

23 December 2015

Ms Emma Barker
HM Revenue and Customs

Email to: consultation.nic@hmrc.gsi.gov.uk

The Association of Accounting Technicians

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Dear Ms Barker

Association of Accounting Technician response to Technical consultation on the exclusion of certain companies from the National Insurance Contributions ‘Employment Allowance’

The Association of Accounting Technicians (AAT) is pleased to have the opportunity to respond to the Technical consultation on the exclusion of certain companies from the National Insurance Contributions ‘Employment Allowance’ (condoc), released on 26 November 2015.

AAT is submitting this response on behalf of our membership and for the wider public benefit of achieving sound and effective administration of taxes.

AAT has added comment in order to add value or highlight aspects that need to be considered further.

AAT has focussed on the operational elements of the proposals and has provided opinion on the practicalities in implementing the measures outlined.

Furthermore, the comments made in our response letter reflect the potential impact that the proposed changes would have on SMEs and micro-entities, many of which employ AAT members or would be represented by our operationally skilled members in practice.

The consultation document states (paragraph 1, page 3, condoc) “At Summer Budget 2015 the Chancellor announced that, in order for the Employment Allowance to continue to meet its objective of supporting employment, from April 2016 it would no longer be available to companies where the director is the sole employee”. This comment would seem to suggest that the original policy intention was for the EA to be available to companies where the director is the sole employee and this was our understanding when the EA was introduced.

Question 1: Do the regulations as drafted achieve their objectives as described above?

Section 2 of National Insurance Contributions Act 2014 (NICA 2014) provides for an exception to the Employment Allowance (EA) of workers supplied by service companies, which AAT considers should be sufficiently wide to cover companies which have only one worker and that worker is the sole director. It is, therefore, unclear to us as to why an amendment to the existing legislation is deemed to be necessary to specifically cover this scenario. There is a real danger that it simply adds yet another layer of complexity to NICs legislation.

As AAT considers that an alternative, less administratively burdensome, approach would be for HMRC to issue a Statement of Practice clarifying their interpretation as this would obviate the need for further legislation.

AAT is concerned that the regulations, as drafted, are insufficiently clear, and convey a slightly different meaning than that provided in the Explanatory Note (EN). The draft regulations could potentially be interpreted to apply to a scenario where there is more than one director. In AAT's opinion, the EN wording is more specific and as a result much clearer.

The real issue in-hand is that the compliance of service companies with existing legislation is not being policed, with the result that the majority of such companies fail to operate in accordance with the IR35 intermediaries legislation. If this issue of non-compliance was tackled correctly there would be no need for the proposed amendments to NICA 2014.

Question 2: Do these draft regulations produce any unintended consequences?

Within the body of the condoc (para 5, page 4, condoc) HMRC makes comment that the proposed measure is not expected to increase administration costs for businesses. While this statement might be the case, businesses that may have benefitted from EA since its inception will suffer in cash-terms.

An employer's NICs impost of £3,000 equates to a salary of approximately £30,000 and this may well prevent businesses, such as university spin-out companies, from employing additional workers in future years. Before implementing the proposed legislation AAT recommends that HMRC conduct research to establish how many one-man limited companies pay their sole directors as much as £30,000 in salary each year. It is a widely acknowledged that many such entities pay a minimal salary, equating to the current Personal Allowance. If this is indeed the case the additional NIC yield from the implementation of the proposed measure is unlikely to be significant.

AAT considers there to be a danger that the regulations might make taxpayers act in a different way to achieve their objectives, in other words, represent a driver for further avoidance.

For example:

A company may decide to pay another person, such as a parent, for provision of administration services via its payroll only for that person to gift back the monies received to the director.

There is also the potential for the new dividend regulations, effect 6 April 2016, that might go some way to preventing this, but it is not a given.

Further unintended consequences could include the stifling of innovation, preventing small companies from growing, and fettering entrepreneurship.

About AAT

AAT is a professional accountancy body with over 49,500 full and fellow members and 82,400¹ student and affiliate members worldwide. Of the full and fellow members, there are over 4,200 Members in Practice who provide accountancy and taxation services to individuals, not-for-profit organisations and the full range of business types.

AAT is a registered charity whose objectives are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

¹ Figures correct as at 30 Sept 2015

Further information

If you have any questions or would like to discuss any of the points in more detail then please contact Aleem Islan, Technical Manager, at consultation@aat.org.uk or Brian Palmer, Tax Policy Advisor, at aat@palmerco.co.uk

Yours sincerely



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