

TAXTEAM TALK

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INTRODUCTION

The amendments to the KiwiSaver legislation proposed in the May 2007 Budget were finally enacted on 19 December 2007, albeit with some further amendments!

Besides giving effect to compulsory employer contributions and the employer tax credit, there were several other important amendments to KiwiSaver that have particular relevance to remuneration negotiations. Over recent months, we have been receiving an increasing number of questions in this area, and therefore now take this opportunity to highlight some of the key issues that you may wish to consider.

COMPULSORY EMPLOYER CONTRIBUTIONS

From 1 April 2008, employers were required to make compulsory employer contributions. By now, you will no doubt have considered the impact from a cost perspective, and whether, in reality, the employer tax credit will significantly reduce the net cost to you.

Importantly, it is intended that compulsory employer contributions will be *in addition* to an employee's gross salary or wages; hence the introduction of the employer tax credit. To ensure that employers operating a 'total remuneration' policy do not defeat the intent of the legislation, the legislation has been drafted such that:

- § Remuneration agreements entered into before 13 December 2007 are null and void, unless the employee and employer reconfirm that they are happy to continue on the existing basis; and
- § Remuneration agreements entered into after 13 December 2007 reflect the intent of the legislation in respect of compulsory employer contributions, and are concluded as part of the 'good faith bargaining' requirements of the Employment Relations Act 2000.

The rationale for this enactment is to ensure that both parties have entered into the agreement with full awareness of the legislation surrounding compulsory employer contributions. It also prevents employers from inadvertently, or deliberately, receiving a windfall from the employer tax credit.

However, further into the period, during which compulsory employer contributions will increase from 1% to 4%, the additional cost to employers can be offset against pay movements – again, provided the funding of contributions is an outcome of a mutual agreement in good faith.

TRANSITIONAL RULES FOR CONTRIBUTIONS

In conjunction with the introduction of compulsory employer contributions, employees' ability to rely on employer contributions to meet the 4% minimum contribution level has been removed.

However, the Government accepted that some employees may have difficulty forgoing 4% of their salary, so, transitional provisions have been legislated enabling employer contributions to count towards the employee contribution, *provided that both the employee and employer agree to apply the transitional rules, and agree to contribute at least to the extent of the amounts stipulated, as summarised below:*

Pay Period	Min Employee Contribution	Min Employer Contribution	Total Contribution
From 01/04/08	2%	2%	4%
From 01/04/09	2%	2%	4%
From 01/04/10	3%	3%	6%
From 01/04/11 onwards	4%	4%	8%

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CHANGES TO DEFINITIONS

"Salary or wages"

The new KiwiSaver legislation has amended the definition of "salary or wages" to exclude:

- § Payments or allowances relating to costs of living overseas;
- § Accommodation benefits and accommodation allowances provided; and
- § Redundancy payments.

However, ACC weekly compensation and paid parental leave are now included in the definition of gross salary or wages.

The basis for excluding certain payments is that they are infrequent in nature and are likely to have a significant impact on affordability for both employers and employees.

"Casual employee"

In order to minimise the compliance burden for employers and short-term employees, an amendment excludes casual employees from the automatic enrolment mechanism due to their "intermittent or irregular" employment nature. Further, casual employees will not be subject to the automatic enrolment rules if they stop being paid holiday pay and become permanent employees.

SALARY SACRIFICE ARRANGEMENTS

The amended legislation does not specifically prohibit salary sacrifice arrangements, so long as they are an outcome of a mutual agreement with good faith. Employers may consider offering such arrangements for various reasons; for example:

- § The arrangements are a viable method of employers assisting employees that wish to participate in KiwiSaver to increase their retirement savings;
- § For some employees, the ability to swap taxable salary and wages for a tax-exempt contribution to a KiwiSaver Scheme or a complying superannuation scheme may be an attractive proposition, despite access to the contribution being deferred until retirement.

However, there are also certain considerations that need to be taken into account during the development of, and prior to, the implementation of a salary sacrifice programme, including:

- § The effect and implementation of compulsory employer contribution — i.e. whether you reduce the level of salary sacrifice or increase the total remuneration in order to account for these;
- § The limit of the Employers Superannuation Contribution Tax ("ESCT", formerly SSCWT) exemption on employer contributions;
- § The impact of a salary sacrifice arrangement on future ACC claimable amounts, redundancy entitlements, etc., which will be based on the new reduced level of salary or wages; and
- § The increased administration that will be required to ensure that all arrangements reached with employees are documented and reviewed periodically.

We would urge any employer that is considering a salary sacrifice to take comprehensive advice prior to offering this option to staff.

RECOMMENDED ACTION

Given the issues highlighted above, it is therefore timely to:

- § Review your KiwiSaver policies and procedures to ensure that those implemented in July 2007 remain effective;
- § Check the payroll system to ensure that KiwiSaver contributions and other superannuation contributions are calculated on the correct amount, particularly where an employee contributes to more than one scheme;
- § Reflect on the impact of the compulsory employer contributions on existing remuneration agreements; and
- § Assess the options available to both your organisation and employees in readiness for the next round of remuneration negotiations, and consider whether a salary sacrifice policy should be implemented.

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