

## Enterprise Management Incentive (EMI)

- Select which employees participate
- Keep everyone's interests aligned

It is common for businesses to want to incentivise key staff by giving them shares in the business. This has many commercial benefits, from ensuring that priorities are aligned, retaining key staff for the long term to increasing employee productivity and motivation.

Without a share scheme, if employees receiving shares pay less than the market value of those shares, a significant Income Tax liability can arise. EMI is an HMRC approved method for giving employees shares in the business in a tax efficient way. Initially, an employee is granted an 'option' which is a right to buy shares at an agreed price in the future.



The two main benefits of EMI are that there is normally no tax to pay when the option is exercised (i.e., converted into actual shares) and that Capital Gains Tax ("CGT") rather than Income Tax is paid when the shares are sold. This means that the tax paid on sale can be as low as 10% compared to 45% Income Tax.

Provided the agreed price is not lower than the market value at the date the options are issued, there will be no tax when the option is 'exercised', i.e., converted into shares.

This means the option agreement is 'risk free' for the employee as if the shares increase in value, they can buy the shares at the lower agreed price, whereas if the value falls, they do not need to exercise the option. The value at the point the option is granted can be agreed with HMRC in advance, although this is not compulsory.

### To be able to issue EMI options:

- The company cannot be under the control of another company (where this is the case, options are often granted in the parent company).
- The company can only have 'qualifying subsidiaries' in which it owns at least 51%. This can present a problem with 50:50 joint ventures. Subsidiaries which manage property must be 90% owned.

- The company must have gross assets of less than £30m.
- It must have fewer than 250 employees.
- It must undertake a qualifying trade (certain trades including property development and running hotels or nursing homes are excluded).
- The company must have a permanent establishment in the UK.

## Qualification

Advance assurance that the company qualifies can be obtained from HMRC and we can draft the application for you.

Employees (including directors) must work for the company for the lower of 25 hours per week or 75% of their working time; Individuals cannot own more than 30% of the shares in the company.

There is an overriding 'commercial purpose test' which states that the option must be issued for commercial reasons to recruit or retain an employee, and not for the avoidance of tax.

Employees can have a maximum of £250,000 worth of options and the company can issue a total of £3m of options.

Farringford Legal, May 2022