

## Further information

For further information about any issue raised in this newsletter please contact:

### Auckland Tax

Andrew Ryan - Partner

Telephone +64 9 353 9950

andrew.ryan@minterellison.co.nz

Joanne Dunne - Partner

Telephone +64 9 353 9990

joanne.dunne@minterellison.co.nz

### Wellington Tax

David Patterson - Partner

Telephone +64 4 498 5128

david.patterson@minterellison.co.nz

John Peterson - Partner

Telephone +64 4 498 5028

john.peterson@minterellison.co.nz

### Auckland Employment

Jennifer Mills - Partner

Telephone +64 9 353 9919

jennifer.mills@minterellison.co.nz

Aaron Lloyd - Senior Associate

Telephone +64 9 353 9971

aaron.lloyd@minterellison.co.nz

### Wellington Employment

Megan Richards - Partner

Telephone +64 4 498 5023

megan.richards@minterellison.co.nz

Karen Spackman - Partner

Telephone +64 4 498 5105

karen.spackman@minterellison.co.nz

Deborah Jones - HR Consultant

Telephone +64 4 498 5123

deborah.jones@minterellison.co.nz

Katie Elkin - Senior Associate

Telephone +64 4 498 5054

katie.elkin@minterellison.co.nz

Emma Warden - Senior Associate

Telephone +64 4 498 5114

emma.warden@minterellison.co.nz

## KiwiSaver and the PAYE rules: How much to deduct?

KiwiSaver has finally arrived. Most employers will already be calculating employee contributions, making deductions from their employees' earnings and forwarding those contributions on to Inland Revenue. Employers who offer a range of benefits to employees, should be aware, however, that some of these benefits may not be subject to deductions on account of KiwiSaver. In particular, certain non-cash benefits and the reimbursement for certain kinds of costs are not "salary or wages" under the KiwiSaver Act 2006 and, therefore, are not counted for the purposes of determining the amount of an employee's KiwiSaver contribution. Accordingly, employers should have a clear understanding of what is included in an employee's gross salary or wages for KiwiSaver purposes.

The definition of "salary or wages" in the KiwiSaver Act is taken from the definition of "salary or wages" in the Income Tax Act 2004. Therefore, in general, if a payment made to an employee is subject to PAYE withholding tax it will also be subject to deductions on account of KiwiSaver.

There are two main forms of benefit provided to employees that are not part of an employee's gross salary or wages: *non-cash benefits* and *non-taxable reimbursing allowances*. While these benefits and allowances are often treated, as an economic matter, as part of the employee's remuneration package, they are not considered "salary or wages" for KiwiSaver purposes.

The need to calculate the correct amount of KiwiSaver contributions for each employee makes it even more important for employers to get their heads around the detail of the PAYE rules. Employees on total remuneration packages will also need to understand how their choice of benefits could affect their level of KiwiSaver contributions. This issue is also likely to become increasingly important for employers in future years, as compulsory employer contributions are phased in from 1 April 2008. Now is the time for employers to start looking at their current remuneration policy and develop a strategy for dealing with KiwiSaver deductions and contributions going forward.

### Salary or Wages

"Salary or wages" is widely defined under the KiwiSaver Act. The definition includes bonuses, commission, extra salary, gratuities, overtime pay and any other remuneration of any kind. Salary or wages do **not** include, however, non-cash benefits provided to an employee or what Inland Revenue generally refers to as exempt "reimbursing allowances".

## The line between benefits and allowances that are taxable and those that are non-taxable is not always easy to draw

### Non-cash Benefits

Non-cash benefits supplied to an employee will generally not be subject to PAYE or KiwiSaver deductions. These non-cash benefits include everything from use of a motor vehicle, to the biscuits supplied at morning tea. Some of these benefits are, however, subject to tax as a “fringe benefit”.

### Fringe Benefits

A fringe benefit is a non-cash benefit provided to an employee in connection with their employment. While many employees consider fringe benefits to be part of their overall remuneration package, a fringe benefit is treated quite differently for tax purposes. The value of the fringe benefit is not taxable in the hands of the employee. Rather, it is the employer who must pay fringe benefit tax (“FBT”) on the value of the benefit. The “classic” fringe benefit is providing an employee with a company car that is available for private use. There is a significant body of legislation and Inland Revenue guidance on how to determine and value the amount of a fringe benefit.

