

ENTERPRISE MANAGEMENT INCENTIVE (EMI) SCHEME FACTSHEET

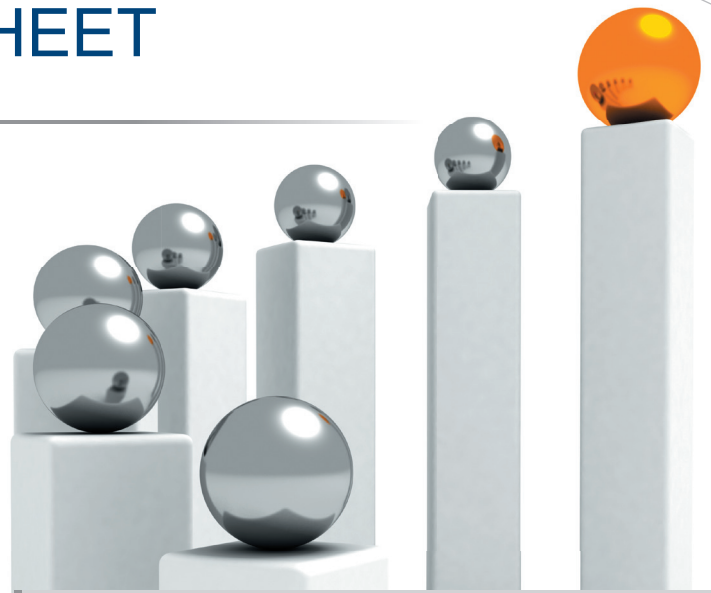
Many employers wish to reward and retain their key employees through share ownership.

In most cases it is not simply a matter of transferring shares to their employees, as this may not be desirable for the existing shareholders, and it could lead to large income tax liabilities for the employee or a big PAYE bill for the employer.

However, it is possible to provide share options to employees using an Enterprise Management Incentive (EMI) Scheme, which by its design is tax efficient and is fully approved by HM Revenue & Customs (HMRC).

Key features at a glance

- EMI is a share option scheme. It is not immediate share ownership
- It can be targeted at a small number of key employees
- Protects the existing shareholders as there is no immediate dilution of share ownership
- Individuals are granted options to acquire shares in the future based on criteria set at the time the share options are granted. This could be performance based, on an exit event or some other criteria.
- Low risk for the participants as they only pay for the shares on exercising the options
- The price paid for the shares is set at the outset by the company
- The value of the shares at date of granting the options is agreed with HMRC
- On exercising the options, provided the participants pay at least the market value of shares at date of grant, then there should be no PAYE/NI implications
- The profit from the sale of the shares may qualify for Entrepreneurs' Relief (Capital Gains Tax at 10%)
- The company may receive corporation tax relief on the profit the participant makes in exercising the option
- Options lapse if an option holder leaves employment



How the company qualifies

The total value of EMI options granted must not exceed £3 million at the time they are granted by the company. The following requirements must also be met:

- The share options granted must be in an independent trading company (or holding company of a trading group);
- Gross assets of the company or group must not exceed £30 million;
- The company or group must have fewer than 250 employees.

How the employee qualifies

For an option to be a qualifying option, it must be granted to an 'eligible employee':

- The individual must be an employee (or Director) of the company;
- The employee must have 'committed time' of at least 25 hours per week, or 75% of their total working time if this is less than 25 hours per week;
- The employee must not already have a 'material' interest in the company.

'Material' interest is defined as the employee already having beneficial ownership of, or the ability to control more than 30%, of the company granting the options.

Tax advantages

- No tax charge on the grant of the option
- No income tax or NIC's payable on the employee when the options are exercised. This is provided that the exercise price is set at the market value of the shares at the date of grant, as agreed with HMRC at the outset
- An income tax and NIC charge would only arise where options are granted at a discount, on the difference between the exercise price and the market value of the shares when granted
- Once exercised, the gain on any shares sold will be subject to Capital Gains Tax (CGT) at the current rate of tax of 20%
- In practice, where options are held for more than 1 year from the date they are granted, and are later exercised and sold, Entrepreneurs' Relief will apply, meaning that CGT is only charged at 10%
- Finally, where share options held under the scheme increase in value from the date they are granted, the issuing company can receive Corporation Tax relief on the exercise of the options as they convert into shares

PRACTICAL EXAMPLE

At the date of grant of EMI options, the underlying shares have a market value of £10 per share. The individual is granted options over 1,000 shares with an exercise price of £10 per share.

After 5 years the company is subject to an offer of £100 per share. The individual exercises the option and makes a profit of £90 per share, being £90,000 in total.

The £90,000 profit is subject to Capital Gains Tax potentially at a rate of 10% if the conditions for Entrepreneurs Relief are met.

The company benefits from a deduction of £90,000 from taxable profits.



HOW CAN SHORTS HELP?

We offer the complete EMI implementation service, which includes:

- EMI design – critical to the success of the scheme
- Employee communication – help to get employee buy in
- Preparation of share valuation and negotiating with HMRC
- EMI scheme documentation
- Dealing with EMI compliance

Talk to our team

If you would like further advice please contact a member of our team.



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