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A special report from the
Policy Advice Division of Inland Revenue

The Member tax credit and other KiwiSaver related amendments in the Taxation (KiwiSaver and Company Tax Rate Amendments) Bill

The government announced a set of enhancements to KiwiSaver in Budget 2007. They include a tax credit to be paid to members of a KiwiSaver scheme or a complying superannuation fund for their contributions. That change is given effect in the Taxation (KiwiSaver and Company Tax Rate Amendments) Bill, introduced on 17 May 2007. The technical aspects of the member tax credit and other KiwiSaver-related amendments in the bill are explained here.

For information on related changes to the KiwiSaver scheme announced in Budget 2007 see the commentary on the Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Bill.

Key features of the changes

Member tax credit

(Clauses 6, 39, 49(2), (3), (5) to (7), (9) and (11), 56, 58, 63, 68, 68 and 69 and 73)

From 1 July 2007, people who contribute to a KiwiSaver scheme (or a complying superannuation fund¹) will be eligible for a member tax credit that matches the amount of their contribution to the scheme up to \$1,042.86 a year (\$20 a week). The tax credit will be available to members regardless of their employment status, which means that it will be available to employees, the self-employed and other people who are not employees. Employer contributions do not count for purposes of the member tax credit.

The superannuation provider will claim tax credits annually on behalf of individual members. It will be able to claim the tax credit part-way through the year for those who stop being a member of KiwiSaver or a complying superannuation fund during the year. When it receives the tax credit, the provider will apportion it across the investments the member has subscribed to or been allocated. If the person involved is a member of both a KiwiSaver scheme and a complying superannuation fund (or a member of more than one complying superannuation fund), the amount of the credit will be apportioned between the schemes on the basis of the contributions made to each.

¹ A complying superannuation fund is a section within a registered superannuation scheme that has been approved by the Government Actuary as having met certain criteria, such as those relating to KiwiSaver lock-in rules and portability.

To qualify for the tax credit, a member will have to be between 18 years of age and the age of eligibility for withdrawal under Clause 4(3) of Schedule 1 of the KiwiSaver Act 2006. This is the later of:

- the date on which the member reaches the New Zealand superannuation qualification age (currently 65); or
- the date on which the member has been a member of a KiwiSaver Scheme or complying superannuation fund for five years.

Members will be required to have a principal place of residence in New Zealand, unless they are government employees serving overseas or work as a volunteer or for token payment for a charitable organisation named in the regulation made under the Student Loan Scheme Act 1992. In this case, the trustees of the scheme will have to be reasonably satisfied that the member's principal place of residence is New Zealand.

The tax credit can be withdrawn in the case of serious illness and will be paid to members' estates upon their death. If members permanently emigrate and withdraw their interest, the nominal value of the tax credit, up to the value of their accumulation in their scheme, will be repaid to the government.

The member tax credit cannot be withdrawn to assist with the purchase of a member's first home, for purposes of significant financial hardship, or to help with mortgage repayments (mortgage diversion).

The member tax credit will be treated as excluded income for income tax purposes. For GST purposes, it will be treated as non-taxable grant or subsidy.

The bill also makes associated amendments to the definition of "complying fund rules" in the Income Tax Act 2004 and to section 56 of the KiwiSaver Act (Notification of transfers and requirement to transfer funds and information). The purpose of the changes is to ensure that member tax information is transferred when a member transfers to another fund.

The bill incorporates the terms relating to the member tax credit into the KiwiSaver and complying superannuation fund trust deeds. The amendment also ensures that the law relating to this tax credit applies despite anything to the contrary in the trust deed.

It provides a transitional measure in relation to prospectuses and investment statements issued before 1 July 2007, to ensure that they remain valid as a result of the new member tax credit.

It also amends the KiwiSaver Scheme rules in schedule 1 of the KiwiSaver Act to reflect the member tax credit.

Employer contributions to KiwiSaver schemes *(Clauses 64 and 65)*

It will be mandatory for all employer contributions to a KiwiSaver scheme to be paid through Inland Revenue using the employer monthly schedule process. This requirement is to allow Inland Revenue to police the payment by employers of the proposed compulsory employer contribution. (See commentary on the Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Provisions) Bill.) The change is being made from 1 July 2007, to minimise compliance costs for employers in having to change systems from 1 April 2008, when the proposed compulsory employer contribution comes into force. Section 94 will be repealed as a result of this requirement.

Complying superannuation fund rules *(Clauses 49(4), (19) and (20) and 71)*

The bill amends the definition of “complying fund rules” in the Income Tax Act 2004 and section 35 of the Superannuation Schemes Act, to ensure that the rules for complying superannuation funds apply to superannuation schemes (or sections within schemes) that are defined contribution schemes in nature, as intended.

Government employees *(Clauses 59, 60, 61 and 62)*

The bill clarifies how the KiwiSaver Act applies to government employees who are serving outside New Zealand. KiwiSaver will apply to them only if they are employed under New Zealand terms and conditions and if it is lawful to offer KiwiSaver membership in the jurisdiction they are serving in. These employees will be excluded from the automatic enrolment rules.

The bill amends the definition of “permanent employees” in section 25 and section 46, to exclude employees who are not subject to the automatic enrolment rules. As a result, employers will be:

- eligible to be an exempt employer even though some employees who work overseas are not able to join;
- able to choose a KiwiSaver scheme to which all new permanent employees will be allocated, even though some new permanent employees who work overseas are not able to join.

Application date

The amendments relating to the member tax credit and employer contributions to KiwiSaver schemes will come into force on 1 July 2007. The amendments relating to government employees and the complying superannuation rules will come into force on the date of enactment.