

**TO ALL EMPLOYERS PARTICIPATING IN THE
WELPLAN AND WELPLAN PLUS HOLIDAY PAY SCHEMES**

12 October 2007

Dear Employer

**2007 PRE-BUDGET REPORT – WITHDRAWAL OF THE NATIONAL INSURANCE
CONTRIBUTIONS EXEMPTION FOR CENTRALLY MANAGED HOLIDAY PAY SCHEMES**

I am writing to inform you about fundamental changes to the legislation that governs the operation of holiday pay schemes in the construction and other industries. The changes are contained in Statutory Instrument 2007 No. 2905 which was laid before Parliament on 9 October.

As you may now have heard, as part of the Pre-Budget Report and Comprehensive Spending Review, the Treasury has announced that the National Insurance Contributions exemption (NI concession) for holiday pay funded through centrally managed schemes will be withdrawn with effect from 30 October this year. There will, however, 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 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 attached as Appendix 1. As you will see, 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, technical and administrative staff but we are awaiting confirmation from HMRC. We will write again just as soon as we have any further information.

Please note that we have also sought urgent clarification on the scope of operation that can be applied to the hvacr contracting industry and have requested that the scope be extended to include service and maintenance work in line with the previous Inland Revenue authorisation granted in 1994. *We have been informed this morning that any employee who undertakes both installation and service/maintenance work, regardless of the ratio between the two, can be deemed to be fully in scope* but we continue to press for inclusion of service and maintenance only companies. Again, we will let you know just as soon as we have any further information.

Government consultation

The announcement was completely unexpected. The long-standing construction industry schemes, ourselves included, have for some time been aware that Government was concerned about the loss of revenue due to the number of new holiday pay schemes being established in the retail and financial services sectors.

Working with our 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. We 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 we have 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.

How to operate the Schemes from 30 October 2007

Subject to the need for clarification mentioned overleaf, for those businesses and/or employees who are no longer in scope, the 30th October deadline applies to all payment of holiday pay, including that already accrued and held by Welplan/Welplan Plus. Accordingly, holiday pay paid after that date to any out of scope employee must be subject to deduction of National Insurance Contributions (NICs).

Those businesses whose employees are within scope can continue until October 2012 to fund holiday pay through the schemes in the usual way and to pay holiday pay without deduction of NICs.

Please note that in all cases, irrespective of holiday pay status, all employers and employees will continue to be covered for the full range of welfare benefits provided whether these are the benefits required under the h&v national agreement, or the modular arrangements available through Welplan Plus.

It is very important, therefore, that you continue to submit your four-weekly/monthly returns and/or spreadsheets to ensure continuity of benefit cover.

Clearly, as participating employers you will have a number of technical questions on whether you can continue to pay holiday pay without deduction of NICs and we will write again with more information just as soon as we have further clarity from HMRC.

If possible, we would ask you to refrain from contacting us over the next few days whilst we continue to research the position, but if you have an urgent enquiry then please contact either of my colleagues Adrienne Langley or Eric Lazenby on 01768 860415 and 01768 860412 respectively.

Yours sincerely



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Chief Executive

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Finance Act 2004 – extract

74 Meaning of “construction operations”

(1) In this Chapter “construction operations” means operations of a description specified in subsection (2), not being operations of a description specified in subsection (3); and references to construction operations—

(a) except where the context otherwise requires, include references to the work of individuals participating in the carrying out of such operations; and

(b) do not include references to operations carried out or to be carried out otherwise than in the United Kingdom (or the territorial sea of the United Kingdom).

(2) The following operations are, subject to subsection (3), construction operations for the purposes of this Chapter—

(a) construction, alteration, repair, extension, demolition or dismantling of buildings or structures (whether permanent or not), including offshore installations;

(b) construction, alteration, repair, extension or demolition of any works forming, or to form, part of the land, including (in particular) walls, roadworks, power-lines, electronic communications apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipe-lines, reservoirs, water-mains, wells, sewers, industrial plant and installations for purposes of land drainage, coast protection or defence;

(c) installation in any building or structure of systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection;

(d) internal cleaning of buildings and structures, so far as carried out in the course of their construction, alteration, repair, extension or restoration;

(e) painting or decorating the internal or external surfaces of any building or structure;

(f) operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are previously described in this subsection, including site clearance, earth-moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works.

(3) The following operations are not construction operations for the purposes of this Chapter—

(a) drilling for, or extraction of, oil or natural gas;

(b) extraction (whether by underground or surface working) of minerals and tunnelling or boring, or construction of underground works, for this purpose;

(c) manufacture of building or engineering components or equipment, materials, plant or machinery, or delivery of any of these things to site;

(d) manufacture of components for systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or delivery of any of these things to site;

(e) the professional work of architects or surveyors, or of consultants in building, engineering, interior or exterior decoration or in the laying-out of landscape;

(f) the making, installation and repair of artistic works, being sculptures, murals and other works which are wholly artistic in nature;

(g) signwriting and erecting, installing and repairing signboards and advertisements;

(h) the installation of seating, blinds and shutters;

(i) the installation of security systems, including burglar alarms, closed circuit television and public address systems.

(4) The Treasury may by order made by statutory instrument amend either or both of subsections (2) and (3) by—

(a) adding,

(b) varying, or

(c) removing,

any description of operations.

(5) No statutory instrument containing an order under subsection (4) shall be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.