of employment claims and the other for health and disability claims.
- To be eligible, employees will need to contribute for at least 6 months in the previous 18 months preceding a claim.
- Claimants under the scheme will need to seek new employment, re-train or undertake rehabilitation and remain in New Zealand.

ACC plan to start work on developing a scheme according to Minister for ACC Carmel Sepuloni. This is expected to be in place by 2025.

IRD Disclosure

Reminder: There are Increased IRD disclosure requirements for trusts in 2022 income tax returns

Trustees should be aware that the 2022 income tax returns for trusts will see both an ongoing significant increase in information required to be filed with the IRD about trusts, plus a significant catch up as the IRD seeks to collect a lot of initial information. This will add both a lot of hassle/time to the preparation of especially the 2022 IR6 income tax return and add significant one off and then ongoing cost.

With its new computer system, the IRD is clearly going to be much more able to use this information to aggregate entities and taxpayers when auditing or looking at who to select for audit.

The additional disclosures required for trust in the IR6 are:

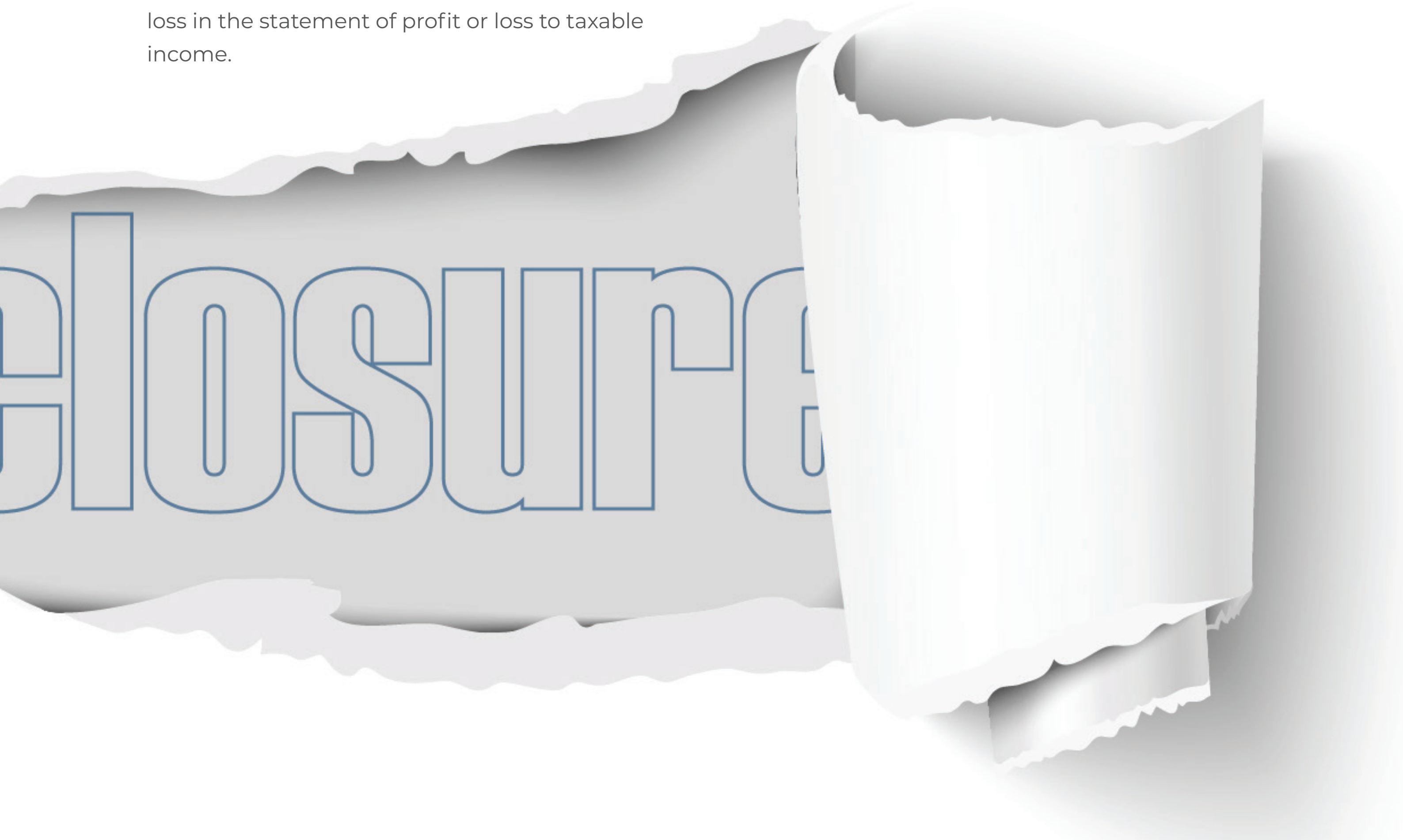
- A statement of profit and a balance sheet.
- The amount and nature of all settlements made to the trust in the income year which will include interest free loans and not just cash gifts or forgiveness of debts.
- The name, date of birth, jurisdiction of tax residence, and tax file number/taxpayer identification number of all settlors who have made a settlement on the trust in the income year, or settlors whose details have not previously been supplied to Inland Revenue.
- The name, date of birth, country of tax residence, and tax file number/taxpayer identification number, of all beneficiaries receiving such a distribution.
- The name, date of birth, country of tax residence, and tax file number/taxpayer identification number, of each person have a power of appointment under the trust deed (including the power to appoint or dismiss a trustee, add, or remove a beneficiary, or amend the trust deed).

In addition, from 31 March 2022 most trusts will also have to prepare financial statements. Unless a trust is a non-active complying trust with no income or income of $200 or less in interest, it will have to prepare financial statements. While these financial statements are not filed with the IR6, they must be available if Inland Revenue requests to see them. We note that these financial statements are also required to be prepared under the Trusts Act 2019.

