

Enterprise Management Incentives (EMI)

Enterprise Management Incentives (EMI) are without doubt the most generous of the current HMRC approved share schemes. EMI is a share option scheme which is discretionary insofar as the company can decide who will be granted an option and the level of the award (subject to certain limits).

Where companies qualify for EMI they should be used in preference to other schemes. EMI has a great deal of flexibility in terms of option price and performance conditions.

Benefits for employee & employer

EMI options offer three main advantages:

1. Gains in value made over market value of the shares at grant are income tax free (any discount to market value is liable to income tax and potentially National Insurance Contributions (NIC) on exercise).
2. Entrepreneurs' Relief is generally available on the shares acquired under an option irrespective of the % shareholding the employee holds as a result. Calculation of the entitlement to Entrepreneurs' Relief commences on the date of grant of the option, not when the shares are actually acquired when the option is exercised.
3. All option gains over and above fair market value are free of NIC, both employer and employee.



Example

An employee acquires an option over shares valued at £100,000 at grant which he will pay £100,000 for on exercise.

Four years later he exercises the option when the shares are worth £200,000. He thus makes a gain of £100,000. He then sells the shares nine months later when they are worth £250,000.

For an unapproved option holder, there would be income tax due on exercise of £45,000 together with £2,000 employee NIC and employer's NIC of £13,800. On sale he will have a capital gains tax (CGT) liability of £14,000 (ignoring annual exemption).

Total tax (employer and employee) = £74,800.

For an equivalent EMI option, there will be no income tax or NIC at exercise. CGT will be payable on sale on a gain of £150,000 at 10%. He will pay CGT of £15,000 (ignoring annual exemption).

Total tax = £15,000.

Clearly, EMI options represent a huge opportunity for employers and employees.

Qualifying conditions for the company

- No more than £3million worth of shares may be under option.
- At the date of grant of the option, the company must not have gross assets exceeding £30million and fewer than 250 employees.
- The company must carry on a trading activity in the UK for commercial return and not carry on significant excluded activities.
- Share capital to be used for the scheme should be fully paid up non-redeemable ordinary shares.
- The company must be independent and all subsidiaries must be at least 51% owned.

Qualifying conditions for individuals

No individual may be granted more than £250,000 worth of shares under option. Existing approved share options are taken into account when calculating this £250,000 amount. Individuals who own 30% or more of the ordinary issued share capital of the company are not permitted to participate. Any employee benefiting from the scheme must work at least 25 hours a week in the company (or if less, at least 75% of his working time) and continue to do so throughout the life of the option.

Effect of loss of EMI status

If for any reason qualifying EMI status is lost, (this is most likely to occur if the company or employee qualifying conditions are breached), an employee has a period in which to exercise his option in a qualifying manner (if the option permits it). Income tax relief to the date of the loss of relief is preserved.

Should the option not be exercised within this period, all further growth in value will be liable to income tax and NIC. CGT will be calculated from the date of acquisition of the shares, not the date of grant of the option.

Please note that this factsheet is for general information purposes only. Professional advice should be obtained before action is either taken or refrained from as a result of information contained herein.
Date created: 29.6.18