

The EMI scheme is aimed at giving relief from tax and national insurance where options over shares are granted by an employer company to its employees.

If the option is granted at market value on the date of grant, then subject to all of the requisite conditions being met, the employee will not incur an income tax charge on the grant or the exercise of the option.

On an ultimate sale of the shares, capital gains tax is charged on the gain. Entrepreneur's Relief may be available from the date on which the option was exercised, if the relevant conditions are fulfilled.

Qualifying Options

The option must be granted for commercial reasons in order to recruit or retain an employee in a company and not as part of a tax avoidance scheme or arrangement.

It must be granted to the employee by reason of his employment with the relevant company.

The shares under the option must be fully paid up ordinary shares.

The option must be capable of being exercised within ten years from the date of grant. If the exercise is dependent upon certain conditions, the conditions must be capable of being fulfilled within those ten years.

There must be a written agreement stating:

- the date of the grant
- that it is granted under ITEPA 2003 Schedule 5
- the number or maximum number of shares that may be acquired

- the price or how the price is to be determined
- when and how the option may be exercised
- any conditions eg performance affecting entitlement
- details of any restrictions on the shares
- where the interest is only conditional, details of the condition.

The option cannot be transferred. If the personal representatives are allowed to exercise the option they must do it within one year of death.

Qualifying Companies

The company can be quoted or unquoted but not under the control of another company. If it has subsidiaries, each must be a qualifying subsidiary ie 51% owned.

Its gross assets must not exceed £30 million. If the company is part of a group this limit applies to the group as a whole.

It must have fewer than 250 full time equivalent employees.

It must exist wholly for the purpose of carrying on one or more qualifying trades, ie

- wholly or mainly in UK
- carried on on a commercial basis
- not an excluded activity:
 - land/share dealing
 - banking, insurance etc
 - legal or accountancy services
 - property development
 - farming or market gardening or woodlands
 - operating or managing hotels etc, nursing homes
 - leasing or receiving royalties/licence fees



Enterprise Management Incentives

Technical Guidelines

Eligible Employees

Must be an employee of the company granting options (or of parent or of qualifying subsidiary). Directors can qualify provided they meet the criteria.

Must work for the company at least 25 hours per week or if less, 75% of his 'working time', ie total time spent on remunerative work as employee or self employed person.

Must not have a 'material interest' in the company, ie more than 30% of the ordinary share capital.

There is no maximum to the number of employees holding qualifying options at any one time.

Maximum Entitlement

The employee cannot hold unexercised qualifying options with a value of more than £120,000, the value being taken at the time the option is granted.

Where an employee has been granted qualifying options with a total value of £120,000 then, whether or not those options remain unexercised, no further options may be granted to him within three years after the date of grant of the last qualifying option.

Maximum Value of Options

The total value of shares in respect of which unexercised qualifying options exist must not exceed £3 million. The value is taken at the time of grant. An option which takes the value over this figure is not a qualifying option.

Tax Consequences

No income tax or National Insurance is chargeable on the grant of a qualifying option.

No income tax or National Insurance is chargeable on the exercise of a qualifying option provided it is exercised within ten years and the shares are acquired at not less than their market value at the time of grant.

Capital Gains Tax is chargeable on the ultimate sale of the shares, the base cost being the amount paid for the shares plus any further amount on which income tax is paid.

Disqualifying Events

The company becoming a 51% subsidiary or under the control of another company.

The company ceasing to meet the trading activities requirements.

The employee ceasing to be an eligible employee.

Variation of the terms of the option which increases the market value of the shares.

Variations to the share capital which increases the value of the shares, where the alteration was made to increase the value and not for commercial reasons.

The employee is granted an option under another company share option plan and immediately after he holds unexercised option in excess of £120,000.

The company does not commence the trade at all or within two years of the grant of the options.

If any disqualifying event occurs before the EMI option is exercised, the option holder has forty days to exercise the option and retain the tax benefits.

Replacement Options

Where any acquiring company obtains control of the company where there are unexercised options, that company can grant options of a similar nature in the acquiring company. This must be done within six months.

Administrative Points

(i) Notification

There is no requirement or facility for approval from HM Revenue and Customs (HMRC) for EMI schemes.

Notification of an option must be given to HMRC by the company within ninety-two days after the option is granted, otherwise it is not a qualifying option.

The notice must contain a declaration by the company that the statutory requirements are met and by the employee that his 'committed time' satisfies the conditions.

HMRC can enquire into the option by notice of enquiry to the employer or employee as relevant.

This enquiry must be within twelve months of the ninety-two days after the option is granted.

(ii) Returns

The company must make a return before 7 July after the end of the tax year in which options are granted.

(iii) Share valuation

We recommend that HMRC's agreement to the suggested valuation of the shares at the date of the grant is obtained, so that future tax liabilities are known.

Advice that stands the test of time

This is intended to provide a guide to current tax issues. It is not a substitute for technical advice. If you have any queries, please do not hesitate to contact us.