



HM Treasury

# Enterprise Management Incentives

## **Call for Evidence: Summary of Responses**

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March 2023

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ISBN: 978-1-915596-62-8 PU: 3282

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# Chapter 1

## Introduction

1.1 Employee share ownership schemes enable employees to acquire and hold shares, either directly or indirectly, in the company that employs them. Research suggests that employee share ownership schemes have several benefits: they allow employees to have a stake in the company they work for and allow employers to help motivate and incentivise employees by sharing the financial rewards of good company performance.

1.2 The government offers four direct tax-advantaged employee share schemes (TASS): Enterprise Management Incentives (EMI), Company Share Option Plans (CSOP), Share Incentive Plans (SIP) and Save As You Earn (SAYE). EMI and CSOP are discretionary schemes while SIP and SAYE are all employee schemes.

1.3 While these schemes differ in their targeting, generally, they are designed to promote employee share ownership by offering a range of tax advantages on shares options or issued shares. The conditions for tax relief vary by scheme, however, each of them allows employees to benefit from reliefs on one or more of these taxes: Income Tax (IT), National Insurance (NICs), and Capital Gains Tax (CGT). In addition, an employer operating the schemes may qualify for Corporation Tax (CT) relief.

1.4 The EMI scheme is a tax-advantaged employee share scheme designed to help Small and Medium Enterprises (SMEs) to compete with larger firms to recruit high-skilled employees and retain key members of staff by bolstering the attractiveness of share-based remuneration they can offer to employees. By helping smaller companies attract and retain talent, the scheme supports companies to develop and grow their business both in terms of employment and output.

1.5 The government announced at Spring Budget 2020 that it would review the EMI scheme to ensure it provides support for high-growth companies to recruit and retain the best talent so they can scale up effectively and examine whether more companies should be able to access the scheme.

1.6 On 3 March 2021, the government launched a review of the EMI scheme with the publication of a call for evidence document, 'Enterprise Management Incentives: call for evidence'. The call for evidence closed on 26 May 2021.

1.7 The government received 48 responses. Those responding included individuals, industry groups, legal and financial advisers,

investment firms and businesses across several sectors. A summary of responses is set out in Chapter 2, and next steps outlined in Chapter 3.

# Chapter 2

## Summary of Responses

### Part 1: Respondent's Profile

Question 1: If you are a business owner or manager, what is your business activity, when was your company created, what is the value of your company's gross assets and how many employees do you have?

2.1 Most respondents were legal, financial, and professional advisers, with an interest in EMI from advising clients that use EMI or who do not qualify due to size or type of business.

2.2 There were also a number of responses from trade representatives, membership organisations and investment firms.

2.3 A few responses came from current or former EMI users. For those currently using EMI, the number of employees reported ranged from around 12 to 230, with the value of gross assets ranging from about £5 million to £23 million. Employees of those companies who formerly used EMI ranged from 250 to over 600, meanwhile gross assets ranged from £30 million to £46 million.

2.4 The type of business of respondents and clients of respondents ranged from tech, law, PR, engineering, healthcare, life sciences, manufacturing, academia, and research.

Question 2: If you are a business owner, have you used EMI? If so, how many employees did you offer it to and why?

2.5 There were five responses from business owners, although some organisations responded on behalf of business owners they represent, some of which they had surveyed specifically for the purpose of this call for evidence.

2.6 Responses were mixed. Some respondents offered EMI options to all their staff, although most offered it to key or senior staff only.

2.7 One respondent noted that EMI was crucial for smaller companies to remain competitive when recruiting senior staff and that for companies within certain sectors, such as tech firms, EMI was a "centrally important" part of their remuneration package.

2.8 A few respondents used an Employee Ownership Trust (EOT) in addition to EMI and suggested that, when used together, it helped to promote the business' emphasis on ownership.

2.9 The most common reasons respondents gave for using EMI, regardless of how many employees they offered the scheme to, were to recruit, retain and incentivise key staff.

**Question 3: If your business does not qualify for EMI, are you using any other tax-advantaged employee share scheme?**

2.10 Nine respondents said that they do not qualify for EMI. It was often noted that when a company is eligible for EMI, it is the clear frontrunner among respondents when compared to the other tax-advantaged share schemes.

2.11 Some respondents suggested that since they have grown past the EMI limits, they are considering the all-employee share schemes to maintain the share ownership culture they have promoted throughout their business.

