Larking Gowen

Committed to you.

EMI share schemes

What is an EMI?

If you're considering incentivising your key employees by giving them an interest in the future growth of your company, an Enterprise Management Incentive (EMI) scheme is a very good place to start.

Originally brought in to assist small and dynamic companies to win and retain key employees, an EMI is a discretionary arrangement which allows the employer to choose who may benefit.

Participants receive options to acquire shares at either a fixed future date or on crystallisation of a pre-determined event, such as a company sale or a flotation.

What are the benefits of an EMI?

EMIs are very flexible and attractive; there are around 14,000 schemes in operation nationwide.

Participants are your key employees; those who can help you deliver growth and who you want to keep (or to recruit).

As participants in the EMI scheme start to deliver growth, then the value of the shares will increase accordingly, making an EMI a valuable retention tool.

However, companies must meet the criteria to qualify (see overleaf).

Personal tax

If you don't qualify for the scheme, or have different reasons for providing shares, then there are other arrangements available.

A brochure outlining alternative employee share schemes is available upon request.

How does an EMI scheme work?

Using options means that employees don't incur any upfront costs; they pay nothing until they exercise them and acquire shares. This is in contrast with the often significant cost that accompanies an outright purchase of shares on day one.

Option shares must be non-redeemable ordinary shares, but can be issued subject to restrictions and performance conditions.

There is no minimum exercise period or exercise price for options and employees can benefit from up to £250,000 worth of shares.

Assuming that the exercise price is no less than the market value at the date of grant, there should be no income tax or National Insurance contributions (NIC) to pay at any point in the life of the option, leaving just capital gains tax (CGT) to pay on any eventual disposal of shares acquired under the option.

Given that CGT rates are currently 20%, or potentially 10% or less if Business Asset Disposal Relief or the annual allowance is available, this is extremely attractive compared with paying income tax and NIC.

Which companies qualify?

- The gross assets of the company (or the group of companies if a parent company) mustn't exceed £30 million.
- The company must have fewer than 250 full-time employees (or equivalent).
- The company must be independent and not under the control of any other company.
- Companies may be quoted or unquoted.
- The company's trading activities must be carried out wholly or mainly in the UK.
- Certain trades are excluded from the scheme. Excluded trades include leasing, financial activities and property development.

Which employees qualify?

To qualify for the attractive tax treatment, generally the employees must work for the company (or, if relevant, any group company) for at least 25 hours a week or for at least 75 percent of their working time (which includes time spent in self-employed work).

They mustn't have a 'material interest' in the company (or, if relevant, any group company).

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Alternative employee share arrangements to an EMI scheme

If you don't qualify for an Enterprise Management Investment (EMI) scheme, or have different reasons for providing shares, then alternative arrangements are available:

Share type	Employee tax position	Employer tax position	When best to use	Issues
Company Share Option Plan (CSOP)	No income tax (IT) or NIC for certain "good leavers" or if the options held for at least three years. Capital Gains Tax (CGT) on sale of shares.	Corporation tax (CT) deduction on options gains. No NIC if the options are held for at least three years.	Where EMI is not available but you want to incentivise a discrete group of employees. Where £30,000 per employee is sufficient.	Some companies are excluded. The options cannot be granted at a discount.
Save As You Earn (SAYE)	No IT or NIC for exercise after the bonus date or for certain "good leavers". CGT on sale of shares.	CT deduction on options gains.	When you want to incentivise all employees to invest in the company. Exercise price can be set at a discount (max 20%).	Some companies are excluded. All-employee scheme so cannot target specific employees. Additional costs of having a savings carrier.
Share Incentive Plan (SIP)	Shares can be purchased out of gross pay. Free shares may be given to participants free of IT and NIC. No CGT on the sale of the shares.	CT deduction on the value of the free shares. No NIC on the value of the free shares or on the value of the shares purchased by participants.	When you want to incentivise all employees to invest in the company. When you want to be able to offer free shares.	Some companies are excluded. All-employee scheme so cannot target specific employees. Makes shares available rather than options. Expensive to administer.
Non Tax Advantaged Options	IT and NIC on options gain, which is due when option is exercised. CGT on further gains between exercise and sale.	CT deduction on options gains. Any NIC liability arising can be transferred to employees if the appropriate election is made.	Useful where EMI or CSOP not possible, but options are still desirable. When you need flexibility – the rules can be better made to suit the employer's needs.	Not as tax efficient as other options.
Growth Shares (or Hurdle Shares)	No IT or NIC if shares are purchased for market value. CGT on the sale of shares.	No CT deduction or NIC if shares are purchased for market value.	A tax efficient alternative where EMI or CSOP not possible.	More complicated to set up as it requires an amendment to the company articles. Valuation questions may arise on receipt of growth shares.

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