

## FOCUS ON

# Enterprise Management Incentives

Enterprise Management Incentives (EMI) option plans are tax-advantaged share options. They provide the option-holder with the opportunity to acquire shares in their employer at an agreed exercise price. The employer has discretion as to which employees may participate and also the terms applying to each individual.

An employer can grant share options worth up to £250,000 (at the date of grant) for each selected employee and up to £3 million for all employees.

## Qualifying conditions

- To qualify for an EMI scheme a company must, at the date on which an option is granted:
  - have fewer than 250 full-time equivalent employees (including directors);
  - operate a qualifying trade (some are excluded – see Excluded trading activities below); and
  - be an independent trading company or trading group with less than £30 million in gross assets.
- Eligible employees must work a minimum of 25 hours a week or must be employed for at least 75% of their full working time, and they must not already own more than 30% of the ordinary share capital.

## Share option

- The option must be a right to acquire shares that are part of the ordinary share capital of the company and which are fully paid up and not redeemable. The shares used to satisfy the exercise of an EMI option can be newly issued or already in existence.
- The option must be in the form of a written agreement between the person granting the option and the employee and must be exercisable within ten years of grant.
- The employee's option entitlement may be dependent on conditions (including performance conditions) but they must be set out in the option agreement.
- EMI options may be granted to an employee over shares with an aggregate value at grant of up to £250,000. The company/group as a whole may grant EMI options to employees over shares with an aggregate value at grant of up to £3 million.

## Excluded trading activities

- A company won't qualify to grant EMI options if it is involved to any substantial extent (20% or more) in excluded activities - including:
  - Dealing in land and property development
  - Leasing, banking, insurance, money-lending, debt- factoring, hire purchase financing or other financial activities
  - Providing legal or accountancy services
  - Farming or market gardening
  - Operating or managing hotels or nursing homes.

## Disqualifying events

A number of changes or developments can disqualify an option from EMI relief including, for example, loss of independence, where the company no longer meets the trading activities requirement, or where the employee is no longer eligible.

## Tax treatment

There is no income tax or (NIC) for the employee or employer to pay when options are granted or when they are exercised (within ten years) if the option price is at least equivalent to the market value of the shares when the options were granted. Corporation Tax relief is available for the employing company for the gain realised by the employee on the exercise of their options.



## Capital Gains Tax

Shares acquired by exercising an EMI option will be subject to Capital Gains Tax (CGT) when they are subsequently sold.

Where the individual qualifies for Business Asset Disposal Relief (BADR), the rate of CGT will be 10%, lower than the normal rate of 20% which applies to those who pay income tax at more than basic rate. Individuals will qualify for BADR on sales of shares derived from the exercise of EMI options even when they don't hold at least 5% of the company's ordinary share capital provided that the period between the grant of the options and the sale of the shares is 24 months or more.

## HM Revenue & Customs (HMRC) notification and returns

Before options are granted, advance assurance can be sought from HMRC that a company will qualify for EMI. It is also possible to agree in advance with HMRC the correct value for tax purposes of the shares over which options are to be granted.

HMRC's approval of an EMI is not required but they must be notified online within 92 days of granting the options.

Once EMI options are granted, an annual share scheme return is required to be filed with HMRC for each UK tax year by 6 July following the tax year end.

## Contact Us

For further information on EMI option schemes or share incentives generally, please speak to your usual MHA MacIntyre Hudson tax contact or contact your local office.

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