2.12 However, some respondents felt these schemes typically focus on different types of companies than those in the early stage of their growth, so may not be a suitable alternative. For example, SIP was referenced for offering direct share ownership, but this is not always appropriate for earlier stage companies due to the liquid market required.

2.13 Other respondents said they had moved on to CSOP but reported that the scheme felt too restrictive in comparison to EMI. A few noted they were looking into non-tax advantaged schemes as a result; however, it was reported that “alternative schemes [were] either too complex or too expensive to implement”.

2.14 There were also reports that companies in this position are not as familiar with the other schemes, so they may not consider another employee share scheme after surpassing EMI limits.

**Question 4: Has your company benefitted from other forms of government support, such as R&D tax credits or investment schemes? Where does EMI rank in terms of importance of government support?**

2.15 Almost a quarter of respondents answered this question. Some noted that it was difficult to compare EMI against other forms of government support. For example, one respondent said that EMI and R&D tax credits both “play an important role in helping grow our business in different ways”.

2.16 Others commented that factors such as the sector or stage of the company’s lifecycle can influence which form of government support is most important.

2.17 Some respondents felt that the early-stage aspect of the types of companies using EMI meant that R&D tax credits and grants specifically were valued higher, “as they allow a company to access cash”.

2.18 Still, most respondents praised EMI for being a key incentive in both the recruitment process and retention efforts: “In terms of recruitment of human capital, EMI options are widely considered to be critical”.

Question 5: If you are responding on behalf of a representative body or think tank, please describe briefly the body, its objectives and its members.

2.19 Several responses were from industry, trade and membership bodies representing businesses, usually SMEs. Their membership sizes ranged from a few hundred to several thousand and covered various industries. Some responses came from groups or bodies dedicated to employee share ownership.

2.20 Some of the objectives noted included campaigning, informing, helping member businesses to grow, and advocating for the industry and the members they represent. Other groups noted that their objectives were to promote and advocate for employee share ownership.

## Part 2: EMI’s effect on the recruitment and retention of key employees

Question 6: To what extent do you agree/disagree that the EMI scheme is fulfilling its policy objective of helping SMEs recruit employees? Please explain your answer.

2.21 Most respondents provided an answer to this question and unanimously agreed that EMI is meeting its objectives of helping SMEs to recruit employees.

2.22 Many respondents said EMI allows companies to access talent that would otherwise not be achievable without offering the higher salaries that larger companies may be able to.

2.23 Some respondents said that candidates enquired about the incentive during recruitment campaigns, with one respondent reporting that “in many industries, EMI options are a standard component of remuneration packages, and companies which do not offer EMI options are at a competitive disadvantage”.

2.24 Reports of the pull factors to the scheme included:

- the alignment of employee and employer interests
- the ability to promote a culture of employee ownership
- the prospect of a high return for an employee’s contribution
- the low cost to buy an option with the possibility of discounting

- and tax benefits for the employer and employees.

Question 7: To what extent do you agree/disagree that the EMI scheme is fulfilling its policy objective of helping SMEs retain employees? Please explain your answer.

2.25 Of the two-thirds of respondents who answered this question, many noted that they could not demonstrate a direct causal relationship between EMI and employee retention.

2.26 Nonetheless, the majority of respondents agreed that EMI met the policy objective of employee retention. It was stated by one user that EMI helped to maintain employee loyalty even “in more difficult times”.

2.27 EMI was praised for incentivising employees to stay, by:

- Encouraging them to reach their personal performance targets that would allow them to trigger ownership of EMI shares
- growing the value of their shares, so that there would be greater financial benefits accrued by the time they eventually exercise the options
- helping the company to reach an exit event, if exercise of their EMI option depended on it

2.28 There was also an indirect effect that EMI was said to have on retention of employees through its impact on workplace culture. One respondent claimed, “Options can also help foster a positive team spirit within companies, as employees are aligned with shareholders in the common objective of working towards business growth and development and hence assist with fostering intangible as well as tangible, financial benefits to the employee.”

2.29 This view was not universal, however, and one respondent said that the link to an exit event can feel too far away for an employee to remain motivated. Another said that EMI was not enough of a retention incentive in isolation, and that employees may leave “if they are sufficiently tempted”.

2.30 Some respondents also noted that an employee’s understanding of the options and market conditions can influence how effective EMI is and emphasised the importance of employer communication of the scheme and its benefits.

Question 8: To what extent do you agree/disagree that the EMI scheme is fulfilling its policy objective of helping SMEs grow and develop? Please explain your answer.

