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SHARE OWNERSHIP FOR EMPLOYEES - EMI

ENTERPRISE MANAGEMENT INCENTIVES (EMI)

Retaining and motivating staff are key issues for many employers. Research in the UK and USA has shown a clear link between employee share ownership and increases in productivity. The government has therefore introduced a variety of ways in which an employer can provide mechanisms for employees to obtain shares in the employer company without necessarily suffering a large tax bill. Provided the company meets the qualifying conditions, EMI can be one of the most tax efficient and flexible means available.

EMI allows selected employees (often key to the employer) to be given the opportunity to acquire a significant number of shares in their employing company through the issue of options. Whilst an EMI can offer significant tax advantages, the key driver for any incentive arrangement should be the commercial objectives of the business.

This factsheet outlines the rules for EMI.

TAX PROBLEMS UNDER NORMAL RULES

If shares are simply given to an employee the market value of the shares will be taxed as earnings from the employment. This is expensive for the employee as he may not have any cash to pay the tax arising.

In order to avoid this immediate charge, options could be granted to an employee. An option gives the employee the right to obtain shares at a later date. Generally, any tax liabilities will be deferred until the time the options are exercised.

This may still be expensive for the employee if he is not then in a position to sell some of the shares in order to pay the tax arising.

WHAT DOES EMI OFFER?

EMI allows options to be granted to employees which may allow the shares to be received without any tax bill arising until the shares are sold.

How does it work?

Selected employees are granted options over shares of the company which must be capable of being exercised within ten years of the date of the grant, or fifteen years from grant if the options are issued on or after 6 April 2026.

There is also a statutory limit of £250,000 in respect of options granted. This means no employee may hold unexercised qualifying EMI options with a market value of more than £250,000. The market value is taken at the date of grant. Any options in excess of this amount will not benefit from any tax advantages. Once the statutory limit is reached, the employee cannot be granted any further options for a period of three years from the last grant that took the employee up to or over the threshold, regardless of whether the value of the unexercised options has reduced or not.

What are the tax benefits to employees?

The grant of the option is tax free.

There will be no tax or NICs for the employee to pay when the option is exercised so long as the amount payable for the shares under the option is the market value of the shares when the option is granted.

The EMI rules allow the grant of nil cost and discounted options. However, in these circumstances, there is an income tax charge at the time of exercise on the lower of:

- the amount of discount (based on the market value at grant); and
- the difference between the market value of the shares on exercise and the amount paid for them.

If the shares are readily convertible assets, NICs will also be due.

Following the acquisition of the shares, when the option is exercised, an employee may immediately dispose of or may retain the shares for a period before selling them. At such time there will be a

chargeable gain on any further increase in value. The CGT liability will depend on the availability of any reliefs and annual exemption.

- CGT at the rate of 18% (10% up until 29 October 2024) applies to gains where net total taxable gains and income are below the income tax basic rate band.
- CGT on any part of gains above this limit will be charged at 24% (20% up until 29 October 2024).

In certain circumstances, in respect of shares acquired through exercising EMI options, Business Asset Disposal Relief may be available to reduce the rate of CGT in the tax year 2026/27 to 18% (14% for 2025/26). Although the Business Asset Disposal Relief (BADR) conditions have to be satisfied, they are modified so that:

- the 5% minimum shareholding requirement does not apply
- and the 24 months (12 months before 6 April 2019) minimum holding requirement is allowed to commence on the date the option is granted.

What are the benefits to employers?

- Employees have a potential stake in their company and therefore retention and motivation of these employees will be enhanced.
- Options will not directly cost the employer any money in comparison to paying extra salary.
- There will normally be no NICs charge for the employer when the options are granted or exercised or when the employee sells the shares.
- A corporation tax deduction for the employer company broadly equal to employees' tax relief.

EMI: POINTS TO CONSIDER

There are a number of issues to consider in deciding whether EMI is suitable for your company.

- Does the company qualify?
- Which employees are eligible and who should be issued options?
- What type of shares will be issued?
- When will the rights to exercise options arise?
- The costs of setting up the option plans are not tax deductible.

Does the company qualify?

EMI was introduced by the government to help small higher risk companies recruit and retain employees with the skills that will help them grow and succeed. The company must therefore:

- exist wholly for the purpose of carrying on one or more 'qualifying trades'
- have gross assets of no more than £120 million (increased from £30 million from 6 April 2026 onwards)
- not be under the control of another company (so if there is a group of companies, the employee must be given an option over shares in the holding company)
- have fewer than 500 full time employees (increased from 250 from 6 April 2026 onwards)
- have a Total Unrestricted Market Value of shares issued under EMI options of no more than £6 million (increased from £3 million from 6 April 2026 onwards).

The main trades excluded from being qualifying trades are asset backed trades such as:

- property development
- banking
- operating or managing hotels
- farming or market gardening.

Which employees are eligible and who should be issued options?

An employee cannot be granted options if they control more than 30% of the ordinary share capital of the company. They must spend at least 25 hours a week working for the company or the group, or if the working hours are shorter, at least 75% of their total working time must be spent as an employee of the company or group.

Subject to the above restrictions, an employer is free to decide which employees should be offered options. The sole test is that options are offered for commercial reasons in order to recruit or retain an employee.

What type of shares will be issued?

EMI provides some flexibility for employers. For example, it is possible to limit voting rights, provide for pre-emption or set other conditions in respect of shares which will be acquired on exercise of an EMI option. The shares must, however, be fully paid ordinary shares so that employees have a right to share in the profits of the company. They must also be non-redeemable.

When will the rights to exercise options arise?

The options must be capable of being exercised within ten years of the date of grant but there does not have to be a fixed date. From 6 April 2026, the qualifying exercise period is increased to fifteen years for new options. Any existing unexercised options at this date (that have not lapsed or expired) can be amended to have the qualifying period extended to fifteen years also.

Examples of circumstances in which the options could be exercised include:

- fixed period
- profitability target or performance conditions are met
- takeover of company
- sale of company
- flotation of company on a stock market.

Options can be made to lapse if certain events arise, for example the employee leaves the employment.

HOW WE CAN HELP

Whilst an EMI can offer significant tax advantages, the key driver for any incentive arrangement should be the commercial objectives of the business. There are a variety of alternative arrangements which can be used each with their own conditions and advantages. We can help you decide whether EMI is appropriate for your business and whether the business will qualify. Please contact us for advice on the best options available for your business.

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