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Enterprise Management Incentives

Enterprise Management Incentives (or "EMIs") are a tax-advantageous way of giving employees a stake in growing companies. This document will try to summarise these tax benefits, but inevitably it won't go into full detail.

The basic idea

A small company agrees to let employees buy shares in the future at a price agreed now (what is known as "share options"). When they do buy them (and then sell them on) they'll pay Capital Gains Tax on any eventual profit — but that won't be very much.

Why do we need EMIs?

If a company promises to let employees buy shares at a price agreed now, it could be storing up a tax problem. When the employees buy the shares, it will probably be because they are worth more than that price that was agreed. Problem: the employee has to pay income tax on the difference between what is paid and what they are worth. The fact the price was agreed up front when the shares were worth less is irrelevant.

Unless there is an EMI in place, that is. An EMI lets you freeze the position when it is set up, so that, if employees get shares later, they are still treated as if the value of the shares and the date of the acquisition were when the scheme was set up, and not the real value and date. That means:

- They only pay tax on the shares when they sell them, not when they get them.
- They pay Capital Gains Tax on any profit, and not Income Tax. That may mean paying 10% tax or less instead of 40%.

What conditions apply?

- Options to acquire shares in a company don't necessarily count as EMIs. There are lots of conditions you need to satisfy:
- You need to be a full-time employee of the company or group that issues the options. Being part-time won't do, nor will being a contractor.
- The company must be trading and not investing, and even then there are some trades that don't count.
- The company can't be controlled by another one, and it mustn't be too large — its gross assets mustn't be more than £30m (most of them are a lot smaller than that).

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- No employee can have options over more than £100,000 of shares — if they do, the excess can't be within the EMI scheme.

- The scheme isn't open to people who (along with certain people connected with them) own more than 30% of the employer company or group.

What can Critchleys do to help?

We can:

1. Help you decide if an EMI scheme is appropriate for your company. While the idea sounds great, for some small companies the added hassle of setting up a scheme is more trouble than benefit.

2. Help with setting one up (if you do want a scheme) and with sorting out what restrictions and rules you want.

3. Get the share values agreed with HMRC, which is important in ensuring that there is no tax problem.

Critchleys is one of the leading firms of advisers to the technology sector. Our commitment to this is demonstrated by our membership of The Oxford Trust and involvement in technology-focused investment networks such as OION, OEI and UNICO. We have also worked with spin-outs from Imperial College, London, Birmingham University, Oxford University, Oxford Instruments and Rutherford Appleton Laboratories.

If you think you might be affected by this please contact, Gerry Jackson on 01865 261100 or email gjackson@critchleys.co.uk