

Bird & Bird

Equity Essentials

Enterprise Management Incentives (“EMI”)



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Essential Facts

EMI option plans are a powerful tax-advantaged discretionary share option arrangement designed for ambitious, high-growth companies to help them recruit and retain top talent (including executive directors) in the UK. These plans offer excellent tax advantages: exercise of EMI options is generally tax relieved, allowing gains to be taxed as capital on the sale of the option shares at a fixed rate of as low as 14% on the first £1 million of lifetime gains (for the 2025/26 tax year, this will change to 18% in the 2026/27 tax year). Where the requirements of the EMI legislation are met, EMI options are one of the most compelling incentive mechanisms available to fast-growing businesses who are seeking to reward and motivate their teams and new hires. Specialist advice should be sought to ensure the qualifying conditions for EMI tax relief are met and retained. We regularly implement EMI plans across a diverse range of businesses: UK private companies seeking to incentivise their employees, US companies extending their share plans to UK operations and qualifying UK listed companies leveraging this attractive regime. Read on to find out more.

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Essential Benefits

Highly Tax-Advantageous

In the normal course of events, options of this sort are granted at market value, so there is no income tax on exercise and all the option gains can potentially be taxed as capital at a very attractive rate of just 14% or 18% depending on the tax year of disposal and assuming the relaxed Business Asset Disposal Relief ("BADR") conditions are met. The spread on exercise (i.e. the market value of the option shares at the time of exercise less the exercise price) gives rise to a corporation tax deduction in the hands of the UK employing company for the accounting period of exercise. More detail below.

Maximum Flexibility

With minimal legislative requirements regarding the option terms, EMI options provide considerable flexibility to allow you to structure your incentive arrangements to align with your business strategy. The main requirements are that the option agreement must be in writing, that options cannot be transferred (other than to personal representatives), that options must lapse within 12 months of an optionholder dying, and that it must be clear the option is a right to acquire shares (so cannot contain excessive discretion and the option agreement must be validly executed). EMI options can be subject to time-vesting and/or performance conditions, provided these are set out in the option agreement. It is also possible to impose restrictions on the option shares so, for example, optionholders may be required to enter into a power of attorney authorising the attorney to exercise the option and sell the option shares to a purchaser on an exit. Currently, EMI options can only achieve tax-advantaged status if they are exercised within ten years of the date of grant but, with effect from 6 April 2026, this time limit will be extended to fifteen years.

Additionally, there is no requirement for options to be granted using a set of plan rules. The option terms can, for example, be contained in a standalone option agreement or an agreement which modifies the terms of an existing plan. Consequently, it is possible to tailor EMI to fit most commercial requirements and to grant EMI options quickly and easily.

Ideal for Private Companies (& Some Listed Companies)

UK private companies often introduce "exit only" plans, so called because options can only be exercised on or immediately prior to an exit being achieved. Leavers may lose their options whatever the reason for leaving, or good leavers may be permitted to retain their options to exit. Alternatively, private companies introduce "pre-exit plans", so called because they allow options to be exercised prior to exit in certain circumstances such as within 90 days of leaving (in which case leavers may be permitted to either retain their option shares or be required to offer the option shares for sale). These types of plan should invariably be structured as EMI plans if the conditions are met, as the tax reliefs are very generous. We recommend participants are required to enter into a power of attorney as a condition of the option grant so that options can be exercised on their behalf on an exit and the option shares can be sold to the purchaser easily without having to operate drag-along rights. Contrary to popular belief, EMI may also be utilised by certain listed companies that satisfy the EMI qualification requirements set out in further detail below – currently only AIM listed companies (or their overseas equivalents) could qualify due to the existing gross assets test but, with the raft of changes announced in the Autumn Budget, from April 2026, EMI options may also be an attractive solution for UK Main Market (and overseas) listed companies with UK group employees that meet the expanded eligibility criteria.

“Very client-friendly approach and advice.”

