

AMCHAM NEWS

American Chamber of Commerce in New Zealand

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Volume 13 Issue 1

Email: amcham@amcham.co.nz



February 2014

TPP to conclude in 2014

Negotiations continued late last year toward a conclusion of TPP with a four day Ministerial meeting that took place in December. The meeting made significant process including identifying potential "landing zones" for the majority of key outstanding issues in the text as well as market access issues.

In his State of the Union address President Obama said "Let's do more to help the entrepreneurs and small business owners who create most new jobs in America. Over the past five years, my administration has made more loans to small business owners than any other. And when ninety-eight percent of our exporters are small businesses, new trade partnerships with Europe and the Asia-Pacific will help them create more jobs. "We need to work together on tools like bipartisan Trade Promotion Authority to protect our workers, protect our environment, and open new markets to new goods stamped 'Made in the USA'.

This has set the platform for an ambitious trade agenda and one that needs to be delivered on before the end of his term.

The leaking of further documents continues to provide the anti TPP groups with media opportunities to increase public opinion against TPP. As a country New Zealand needs to embrace new trade deals to help grow the economy and TPP brings together key economies where significant trade opportunities exist. The USA is NZ's third largest trading partner with current bilateral trade worth NZ\$8.6b, Japan (4th) NZ\$5.9b, Canada NZ\$1.1b, none of which New Zealand has FTA's with.

In a recent article John G Murphy of the US Chamber said "FTAs Make Big Markets: America's 20 free-trade agreement (FTA) partners purchased nearly half (46.4%) of U.S. goods exports in 2013. This is a remarkable performance given that these countries represent just 10% of global GDP outside the United States. On a per capita basis, these countries purchase 12 times as many U.S. goods and services as non-FTA countries". This goes to show that trade agreements do work.

TPP Trade Ministers are due to meet again at the end of February followed by an officials meeting.

TPP & other trade articles

[MPAA's Dodd calls for creative industry support](#)

[Washington Post Writer Stands Up to Protectionists, Defends Trans-Pacific Partnership](#)

[Achieving Trade Promotion Authority Will Require a Heavy Lift from the President](#)

[Joint Statement on Proposal to Modify the GATT General-Exception Provision and the Dispute-Settlement Procedures for TPP](#)

[Obama's Moment of Truth on Trade](#)

[U.S. benefits from trade deals — never mind the protectionists' hype](#)

U.S. Chamber Welcomes Trade Promotion Authority Bill but faces push back by Senate Majority Leader Harry Reid (D-MN)

U.S. Chamber of Commerce President and CEO Thomas J. Donohue applauded the introduction of the Bipartisan Congressional Trade Priorities Act, which will renew Trade Promotion Authority (TPA):

"TPA is a vital tool to help Americans sell their goods and services to the 95% of the world's customers living outside our borders. The Chamber congratulates Senate Finance Committee Chairman Max Baucus, Ranking Member Orrin Hatch, and House Ways and Means Committee Chairman Dave Camp, whose bill promises to spur economic growth and job creation at home.

(Continued on page 2)

Index	
Amb. Huebner says farewell to NZ	2
New Pilot Training contract	2
US Sec to Navy visits	2
US Chambers CEO State of American Business	3
2014 Int'l IP Index	3
Visit by Villanova Uni	3
2014 AUSA LANPAC Symposium	3
Intern NZ	4
APCAC Summit - Manila	4
TRADE & INVESTMENT	5
Stories with USA	5
Commercial News USA	5
Trade Leads	5
Int'l Buyer Programme	5
TRAVEL	
Holiday Arrivals drive growth	5
2014 Discover USA	5
Business Travel	6
MEMBER NEWS	7
New Members	7
NY Honour Congrats.	7
People on the move	7
Keas seeks new Global CEO	7
Seeking Companies operating in US East Coast	7
FOR YOUR DIARY	7
Be online with AmCham	7
NZ US Connections	8
AmCham Role of Honour	8
TAXATION ISSUES	8
Us Taxation of Non Qualified Deferred Plans	8
GENERAL	10
Who is Managing your Int'l Payments and Forex?	10

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US Chamber Welcomes Trade Promotion Bill (Continued from page 1)

"In today's tough international markets, we need our trade negotiators to tear down the foreign tariffs and other barriers that too often shut out U.S products. However, to secure new growth-creating trade pacts such as the trans-Pacific and trans-Atlantic agreements now under negotiation, Congress must first approve TPA.

