



Welcome

New Team Members –
Getting to know them

Anti-Bribery & Corruption
Focus: 2014 Survey &
Anti-Corruption Training

eDiscovery: Common
pitfalls

Bitcoin 101: Back to
basics

Contacts

Cutting through the smoke and mirrors Forensic Focus



Welcome to the latest Forensic Focus edition. Christmas is, once again, rushing up on us and a relaxing summer break is enticingly imminent.

Where has the year gone? Our team has been hard at work this year and the increase in demand for our services has seen our team grow both in size and capability. Four new team members have joined us this year, bringing with each of them a unique skill set. We profile our new staff, James Cowan, Rebecca Hildyard, Nicola Baldwin and Maggie Zheng in 'Getting to know them'.

Jason Weir's admission as a new Forensic Partner is a massive achievement and we are very proud of Jason. Please join us in congratulating him on this wonderful milestone.

Bribery and Corruption is still a hot topic. Lorinda Kelly is working with Deloitte Australia to produce the 'Deloitte Bribery and Corruption Survey 2014 Australia & New Zealand'. Lorinda and Ian Tuke have also developed anti-corruption training material during 2014. In 'Anti-Bribery and Corruption Focus' we discuss the survey further and provide details about how you can participate in the

survey. We also discuss the anti-corruption training material that is available to you and your clients.

This year has also seen a significant increase in our eDiscovery offering. In 'E-Discovery: Common pitfalls' we share some of the common pitfalls and how to avoid them, when managing the eDiscovery process.

"Bitcoin" has been the subject of many media headlines throughout 2014. In 'Bitcoin101: Back to basics' we provide an overview of bitcoin and how it potentially can be used by fraudsters.

We hope you enjoy this edition of Forensic Focus and we wish you a safe and enjoyable festive season.

Barry and the Team



New Team Members

Getting to know them



Welcome

New Team Members – Getting to know them

Anti-Bribery & Corruption Focus: 2014 Survey & Anti-Corruption Training

eDiscovery: Common pitfalls

Bitcoin 101: Back to basics

Contacts

Welcoming the new members of the Deloitte Forensic team

With four new members joining our Forensic team during 2014, we have fourteen specialists operating nationwide. We take this opportunity to welcome and introduce Rebecca, James, Nicola and Maggie.



Rebecca Hildyard

Location: Auckland

What is your background prior to joining Deloitte Forensic? For the three years prior to joining the Forensic team, I worked for the Deloitte Recovery team in the Wellington Office. During that time I was exposed to a wide range of assignments and recovery actions involving company liquidations and receiverships as well as the odd creditor compromise.

What strengths do you bring to the team? Brains, brawn and humour. A strong insolvency background and an inquiring mind.

What do you enjoy doing outside of work? Gym, running, golf, jazz piano, supporting rugby and motorsports, whisky and coffee connoisseur, travelling.

What is your favourite holiday memory? Angkor Wat and Angkor Thom in Siem Reap, Cambodia for the sights; the Jameson Distillery in Dublin for the history.



James Cowan

Location: Auckland

What is your background prior to joining Deloitte Forensic? I'm an admitted Barrister and Solicitor, previously with Kensington Swan in Auckland. I've worked in a few practice areas, most recently in Insolvency. I also have a background in debt collection/recovery.

What strengths do you bring to the team? A legal background and perspective.

What do you enjoy doing outside of work? Pool, cards, TV and relaxing.

What is your favourite holiday memory? Safari in the Serengeti. A close second being scuba diving on Roatan (an Island off the coast of Honduras).

New Team Members

Getting to know them



Welcome

New Team Members – Getting to know them

Anti-Bribery & Corruption Focus: 2014 Survey & Anti-Corruption Training

eDiscovery: Common pitfalls

Bitcoin 101: Back to basics

Contacts



Nicola Baldwin

Location: Wellington

What is your background prior to joining Deloitte Forensic? I grew up in the Manawatu and then did a biochemistry degree at the University of Otago. I went on to do an accounting degree (as working in a lab wasn't my thing) and worked in Audit and Assurance at Deloitte for 5.5 years. I then shifted to the forensic team and have been there for the past 7 months. I have also carried out a secondment in Edinburgh for 4 months in financial services as well as carrying out a 4 month corporate secondment in the public sector.

