
DRAFT STATUTORY INSTRUMENTS

2020 No.

**The Employment Allowance
(Excluded Persons) Regulations 2020**

Amendment to the National Insurance Contributions Act 2014

3. In section 2 (exceptions), after subsection (4A)(1) insert—

“Excluded persons: secondary Class 1 liability limit of £100,000 or more

(4B) A person cannot qualify for an employment allowance for a tax year if the total of the following items is £100,000 or more—

- (a) the person’s qualifying liabilities for the previous tax year, and
- (b) where the person is a company, the qualifying liabilities for that previous tax year of each company (if any) to which the person is connected at any time in that previous tax year, and
- (c) where the person is a charity, the qualifying liabilities for that previous tax year of each charity (if any) to which the person is connected at any time in that previous tax year.

(4C) A person who is a company or a charity cannot qualify for an employment allowance for a tax year if there is a time in the tax year when the relevant total is £100,000 or more; and for this purpose “the relevant total” at any particular time in the tax year is the total of the qualifying liabilities for the previous tax year of each other company or charity (as the case may be) to which the person is connected at the particular time.

(4D) For the purposes of subsections (4B) and (4C)—

- (a) a company is “connected” with another company if they are connected with one another for the purposes of section 3(1);
- (b) a charity is “connected” with another charity if they are connected with one another for the purposes of section 3(2).

(4E) In subsections (4B) to (4D) and this subsection—

- (a) “charity” has the same meaning as in the Small Charitable Donations Act 2012(2) and includes a company which is treated as a charity by paragraph 8(5) of Schedule 1;
- (b) “company” has the meaning given by section 1121(1) of the Corporation Tax Act 2010(3) (meaning of “company”) and includes a limited liability partnership;
- (c) “qualifying liabilities” means any liabilities to pay secondary Class 1 contributions under SSCBA 1992(4) or SSCB(NI)A 1992(5) excluding any liabilities which are excluded liabilities by virtue of subsection (4).

Excluded persons: receipt of de minimis state aid

(1) Subsection (4A) was inserted into section 2 by regulation 2 of [S.I. 2016/344](#).
(2) [2012 c. 23](#).
(3) [2010 c. 4](#).
(4) Social Security Contributions and Benefits Act 1992 (c. 4).
(5) Social Security Contributions and Benefits (Northern Ireland) Act 1991 (c. 7).

(4F) A person cannot qualify for an employment allowance for a tax year if, were the person to receive the maximum employment allowance available for that tax year, it would in the person's case be state aid that is not de minimis state aid.

(4G) For the purpose of subsection (4F)—

“de minimis state aid” means state aid which is exempted from notification under Article 108(3) of the Treaty on the Functioning of the European Union by—

- (a) [Commission Regulation \(EU\) No 1407/2013](#) (de minimis aid except in the agriculture and fisheries sectors)(**6**),
- (b) [Commission Regulation \(EU\) No 1408/2013](#) (de minimis aid in the agriculture sector)(**7**),
- (c) [Commission Regulation \(EU\) No 717/2014](#) (de minimis aid in the fisheries sector)(**8**),
or
- (d) [Commission Regulation \(EU\) No 360/2012](#) (de minimis aid to undertakings providing a service of general economic interest)(**9**);

“the maximum employment allowance”, in relation to a tax year, means the amount in section 1(2)(a) converted into euros using the exchange rate quoted by the European Central Bank for the second to last day of March in the previous tax year or, if no rate is quoted for that date, the rate quoted for the closest day to that date for which a rate is quoted.”.

(6) OJ L 352/1 24.12.2013.
(7) OJ L 352/9 24.12.2013.
(8) OJ L 190/45 28.6.2014.
(9) OJ L 114/8 26.4.2012.