"While the Constitution gives the president authority to negotiate with foreign governments, it gives Congress authority to regulate international trade. TPA squares this circle: It directs Congress to set negotiating objectives and requires the executive branch to consult extensively with Congress during negotiations. The result should be a true partnership stretching the length of Pennsylvania Avenue.

"TPA is the Chamber's top trade priority before the Congress. We look forward to working with Democrats and Republicans on Capitol Hill as well as the administration to secure TPA's renewal as soon as possible."

[Click here](#) to see a copy of the US Chambers testimony to the Senate Finance Committee.

However since the bill was presented Senate Majority Leader Harry Reid (D-NV), has announced his opposition to TPA, apparently saying he's not even sure he will bring it up for a vote in the Senate this year because there is no certainty that the measure can gain the 218 votes needed to pass the House. Commentators feel that the passage of TPA will require significant leverage by President Obama.

The House and Senate last week easily approved an omnibus fiscal 2014 appropriations bill (HR 3547) that will keep the US government running until the end of the fiscal year. Overall there was little difference with the last batch of funding bills – except that trade activities across agencies all got a bit of a boost.

Ambassador Huebner says farewell to NZ

"As I mentioned on Stuff earlier today, I knew when I arrived in Wellington in 2009 that the time would come to depart. What I didn't know was that my term would fly by so fast. I have been here for more than four years, which is longer than usual, but it really only seems like yesterday that I walked down the street from Camperdown to Vogel House to present my credentials to the Governor-General.

Although I am returning to private life for now, I will remain a vigorous advocate for the relationships I have been blessed to help steward over the past four years. I look forward to remaining active in the ongoing conversation, and to working to make sure that all voices are heard, not just those that shout the loudest, spread the most money around, or claim particular entitlement.

Thank you for embracing Dr. McWaine and me so warmly, and for making our time here so rich and memorable. We have made many life-long friends, and we will return". [Full article](#)

As yet Congress has not confirmed **Mark D. Gilbert** as the next Ambassador to New Zealand and Samoa. His hearing is due to take place on 13th February and we hope that this see him approved and New Zealand bound. We look forward to welcoming the new Ambassador in the coming months.

New pilot training capability contract awarded

The Government has awarded the contract to deliver a new and more effective military pilot training system to Beechcraft Defense Company. The aircraft will be assembled in Wichita, Kansas

Defence Minister Jonathan Coleman has congratulated Beechcraft and associated companies including New Zealand based Safe Air Limited on being selected to supply the NZ Defence Force's new pilot training capability.

"This modern, safe and reliable pilot training system will enable our military pilots to be trained to the highest standards, and is in line with the training systems used in Australia, the UK, the US and Canada," says Dr Coleman.

"The \$154 million package includes ground simulators, classroom and computer based training packages to complement practical flying experience in turbo-prop T-6C aircraft. The T-6C has a proven track record in service with other militaries, and meets the NZDF's performance and safety standards.

"The new system is expected to be operational for the first trainee intake in early 2016. It is estimated it will produce up to 15 graduate pilots and 12 Qualifying Flying Instructors per year over the next 30 years."

US Secretary of the Navy visits New Zealand

US Secretary of the Navy Ray Mabus will hold a number of meetings in Wellington on Monday as part of a wider visit to the region.

Defence Minister Jonathan Coleman says it is a good opportunity to discuss upcoming defence exercises and other engagement activities. Secretary Mabus and Dr Coleman last met in Washington last October.

"Our defence relationship with the US is in good shape. Following the signing of the Washington Declaration in 2012, we have steadily increased the level of joint activities and enhanced co-operation in the region," says Dr Coleman.

"Our Navies continue to work together in areas of common interest. For example, HMNZS Te Mana is currently working with the US Navy

(Continued on page 3)



Supporting AmCham

US Secretary of Navy visits (Continued from page 2)

and other nations on counter-piracy operations in the Gulf of Aden and Indian Ocean.

“Looking ahead, the NZ Defence Force will be participating in Exercise RIMPAC which is held in Hawaii later this year, and Exercise Pacific Partnership, the annual humanitarian assistance mission in the Asia-Pacific region.”