What strengths do you bring to the team? Audit and accounting experience and a good understanding of transaction process, controls and accounting systems. I also have a broad understanding across different industries and knowledge of how a variety of businesses work operationally.

What do you enjoy doing outside of work? Flying, skiing and diving.

What is your favourite holiday memory? I have travelled many places of the world – but my favourite memories would be flying around the Southern Alps of New Zealand (especially around Milford Sound and South Westland).



Maggie Zheng

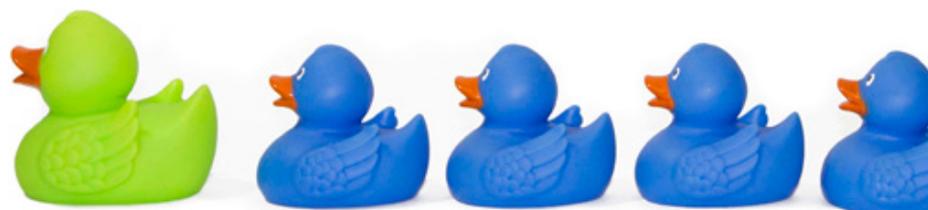
Location: Auckland

What is your background prior to joining Deloitte Forensic? I interned as a Compliance Officer at Interchem Agencies during the summer and was a student at the University of Auckland doing a BCOM/ BSC degree majoring in Accounting, Commercial Law, Statistics and Taxation.

What strengths do you bring to the team? Applying my knowledge of software that I've learned throughout my degree to work situations. Sometimes, being bilingual (Mandarin) also comes into use on cases that might need some translation.

What do you enjoy doing outside of work? I'm always eager to meet new people and learn new things. Some weekends, my friends and I go exploring here and there.

What is your favourite holiday memory? Having never been too far away from New Zealand, my favourite holiday memory was earlier this year when I did an Overseas Exchange to Poland through AIESEC. I was volunteering for six weeks teaching English to kindergarten kids and then backpacked across Europe with a few friends for a month. It was an incredible and memorable journey.



Anti-Bribery & Corruption Focus

Australia & New Zealand 2014 Survey & Anti-Corruption Training

Welcome

New Team Members – Getting to know them

Anti-Bribery & Corruption Focus: 2014 Survey & Anti-Corruption Training

eDiscovery: Common pitfalls

Bitcoin 101: Back to basics

Contacts

Anti-Bribery & Corruption continues to be a hot topic. The second Deloitte Bribery & Corruption survey is currently open for NZ and Australian businesses to give feedback on the risks that they face, both domestically and offshore. And the development of free online anti-Corruption training material means that all NZ businesses are able to access essential training to provide their staff with the skills to detect and respond to potentially suspicious offers and transactions.

Australia & New Zealand 2014 Bribery & Corruption Survey

Historically, bribery and corruption has not been high on the risk agenda for New Zealand organisations. In 2012, we conducted our first Bribery and Corruption Survey. This inaugural survey received recognition across industry and government. The results of the survey confirmed our experiences that Australian and New Zealand organisations are encountering bribery and corruption incidents and challenges that many are ill-equipped to identify, manage and, most importantly, prevent.

The second Deloitte Bribery and Corruption Survey is now open. We are seeking the valuable insight of organisations on both sides of the Tasman to help inform the approach to managing this increasingly serious operational risk.

Like our first survey, we intend to provide a detailed picture of bribery and corruption. In particular we will focus on:

- The size of the problem;
- Organisational profiles most at risk;
- The challenges your organisation may face; and
- What trends we are seeing when compared to our inaugural survey in 2012.

New Zealand & Australia have a strong reputation for being perceived as corruption “clean”, however recently there have been a number of incidents that challenge this image.

New Zealand corruption laws are currently being updated with the introduction of the Organised Crime and Anti-Corruption Bill. A number of offshore authorities are also reviewing or adopting new anti-corruption laws. With New Zealand and Australian businesses increasingly looking for opportunities offshore, the need to understand the risk of bribery and corruption also continues to grow.