Legal 500

Compelling Tax Advantages

The EMI tax reliefs are very generous. Broadly, there is usually:

- **no income tax or National Insurance contributions on grant;**
- **no income tax or National Insurance contributions on exercise** (assuming the option qualifies for EMI tax relief and was not granted with an exercise price below the market value of the shares underlying the option as at the date of grant);
- **capital gains tax ("CGT") on the sale of the option shares** with no minimum share holding period and the **reduced BADR tax rates** may also be available (see below);
- a **corporation tax deduction** for the UK employer company **equal to the gain** that optionholders make for the accounting period in which the option is exercised (even if participants are relieved from income tax); and
- a **corporation tax deduction** may also be available for **operating costs** (though not for setup costs).

Further Detail

Any gains made on the sale of the option shares are generally subject to CGT if the exercise price is at least equal to the market value of the shares underlying the option as at the date of grant. Individuals benefit from a CGT annual exemption (of £3,000 for 2025/26) and any subsequent gains are subject to CGT (currently at a top rate of 24% or 18% for basic rate taxpayers). However, individuals who qualify for BADR are subject to CGT at the rate of 14% on the first £1 million of lifetime gains (for the 2025/26 tax year, the BADR CGT rate will rise to 18% for the 2026/27 tax year). The BADR conditions are easier to meet for shares acquired pursuant to the exercise of EMI options (because the usual "personal company" test does not apply) and the holding of the option counts towards the two-year share holding period. Companies should, however, note the relaxation of the BADR conditions can be lost in connection with certain "disqualifying events" (see below).

If an option was granted with an exercise price that was lower than the market value of the shares underlying the option at the time of grant, only the amount of the discount on grant is usually subject to income tax on exercise, though there are different rules in certain circumstances, such as on "disqualifying events" which are outlined below. Pay as you earn ("PAYE") and social security contributions apply to amounts assessed to income tax (if any), and also only if the option shares are readily convertible assets ("RCAs") on exercise. If employer social security does arise, it can be passed on to optionholders by agreement or election and, if passed on, may be deducted from the amount assessed to income tax for the individual. Shares will be RCAs if, broadly, arrangements are in place (or are about to be put in place) to create a market in the shares, or certain deeming provisions apply.

We offer a fixed-fee EMI share valuation service to agree the market value of shares at the time of grant with HMRC. See "Share Valuation Security" below for more information.

Disqualifying Events: The 90-Day Window

The EMI legislation prescribes certain "disqualifying events" which generally have no effect if the option is exercised within 90 days of the event. If the option is exercised later, however, although the EMI tax treatment up to the date of the disqualifying event is "banked", any increase in the market value of the option shares between the time of the disqualifying event and exercise is subject to income tax (and PAYE and social security contributions if the shares are RCAs at the time of exercise). Depending on timings and the type of disqualifying event, the relaxation of the BADR conditions may also not apply to the part of the share gain where the tax treatment was "banked" (and so the usual CGT rates would then apply to that portion). There are broadly two types of disqualifying events: those which relate to the company (for example, the company ceasing to satisfy the independence test), and those which relate to optionholders (for example, the employee ceasing to be an eligible employee because they cease to work for the relevant company or within the group, or they cease to satisfy the working time commitment).

"The team were fantastic at listening and understanding [our] requirements..."

Legal 500

Essential Considerations

The EMI legislation sets out an overall "purpose test": options must be granted for commercial reasons - to recruit or retain an employee - and not as part of a scheme or arrangement where the main purpose (or one of the main purposes) is the avoidance of tax. Below we outline some of the key requirements of the EMI legislation. If you are uncertain whether your company meets these conditions, we would be happy to help. We can also assist you in writing to HMRC to seek advance assurance that your company qualifies to grant EMI options and advising on the treatment of EMI options in connection with corporate transactions. To learn more about the qualifying requirements and **access our complimentary EMI checklist**, please contact LDNEIB@twobirds.com.

Company Eligibility: Six Essential Criteria

To be eligible to grant tax-advantaged EMI options over its shares, a company must:

1. Be independent	2. Have gross assets of £30m or less (increasing to £120m from April 2026)	3. Have only "qualifying subsidiaries"
4. Carry on only "qualifying trades"	5. Have fewer than 250 full-time employees (increasing to 500 from April 2026)	6. Have a permanent establishment in the UK.

