



Response from ICAS

HM Revenue & Customs
Draft Legislation: Employment Allowance Eligibility Reforms

23 August 2019

About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants and we represent over 21,000 members working across the UK and internationally. Our members work in all fields, predominantly across the private and not for profit sectors.
2. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members into the many complex issues and decisions involved in tax and financial system design, and to point out operational practicalities.
3. ICAS welcomes the opportunity to respond to the consultation document 'Draft Legislation: Employment Allowance Eligibility Reforms', issued by HMRC on 25 June 2019. We were also pleased to invite a member of HMRC's policy team to dial in to a meeting at ICAS; and to attend other meetings with officials to discuss the consultation.

General Comments – Key issues

4. By restricting the Employment Allowance (EA) to employers with a less than £100,000 secondary NIC's bill, the allowance is now to be classified as *de minimis* [State Aid](#). As such, additional data requirements will be demanded from employers. In addition, according to HMRC ... "Those engaging in economic activity will also have to confirm to HMRC every year that their previous year's employer secondary Class 1 NICs liabilities were under £100,000, inform HMRC of the State Aid sector in which they operate, and notify of any other State Aid received." All of this amounts to a significant additional administrative burden for those employers who need the EA most. This concept has been conceived of without prior consultation and most importantly, without considering the needs of small business.
5. HMRC considers that 93% of all businesses will still be eligible to claim the Employment Allowance – but will they wish to, given the added complications they potentially face, just to obtain a £3,000 reduction in their NICs bill?
6. Those with limited State Aid provisions (e.g. Agriculture has a ceiling of 20,000 Euros over three years and Fisheries 30,000 Euros over three years) are likely to suffer the most from this proposal.
7. It is not yet clear how the *de minimis* cap is to be calculated if an employer is trading in a combination of roles – e.g. agriculture, export (including road haulage) and industry. This needs to be made unequivocally clear in the guidance.
8. Whilst small business will shoulder the burden of claiming State Aid, we should not forget about large businesses, whose administrative and cost burdens have risen significantly over recent years. Now, larger businesses will no longer benefit from the Employment Allowance, meaning that each one will have an additional NICs burden of £3,000 p.a. in addition to other liabilities such as increased pension costs, IR35 related NICs costs where they pay workers through intermediaries, and Apprenticeship Levy in qualifying cases, which collectively amounts to a significant rise for large business.
9. If the Employment Allowance is to be submitted on a separate EPS (which HMRC has stated can be at any time in the tax year), there is a chance that some service providers may decide they are not contracted to carry out this work, and extra costs to the client will ensue. The EPS is not a statutory form and some software providers may not provide for it in their packages.
10. There is currently confusion in relation to the submission timetable of the EPS containing the claim for EA from 2020. It is often unclear until the year-end what the NICs bill is for the year, because of bonuses and other issues; yet the EA must be claimed before the final payment of the tax year is made (i.e. by 19/22 of April following the tax year to which the claim relates) because otherwise the EA will not be capable of being deducted from the final payment and the figures for that tax year will not tally.

11. The EPS is something which will have to be performed by the payroll provider as a manual exception report process. For agencies and payroll bureaux this is likely to amount to a significant amount of additional work which they are unlikely to ever be able to recover from the employers. There is also the risk of manual adjustments leading to human error.
12. In relation to the tie-in with 'off-payroll' workers, HMRC has stated that no EA is to be claimed in respect of the NICs paid over for deemed employments under IR35 intermediaries' rules, even though those 'off-payroll' payments will attract Apprenticeship Levy and Employer's NICs. This not only seems unfair, but also means that in many cases, off-payroll workers will have to be incorporated on to a separate payroll department within the main payroll scheme so that the NICs calculations for EA purposes can be carried out separately. This is another example of yet more work required from the employer and/or payroll provider which will lead to additional costs being incurred.
13. HMRC has stated that it will take at face value any claims for EA. How is HMRC proposing to combat fraud in connection with this? The message needs to be clear and unequivocal to apprehend any deviancy in this regard. The mushrooming of Umbrella Companies, the gig economy and organised payroll fraud must be of concern here.
14. The idea that the reporting will need to be done in Euros even after Britain leaves the EU, as has been advised at EA round table meetings, is simply nonsensical. Clearly, if compliance is expected, significant additional thought needs to be put into this.
15. HMRC should set out clear guidance for employers. That guidance should provide reassurance as to the level of record-keeping that would satisfy HMRC that a claim has been made on the basis it was made to the best of the employer's knowledge and belief. Employers need to understand the depth of diligence they are expected to carry out to fulfil their obligations.
16. Possible unintended consequences of this could be that employers find the whole issue of obtaining a £3,000 rebate from their NICs bills so complicated that they simply give up – which means that the Employment Allowance will not be claimed, and it may eventually be withdrawn altogether by HMRC on this basis. This is not an equitable situation for small employers, some of whom rely heavily on the EA to assist them with cash flow.