All trusts required to file a tax return must prepare financial statements to a minimum standard that includes:

- A balance sheet (showing assets and liabilities of the trust using one or more of 3 specified valuation methods, and state which type is used).
- A statement of profit and loss (showing income derived and expenditure incurred).
- Using the double entry method of recording transactions; and

- Disclose the type of valuation principle adopted for shares/ownership interests, land, and buildings. In addition to the above requirements, the financial statements for trusts that are not simplified reporting trusts must:
- Be prepared applying the principles of accrual accounting.
- Include a statement of accounting policies.
- Disclose comparable figures for the previous income year to the extent that the trustee has that information.
- Include a reconciliation between the profit or loss in the statement of profit or loss to taxable income.
- Include an appropriately detailed schedule of the trust's fixed assets and depreciable property used for tax purposes; and
- Disclose details of any below market value transactions between a trustee and an associated person (aside from minor transactions incidental to the trust's activities) including the person's name, the nature of the association, the nature of the transaction and the amounts involved.



ATO Settlement

A$1 Billion paid in tax settlement

If you thought you were having a problem with the New Zealand Inland Revenue give a thought to one of Australia's largest mining companies, Rio Tinto, which has agreed to pay the Australian Tax Office A$1 billion in settlement of its long running disputes with the ATO. To date it had already paid around A$378m and it has now agreed to pay out a further A$613m to conclude the disputes.

The matters that gave rise to the bulk of the amounts paid included transfer pricing and the denial of interest deductions on funds borrowed to pay dividends.

The disputes were part of the ATO's audits into the mining and natural resources sectors which are understood to have raised up to A$26.3 billion in extra taxes to date.

To put that in perspective in NZ total company tax collected in the June 2017 year was only NZ$17 billion!

Tax in Brief

Mysterious Tax Times

Dumped on a Friday afternoon in August 2022, the Housing Minister announced a “tax break” for long term build-to-rent developments in an attempt to increase rental supply for long term tenants.

This tax break would allow certain types of new and existing build-to-rent developments to be exempt for the interest limitation rules in perpetuity.

To qualify for the exemption, developments will be required to offer tenants leases of at least ten years. Tenants will be able to ask for short agreements and the developments will still qualify for the exemption. Tenants can break the agreement at any time by giving a 56 day notice period.

This change comes eighteen months after the March 2021 announcement to restrict interest deductibility on most residential property developments. The March 2021 changes were part of an overall plan to stem the rising prices for residential property in NZ.

How times have changed since March 2021 with:

- The official cash rate moving from 0.25% (March 2021) to 2.5% (July 2022);
- House prices and volume dropping significantly off 2020-21 highs; and
- Inflation hitting a thirty year high in NZ of 7.3% (July 2022).

Following on from the recent cash payments to individuals via the NZ tax system, one should rightly speculate whether this further change to interest deductibility rules will have the desired impact on NZ’s economy.

Or is NZ’s once reputable “generic tax policy process” now a casualty of our time?

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TRUSTS:

A Trustee’s Dilemma

At Covisory we act as independent trustees for many trusts. Being outside of the family allows us to bring an unbiased and clear appreciation of both the issues and options facing trustees in the modern world. In addition, often we have already addressed the issue many times before, so that history allows us to crystalise the issues and help our client families make informed decisions.

In what will become an ongoing column in Connect we thought we would share some of the issues we face as trustees so that if they do apply to you and your family you will benefit from our past experiences. In this issue we will share two insights with you.

Trust investments and market downturns

At the outset we clearly must state that we do not offer investment advice in our role as a trustee. What we do is to make sure that the correct process of selecting investments is followed.

So what do you do as a trustee when the share market suddenly falls 10-20% like it has this year? The short answer is that typically you must simply hold the course and wait for the markets to rebound. Investing in these types of products and types is supposed to require long term investment horizons. If you have a long-term horizon of say greater than 10 years, then some bumps along the way should not matter. If you need the funds back in the next few years for a particular purpose or for example to fund retirement, if you are of that age then you need to give this thought.

If you sell out and wait you risk losing the eventual rebound in value. Instead, it may be appropriate to review or reconsider the overall level of risk/volatility that the portfolio is operated under, often called a "SIPO". Should you hold more conservative assets? Over the past few years which saw low interest rates and strong share market returns, we often saw clients reducing the percentage of the portfolio invested in banks etc, with more invested in shares etc. Now that fixed interest returns are increasing is it time to revisit that position.

The key point overall is to be aware of what the markets are doing, but not to be panicked when they do fall. You should always expect the market to fall, and if you would be worried if it were to, then you should probably either not be investing in that market or you should talk to your investment adviser about how to mitigate that risk.

Investing is a long-term journey, and it is full of ups and downs, although overtime history tells us that markets do keep going up.

Treating children equally and helping them into the housing market

Ignoring for a moment the how to help children into a home, which we have covered previously and will revisit again soon in the future, the issue of how to treat children fairly and equally is often more difficult to achieve an answer to.

Let's consider a hypothetical situation as an example.

a. Bill and Mary have 2 children from their marriage. Johnny is 27 and is an investment banker, earning great money, most of which he spends on an extravagant lifestyle. Sue is 33, in a de facto relationship with 1 child aged 2. Both her and her partner earn modest wages and despite a frugal lifestyle don't seem to be getting ahead after paying rent and their bills, each month.

b. Johnny lives in Auckland and Sue lives in a medium provincial town.

If we start with a basic principle of wishing to treat the kids equally how does the family trust, of which we are an independent trustee, counsel Bill and Mary?

The factors to consider in making any decisions are as follows:

- Location – what is the price of a modest 3-bedroom home in a reasonable suburb?
- Where do they want to live? Johnny is likely to want to live in Herne Bay as an example.
- What have they saved?
- What are their incomes?
- What are their lifestyles?