1. Independence test

To be independent, the company cannot: (a) be a 51% subsidiary of another company, or (b) be under the control of another company (or of another company and persons connected with the other company) without being a 51% subsidiary of that other company. Additionally, "arrangements" must not exist which could result in the company becoming such a subsidiary or falling under such control. The independence test prevents companies controlled by one investor from qualifying for EMI tax status and needs to be considered carefully in borderline cases as it can even exclude venture backed companies if the investors are connected to each other or there are enhanced voting rights that go beyond what HMRC considers commercially necessary. Where there is an impending transaction, there is also a risk that "arrangements" may exist, which would prevent any last-minute option grants from qualifying for EMI tax status (in addition to the concern about share value increases). To learn more, read our insight article [UK: Clarity and confusion - HMRC speak out on EMI tax status during sale negotiations and equity funding rounds - Bird & Bird](#).

2. Gross Assets

Currently, the company's gross assets cannot exceed £30 million at the time of grant. With effect from April 2026, this limit will be increased to £120 million. Gross assets are normally as shown in the company's balance sheet (or in the consolidated balance sheet in group situations).

"Sarah has a great attitude, is very supportive and has strong knowledge."

Chambers & Partners

3. Qualifying Subsidiaries

A company is not a qualifying company unless all its subsidiaries are qualifying subsidiaries at the time of grant. A subsidiary for these purposes is any company that the company controls either on its own or together with any person connected with it. A company is a qualifying subsidiary if it is a 51% subsidiary of the holding company, no other person (other than the holding company or another of its subsidiaries) has control of the subsidiary, and there are no arrangements in place by virtue of which these conditions would cease to be met. This test frequently causes difficulties in 50:50 joint venture ("JV") situations where the company will be treated as acting together with its JV partner to control the JV. In these circumstances, it is often necessary to alter the share capital held by the company in the JV so that it holds more than 50% by nominal value (whilst retaining only a 50% economic interest), in order to ensure the JV is a qualifying subsidiary. To find out more, contact LDNEIB@twobirds.com.

4. Qualifying Trades

The EMI trading activities requirement must also be met at the time of grant of the EMI options. Very broadly, assuming your company has no subsidiaries, it must carry on (or be preparing to carry on) a qualifying trade conducted on a commercial basis with a view to profits and the trade must not consist wholly or substantially (broadly, more than 20%) of excluded activities such as property development, financial services, leasing, legal or accountancy services, or operating hotels or care homes. This requirement is detailed and can be tricky to navigate. We have lots of experience in helping companies to access the important exemptions that exist. For example, in the case of IP-rich businesses, royalties and licence fees from intangible assets you've created (such as software or patents) are permitted, making EMI ideal for technology and innovation-focused companies. Get in touch at LDNEIB@twobirds.com to find out more about this requirement and access our complimentary EMI checklist.

5. Employee Limit

At present, your company must have fewer than 250 full-time equivalent employees at the time of grant. However, with effect from 6 April 2026, this employee limit will increase to 500 full-time equivalent employees at the time of grant. For these purposes, an employee includes a director but excludes an employee on maternity or paternity leave or students on vocational training. In group situations, employees of all qualifying subsidiaries are included even if these are outside the UK. The test is a snapshot, not an average, so borderline companies with seasonal employees may qualify by careful timing of option grants. A full-time employee is not defined in the legislation but is taken by HMRC to mean at least 35 hours per week excluding lunch breaks and overtime. An employee who works more than 35 hours per week is taken to be one full-time employee. It is necessary to add to the number of full-time employees a "just and reasonable" fraction for each employee who is not full-time. Note that companies should be careful not to confuse this definition with the 25-hour per week test for qualifying employees described under "*Employee Eligibility*" below.

6. Permanent Establishment in the UK

There is no requirement for the company to be UK incorporated or resident in the UK, but it must have a permanent establishment in the UK. In group situations, there must be at least one group company which meets the trading activities requirement and has a permanent establishment in the UK. This requirement can be met by having an office in the UK, including shared office space.

