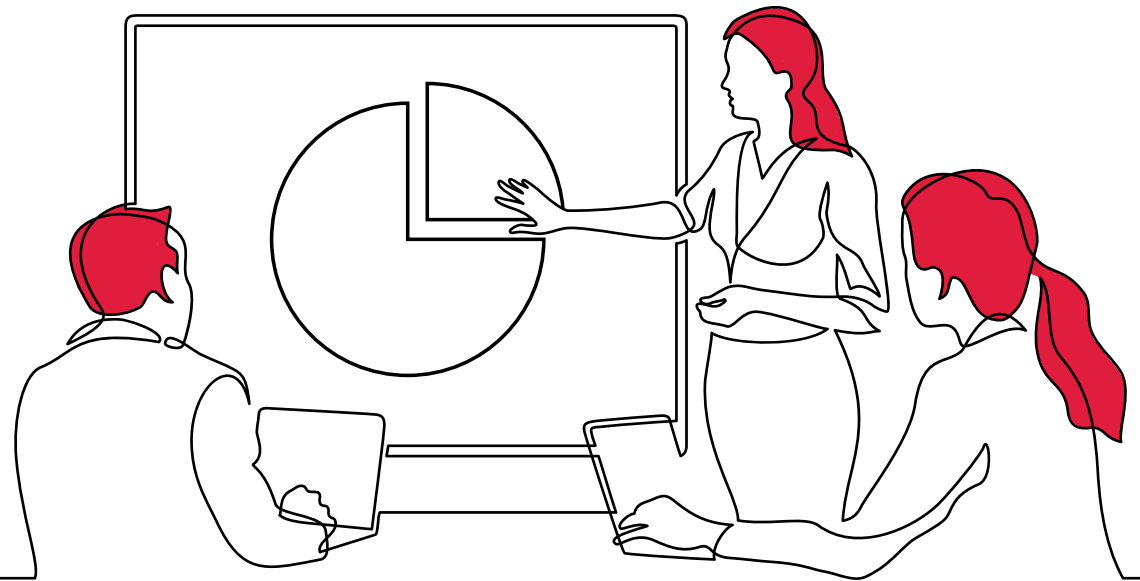


# Enterprise Management Incentives (EMI)



**The enterprise management incentive (EMI) scheme is a tax-advantaged share option incentive scheme, aimed at entrepreneurial companies that meet certain conditions.**

**It is designed to assist such companies in recruiting and retaining high quality employees.**



The EMI scheme is flexible enough to allow for options to be geared to future capital growth and performance targets. So long as the options remain qualifying for EMI status throughout the period of ownership, the employee should be able to take advantage of income tax and national insurance reliefs.

### **EMI requirements and definitions**

#### **Qualifying companies**

To qualify to offer EMI options, a company can be quoted or unquoted but must meet ALL of the qualifying conditions.

#### **Condition**

- The issuing company must not be controlled by another company
- All subsidiaries of the issuing company must be “qualifying subsidiaries”
- The gross assets of the company (or group) must not exceed £30m
- The company (or group) must have less than 250 full-time equivalent employees
- The company (or group) must be carrying on a commercial trade which does not consist wholly, or a substantial part, of excluded activities
- The company (or at least one company in the group which has a qualifying trade) must have a permanent establishment in the UK

If the company or group does not meet these tests, then EMI options are not for you.

Companies that carry out ‘excluded activities’ are not allowed to offer EMIs. Excluded activities include:

- banking
- farming
- property development
- provision of legal services
- ship building

## Eligible employees

The company can decide which employees it grants EMI options to.

Employees however, have to meet the qualifying conditions. These include:

- being an employee of the company granting the options, or of a subsidiary company. A bona fide employee, not just a director or other officeholder.
- work at least 25 hours a week for the company or group or, if less, 75% of their 'working time'. (Special concessions were granted for COVID-19 related absences)
- does not have a 'material interest' in the company or, if the company is the parent of a group, a material interest in any of the group companies.
  - An individual has a material interest if their shareholding and unexercised share options, together with those of their associates, exceeds 30% of the ordinary share capital of the company.

## Requirements relating to options

To qualify for EMI, the options/shares must meet the following conditions:

- Shares must be non-redeemable fully paid-up ordinary shares
- Option must be capable of exercise within 10 years
- A written agreement is required.
- Option must be non-assignable

## Limit on options

The maximum value of EMI options that can be granted is £250,000 per employee in a 3 year period.

The maximum value of EMI options that a company or group can grant is £3m.

For the purposes of these limits, the unrestricted market value of the shares must be used

## Disqualifying events

The beneficial tax reliefs can be lost if before the exercise of an option:

- the company ceases to carry on (or prepare to carry on) a qualifying trade
- the company is taken over by another company
- an employee no longer meets the working time requirements
- the employee ceases employment with the company or group
- a variation is made to the terms of the option which increases the market value of the shares under option, or makes it non-qualifying.

Tax relief can still be retained if exercise occurs within 90 days of a disqualifying event.

## Administration

Share valuations may be agreed with HMRC in advance of the options being granted.

