



2023, The rise of the Enterprise Management Incentive scheme

In this article, Sarah Hemmings in our Corporate and Commercial department provides an insight into EMI schemes and why they are becoming increasingly popular with employers.

UK Businesses have identified that there is a talent shortage throughout each sector. Companies are looking for new ways to attract and retain key staff to help their future growth. Many companies are using Enterprise Management Incentive schemes (EMI) as a way of providing differentiation. EMI's have grown in popularity with the financial and non-financial incentives proving too rewarding to turn down.

What exactly is an EMI scheme?

An Enterprise Management Incentive Scheme is a share option scheme backed by HMRC, designed for employees or directors working for more than 25 hours per week (or 75% of their time) in a business. Provided that certain requirements are met (for both the employee and the company itself) an EMI is recognised as one of the most tax efficient and favourable HMRC approved share incentive schemes available for businesses and employees alike.

EMI schemes are inherently flexible, allowing for an employee to acquire shares under their option upon the passage of time; or upon certain targets being met (whether individual or linked to company performance); or only on an exit (sale) of the business. Depending upon the employer's intentions, there is significant scope to mould the scheme to fit requirements.

There is recognised a key psychological benefit for employees in having "skin in the game" in terms of their commitment and performance within a business that has granted EMI options. EMIs are seen as having mutual commercial benefit for both the employee and employer.

This scheme is intended to help smaller independent businesses realise their potential by attracting and retaining the best employees.

What are the benefits of an EMI scheme to my company?

There are numerous significant tax advantages for both employee and employer. There is no income tax or national insurance to pay when the EMI option is granted or when the option is exercised provided certain conditions are satisfied. When the shares are sold, again subject to certain requirements being met, the employee will pay only 10% capital gains tax on any profit.

Other significant advantages include:

Attracting talent: Offering a rewarding option scheme can attract the best talent in the jobs market.

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Talent retention : Employees who have been rewarded with options will wish to stay to see their shares grow and realise the potential of the company in order to receive the most benefit out of their shares.

Reward employees: EMI options can be offered as a hugely tax friendly part of a rewards package for meeting individual or company targets. Creating an incentive for staff to go the extra mile whilst creating tax benefits for both employers and employees.

How do I know if my company qualifies for an EMI scheme?

Qualifying companies:

- An EMI scheme is available to companies with gross assets of £30m or less.
- In a group structure, EMI share options must be granted over shares in the parent company, and at least one of the trading subsidiaries must carry on a qualifying trade.
- There must be fewer than 250 employees at the date the EMI options are granted.
- The company must be a trading company (i.e. not an investment company).

How do I know if my employees qualify under the EMI scheme?

To be eligible for an Enterprise Management Scheme, the employee must be:

- a legal employee of the business
- The person must work a minimum of 25 hours per week or 75% of their time as an employee or director of the company
- The person cannot hold more than 30% of all company shares

What kind of shares qualify under the EMI scheme?

- The market value of the shares must not exceed £250,000 per employee
- The share options under the scheme must be granted within 90 days of HMRC's valuation
- The options must be able to be exercised within 10 years of being granted
- The shares must be non-transferrable

All terms and conditions for your options scheme must be placed in writing. Our expert solicitors at **Chadwick Lawrence LLP** can tailor all other terms, depending on what terms your company wishes.

For more information about how we can help you please contact:

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Alternatives to the EMI scheme?

Whilst EMI schemes are currently limited to SME's and other companies/employees meeting the relevant requirements, some alternatives may still suit larger or other organisations that for whatever reason do not qualify for EMI. These alternatives (which are not exhaustive) include:

Non-tax-advantaged share options : Unlike tax-advantaged arrangements, they are not subject to statutory rules regarding the types of shares that can be used, the individuals that can participate, or the form and terms of awards.

Phantom share schemes: A type of employee share scheme that allows companies to offer incentives to employees to help the company achieve share price growth in return for a cash bonus instead of becoming shareholders.

Share growth schemes : Where shares are issued to employees but the value of the shares is linked only to growth in the business between the date of issue and the date upon which the business is sold.

We can help

If your company is interested in pursuing an EMI scheme or the alternatives listed above, or if you simply want to discuss what your options may be, our expert **Corporate and Commercial team** can help in a wide variety of ways to help set up a scheme that suits your business, ensuring a rewarding outcome for both you and your employees.

For further advice or information about what we can offer, please contact sarahhemmings@chadlaw.co.uk

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