Secretary Mabus’ programme includes a call on Foreign Affairs Minister Murray McCully, and meetings with senior Defence officials. Secretary Mabus previously visited New Zealand in 2010.

US Chamber CEO’s State of American Business

In his annual State of American Business address, U.S. Chamber President and CEO Thomas J. Donohue unveiled the Chamber’s 2014 Jobs, Growth, and Opportunity Agenda.

“Our economy is gaining strength, and we now have an opportunity to turn the page. But alongside the positive signs are some pretty big question marks. Employers are concerned about overregulation, the negative impacts of policies like Obamacare, and the fiscal health of our nation. Our economic success will depend on how well we build upon the economic momentum that is finally taking hold. By making the right decisions and adopting the necessary reforms, we can usher in a new era of economic prosperity and extend its benefits to all Americans.”

[Full address](#)

U.S. Chamber’s Global IP Center Unveils 2014 International Intellectual Property Index - Report Sheds Light on Progress, Deficiencies in 25 Countries’ IP Environments, Including Select TPP Participants

Property Center (GIPC) today unveiled its 2014 International Intellectual Property (IP) Index, a survey of 25 countries with diverse economies reflected in varying market size, level of development, and geography. Charting the Course provides an empirically-based measurement and comparison of the IP environments of each country.

“A robust IP system provides the critical foundation needed for nations wishing to advance their economic and social progress, and provide assurances to consumers that the products they use are authentic, safe, and effective,” said David Hirschmann, president and CEO of the GIPC. “By highlighting countries that are leading or lagging in fostering a strong IP framework, the GIPC Index provides a clear and objective tool for policy makers to strengthen innovative potential and for business leaders to assess risk and investment.”

In the second edition of the GIPC Index, this year’s report evaluates 30 factors indicative of an IP environment that fosters growth including protection and enforcement of patents, trademark, copyrights, trade secrets, and participation in relevant international treaties. Although none of the 25 countries surveyed received a perfect score of 30, the United States received the highest score of 28.52, making it the global leader in protecting IP.

New Zealand ranked 7th with a score of 21.32 out of 30 with Key Areas of Weakness

- Limited patentability of surgical and therapeutic treatments for human use
- No patent term extension offered
- Limited term of RDP in comparison to other high-income countries
- Firm Government intention to introduce plain packaging legislation
- Low damages awarded in infringement cases
- No ex officio powers for customs officials
- Limited participant in international IP treaties

The full report is available at www.theglobalipcenter.com/GIPCindex

Visit by Villanova University

A group of 21 MBA students from [Villanova University](#) School of Business (PA) led by Assistant Professor, Economics & Statistics, Michelle Casario, visited Auckland in early January. This was their first trip to New Zealand. AmCham Executive Director Mike Hearn presented to the group giving an overview of the New Zealand economy and a discussion on the relationship between the U.S. and New Zealand, in particular around trade relations. Villanova regularly visits Sydney but the students enjoyed Auckland more and Michelle is already planning to return with another group in 2015.

2014 AUSA LANPAC Symposium | International event focusing on the Indo-Asia Pacific Region

Second annual Association of the United States Army (AUSA) LANPAC Symposium and Exposition in Honolulu 8 – 10 April 2014.

This is a world-class international event highlighting the role of land forces in the Asia-Pacific theater in peace and war. This event will bring together JOINT, Interagency and Multinational colleagues along with academia, industry and NGOs to discuss the role of land power as an element in whole government operation in the Indo-Asia Pacific region.

(Continued on page 4)

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HOTELS AND RESORTS

AUCKLAND

Supporting
AmCham

2014 AUSA/LANPAC Symposium (Continued from page 3)

Our goal is to showcase how land power complements maritime and airpower in this vital part of the world.

Senior leaders from the Army, DoD and international defense community will examine a variety of important topics including:

- Information warfare and cyber activities
- Leveraging training with technology
- Partnerships with nongovernmental organizations
- Humanitarian assistance and disaster response

Invited guests include:

- GEN Raymond Odierno, Chief of Staff, U.S. Army
- GEN Vincent Brooks, Commanding General, U.S. Army Pacific
- ADM Samuel Locklear, Commander, U.S. Navy, U.S. Pacific Command

As with last year, we expect robust participation from U.S. Pacific Command and its service components. Additionally, very senior military officials of over 15 region countries are expected to attend. The U.S. Army Pacific Command and other services have a considerable presence in Hawaii making this a very appropriate venue to showcase what they do, the significant role they play in this region and how key industry partners can support their mission. This event will be a great opportunity to immerse in the Asia-Pacific Theater, and learn perspectives from U.S. military leaders and chiefs of service of countries in the region.