The completion of the survey will only take 10 to 15 minutes and will provide valuable input to help us shape a picture of the current risks. The results and analysis will be made available in early 2015.

To complete the survey simply click on this [link](#).

The survey closes at 5pm on 28 November 2014 and we would greatly appreciate you completing the survey by this date.

For more information about the survey, please contact Lorinda Kelly.

Anti-Corruption Training

New Zealand consistently rates at the top of Transparency International's Corruption Perception Index. It's important that New Zealand retains this position each year, and that it isn't eroded by complacency or a lack of awareness of evolving trends in the international marketplace.

The benefits of having a society that is largely free of corruption are immeasurable. Having a highly regarded and transparent marketplace provides domestic businesses with a competitive advantage when engaging with foreign companies, as it encourages international firms to purchase our goods and services.



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Anti-Bribery & Corruption Focus

Australia & New Zealand 2014 Survey & Anti-Corruption Training

Welcome

New Team Members – Getting to know them

Anti-Bribery & Corruption Focus: 2014 Survey & Anti-Corruption Training

eDiscovery: Common pitfalls

Bitcoin 101: Back to basics

Contacts

An inherent downside is that the lack of exposure to bribery and corruption can create a blind spot for our New Zealand based clients with an offshore footprint.

Bribery and corruption techniques differ depending on the area of the world the transaction is intended to occur; quantum of funds involved; and nature of work proposed.

This presents a dilemma for some firms which export to, or import from, regions where bribery and corruption is commonplace. In order to compete, the pressure to pay 'facilitation' payments to local government officials to get things done can be very high.

Consequently, it's important to have an ongoing training module which provides staff with the skills to detect and respond to potentially suspicious offers and transactions.

In response to this need, Ian Tuke has been working with fellow Transparency International Director and Bell Gully Senior Associate Fiona Tregonning to develop UK-centric online anti-corruption training for the New Zealand context.

The 90 minute training module is the first of its kind in our part of the world. It is now live and available for all New Zealanders to use free of charge. The training uses a range of scenarios and mini quizzes to outline the applicable anti-bribery laws, corruption red flags, and suggests alternatives to paying bribes.

The module has been designed so that it is appropriate for staff of all levels and is a practical tool that can be shared with firms that intend to operate overseas.

The training module is available online for free at <http://www.doingbusinesswithoutbribery.com/newzealand.html>.

In addition to the online training, Lorinda and David Seath were joined by two Chapman Tripp partners to deliver in-person anti-corruption training workshops in Auckland, Hamilton, Tauranga, Hawkes Bay, Wellington, Christchurch and Dunedin throughout September 2014. The workshops are able to be tailored and delivered to any organisation, who would prefer in-person training for their staff.

Feedback from the sessions has been very positive. Catherine Beard, Executive Director of Export NZ, who arranged the logistics of the training roadshow, said that feedback she had from the attendees has been that it was a really valuable session.

Both **Lorinda Kelly** and **Ian Tuke** are available to talk to any firms that need assistance understanding their own risk profile, and they are able to help them address any gaps they may have.



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eDiscovery: Common pitfalls



Welcome

New Team Members –
Getting to know them

Anti-Bribery & Corruption
Focus: 2014 Survey &
Anti-Corruption Training

eDiscovery: Common
pitfalls

Bitcoin 101: Back to
basics

Contacts

In a complex business dispute, litigation or regulatory investigation, all organisations face one certainty – the discovery process. Whether you are a litigation lawyer at a law firm or in-house counsel, responding to a discovery request or regulator’s notice involves a myriad of complex requirements for proper data collection, processing, hosting, review and production.

Traditionally, the discovery process has involved primarily hard copy documents. However, the low cost of electronic data storage, coupled with a behavioural shift towards increased reliance on electronic communication, means that many of the potentially relevant documents in your organisation will be stored electronically, including emails and Word and Excel documents. And data volumes are often immense. Therefore, the discovery process now requires requests for, and the provision of, a considerably larger proportion of electronic documents.