2.31 Most respondents provided an answer to this question and, overall, they supported the view that EMI had a positive effect on the growth of SMEs. There were no responses in disagreement, but a few

remarked that it was difficult to establish a direct link between the use of EMI and a company's subsequent success.

**2.32** Aspects of the scheme that were said to encourage growth included:

- Set targeted performance conditions
- Better recruitment of skilled staff
- Retention of skilled staff and their institutional knowledge
- Better aligned employee interests and company outcomes
- Incentivised employees through a sense of ownership

**2.33** Moreover, it was said that EMI provides a strong basis for growth, in a way that complements and must be complemented by the overall business plan. To that effect, it was termed by one respondent as “a valuable management tool”.

**Question 9: In your views, what aspect of the EMI scheme is most valuable in helping SMEs with their recruitment and retention objectives? Please explain your answer.**

**2.34** The most valuable aspect varied by respondent, but included:

- the advantageous tax treatment
- high options limits
- retention of key people
- simplicity compared to other share schemes
- and affordability for both the employer and employee.

**2.35** The most common answer was the flexibility of the scheme, “tailored to suit each company's specific needs, requirements and objectives”. Demonstrating its flexibility, respondents praised its discretionary nature; ability to tailor performance conditions and attach them to options; ability to have options lapse on cessation of employment; ability to offer EMI options over multiple share classes including non-voting shares; and flexibility over when each option can be exercised.

**2.36** EMI was largely considered to be straightforward to understand and explain to employees and clients. However, some respondents stated that a drawback was the complexity of the rules and the administration involved in operating it. A particular example given was the 92-day EMI notification, where employers have 92 days to notify HMRC of each EMI option granted for it to qualify.

**2.37** Some respondents claimed that the employee working time requirement was an obstacle in widening up the scheme across their

workforce, while others felt it was right only to offer the incentive to direct employees. However, many respondents agreed that the requirement to submit a working time declaration signed by the employee was burdensome.

### Part 3: Recruitment and retention of key employees in high-growth companies

Question 10: Is there evidence to suggest that high growth companies that are no longer eligible for EMI are finding it difficult to recruit or retain employees? Please explain your answer. If your answer is yes, what in your view causes these difficulties and which jobs and kinds of companies are affected?

2.38 Evidence for larger high growth companies facing a market difficulty in attracting talent was not provided by the two-thirds who responded, although anecdotes supported this stance.

2.39 Responses largely suggested there was not an effectively similar alternative in terms of the benefits that EMI provides for the types of high-growth companies that have just surpassed the EMI limits.

2.40 The 'gap' between EMI and CSOP was cited often to demonstrate that the next most suitable tax-advantaged share scheme for their business beyond EMI was more restrictive and so causes a 'cliff edge'.

2.41 CSOP was not seen as being as flexible as EMI, due to multiple share class restrictions and 'good leavers' rules. Additionally, it was considered not to be as generous with its current £30,000 options limit.

2.42 A few respondents suggested there should be a scheme for companies who have just passed this cliff-edge of EMI but with a more generous options limit: "in our view, allowing for up to say £100,000 of income tax relieved options to be granted to employees in these sorts of companies would be an acceptable trade off."

2.43 Overall, respondents felt the current benefits offered by CSOP do not enable high-growth companies beyond the EMI limits to compete effectively with larger companies who can offer liquid equity.

2.44 Respondents did not specify which types of companies and employees that this reported market difficulty affects the most.

Question 11: If your answer to the previous question is yes, in your view, would expanding EMI help with these issues? Please explain your answer. If your answer is yes, do you think that other forms of remuneration or employee benefits could achieve similar results?

2.45 Most respondents considered a need for greater support in the employee share schemes space for these larger high-growth companies.

2.46 Employee share ownership was deemed a most effective incentive for “loyalty and performance”, and it was widely agreed that another form of remuneration could not replicate this to the same extent.

2.47 Suggestions for expanding EMI include increasing the limit on number of employees, increasing the limit on gross assets, broadening the types of companies that are eligible and increasing the company-level limit on unexercised options under issue.

2.48 Notwithstanding the above, many respondents acknowledged that a competitive advantage for SMEs should be maintained. There were suggestions to this effect, such as a phased withdrawal from EMI; or an enhanced CSOP to ease the cliff-edge and provide “a more effective next step for growing companies”.

Question 12: Are you aware of the other tax-advantaged employee share schemes offered by the Government (CSOP, SIP, SAYE)? Do you use or have you previously used any of these schemes? If the answer is no, please explain why.