U.S. companies as well as those foreign companies who partner with the United States of America are encouraged to exhibit. For more information, please visit our web page, www.ausa.org or contact Mr. Alex Brody at 703-907-2665 or abrody@ausa.org

Intern NZ - Unpaid work experience opportunities for University students

We are gathering expressions of interest for hosting a university or technical institute student or graduate for unpaid work experience for the 2014 year.

- Most students are offering several months of their time for meaningful and relevant work experience
- Most are doing an internship as a university requirement
- Most have relevant experience
- All are fluent in English

If you feel you could use an extra pair of hands this year and are willing to offer an opportunity to a University student or graduate, I would be very grateful if you could complete details on the link: [INTERNSHIP PROGRAM INTERN REQUEST](#)

By completing the form you are under no obligation to take a student. You will always have the opportunity to review the CV and or speak with them.

Bob Alagh, Director, InternNZ, bob@internNZOZ.com | www.internNZOZ.com

APCAC Summit in Manila on March 20-21

The Asia Pacific Council of American Chambers of Commerce is holding its Spring Summit in Manila from 20-21 March. They are expecting about 300-400 people from Asia, Washington DC and the Region to attend.

Speakers and Panels

- ⇒ President Aquino has been invited, US Ambassadors from Philippines, Singapore, Indonesia (DCM) and ADB;
- ⇒ US Commercial Officers from Philippines, Vietnam, Indonesia, Thailand, Singapore, Malaysia
- ⇒ US AID Head of Missions for the Philippines Gloria Steele with the governor of Leyte and the governor of Bohol to discuss Lesson Learned after Super-typhoon Haiyan and the Bohol earthquake
- ⇒ Aquino Cabinet – Secretary of Finance Cesar Purisima, Secretary of Tourism Ramon Jimenez, Secretary of Trade and Investment Greg Domingo and Secretary of Health Enrique Ona
- ⇒ Mayor Duterte of Davao City speaking on Southern Mindanao as the Gateway to ASEAN

Panels on APEC Travel Card and Global Entry with Department of Homeland Security; Healthcare; Cyber Security; Cross Border Data Transfer; Climate Change; Disaster Response, Cross Border Data Transfer, etc.; Regional Competitiveness and APEC 2015

Other Events

- Reception at US Ambassador's residence on Wednesday evening, March 19
- Hoedown Party at the Polo Club on Thursday evening, March 20

SUCCESS STORIES WITH USA

[Tech veteran joins project to help NZ firms access US](#)

[Energy Mad surges on Amazon deal](#)

[Newmont digs in for future](#)

[BurgerFuel welcomes American investor](#)

[PowerbyProxi to licence technology to Texas Instruments](#)

[US fund Capital Group buys \\$51.7m stake in Infratil from Utilico](#)

[US fund manager BlackRock takes 5% stake in SkyCity](#)

[Xero gets Kiwi-born Silicon Valley exec to head global sales](#)

TRADE, BUSINESS and INVESTMENT OPPORTUNITIES

Commercial News USA

The January/February issue of Commercial News USA, the official export promotion magazine of the U.S. Department of Commerce, is currently online at <http://www.thinkglobal.us/exportusa/012014/>

Trade-Leads for Importing and Exporting

You are invited to register your company at America's new online trade leads matchmaking platform for importers and exporters. ThinkGlobal is the world's first B2B matchmaking platform to integrate multimedia, localization, virtual trade show technology, and social media. Just register online at [ThinkGlobal](#)

International Buyer Program – Trade Show Schedule 1 Jan to 31 Dec 2014

for details and support contact Janet Coulthart: janet.coulthart@mail.doc.gov

TRAVEL NEWS

Holiday arrivals drive a year of growth for 2013 – Tourism New Zealand

An increase in holiday arrivals, up a staggering 9.8 per cent for the year ending December 2013 has driven annual visitor growth up 6.0 per cent for the year - seeing more than 2.7 million international arrivals to New Zealand for the first time ever.