To be fair this is an extreme example, chosen to highlight two ends of the spectrum. However, it is likely that Johnny would be seeking more assistance from either the bank of Mum and Dad or the Trust than Sue, whereas he is actually more financially able than Sue.

Equality does not mean treating the 2 of them identically. Consider how you would handle the passage of time and inflation as well if for example the purchase of the 2 houses was separated by some years in a highly inflationary period.

Our starting point is to assess firstly what Bill and Mary can realistically afford to do. If they do gift or loan funds (we clearly prefer loan and security), is it likely to be able to be repaid at all, or will they be likely to even get interest.

After that we would normally consider the relative position of each child. Johnny clearly should be better able to support himself and to save more of a deposit. He also will have higher income to fund a larger mortgage. Then consider the relative areas/prices of the houses. We tend to benchmark to a verifiable index like the average house price in Auckland so it can be inflation adjusted over time.

In this case Sue may need less funds but is probably more deserving of her parents support than Johnny who may be perceived as being “entitled”.

Finally, with a child Sue’s needs are more real and pressing than Johnny’s. He has time to save and no family yet. While we have not put a numeric answer to this case study, as independent trustees we would attempt to see Sue assisted first, then look to assist Johnny either now or in the future depending on the financial position of Bill, Mary, and the trust. He may also need to learn to curb his lifestyle, save some dollars, and lower his expectations of where he will end up living.

As an unbiased external party, we can bring independence and clarity to situations like this. Above all else we act as a foil against the pressure brought to bear on parents like Bill and Mary.

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Is Your Trust Still Relevant?

When the Trusts Act 2019 came into force in early 2021 we conducted a lot of reviews of trust structures for our clients both before that date and after. Recommendations were made and discussions with clients resulted in structures being amended and, in some circumstances, trusts completely wound up.

It is clear that trusts are becoming more complex to manage, especially when coupled with the new domestic trust tax disclosures which now apply from the 2022 tax year. For the Covisory Trust team this has seen us working on a new wave of trust structure reviews. These structures normally take two forms. First, the structure has never been reviewed and now with the new trust tax disclosure rules people are starting to question the utility of keeping the structure. The second variety of trust structure was those that had been reviewed before the new Trust Act 2019 came into force, but it is very clear the review was superficial and didn't address any of the major issues that needed to be sorted with the structure.

With the trust structure reviews we are currently working on the key questions we ask are:

1. Is the trust structure still required?

There might be compelling reasons why the structure should be terminated as the assets returned to the settlor.

2. Does the structure need to change?

This might mean changes to the deed of trust itself through a variation of trust and/or the removal of some classes of beneficiaries who would be considered surplus to requirements. If a variation cannot happen, then perhaps a resettlement of the assets onto a new trust needs to be considered.

Problems we are noting:

1. The administration of the trust in the past has been lacking with trustee resolutions not being recorded when trustees have made decisions and trust records are not in one place which means new trustees that come onto the trust in the future are having difficulty in ascertaining the exact position of the trust.

2. Problems with the subsequent appointment of trustees – especially a sole corporate trustee – when the deed of trust does not allow it.

We are happy to review any trust structures that you have, even if they have been reviewed previously by your lawyer.

Contact Marcus Diprose for more information

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Inheritance Law Changes

Flying a bit below the horizon the New Zealand Law Commission has recommended a number of changes to the way New Zealand inheritance law works.

The current law is over 70 years old so a general refresh was expected as circumstances have changed such as blended families, people living longer, more family conflict etc. It is also recommended that inheritance law is contained in one statute going forward as opposed to being spread across a number of different statutes as it is currently. There is still a long way to go before there is a draft law.

The major recommendations are:

Children who are over 25 who have fallen out with a parent and are cut out of their inheritance will not be able to contest the decision.

Stepchildren should be given the power to make a claim against an estate – probably resulting in a whole lot of new litigation between biological children and stepchildren over assets but also reflecting changing family dynamics in New Zealand.

Trusts which are used to stop someone from inheriting by hiding assets could be challenged.

If you have separated from your partner, then the partner can make a claim against the estate for up to two years after separation. The thinking behind this is that you cannot get divorced legally for two years and often property settlements take that long to finalise.

There is a lot of other detail and recommendations in the Law Commission report. We will keep you up to date once the recommendations are concrete.

IRD Rich List Project

In early May 2022 the IRD released its final information request to the approximately 400 individuals it had selected. This was the third major data set of information to be collected.

This data set collected information on:

- The ownership of residential properties.
- Investments in financial products including shares and lands.
- Annual spending by the household including outside of New Zealand.
- Inheritance.
- Capital gains on the sale of shares and other investments.

