



October 2008

Employment and Tax Update

National's KiwiSaver and Superannuation Policy

Last week the National Party released its KiwiSaver and Superannuation policy. National says that its proposed changes to KiwiSaver will make the scheme more affordable for workers and employers (and the Government). At the same time, the proposal is likely to make KiwiSaver a less attractive savings vehicle overall, particularly for workers on lower incomes.

Perhaps the most significant aspect of National's KiwiSaver policy is the implicit acknowledgement that KiwiSaver will remain a permanent feature of the employment and investment landscape for the foreseeable future. National has confirmed that the basic features of the current scheme, including: automatic enrolment and deduction from an employee's wages; the \$1,000 kick start and annual fee subsidy; compulsory employer contributions and member tax credits are all here to stay.

However, National has said that it believes some adjustments to KiwiSaver will ensure that the scheme remains affordable and sustainable over the long term. National has projected that its proposed changes will save the Government around \$3 billion over the next 4 financial years.

The key changes to KiwiSaver proposed by National are:

- to reduce the rate of minimum employee contributions from 4% to 2%;
- to discontinue the employer tax credit; and
- to repeal the most recent Employment Relations Act amendments to KiwiSaver.

Minimum employee contribution rates

The first proposal is to discontinue the incremental increases in the minimum contribution rate for employers and to cap the minimum employee contribution rate to 2% of gross salary from 1 April 2009. Employees and employers will be able to make voluntary contributions at a higher rate but the exemption from employer superannuation contribution tax (ESCT) will not apply to employer contributions that are in excess of the 2% compulsory minimum contribution.

National says that the reduction in minimum contributions would make KiwiSaver affordable to a greater number of employees while also increasing their take home pay. National has also indicated that it will review KiwiSaver in due course with a view to introducing an alternative option providing for higher contribution rates from both employers and employees if economic conditions permit.

The member credit will continue to be available under National up to the current maximum of \$1040 per year. There was initially some confusion when the policy document was released, with some commentators suggesting that employees would only be eligible for the credit to the extent it matched the employee's minimum contribution. This would have meant that an employee earning less than \$52,000 a year would miss out on the full benefit of the member credit. Subsequent National Party statements have indicated that this aspect of the policy requires further elucidation and we expect that the member credit will be matched against both compulsory and voluntary KiwiSaver contributions; meaning that employees on lower incomes will enjoy the full benefit of the member credit provided they make a total contribution of at least \$1,040 a year.

Discontinuing the employer tax credit

Currently, employers are entitled to an employer tax credit of up to \$1,040 per year in respect of employer contributions to an employee's KiwiSaver scheme. From 1 April 2009, National proposes to discontinue this credit. The employer tax credit was introduced by the Government to help off-set the cost of making compulsory employer contributions for each KiwiSaver member. National has said that its proposed cap on the employer's minimum contribution rates means that there is no longer any need to offset the cost with an employer tax credit.

Currently, certain employers are contributing more than the statutory minimum to their employee's KiwiSaver scheme on the basis that these contributions are free of ESCT and because that contribution is funded by a tax credit (up to a maximum \$1,040 per year). The employer tax credit was thus operating as an additional source of funding for employers to increase the overall level of KiwiSaver contributions for lower income earners. Under National's policy, the incentive to contribute at a higher rate than the statutory minimum will be removed. This is because any contribution over the minimum contribution rate will no longer be funded by the employer credit and will be subject to employer superannuation contribution tax (ESCT).

A further consequence of the proposed changes is that the treatment of employees and independent contractors will be more closely aligned. Employer contributions (and exemptions on those contributions from ESCT) generally make KiwiSaver a more attractive scheme for employees than it is for independent contractors. The reduction in the ESCT exemption and state subsidised employer contributions will mean these differences will be less pronounced under National's KiwiSaver scheme.

Repeal of recent ERA amendment

National has announced that it would repeal the recent amendment to the Employment Relations Act that effectively prevents employers from entering into "total remuneration" arrangements with its employees. This amendment was said to be targeted at employment arrangements that were considered to "discriminate" against KiwiSaver members, in circumstances where employers required KiwiSaver member employees to take a pay cut to fund the employer contribution. However, the effect of that legislation is extremely broad and also prohibits otherwise legitimate "total remuneration" arrangements where employees have chosen, on an informed basis, whether to take part of their remuneration in the form of salary or wages or in the form of KiwiSaver contributions. While repealing the changes to the ERA, National has also stated it will amend the KiwiSaver Act to make it clear no employee can have their gross taxable pay reduced as a consequence of joining KiwiSaver. It is not clear how this will be achieved.

Next steps?

Many employers have understandably become exasperated with the constant changes and proposed changes to KiwiSaver. If further changes are made, then employers will need further advice on whether their employment agreements (and any other contractual arrangements) reflect and comply with the legislation and how to get the best out of the revised scheme. In the meantime, employers should take care to ensure that their employment agreements are worded with sufficient flexibility to allow them to comply with future legislative changes. Agreements that specify the amount of KiwiSaver contributions should allow sufficient flexibility to adjust that rate if the minimum contribution rates change or the employer tax credit is eventually scrapped.

Please contact us if you would like any advice in managing any aspects of KiwiSaver including making sure that you have a KiwiSaver strategy which best suits your own particular circumstances now and over a longer term.