2.49 Most respondents were aware of the other schemes. Representative bodies who asked their clients about other government employee share schemes said they received mixed responses.

2.50 Some responses noted that companies who were eligible for EMI opted for this scheme out of preference.

2.51 Although SIP and SAYE were largely praised for encouraging broader share ownership, they were not seen as being as relevant to start-ups as EMI and CSOP, due to the different ways in which the schemes operate and the financial demand that may be involved: “Given the nil bonus rates and the fixed option periods, as well as the administrative costs of the savings contracts, and the need to extend participation to all eligible employees, they are of limited appeal to those high-growth companies seeking to attract and retain key employees.”

2.52 Some said they used CSOP, but most stated that they were considering alternatives due to the requirement to grant options at market value, the 3-year holding period and the £30,000 options limit.

Question 13: In your view, do the other tax-advantaged employee share schemes offered by the government (CSOP, SIP, SAYE) provide enough support to high growth companies that no longer qualify for EMI to recruit and retain employees? Please explain your answer.

2.53 A widely held view was that CSOP did not effectively support high-growth companies as it currently operates, with the lower option limits seen as unattractive, and the share class restriction causing difficulty for high growth companies as they proceed through funding rounds.

2.54 SIP and SAYE usually require use of an administrator/savings provider. One respondent noted that SMEs have limited resourcing to implement this and deemed the schemes largely unsuitable for smaller companies where the costs may outweigh the benefits.

2.55 Responses stated that companies often consider unapproved options due to the restrictions in CSOP.

Question 14: In your view, how could the government improve the other tax-advantaged employee share schemes to help support high growth companies?

2.56 Suggestions for CSOP included:

- Increase options limit
- Allow multiple share classes
- Decrease holding period
- Allowing option grant below market value

2.57 Respondents also suggested simplifying the reporting procedures and overall administrative requirements for the schemes.

2.58 For SIP, a few respondents asked for a decrease in the current 5-year holding period required for an employee to access the full tax advantages of the scheme.

2.59 There were also responses that asked for the schemes to be widened to self-employed contractors.

Question 15: In your view, how does the tax-advantaged employee share schemes' offer in the UK compare with other countries?

2.60 Just over half of the respondents responded to this question. EMI was largely seen as comparing well internationally, with one respondent noting that EMI is considered a "key [counter] to the draw of the US" and "one of the most tax advantageous and flexible [schemes] in the world".

2.61 It was stated by a few respondents that companies who have just passed the EMI limits find it difficult to recruit UK talent without a sufficiently similar scheme.

2.62 One respondent suggested that there are fewer administrative requirements involved in other countries' schemes, thus "[resulting] in some of the UK's schemes appearing much more complex in their procedural requirements".

## Part 4: EMI eligibility criteria

Question 16: In your view, should the EMI scheme criteria be extended to include more companies? Please explain your answer. If your answer is yes, which eligibility criteria would you change and why?

2.63 Most respondents believed that the EMI scheme should be expanded to companies with greater gross assets and a larger number of employees, as well as those who currently do not qualify due to the business type or structure.

2.64 Many believed that there should be greater support for larger high-growth companies, whether in the form of an expanded EMI or an enhanced CSOP: "If the view of government is that employee ownership is a positive force for the economy – leading to better productivity, employee retention, and growth – it makes little sense to limit the benefits of EMI to smaller companies. Therefore, we consider that expanding EMI – or adjusting some of the rules relating to CSOP – could help with these issues."

2.65 There was widespread recognition that preserving EMI is valuable to the growth of SMEs. Some respondents felt that rather than expanding the current scheme, there should be a similar incentive available to larger companies: "a tapering level of EMI qualifying status which enables larger companies to offer some but not all of the benefits of EMI, would widen access, deal with the 'cliff edge problem' and maintain the distinctiveness of the regime".

2.66 On an employee level, a few respondents felt that the working time requirement should be reduced in order for an employee to qualify for the scheme. The reporting requirements were mentioned again in terms of easing the current administrative burden on SMEs operating the scheme.

Question 17: In your views, do the current EMI scheme criteria have a distorting effect on companies' growth insofar as the companies try to remain within the scheme's limits? If your answer is yes, could you provide examples or quantitative data to support your views?

2.67 Although respondents generally reported it was preferable to have access to the scheme, the majority said it did not discourage companies from growing beyond the limits of the scheme and that, overall, they had not seen EMI lead to distortive behaviour.