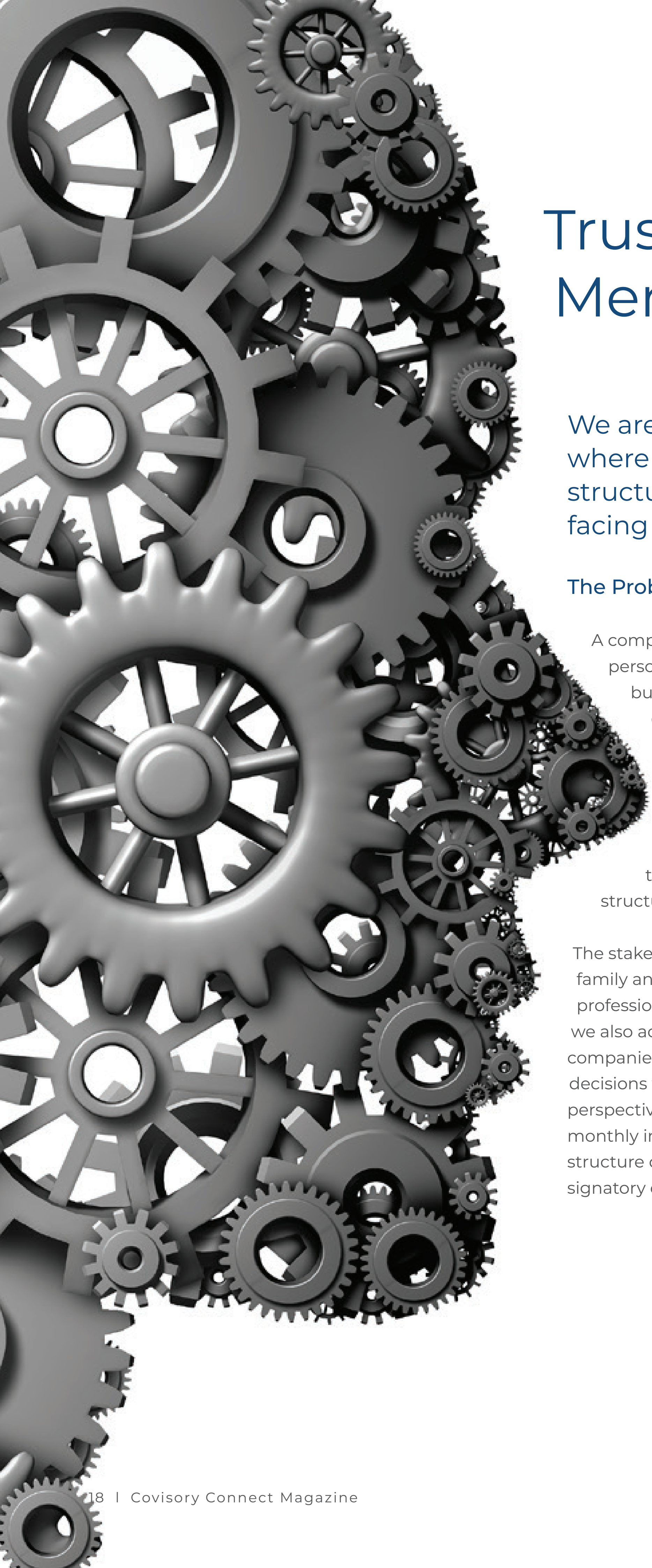
It is arguable whether the IRD has legal capacity to request some of this information, and it may well yet be tested in court. However, most of those affected will have answered giving the IRD a large bounty of data to analyse and design new tax collection tolls to relieve the rich people of more of their funds. A formal report is due out May 2023 in time for the election.

Those selected are not just names off the NBR rich list. In our experience the IRD has done a lot of work already to aggregate the state it has to identify families who it considers to be rich.

The compliance rate to date is understood to be about 90%. May 2023 will certainly be interesting reading, and will likely see a number of weird and wacky proposals which could include some or all of:

- Wealth taxes
- Land taxes
- Death duties
- Capital transfer/gift taxes
- Deemed income regimes, e.g., like the FDR regime for foreign shares, it is possible for the Government to deem a person to receive phantom income from owning a house over a certain value, or a beach or holiday home.

While the final output is likely to be offensive to many of you reading this, it is unlikely any new law will be in force before the next election. Naturally we will be informing you when the proposals become available.



Trusts – Mental Capacity

We are increasingly seeing issues where people involved in complex structures such as trusts are facing issues over mental capacity.

The Problem

A complex family structure has had one dominant personality over their life running the family business. The person is a director of operating companies, director of trustee companies, a personal trustee, holds the power to appoint and remove trustees for a number of trusts and signatory on numerous bank accounts. The person has now developed cognitive issues so the problem is how the entities within the structure will be managed going forward.

The stakeholders are the person above, the wider family and professional advisors. Our role is that of professional advisors over a number of years and we also act as a director for a number of trustee companies. The potential business impact is that decisions will not be able to made from a strategic perspective and more practically, the paying of monthly invoices for business entities within the structure of which the impacted person is the sole signatory or joint signatory on bank accounts.

Our Role

When we became aware that the impacted person had potential mental capacity issues, we looked at the following:

Arranging for a proper mental capacity assessment by a medical professional for the impact person to determine whether they do or do not have capacity.

Working out the potential impact on the structure if the person is adjudicated as mentally incapacitated and reviews of enduring powers of attorney and who will act.

Ensuring the impacted person has the appropriate support as well as close family members who will be caring for the impacted person.

Detailed research was taken on how the attorney's under the enduring power of attorney for property could act for the impacted person. For example where the impacted person was a shareholder can they exercise the shareholder rights to remove and appoint directors of a company. Further analysis was done as to how mental incapacity of a person impacted on trusts and what provisions of deeds of trust and what provisions of that Trusts Act 2019 were applicable. This provided clarity as to who would exercise powers to appoint and remove trustees if the impacted person held that power under a deed of trust.

We had call with various family members and professional advisors to discuss the legal position and also the practical implications of the impacted person's mental incapacity.

Outcome

The final outcome is still to be determined as the final medical assessment for mental capacity has not been issued. However, everyone involved now has an understanding of what will happen when the mental capacity certificate is issued in the future and the steps that need to be taken.

Learnings

The one main learning from this is to ensure all your succession planning documents are in place, especially enduring powers of attorney.

In this situation we were lucky the impact person has enduring powers of attorney in place which will enable the attorney's to carry on running the businesses in the structure and manage the overall structure by appointing new directors of companies etc. We have seen a lot of situations where clients will have a structure in place and a Will but not enduring powers of attorney. They are valuable documents in a person's overall succession planning. The impact of not having them in place and something happening which impacts on a person's mental capacity will be severe and will take considerable time to sort.

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INTERNATIONALISATION:

What you need to consider when doing business in Europe

When expanding into and operating across Europe, export-ready companies need to navigate an entirely different legal landscape and address a number of key issues that impact the success of the business overseas.