Also, the ‘new’ High Court Rules (High Court Amendment Rules (No 2) 2011) came into force on 1 February 2012. The changes to the rules promote electronic discovery (“eDiscovery”), reflects the ever-increasing volume of data (in particular, electronic data) in modern litigation, and the need to effectively and efficiently handle the discovery process.

There are three main phases to the discovery process:

Collection: This phase requires an organisation to identify the data sources, and appropriately collect the documents and the associated metadata (data about data, e.g. author, date and time information) in a forensically sound manner to ensure that the evidence and the chain of custody are preserved. This phase often involves an organisation’s IT staff and/or Forensic expertise to collect the data. An organisation’s key decision-makers and legal advisors are also essential to determine what data should be collected.

Processing: This involves indexing the documents and converting documents such as pdfs or other scanned documents (e.g. hard copy documents) into text-searchable documents using a process called Optical Character Recognition (OCR). Processing may also involve decrypting password-protected documents. Processing the data enables the documents to be filtered in order to reduce the electronic data sizes at the earliest

stages in the discovery process. Filtering techniques include key-word searches, date-range filters etc. This phase often involves Forensic expertise to process and filter the data. Although an organisation’s key decision-makers and legal advisors are also essential in order to determine what filters to apply.

Review: This is a critical component to most litigation. Reviews are usually conducted by legal staff (in-house and/or external) and are used to identify responsive documents to produce, and privileged documents to withhold.

In our experience, when managing the eDiscovery process, the key questions to ask are:

Are the right people involved in key eDiscovery decisions?

When an organisation needs to comply with discovery or a regulator’s notice, there are often tight deadlines in which to respond, making the discovery process very stressful. In a tight deadline or stressful situation, the temptation is to quickly make decisions, which may mean that key people are excluded from the discovery decision-making process.



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eDiscovery: Common pitfalls



Welcome

New Team Members – Getting to know them

Anti-Bribery & Corruption Focus: 2014 Survey & Anti-Corruption Training

eDiscovery: Common pitfalls

Bitcoin 101: Back to basics

Contacts

In our experience, successful discovery occurs when all key stakeholders are involved in the decision-making process from the outset. The key decision-makers for a successful discovery process include external legal advisors, in-house legal advisors (if applicable), IT, business leaders or key management personnel, Privacy Officers (if applicable) and Forensic experts who are familiar and experienced in the eDiscovery process. This list of people encompasses all of the different disciplines and expertise required in the eDiscovery process (from collection to review).

What data should be collected?

Relevant documentation for the discovery process may reside in a number of different places, such as hard copy documents, individual computers, laptops, servers, smartphones, the cloud, back-up tapes, social media, externally hosted web-based email servers and document management systems.

The time and effort required to obtain data from each of these data sources needs to be considered. While some data sources might be well structured and easy to use, others may require significant time and effort when it comes to extracting information.

Also, it might not be appropriate to collect all of these data sources for the discovery process. One of the key principles of the new High Court Rules is 'proportionality'. High Court Rule 8.2(1) requires the parties to cooperate to ensure that discovery and inspection are "*proportionate to the subject matter of the proceeding.*" And 1(d) of the Discovery Checklist requires the parties to consider the likely costs of the discovery and "*assess and discuss ... whether that estimated cost is proportionate to the sums in issue...*" Therefore, given that proportionality is a key principle of the new Rules, to collect and process all data sources might be disproportionate to the issue or subject matter. However, if a party decides not to collect data from certain data sources, they should be able to justify this decision if questioned by the other party, the regulator or the Court – which could be several months (or years) in the future.

When managing the discovery process, in our experience, organisations should clearly understand the objectives and use this to determine what data sources should be collected. Organisations should also clearly document what data sources to collect, and more importantly, what data sources should not be collected and why.

Have you collected all of the data?

Sometimes, despite making and documenting data collection decisions, key data might not be collected. For example, instead of collecting all sent and received emails, only the sent emails were extracted; or a key user's computer has not been collected; or there is an obvious gap in the data collected (e.g. October data is missing).

