
ENTERPRISE MANAGEMENT INCENTIVE (EMI)

EMI is the most flexible tax efficient share option scheme currently available for ownermanaged UK trading companies. It permits qualifying companies to give employees the right to purchase shares in that company at a specified price on a future date.

State Aid

The EMI Scheme is dependent on the EU State Aid rules which have been granted until 6 April 2023 though, of course, Brexit is likely to arise before that date.

How EMI schemes provide effective incentives

EMI schemes offer a number of key benefits, including:-

- A tax framework for both employee and employer which is more advantageous than any other HMRC approved share scheme;
- No formal approval process, which means that the scheme can be rapidly implemented.

EMI schemes enable employees to participate in the growth of the company at a low risk. Options are issued over shares in the company, normally at today's price, with the right to exercise the options falling due at a future date. The right to exercise can be conditional on specified criteria, for example the employee's performance, and/or deferred until an exit.

Since EMI is a share option scheme, the employees can choose whether to exercise or not and so are not at risk if the shares fail to increase or even fall in value during the option period. Assuming that the company continues to perform and the shares increase in value the employees can then exercise the options and acquire shares at today's price with no tax cost. Even then there is no obligation to exercise; it is a personal choice.

Once the shares are held the employees would participate in any future sale and should pay only Capital Gains Tax (CGT), normally at 10% (see below) but with a maximum of 20%, as opposed to income tax, maximum 45%.

There are risks to the tax benefits; broadly, if the company loses its EMI qualifying status or the employees cease to qualify under the legislation no further tax benefits can accrue after that date.

What are the tax benefits?

- No tax charge on the employees when the option is granted;

- No income tax or national insurance is payable on the exercise of the option, provided it was granted at market value or higher;
- CGT is payable on disposal on proceeds less cost (where option shares are subject to restrictions, the 'restricted securities' provisions may apply post exercise);
- Entrepreneurs' Relief (reducing the rate of CGT to 10% on the first £10 million of gains) is available where employees acquire shares under EMI options and hold the shares and/or options for at least 24 months before any disposal;
- Corporation Tax relief in the company on the difference between the market value on exercise and the cost of the shares.

General

Participation in the scheme is restricted to full time employees (those working for 25 hours per week or, if less, 75% of their working time)

The law imposes certain other restrictions, including:-

- The total value of shares in a company over which unexercised options exist cannot exceed £3 million;
- Each employee may hold options over shares worth no more than £250,000 at the time of grant and may hold no more than 30% of the company's share capital;
- The company granting the options, or the group of which it is a part, must have gross assets of no more than £30 million and less than 250 employees;
- The company must carry on a qualifying trade; the most common excluded trades are:-
 - Dealing in land, commodities, shares or other financial instruments;
 - Financial activities;
 - Leasing or letting assets on hire;
 - Providing legal or accountancy services;
 - Property development;
 - Farming or market gardening;
 - Operation or managing hotels, guest houses, hostels, nursing homes or residential care homes;
 - Energy generation.

Please note, this is not a complete list.

This Mercer & Hole Insight is a short selection of items extracted from complex legislation. Further specific advice on any matters referred to must be taken at all times. The information is given for general guidance only and publication is without responsibility for loss occasioned to any person acting or refraining from acting as a result of the information given. No part of this publication may be reproduced without the prior permission of Mercer & Hole.
