

Beneficial CGT treatment on EMI share sale (Lecture P1418 – 11.37 minutes)

The legislation for EMI share option schemes is found in ss.527 – 541 and Sch 5 ITEPA 2003.

For many employers, this arrangement is the scheme of choice, given that it provides significant tax and NIC advantages for qualifying share options granted by companies with gross assets not exceeding £30 million.

The scheme seeks to assist employers in recruiting and retaining key members of staff.

As well as having to satisfy the gross assets test, the EMI regime is restricted to companies or groups which are independent and whose trade does not consist of certain excluded activities.

Two of the most important attractions of the scheme are the CGT amendments made to the rules by FA 2013 in connection with the sale of EMI shares – see s.169I(7A) – (7R) TCGA 1992.

For business asset disposal relief purposes:

- EMI option holders do not have to meet the various 5% tests which normally apply for shareholders (a typical EMI holding will be significantly less than a 5% stake);
- The date when an EMI option is granted marks the start of the two-year qualifying period. This is particularly helpful in the context of exit-based schemes where the options are normally exercised shortly before the company is sold.

Therefore, as long as employees sell their EMI shareholdings when two or more years have elapsed since the grant of the options, they will qualify for the 10% CGT rate. Another consideration is that payment for the exercise of the option can effectively be funded from the employee's share of the sale proceeds.

Illustration

Cricketworld Ltd is a UK-resident company which is involved in the promotion of all forms of cricket throughout the world. It meets the criteria to be a qualifying EMI company.

In April 2017, Eoin was granted an EMI option to acquire 10,000 ordinary shares in Cricketworld Ltd at £3.40 each (which was the agreed market value of the shares at that time). Eoin's 10,000 shares under option represent 1% of the company's fully diluted share capital. Eoin understands that his options can only be exercised when an offer has been accepted for the sale of Cricketworld Ltd.

At the end of November 2023, the directors of Cricketworld Ltd agreed to accept an offer from Virat Industries plc to purchase 100% of the company's shares for £48,000,000 (ie. at £48 per share).

The EMI option holders (including Eoin) were permitted to exercise their options on 15 December 2023 and the sale of the company was completed one week later.

Eoin is able to claim business asset disposal relief on the sale of his 10,000 EMI shares since all the relevant CGT requirements have been satisfied. It does not matter that Eoin's stake represents just 1% of Cricketworld Ltd's ordinary share capital nor that he only owned his shares for seven days – Eoin's EMI shares have been under option or owned by him for well over two years before they were sold.

Eoin's CGT liability on the sale of his 10,000 ordinary shares on 22 December 2023 is:

	£
Sale proceeds (10,000 x £48)	480,000
Less: Cost (10,000 x £3.40)	<u>34,000</u>
	446,000
Less: Annual CGT exemption	<u>6,000</u>
	<u>£440,000</u>
CGT @ 10%	£44,000

Contributed by Robert Jamieson