



EMPLOYMENT ALLOWANCE AND DE MINIMIS STATE AID

Issued 20 August 2019

ICAEW welcomes the opportunity to respond to the invitation to provide technical comment on **Employment Allowance eligibility reforms draft legislation and related documents** published by HMRC on 26 June 2019.

The administrative burden for smaller employers of ascertaining the state aid information to report on payroll submissions may be disproportionate to the value of the employment allowance claimable, which seems at variance with a policy intended to benefit such businesses. HMRC will need to publish very clear guidance to enable employers to comply. We also endorse the CIOT's response.

This response of 20 August 2019 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System are summarised in Appendix 1.

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COMMENTS

1. We are disappointed that claiming a relatively minor tax relief like employment allowance (EA) will impose burdens on employers and their payroll agents which in many cases will be disproportionate to the value of the relief claimable. This seems at variance with a policy intended to support smaller businesses. We can only assume that state aid (StA) was not considered before the decision was made to restrict EA to smaller employers.
2. The imposition of onerous StA reporting requirements on employers does not comply with Tenet 4 : 'Easy to collect and to calculate' of our Ten Tenets for a Better Tax System by which we benchmark the tax system and changes to it (summarized in Appendix 1).
3. We endorse all the comments in the [CIOT's response dated 13 August 2019](http://www.tax.org.uk/ref562) (see www.tax.org.uk/ref562).
4. HMRC's draft documentation will achieve its purpose of restricting eligibility of EA to employers with a secondary Class 1 NIC liability of less than £100,000.
5. However, to enable employers to comply, HMRC will need to publish detailed guidance in plain English, preferably all in one place, to explain how employers, and, where applicable, associated entities, should ascertain and calculate all the information that they will need to report in the employer payment summary (EPS). Official guidance currently available, for example [State Aid: the Basics](#) and [The State Aid Manual](#), is written for public sector officials and assumes too much knowledge and contains too much jargon to provide meaningful guidance to the average SME employer and payroll agent.
6. The provision of clear guidance by HMRC will be particularly necessary in the farming and fisheries & aquiculture sectors where the StA de minimis are relatively low and government assistance is prevalent so the StA threshold may well preclude an EA claim.
7. As a minimum, we suggest that the simple guidance that government needs to publish should include:
 - that in calculating EA, secondary NIC for deemed employees (ie who are on payroll under the off-payrolling rules) is disregarded (this will also be a big software change),
 - that EA claims will no longer automatically be rolled forward – a fresh claim will be needed for each tax year,
 - StA de minimis for each industry sector,
 - what counts as StA that needs to be taken into account for EA, eg R&D tax credits and EMI, and how it relates to EA,
 - for what other years do StA details need to be provided to HMRC,
 - what StA records need to be kept and for how long,
 - which figures have to be returned in euros, how to calculate them and the exchange rate to use,
 - the new fields on the EPS and how/when they should be completed, for example, whether employers have to keep reporting values each month once they have been reported in April like for statutory payments, and
 - whether the business tax account (BTA) will show any of the values entered and whether the claim has been rejected.
8. We should welcome clarification of whether Government departments keep records of StA provided to entities and how HMRC will check StA details submitted by employers.
9. We understand that HMRC is proposing to send employers new generic notification service (GNS) messages to advise when a claim is rejected, for example where claims exceed the £100,000 NIC limit or the industry sector de minimis StA threshold. We are not aware that HMRC systems currently enable an EPS claim automatically to be rejected.
10. Guidance will be needed on the new 'rejection' GNS. Many employers/agents do not collect GNS messages so will be unaware the claim has been rejected.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).