



## THE POWER OF BEING UNDERSTOOD

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## ENTERPRISE MANAGEMENT INCENTIVES SHARE OPTIONS

Offer your employees the chance to share in company growth and get the benefit of business asset disposal relief (previously called entrepreneurs' relief) alongside the main shareholders. Incentivise the team to increase the company's value without incurring any cash expense other than set up costs (which are generally tax deductible).

Successive governments have encouraged employers and employees to take advantage of enterprise management incentives (EMI) options. These share options can enhance the recruitment and retention of employees for most trading companies with fewer than 250 employees, providing the following benefits.

- Greater employee incentivisation and reward.
- Employee gains often taxed at 10 per cent with payment potentially deferred up to 22 months after the employee sells the shares.
- Performance conditions that can directly link rewards to performance.
- No income tax or national insurance contributions (NICs) liability (provided exercise price is at least equal to the shares' value at the date of grant).
- No loss of control for existing shareholders.
- Succession planning or equity release for existing shareholders.
- A corporation tax deduction for the employer company equal to the employees' gains, whether or not any cash costs have been incurred.
- Business asset disposal relief (formerly called entrepreneurs' relief) may be available regardless of the size of holding.

The company must register an EMI scheme with HMRC, report options within 92 days of grant and make annual online returns to HMRC.

### An example

An employee is granted an option to purchase shares for market value at grant date of £50,000.

The employee exercises the option after two years, and the company issues new shares for £50,000.

The employee sells the shares to a third party for their then market value of £250,000 (the value of an investment can of course fall as well as rise).

The employee immediately realises a gain of £200,000 to be taxed at the applicable rate (usually 10 per cent) after the capital gains annual exemption.

The company receives £50,000 for the share subscription and corporation tax relief on the employee's gains at the applicable rate.

### Accounting treatment

The company will need to account for deferred tax during the vesting period (between grant and exercise of the options). The deferred tax asset will then be reversed on exercise of the options.

## Features of EMI

The main features of EMI options are summarised below, but specific advice should be sought in every instance. An option plan is flexible and simple to administer and should be considered by every qualifying company as part of its remuneration strategy.

- Options can be granted to full-time employees (including full-time directors), but not those who (together with associates) already own over 30 per cent of the company. Full-time is broadly 25 hours per week or if 75 per cent of the employee's working time is committed to that employment.
- Options must be over fully paid up, non-redeemable shares and must be exercisable within ten years of grant, but otherwise the employer may use shares with a variety of rights and restrictions as commercial needs dictate.
- Options may be subject to continued employment conditions, exercisable only after a specified period, or subject to achievement of performance targets. All at the discretion of the employer company.
- Each employee may have unexercised options (including CSOP options) over shares worth no more than £250,000, by reference to their market value (to be agreed with HMRC) as at the date of grant.
- The total value of unexercised options must not exceed £3m per group.
- Share values may be agreed with HMRC prior to option grants.
- Business asset disposal relief (previously called entrepreneurs' relief) is available regardless of the size of holding but subject to the other conditions (eg sale two years or more from the option grant, lifetime limit of £1m, continued employment).
- The gross assets of the employer company must not exceed £30m as at the date the options are granted.
- The employer company must carry on a trade through a permanent establishment in the UK, but certain trades (eg leasing, financial services, farming and property development) are non-qualifying.
- The shares must be in a company that is not under the control of another company.
- The exercise price for options can be market value at grant, or at a discount or premium to market value.
- On grant of the option, no income tax or NICs arise.
- On exercise of the option, no income tax or NICs arise, unless the option was granted at a discount, or there has been a 'disqualifying event'.
- If the option was granted at a discount to market value, that discount is charged to income tax (and possibly subject to NICs) when the option is exercised.

### International considerations

EMI share plans can be expanded to accommodate international participants, but those participants may not be able to benefit from the UK tax advantages.

### Pay careful attention

The tax legislation, rates and reliefs referred to herein are applicable at April 2021. Tax rules change frequently and the value of a relief from taxation depends on the particular circumstances of the taxpayer.

### Contact

For further information on share schemes, please contact your usual RSM adviser.

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