"Sarah Ferguson... led from the front throughout ensuring there was consistency of thought and client relations. Her wider team were also fantastic."

Legal 500

Company Re-Organisations: Preserving EMI Benefits

On a company re-organisation, optionholders may be granted replacement options over shares in the new holding company, which continue to qualify for tax relief if certain conditions are met.

The normal EMI conditions must be met when the replacement options are granted, save that the new holding company need not satisfy the current £30 million gross assets test or the current 250 full-time employee tests. The 10-year period during which options may be exercised in a manner which qualifies for tax relief runs from the date of grant of the original (rather than the replacement) option (albeit this will be extended to a 15-year period from April 2026). The total exercise price of the original and replacement options must be the same, as must the value of shares under option, so it is normally necessary to agree that is the case with HMRC. The replacement options must be granted by agreement (or evidenced by a later agreement) within a strict time limit and the replacement option grants must be notified to HMRC by 6 July of the tax year following the grant of the replacement options. There is also a strict time limit in relation to the period during which such replacement options may be granted.

Finally, if the grant of replacement options happens too close to (or after completion of) a transaction where the new holding company loses its independence, the replacement options may fail to qualify as valid EMI options. Other solutions may be possible in such situations but early action is required. To learn more, contact LDNEIB@twobirds.com.

“Sarah has incredible technical expertise and she took the time to get to know us as a business.”

Chambers & Partners

Employee Eligibility: Two Essential Criteria

Who Meets The Requirements?

Whilst the company must meet the company requirements to grant EMI options, there are a number of essential considerations that must also be met in relation to individual option grants. An individual is eligible if they are an employee of the company or one of its qualifying subsidiaries at the time of grant, satisfy the working time commitment and do not have a material interest. Of course, they must also be UK tax resident!

1. Working Time Commitment

The employee must work at least 25 hours per week on average for the company (or its 51% subsidiaries), or 75% or their working time if less. Periods of absence are generally ignored for specified reasons such as reasonable holiday, garden leave, ill health, pregnancy, childbirth, maternity and paternity leave and parental leave.

2. Material Interest Test

Broadly, an employee cannot be granted an EMI option if they (and their "associates") beneficially own or have the ability to control more than 30% of the ordinary share capital of the company (or more than 30% of assets on a winding up, in the case of a close company). The EMI option itself does not count towards the limit, so if an individual (with their associates) beneficially owns 20% of the ordinary share capital (for example), it would be possible to grant them an EMI option to acquire a further 20% without breaching the limit. This test subtly differs from the material interest test for CSOP options but we're here to guide you through any unexpected traps.

“Sarah is highly knowledgeable and is able to explain relevant information in clear and precise terms.”

Chambers & Partners

Other Essential Considerations

Grant Limits

Two key limits apply to EMI option grants: the individual limit and a company-wide limit. Under the individual limit, an individual may not hold unexercised qualifying options to acquire shares worth more than £250,000. Under the company-wide limit, there is currently a limit of £3 million on the total value of unexercised qualifying options; however, with effect from 6 April 2026, this will increase to £6 million. For determining these limits, the CGT value disregarding any restrictions is used (known as a the "Unrestricted Market Value" or "UMV"). It is possible to grant options over a newly created class of growth shares to make the £250,000 individual limit go further for these purposes. There are further nuances to the operation of these limits. Please email LDNEIB@twobirds.com for further information.

Setting Your Exercise Price

Options can be granted at any exercise price or for a nil exercise price. Options are usually granted at a price equal to the market value at the time of grant in order to prevent any income tax or social security charges arising on exercise. Market value for these purposes is the CGT value, taking account of restrictions (known as the "Actual Market Value" or "AMV"). The AMV is typically 10% lower than the UMV.

Share Valuation Security

To provide you with additional comfort, HMRC will agree share valuations in advance of the grant of EMI options. It is usual practice to obtain prior agreement so as to avoid granting the option at a discount and to reduce the risk of tax disputes on a future funding round or exit. HMRC will usually agree a valuation window of 90 days during which the option may be granted. HMRC will also agree valuations at any time up to 12 months and 92 days after the options have been granted. This share valuation is also helpful for ensuring that the individual and company-wide limits noted above are met. For listed companies, the process differs; HMRC will generally agree a methodology for valuing the shares by reference to the company's published share price. This agreement is only needed on a one-off basis and lasts until the Company's shares are no longer traded on the relevant stock exchange. We offer a comprehensive EMI share valuation service on a fixed-fee arrangement to agree the market value of shares at the time of grant with HMRC. Get in touch at LDNEIB@twobirds.com for more information.

