

ENTERPRISE MANAGEMENT INCENTIVES (EMI)

The EMI share option scheme is the most tax advantageous share scheme ever introduced in the UK. It is designed to help smaller higher risk companies recruit and retain employees who have the skills to help them grow and succeed. It also provides a way of rewarding employees for taking a risk by investing their time and skills to help companies achieve their potential. Key staff know their value and it is often difficult for companies to hold on to them or attract new staff if they are only able to offer a standard remuneration package.

1. Key Features

Tax advantaged share options with a market value of up to £250,000 may be granted to a qualifying employee of a qualifying company. The number of employees that can be granted EMI options is unrestricted, subject to a total share value of £3 million under EMI options to all employees.

2. Qualifying Employee

To qualify for EMI an employee has to be employed by the company whose shares are the subject of the option, or by a subsidiary. An employee must spend at least 25 hours a week working for the company or the group. If his hours are shorter, he must spend at least 75% of his working time as an employee. The employee must not control more than 30% of the Ordinary Share capital of the company at the time of grant.

3. Qualifying Company

The shares must be in an independent trading company that has gross assets of no more than £30 million, or in the holding company of a trading group where the gross assets as a whole do not exceed £30m. Companies carrying on certain trades (e.g. property development, financial services, farming and accountancy) will not qualify, and the trade must be carried out wholly or mainly in the United Kingdom.

4. Other Features

- Flexible arrangements where companies can tailor each individual option to an individual employee.
- Shares with restricted rights (e.g. non-voting) are allowed.
- Options can be granted at a discount to market value but the discount is taxed upon exercise.
- Options can be exercised as early as is considered appropriate after the date of grant or only on a sale, for example.

- Share valuation to be agreed up front with HM Revenue & Customs.
- Minimum red tape – no prior approval process.
- Reporting of all options granted to be registered online with HM Revenue & Customs (“HMRC”) within 92 days and annual tax return to be completed.
- Arrangements to roll over “old” options into “new” options on a takeover.

5. Benefits

- Employees will not suffer charge to income tax or NIC upon the grant of an EMI option.
- Upon the exercise of an EMI option there is no income tax or NIC charge if the exercise takes place within 10 years of grant and the exercise price is not less than market value at the date of grant.
- When the shares are sold they attract the more friendly capital gains tax treatment and it should be possible to qualify for Entrepreneur’s Relief (as long as the options/shares have been held for at least 2 years). This would give an effective CGT rate of 10% on gains of up to £10 million.
- Companies will get Corporation Tax relief at the date of exercise equal to the market value of the shares at exercise, less any amount paid by the employee for the shares.

6. How Menzies can help?

The EMI share option scheme is a powerful tool in recruiting retaining and remunerating key employees, particularly when the company does not currently have the resources to do so.

Menzies can provide:

- A timely and cost effective service;
- Advice on how the EMI Scheme can work for you;
- Advice on existing schemes;
- Draft documentation;
- Share valuation and agreement with HMRC;
- Clearance of company’s qualifying status with HMRC;
- Advice on the practical considerations for companies contemplating employee share ownership for the first time.

This is a detailed and complex area of the tax legislation and this guide is a summary only. Professional advice should be sought from your Menzies contact before taking any action.

If you require any further information on any of the issues raised above, please email taxconnect@menzies.co.uk