

Enterprise Management Incentives (EMI)

EMI share options are a tax efficient way for growing entrepreneurial companies to recruit, retain and incentivise key employees.

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n EMI share option is an agreement to let an employee purchase shares in the employing company (or parent company, if the employing company is a subsidiary) at a future date for a specified price.

What is EMI?

EMI options are very flexible and you can build conditions into the option: for example, that the employee meets certain performance targets before he or she can exercise the option.

EMI options are popular as they are highly tax efficient. Provided that the option meets the qualifying conditions, 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. In addition, on exercise of the options the company can secure a corporation tax deduction.

When the employee eventually sells the shares acquired under the option, he or she will pay capital gains tax on the gain. Capital gains tax rates are lower than income tax rates in the UK and gains made on EMI option shares may qualify for Entrepreneurs' Relief, meaning the gain may be taxed at only 10%.

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What are the qualifying conditions?

EMI options are very flexible, but to obtain the tax benefits the employee and the company must meet several conditions. The key conditions are set out below:

- the company cannot be a subsidiary of another company (in such cases options should be granted over shares in the parent company, which may be overseas);
- the company must have gross assets of less than £30m and fewer than 250 full time equivalent employees;
- the company must be carrying on a qualifying trade and must have a "permanent establishment" 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 at the time the options are granted;
- the maximum value of unexercised EMI options which a company may have outstanding at any one time is £3m and no employee may hold unexercised options worth more than £250,000 (valued at the date of grant);
 - The exercise price must be at least the unrestricted market value of the shares at the date of grant. If the exercise price



is below this amount, the option can still be granted but there will be income tax on exercise of the option, calculated on the difference between the market value of the share on date of grant and the amount paid for the share on exercise.

- a company may grant EMI options only 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.

How we can help

We have extensive experience in advising on all aspects of EMI and other share incentive arrangements.

We can help you design your EMI scheme, including advising on when share options should become exercisable and whether to include performance criteria. We can undertake a valuation of the EMI share option shares and agree the valuations with HMRC.

We can also assist with notifying HMRC of the share option grant and with the annual reporting compliance matters.

If you would be interested to learn more about EMI and how it can assist your business with recruitment and retention, please contact your usual Blick Rothenberg contact or one of the individuals listed below.



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