Notification Necessities

For options granted before 6 April 2024, the tax relief can only be obtained if an online notification is filed with HM Revenue & Customs ("HMRC") within 92 days of grant. For options granted on or after 6 April 2024, the grant of an EMI option must be notified online to HMRC by 6 July following the end of the tax year that the grant was made in or, if earlier, before the exercise of the EMI option. With effect from April 2027, this notification requirement is expected to be removed entirely. The plan needs to be registered with HMRC online before notifications can be accepted. In the past, HMRC has not generally accepted any excuses for late notifications, but a more relaxed approach now seems to be prevailing provided that HMRC is satisfied that there were good reasons for the delayed notifications; however, the leniency of HMRC in such circumstances cannot be guaranteed and so option grants should be notified within the deadline wherever possible.

Essential Cross-border Expansion

US Companies: Extending Share Plans to the UK

A sub-plan to the main US plan is typically created for the grant of EMI options to ensure compliance with the UK tax legislation. US companies typically wish to grant options to UK employees at the same time as other option grants to US employees with the same fair value strike price. The market value of the option shares is usually agreed by submitting the most recent s409A valuation to HMRC and asking them to confirm the strike price is no more than the actual market value for UK tax purposes, although certain companies may wish to utilise the generally higher UK valuation discounts available for UK employee grants. For US companies with a valid 409A valuation, HMRC will usually agree to the same valuation, though this is not always the case as 409A valuations sometimes disregard information HMRC considers relevant and old 409A valuations can be challenged/HMRC valuation agreements can be invalidated if a new 409A valuation is released before the grant of EMI options. We offer a comprehensive EMI share valuation service on a fixed-fee arrangement to agree the market value of shares at the time of grant with HMRC. Get in touch at LDNEIB@twobirds.com for more information.

Our US Relationships: Seamless Cross-Border Support

While we don't practice US law at Bird & Bird, we have built strong relationships with a number of law firms in the US and foster these through our San Francisco office and the broader firm. This approach enables us to advise on cross-border and multi-jurisdictional matters utilising the US firm with the most appropriate expertise to your business and immediate legal needs. Whether working directly with American clients or providing US advice to clients based in Europe, the Middle East or the Asia Pacific region, we can provide our clients with seamless services across multiple jurisdictions.

Extending Share Plans beyond the UK

For employees outside the UK, a non-tax advantaged option component can be added to your plan. This enables you to grant options across multiple jurisdictions under a consistent framework, with jurisdiction-specific appendices addressing local tax and regulatory requirements where necessary. We work with you to determine the most cost-effective approach for obtaining overseas legal advice based on your specific needs and the jurisdictions involved. This ensures you receive cost-effective, high-quality advice while maintaining a cohesive global equity programme.

