

Business Advice



Business Matters

In This Issue

- KiwiSaver
- Holidays - impact of 4 weeks
- 4 Weeks Annual Leave
- IRD changes from 1 April 2007
- Or Nominee or Not?
- Employee Relocation Allowances

D
E
C
2
0
0
6

KiwiSaver

All employers by now should have received a letter from the IRD re KiwiSaver. This gives an overview of the KiwiSaver system and what your obligations and options are.

Like most Government initiatives it is you the employer who has to carry the compliance time and costs as the administration of the scheme is compulsory for all employers (it is only voluntary for employees).

It is important that you start planning now for its introduction in July 2007 - particularly if you already have or want more information on existing work super schemes.

If you have not received this letter or want more information on KiwiSaver contact the following addresses:

communications@ird.govt.nz
www.kiwisaver.govt.nz

Holidays - impact of 4 weeks

Many clients are starting to consider the impact that the extra weeks holiday will have on their business. See overleaf for more details.

Most of you will be aware of the cost of the extra weeks wages but don't forget about the following:

- If you accrue for holiday pay remember to increase the figure from 6% to 8%.
- If you measure productivity then also build in the impact of 1 lost weeks charge out (i.e. reduction of 2% per annum).
- The cost of hiring temporary staff to cover that role, if required.
- The impact on your income when you are doing your forecasts for next year (March 2008). This will equal the lost income generated by the person for that week.

To calculate this figure use the following formula:
Hours worked per week X their productivity rate X their charge out rate. The total cost to your business will be this **plus** the persons weekly wage.



4 Weeks Annual Leave

On 1 April next year all employees become entitled to 4 weeks annual leave per year. The law says they become entitled to that on their first anniversary date on or after 1 April 2007.

- **Until 31 March 2007**

Until 31 March 2007, when an employee's anniversary arrives, 3 weeks is added to any accumulated leave from previous years of service. When they take leave, they are paid at the higher of ordinary weekly pay or average weekly earnings. It doesn't matter when they take leave – before or after 31 March 2007.

- **From 1 April 2007**

From 1 April 2007, when an employee's anniversary arrives, 4 weeks is added to any accumulated leave. When they take leave, they are paid at the higher of ordinary weekly pay or average weekly earnings.

Remember that the anniversary date of employees affected by an annual close down is not their start date, but the day the company reopens after the close down.

- **Accounting provision**

You should, of course, make a provision in your accounts for the liability that arises on 1 April 2007. Your provision should start on 1 April 2006, but beware: your pay slips should **not** show that the employee is **entitled** to this accrued fourth week. You are **providing** for the increased leave as a liability in your books, but not yet **giving** it to the employee. In other words, the employee cannot claim the increased leave shown on his pay slip until 1 April 2007. Show increased accrued leave separately, or add a note to your pay slips.

- **What if the employee does not have enough leave to cover the close down?**

You can require such employees to take unpaid leave (after 2 weeks notice), or can agree to give them leave in advance. Remember, if you give leave in advance, to have the employee sign an acknowledgement, agreeing that you may deduct this from their wages, should they leave.

- **What if employment is terminated?**

It depends on length of service, and some other factors.

Less than 12 months of service

- Until 31 March 2007 – pay 6% of gross earnings.
- From 1 April 2007 – pay 8% of gross earnings.

More than 12 months of service

- Until 31 March 2007 – any accumulated leave as at last anniversary **plus** 6% of gross earnings between anniversary and termination dates.
- From 1 April 2007 – if their anniversary has not yet occurred – any accumulated leave as at last anniversary **plus** 8% of gross earnings between anniversary and termination dates. If their anniversary date falls between 1 April 2007 and the date of termination – 4 weeks leave **plus** 8% of gross earnings from anniversary date to termination date.

- **What about employees who have 4 or more weeks annual leave now?**

- Whether they are entitled to have another week added will depend on the wording of their employment agreement or the Collective Agreement.
- If the wording is unambiguous e.g. “you will be entitled to 4 weeks paid leave per year”, without any qualification, there is no obligation to add a fifth week. A recent Employment Court decision ruled the existing extra week was an ‘enhancement’ of their current minimum entitlement - not a general right to a weeks leave on top of whatever the statutory minimum happened to be at the time.
- If the wording is not clear or if the employee feels the original intent was for one week over and above the statutory minimum, the employee may ask to negotiate with you. Both parties have to agree before the agreement is changed, but the employee could ask for mediation, if there is a stalemate.