"The extra 114,112 holiday arrivals during the year equates to an estimated \$365 million additional expenditure – providing significant value to both the industry and the wider New Zealand economy," says Kevin Bowler, CE Tourism New Zealand.

With 381,900 arrivals during the month, December was the highest monthly total ever, up 4.9 per cent on December 2012.

Holiday arrivals from the US are up 21.3 per cent, Canada up 7.7 per cent, Germany up 9.4 per cent, and Australia up 8.1 per cent, for the 2013 calendar year.

2014 Discover USA

The annual Discover America Events will be held in Christchurch on the 17th of February and Auckland on the 18th respectively. The events will be the largest ever staged with over 60 suppliers showing casing everything U.S.A to Travel Agents, selected Media and Travel Trade partners.

Wayne Mincham, Brand USA, says "We are expecting over 300 agents to attend in Auckland and over 100 in Christchurch. The events will be MC'd by New Zealand's very own 'Cuddly Cook' Annabelle White, who is a fantastic supporter of the U.S having previously lived there, and travels there often.

In our Auckland event we will be having a B2B session which is a free flowing networking session for selected media to attend and various stakeholders to chat with U.S suppliers prior to the Agents arriving.

Brand USA will have a stand presence at both Christchurch and Auckland along with Dana Deree looking after the US Consul stands and Dana will be conducting the open address speeches at both events also.

This is the one major event and opportunity we have to show case to the Travel Industry all that the U.S has to offer for visitors to this wonderful land. Agents will be partaking in quiz type competitions through the evenings with some fantastic prizes up for grabs including trips/packages to the U.S.

For further info contact Wayne: wmitcham@thebrandusa.co.nz



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BUSINESS TRAVEL & TRAVEL NEWS

News, views and information for Amcham business travellers from **Grant Bevin**, Managing Director Business World Travel.

Business World Travel is a member of GlobalStar Travel Management

Travellers transiting through **San Francisco** on **United Airlines** will be aware that United's Terminal 3 Area E upgrades are now completed and they'll be enjoying the modern flyer-friendly conveniences. The 68,000sqft boarding area has 10 gates and the floor to ceiling windows offer views across the airfield to **San Francisco Bay**. There is complimentary wi-fi, and interactive children's play area and a yoga room just to name a few of the new features. The next phase includes a new concourse connecting Areas E and F. United's LAX Terminals 7 & 8 are about to undergo enhancements as well; the changes will occur over a four year period.

Whilst on **United Airlines** they will be changing the Australian operation to Sydney and Melbourne from the older 747s to new 4-class **Boeing 777-200** aircraft which will now offer in-seat entertainment in every class of travel. The airline will also initiate charging for alcoholic beverages between Australia and the USA in economy class, bringing this route into line with United's global network strategy.

If you are travelling to the US this year **Air New Zealand** is offering us a discount on **Premium Economy Class** seats for travel between 24 February and 30 November 14, if booked by 17 February. We can save you \$600 on your Premium Economy Class fare. Discounts of \$300 are also available in Economy at various time lines throughout the year.

Likewise **Hawaiian Airlines** is offering their February Frenzy Seat Sale – **Auckland to Honolulu is available at \$1125** and the neighbor Islands at \$1229. West Coast (San Diego, Los Angeles, San Francisco and Seattle) from NZ\$1499 return. Taxes are included. Buy your tickets from us by 23 February. Depart by 24 June 14 (some exceptions).

Our specialist holidays desk '**Travel with Kidz**' Manager Tanya Warman has geared up for what already looks to be a boom Hawaii holiday year. All our families we sent last year are returning plus they've told their friends! You need to book now for School Holidays otherwise the airfares get very expensive – Term 2 School Holidays 17 April – 05 May and Term 3 Holidays 04 July – 21 July. Dates vary; check your own school's calendar. Tanya has her Top 10 list of things to see with teenagers or younger children in Hawaii:

Pearl Harbour. USS Arizona Memorial and the USS Missouri – and Pearl Harbour history. Bring the history lessons and school to life for your children!

Hanuama Bay – beautiful snorkeling

North Shore – take surfing or stand-up paddle board lessons

Tanya will let you know the other 7, and more, once you've booked! (twarman@bwt.co.nz)

Delta Airlines has won the 2013 **ATW Airline of the Year Award** (Air New Zealand has previously won this award), the first US Airline to have won in over a decade. This is the benchmark award for credibility that we as an industry look to, unlike most other quite random awards that airlines claim they've won. The last US airline to have won was Alaska Airlines.

