



August 2008

Employment & Tax Update

Employment Related Changes in the Latest Tax Bill

The Taxation (International Taxation, Life Insurance, and Remedial Matters) Bill (the Bill) had its first reading in Parliament on 6 August 2008. The Bill proposes a number of important, employment-related changes, including in relation to KiwiSaver, although it does not presently contain the amendments to KiwiSaver which the Government announced recently it was looking to introduce (you can read more about this in our [recent update](#)).

The principal employment-related changes mentioned in the Bill include the following (in summary):

- Relocation and overtime meal allowances will be exempt from tax with retrospective effect from 1 April 2002. Employers and employees may be entitled to tax credits on relocation and overtime meal allowances paid since 1 April 2002.
- Employers will be able to elect to participate in the “payroll giving” scheme, which will allow employees to make gifts directly from their salary to charitable entities in return for a tax credit which is offset against the employee’s PAYE liability. Employers who participate in the scheme will be subject to a number of administrative and compliance obligations. The scheme will apply from 1 April 2009.
- Migrant workers who come to New Zealand under the recognised seasonal worker policy will have a new tax code, and will not be required to file an end-of-year tax return (to apply from 1 April 2009).
- A number of technical changes are proposed to be made to the KiwiSaver legislation. The major proposed changes of particular interest are:
 - An end-of-year square up process to ensure eligible employers will receive their full entitlement to the employer tax credit (to apply to contributions made from 1 April 2008).
 - Where the Inland Revenue is required to refund employer contributions because an employee has opted out of KiwiSaver, the refund will be made directly to the employer, rather than being offset against a tax debt of the employer (to apply from 1 April 2008).
 - An amendment which purports to correct a mismatch in the required amount of compulsory employer contributions that can occur when an employee is a member of a KiwiSaver scheme and another superannuation fund (to apply from 1 April 2008).

- A new provision to prevent double dipping where an employee who is a member of a multi-employer superannuation fund moves to a new employer who also contributes to that multi-employer superannuation fund (to apply from 1 April 2008).

Relocation and overtime meal allowances

In November 2007 the Inland Revenue issued an official's paper signalling its intention to specifically exempt certain relocation and overtime meal allowances. The Bill legislates the criteria that must be met before relocation and overtime meal allowances will be exempt from income tax and fringe benefit tax (FBT).

The changes will apply retrospectively from 1 April 2002. This means that employers or employees who have paid tax on relocation or overtime meal allowances since 1 April 2002 may be entitled to a credit for over-paid tax. If you think you or anyone in your organisation may be entitled to a tax credit under the new legislation, please feel free to contact us for further advice.

Relocation payments

If an employee is required to relocate to a new workplace, which is not within a reasonable travelling distance of their existing home, as a result of a change in their employment (whether they are starting with a new employer, or remaining with their existing employer but in a new location), a relocation allowance paid to them may be tax exempt. The Inland Revenue recognises that factors such as traffic density impact on commuters, and proposes to issue guidance on what is a "reasonable" travelling distance.

In order to be eligible for the tax exemption, a relocation payment must roughly reflect the actual expenditure incurred in relocating, and the relocation expenses must be incurred before the end of the income year after the employee relocates. The specific types of relocation expenses which will be eligible for the tax exemption will be set out in a determination to be issued by the Inland Revenue. This has not yet been released, but is expected to be extensive and include items such as expenses related to immigration, the costs of relocating the employee, their family, pets, household and personal items, the costs associated with selling the employee's existing home and purchasing another, temporary accommodation and various one-off expenses like disconnection and reconnection fees, and new school uniforms for the employee's children.

Overtime meal allowances

As currently drafted, overtime meal allowances will only be eligible for the exemption if the employee is entitled to be paid for overtime, or the employer has an established practice of paying for overtime meals. The Bill defines "overtime" as being when an employee works more than 2 hours beyond their

ordinary hours of work for that day. Restrictions considered in the officials' issues paper which proposed these changes (such as an 8 hour minimum day and an overtime rate equivalent to time-and-a-half) have not been reflected in the Bill. As overtime meal allowances can only cover actual costs or a reasonable estimate, any payments over \$20 must be verified with documentation (i.e. a receipt).