IRD Changes from 1 April 2007

- GST returns will be aligned with business balance dates. Those with 31 March balance date but with 28 February as their GST period date will have to file a GST return for the month of March 2007 so their GST periods are aligned to 31 March.
- GST will become payable by the 28th of the month except for the November period which will be due on 15 January.
- IRD numbers and GST numbers will change to 9 digit numbers. Existing ones will simply have a zero added in front of them

Or Nominee or Not?

It has been common practice for many years for people to enter into a transaction (particularly property ones) with the intention of a Nominee completing the purchase.

However due to the increasing use of the “or Nominee” clause and a change in legislation, the IRD is now starting to take a different approach to the implications of an “or Nominee” clause, particularly in relation to GST.

Some of the potential problems are:

- **Going Concern**

One of the requirements for a transaction to be a going concern is that both parties must be registered for GST **at the time of supply**. Therefore if the Nominee is not registered (or even in existence) at that time the transaction can not be a going concern - this can leave one or both parties with unexpected GST and/or cash flow problems.

Possible solutions to the above, depending on the circumstances of the transactions, could be the deeming provision of the GST Act which deems a person to be registered if their turnover is more than \$40,000 from when the person first became liable to register (i.e. purchase date). Note there are no deeming provisions where the Nominee does not exist at that time.

- **Supply between associated persons - GST**

A potential problem exists where a person (purchaser) enters into an agreement with another unregistered party with the intention of using the ‘or Nominee’ clause to transfer this agreement to another party (nominee) who is registered. The nominee then tries to claim a GST refund using the 2nd hand goods provision. This situation is quite common for property purchases.

The IRD is now arguing that for GST purposes, 2 GST supplies occur, one between the vendor and the person named on the contract (“purchaser”), and the second between the purchaser and the Nominee.

If this argument was successful the IRD could deny any GST input claim by the Nominee as the Nominee and the purchaser will normally be associated and under current GST laws the Nominee claim is limited to the amount of GST included in the original price to the purchaser.

The best possible solution is to use the name of the entity that will ultimately be purchasing the property from the beginning or if possible do what is called a notation which is effectively a new agreement substituting the nominee for the original purchaser - however you will need the vendors consent.





Employee Relocation Allowances

There is currently some confusion as to the tax implications of employers paying for relocation costs of **new** employees recruited from overseas or from around New Zealand e.g. airfares, immigration fees, removal costs and expenses incurred in finding new accommodation.

Traditionally relocation allowances have been treated as being non-taxable payments. However, in recent investigations the IRD has appeared to take a firm line regarding relocation allowances, stating that they are taxable to the employee. If this is the case, the payment would be subject to either PAYE or FBT, depending on whether there is a reimbursement to the employee or whether the costs are paid directly by the employer.

In response to the confusion, the IRD has recently released an exposure draft (ED) dealing with this issue.

The ED considers three types of payments to **new** employees:

- Reimbursement of actual or estimated costs;
- Direct payment by the employer to a third party on account of the employee; and
- A lump sum payment to the employee as a contribution towards relocation costs.

The IRD's preliminary, and draft, view is that all three payments are taxable employment income and are not exempt reimbursement payments.

We believe it is safe for taxpayers to continue treating relocation allowances to existing employees as non-taxable (provided the reimbursement meets the legal requirements and is based on actual expenditure incurred by the employee, or the employer's own reasonable estimate of expenditure incurred by an employee).



**We hope you have a Very Merry
Christmas and a Happy New Year**

Christmas Closing Dates

Our Office will close for the Christmas Holiday period on **Thursday 21 December 2006 at 4pm** and will reopen **Monday 8 January 2007 at 8am**.

For any enquiries during this time **please feel free** to contact **David on 021 975 901** or **Juliet on 021 675 901**. We would rather you contact us to discuss your issue - no matter how small!

We also draw your attention to our change of office hours for the summer period. Our office hours will change to **8am to 4.30pm from Monday 4 December 2006 to Friday 2 March 2007**.

Business Advice Limited

15 Norfolk Street, P O Box 915, WHANGAREI

Phone: (09) 430 2301, Fax: (09) 430 2303, Email: david@bizvice.co.nz

Website: www.bizvice.co.nz

Disclaimer: These notes are intended to be a guide only. Business Advice Ltd, its directors, employees and consultants expressly disclaim any and all liability to any person, whether a purchaser or not, for the consequences of anything done or omitted to be done by any such person relying on a part or the whole of the contents. Do not act on the information without first obtaining specific advice regarding your particular circumstances from a suitably qualified advisor.
© 2006 Business Advice Ltd. It is for your internal use only. Unauthorised distribution, use or reproduction of this information, or any part of it, without our express written permission is prohibited.