Award winning **Alaska Airlines (AS)** has renovated the interiors on most of its US domestic fleet and they have become the only U.S. carrier to provide both 110-volt and USB power for tablets and smart phones at every seat, (located in the seatback in front) and power is available at no additional charge.

Marriott has opened North America's tallest hotel in **New York City**, a 68-story tower that includes a 378-room Courtyard Hotel and a 261-suite Residence Inn hotel. Located in mid-town Manhattan on **1717 Broadway**, the property is a short walk from both Central Park and Times Square. It features a gym with outdoor sundeck and some guest rooms offer floor-to-ceiling windows with views over Times Square, Central Park and the Hudson River.

The **US Transport Security Agency (TSA)** discovered around 5 firearms per day in passengers' carry-on luggage across the US in 2013. 81% of these were loaded with 'notable incidents' including a loaded .38 with 8 rounds of ammunition found on a passenger's lower leg and a .48 pistol with 6 rounds strapped to the passenger's ankle. Atlanta was the hotspot for most firearms intercepted followed by Dallas Fort Worth. This of course doesn't include the grenades and a WWII era bazooka and a stun gun disguised as a walking cane.

Check out our website at www.bwt.co.nz

Reviewing your Corporate Travel? Call our Team:

Jane Higgie Business World Travel Wellington 04-470 6044 jhiggie@bwt.co.nz

Grant Bevin Business World Travel Auckland 09-529 3700 gbevin@bwt.co.nz



MEMBER NEWS

New Members

Becton Dickinson Ltd, Auckland - **Anne Familton**, General Manager - medical technology company that serves healthcare institutions, life science researchers, clinical laboratories, industry and the general public. BD manufactures and sells a broad range of medical supplies, devices, laboratory equipment and diagnostic products. www.bd.com

Hahei Consulting Ltd, Auckland – **Stephen Titter**, Director – Professional director.

Jonathan Mason, Auckland – **Jonathan Mason** – Professional director

Quigg Partners, Wellington – **David Quigg**, Partner - boutique corporate law firm specialising in the following areas of law; corporate, mergers and acquisitions, employment and insurance. <http://www.quiggpartners.com/>

Congratulations to AmCham members & US friends in New Year Honours

Dr Kurt Michael Campbell, CNZM, of Washington D.C., United States of America. for services to New Zealand-United States relations.

Peter Ramsay Townsend, CNZM, of Christchurch. For services to business and the community.

Simon Charles Hayes Leeming, MNZM, of Canterbury, New Hampshire, United States of America. For services to New Zealand-United States relations.

Alastair Kinloch Carruthers, CNZM, of Auckland. For services to arts governance

Peter Charles Cooper, CNZM of Los Angeles, United States of America. For services to urban redevelopment.

People on the move

Changes at **Pratt & Whitney Air New Zealand Services t/a Christchurch Engine Centre** with **Steve Robinson** has moved to Singapore as Sales Manager with ESA; **Anura Fernando** now has role as CFO with P&W in China and has been replaced by **Ken Glassenbury**.

Marija Gecan, is the new Director of Sales at the **Stamford Plaza Hotel** in Auckland

Mike Pretty has taken over as Managing Director for **Heinz Wattie's NZ**.

New Zealand Trade & Enterprise has appointed **Steven Mayo-Smith** to lead its programme of work with health IT and medical device companies.

KEA seeking new Global CEO

KEA is looking for a new Global CEO based in Auckland on a 3 year contract. For details contact Peter Kerridge at Kerridge & Partners peter@kerridge.co.nz Tel 64 9 969-9902

Seeking companies operating in US East Coast markets

Craig Coldstream is looking to explore employment and networking opportunities with companies operating in US East Coast markets. Craig is based in Boston and has travelled extensively throughout the US. He is looking for opportunities with both established and emerging companies who are pursuing growth opportunities in US markets. His background is diverse and adaptable covering start-ups, finance, operations, project management, business improvement, business development, sales and marketing, resource smoothing and technology. Craig has an MBA, BBS (Accountancy) and is a US permanent resident. Contact Details: Cell: 6177749513(USA) 0274863891(NZ); Email: craig@phuturevaf.com Web: www.phuturevaf.com

FOR YOUR DIARY

12th February Roundtable with US ABAC delegates, Auckland sponsored by Sanderson Weir

14th February Hawaiian Airlines-AmCham Ambrose Golf Tournament, The Grange Golf Club, Auckland

19th February Auckland CEO lunch (by invitation only)

24th February Roundtable with Los Angeles based NZ Consul General Leon Grice, Auckland

5th March Wellington Member & Government officials reception sponsored by Deloitte.

