BUDDLEFINDLAY

Legal update - Changes to KiwiSaver: key issues for employers

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Budget 2011 has made significant changes to KiwiSaver, New Zealand's workplace savings scheme. The generous incentives have been cut back – although incentives do remain. The changes bring the scheme more into line with typical international retirement saving schemes which rely primarily on contributions from employers and employees, rather than on government support.

The changes – in order of implementation

Employers need to be aware of the different dates on which the changes take effect.

Reduced Member Tax Credit

The first change to take effect is to Member Tax Credits, which are paid into members' accounts in June each year. These will reduce from a current maximum of $20 a week (up to $1042 per annum), to $10 a week (up to $521 per annum). The reduced level will apply to all contributions made on or after 1 July 2011.

Tax free Status removed

The current tax free status of employer contributions will be removed. From 1 April 2012 all employer contributions will be subject to Employer Superannuation Contribution Tax (ESCT) at the rate of 33%.

State Sector Contributions

The Government will no longer centrally fund contributions to KiwiSaver (and other retirement schemes) for State Sector agencies. From 1 July 2012 agencies will have to meet contributions from existing funding.

Increased Contributions

From 1 April 2013 minimum employee and employer contributions will rise from 2% to 3%.

Questions for employers to consider

At first glance, it appears the only impact on employers will be the April 2013 increase in contributions from 2% to 3%. There are a number of other factors however which employers will need to consider and prepare for.

Consider any Total Remuneration arrangements?

The Savings Working Group had recommended that an employer's ability to offer KiwiSaver on a "total remuneration" basis (ie giving non-KiwiSaver employees pay increases to compensate for not receiving contributions) should be removed. Some commentators expected this would occur in Budget 2011, but the budget is silent on this point. There remains the possibility, however, that this change will occur in the future. Our advice generally, given the changes that keep occurring, and the complexity that comes with factoring employers' KiwiSaver contributions into total remuneration arrangements, is that employers are best to keep KiwiSaver separate.

What will be the impact on bargaining?

Employers now face an imminent increase in remuneration costs. For State Sector agencies this commences in July 2012, when they must fund contributions from within existing funding (with a further 1% increase to costs in April 2013). Private sector employers have two years before the minimum employer contribution rises by 1% in April 2013. Nevertheless, we expect employers will factor in the cost increases when negotiating wage and salary increases in the intervening period – particularly in the State Sector in the year ahead.

Am I prepared for potential questions from employees?

From 1 April 2012 employer contributions to a KiwiSaver scheme will be subject to ESCT, similar to employer contributions to non-KiwiSaver superannuation schemes. Currently, employers who contribute to a KiwiSaver scheme at the standard 2% rate are not required to deduct ESCT.

In addition, the option employers have to deduct ESCT at a flat rate of 33% rate will be removed. From 1 April 2012, a progressive rate of ESCT will apply, determined by reference to the employee's total gross salary and wages and employer contributions in the previous tax year, or the employer's estimation in some cases.

It should be noted that any variation in income level could result in employees being subject to an ESCT rate that differs from their current year marginal tax rate. For example, if the employee experiences a drop in income level, the applicable ESCT rate may be higher than his/her current year marginal tax rate. Employers should be prepared for potential questions from employees.

What about any compliance costs?

Employers will have additional compliance costs as a result of the changes. Payroll systems, policies and possibly employment agreements will need changing to reflect the changes in rates and tax treatment. Employers will also have to be prepared to answer questions from employees.

Consider any Salary Sacrifice offered?

In light of the alignment of the ESCT rates and marginal tax rates, we believe that it is timely to revisit existing salary sacrifice arrangements. The imposition of ESCT from 1 April 2012 means that employers should consider whether to continue with salary sacrifice as part of their offering.

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