KPMG

Enterprise management incentives

Engage your workforce with enterprise management incentives (EMI) – share options introduced specifically for companies with growth potential.

What are EMI options?

EMI options are tax advantaged incentives that allow employees to share in the value they create.

Introduced specifically for smaller companies with growth potential, they benefit from the most generous employee share plan tax advantages offered by the UK government.

How do EMI plans work?

Eligible employees are granted options to buy shares in their employer or its parent company.

The employer decides when and in what circumstances employees can exercise their options.

It is common for options to be exercised only when the company floats or is sold, and to be forfeited if the employee leaves. The employer can also impose performance or other 'vesting' conditions on exercise.

The price the employee needs to pay to buy the shares can be set at, above or below their market value on the date the option is granted (including nil or nominal value).

Each employee can hold EMI options over shares which were worth up to £250,000 when the options were granted. This is subject to a company-wide cap of £3 million.

What is the tax treatment?

EMI plans offer income tax, social security (NIC) and Capital Gains Tax (CGT) advantages if certain conditions are met.

Exercise of the options

Employees won't usually pay income tax or employee's NIC when they exercise EMI options. Similarly, there is usually no employer's NIC or Apprenticeship Levy for the employer to pay.

When the options are exercised, the employer can usually claim a corporation tax deduction equal to any difference between the market value of the shares at that time and the price – if any – the employee pays to buy the shares.

Some income tax and, potentially, NIC and Apprenticeship Levy charges can arise if:

— The exercise price of the option is less than the market value of the shares when the option was granted; and/or

— One or more conditions ceases to be met before the option is exercised.

However, the tax due in these cases is still likely to be less than if non-tax advantaged options had been used.

Sale of the shares

CGT may be payable when the shares are sold. This is currently charged at standard rates of 10% and 20%, which apply depending on individual circumstances.

But shares employees buy when they exercise EMI options can qualify for Business Asset Disposal Relief (BADR) (formerly Entrepreneurs' Relief), which can cut the top rate of CGT that applies to 10%.

Generally, gains realised on a sale of EMI shares will benefit from BADR if the shares are sold at least two years after the option was granted and during that time:

— The company was a trading company or the holding company of a trading group; and

— The employee was an officeholder or employee.

The CGT annual allowance (or other CGT reliefs) might reduce or eliminate any CGT charges.

How can EMI plans be used?

As companies can choose who participates in an EMI plan, they can be used to grant options to selected senior executives.

But they can also be used for a wider employee population, and are much more flexible than tax advantaged 'all employee' plans as awards can vary between participants.

What kind of shares can be used with EMI?

Shares used in an EMI plan can carry any rights and restrictions provided they are fully paid-up, non-redeemable ordinary shares.

Which companies qualify?

In summary, the company must meet the following conditions when the option is granted:

- It must be UK resident or have a UK branch;
- It must not be a subsidiary, or under the control, of another company (some private equity fund structures can prevent this condition being met);
- Its gross assets must not exceed £30 million;
- It must have fewer than 250 full time equivalent employees (part time employees are pro-rated); and
- It must carry on a qualifying trade.

Any trade will be a qualifying trade unless a substantial part of it is made up of 'excluded activities', for example:

- Dealing in land or financial instruments;
- Banking, insurance, hire-purchase financing or other financial activities (but giving financial advice does not fall within this category);
- Leasing or receiving royalties or licence fees in relation to certain intellectual property;
- Providing legal or accountancy services;
- Certain property-backed trades; and
- Ship building, coal and steel production.

Broadly similar conditions apply to groups of companies, as well as some additional conditions (e.g. concerning subsidiaries).

Which employees are eligible?

Employees can be granted EMI options if they work for the company or group for at least 25 hours per week.

Employees who work for fewer than 25 hours per week can still be granted EMI options if at least 75% of their total working time is spent working for the company or group.

However, employees who control 30 percent or more of the company's ordinary share capital cannot participate in an EMI plan.

Find out more about EMI

Contact us to talk through how EMI options can help you grow your business by cutting the cost of recruiting and retaining key employees.

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