In our experience, running data analytics over the collected data will highlight any gaps or anomalies that might indicate that data is missing. And in our experience it is important that this is done early in the discovery process and before any processing, filtering or reviewing has begun in order to avoid wasted time and costs.

Have you filtered the data appropriately?

Filtering the data is an important step in the discovery process as it assists in reducing the number of the documents for review. But the filtering phase needs to be carefully managed in order to ensure that documents are not unjustifiably excluded (e.g. relevant, discoverable documents are not returned) and that the High Court Rules are adhered to.

High Court Rule 8.14 requires parties to make a reasonable search for documents. What is reasonable depends on the circumstances and includes factors such as the numbers of documents involved, the ease and cost of retrieving a document and the need for discovery to be proportionate to the subject matter of the proceeding. However, the reasonable search requirement needs to be balanced with the temptation to brutally apply filtering techniques so as to drastically reduce the amount of documents for review. By doing this, there is a risk that the Court will find that you did not comply with the discovery process.



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eDiscovery: Common pitfalls



Welcome

New Team Members –
Getting to know them

Anti-Bribery & Corruption
Focus: 2014 Survey &
Anti-Corruption Training

eDiscovery: Common
pitfalls

Bitcoin 101: Back to
basics

Contacts

In our experience, some of the filtering ‘fish-hooks’ to watch out for are:

Narrow or pre-agreed key words. Whilst one of the key principles of the High Court Rules is cooperation, there is a danger that parties may agree on the key word searches too early in the discovery process. For example, once the discovery process commences it might become apparent that the initial key word searches are not returning appropriate results; and therefore the key word searches need to be tweaked to better align with the words used in the data. This might be because of the syntax used, for example “computer” will not return “laptop” etc.

Documents with no dates. Sometimes documents have no dates. These might have been scanned by a scanner which does not record document dates. Therefore, if a date range filter is applied, these documents will **not** be returned.

De-duplicating documents. Clause 8 of the listing and exchange protocol in the Rules details how to deal with duplicate documents. It is important that de-duplicating documents are properly managed in order to comply with the Rules, and also to avoid reviewing multiple, duplicated documents. However, when de-duplicating documents it is important that email ‘families’ are properly de-duplicated. For example, an email and an attachment are only considered to be a duplicate if the entire email and attachments are contained together elsewhere. So, if a relevant document (e.g. a word document) is a stand-alone document, but is also attached to an email (a ‘child’ document and therefore part of the email ‘family’), both documents need to be discovered. The ‘parent’ email that includes the attachment also needs to be provided.

High Court Rules. This article does not attempt to circumvent appropriate legal advice that should be obtained about how the discovery process should be conducted. We have provided some considerations for managing the discovery process. If your organisation’s discovery process is not managed properly, you could find yourself in a situation where you are unable to provide information that you are required to disclose. This is especially problematic when the other parties to litigation are able to do so effectively.



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How can we help?

Deloitte Forensic has assisted many organisations manage the electronic discovery process in an efficient, secure and easily accessible manner. If you or your organisation needs electronic discovery assistance, please do not hesitate to contact either **Jason Weir** or **Melanie Maddox**.

The requirements of discovery are covered under the new



Bitcoin 101: Back to basics



Welcome

New Team Members –
Getting to know them

Anti-Bribery & Corruption
Focus: 2014 Survey &
Anti-Corruption Training

eDiscovery: Common
pitfalls

Bitcoin 101: Back to
basics

Contacts

“Bitcoin Rush Compared to California Gold Rush in 19th Century”

“Bitcoin trading website accused of defrauding thousands of customers”

With such attention grabbing headlines, we bring Bitcoin back to basics in order to understand why it’s such a global hot topic of conversation.

What exactly is Bitcoin?

Bitcoin is a decentralised digital or virtual currency. An easy way to think of it is like cash for the internet. It was founded by Satoshi Nakamoto in 2008 and first went live in 2009. There is an air of mystery that surrounds Satoshi Nakamoto - much debate circulates in online forums as to who or whom Satoshi Nakamoto could be, and if he even exists. However, no one has publicly admitted to being the founder of Bitcoin.

