

## **Finance Bill 2023 - Miscellaneous business issues (Lecture B1375 – 14.17 minutes)**

### **Seed enterprise investment scheme**

Various changes to the seed enterprise investment scheme (SEIS) are introduced by Clause 15.

These are:

- The maximum amount on which an individual can claim SEIS income tax relief and/or SEIS capital gains tax reinvestment relief in any tax year is increasing from £100,000 to £200,000
- The gross assets that a company can have immediately before the share issues and still be an SEIS qualifying company is increasing from £200,000 to £350,000
- The amount which a company can claim under SEIS is increasing from £150,000 to £250,000
- The maximum age of the trade for which SEIS can be claimed is increasing from two years to three years.

These changes will apply for shares issued on or after 6 April 2023.

### **CSOP**

Clause 16 increases the amount of options which can be issued under Company Share Option Plans (CSOPs) from £30,000 to £60,000. This represents the value of the shares when the options are first issued. This limit will be capable of being varied by secondary legislation going forward.

This clause also removes Para.20 Sch.4 ITEPA 2003, which currently states that the majority of the issued shares of the same class as the eligible shares (ie those subject to the CSOP) must be employee-controlled shares or open market shares, unless there is only one class of shares. This is referred to as the 'worth having' condition and was designed to limit the ability to create significant holdings of very low value shares to participate in the CSOP. There are consequential changes arising from this change.

Broadly speaking, a company's shares are 'employee-control shares' if they are held by employees or directors who together control the company. The shares are 'open market shares' if they were not acquired as a result of a right or opportunity as directors or employees (unless it was as a result of an offer to the public).

These changes will be of particular interest to growth companies that do not qualify for EMI (e.g. those that have outgrown the EMI employee limit and gross assets test but are currently prevented from operating a CSOP due to the restrictions on share classes, including venture-capital backed companies and others with multiple share classes).

These provisions will apply to options granted on or after 6 April 2023 as well as those that were granted before that date but have yet to be exercised.

## **Enterprise Management Incentive schemes**

Clause 17 makes a couple of technical amendments to the EMI provisions.

For options granted on or after 6 April 2023, it will no longer be a requirement that any restrictions applying to the shares be outlined in the share option agreement, nor will a declaration be needed that the employee who received the share options has signed a 'working time' declaration. The working time requirement (WTR) remains but it will not have to be confirmed in the paperwork. The WTR is (broadly) that the employee's committed working time for the company must be either an average of 25 hours per week or, if less, 75% of their overall working time.

Additionally, where the maximum entitlement to EMI options is exceeded, new provisions require the employer company to make arrangements for determining which options will and will not qualify under EMI. This must be done on or before 6 July following the end of the first year in which the options are exercised. The employer must specify how the determination has been made and this must be made available to any employee who is affected. If this is not done, options will be determined in chronological order of date of grant of the option, with apportionment where required.

### Example

A company has issued share options under EMI to 15 employees over 20,000 share for each so a total of 300,000 shares in issue. They had valued the shares at £10 per share but HMRC subsequently challenge this and it is agreed that they are worth £11 each.

The total shares under option now reaches £3,300,000. Each individual is still under the £250,000 limit but the company will have to decide which shares are no longer qualifying. They have to notify the employees of their decision.