Doing business in Europe in 2022

Europe offers a solid and attractive marketplace for business opportunities, with long-term political stability, strategic location, competitive tax system, highly skilled workforce and international community. The ongoing wave of internationalisation calls for reaching beyond your local borders, encouraging companies of all sizes to conquer new locations – stretching right across the spectrum upwards from owner-operator, micro businesses through to the SME segment up to larger corporates and enterprises. If you are tempted by expansion and/or consider starting a business with focus on Europe, with this our expert four-part Develop IN Europe (D.IN.E.) article series we will endeavour to help you: 1. Understand; 2. Prepare; 3. Sell; and 4. Improve.

Part 1

With a starting view from Paris, by many considered to be the 'centre of Europe, this article covers many of the key legal issues companies encounter when doing business in the Euro-zone. In the wake of Brexit, we also address some of the principal ways this will impact companies trading in the EU market.

1. Commercial agreements

Bear in mind that some commercial agreements (such as agency, exclusive distributorships or brokerage agreements) are regulated at an EU-level and that some member state legislation contains protective rules for such distributors.

As EU and international antitrust laws can be different, you should also consider whether your European agreement is compliant as the criteria to assess a breach in competition law may differ from the local (home country) approach to antitrust issues.

Also, now that the UK sits outside the EU, you may want to review any existing contractual discrepancies to understand how your export business may be affected. For example, is the territorial scope of the agreement defined as 'the EU', and if so, should this include or exclude the UK post-Brexit? Which party would take the risk of customs duties, conformity checks or delays at the border lingering post-Brexit? And in particular, might either party have the contractual ability to terminate or renegotiate any recent supply agreement as a result of Brexit or a Brexit-related event?

2. Disputes: Choice of law and venue

Choice of law is an important aspect of the agreement you are negotiating; the same contractual clause could be interpreted differently in different jurisdictions. English law, for example, tends to give a more literal interpretation of the exact words used, while certain other jurisdictions give more weight to contractual common sense. Other concepts that vary across jurisdictions include the extent to which parties will be subject to duties of good faith, and whether certain contractual remedies will be deemed to be 'penalties' and thus unenforceable.

Depending on the jurisdiction, additional clauses will be imposed on the contract by statute, for example in relation to consumer protection or personal injury.

You may therefore want to apply a specific jurisdiction's law depending on various factors such as location of the other parties, the supply of services/ delivery of goods, or laws that are more favourable to your business.

Except in specific areas like employment relationships or consumer contracts, parties are generally free to choose which EU law will apply to their agreement.

The same goes for choice of venue, but in a positive development, EU member states have recently implemented their own English-speaking international courts designed to deal with litigation involving third party countries (among others Belgium, France, Netherlands and Germany).

As an example, the Netherlands Commercial Court in Amsterdam (NCC) has been set up and you can read more about it in the link below.*

For cross-border contracts, you may also want to consider whether international arbitration might be preferable to litigation as a forum for dispute resolution. A major strength of international arbitration is the ease of enforcement, with +150 countries having signed up to the New York Convention on the enforcement of arbitral awards.

3. Regulatory transformations

Understanding the regulatory environment applicable to your business is an important consideration. Some of the higher profile regulations you may have heard of include the incoming new Copyright Directive*, the 6th Anti-Money Laundering Directive*, or the one everyone has heard of, the General Data Protection Regulation*. There's also the new EU-wide foreign investment controls regulation* which has come into force in 2020 that will impact international companies investing in EU-based businesses.

*** NETHERLANDS COMMERCIAL COURT** WEB LINK
*** EU DIGITAL STRATEGY** WEB LINK
*** EU ANTI MONEY LAUNDERING** WEB LINK
*** EU TRADE** WEB LINK
*** EU GENERAL DATA PROTECTION** WEB LINK

Several sectors are heavily regulated in the EU and the rules in place often differ from local regulations, especially in the fields of healthcare, financial services, chemicals, food, product safety, and consumer information and protection. Ensure that you understand the regulatory environment of new markets that you are entering and monitor your sector's applicable regulations periodically in order to implement any necessary change in due time.

4. Employment

As a general rule, employment law in the EU tends to be less employer-friendly in the EU than what you might be used to, with termination-at-will clauses not usually allowed and collective bargaining agreements common in some countries. While monitoring your business in the EU, ensure that your employment agreements are compliant with the local legislation as every EU member state has its own set of rules regarding various aspects such as benefits, employment taxes, termination, and part-time working.

With Brexit now in place, we always recommend that you review any current arrangements involving UK employees (work permits and mobility) in the EU will not be impacted and implement the necessary contractual changes or restructuring within your company.

5. Immigration

Business immigration is a key topic in the EU as various companies are welcoming employees from other EU or third-party countries. You should consider what the options are for your local workers you would like to send in the EU and define the strategy and kind of support you want to provide to your staff and their families.

Make sure you are aware of recent and upcoming legislative changes. For example, Belgium has adopted the EU Single Permit Directive* containing a new set of rules rendering the administrative process for work permits less burdensome.

* EU SINGLE PERMIT WEB LINK

6. GDPR compliance

Complying with the GDPR requirements is key for all businesses operating in the EU (or even those with EU customers). There are also particular obligations on those transferring personal data out of the EU and each national data protection authority is monitoring companies closely.

Ensure your business is taking steps to comply with the regulation and consider auditing your data protection policies, together with your data processing agreements and appoint a data protection officer in order to ensure compliance with the GDPR. Breach of the GDPR provisions is likely to lead to considerable fines; for example, the French data protection regulator, the CNIL, fined Google as Google's data consent policies were found not to be easily accessible or transparent to its users, which runs afoul of the GDPR provisions.

7. IP registrations

Ensure that you register your IP in overseas jurisdictions and review your IP portfolio to ensure it is up-to-date with registrations and expiration dates.

While trademarks, designs and patents are protected through registration at the local and EU level, bear in mind that the duration of each right is different and that their use or licensing may be restricted by specific member state legislation (i.e. employee creations).

Focus should be given to the UK specific technical notices on IP as a result of Brexit.