Payroll Giving

From 1 April 2009, the payroll giving scheme is intended to allow employees to make regular donations to charitable entities directly from their salary and wages. It is proposed that the tax credit from the donation will be offset against the employee's PAYE liability, so that the employee receives an immediate tax benefit rather than having to wait for the end of the year and file a tax return.

The payroll giving scheme is only available where an employer files their employer monthly schedules electronically, and participation is voluntary for both employers and employees. If an employer does choose to participate in the payroll giving scheme, it is envisaged in the Bill that they will be subject to administrative and compliance requirements, such as ensuring that donations are transferred to charities and keeping records. Employers may be liable for shortfall penalties if they fail to comply with their obligations under the payroll giving scheme.

Migrant Workers

The Bill proposes changing the rules regarding PAYE withholding for non-resident seasonal workers, ostensibly to reduce the compliance costs for migrant workers coming to New Zealand under the recognised seasonal employer policy. These changes would appear to be part of the Inland Revenue's response to PAYE compliance issues in the fruit picking industry, following a number of high profile cases of horticultural contractors being prosecuted for a failure to comply with their PAYE obligations. Under the proposed changes, temporary migrant workers will be known as "non-resident seasonal workers", and will use a new tax deduction code, "NSW". Employers will deduct a final tax at a flat rate of 19%. Non-resident seasonal workers will not be required to file an income tax return or a personal tax summary.

KiwiSaver Changes

A number of changes to the KiwiSaver Act 2006 and other KiwiSaver related legislation have been proposed. These changes are mostly technical in nature, but those most likely to be of interest to employers are set out in more detail below. Many are also proposed to have retrospective effect:

- **Square-up process for the employer tax credit**
Payroll timing and tax credit calculation issues have meant that some employers are not getting the full current benefit of the employer tax credit. It is proposed that, from 1 April

2009, employers will be able to “square up” at the end of the income year by making an additional claim for employer tax credits. This is intended to ensure that employers receive, on an annual basis, the total amount of employer tax credits for which they are eligible.

- **Refund of employer contributions**

Where an employee has opted out of KiwiSaver, and the Inland Revenue is required to refund employer contributions, the Inland Revenue can currently elect to offset any refund of employer contributions against the employer’s tax debt. As employer contributions are commonly funded by employees through a total remuneration arrangement, it is inappropriate for the Inland Revenue to offset the refunded employer contributions against the employer’s tax debt. These refunds should be paid in cash in order that they can be remitted to the employee under the total remuneration arrangement. As such, it is proposed that the Inland Revenue will be required to make any refund of employer contributions without offset. This change is proposed to apply from 1 April 2008.

- **Employer contributions for employees with two or more funds**

The base on which employer contributions to KiwiSaver are calculated (gross salary and wages) is different to the base on which employer contributions to complying superannuation funds are calculated (gross base salary and wages). When an employee is a member of a KiwiSaver scheme and a complying superannuation fund, the employer may be required, under current law, to make “top up” contributions to the employee’s KiwiSaver scheme. While the drafting in the Bill is less than clear, amendments are proposed to the KiwiSaver Act 2006 that are intended to ensure that employers are not required to make “top up” contributions solely because of the difference in calculation method. This change is proposed to apply from 1 April 2008.

- **Extending double dipping provisions to existing defined contribution schemes**

This amendment is intended to apply where:

- an employee is a member of a multi-employer superannuation scheme which is eligible for a contributions offset; and
- that employee changes jobs to work for another employer who also contributes to the same multi-employer scheme.

In this situation, it is proposed that the new employer’s contributions should also “count” for KiwiSaver purposes, and the employee should not be able to “double dip” (i.e. require the new employer to contribute to the superannuation scheme and make compulsory employer contributions to the employee’s KiwiSaver scheme, the employee, in most cases, having been automatically enrolled in KiwiSaver upon joining the new employer). Changes designed to achieve this are proposed to apply from 1 April 2008.

We will keep you informed of any changes to this Bill as it passes through Parliament.

Contacts

If you have any questions regarding this update and how it will impact on your organisation, please do not hesitate to contact us for assistance.

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