

INTRODUCTION TO EMI SCHEMES

The EMI Scheme initially began in 2000 but has since evolved and been improved upon. It is an HMRC approved employee share scheme where the business grants share options to key employees. It is used by employers as a way of rewarding their most productive employees and incentivising workers in the company. It is also a great way of retaining key staff.

An employee can become a shareholder in the company, making them feel like they are receiving a reward. Yet, the employer will not need to pay extra money to implement the scheme. As such, EMI schemes are great for companies who need to retain their best employees but do not have the finance to pay the higher salaries and/or bonuses required to avoid losing members of staff.

WAIT... WHAT'S AN 'OPTION'?

In the context of an EMI scheme, options give the employee the right to purchase shares in the company in the future. The employer and employee will agree and fix the price of these shares today, and that will be the price paid by the employee. So essentially, if the value of the shares rises over time, the employee can exercise their option at that point (i.e. purchase the shares) and subsequently sell these at the higher market value. This is a very rewarding outcome for the employee.

When the employer decides to grant the option to the employee, the value of the shares at that point is agreed with HMRC. One benefit of this is it helps to settle any concerns or disputes down the line that may arise regarding the initial value of the shares.

In terms of the structure and terms which the employer can set for the share options, there is a lot of flexibility. You could set up a time for when staff are able to exercise their option, or you could give staff the choice to exercise their options in small amounts over time. You could incorporate employee incentives such as ensuring that certain performance targets are met in order for their options to apply. If you are interested in setting up an EMI scheme, we can advise you on how to write the terms to suit your business's needs.

Notice in the definition of an option that an employee has the right to exercise the option. This means that even if you set a time for which the option can or should be exercised, the employee does not have an obligation and can still decide on whether they actually exercise their option or not within the specified time frame. As soon as this time has passed, if the option has not been exercised it no longer applies (yet you will have successfully retained a key member of staff for all those years!)



HOW DOES THIS EFFECT THE TAX BILL?

In the case of unapproved shares, the tax is calculated in the same way as salaries and bonuses. EMI schemes are approved by HMRC, so if the price of the shares are set at market value there will be no tax to pay at the point the options are granted and at the point they are exercised.

The major tax advantage to the employee comes when they decide to sell their shares. Without an EMI scheme, the employee is potentially required to pay up to 45% PAYE from sale of the shares. Under the EMI Scheme, Capital Gains Tax applies at just 10%.

The business can also save on their corporate tax bill when members of staff exercise their options. The tax calculation would be made in the accounting year when the options were exercised. However, there are conditions which need to be met first, so we can advise you on whether this would apply to your business. The costs of setting up and implementing your EMI Scheme can be included as expenses when calculating the amount of corporate tax to pay, so this would also lower your tax bill.



WHO QUALIFIES? WHAT REQUIREMENTS ARE THERE?

Our summary guide to EMI Schemes introduces the main qualifying criteria and conditions. In addition to this, we have also included here some additional points that you need to consider.

One requirement for companies is that they must have a 'permanent establishment' in the UK. Or in other words, your business need not have started in the UK. It need not be resident in the UK. But according to HMRC, there needs to be a UK site which is considered 'a fixed place of business', or alternatively you may have an independent agent in the UK. If you have questions about this, please get in touch with us.

Bear in mind that under the rules of the EMI Scheme an employee will have a maximum of 10 years in which to exercise their option AND still be eligible for the tax advantages of the scheme. However, the employer can choose to set a time frame of less than 10 years if they wish to do so.

There is also a time limit in the event of the death of an employee. In this case, the employee's administrators (or executors for those who have a will) have a maximum of one year from the date of the employee's death to exercise the options.

It is possible that a company acquisition can take place when options in the EMI Scheme have not yet been exercised. In this situation, it is still possible for the employee to be given replacement options that meet the conditions for an EMI Scheme – however, the maximum 10 year limit mentioned before would still be based on the options before the acquisition. It is important that you seek professional advice if you believe your company is subject to a possible takeover.

There is also the matter of which trades do not qualify. Investment, financial activities, legal services and property development amongst others are excluded from EMI Schemes. This may sound simple, but a trading company that innocently decides to use some of its surplus of cash balances on investment activities can be enough. It depends on whether 20% or more of the company's activities are 'excluded trades'. What's more, a business consisting of a group of companies will be considered as one when checking for excluded activities and at least one of these companies must dedicate all of its work to qualifying trades.

OTHER ASPECTS TO CONSIDER

There are additional points not relating to the conditions but that are definitely worth considering, and we can advise you on these where necessary. For example, despite your efforts to retain key staff, one or more of these staff may decide to leave employment during the period of the EMI Scheme. Depending on your circumstances, we may be able to get round this problem, so please do let us know if this concerns you, or equally if there are any other questions you wish to raise.

The employer must inform HMRC whenever it grants options, and there is a strict time limit of 92 days from the date the company grants options to an employee. If it fails to tell HMRC in this time, the options will become unapproved and thus will be subject to PAYE charges in the normal way. This does not mean that HMRC controls the EMI Scheme – this is still designed and implemented by the business.

You will need to complete an EMI Scheme annual return every year. This should be submitted no later than 6th July each year.

WE'LL REMOVE THE COMPLEXITY

At Edwards, we have a structured procedure in place for anyone who wishes to set up an EMI Scheme. Once you fill in our due diligence documents at the beginning, we then complete the usual tasks with HMRC. Following this, we arrange to meet you and the business to tailor the scheme to your needs. We then go straight into the exciting part of designing and implementing your EMI scheme.

We have extensive experience of implementing EMI Schemes. So if you would like to know more for your company, please get in touch.



Steve and his team provided EBI with a professional and efficient service all completed on time and within budget.

Craig Burgess
CEO, CIO and Founder
EBI Portfolios Ltd



Edwards Chartered Accountants, 34 High Street, Aldridge, Walsall, West Midlands, WS9 8LZ - Tel: 01922 743100
www.edwardsaccountants.co.uk

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