



HM Treasury

Enterprise Management Incentives: Call for Evidence

March 2021

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Preface

Subject of this Call for Evidence: The government announced at Budget 2020 that it would review the Enterprise Management Incentives (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.

Scope of this Call for Evidence: The government's objective for this call for evidence is to gather more evidence to understand whether the EMI scheme should be extended to include more companies. In particular, the government is seeking views on:

- whether the current scheme is fulfilling its policy objectives of helping Small and Medium Enterprises (SMEs) recruit and retain employees
- whether companies that are ineligible for the EMI scheme because they have grown beyond the current qualification limits are experiencing structural difficulties (i.e. in the labour market) when recruiting and retaining employees
- whether the government should expand the EMI scheme to support high-growth companies and how
- whether other forms of remunerations could provide similar benefits for retention and recruitment as EMI for high-growth companies

Who should read this: The government seeks views from businesses, business representative organisations, and employees as well as anyone interested in the EMI scheme or the wider tax system.

Duration: The government would welcome responses by 26 May 2021.

How to respond or enquire about this call for evidence: We are currently unable to respond to responses or queries sent in the post at this time. You can submit your response by email to: emiconsultation@hmtreasury.gov.uk

Enterprise Management Incentives Call for Evidence – processing of personal data

This notice sets out how HM Treasury will use your personal data for the purposes of this call for evidence and explains your right under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA).

1. Your data (Data Subject Categories)

The personal information relates to members of the public, parliamentarians, and representatives of organisations or companies.

2. The data we collect (Data Categories)

Information may include the name, address, email address, job title, and employer of the correspondent, as well as their opinions. It is possible that respondents will volunteer additional identifying information about themselves or third parties.

3. Legal basis of processing

The processing is necessary for the performance of a task carried out in the public interest. The task is consulting on departmental policies or proposals, or obtaining opinion data, in order to develop good effective policies.

4. Special data categories

Although not being requested, it is possible that special category data may be processed if such data is volunteered by the respondent.

5. Legal basis for processing special category data

Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: The processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department. This function is consulting on departmental policies or proposals, or obtaining opinion data, to develop good effective policies.

6. Purpose

The personal information is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

7. Who we share your responses with (Recipients)

Information provided in response to a call for evidence may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place. Where information about respondents is not published, it may be shared with officials within other public bodies involved in this call for evidence process to assist us in developing the policies to which it relates. Examples of these public bodies appear at: <https://www.gov.uk/government/organisations>.

As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

8. How long we will hold your data (Retention)

Personal information in responses to call for evidence will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958. Personal information in responses that is not published will be retained for three calendar years after the call for evidence has concluded.

9. Your rights

- you have the right to request information about how your personal data are processed and to request a copy of that personal data
- you have the right to request that any inaccuracies in your personal data are rectified without delay
- you have the right to request that your personal data are erased if there is no longer a justification for them to be processed
- you have the right, in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted
- you have the right to object to the processing of your personal data where it is processed for direct marketing purposes
- you have the right to data portability, which allows your data to be copied or transferred from one IT environment to another

10. How to submit a Data Subject Access Request (DSAR)

To request access to personal data that HM Treasury holds about you, email dsar@hmtreasury.gov.uk. We are currently unable to respond to queries sent in the post at this time. Any written responses will be addressed upon our return to the office.

HM Treasury Data Protection Unit,
G11 Orange,
1 Horse Guards Road,
London,
SW1A 2HQ

11. Complaints

If you have any concerns about the use of your personal data, please contact us via this mailbox: privacy@hmtreasury.gov.uk

If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

0303 123 1113
casework@ico.org.uk

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

12. Contact details

HMT is the controller for any personal data collected as part of this call for evidence, the contact details for whom are:

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Foreword

This government wants to make the UK the best country in the world to start and grow a business – a place where entrepreneurs know they can build on their ideas and find success. Of the nearly 6 million businesses in the UK, the vast majority are small and medium sized, and this government is committed to helping these businesses and innovative companies tackle the everyday obstacles they face.

