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2 September 2009

Hon. Peter Dunne
Minister of Revenue
Parliament Office
Private Bag 18888
Parliament Buildings
WELLINGTON 6160

Dear Mr. Dunne,

RE: KIWISAVER ACT AMENDMENTS – EXEMPT EMPLOYER STATUS

Part 4 of the Taxation (International Taxation, Life Insurance and Remedial Matters) Bill currently before the House proposes amendments to the KiwiSaver Act 2006. Included in those amendments is a grandfathering of exempt employer status eligibility currently available under Section 25 of the KiwiSaver Act. The grandfathering has the policy intent of preventing employers establishing new schemes to avoid application of the automatic enrolment rules. The proposed amendment to Section 25(1)(B) of the KiwiSaver Act introduces a sunset clause for the exemption to apply.

ASFONZ is opposed to the proposed sunset mechanism as a concept, and are very disappointed that this particular amendment was incorporated in the Bill without any publicity or prior consultation, such that it only came to our attention late last month.

When the KiwiSaver Act was introduced, ASFONZ was at the forefront of initiatives aimed at allowing employers participating in workplace savings arrangements other than KiwiSaver being able to escape the cost and inconvenience of automatic enrolment, provided certain key conditions were satisfied. The end result was a workable compromise, with employers who were committed to providing workplace savings arrangements with broadly similar contribution terms being relieved from also having to deal with automatic enrolments, but with all employees eligible to opt in to KiwiSaver regardless.

We appreciate that it is now too late to lobby the Government to seek a back tracking on the sunset provision in the current Bill. However, we would like to signal our intention to lobby for a repeal of this particular change in the future, at the earliest opportunity. Our primary concern is the inflexible nature of the sunset provision as contemplated. As worded, the new section 25(1)(BB) requires the relevant participation agreement to have been entered into prior to the date the 2008 Tax Act receives the Royal assent.

There are three key situations of concern:

- 1 where there is a need for a participation agreement to be replaced as a result of merger and acquisition activity (as opposed to such an agreement simply being amended). The replacement agreement will fall outside of the sunset relief and the employer concerned will cease to have the benefit of exempt employer status moving forward;
- 2 where all members of an existing workplace arrangement are transferred to another scheme under Section 9BAA of the Superannuation Schemes Act 1989 (a mechanism that facilitates the bulk transfer of members from one scheme to another, usually as a result of merger and acquisition activity, but also in circumstances where an employer participating in a master trust arrangement looks to change that arrangement). Exempt employer status will again be lost;
- 3 where master trust superannuation scheme providers go to the market to attract new employer business. Employers who have a participation agreement with another provider that qualifies the employer for exempt employer status will have a strong disincentive to migrate that arrangement to a new provider. Such employers would not be able to retain exempt employer status with the new scheme provider, even though the participation agreement might be on identical terms as previously applied or may even be more favourable for the new employees affected.

A mechanism is included at Section 35 of the Superannuation Schemes Act 1989 (relating to complying superannuation funds) that recognises the concept of a 'successor participation agreement'. That concept removes what would otherwise be a complication in merger and acquisition activity involving an employer with an existing workplace superannuation scheme arrangement. It does this by allowing an agreement that succeeds and replaces an existing participation agreement to effectively qualify the employer or workplace savings arrangement for the same relief as applied prior to the replacement.

We would like to see a similar successor participation agreement concept introduced as a logical enhancement to the current amendments, so as to preserve relief currently enjoyed by a limited number of employers. To do otherwise is likely to cause disruption and complication for employers looking to change their participation arrangements, and limits competition between master trusts providers. Ideally, we would like the successor participation agreement concept extended to allow exempt employer status to extend to equivalent arrangements entered into with an alternative scheme provider.

Our Chairman David Ireland and I would welcome the opportunity to meet with you at some stage to discuss this proposal, as well as other enhancements to a couple of other key legislative provisions we see as being desirable to simplify regulatory complications and impediments for employers participating in workplace savings.

We look forward to discussing this with you or your team when convenient, and would welcome a call to progress these initiatives.

Yours sincerely,



Bruce Kerr

Executive Director

ASFONZ – *the voice of workplace super*

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