Bitcoins are traded on exchanges in the same way that securities are. It’s an attractive investment to speculators due to the extreme price volatility observed in recent years. At the end of 2012 one Bitcoin was worth US\$10, however by the end of 2013 it was trading at approximately US\$1,000. Due to the very low transaction costs associated with Bitcoin, it appeals to foreign nationals transferring money home, or by those emigrating from countries where it is prohibited to leave with local currency (e.g. Vietnam, China).

Don’t let the pictures of the coins with a ‘B’ on it fool you – Bitcoins do not exist in a physical form. Bitcoins are stored in digital wallets on computers, laptops or smartphones. The software is downloaded in the same way as downloading an app for internet banking or Trademe. Each digital wallet has a unique address and a private key. Last October, the first Bitcoin ATM went live in Canada, which allows customers to exchange cash for Bitcoins (and vice versa). The Bitcoins are received via a QR code to their smartphone wallets or obtained via a temporary paper wallet printed by the ATM (i.e. a receipt with a balance on it).

How does a Bitcoin transaction work?

One concept that people struggle to grapple with is that Bitcoins are not a tangible currency. There are no Bitcoins only records of Bitcoin transactions. Every transaction is stored in a publicly available general ledger called the ‘block chain’.

To send Bitcoins you need an address and a private key, both of which are a random sequence of letters and numbers unique to that Bitcoin customer. When coins are sent from one Bitcoin wallet to another, the transaction is put into a ‘block’ for ‘miners’ to solve. The wait time for processing the transaction is approximately 10 minutes.

Transaction fees are optional, however they do provide an incentive for the miners to solve the block chain promptly since the fee goes to the miner who successfully verifies the transaction.

What is Bitcoin mining?

Bitcoins are discovered by way of ‘mining’. It is thought that the currency is limited at 21 million Bitcoins. Since 2009, 12 million Bitcoins have been discovered and are in circulation, through mining.

All transactions within a set period are collected into a ‘block chain’ (i.e. a publicly available general ledger). Block chains are padlocked. Miners apply mathematical formulas to find the key to the padlock thereby verifying the transactions. As a reward, the successful miner gets 25 newly generated Bitcoins. From this process, another sequence of random letters and numbers is created called a ‘hash’. This hash is added to the end of a block, essentially a digital signature (or wax seal) confirming the transaction is legitimate.



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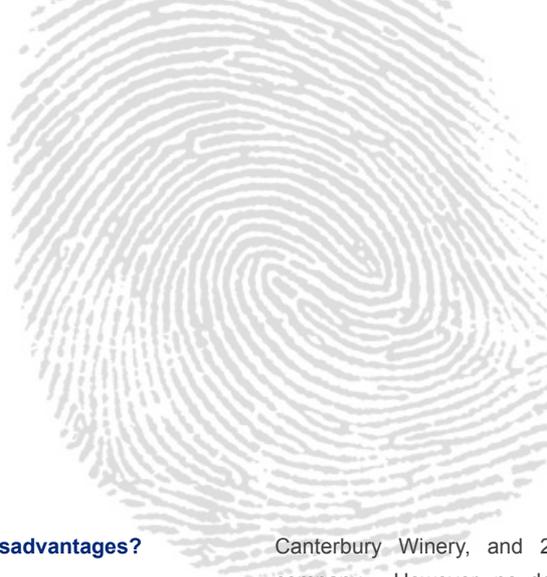


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“Bitcoin Rush Compared to California Gold Rush in 19th Century” was written by Mathew, J. (2014) and appeared in ‘International Business Times’

“Bitcoin trading website accused of defrauding thousands of customers” was written by Snyder, R. (2014) and appeared in the ‘Los Angeles Times’

Bitcoin 101: Back to basics



Welcome

New Team Members –
Getting to know them

Anti-Bribery & Corruption
Focus: 2014 Survey &
Anti-Corruption Training

eDiscovery: Common
pitfalls

Bitcoin 101: Back to
basics

Contacts

What are the advantages and disadvantages?

