

Employment Allowance

Please tick the following that apply and return to payroll@cliveowen.com, or the address below:

- We are not connected to any other companies (please read the attached connected companies information).
- We confirm that our total Employer NIC for all connected companies was £100,000 last tax year or less, and that the total of any de minimis state aid received will not exceed the threshold. We would therefore like to claim the Employment Allowance for the following company:

.....
Employer Name

.....
Signed

.....
Printed

.....
Dated

Connected companies: detailed technical guidance for employers and their agents

If you are a company, here is detailed technical guidance to help you decide if you are connected to other companies.

The rules relating to connected companies do not apply to unincorporated businesses or single companies.

This guidance is relevant if a company has control of another company or both companies are under the control of the same person or persons. For example, companies linked in a group - these companies are connected.

The 'connected persons' rule for the Employment Allowance is largely based on the connected persons rule used more widely for tax purposes.

In order to operate the Employment Allowance from the beginning of the tax year the employer will need to know whether he is a connected person at the start of the tax year. If the test is satisfied at the start of the tax year, with 2 or more companies being connected at that point, the treatment for Employment Allowance purposes is set for the remainder of the tax year regardless of a subsequent change of circumstances in that year.

Exemptions from entitlement to claiming the Employment Allowance for connected companies

If, at the start of the tax year, 2 or more companies are connected with each other and those companies would otherwise each be entitled to the Employment Allowance, only one of those companies can qualify for the Employment Allowance for that tax year. It is up to the companies concerned to decide which one of them will qualify for the Employment Allowance.

The rules in place for determining if companies are connected are similar to the 'associated companies' rules at sections 25 and 27 to 30 of the Corporation Tax Act 2010.

Where 2 companies are only connected with each other through the attribution of rights between certain associated persons (eg relatives), the connected persons rule will only apply if the companies in question are substantially commercially interdependent. For example, when one company gives financial support to another, they have the same economic or commercial objectives and have common management, employees and premises.

How do I decide if my company is connected to another company?

The basic rule for determining if two companies are 'connected' with each other is that they will be connected if one of them has control of the other or if both are under the control of the same person or persons. The term 'control' is given the same meaning as in sections 450 and 451 of the Corporation Tax Act 2010. This is where a person has or is entitled to acquire the greater part of the share capital or voting power in a company, or in the event of a distribution of the company's income the greater part of the amount distributed, or in the event of distribution of assets the greater part of the company's assets.

How is the application of control applied to Limited Liability Partnerships?

This test is modified in the case of a limited liability partnership so that control is where the other company possesses, or is entitled to acquire, rights to a share or more than half the assets or more than half the income of the limited liability partnership.

Can I claim the balance of any Employment Allowance due from one PAYE scheme against a separate PAYE scheme that I am responsible for?

This is dependent on whether the separate businesses are set up as incorporated (limited companies) or as unincorporated (sole trader) businesses.

The test of substantial commercial interdependence

This test determines whether 2 companies are connected with each other if the relationship between them is not one of 'substantial commercial interdependence'. The factors to be taken into account include whether the companies are financially interdependent, economically interdependent and organisationally interdependent.

This test is only relevant to companies that are only connected once rights in those companies are attributed between connected persons. For example, Janet and Peter are brother and sister. Janet owns J Ltd and Peter owns P Ltd. As Janet and Peter are siblings (associates), the rights they hold respectively in each company can be attributed to each other. So Janet is treated as controlling J Ltd and P Ltd, as is Peter. However, J Ltd and P Ltd are only treated as connected companies if there is substantial commercial interdependence between them. This is because, if the 2 businesses are completely unrelated (for example, Janet and Peter live hundreds of miles away from each other and have little contact), it would be unfair to deny the allowance to one of the companies.

When might a company be financially interdependent?

Two companies are financially interdependent if (in particular) either of the following apply:

- one gives financial support (directly or indirectly) to the other
- each has a financial interest in the affairs of the same business

When might a company be economically interdependent?

