



HM Revenue
& Customs

Technical consultation on the exclusion of certain companies from the National Insurance Contributions 'Employment Allowance'

Consultation document

Publication date: 26.11.15

Closing date for comments: 3.1.16

Subject of this consultation:	Technical consultation on draft regulations to exclude certain companies from the National Insurance Contributions (NICs) Employment Allowance
Scope of this consultation:	At Summer Budget 2015 the Chancellor announced that, in order for the Employment Allowance to continue to meet its objective of supporting employment, it would no longer be available to companies where the director is the sole employee from April 2016. This consultation seeks comments on the draft regulation to implement the new exclusion.
Who should read this:	This technical consultation will be of interest to contractors working through a limited company, payroll agencies, and accountancy and tax advisory firms.
Duration:	The consultation will run for five and a half weeks commencing on 26 November 2015 and ending on 3 January 2016.
Lead official:	Emma Barker, HMRC
How to respond or enquire about this consultation:	Any comments should be sent to consultation.nic@hmrc.gsi.gov.uk
Additional ways to be involved:	As this is a largely technical issue, this will primarily be a written exercise. If you would like to have this document in Welsh or alternate formats including large print, audio and braille, please let us know and we will provide a copy.
After the consultation:	Responses to this technical consultation will be reviewed and the draft regulations will be revised as appropriate before they are laid before Parliament. Guidance on changes to eligibility for the Employment Allowance will be made available on gov.uk in March 2016.
Getting to this stage:	The Employment Allowance was introduced in April 2014. This measure was announced at Summer Budget 2015.
Previous engagement:	Explanatory notes to section 5 of the National Insurance Contributions Act 2014, which provides the power to modify the cases in which a person cannot qualify for the employment allowance can be found at http://www.legislation.gov.uk/ukpga/2014/7/notes/division/5/5 .

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On request this document can be produced in Welsh and alternate formats including large print, audio and Braille formats

1. Introduction and background

1. 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.
2. The Employment Allowance currently entitles the vast majority of businesses, charities, and community amateur sports clubs to a reduction of up to £2,000 per year on their employer NICs bill. The government introduced the allowance in April 2014 to support small businesses and charities with the cost of employment.
3. From April 2016, the allowance will be increased by £1,000 to £3,000 to further support businesses with the cost of employment.
4. At present, the Employment Allowance has very broad eligibility, subject only to exceptions outlined in the National Insurance Contributions Act 2014. The purpose of this change is to focus the allowance on those firms who are creating employment.

Impact of the proposed change

5. Early estimates suggest that this measure will affect around 150,000 limited companies with a single director. The measure is not expected to increase administration costs for businesses. Other than director-only companies, all other employers remain unaffected, and no action is needed from them. There may be negligible one-off costs as businesses familiarise themselves with the new rules.

2. National Insurance Contributions Act 2014

6. The Employment Allowance was introduced by section 1 of the National Insurance Contributions Act (NICA) 2014. This states that a person qualifies for an employment allowance for a tax year if they incur liabilities to pay secondary Class 1 contributions in that tax year, in relation to one or more employed earners. The Act can be found at:
<http://www.legislation.gov.uk/ukpga/2014/7/contents/enacted>
7. Section 2 of the Act outlines existing exceptions to the allowance, including in relation to employers who are public authorities, employment in relation to personal affairs, workers supplied by service companies, and in relation to transfers of businesses. Section 3 outlines a connected persons test to prevent the allowance being claimed by multiple connected companies or charities. Section 5(1)(b) provides that the Treasury may make regulations to modify the cases in which a person cannot qualify for an employment allowance for a tax year.

3. Technical consultation on draft regulations

8. The purpose of the regulations is to focus the Employment Allowance on those businesses which support employment. To achieve this, the measure will exclude limited companies where the director is the sole employee from April 2016. The draft regulations are set out in Annex A.

9. HM Treasury and HM Revenue and Customs have UK-wide responsibility for NICs policy. The regulations will apply in England, Wales, Scotland, and Northern Ireland.

Questions for consultation

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

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

4. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 3 of the process. The purpose of the consultation is to seek views on draft legislation in order to confirm, as far as possible, that it will achieve the intended policy effect with no unintended effects.

How to respond

Responses should be sent by 5 pm on 3.1.16. Any comments should be sent to consultation.nic@hmrc.gsi.gov.uk

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Next Steps

Responses to this technical consultation will be reviewed and the draft regulations will be revised as appropriate before they are laid before Parliament. Guidance on changes to eligibility for the Employment Allowance will be made available on gov.uk in March 2016.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: Draft Legislation

Draft Order laid before Parliament under section 5(5) of the National Insurance Contributions Act 2014, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2016 No. 0000

SOCIAL SECURITY

The Employment Allowance (Excluded Companies) Regulations 2016

Made - - - - - *****
Coming into force - - - *6th April 2016*

These Regulations are made by the Treasury in exercise of the power conferred by section 5(1)(b) of the National Insurance Contributions Act 2014⁽¹⁾.

A draft of this instrument was laid before Parliament in accordance with section 5(5) of the National Insurance Contributions Act 2014 and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Employment Allowance (Excluded Companies) Regulations 2016 and come into force on 6th April 2016.

Amendment to the National Insurance Contributions Act 2014

2. In section 2 of the National Insurance Contributions Act 2014 (exceptions), after subsection (4) insert—

“Excluded companies

(4A) A body corporate (“C”) cannot qualify for an employment allowance for a tax year if—

- (a) all the payments of earnings in relation to which C is the secondary contributor in that year are paid to, or for the benefit of, the same employed earner, and
- (b) when each of those payments is made, that employed earner is a director of C.”

Date _____ *Name*
Two of the Lords Commissioners of Her Majesty’s Treasury *Name*

⁽¹⁾ 2014 c. 7.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Insurance Contributions Act 2014 (c. 7) (“the Act”). Section 1 of the Act allows a secondary contributor to claim an employment allowance towards their liability to pay secondary Class 1 National Insurance Contributions. The employment allowance for the tax year 2016-17 will be £3,000. Section 2 of the Act contains exceptions and in particular provides that certain persons are not able to qualify for an employment allowance.

Regulation 2 inserts new subsection (4A) into section 2 of the Act. The new subsection provides that a company cannot qualify for an employment allowance where all the payments of earnings it pays in a tax year are paid to or for the benefit of one employed earner only who is also a director of the company at the time the payments are made.

A Tax Information and Impact Note covering this instrument was published on X January 2016 and is available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

Annex B: Relevant Legislation

National Insurance Contributions Act 2014

<http://www.legislation.gov.uk/ukpga/2014/7/contents>

Income Tax Act 2007

<http://www.legislation.gov.uk/ukpga/2007/3/contents/enacted>