

Enterprise Management Incentive (EMI)

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

What is an EMI Scheme?

EMI schemes are a popular tool used by small- and medium-sized businesses to motivate and retain key employees. Employees who participate in EMI schemes receive share 'options', which grants them the right to buy company shares in the future, at a predetermined price. This is done in the form of a written agreement between the company and their employee.



This agreed price means that the employee is protected from risk; if the value of the shares falls, they are under no obligation to 'exercise' the option (i.e. receive the shares). If the value increases, they are still able to buy them at the lower agreed price. An employee can hold an option for up to 10 years.

EMI schemes are popular because of the significant tax advantages of these share options for both employees and the company. Usually, employees do not have to pay income tax or National Insurance Contributions when they are given the EMI option, or when they 'exercise' it (i.e. decide to receive the shares). If the employee decides to sell their shares later on, they will have to pay capital gains tax (usually only 10%) rather than income tax (up to 45%) on any profit.

Employees will only have to pay tax when they 'exercise' the option if the agreed price is lower than the market value of the shares at the date they were granted the option.

In addition, under certain circumstances the company may be able to get a deduction from corporation tax when an employee 'exercises' their EMI option.

Is your company able to use an EMI scheme?

In order to use an EMI scheme:

- The company must not be controlled by another company (i.e. where a 'parent' company owns over 50% of its shares)
- The company must only have 'qualifying' subsidiaries (i.e. the company must hold more than 50% of the subsidiary's shares - this increases to 90% for subsidiaries which manage property)
- The value of its gross assets must not exceed £30 million
- It must have less than 250 full-time 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 fixed place of business in the UK

Which employees are able to use the EMI scheme?

To qualify for an EMI scheme:

- The employee must spend at least 25 hours per week (or 75% of their working time) working for the company
- They must not own more than 30% of shares in the company

Limits on EMI schemes and qualification

There is an overriding 'commercial purpose test': the option must only be issued for commercial reasons (as an incentive to recruit or retain an employee), not for the avoidance of tax.

An employee can hold up to a maximum of £250,000 as EMI options. The maximum value of shares which the company can issue as EMI options is £3,000,000.

The company must notify HMRC of the grant of an EMI option - this must be done within 92 days. The HMRC are very strict with this time period, and failure to notify HMRC before the deadline is one of the most common reasons for EMI options losing their qualifying tax status.

To obtain tax advantages, the EMI scheme must be registered online. Pre-approval from the HMRC on your option agreement or EMI plan is not compulsory; however, it is possible to obtain advance assurance from the HMRC that the company qualifies, and we can draft this application for you.

What our clients say

Client feedback has revealed three main reasons that SMEs have decided to adopt the EMI scheme:

1. To reward and incentivise senior staff members
2. To make their reward scheme tax-efficient
3. To retain current employees and attract new talent

Whilst setting up the EMI scheme was regarded as a complex job, the team at Farringford Legal can guide you through the process and implement the scheme as smoothly as possible.

Laura Fursdon, *Calder & Co*

“The EMI scheme has been a valuable tool for our company [...]. We implemented it primarily to retain employees in whom we invest considerable training, and where strong relationships are key to our business success.

In terms of ease of implementation, the process itself was complicated, but thankfully the team at Farringford Legal were incredibly knowledgeable and supportive. They guided us through the entire process seamlessly, making it much smoother than we initially anticipated.

One of the biggest advantages we’ve seen so far is the increased incentive for our employees. We believe this will not only boost employee retention but also make us a more attractive employer to new talent who appreciate being part of a company that recognises the value they bring.”

Damien Stork *CHX Challenge*

“I chose the EMI scheme because it was by far the best way for us to effectively reward and incentivise key staff members for past work and future work, in a tax efficient way. I love the scheme because it engenders a great sense of ownership for our key people as they help us grow, but at the same protects the business in case of departure.

Farring Ford Legal were exceptional because they blended advisory with very speedy execution and the scheme was established in less than a month. It was also extremely cost effective to do.

I wholeheartedly recommend both the scheme and Farringford for a great job.”

Stephen Melford, *The Forge*

“Our motivation for doing this was to incentivise senior members of the team. We had two minority shareholders that had been operating as if they were founder members of the business and we wanted to recognise that. In this situation, it was quite a functional driver in the sense of being a route to greater value share in the business. It was about creating a more direct link between contribution to success and ultimate reward.

However, I also know that there is a powerful emotional reward from feeling you own part of a business, even if that amount is small. This is something we are currently considering in terms of other team members.”

Farringford Legal, July 2024