Exclusion of some companies from the National Insurance contributions employment allowance

Employment Tax

01 March 2016

CIOT responds to the HMRC consultation

On 26 November 2015 HMRC published a technical consultation on draft regulations to exclude limited companies where the director is the sole employee from claiming the NIC employment allowance from April 2016.

In response to the consultation the CIOT noted that the draft regulations did not appear to meet their objectives because the exclusion may be avoided easily.

For example, any company that is a single director or employee business can avoid the exclusion for all payments made to the same employed earner in one of two ways: by engaging a spouse, civil partner or other family member on a token wage as an employee or director; or appointing such a person as the ‘sole’ director and engaging the existing employed earner as an employee rather than director. Further, the exclusion in respect of the employed earner being a director when each payment is made also appears to be avoidable by arranging for at least one payment of earnings to be made after the director has resigned.

In essence, the CIOT believes that the regulations, as drafted, will be open to abuse and will simply have the effect of penalising those single director-employee limited companies that are unable to, or do not know that they could claim the allowance by appointing another person as director or employee.

The consultation closed on 3 January 2016. Final regulations are expected to be laid before parliament, and guidance issued by HMRC on eligibility criteria for the

employment allowance, imminently.

Read the CIOT’s full response here and the ATT’s here.