Valuations for EMI schemes are valid for 90 days from the date of the agreement (was 120 days due to COVID-19 relaxations).

The company must notify HMRC within 92 days of the options being granted.

The company must also file an annual return online by 6 July following the end of the tax year.

Penalties may be charged if the return is filed late or is found to contain incorrect information.

## Tax implications for the employer

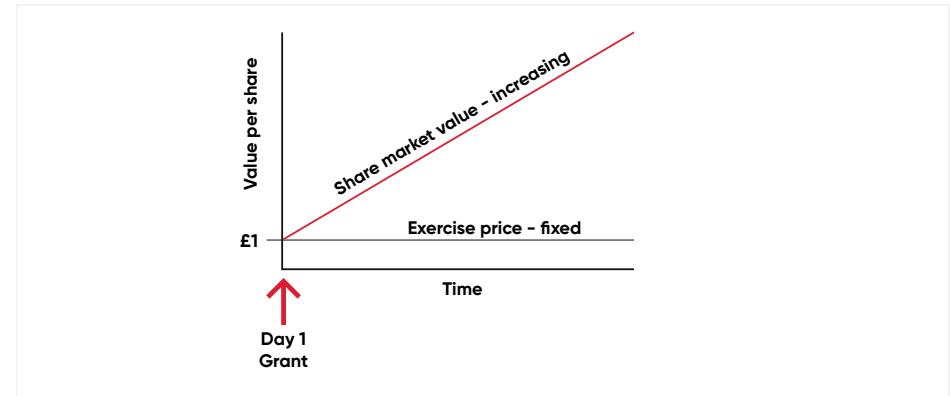
The company may be entitled to a corporation tax deduction equal to the difference between the price paid for the shares and the relevant market value.

(It is important to remember this on a sale.)

## Tax Complications

### Grant – no tax to pay

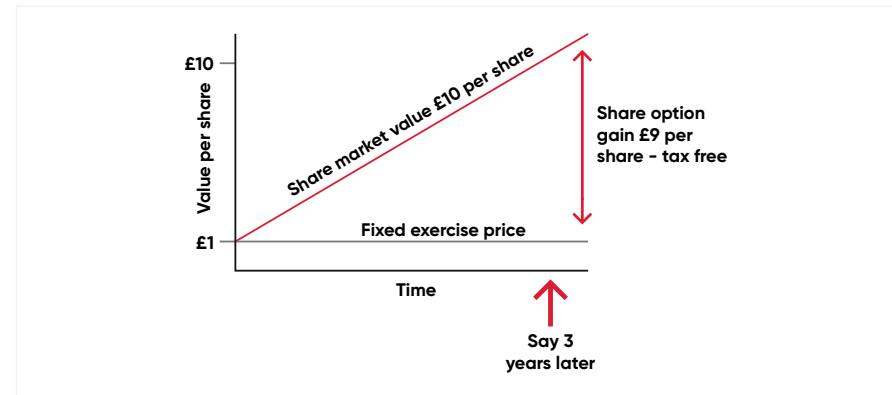
No income tax or national insurance contributions (NIC) are payable on the grant of the option. The individual does not need to report the grant of the options on their tax return.



### Exercise – no tax to pay

Provided that the options are exercised within 10 years of the date of grant, and if the price at which the employee can exercise the option is at least equal to the market value of the shares when the option was granted, no income tax or NIC is charged.

The individual does not need to report the exercise of the options on their tax return in these circumstances

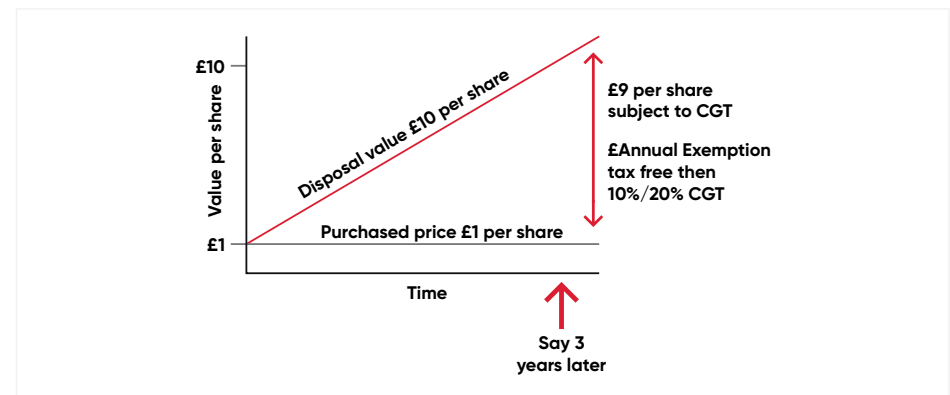


### Disposal of Shares – CGT at 10%

On sale, a capital gain or loss will arise to the employee.

The difference between the exercise price of the EMI options and the sales proceeds received is subject to capital gains tax (CGT).

CGT is charged at 10% or 20%, depending on the rate at which the employee pays income tax. If the shareholding meets the qualifying conditions for business asset disposal relief, up to £1m (max) of the gain will be taxed at a rate of 10%.



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