HM Revenue & Customs

Employment Allowance (Excluded Persons) Regulations [XXXX/2019]

Who is likely to be affected

Employers with a National Insurance contributions (NICs) liability of £100,000 or more, or employers who are connected to other employers where their cumulative secondary Class 1 NICs liability is £100,000 or more.

Some employers who are in receipt of large amounts of State aid.

General description of the measure

This measure restricts access to the Employment Allowance to only those employers who have incurred a secondary Class 1 NICs liability of less than £100,000 in the tax year immediately prior to the year of claim.

When determining eligibility to receive the Employment Allowance for a tax year, for tax years starting on or after 6 April 2020, employers who are connected to other employers (such as companies within a group) will need to add together all of their collective secondary Class 1 NICs liabilities incurred in the tax year prior to the year of claim and if that amount is £100,000 or more then none of those employers will be eligible to claim the Employment Allowance for the current tax year.

As a result of this restriction to the eligibility for the Employment Allowance, the allowance will, from 6 April 2020 be operated as de minimis State aid. It will be available to all employers who meet the secondary Class 1 NICs eligibility criteria explained above, provided they have space in their relevant de minimis State aid limit(s) to accommodate the annual amount of the Employment Allowance (regardless of whether they would have that level of secondary Class 1 NICs liability).

The draft Regulations, setting out the revised conditions for eligibility will be published for technical consultation in June 2019.

Policy objective

This reform is designed to focus the Employment Allowance at the original intended beneficiaries: smaller businesses. That is why the relief is being removed from larger employers who incur employer secondary Class 1 NICs liabilities of £100,000 or more in the tax year immediately before the year of claim.

Background to the measure

This reform was announced by the Chancellor at Budget 2018.

Draft Regulations reforming the eligibility criteria will be published alongside the draft Explanatory Memorandum and this TIIN for technical consultation. The consultation will close on 23 August 2019.

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Detailed proposal

Operative date

This reform will have effect from 6 April 2020.

Current law

The Employment Allowance was introduced in 2014 in the National Insurance Contributions Act 2014, and was originally a relief of up to £2,000 when it was first introduced.

It was reformed from April 2016 to increase the value of the relief to £3,000 and to exclude single director companies.

Proposed revisions

This measure reforms the Employment Allowance by restricting eligibility to employers with a secondary Class 1 NICs liability of under £100,000 in the tax year immediately before the claim year.

The £100,000 limit applies to the secondary Class 1 NICs liabilities of individual businesses and in cases where there are connected employers, the cumulative secondary Class 1 NICs liabilities for all those businesses.

Where employers become connected during a tax year and before becoming connected they were all (individually, or in their previously connected grouping) eligible for the Employment Allowance they will remain eligible for the remainder of that tax year, but their eligibility will be reassessed as a collective for future claim years.

Where an employer becomes connected during a tax year to a company or group of companies who have exceeded the limit for the Employment Allowance because their collective secondary Class 1 NICs liability in the previous year was £100,000 or more, the employer joining that group will no longer be eligible for the Employment Allowance in the tax year in which they become connected to the group.

From April 2020, the Employment Allowance will be operated as de minimis State aid. This means that employers must have space to accommodate the full £3,000 Employment Allowance within their relevant de minimis limit.

Employers who do not have space in the relevant State aid limit to accommodate the annual amount of the Employment Allowance will not be eligible to claim the Employment Allowance even if they would not use the full annual amount of the allowance. Employers who are connected must ensure that the cumulative value of all secondary Class 1 NICs or State aid across all connected companies does not exceed the relevant limits.

This will apply to all employers carrying out an economic activity (and so governed by the State aid Regulations). Employers who are not carrying out an economic activity may still be eligible for the Employment Allowance however, they do not have to comply with State aid regulations.

Employers, will have to claim the Employment Allowance every year in order receive the relief as it will no longer be carried forward from one tax year to the next tax year. Those engaging in economic activity will also have to notify HMRC every year to confirm that their previous year's employer secondary Class 1 NICs liabilities were under £100,000 and to inform HMRC which State aid sector(s) they operate in and of any other State aid received or allocated for the tax year and the two previous years. These amounts must be converted from pounds sterling to euros.

Summary of impacts

Exchequer impact (£m)

2018 to 2019	2019 to 2020	2020 to 2021	2021 to 2022	2022 to 2023	2023 to 2024
-	-	+225	+260	+290	+320

These figures are set out in Table 2.1 of Budget 2018 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside Budget 2018.

Economic impact

This measure is not expected to have any significant macroeconomic impacts.

Impact on individuals, households and families

There are no impacts on individuals, households and families.

Equalities impacts

It is not anticipated that there will be impacts on groups sharing protected characteristics.

Impact on business including civil society organisations

This measure is expected to have a significant impact on nearly 1.2 million businesses by restricting access to the Employment Allowance to employers with a secondary Class 1 NICs liability of less than £100,000 in the previous tax year. They will need to familiarise themselves with the changes to the Employment Allowance, and identify if they are eligible for the allowance each tax year.

Anticipated one-off burdens include understanding the changes to the legislation, identifying whether the claimant's business is still eligible to receive the allowance and updating internal systems.

Anticipated ongoing costs include checking the total secondary Class 1 NICs liability from the previous tax year, collating how much State aid they have received or been allocated and confirming that the business is still eligible.

The costs are set out in the table below. Employers who are no longer able to claim the Employment Allowance will have to pay the full amount of the secondary Class 1 NICs liability.

In total, HMRC anticipates one-off costs across all 1.2 million businesses to be around £9 million, and additional burdens of around £0.6 million per annum.

Estimated one-off impact on administrative burden (£m)

One-off impact	**(£m)**

Costs	9.2
Savings	-

Estimated ongoing impact on administrative burden (£m)

Ongoing average annual impact	(£m)
Costs	*0.6*
Savings	-
Net impact on annual administrative burden	*+0.6*

There is not expected to be any impact on civil society organisations.

Operational impact (£m) (HMRC or other)

HMRC are still mapping the operational impact of these changes. The customer facing guidance is being updated and will provide additional information to businesses.

Some increased contact is expected from businesses seeking to clarify the new rules and if they apply to them.

Current claimants of the Employment Allowance will receive a letter before the end of this tax year informing them of the changes and what they will need to do.

Other impacts

Other impacts have been considered and none have been identified.

Monitoring and evaluation

The measure will be monitored through information collected from tax returns.

Further advice

If you have any questions about this change, please contact Victoria Bedford on Telephone: 03000 562088 or email: victoria.bedford@hmrc.gov.uk