

NIC Concession for centrally managed holiday pay schemes in the construction industry and allied trades

The Chancellor's Pre-Budget Report delivered to Parliament on 9 October 2007 included an announcement that the National Insurance Contributions exemption (NI concession) for holiday pay funded through centrally managed schemes is to be withdrawn with effect from 30 October this year. The changes, contained in Statutory Instrument 2007 No 2905, are aimed primarily at the increasing number of new schemes being established in the banking and retail sectors.

Fortunately, there will be a five-year transitional period for the long-standing construction industry schemes, during which time participation in those schemes, including Welplan and Welplan Plus, will continue to attract the NI concession.

However, a new, narrower definition of businesses and employees could mean that some existing Welplan and Welplan Plus participants find their operations or certain groups of employees are no longer in scope of the NI concession. Two broad definitions apply:

- a) Firstly, the **employer** must be a business engaged in "*construction operations*" as defined in Section 74 of the Finance Act 2004. A copy of Section 74 is included with Council Issues. Any business engaged in the "*installation in any building or structure of systems of heating, lighting, air-conditioning, ventilating, power supply, drainage, sanitation, water supply or fire protection*" can continue to use the concession, as can any of the other business types listed at paras (2a) to (2f).
- b) Secondly, however, the **employee** must be "*personally engaged*" in such operations at the time the holiday entitlement is accrued. This definition would appear to exclude support staff such as drivers, store-men and, particularly, clerical and administrative staff.

Government Consultation

The announcement was completely unexpected. Welplan and the other construction industry schemes have been aware for some time that Government was concerned about the loss of revenue due to the number of new holiday pay schemes being established in sectors unrelated to construction.

Working with their respective employer groupings and negotiating unions, all seven construction industry schemes have held a number of meetings over the last twelve months with HMRC and Treasury officials. They were led to believe that attempts would be made to retain the NI concession for the construction sector and, at the very least, that there would be a further period of consultation before any changes were announced.

In the event, there was no further consultation although the group has been at least partially successful in that the construction schemes have been granted five full years of continued operation of the concession whereas those new schemes in the retail and financial services sectors will have to cease immediately.

The group has also held further meetings with HMRC since 9 October to seek clarification of the extent to which their existing participating employers and

employees will be affected by the change. Key points to emerge and of particular concern to Welplan and Welplan Plus participants are:

- Clerical and administrative staff are not in scope of the new definition unless they are also *“personally engaged”* in construction operations.
- The position of professional and technical staff is not yet clear. Further guidance will be issued shortly.
- Building service and maintenance employees can continue in the scheme provided they also undertake “some” installation work. Given that service and maintenance will inevitably at some time involve installation of new equipment, most participating employers will be able to retain their service engineers, and similar, within full scope of the scheme.
- Businesses and employees employed in ductwork manufacture are deemed to be in scope provided, again, that “some” installation work is undertaken. The construction, alteration, repair, extension or dismantling of ductwork in a building or structure will fall within full scope.
- The same applies to offsite pre-fabrication, where on-site installation of prefabricated components or equipment under a supply and fix contract will be in full scope.
- Those businesses and/or employees who are no longer in scope must cease to participate in the holiday pay element of the schemes with effect from 30 October 2007, and all holiday pay paid after that date must be subject to deduction of NICs in the usual way. HMRC acknowledge that timescales are very tight and accept that some employers may not have time to make the necessary changes. Any holiday pay paid free of NICs to out of scope employees after 30 October should be adjusted at the earliest opportunity.
- The HMRC policy review team involved in the change has undertaken to adopt a *“pragmatic and practical”* approach to classification and will be issuing comprehensive guidance to all tax districts to ensure that a uniform approach is adopted at a national level. The seven construction industry operators will have ongoing access to the same policy review team, again to ensure consistency of approach.

Companies who do not currently utilise this valuable concession and fall within scope should contact us to arrange a meeting to fully discuss the possibilities.