

Enterprise Management Incentives (“EMI”)

EMI share options are a tax efficient method of incentivising key employees for growing, entrepreneurial companies.

Under an EMI share option plan, the employee is granted the option to purchase shares in the employing company at a future date for a specified price. The option may be subject to certain conditions, for example, the requirement to have worked for the company for a specified number of years, or attained specific goals, before it is possible to exercise the option.

EMI options are popular as they are highly tax efficient. Provided that the appropriate conditions are met, there is no tax charge for the employee or the employer at either the date of grant or the date of exercise of the option. Under an EMI plan an employee may acquire shares tax free. In addition, on exercise of the options it is possible for the company to secure a corporation tax deduction.

When the shares acquired under the option are eventually sold, the gain made is subject to capital gains tax. Capital gains tax rates are lower than income tax rates in the UK and gains made on EMI option shares qualify for Entrepreneurs’ Relief, meaning the gain may therefore be taxed at only 10%.

EMI options are very flexible but in order for the tax benefits to apply, there are several conditions which must be met by the employee and the company - the key criteria are set out below:

- the company cannot be the subsidiary of another company (in such cases options should be granted over shares in the parent company);
- the company must have gross assets of less than £30 million and not more than 250 full time equivalent employees;

- the company must be carrying on a qualifying trade in the UK;
- the employee must meet the working time requirements (25 hours a week or 75% of their working time) and must not own, directly or indirectly, more than 30% of the company;
- the maximum value of unexercised EMI options which may be granted by the company is £3m and no employee may hold unexercised options worth more than £250,000 (valued at the date of grant);
- the options must be granted for commercial reasons to recruit or retain employees and not as part of an arrangement of which one of the main purposes is to avoid tax.

Where the company is part of a group the limits are applied to the whole group. In addition, crucially, the exercise price of the option must be at least equal to the market value of the shares at the date the options are granted. For this reason EMI options are generally most beneficial when a company is at the early stages of its life-cycle and the market value of the shares are low. It is possible, and recommended, to agree the valuation with HMRC prior to the options being granted.

How Blick Rothenberg can help

We have extensive experience in advising on all aspects of EMI and other share incentive arrangements, including undertaking valuations of the shares and agreeing this with HMRC.

If you would like to discuss EMI share options, or other share incentive arrangements in more detail, then please contact:

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