

2008 Changes to EMI Schemes

Following the budget announcement on 12 March 2008, certain changes have arisen which will affect the way your implemented EMI scheme may be dealt with.

Changes to EMI Schemes in General

From 6 April 2008 the current cap on how many options an individual employee can hold will rise to £120,000 worth of shares.

There are also two proposed changes which will be implemented when the Finance Bill 2008 receives royal assent. The first is that EMI schemes will only apply to companies with fewer than 250 employees – please let us know if you believe that you have in excess of 250 employees and may no longer be considered a qualifying company.

The second change is that companies involved in ship building, coal and steel production will no longer qualify for EMI. Again, if you believe that this proposed change may affect your current EMI scheme, then please call us.

Changes to the Tax Affecting EMI Options Once They Are Granted and Subsequently Sold

These changes have come about after the revision of the Capital Gains Tax structure. Before 6 April 2008 if you had held shares in a business for longer than 2 years you would qualify for taper relief, which effectively meant that Capital Gains Tax due could be reduced so that 10% of the gain was payable in tax. The new change sees Capital Gains Tax set at a rate of 18%. This means that if an employee does not attract the Entrepreneurs' Relief explained below, then they will pay 18% of the gain made to tax.

Entrepreneurs' Relief will available on gains made individuals who dispose of:-

- All or part of the trading business the individual carries on alone or in partnership.
- Assets of the individuals or partnership's trading business following the cessation of the business.
- Shares in (and securities of) the individual's personal trading company (or holding company of the trading group).
- Assets owned by the individual and used by his or her personal trading company (or group) or trading partnership.

The first £1 million of any gain made will be taxed at a rate of 10% and anything over will attract an 18% rate.

The £1 million relief can be used over the individual's lifetime. This relief will also apply to sole traders and partnerships, so long as the individual has owned the business or been a member of that partnership for a one year period ending with the disposal. The relief of the price to shares and the securities held (but does not benefit an EMI option holder) in a trading company provided that the shares have been held for one year. However, in order to attract the Entrepreneur's relief when disposing of the shares the individual must be an employee of the company or of a company within the same group and own at least 5% of the ordinary share capital of the company, allowing that individual to exercise at least 5% of the voting rights of that company. Obviously, in the case of EMI option holders, this is generally not the case.

It would be advisable for you to mention to your employees that they may now be taxed at higher rate than they would have been when you implemented the scheme. It is

worth bearing in mind that the Capital Gains Tax personal allowance has risen from £9,200 to £9,600. The personal allowances are now given to every individual, meaning that they can make a gain up to that amount before any tax rate will apply. If the likely share option would be less than this amount then no tax would be charged at all, but this is dependent on whether your employee may have made other gains during the year which may affect their personal allowance. This is something that they should take up with a tax adviser, and you should remind them of this point.

If there is anything that we can help you with in respect of your EMI scheme please do not hesitate to let us know.

Adrian Phillips