Employers should always consider carefully the after-tax cost of providing non-cash benefits. If you have any questions about the correct tax treatment of any non-cash benefits you are providing to employees you should feel free to contact us. Our tax and employment experts can provide you with practical and clear guidance on how best to structure your employee remuneration policies.

### Reimbursing Allowances

Some allowances paid by employers are taxable and some are not. Allowances that are taxable fall within the definition of “salary or wages” and should be subject to PAYE and included in the employee’s gross earnings for KiwiSaver purposes. Taxable allowances are those which benefit the employee in their private capacity, (for example gym membership or child care allowances) and allowances that are compensation for, or in recognition of, certain services rendered by the employee (for example a first aid allowance).

Broadly, non-taxable “reimbursing allowances” are payments made to employees to compensate them for expenses that they have incurred while doing their job. Examples include phone allowances (where the phone is used for business purposes), meal allowances, mileage allowances, or tool money. These types of allowances are not subject to PAYE, and so would be excluded from an employee’s KiwiSaver contribution calculation.

The line between benefits and allowances that are taxable and those that are non-taxable is not always easy to draw. There are quirks in the tax system which may lead to unexpected results. Two types of scenarios will be considered in this Employment Update.

### Doctors Visits

A benefit that an employer provides to their employees at work (including everything from Friday lunches to on-site flu inoculations) will generally not be subject to FBT. A recent law change provides that benefits provided by employers to meet their health and safety obligations should also be outside the scope of FBT, even if those benefits are delivered off-site. Accordingly if an employer arranges and pays for an off-site visit to a doctor for an employee’s flu inoculation then the cost of that visit will not be subject to FBT, PAYE or a deduction on account of KiwiSaver.

**Minter Ellison Group  
and Associated Offices**

AUCKLAND  
WELLINGTON SYDNEY  
MELBOURNE BRISBANE  
DARWIN CANBERRA  
ADELAIDE PERTH GOLD  
COAST HONGKONG  
SHANGHAI JAKARTA  
SAN FRANCISCO  
LONDON

**AUCKLAND**  
PO Box 3798  
88 Shortland Street  
Auckland, New Zealand  
Ph +64 9 353 9700  
Fax +64 9 353 9701

**WELLINGTON**  
PO Box 2793  
125 The Terrace  
Wellington, New Zealand  
Ph +64 4 498 5000  
Fax +64 4 498 5001

*This newsletter has been  
prepared by Minter Ellison  
Rudd Watts. Professional  
advice should be sought  
before applying the  
information to particular  
circumstances.*

*To have colleagues added or  
yourself deleted from the  
mailing list contact  
mia.dellabarca@minterellison.co.nz*

Yet, if the employer reimburses the employee for the cost of the doctor's visit, then the allowance will be subject to PAYE and should be included in the employee's gross earnings (and therefore subject to KiwiSaver contributions). The anomalies in the PAYE system are thus further magnified by the introduction of KiwiSaver. In the context of compulsory employer contributions, employers will face the dual indignity of having to gross-up the employee for the PAYE withheld and make a contribution to KiwiSaver. We do not believe that this was Parliament's intention and we have asked Inland Revenue to look at this issue.

## Relocation Allowances

Whether or not relocation allowances are to be taken into account for KiwiSaver purposes depends (arguably) on whether the relocation allowance is to reimburse an existing employee for transfer to a new place of work or to reimburse a new employee for the costs of relocation to the place of their new job.

An allowance paid to an existing employee for relocation costs is excluded from the employee's gross earnings and, accordingly, will not be subject to KiwiSaver deductions. However, the situation may be different for the costs associated with relocating a new employee. Recently, Inland Revenue has expressed the view that a relocation allowance paid to a new employee should be treated as taxable. If that is correct, the allowance should also be subject to PAYE and deductions on account of KiwiSaver. Inland Revenue's view has provoked some controversy and Inland Revenue has indicated it will reconsider its position. However, until Inland Revenue states otherwise, it may be prudent for employers to take a conservative approach and include the allowance when calculating the new employee's gross earnings and KiwiSaver contributions.

## How can we help

As KiwiSaver is untested legislation, we expect that there will be kinks in the system that are likely to create uncertainties for employers. Many employers will have questions about whether particular allowances and benefits should be included when calculating an employee's gross salary or wages, or how to efficiently structure the payment of allowances or benefits. Our Tax and Employment teams are experienced in advising on the allowances and benefits that employers provide, and can provide advice on the impact of KiwiSaver and the appropriate treatment for allowances and benefits.