

Tax avoidance takes a new twist using thousands of limi...

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I have been assisting [the BBC with their news story](#), first broadcast this morning on the Today programme, on a new and, in my opinion, extremely abusive tax avoidance scheme.

The scheme abuses the [employment allowance](#) introduced in April 2014 that provides small employers with a rebate of £2,000 a year on their employer's national insurance charges. This means that for a company with three employees on the minimum wage most of their employer's national insurance cost in a year is effectively cancelled. The virtue of the scheme can be debated. What is beyond doubt is that it came with many anti-avoidance measures attached. In particular the employment allowance is granted for just one PAYE scheme that a company operates and if a company is part of a group only one company or charity in the group can claim the allowance.

What is also very obvious is that the government did anticipate abuse of these rules. They [published extensive guidelines](#) to the new law explaining how multiple claims from linked persons would be identified and stopped. Despite this the evidence the BBC has now supplied to HMRC shows that a large recruitment agency is selling a scheme that creates multiple companies to pay agency workers. Each such company is suggested to be independent of all others used for the same purpose for the benefit of the same ultimate user of the labour of the people being engaged. The result is that it is claimed that each such company, with its own PAYE scheme, can claim the employment allowance for the two or three people it might engage in a year.

The Anderson Group, who are the vendors of this scheme, have appeared to suggest that there may already be thousands of employees being paid through it. It is a claim that may well be true. Over 1,500 companies look likely to have been created over relatively recent months for apparent use in this scheme, all having similar names (they are frequently named identically barring the use of successive numbering) and many share the same registered address in the Midlands. The implication of the data and interview transcripts I have seen is that they share the same back office arrangements.

So, does such an arrangement, if sold by a single vendor to a single end client on behalf

of a single scheme creator have any chance of working for the purposes of claiming successive employment allowances? In my opinion, and I know that of HMRC, it does not. That should be obvious. The guidance on employment allowance says that:

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

i, management

i, employees

i, premises

i, equipment.

If they are organisationally interdependent then a claim for multiple employment allowances should fail. That appears to me to exclude any chance of successful claims being made by the companies in the scheme that the BBC found and of which HMRC now has details.

But this, for me, is not the biggest issue. As I said on the Today programme on Radio 4 this morning:

All I can guess is that they think that if the Revenue come and ask for that Employers National Insurance, what they'll say is: 'Well, there's no money in any of these companies, they're all empty shells, therefore, you can sue us, you can put us in to liquidation, but they'll be nothing for you to have.' The response to that is that is isn't it time now to consider whether there should be a penalty on the directors of limited companies that are incorporated for the purposes of abusing the tax system.

What purchasers of this scheme are apparently told is that they are guaranteed that there will be no claim against them if the scheme fails. I suspect it is the fact that there will be literally many thousands of companies, few of which will have any significant substance and which look like they will have effectively been used as conduits for the employment of staff with whom they have no substantial relationship, that have been used in this scheme that backs up this guarantee. If the operator of the PAYE scheme is liable for the unpaid national insurance, for which they will not have charged to the clients who make use of the labour they engage, then there is no logical reason to think that these companies will have the funds needed to pay that national insurance if claim is made for it. In that case whether the scheme works or not payment is not likely to be made to HMRC if my fears are correct.

I have [long argued](#) **that UK companies are being abused for tax purposes. I think that this scheme provides clear evidence of this. The arrangement is wholly dependent upon the ready availability of cheap limited liability**

companies in the UK, the lightness of regulation that applies to them and the ease with which they can be disposed of when no longer required. Add to this the fact that it is very difficult to make a director of a UK company, or its members liable for its debts.

But if, as I suspect, this scheme shows that systemic use of limited liability is being relied on to make sure that tax is not paid this situation has, as I have also long argued, to change so that where it can be suggested with reasonable probability that limited liability has been used for the purposes of not settling tax liabilities properly due then the liability for that tax should fall on the directors, shareholders and promoters of the scheme in question together with any who might have enjoyed economic benefit as a result of its use (i.e. the end user of the labour in this case), and this liability should be joint and several.

If the government is serious about tackling tax abuse this has to be one its first acts on this issue or this abuse will grow, rapidly. I would urge them to act, quickly.