

## ENTERPRISE MANAGEMENT INCENTIVES (“EMI”)

### Key Features of the Plan

Enterprise Management Incentives (“EMIs”) are tax advantaged share options designed to help smaller, often high-risk companies, recruit and retain employees. The EMI legislation is contained in the Income Tax (Earnings and Pensions) Act 2003.

EMI options must be over shares in an independent trading company, which has gross assets not exceeding £30 million at the time the options are granted. There are no restrictions on the exercise price and the maximum value of granted, but unexercised, EMI options must not exceed £3 million at any time. However, such schemes are no longer available for companies with 250 or more employees.

From 6 April 2008, the individual employee limit increased from £100,000 to £120,000.

To be eligible for EMI options, an employee (who may be an executive director of the company) must:

- be employed by the company or a subsidiary company within the same group as the company granting the option
- work at least 25 hours per week for the company (or, if less, at least 75% of the time which the employee spends working, whether as an employed or self employed person)
- not control, either directly or indirectly, more than 30% of the ordinary share capital of the company
- not hold outstanding EMI options or other HMRC approved options (excluding SAYE options) which, taken together with new EMI options, would have value, calculated at time of grant, of more than £120,000

Once the £120,000 limit is reached, there is a time limit of three years before any further EMI options may be granted to that employee.

The shares over which EMI options may be granted must be part of the fully paid ordinary share capital of the company and be non redeemable.

A company whose shares are subject to EMI options, must not be a 51% subsidiary of or be controlled by another company and must carry on a qualifying trade. Examples of excluded trades are shipbuilding, coal and steel production, banking, insurance underwriting, certain other financial activities, leasing, providing legal or accountancy services, property development and farming.

There are no formal HMRC approval procedures to be followed for a company to establish EMIs. However, each time an option is granted to an employee, the company granting the option must notify HMRC within 92 days of the date of grant.

An EMI option may be granted pursuant to a formal share scheme or by a written agreement between the company granting the option and the employee. Among other things, such an agreement must state the date on which the option is granted, the number of shares which may be acquired, the price (if any) which the employee will be required to pay to acquire the shares, when and how the option may be exercised, any conditions, including performance conditions, which must be fulfilled before the option may be exercised and details of any risk of forfeiture.

The exercise of options may be made conditional on the satisfaction of performance criteria. In private companies, exercise is often dependent upon achieving an objective such as a flotation or a trade sale. Listed companies will normally follow the guidance published by the ABI and other similar bodies.



## Tax Treatment

EMI options must be capable of exercise within 10 years of the date of grant. Providing that an EMI option is exercised within this period, and no income tax and disqualifying event has occurred, there will be no tax or National Insurance either on the grant or (assuming the option was granted at market value) on the exercise of the option. Income tax disqualifying events include the company falling under the control of another company or ceasing to carry on a qualifying trading activity or an employee ceasing to meet the prescribed working time requirement outlined above. If the EMI option is exercised within 40 days of the disqualifying event, the tax and National Insurance advantages are preserved

Where shares acquired under an EMI option are sold for more than their market value at the grant date (or if higher the option exercise price), and subject to the capital gains tax "CGT" annual exemption limit (£9,600 for 2008/09), a "CGT" charge will arise. From 6 April 2008, CGT will be charged at a flat rate of 18% on any disposal of shares. Those employees who own more than 5% of their employing company's shares may qualify for a 10% CGT rate under a new Entrepreneur's Relief (introduced in the 2008 Budget).

A company which has granted EMI options at any time during the tax year must complete an EMI return and submit it to HMRC within three months of the end of the tax year. It will also be responsible for monitoring options granted to ensure that they continue to meet the requirements set out above (in particular those relating to income tax disqualifying events).

This summary is intended to provide a broad overview only and readers should take specific advice before applying the information contained within it.

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