2.68 A few respondents noted that accessibility to the scheme was kept in mind when going through funding rounds or provided anecdotal evidence of companies wanting to spend their equity, or postpone recruitment of the 250th person, to maintain their ability to grant EMI options.

2.69 A number of respondents agreed that it is mostly commercial factors that determine the growth of a business, and that a business would not halt its growth solely to access the scheme. Respondents stated that it instead meant that the company would typically turn to growth shares, unapproved options or cash bonuses as an alternative.

Question 18: In your view could widening the current eligibility criteria to support larger companies affect smaller companies' ability to recruit and retain employees? Please explain your answer.

2.70 Views varied, but it was widely acknowledged that higher growth companies should be able to access a similar incentive.

2.71 Most respondents acknowledged there may be an effect, but that high growth companies would like more support with equity ownership. On the contrary, one respondent claimed that "smaller companies would have the highest growth potential and would remain attractive to potential employees for this reason".

2.72 Some respondents felt that the effect on smaller companies could be mitigated by ensuring any expansion of limits was proportionate. Others suggested a more restricted scheme could be offered to maintain the advantage that EMI provides to SMEs while providing greater support to larger companies: "Taking the impact that we have seen EMIs have, one solution might be to provide a reduced form of EMI which could be used for larger companies, providing access to their flexibility but possibly with reduced tax breaks. This could be through a revamped CSOP or another new alternative."

# Chapter 3

## Next Steps

**3.1** At Spring Statement 2022, the government announced it had concluded that the current EMI scheme remains “effective and appropriately targeted.” However, the scope of the review was expanded to consider if the other discretionary tax-advantaged share scheme, the Company Share Option Plan (CSOP), should be reformed to support companies as they grow beyond the scope of EMI.

**3.2** In September 2022, the government announced an expansion of the availability and generosity of the CSOP scheme, widening access to CSOP for growth companies.

**3.3** From 6 April 2023 there will be:

- Relaxation of the rules which restrict use of the scheme when the company has more than one class of ordinary shares (the ‘worth having’ restriction), to better align it with EMI.
- Doubling the employee option limit from £30,000 to £60,000.

**3.4** These measures will help larger companies that no longer qualify for the EMI scheme to offer more attractive share-based remuneration, helping them to recruit and retain key talent.

**3.5** The government notes that many respondents reported that the administrative requirements of the EMI scheme could be improved to reduce the burden on participating companies.

**3.6** The government agrees that administrative burdens should be proportionate and not overly burdensome to the point where they could act as a disincentive to participate in the scheme.

**3.7** To reduce administrative burdens, the government announced at Spring Budget 2023, the following changes to the process to grant options under an EMI scheme:

From 6 April 2023:

- The removal of the requirement for a signed working time declaration.
- The removal of the requirement to set out share restrictions in an option agreement.

From 6 April 2024:

- An extension of the time limit within which companies must submit an EMI notification.

# Annex A

## List of Respondents

### List of respondents from businesses and organisations

- Addleshaw Goddard LLP
- Anderson Law LLP
- BDO LLP
- Beauhurst
- BGF
- British Private Equity & Venture Capital Association (BVCA)
- Cambridge Design Partnership
- Charlie Bighams
- Chartered Institute of Taxation (CIOT)
- Confluence Tax
- Crowe U.K. LLP
- Deloitte LLP
- DWF Law LLP
- Employee Ownership Association
- Employee Shares Policy Forum
- The Employee Share Ownership (Esop) Centre
- Fieldfisher LLP
- GoCardless
- Grant Thornton UK LLP
- The Institute of Chartered Accountants of Scotland (ICAS)
- Index Ventures
- Johnston Carmichael
- KPMG LLP (UK)
- Macfarlanes LLP
- Mazars

- Moore Kingston Smith LLP
- Octopus Group
- Osborne Clarke LLP
- Pett, Franklin & Co LLP
- Pinsent Masons LLP
- ProShare
- PricewaterhouseCoopers LLP
- The Quoted Companies Alliance (QCA)
- Raimés Clark and Co Ltd
- The RM2 Partnership Limited
- RSM UK Tax and Accounting Limited
- Saffery Champness LLP
- Share Plan Advisors Group
- Share Plan Lawyers Group (SPLG)
- Travers Smith LLP
- UK Business Angels Association (UKBAA)
- UK BioIndustry Association (BIA)
- Wiggin LLP
- Wright Hassall

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