TAXATION - SALARY PACKAGING SUPERANNUATION

It has come to the attention of the IRC that employers are making deductions from the Gross Salary of employee's and returning these amounts as Employer Contributions under what is purported to be a salary packaging arrangement.

Such amounts are in fact employee contributions which form part of the assessable income of the employee. Statements such as: *"Remember that your wages tax is calculated after your personal superannuation contribution has been deducted from your gross pay."* are **wrong** and have **no substance in law**.

An effective 'salary package' arrangement requires the employee and employer to negotiate a new employment contract such that they prospectively mutually agree changes to the terms of the employee's employment contract reducing that employee's entitlement to Gross Salary (the 'sacrificed' amount) in return for the employer making a specified employer contribution in excess of the 8.4% mandatory requirement.

The newly agreed Gross Salary amount pursuant to the employment contract then forms the basis of calculating both employee and employer contributions (both mandatory and voluntary amounts) as well as any other entitlements calculated as a percentage of Gross Salary i.e. bonuses, contribution limitations etc.

This is best exemplified by the following:

Fortnightly pay before 'salary packaging' agreement		**Fortnightly pay after 'salary packaging' agreement**	
Gross Salary	10,000.00	Renegotiated Gross Salary	9,426.00
Less tax!!	3,666.42	Less tax!!	3,429.25
Less employee contribution*	600.00	Less employee contribution*	565.56
Net pay	5733.58	Net pay	5,431.19
Mandatory 8.4% employer contribution is K840.00		Negotiated 15% employer contribution is K1,414.00 (this is calculated on the new Gross Salary amount of K9,426.00,is inclusive of the mandatory 8.4% and cannot exceed the 15% limit without adverse taxation consequences)	

*Mandatory 6% employee superannuation contribution
!!Tax rate on total Gross Salary

IMPORTANTLY

- There remains only **two categories of contributions** employee contributions and employer contributions. No third category, such as "*salary sacrificed*" contribution is created.

- Any amount **deducted from Gross Salary** is an **employee contribution** and is deducted after tax.
- Employer contributions **must be made out of the property of the employer** and **cannot** by law, by reason of its liability to pay mandatory contributions or its election to make voluntary contributions, **reduce directly or indirectly affect the wages, salary or other remuneration or benefits to which an employee** is entitled under a contract of employment or any other law.

ALL EMPLOYERS - Opportunity to make voluntary disclosure

The IRC will allow all employers to review their Salary or Wage tax deductions from 1st January 2014 to date where purported employer contributions have been taken from the Gross salary of employees without first deducting tax and make a voluntary disclosure as to the under-deduction of any tax amount.

Disclosure and payment made prior to 7th March 2019 will not accrue any additional late payment penalty. For administrative efficiency such amounts can be included in your February 2019 remittance advice with an attached breakup of that months remittance and the under-deduction amount and the period it relates to eg 1/1/14 to 30/9/2018 or 1/6/2017 to 28/02/2019.

The IRC will be undertaking specific issue audits in relation to this matter in the new year and any non-compliance identified will have late payment penalties applied (20%flat and 20%p.a) from the original due date, being the 7th day of the month following the under-deduction.

Employers will need to also notify the Authorised Superannuation Fund of any instances of incorrect characterization of any contribution. Those Superannuation Funds are working with the IRC to ensure compliance from both a tax and superannuation perspective.

Employers and employees are free to negotiate new terms of employment whereby salary is permanently foregone, in exchange for the employer's obligation to make voluntary employer contributions. However, this should be evidenced in the employment contract, it cannot simply be a directive to take an amount out of the gross salary of the employee before tax.

Any queries in this matter can be directed to the 'Salary or Wages Tax Helpdesk on email swt_helpdesk@irc.gov.pg.

AUTHORISED BY

DR. ALOIS DATON
ACTING COMMISSIONER GENERAL