Employment Allowance Eligibility Reforms

Employment Tax

01 October 2019

The government will restrict eligibility for the employment allowance from April 2020, such that it will only be available to employers with a secondary NICs liability below £100,000 in the previous tax year. The practicalities of this restriction are likely to create significant burdens for some employers.

The CIOT and ATT have raised concerns with the information requirements for employers claiming the employment allowance from April 2020, which arise from the employment allowance being reclassified as EU State Aid.

Draft regulations published on 25 June 2019 will restrict eligibility for the employment allowance from April 2020, such that it will only be available to employers with a secondary NICs liability below £100,000 in the previous tax year. As a result of this restriction, the employment allowance is being reclassified as EU State Aid.

Information is required to be submitted through the PAYE Real Time Information (RTI) reporting system to certify that de minimis EU State Aid thresholds have not been exceeded, in order to claim a maximum of £3,000 in employment allowance. The CIOT is very concerned that these requirements will place an onerous burden on employers, such that some employers may decide the burden outweighs the benefit.

The ATT is similarly 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.

One result of the eligibility restriction will be that it will no longer be possible for an employer’s claim to the employment allowance to be automatically carried forward

from one tax year to the next, as it cannot be assumed at the start of each tax year that the employer's secondary Class 1 NICs liability in the preceding tax year was less than £100,000, just because the employer was eligible for the employment allowance in that preceding tax year. An annual claim will now be required at the start of each tax year. While on its own this may not be too burdensome, the CIOT considers that the need to total all secondary Class 1 liabilities (especially across connected employers) and confirm to HMRC that eligibility to the employment allowance continues will add to employer burdens (and may delay claims for the employment allowance).

In addition, the eligibility restriction will result in an employer being excluded from qualifying for the employment allowance where an otherwise qualifying employer would, were they to obtain the maximum £3,000 employment allowance, be in receipt of EU State Aid that exceeds the de minimis limits for EU State Aid. The CIOT considers that the compliance burdens being placed on small business (through the PAYE system) in order that HMRC can monitor compliance with the de minimis EU State Aid regulations are disproportionate.

The ATT is particularly concerned that, where an employer has received State Aid previously, in order to claim the employment allowance the employer 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.' The ATT considers that it may be difficult in practice for employers to quantify the State Aid they receive in this way. In particular, it notes 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.

The ATT has therefore recommended that the proposed requirement for State Aid to be quantified when claiming the employment allowance be removed and suggested that it should be sufficient 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' when claiming the employment allowance.

The CIOT noted that the de minimis EU State Aid restriction will require employers to:

- consider which category they fall into for EU State Aid purposes;

- total up all the EU State Aid they have received, or will receive, for the tax year (and previous two years of claim); and
- add to this the maximum amount of the employment allowance receivable (even if the employer will not qualify for the maximum sum) in the tax year (converted into Euros) and decide if this total has, or will, exceed the de minimis EU State Aid threshold for their entity's category.

Since establishing what EU State Aid an employer is receiving, or will receive, and has received in the previous two years is not straightforward, the CIOT felt that the only 'safe' course of action for some employers will be to make retrospective claims after the end of the tax year, once the employer can ascertain the full amount of EU State Aid received and add this to the maximum employment allowance receivable for that year, convert this sum into Euros and compare the figure with the threshold for de minimis EU State Aid relevant to the entity's category.

The CIOT added that the need to address EU State Aid matters goes well beyond the remit of the PAYE functions of most small businesses and that of their payroll agents/advisers. It suggested that the Business Tax Dashboard functionality should be improved to include the recording of EU State Aid for this purpose, rather than requiring declaration via the RTI submissions.

The ATT's response can be found on the ATT website.

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