ENTERPRISE MANAGEMENT INCENTIVES (EMI)

Why Choose an EMI scheme ?

The Enterprise Management Incentives Scheme (EMI) was introduced to assist small high risk companies in attracting and retaining key employees and to reward those employees for taking the risk to work for such companies, at often below market rate salaries.

The EMI allows a qualifying company to grant options over shares with a value of up to £120,000 per employee with favourable tax treatment making it attractive to both companies and employees.

Who can use the scheme ?

In order for companies to qualify for the EMI scheme they must satisfy the following:

- The gross assets of the company (or the group of companies if a parent company) must not exceed £30million.
- The company must have fewer than 250 employees.
- The company must be independent and not under the control of any other company.
- Companies may be quoted or unquoted.
- There is no requirement that the company be resident or incorporated in the UK but the company's trading activities must be carried out wholly or mainly in the UK.
- Group companies can offer the EMI to employees of both the parent and the subsidiary companies, provided that all of the subsidiaries in the group are qualifying subsidiaries.
- Certain trades are excluded from the EMI. Excluded trades include leasing, financial activities and property development and from the date of Royal Assent of the Finance Bill 2008, shipbuilding, steel and coal producing companies.

As well as the company meeting certain criteria so must the employee:

- Work for the company for at least 25 hours a week or for at least 75 per cent of their working time.
- Not have a "material interest" in the company (or, if relevant, any group company) (defined very widely by reference to a holding of more than 30 per cent of that company).

Are there any restrictions on the grant of options?

Each employee can only hold a maximum of unexercised options worth £120,000 in any 3 year period under the EMI.

Companies are free to set their own option period, but options must only be capable of exercise within 10 years of being granted and be exercised within that period

Companies are also free to set the option price which may be more or less than the market value of the shares on the date the option is granted.

The shares over which options are granted must be fully paid up ordinary shares. It is not possible to grant an EMI option over redeemable or convertible shares.

What are the tax advantages of EMI options?

No income tax or national insurance contributions (NICs) are payable on the grant of an EMI option.

Where the option price is equal or greater than the market value of shares on the date that the option is granted, then no income tax or NICs are payable on the exercise of the option.

Companies may set the option price at a discount (or even at nil). However, where this is the case then, on exercise of the option, income tax will be payable on the discount (the excess of the market price of the shares on the date the option is granted over the exercise price paid by the employee).

When shares obtained on exercise are eventually sold the employee will be liable for capital gains tax (CGT).

The costs of setting up and administering the EMI will be deductible expenses for the company when calculating its profits for the purposes of corporation tax.

Can the tax advantages be lost?

If at any time prior to the exercise of an option a “disqualifying event” occurs then, on a subsequent exercise of the option, an employee will be subject to income tax in the usual way as on the exercise of an unapproved share option. However, the gain will be calculated by reference to the market value of the shares on the date of the disqualifying event. Examples of disqualifying events include:

- The employee ceasing to be a qualifying employee.
- The company ceasing to be a qualifying company.

Further Information

As a firm, we are able to provide a wide range of services tailored to your particular industry. We believe by staying up to date with not only current but changing legislation and industry news we are better placed to help our clients and their businesses succeed.

If you would like to discuss any of the topics in this update or how Loucas can assist you please do not hesitate to contact us.