6th March Wellington CEO lunch (by invitation only)

13th March St Mary's University, San Antonio, TX, reception, Auckland

19th March Auckland CEO lunch (by invitation only)

22nd May Business Model Innovation seminar presented by Matt Tice, MD Asia-Pacific, Palladium Group, Auckland

BE ONLINE WITH AMCHAM

Online membership database plus companies trading with USA

All members should have received their passwords so please go online and make sure your information is correct so that other members can get see who you are and what you do. www.amcham.co.nz

US NZ CONNECTIONS IN NEW ZEALAND

Kiwi Expat Association – www.keanewzealand.com

Wanganui New Zealand American Association donnarush@clear.net.nz

American Club – Auckland <http://www.americanclub.org.nz/>

American Women's Network – Wellington www.awn.co.nz

American Women's Club – Auckland www.awcauckland.com

American Club of Christchurch – www.american-club-chch.org

NZ/American Association, Wellington www.nzaa.org.nz

Kiwi Club of New York Inc - www.kiwiclubny.org

AmCham Role of Honour

Founding Members:

3M New Zealand, Chartis Insurance New Zealand Limited, Air New Zealand, ANZ Bank, Fonterra Co-Operative Group Ltd, IBM New Zealand, Merck Sharp & Dohme (New Zealand) Ltd, Mobil Oil New Zealand Limited, National Bank of New Zealand

25 Year + members:

Ace Insurance Ltd, DHL Express (New Zealand) Ltd, Eagle Technology Ltd, Hesketh Henry, Kensington Swan, KPMG, The Langham Hotel, Dun & Bradstreet (New Zealand) Ltd, Ernst & Young Ltd, Federal Express Pacific Inc, Qantas Airways Ltd, Wallenius Wilhelmsen Logistics AS.

TAXATION ISSUES

United States Taxation of Non-Qualified Deferred Compensation Plans

By Gina Wallace, Director, NZ US Tax Specialists Limited gina@nzustax.com

Late last year I wrote an article about the New Zealand tax treatment of foreign superannuation schemes including United States retirement accounts such as IRAs.

This article looks at the United States Federal income tax treatment of what is termed 'Nonqualified Deferred Compensation Plans' (NQDCP).

In 2004 as part of the American Jobs Creation Act of 2004, the Internal Revenue Code was modified with the provision of Section 409A Inclusion of Gross income of deferred compensation under nonqualified deferred compensation plans. Subchapter D of the Internal Revenue Code deals with Deferred Compensation.

So, what is a 'nonqualified deferred compensation plan'?

This is addressed in regulation 1.409A. Regulation 1.409A is effective from April 17, 2007.

Regulation 1.409A-1 defines the term NQDCP to mean any plan that provides for the deferral of compensation but excluding:

Qualified Employer Plans including

- Section 401(a) plans and a trust exempt from tax under section 501(a)
- Section 403(a) annuity plan and section 403(b) annuity contract
- Section 408(k) simplified employee pension
- Section 408(p) simple retirement account
- Section 501(c)(18) plan.
- Section 457(b) eligible deferred compensation plan
- Section 415(m) plan
- Section 1022(o)(2) plan.

Certain foreign plans including:

- a) participation addressed by treaty
- b) participation by non-resident aliens, certain resident aliens and bona fide residents of possessions: broad-based foreign retirement plan (as defined shortly).
- c) participation by U.S. citizens and lawful permanent residents.
- d) plans subject to a totalization agreement and similar plans.

The determination of whether a plan provides for the deferral of compensation is made at the time that the service provider obtains a legally binding right to the compensation under the plan and is not affected by any retroactive change to the plan.

