



Temporary Halt on Grant of EMI Options to UK Employees

April 4, 2018

With a generous individual limit of £250,000, companies with a UK presence, group gross assets below £30m (balance sheet test) and fewer than 250 employees often grant potentially tax advantageous Enterprise Management Incentive (EMI) options to their UK employees. EMI options with a market value exercise price can mean no income tax for the employee at exercise and capital gains tax at a special 10% rate on a sale of the shares acquired, provided that occurs more than one year after the date of grant.

The tax advantages of EMI options are dependent on EU State Aid approval and, despite the efforts of the UK government, this approval will expire on Friday, 6 April 2018. The UK government has applied to the European Commission for fresh approval and is currently waiting for the commission's final response. Unfortunately, this response will not be received before 6 April 2018.

The UK tax authorities (HMRC) have [confirmed today](#) that EMI options granted up to and including 6 April 2018 will not be affected by the lapse of approval. However, EMI options granted in the period from 7 April 2018 until the EU State Aid approval is received may be treated as non-tax advantaged options (with UK income taxes payable on the profit at exercise).

On this basis, we strongly recommend companies delay granting options intended to qualify as EMI to their UK employees until fresh EU State Aid approval has been given.

Please do not hesitate to contact Paula Holland or Nihara McCormack with any questions.

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