



ICAEW REPRESENTATION 01/17

TAX REPRESENTATION

EMPLOYMENT ALLOWANCE: 'ILLEGAL WORKERS'

ICAEW welcomes the opportunity to comment on the consultation document [Employment Allowance: technical consultation on excluding employers of 'illegal workers'](#) published by HMRC on 8 November 2016.

This response of 3 January 2017 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

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ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

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COMMENTS

1. We recommend that the proposal to prevent employers from claiming employment allowance where they have employed illegal workers, the employer has been penalised by the Home Office and all appeal rights against that penalty have been exhausted should be abandoned both on the grounds of complexity and because it will be impossible, or at best resource intensive, to enforce.
2. First, the EA rules are complicated enough already and creating yet another condition will make them still more so. This conflicts with three of our Ten Tenets for a Better System summarized in Appendix 1, namely Simple, Easy to collect and to calculate and Constant.
3. Secondly, a Home Office penalty followed by an HMRC penalty amounts to double jeopardy as employers are being punished twice for the same offence.
4. Thirdly the proposal effectively to fine employers an additional £3,000 suggests that the government considers that the Home Office penalties are insufficient, in which case we recommend that they be reviewed
5. Fourthly we do not believe that HMRC's systems will be able to police the new policy effectively.
6. We doubt that those who do not follow Home Office procedures for checking whether workers have the right to work in the UK will disclaim EA, so HMRC will be obliged to check whether all employers penalised by the Home Office have not claimed EA, which will be resource intensive at a time when HMRC is supposed to be shedding staff and cutting its costs.
7. Also we have several reports of HMRC giving EA to employers who are not eligible and have therefore not claimed it, either because they are connected or are public sector bodies. This suggests that HMRC does not know which employers are associated with one another and similarly may well be unable to link PAYE schemes to those who have been penalised by the Home Office for taking on employed illegal workers.
8. For all these reasons, we recommend that this proposal be dropped.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <http://www.icaew.com/-/media/corporate/files/technical/tax/tax-news/taxguides/taxguide-0499.ashx>).