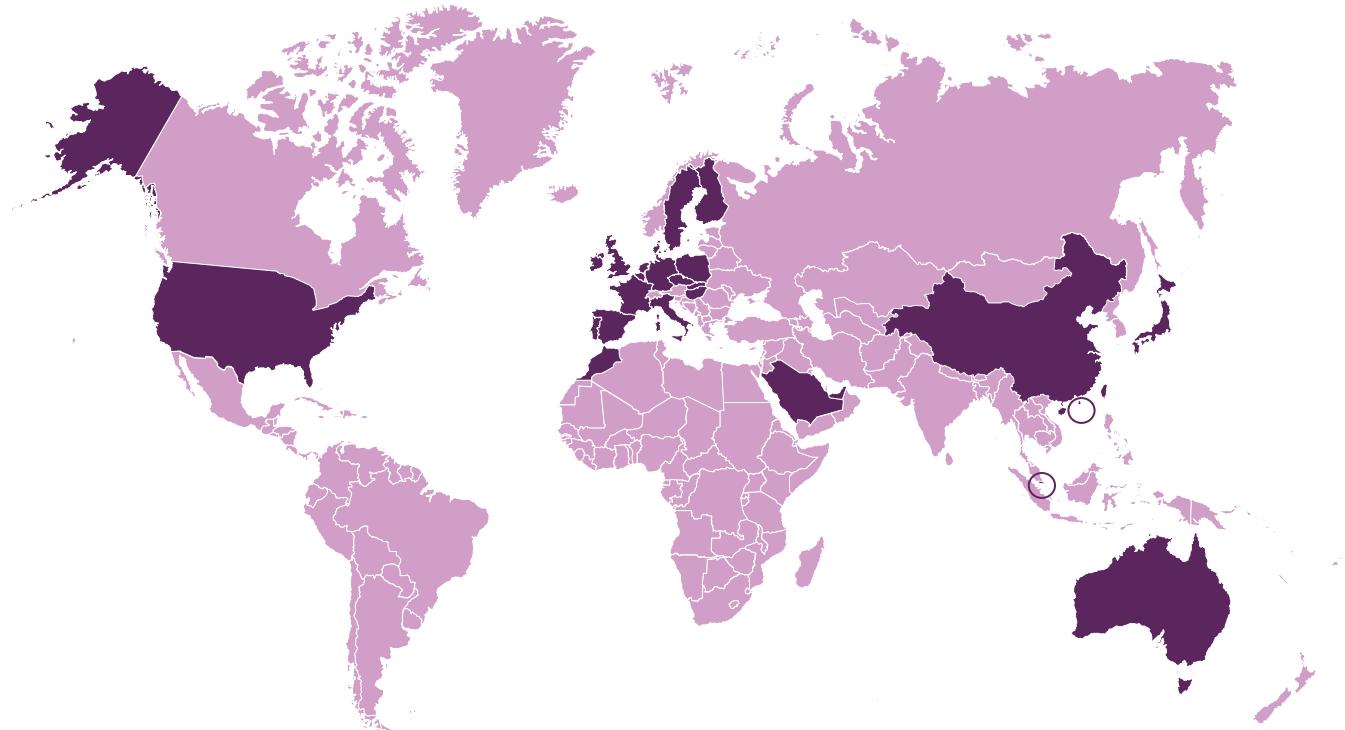
One Firm. Global Mindset.

The EMI option regime is one of the most tax advantaged regimes in the world but certain other jurisdictions operate similar plans. We frequently work on international and multi-jurisdictional arrangements and can assist with analysis of international tax and social security regimes, both for individuals and corporations. We also advise on tricky aspects of overseas securities laws and foreign exchange (plus local employment law and data privacy considerations) that often come into play for global equity arrangements.

"Their approach demonstrates a clear understanding of commercial considerations and client interests."

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In addition to our Bird & Bird offices across a wide range of jurisdictions, our unique Bird & Bird *Plus* offering combines Bird & Bird's service and knowledge with specialist local expertise from over 500 global firms:

Simplifying international service: We coordinate work with Plus firms on your behalf, which means you benefit from a joined-up service with centralised communication, management and billing.

Guaranteeing quality: You benefit from the consistent, high-quality service that you would expect from us, with the same added value offering across project management, legal technology and knowledge sharing.

Local knowledge: Our 20 steering groups - comprising partners with relevant jurisdictional knowledge, cultural connections and language skills - research regional trends with local counsel to ensure we stay ahead of opportunities.

Essential Next Steps

We provide a full-service offering and advise throughout all stages of design, implementation, and post implementation of EMI plans and compensation arrangements.

Ready to get started? To access our complimentary EMI checklist, discuss your specific requirements and explore how we can support your employee incentives strategy, please contact LDNEIB@twobirds.com.

Tier 4 Employee Share Schemes

★ Client Satisfaction

Legal 500 UK, 2026

"...they were strong at drawing up the materials and in navigating some of the complexity of these schemes"

Legal 500

Equity Essentials Library

Click below to find out about other employee equity incentives:

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