Two companies are economically interdependent if (in particular) one of the following applies:

- the companies seek to realise the same economic objective
- the activities of one benefit the other
- the companies have common customers

When might a company be organisationally interdependent?

Two companies are organisationally interdependent if (in particular) the businesses of the companies have or use common:

- management
- employees
- premises
- equipment.

Connections through holding of fixed-rate preference shares

The holding of fixed rate preference shares by another company need to be considered if the company is a 'close company' (ie a company which is under the control of 5 or fewer participators or of its directors), takes no part in the management or control of the company which issued the shares and subscribed for the shares in the ordinary course of a business, including the provision of finance (eg by a venture capital fund).

I hold fixed-rate preference shares in a company. Are my company and the company I hold the fixed rate preference shares in connected for the purposes of the Employment Allowance?

Certain financial institutions, notably the venture capital funds that seek to support smaller developing companies, may provide finance by taking up preference shares rather than by

making loans. In some cases the degree of share ownership is sufficient to give the investor company control.

To determine whether the investor and target companies are associated, or companies under the common control of the investor company are associated with each other fixed rate preference shares are disregarded for the purpose of determining control if the company holding them meets all the following conditions. It:

- is not a close company
- takes no part in the management or conduct of the issuing company or in the management or conduct of its business
- subscribed for the shares in the ordinary course of a business which includes the provision of finance

What type of fixed-rate preference shares count for this purpose?

Fixed-rate preference shares for this purpose are defined as shares which:

- were issued wholly for new consideration
- do not carry any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities
- do not carry any right to dividends other than dividends which: are of a fixed amount or at a fixed rate per cent of the nominal value of the shares
- together with any sum paid on redemption, represent no more than a reasonable commercial return on the consideration for which the shares were issued

What is the minimum controlling combination principle in determining control of a company?

A 'minimum controlling combination' means a group of persons which has control of the company but which would not have control of it if any one of the persons were excluded from the group.

More than one person or one group of persons may 'control' a company. For example, one person may have the greater part of the voting power, while 2 people hold the greater part of the issued share capital and a group of 3 people are entitled to the greater part of the assets in a winding up of the company. All 3 combinations of people can be said to have control of the company at the same time.

If 3 persons, A, B and C, each hold one third of the shares in a company, and they are not connected in any way which would allow the rights and powers of one to be attributed to another, then control is held by A and B, or B and C, or A and C but not A, B and C together. This is because in determining whether companies are 'associated companies', only 'minimum' controlling combinations should be considered and combinations containing unnecessary members should be ignored.

For example, a company controlled by the unconnected persons D, E and F together, but not by any one or two of them alone should not be regarded as associated with any company controlled by one of them alone or by any two of them.

Two companies are only under the control of the same persons if:

- a group which controls one company is identical with a group which controls the other
- for each company, that group is a 'minimum controlling combination'

What is a loan creditor? A loan creditor is a creditor in respect of any redeemable loan capital issued by the company or any debt relating to money borrowed or capital assets acquired by the company, any right to receive income created in favour of the company, or debt for which the value of the consideration to the company at the time the debt was incurred was substantially less than the amount of debt.

A loan creditor is also a person who is not the creditor in respect of any debt or loan capital but has a beneficial interest in the debt or loan capital.

A person who carries on a banking business is not classified as a loan creditor for money lent in the ordinary course of business.

How does the connection through a loan creditor work?

When determining whether one company controls another, a loan creditor is disregarded if there is no other connection between it and the company to which the loan was made **and** either the loan creditor is not a close company or the loan was made in the ordinary course of a business carried on by the creditor.

How can my company be connected with another company through using the same trustee?

Where 2 companies are under the control of the same person by virtue of rights or powers held in trust by that person, and there is no other connection between the 2 companies, those rights and powers held in trust are ignored when determining whether the 2 companies are connected (the trustee may, for example, be a solicitor or the trustee company of a bank).