Apprenticeship Levy

Employment Tax

01 April 2016

ATT and CIOT respond to the draft legislation

The ATT and CIOT have responded to draft legislation which will create the mechanism for an apprenticeship levy to be charged and collected on employers' pay bills from 6 April 2017. The legislation will be included in Finance Bill 2016.

The levy will be based on employers' total pay bill for Class 1 NIC purposes, including pay charged at the Class 1 0% rate (under 21s and apprentices under 25). The levy will be charged at 0.5% of the total pay bill, including earnings, under the Class 1 secondary threshold. Each employer will receive an allowance of £15,000 to offset against their levy payment, the intention being that the levy will only be payable on pay bills in excess of £3m a year.

There is a 'connected companies' rule which aggregates employers that form part of a group. This rule is the same as that used for the employment allowance (EA). The ATT commented that using the EA rules attempted to keep matters simple and easy for employers to implement. However, it did share the concerns noted by CIOT below.

Although the rule will work fairly in cases in which the £3m threshold is exceeded by one employer, the CIOT has raised concerns that it will not work if the aggregated pay bills amount to less than £3m. This is because only one business under the connected company test can qualify for the allowance. No other enterprise can receive any part of it even if the nominated company has not fully used it. The CIOT does not believe that this is what was intended and has urged the government to amend the legislation so that the £15,000 allowance can be fully used.

The ATT suggested that, if the allowance has been exhausted by other connected PAYE schemes, it may be advantageous to consider a de minimis level of pay bill to prevent PAYE schemes with very small pay bills suffering a charge.

The ATT also raised concerns that companies within large groups, where a decision has to be made as to which company or charity or PAYE scheme should get the allowance, could either claim the allowance in error or, in fear of making a mistake, not claim it.

The breadth of the anti-avoidance provisions is a concern. The ATT requested clarification on whether the provisions could catch cases in which earnings are genuinely paid in different tax years with no avoidance motive. For example, termination payments, which are often paid at a different time from the final monthly salary, could be paid in separate tax years.

Lastly, although the exact mechanism of collecting the apprenticeship levy is still under discussion the legislation does permit HMRC to 'require payments to be made on account of apprenticeship levy'. We understand the envisaged approach is to allow one-twelfth of the allowance each month but this could result in in-year overpayments to HMRC. The ATT and CIOT have therefore recommended following the EA approach and permitting the levy allowance to be claimed in full upfront by an employer.

The full CIOT response can be found here. The full ATT response can be found here.