Also, review any current license agreements; while they generally cover the EU as a single licensing territory, the use of your IP may not be relevant in each member state, and you may want to reconsider a more local approach in order to facilitate their monitoring and mitigate challenges from third parties.

An important component of any business' IP strategy will be the protection of trade secrets. The EU Trade Secret Directive* was intended to harmonise trade secret protection across the EU.

8. Financial services and passporting

As an international financial services company doing business across the EU, the 'passporting' system facilitates utilising a regulatory license from one EU country across the entire EU. Once you have obtained your financial services licenses with one of the national regulators, no further licence is required to offer the same services in other EU countries, eliminating the burden and costs of additional regulatory approvals in other EU countries.

In addition to passporting of licenses, there are a number of 'initials' – regulations such as PSD2, MiFiD II, AIFMD, AML, etc. which impose specific compliance obligations to companies within this sector.

Keep pace with the changes

This brief overview illustrates just some of the key legal issues to consider when doing business across the EU. Thus, the importance of first Understanding the market(s) and EU playing field is paramount. Regulations are constantly changing and it all goes hand-in-hand with Brexit impacts on the broader strategy foreign companies should implement to succeed in the EU. We recommend reviewing these issues on a regular basis and seeking local counsel when further input is needed

Now that you and your company better Understand the foundations for doing business successfully in Europe, Part 2 of this article series will focus on some of the central aspects you need to consider in connection with your Preparation for market entry into Europe.

***EU TRADE SECRET DIRECTIVE** WEB LINK

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NZ Funds. Economic Update

For July 2022

NZFunds

'Cost of living' is a term that's been hard to miss this year as prices head higher. In New Zealand, the formal measure of the cost of living is the Consumer Price Index (CPI), which is running at 7.30%. The path of the CPI going forward is critically important for financial markets as it impacts the valuation of all asset classes.

It's our expectation that inflation will come down from the levels we're now seeing, but we're equally wary that this may be just the first part of the story and the CPI will remain challenging over the next few years.

Why is this?

The key reason is the difference in prices for goods and for services. We have experienced supply-related disruptions since the start of the Covid pandemic, and more recently this has been exacerbated by the Russian invasion of Ukraine which has driven global energy and food prices higher. In the second quarter, transportation inflation in New Zealand was more than 14%, driven by higher petrol and diesel prices.

Energy prices are notoriously volatile. Hopefully. we're past the peak of these price rises as supply constraints continue to ease. We've already seen the price of oil drop by more than $40 below the highs of March and this should help inflation to fall over the coming months.

However, the key challenge will be the second round impact as inflation migrates from the goods sector to the service sector. If the cost of living crisis was the first round, the second is the process of people looking to recover their standard of living. With unemployment at a record low, it's inevitable that there'll be pressure for wages to rise significantly to compensate for the inflation we've experienced. This becomes an inflationary impulse in its own right, and is one reason why we expect inflation to remain elevated. Inflation may remain a problem even if we enter an economic recession.

The other second round impact is the way energy prices are interlinked with food production.

Greater fertiliser use has led to a four-fold increase in global grain production over the last 60 years, which has supported the growth in the global population. Since 1960, global grain production has increased from 630 million metric tonnes (mmt) to 2.84 billion mmt in 2022. Additonally, fertiliser is typically manufactured using natural gas to capture atmospheric nitrogen (which makes up 78% of the atmosphere).

High prices for oil and natural gas have resulted in significant fertiliser price increases and continues to put upward pressure on food prices. Higher food prices will add further pressure for higher wages. The result is that the cost of living crisis has the potential to become a looped system where high inflation drives further inflation.

What does this mean for investments with NZ Funds? Firstly, the goal of all investment managers should be to deliver a positive return after inflation to clients. With elevated inflation, it's harder for a traditional portfolio of bonds and shares to achieve this goal. This is a key reason why NZ Funds invests across a wider range of assets, including commodities, and it underpins our active investment management approach, which can position portfolios to benefit from future inflation.

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Colliers.
The Halfway Mark:
Asset Class Market Update

The July edition of the Colliers monthly property research report reflects the halfway mark for 2022 and presents a timely opportunity for us to provide an update on market conditions across multiple asset classes.

Retail

The retail sector has had its fair share of challenges over the last couple of years, but the opening of closed borders at the end of the month provides some more positive expectations for retailers ahead. The low unemployment rate has been a major tailwind for the sector, but the rising cost of living, debt cost increases and a slowing residential sector provide headwinds that will continue to impact retailing over the short-term.

It is worth noting that despite low consumer confidence surveys, there are bright spots. From an online spending perspective, Q1 2022 was a record, with the latest NZPost report utilising Datamine data showing an exceptionally strong quarterly result with $2.2 billion of spending occurring, a rise of 86% from Q1 2020 (a record 77% was with NZ-based businesses). This highlights that people are still willing to spend, and the line between online and offline spend is increasingly being blurred with the growth of click and collect and other omnichannel experiences. Furthermore, property purchasing activity remains buoyant, especially for large format retail and shopping centres. This is showcased by two recent deals in Hamilton.

Office

The debate surrounding back to office work, remote working and hybrid working continues to take place. While trends offshore provide some insights, caution is advised on their use outside of the origin location. The variances in approach to tackling Covid-19 by central and local governments around the world means not all findings and approaches are as easily transferrable and straight forward to implement as can be expected. This means a variation at a business, employee and location level should be expected and implemented on a case-by-case basis.

Despite this, what is apparent is the desire for good quality office space has risen and this will add pressure to what is ultimately a limited resource. Lack of suitably available high quality office space is reducing and the ability to build new space in all the right places isn't as easy as it was with material, labour and financial constraints remaining a hindrance to development pipelines. Further, New Zealand's adoption of environmental standards, while improving over the years, is arguably still well behind other countries' approaches. With an ever-increasing focus on the environment and a lack of standardised accreditation in the sector, there is likely to be a number of ongoing challenges. Hopefully more agreement can be reached on the benefits provided and more mainstream approaches can be adopted by New Zealand occupiers and owners more often in the years ahead.