Once a plan has been identified as a NQDCP, Section 409A(a) applies. The general rule is as follows:

If at any time during a taxable year a NQDCP:

Fails to meet the following criteria or

Is not operated in accordance with such requirements:

- Under the doctrine of constructive receipt, funds that are not accessible and are subject to a substantial risk of forfeiture (such as funds not vested in an employee) are not deemed to be received as income by an individual.
- Section 409A of the Code addresses the issue of constructive receipt which might otherwise be applied to funds deferred to a retirement plan. It does this by requiring non-qualified deferred compensation plans (NQDCP) to meet specific criteria to be able to use constructive receipt and exclude the deferred earnings.

(Continued on page 9)

United States Taxation (Continued from page 8)

- A NQDCP that does not fulfil the restrictions relating to:
 - Distributions
 - Acceleration of benefits
 - Elections
 is taxable to the extent that it is not subject to a substantial risk of forfeiture and has not previously been included in gross income.
- Regulations to Section 409A (regs) clarify and explain the rules governing the application of 409A to NQDCP. The regs were came into effect on April 17, 2007 applying to tax years beginning on/after 1 January 2008.
- The regs define a NQDCP in depth and includes detailed exclusions from the definition including certain broad-based foreign retirement plans.
- The definition of a 'Broad-based foreign retirement plan' is on page 198 of the regs:
 - * Non-discriminatory,
 - * Actually provides significant benefits for a substantial majority of covered employees
 - * The benefits actually provided under the plan to employees are non-discriminatory
 - * Restrictions exist discouraging employees from using plan benefits for purposes other than retirement
- Reg 1.409A-1(a)(3)(iii) – US citizens and residents only – NDCP does not include a broad-based foreign retirement plan but only for the following:
 - * The service provider ie the employee not be eligible to participate in a qualified employer plan and
 - * Only applies to non-elective deferrals of modified foreign earned income (the plan can have a mix of elective and non-elective deferrals but they need to be sufficiently separated in terms for identification purposes) and
 - * the income deferred is foreign earned income as defined in section 911(b)(1) but not taking into account 911(b)(1)(B)(iv) and 911 (d)(1)(A) or (B) and
 - * the deferred income does not exceed the limits under section 415(b) and (c) that would apply if the plan was otherwise a qualified plan.
- If the foreign retirement plan qualifies for the exemption under the above reg, it does not meet the definition of a NQDCP and therefore 409A does not apply.
- If the foreign retirement plan cannot qualify for the exemption it just means S409A applies. The effect of S409A is that if the provisions are not met, deferred compensation is includable in gross income. Furthermore, interest and additional tax apply on previously deferred income which fails the test for exclusion.

All compensation deferred under the plan for the taxable year and all preceding taxable years shall be includible in gross income for the taxable year and all preceding taxable years shall be includible in gross income for the taxable year to the extent not subject to a substantial risk of forfeiture and not previously included in gross income.

The criteria are:

1. The plan cannot allow distributions any earlier than either separation from service/the date the participant becomes disabled/death/the specified time under the plan/change in the ownership or effective control of the corporation/the occurrence of an unforeseeable emergency.
2. The plan does not permit the acceleration of the time or schedule of any payment under the plan.
3. The plan provides for participant's election to defer no later than the close of the preceding taxable year.

A broad-based foreign retirement plan is a scheme, trust, arrangement, or plan (regardless of whether sponsored by a U.S. person) that is written and that, in the case of an employer-maintained plan, satisfies the following conditions:

- A. The plan is nondiscriminatory insofar as the employees who, under the terms
- B. The plan actually provides significant benefits for a substantial majority of such covered employees
- C. The benefits actually provided under the plan are nondiscriminatory.
- D. The plan is the subject of tax law provisions or legal restrictions discouraging employees from using plan benefits for purposes other than retirement/unforeseeable emergencies/hardship/educational purpose/purchase of a primary residence.

But first, let's look at what is a 'Qualified Deferred Compensation Plan' for United States Federal tax purposes.

A QDCP includes IRAs, so that the deferral of gross income into such a plan is not taxable.

One of the criteria to be qualified is that the plan is a United States-based plan.

This obviously excludes New Zealand plans such as Superannuation schemes and Kiwisaver.

It will probably come as no surprise that a NQDCP does not qualify for the preferential treatment that a QDCP is afforded, being the deferral of gross income into a retirement plan.

The internal revenue code (the Code) requires the inclusion in gross income of deferred compensation under NQDCP where

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