

**Technical consultation on the exclusion of certain companies from the National Insurance Contributions 'Employment Allowance'
Response by the Chartered Institute of Taxation**

1 Introduction and Summary

- 1.1 The Chartered Institute of Taxation (CIOT) sets out below its response to the technical consultation on the draft regulations to exclude sole director/employee companies from claiming the Employment Allowance (EA) from 6 April 2016.
- 1.2 We do not believe that the draft regulations will meet their objectives. In our view the proposed restriction to exclude limited companies where the director is the sole employee can be easily avoided.
- 1.3 We set out below our detailed response to the consultation.

2 Response to the questions for consultation

2.1 *Question 1: Do the regulations as drafted achieve their objectives as described above?*

- 2.2 The consultation document states that the objective of the EA is to support employment and, accordingly, that the purpose of the regulations is to focus the EA on those businesses which do so by excluding limited companies where the director is the sole employee.
- 2.3 We believe that the requirement in new section 2(4A)(a) that all payments are to be made to the same employed earner can easily be avoided. For example, any company that is currently a single director/employee company will have an incentive to either (i) engage a spouse, civil partner or other family member on a token wage as an employee or director, or (ii) appoint such a person as the 'sole' director and engage the existing employed earner as an employee rather than director.

- 2.4 To achieve its stated objective we would suggest that the legislation should include a connected persons test to prevent any limited company where there are two directors who are connected persons, and no other employees, from benefiting from the EA.
- 2.5 If the policy intention is to retain the EA where, for example, husband and wife are the 'sole' directors/employees of a limited company, it is unclear how that meets the policy objective of focusing EA on businesses who are 'creating employment' whereas single director-employee companies do not.
- 2.6 Furthermore, we think the requirement in new section 2(4A)(b) that when each payment is made the employed earner is a director of C also appears to be open to abuse. This is because making one payment after the director has resigned would seem to enable 'C' to escape the exclusion and hence qualify for the Employment Allowance because both legs of the requirement in new section 2(4A) are not satisfied. If the requirement was that when **any** of the payments were made the recipient was a director, it would be more effective.
- 2.7 ***Question 2: Do these draft regulations produce any unintended consequences?***
- 2.8 Yes, we think so. This is because in order to retain or obtain entitlement to EA under the proposed regulations this may lead to family members becoming employees in companies for the simple reason of enabling that company to claim the EA. Similarly there might be reciprocal agreements set up between friends whereby they become directors of another contractor company with the sole aim of that company claiming the EA.
- 2.9 In summary, we believe that the draft regulations are open to abuse in their current form. The regulations will have the effect of penalising those single director-employee limited companies that are unable to, or do not know that they could, appoint another person as director or employee in order to claim EA. Their focus is not therefore sharp enough to meet the policy objective of supporting businesses that grow by taking on more employees.

3 The Chartered Institute of Taxation

- 3.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 17,500 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation
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