Contacts

EMAIL firstname.lastname@minterellison.co.nz

WELLINGTON - EMPLOYMENT

Greg Cain , Partner	T +64 4 498 5180
Megan Richards , Partner	T +64 4 498 5023
Karen Spackman , Partner	T +64 4 498 5105
Katie Elkin , Senior Associate	T +64 4 498 5054
Steve Wragg , Senior Associate*	T +64 4 498 5041

*Subject to Law Society requirements

AUCKLAND - EMPLOYMENT

Jennifer Mills , Partner	T +64 9 353 9919
Aaron Lloyd , Senior Associate	T +64 9 353 9971
Bridget Fleming , Senior Associate	T +64 9 353 9968
Emma Warden , Senior Associate	T +64 9 353 9741

WELLINGTON - TAX

David Patterson , Partner	T +64 4 498 5128
John Peterson , Partner	T +64 4 498 5028
Vivian Cheng , Senior Associate	T +64 4 498 5079

AUCKLAND - TAX

Joanne Dunne , Partner	T +64 9 353 9990
Andrew Ryan , Partner	T +64 9 353 9950
Amanda Somers , Senior Associate	T +64 9 353 9994

INTERNATIONAL OFFICES

AUSTRALIA

Sydney AURORA PLACE 88 PHILLIP STREET SYDNEY NSW 2000 • TELEPHONE +61 2 9921 8888 • MANAGING PARTNER: ANDREW CUNNINGHAM

Melbourne RIALTO TOWERS 525 COLLINS STREET MELBOURNE VIC 3000 • TELEPHONE +61 3 8608 2000 • MANAGING PARTNER: MARK GREEN

Canberra 25 NATIONAL CIRCUIT FORREST, CANBERRA ACT 2603 • TELEPHONE +61 2 6225 3000 • MANAGING PARTNER: JOHN WEBER

Brisbane WATERFRONT PLACE 1 EAGLE STREET BRISBANE QLD 4000 • TELEPHONE +61 7 3119 6000 • MANAGING PARTNER: ROSS LANDSBERG

Gold Coast * 159 VARSITY PARADE VARSITY LAKES QLD 4227 • TELEPHONE +61 7 5553 9400 • MANAGING PARTNER: JOHN WITHERIFF

Perth * LEVEL 49, CENTRAL PARK 152-158 ST GEORGE'S TERRACE PERTH WA 6000 • TELEPHONE +61 8 9429 7444 • MANAGING PARTNER: JOHN POULSEN

Adelaide * 25 GRENFELL STREET ADELAIDE SA 5000 • TELEPHONE +61 8 8233 5555 • MANAGING PARTNER: NIGEL MCBRIDE

Darwin * LEVEL 4, 66 SMITH STREET DARWIN NT 0800 AUSTRALIA • TELEPHONE +61 8 8981 3399 • MANAGING PARTNER: CRIS CURETON

NZ

Auckland MINTER ELLISON RUDD WATTS * LUMLEY CENTRE 88 SHORTLAND STREET AUCKLAND 1010 NEW ZEALAND • TELEPHONE +64 9 353 9700
MANAGING PARTNER: MARK WEENINK

Wellington MINTER ELLISON RUDD WATTS * 125 THE TERRACE WELLINGTON NEW ZEALAND • TELEPHONE +64 4 498 5000 • MANAGING PARTNER: MARK WEENINK

UK

London 10 DOMINION STREET LONDON EC2M 2EE UNITED KINGDOM • TELEPHONE +44 20 7448 4800 • MANAGING PARTNER: ROBERT HANLEY

ASIA

Hong Kong 15TH FLOOR, HUTCHISON HOUSE 10 HARCOURT ROAD CENTRAL HONG KONG • TELEPHONE +852 2841 6888 • MANAGING PARTNER: SAM FARRANDS

Shanghai SUITE 6211-6212, FLOOR 62, PLAZA 66 1266 NAN JING WEST ROAD SHANGHAI 200040 PEOPLE'S REPUBLIC OF CHINA • TELEPHONE +86 21 6288 2171
PARTNER: WAN LI

Jakarta MAKARIM & TAIRA S ** LEVEL 17 SUMMITMAS TOWER 1 JL JENDERAL SUDIMAN NO 61 JAKARTA • TELEPHONE +62 21 252 1272 • PARTNERS: PETER MONK, DAVID INGLIS

* MINTER ELLISON LEGAL GROUP MEMBER

** MINTER ELLISON ASSOCIATED OFFICE

Disclaimer

The information contained in this update is intended as a guide only. Professional advice should be sought before applying any of the information to particular circumstances. While every reasonable care has been taken in the preparation of this update, Minter Ellison does not accept liability for any errors it may contain. Minter Ellison Rudd Watts is aware of the challenges that arise from climate change so are being environmentally responsible by using offset paper, manufactured using ECF pulp, sourced from sustainable well managed forests by Nordland Mill - an FSC certified mill.

SYDNEY
MELBOURNE
BRISBANE
CANBERRA
ADELAIDE
PERTH
GOLD COAST
DARWIN
AUCKLAND
WELLINGTON
HONG KONG
SHANGHAI
JAKARTA
LONDON

www.minterellison.co.nz