The main advantages are:

- Bitcoin offers a lot of freedom to its customers allowing them to transact or trade any amount instantly, anywhere in the world, at any time.
- There are currently no compulsory fees attached to completing a Bitcoin transaction outside of a trading platform. Fees are optional, and ensure the transaction is confirmed in a timely fashion by the miners.
- Arguably there is reduced risk from an identity theft perspective because transactions do not contain personal information, and unlike using a credit card over the internet there is minimal risk of fraudulent charges being applied to the Bitcoin account.
- Due to Bitcoin transactions being irreversible and verifiable, it allows companies to expand into emerging markets where the risk of fraud and corruption is unacceptably high.

Some Bitcoin users argue that it is an advantage that they can remain anonymous. And other proponents of Bitcoin argue that the system is transparent, with all transactions being held in a public general ledger.

However a system that allows users to remain anonymous does not seem to support notions of transparency. And the anonymity of Bitcoin makes it conducive to abuse. Since no personal information of senders or recipients is provided and retained, there is ample opportunity that this virtual money could be used to finance criminal activity (i.e. money laundering, drug and human trafficking, such as the “Silk Road drug bust” headlines that occurred during 2013 and 2014. ‘Silk Road’ was a popular online illegal-drug emporium that used Bitcoin as a medium of exchange).

The only Bitcoin users that are not veiled by the cloak of anonymity are vendors that accept Bitcoin in exchange for goods and services. New Zealand examples of vendors that accept Bitcoins include Pyramid Valley, a North

Canterbury Winery, and 2Talk, a telecommunications company. However, no details apart from their unique account number are provided.

Furthermore, the fact that Bitcoin is an unregulated currency would also point toward the currency being more murky than transparent. There are no laws around IT security, so it is prone to hacking. Exchanges can be shut down at any time and there is no form of protections such as a trustee relationship or deposit guarantee scheme to protect investors. Since it is an unregulated currency that is not issued or backed by a central bank, it is subject to major exchange rate valuations. As such, there is always the potential for total loss for its investors.

Security of digital wallets has also been brought into question. As no information is stored by a central authority such as a bank, if a wallet is hacked there is no bank that reimburses you for the loss, and if the private key to a wallet is lost, it is no longer possible to access that wallet.

Regulators radar

Tax is certainly at the forefront of any discussion surrounding Bitcoin regulation. In New Zealand there is currently no guidance from Inland Revenue as to how to account from Bitcoin transactions. Singapore is the first jurisdiction to release tax guidance, and we understand that the Australian Tax Office will not be far behind.

Going back to tax basics, it will hinge on whether Bitcoin is regarded as an asset or currency. If Bitcoins are seen as a currency, Companies that trade Bitcoins could be subject to income tax gains from their sale. Additionally, the sale of Bitcoins to investors in exchange for money could be considered a taxable supply and attract GST. If, on the other hand, Bitcoins are assets which are invested in for capital appreciation purposes, then they may be subject to a capital gains tax. Where Bitcoins are accepted as payment for real goods or services GST could be accounted for on the individual supplies made if the parties involved are registered for GST.



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Bitcoin 101: Back to basics



Welcome

New Team Members – Getting to know them

Anti-Bribery & Corruption Focus: 2014 Survey & Anti-Corruption Training

eDiscovery: Common pitfalls

Bitcoin 101: Back to basics

Contacts

Concluding comments

At last count there were over 70 Bitcoin alternatives, so will this fascination with Bitcoin lead to worldwide acceptance of currency that is not backed by a central bank? Or is it simply another 'tech bubble' waiting to burst? If Bitcoin were to become regulated then it would enter the realms of being a legitimate currency. And if this occurred, the features that have made Bitcoin such a unique and highly valuable commodity to date, would no longer exist making it no more extraordinary than the US dollar. However, people will always have a tendency to revert back to a sovereign backed currency, especially in times of crisis.

Deloitte Forensic is actively keeping up to date with developments regarding virtual currencies, and their propensity to be involved in fraudulent activities. If you have any questions or concerns around Bitcoin or other virtual currencies, please do not hesitate to contact **Barry Jordan** or **Rebecca Hildyard**.



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