Industrial

Rental growth in the industrial sector will be one of the standout trends for 2022 and 2023, as limited supply and ongoing demand continues to impact the sector. Projections of 3% to 4% p.a. prime rental growth rates are likely to be tested, and while limited evidence is available at this stage, anecdotal evidence suggests higher percentage rates should be anticipated, especially for the most sought-after spots. On the horizon is more industrial floor space, which may assist alleviate some occupancy constraints, but not all pressures. Latest figures from StatisticsNZ show quarterly national industrial building consent issuance across storage, factories and industrial buildings reached the third highest on record in Q1 2022 with 392,012 sqm of floor space consented. Further, the results showed it was the second highest level of floor space consented for a 12-month period to March 31. While these issuance numbers are near record highs, material, labour and financial constraints may lead to a lower proportion of space being completed than intended and achieved in previous years.

New Build Residential Sector (Auckland)

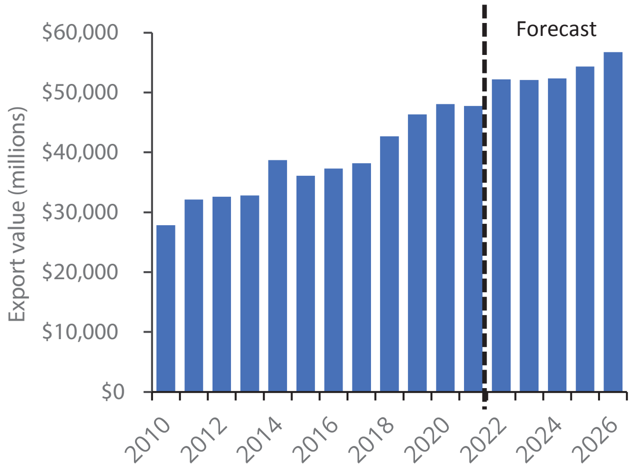
Data from a variety of sources show a slowdown in off the plan sales in 2022 from the tailwind of record low interest rates stimulating the market between mid-2020 and 2021. As a result, the record high levels of building consents will now reduce, meaning we could head back into a tight supply situation in key hotspots in the next 12 to 18 months.

The upper end of the new build apartment and terraced housing sector targeting owner-occupiers, will continue to perform the best. First home buyers will find interest rates returning to historical averages make owning their first home more challenging. However, government initiatives such as the First Home Partner Scheme that assists selected struggling deposit savers with a maximum 25% or $200,000 top-up at a 0% interest rate for up to 15 years a major benefit. Investors will remain poised, looking to time the next upswing.

Rural

The total value of farm sales has surged over the last two years reflecting elevated commodity prices, the prospect of record milk price payouts and a positive outlook for export returns. Over the 12 months to May 2022, REINZ statistics show the total value of farm sales reached just under $5 billion, the second highest figure recorded for a May year surpassed only by the 12 months ending May 2008. Total transaction values were led by the Waikato region which generated 17% of total sales by value with sales activity underpinned by the strong performance of the dairy sector. Sales across Canterbury comprised 12.5% of sales followed by the Bay of Plenty where sales are dominated by a booming horticultural sector.

Value of Primary Industry Exports (June year)



Source: Ministry for Primary Industries

While the sector faces headwinds from increasing regulation and environmental compliance costs, farm gate earnings appear well underpinned. Fonterra is forecasting a mid- point payout of $9.30 this season and $9.50 for 2022/23. Total export earnings are also projected to rise sharply with Ministry for Primary Industry forecasts showing an increase of 19% between 2021 and 2026 to reach $56.75 billion.

New Zealand Key Economic Indicators – July 2022

	Mar-22 (vs. previous quarter)	Dec-21 (vs. previous quarter)	Q-o-Q Change	Mar-22 Vs Mar-21	Mar-21 vs. Mar-20	Y-o-Y Change	March Quarter 2023F	2024F	2025F
GDP	-0.2%	3.0%	-3.1%	1.2%	3.3%	2.1%	2.4%	2.2%	2.6%
Current Account (% of GDP)	-6.9%	-5.8%	NA	-6.9%	-2.5%	-4.4%	-12.3%	-12.9%	-12.7%
	Mar-22	Dec-21	Q-o-Q Change	Average Year To Mar-22	Mar-21	Y-o-Y Change	March Quarter 2023F	2024F	2025F
CPI Inflation	1.8%	1.4%	0.3%	6.9%	1.5%	5.4%	2.8%	2.1%	2.0%
Net Migration Gain (000's)	-1	-3	2	-7	-2	-6	4	16	21
Retail Sales (ex -auto)	0.7%	7.6%	-6.9%	6.4%	6.7%	-0.3%	4.5%	4.0%	4.5%
Unemployment Rate	3.2%	3.2%	0.0%	3.2%	4.6%	-1.4%	3.8%	4.3%	4.5%
	Apr-22	Mar-22	M-o-M Change	Apr-21 (yr rate)	Y-o-Y Change	10 Year Average	March Quarter 2023F	2024F	2025F
Tourist Numbers Growth	70.1%	517%	446.8%	1755.4%	-1685%	-12%	9.6%	9.0%	8.5%
	May-22	Apr-22	M-o-M Change	May-21 (yr rate)	Y-o-Y Change	10 Year Average	March Quarter 2023F	2024F	2025F
Floating Mortgage Rate	5.46%	5.36%	10 bps	4.4%	109 bps	5.6%	7.2%	7.4%	7.2%
3 Year Fixed Housing Rate	5.81%	5.73%	8 bps	3.4%	241 bps	5.2%	NA	NA	NA
Consumer Confidence	82	84	-2%	114	-28%	119	7.16%	7.35%	7.22%
	May-22	Apr-22	M-o-M Change	May-21	Y-o-Y Change	10 -Year Average	April 2023F	2024F	2025F
Official Cash Rate	2.00%	1.50%	50 bps	0.3%	175 bps	1.91%	3.50%	4.00%	4.00%
90 Day Bank Bill Rate	2.22%	1.8%	41 bps	0.4%	187 bps	2.1%	3.72%	4.16%	4.23%
10 Year Government Bond	3.64%	3.47%	17 bps	1.8%	183 bps	2.8%	3.66%	4.28%	4.53%
NZD vs:									
US	0.64	0.68	-6%	0.72	-11%	0.73	0.66	0.66	0.65
UK	0.51	0.52	-2%	0.51	0%	0.51	0.47	0.45	0.42
Australia	0.91	0.92	-1%	0.93	-2%	0.90	0.90	0.87	0.85