Throughout 2020, the government took decisive steps to support the British economy through the COVID-19 pandemic with a comprehensive package of economic support for SMEs and innovative companies. In March 2020, the government launched the Future Fund offering convertible loans of up to £5 million for innovative companies facing financing difficulties due to the COVID-19 outbreak. The government also launched the Coronavirus Business Interruption Loan Scheme providing financial support to smaller businesses affected by coronavirus. The government also provides support for innovative UK businesses to realise the potential of new technologies, develop ideas and make them a commercial success through the Innovate UK scheme. Innovate UK also provided additional COVID-19 continuity loans for the continuation of existing innovation activity.

At Budget 2020, the government announced that it would review the Enterprise Management Incentives (EMI) scheme to ensure it provides support for high-growth companies to recruit and retain the best talent so they can scale up effectively. The review will also examine whether more companies should be able to access the scheme.

Through this Call for Evidence, the government seeks views from businesses and business representative organisations and anyone interested in the EMI scheme or the wider tax system on whether the current EMI scheme is fulfilling its objectives.

Chapter 1

Introduction

1.1 The government wants small, innovative companies across the UK to reach their growth potential. However, historic evidence shows that there are market failures that negatively affect SMEs' growth opportunities. One such market failure is felt by small companies struggling to recruit and retain the talent they need to scale up and grow as a business, as they may not have sufficient cash on hand to be able to offer a competitive level of remuneration for employees compared with larger, more established companies.

1.2 The Enterprise Management Incentives (EMI) scheme is a tax-advantaged employee share scheme that has been created to address this market failure, by bolstering the attractiveness of share-based remuneration that Small and Medium Enterprises (SMEs) can offer to employees. This means cash-constrained small employers can offer more attractive remuneration packages, helping them recruit and retain skilled employees.

1.3 The government committed to review the EMI scheme. This Call for Evidence seeks views on the current EMI scheme to assess whether the effectiveness of its targeting and whether more companies should be able to access the scheme to recruit and retain the key talent they may need to grow and scale up.

Chapter 2

How EMI currently works

Tax-advantaged employee share schemes

2.1 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.

2.2 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.

2.3 The government also offers an indirect employee share scheme in the form of Employee Ownership Trusts (EOTs), which holds a stake in a company on behalf of its employees.

2.4 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.

2.5 This Call for Evidence focuses predominantly on EMI.

Enterprise Management Incentives

2.6 EMI allows SMEs to offer tax advantages on the exercise of qualifying share options offered to employees as a form of remuneration. The scheme aims to produce a range of outcomes including helping SMEs compete with larger firms to recruit high-skilled employees and retaining key members of staff. By helping companies attract and retain talent, the scheme supports companies to develop and grow their business both in terms of employment and output.

2.7 Evidence suggests that SMEs are disadvantaged in the labour market as they struggle to compete with larger firms when recruiting and retaining key staff, particularly at the executive, managerial level. This is often due to:

- **Uncompetitive remuneration:** small, high-growth companies are at a disadvantage to larger firms in terms of their ability to offer competitive cash salary and remuneration packages, often due to having limited capital available.
- **Information asymmetry:** prospective employees may have more information available to them on the future potential of larger companies, such as financials, compared to smaller companies.
- **Access to finance issues:** financial constraints are a barrier to growth among smaller companies. Micro-businesses face the most acute funding constraints and are only able to undertake below socially optimal levels of investment.

How EMI works

2.8 As a 'discretionary' scheme, EMI options can be offered to individual employees at the discretion of the employer. An employer may grant qualifying share options up to a value of £250,000 per employee in a three-year period. The total market value of unexercised qualifying share options a company may grant under EMI cannot exceed £3 million.

2.9 To qualify for EMI, a company must, at the relevant time, have less than £30 million in gross assets, fewer than 250 full-time employees and carry out a qualifying trade.¹ A company must also have a permanent establishment in the UK.

2.10 Upon exercise of EMI options, in addition to potentially not paying employer NICs (compared to other forms of remuneration), a company may receive a corporation tax deduction when shares are acquired under the EMI option for the gain that the employee makes at that point.

2.11 If EMI options are granted at market value, employees pay no IT or NICs on any increase in share values between the date the options were granted and the date the options were exercised. Once options have been exercised gains arising from disposal of the shares may be subject to CGT (which is lower in comparison to Income Tax rates). Some employees may be eligible for a reduced CGT rate through Business Asset Disposal Relief (BADR), if there is a period of two years between the date an option was granted and the disposal date of the shares.

