Guide to: Enterprise Management Incentive Option Schemes

Enterprise Management Incentive Option Schemes (EMIs) are a type of HMRC recognised employee share scheme specifically targeted for use by small, privately owned companies. EMIs are popular because, unlike other share incentive schemes, they enjoy tax favourable treatment and do not need HMRC's prior approval.

The life-cycle of an EMI can be roughly broken down into three stages: (1) the grant of the EMI option to the employee(s), (2) the exercise of the option by the employee(s) which converts the option into actual shares and (3) the subsequent sale of the shares.

Ordinarily, if a company gives shares (or options for shares) to an employee then income tax and NIC liabilities will arise on the grant and exercise of the option. These liabilities can be significant.

With a properly prepared EMI scheme however, the employee shouldn't incur any tax liability on the grant or on exercise. On a disposal of the shares, capital gains tax will be payable on any increase in the value over the market value on. If, however, entrepreneurs' relief is available (which is often the case) this will mean an effective 10% rate of tax.

From a company's perspective, an attraction of EMI schemes is that the exercise conditions can be specifically tailored to the needs of the company and are commonly linked to the financial performance of the company (e.g. a sustained level of turnover or profitability) and the sale of the company to a third party. The company may also enjoy certain corporation tax benefits.

Exit only EMI schemes (i.e. which can only be exercised on a sale of the company) are often very attractive to owner-managed businesses as the participants in the EMI scheme do not have to be given shares (together with all the rights which attach to) until the company is sold. This means employees can be given a "notional stake" in the company without giving away voting rights and dividends in the meantime.

In addition, EMI schemes can be structured to make shares affordable to employees especially where the value of a company perhaps prohibits the traditional buy-in routes.

In broad terms, in order to qualify to grant EMIs a company must be an independent trading company with:

- Gross assets of no more than £30 million.
- Fewer than the equivalent of 250 full-time employees.
- A qualifying trading activity.

For employees to be eligible to be granted an EMI option they must work for the company for at least 25 hours per week (or, if less, 75% of their working time) and not have, or be associated with someone who has, a material interest in the company granting the EMI.

Overall, EMIs are an ideal and popular way of incentivising employees and can be presented to potential candidates very favourably. The rules surrounding EMIs are, however, very complex and professional advice should always be sought.

T: 0116 289 7000 E: info@bhwsolicitors.com W: www.bhwsolicitors.com

1 Smith Way, Grove Park, Enderby, Leicestershire, LE19 1SX

BHW