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# DRAFT LEGISLATION: EMPLOYMENT ALLOWANCE ELIGIBILITY REFORMS

## Response by Association of Taxation Technicians

### 1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to provide comments on the draft *Employment Allowance (Excluded Persons) Regulations 2019* ('the Draft Legislation') and accompanying documents issued on 25 June 2019<sup>1</sup>.
- 1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.3 Our response is set out below. We have not commented on the contents of the Draft Legislation itself. Instead, we have limited our comments to practical concerns regarding the proposed compliance obligations set out in the accompanying documents and the need for detailed guidance to be issued to employers.
- 1.4 We would be pleased to discuss any aspect of this response further and contact details can be found in Section 4.

### 2 Compliance: practical considerations

- 2.1 The document (*Draft*) *statutory notice – Employment Allowance (Excluded Persons) Regulations 2019* (the 'Draft Notice'), which was published alongside the Draft Legislation, sets out a number of requirements for employers wishing to claim the Employment Allowance from April 2020, and states that these will have the force of law by virtue of s4(4) of the National Insurance Contributions Act 2014. We understand that HMRC believe these requirements to be necessary as, following the changes to eligibility from April 2020, the Employment Allowance will be administered as *de minimis* State Aid.
- 2.2 We appreciate that changes to the eligibility rules for the Employment Allowance will result in a requirement to monitor compliance with the EU State Aid rules (and their eventual replacement upon the UK leaving the

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<sup>1</sup>[https://www.gov.uk/government/consultations/draft-legislation-employment-allowance-eligibility-reforms?utm\\_source=831165a0-a5f1-459a-965c-c1e76bf87b2a&utm\\_medium=email&utm\\_campaign=govuk-notifications&utm\\_content=immediate](https://www.gov.uk/government/consultations/draft-legislation-employment-allowance-eligibility-reforms?utm_source=831165a0-a5f1-459a-965c-c1e76bf87b2a&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate)

EU). However we are concerned that some of the requirements set out in the Draft Notice could be unduly onerous and difficult to comply with, and could ultimately result in smaller employers deciding that it is not cost effective for them to claim the Employment Allowance.

- 2.3 The requirement contained in the Draft Notice which causes us particular concern is that, where an employer has received State Aid previously, in order to claim the Employment Allowance they will have to provide “...*the total amount of de minimis State aid they have received or been allocated in the year of claim and in the two tax years immediately prior to the year of claim.*”.
- 2.4 We believe it may be difficult in practice for employers to quantify the State Aid they receive in this way. In particular, we note that where State Aid arises in the form of a tax relief it may not be as simple as identifying a gross figure in accounting records or tax returns.
- 2.5 A good example of the potential difficulties can be found in the R&D relief available to small and medium sized companies (the ‘SME R&D scheme’), which is a form of State Aid. We assume that, under the proposals in the Draft Notice, any employer wishing to claim the Employment Allowance would have to quantify the amount of State Aid they have received under the SME R&D scheme. The Draft Legislation and accompanying documents do not set how this is to be calculated. However, if the legislation for quantifying aid in s1113 – s1118 CTA 2009 has to be followed, then employers will effectively have to calculate the difference between the relief they have received under the SME R&D scheme and what they would have received had they instead claimed under the large company scheme (which is not a form of State Aid). This a complicated calculation due to the distinctly different nature of the SME and large company schemes, and one which many smaller employers are unlikely to be able to carry out themselves. Whilst they could pay an adviser to carry out the calculation for them, the additional costs and inconvenience of this may well outweigh or greatly reduce the benefit of claiming the Employment Allowance.
- 2.6 The document (*Draft*) *tax information and impact note – Employment Allowance (Excluded Persons) Regulations 2019* (the ‘Draft TIIN’) states that “*This reform is designed to focus the Employment Allowance at the original intended beneficiaries: smaller businesses.*”. It would be unfortunate if those smaller employers who are the intended beneficiaries of the Employment Allowance were actually put off claiming it through concerns over the cost or practicality of meeting compliance obligations.
- 2.7 We would therefore recommend that the proposed requirement for State Aid to be quantified when claiming the Employment Allowance be removed. We note that the Draft Notice already includes a requirement for employers to state that, to the best of their knowledge, they “...*will not exceed the relevant de minimis ceiling for State aid for the sector(s) in which they operate by claiming the full annual amount of an Employment Allowance.*”. We believe that making this statement alone should be sufficient when claiming Employment Allowance, without requiring detailed numbers to be provided. In section 3 below, we suggest guidance that would help to make the employer’s statement sufficient without supporting calculations.

### **3 Guidance and publicity**

- 3.1 Whatever compliance requirements are imposed from April 2020, clear and practical guidance will be required to assist employers in meeting them.
- 3.2 It is likely that payroll staff (either internal or external) will be responsible for submitting claims for the Employment Allowance, and they are unlikely to be familiar with the State Aid rules. Guidance should therefore start at a basic level, identifying what State Aid is and how to identify an employer’s respective *de minimis*

threshold. It would be helpful to include in this a form of checklist setting out the most common forms of State Aid which an employer may receive. The guidance should then go on to explain (or link to further information on) how to carry out any calculations needed.

- 3.3 If, as we recommend at 2.7 above, the proposed requirement to quantify State Aid is removed, this guidance should also cover the pragmatic steps which employers can take so that they are able to declare, to the best of their knowledge, that claiming the Employment Allowance will not lead them to exceed their relevant *de minimis* State Aid ceiling. This could, for example, state that employers can use gross figures for relevant grants and tax relief received as a proxy. Where the total of these gross figures is comfortably below the *de minimis* ceiling the employer could proceed to claim Employment Allowance with no further calculations required. This should enable smaller businesses in receipt of small quantities of State Aid to benefit from the Employment Allowance and fulfil their obligations without having to perform the potentially complicated calculations referred to above. Where the gross total of State Aid grants and tax relief is close to, or over, the employer's respective ceiling it seems reasonable for employers to have the choice of either calculating the State Aid they have received or choosing not to claim the Employment Allowance.
- 3.4 Finally, in addition to comprehensive guidance, we believe that a publicity campaign is required in advance of April 2020 to make employers aware of the changes which are being introduced. This should be through a combination of letters and emails direct to employers, social media, trade press or other channels (such as HMRC's *Employer Bulletin*). Publicity should be scheduled so as to allow businesses adequate time to gather any evidence they may need to make their claim for Employment Allowance. The first awareness of these changes and the associated requirements should not be when an employer comes to make a claim for the tax year.
- 3.5 We would be happy to assist in reviewing or otherwise contributing to any draft guidance or other publicity materials produced by HMRC.

#### 4 Contact details

- 4.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact our relevant Technical Officer, Emma Rawson ([erawson@att.org.uk](mailto:erawson@att.org.uk), mobile 07773 087111).

#### The Association of Taxation Technicians

#### 5 Note

- 5.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has more than 9,000 members and Fellows together with over 6,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.