



## **National Insurance Holiday for new businesses**

In the June 2010 Budget, the Government announced a Holiday from employer's National Insurance contributions (NICs) for new businesses with precise details to follow. HMRC has now issued a Technical Note and draft legislation.

Below we summarise the terms of the NIC Holiday and explain what's in the latest Technical Note.

### **The NIC Holiday – a summary**

The scheme will start on 6 September – this coming Monday.

It will be a three-year scheme available to qualifying new businesses set up on or after 22 June 2010 outside London, the South East and East England.

It provides exemption from up to £5,000 of Class 1 employer NIC for each of the first ten employees hired in the first year of business. Each Holiday will last for the first 52 weeks of each employee's employment, providing these fall within the three-year Holiday scheme period.

Most kinds of business activity (including investment and property businesses) will be eligible for the Holiday provided they employ staff and meet other criteria, but some will be excluded.

Most staff will be included but there will be some specific exclusions, for example employees operating under companies caught by the IR35 rules and employees engaged through managed service companies.

Qualifying businesses that commenced on and after 22 June 2010 can take a NIC Holiday for up to 12 months' contributions from 6 September 2010, in respect of the first ten employees taken on in the first year, beginning from the actual day that trading commenced. They will still have to pay employer's NIC in the period before the start of the scheme.

Relief is not compulsory and businesses will need to apply. There will be a separate NIC Holiday end-of-year return as at each 5 April in addition to the normal P35.

### **What's a new business?**

The new business requirement forms a key part of the policy underlying the Holiday. Only new businesses (including charities that start to carry out a trade) will qualify for the Holiday. An important point to note is that the relief is about the business itself not the legal structure or the people who carry it on.

As you would expect, there are anti-avoidance rules as to the meaning of a new business designed to ensure that only genuinely new businesses qualify.

HMRC give the following as examples which would **not** qualify for the relief.

*Jim is a sole trader, a carpenter. The business incorporates and Jim's wife Rosie is named as the sole director. Jim is then taken on by the company as an employee. This is not a new business, as the whole of the trade carried on by the company was previously carried on by Jim.*

*Sam is a publican, running a pub in a small village. He wishes to retire and sells the pub as a going concern to Tom, who takes over the trade and continues to employ the pub's staff. Tom is not carrying on a new business, as the whole of the trade he is now carrying on was previously carried on by Sam.*

*John and Paul are dentists, practising in partnership. They fall out and dissolve their partnership, dividing their practice and its patients between themselves and both now carry on their professions alone. Neither Paul nor John is carrying on a new business, as each is carrying on a profession the whole of which was previously carried on by them in partnership.*

A business already claiming the Holiday which is then taken over or sold will cease to be eligible immediately.

### **Health Warning**

The legislation is not expected to receive Royal Assent until early 2011. New businesses which choose to participate in the scheme in advance of it becoming law should note that if the draft legislation that is published in the Technical Note is not enacted in substantially the same form they will be required to pay over to HMRC by 19 April 2011 any contributions that they have withheld which remain due.

The Holiday is to be administered as 'de minimis' State Aid and so some businesses will have their entitlement reduced. The coal industry is completely excluded. There are financial limits for the agriculture, fisheries, aquaculture and road transport sectors. And there will be a reduction on the NIC Holiday relief available where a business has already received some other form of EC de minimis State Aid.

## Further Information

HMRC have promised to publish guidance for new businesses, including an application form, before the scheme starts on 6 September 2010 – so presumably it can be expected imminently.

## Can We help?

If you think this may affect you and you want to discuss your options, please contact us so that we can discuss your personal circumstances.

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