



EMIs:

Have you got one yet?

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Introduction

Enterprise Management Incentive ('EMI') plans are available to companies with gross assets of less than £30 million. They provide for selected employees to be granted options over shares in their employing group.

Why should you have an EMI plan?

There are a number of reasons why you should consider having an EMI plan. In particular:

- > It is an excellent **recruitment and retention tool**. An EMI plan gives employees a stake in the business, ensuring they can participate in its growth but protecting them from any fall in the value whilst they hold options.
- > It provides a great **incentive** for employees to work towards corporate aims. The plan can be structured so that exercise of the option is subject to individual and/or corporate performance targets. Exercise can also be conditional on the company achieving a sale or listing.
- > Until they exercise options they have **no dividend or voting rights**.
- > EMI plans are **generous**, enabling a company to grant individual employees options over shares worth up to £100,000 each. The total value of a company's shares that may be subject to EMI options is £3 million. In both cases, the value of the shares is measured at the date of grant.
- > EMIs are **flexible**: you have discretion to select which employees will participate and the extent to which

they may do so.

- > It is an extremely **tax-efficient** benefit. Under rules established by Her Majesty's Revenue & Customs (HMRC) the tax treatment for options granted with a market value exercise price is highly favourable:
 - On grant of the option, no income tax or (employee or employer) national insurance (NI) contributions are payable.
 - On exercise of the option, again no income tax or (employee or employer) NI contributions are payable. However, the employer should be able to obtain a corporation tax deduction equal to the difference between the market value of the shares at the date of exercise less the exercise price.
 - On sale of the shares, the employee will have a capital gains tax liability on the difference between the sale proceeds less the exercise price. Unlike other share options, the period for 'business asset taper relief' runs from the date on which the employee is granted the option rather than the date on which the employee exercises the option. That means that employees who sell their shares two or more years after the date on which the options were granted are potentially entitled to full business asset taper relief, which reduces the effective tax rate on sale from 40% to 10%.

Where is the catch?

A company must satisfy certain eligibility conditions before it can implement an EMI plan. In particular:

- > Its gross assets must not exceed £30 million.
- > It must be independent - that is, it must not be under the control of another company (nor must any ar-

rangements be in place under which it could become so).

- > It must carry on a qualifying trade. Examples of trades which do not qualify include property development, leasing and financial activities.
- > The trading activities must be carried on wholly or mainly in the UK.

If there is any doubt about whether your company satisfies the eligibility conditions, advance approval may be sought from HMRC.

Other restrictions and exclusions include the following:

- > Employees who own more than 30% of the share capital before EMI options are granted are excluded from participating in the EMI plan. In addition, employees must work for the company at least 25 hours a week or, if less, 75% of their working time.
- > The generous tax reliefs for employees can be lost if there is a 'disqualifying event' - for example, the employee ceasing to work for the company or it being taken over by another company - unless options are exercised within 40 days of that event.
- > Under new accounting rules you will have to charge the fair value of the options - measured at the date of grant - over the vesting period in your profit and loss account.

How we can help

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