Source: NZIER, Colliers Research

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Are you doing what you love?

By disrupting people's routines, the pandemic prompted many people to re-evaluate their personal and professional fulfilment.

Giving them the opportunity to ask long suppressed questions. All of us over this time would have questioned ourselves – "Is this all there is? "Is this really what I'm passionate about?" "Do I want to spend the majority of my waking hours doing this?" "Does my job bring me meaning?"

The pandemic has reawakened in many the deep-seated desire for a job and a life they actually enjoy, but on the other side of the coin many also would have asked - "Am I worth more than what I'm being paid?" "Currently I'm not valued in my team where will my skills be of worth?" "Where can I go where I can learn more?" "I have no prospects where I am, where can I go that allows me to have a career path?".

1. The Passion Paradigm

We have all read them – self-help books that advise the reader to reflect on what they love to find that perfect job. The TV and Movie industry don't help presenting a somewhat romantic view of the world encouraging the viewer to aspire to work that expresses their authentic self and as a result is intrinsically satisfying.

An idea coined in the 60's by Abraham Maslow, the Passion Paradigm emerged in a decade of change when the youth questioned social and cultural norms which helped drive a new way of thinking about the role of work.

Maslow argued that work should be thought of as a key source of personal growth and self-actualisation. Maslow envisioned a world where individuals derived deep satisfaction from their working lives, and who would treat their work as a sacred activity. But we all know that the world is not perfect and although there was a rise in the popularity of the passion paradigm this also coincided with an increase in economic inequality and a steep decline in the power of unions. Not surprisingly it attracted a host of criticism.

Some would argue that those who would romanticise their work would be blind to the fact that there is throughout their working lives an unequal distribution of power. That ultimately the worker would be open to (self)exploitation.

We all know where this leads to - as life and work demands increased many prioritized their work at the expense of other important aspects of their life — family, friends, continuing education, and hobbies. The flip side of this was that people then saw those who cannot work as lazy, stupid, or undeserving of concern.

FAMILY:

On the back of the pandemic, we have seen a shift of power back to the employees. Employers are having to listen to their workers and hear their demands around pay, flexibility, autonomy, and scheduling. With ongoing labour shortages "business as usual" is no longer acceptable.

The key takeaway from this is real change around work life balance and better and more meaningful work can only occur when the worker has a strong social safety net and real economic freedom to ask the questions.

We take from this that the worker by not accepting the status quo is expressing a sense of optimism - in short, they are saying 'we can do better than this'.

2. Re-evaluating what work offers

The pandemic provided people with a new clarity and sense of urgency. Initially, the state of job market and economy deterred many people from quitting in case they couldn't find other work. But with labour shortages in most countries, and employers actively hiring has provided workers with the confidence to take their chances in greater numbers to quit work and pursue new priorities.

After being cooped up from the pandemic for so long and dealing with burnout and no work life boundaries people have used this period to look for change. Some have been motivated to run with their side hustles turning them into full time businesses taking back control over their work lives. Others have shifted regions, islands, or countries to move closer to family, travel opportunities or seek a better work-life balance. Others are taking semi-retirement seeing this as an opportunity to spend quality time with their families.

This need to embrace change in their lives, to not accept the status quo, to speak out for more opportunities is a positive benefit to the pandemic "People are saying, 'I need to make a change here. Things weren't working, there seems to be some opportunity out there. ...I can maybe bargain for a higher wage and for benefits.

3. Employers the onus is on you to give your workers better reasons to stay.

There is plenty of research that shows that people tend to quit their jobs after experiencing an event that initiates that person towards self-reflection about not only one's life but their job satisfaction. These events can be both positive like a new baby, a much-needed long Holiday or negative, like a heart attack, divorce, or a sick relative or friend. These life shocks are very individual and do not happen every day. But the Pandemic and the unrelenting nature of it which we have experienced over the past few years has upended every aspect of our daily lives and we are seeing people respond en masse. With the labour shortages, the lure of higher wages, the ability to work anywhere is the "perfect storm" colluding against employers allowing people to have the confidence to choose change.

Employers need to ask themselves what their plan is for dealing with workers resigning. Don't leave it till your employee hands in their notice to offer more pay or benefits – this insults both sides. Make your company a place that values your workers, provides clear opportunities and is seen as an industry leader. By creating an environment that people want to be in will mean others will want to be part of the story.

Does this resonate with you? Then what do you need to do?

From a personal perspective the first step is to actually figure out what you really want from life. Once you know this you can align your goals and actions properly and begin to set about creating the life you want to give yourself.

If you are approaching this from an employer's perspective, then listen to the talk around the water cooler. With low unemployment rates your employees will have the confidence that if they leave, they will find work. In addition, job switchers tend to score bigger raises than those who stay behind – with increased inflation pressures this could fuel further turnover. What can you do to stem this? Ensure that your employees have some flexibility of where they work from, offer distinct career paths and opportunities to continue training, higher pay rates, the opportunity to travel and the potential to work while overseas and be able to come back to at least the same level. Work at having a physical office that is a place all age groups want to be at.

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