2.12 EMI is a notified State aid which was approved by the European Commission. Any future changes to the scheme will need to comply with the subsidy control obligations which apply in the UK, including those under the EU-UK Trade Cooperation Agreement and the Northern Ireland Protocol (the Protocol).

Box 2.A: Subsidy control

Where government considers whether to support certain activities or sectors in the economy, it must determine whether that support constitutes a subsidy. If

¹ Excluded activities including banking, farming, property development, provision of legal services and shipbuilding¹.

the measure meets the definition of a subsidy then government should consider which international obligations are engaged.

The EMI is a subsidy because it provides a tax advantage to certain firms (SMEs), as a way to address the market failure described in 2.7. While the UK was an EU Member State, the Commission approved the EMI as a State Aid, on the basis that it was justified as a way to tackle the wider market failure. To the extent that the EMI falls within scope of the NI Protocol, any amendments to the scheme will need to comply with State aid rules.

Under the EU-UK TCA, using resources to provide assistance to one or more organisations in a way that gives them an advantage over others may also be a subsidy. To comply with the subsidy control obligations in the TCA, the EMI will need to continue to address a specific, identified market failure, and comply with the principles outlined in the Agreement.

The government has launched a consultation on the UK's new domestic subsidy control regime, following the end of the Transition Period. Through this, the government seeks to ensure that subsidies in the UK are granted in line with our international commitments including those in the UK-EU Trade and Cooperation Agreement (TCA).

Policy history

2.13 Since EMI was introduced in 2000 alongside SIP, the scheme has undergone several changes:

- In 2002, the gross assets limit for eligible companies increased from £15 million to £30 million and the previous employee limits were removed.
- In 2008, EMI was restricted to companies with fewer than 250 employees to improve its targeting.
- In 2008, the individual employee share option limit was increased to £120,000. In 2012, this was increased again to £250,000 as part of a package of measures to expand EMI. This included the extension of Entrepreneurs' Relief (now Business Asset Disposal Relief) to shares acquired through EMI.
- In 2020, the Government reduced the lifetime limit for Business Asset Disposal Relief (BADR) from £10 million to £1 million, including for qualifying gains realised through EMI.

2.14 As Table 1 demonstrates, EMI usage has increased significantly in recent years. In 2018-19, around 34,000 employees were granted EMI share options and 8,000 employees exercised share options. Around 12,400 companies had an EMI scheme in place. The initial value of share options granted in-year through EMI was £460 million, which is £12,720 per employee.

Table 1: Enterprise Management Incentives data, 2014/15 – 2018/19

Year	Number of companies where employees granted options	Number of companies where employees exercised options	Number of employees that were granted options	Number of employees that exercised options
2015-16	2,860	1,280	23,000	5,000
2016-17	3,500	1,320	27,000	7,000
2017-18	4,020	1,420	33,000	7,000
2018-19	3,820	1,550	34,000	8,000

Source: HMRC Employee Share Schemes statistics 2018/19

Chapter 3

Questions

Respondent's profile

3.1 When responding to this call for evidence, it is extremely helpful if you can include your experience of the EMI scheme and your role in relation to it.

Box 3.A: Questions

- 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 If you are a business owner have you used EMI? If so, how many employees did you offer it to and why?
- 3 If your business does not qualify for EMI, are you using any other tax-advantaged employee share scheme?
- 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?
- 5 If you are responding on behalf of a representative body or think tank, please describe briefly the body, its objectives and its members.

EMI's effect on the recruitment and retention of key employees

3.2 Evidence suggests that SMEs are disadvantaged in the labour market as they struggle to compete with larger firms when recruiting and retaining key staff, particularly at the executive, managerial level.¹ This is often due to uncompetitive

¹Ipsos Mori (2018) Evaluation of Enterprise management Incentive Scheme

:https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716544/EMI_report_Final.pdf

remuneration, weaker information on the prospects of the SMEs than larger firms and funding constraints.

3.3 The aim of the EMI scheme is to help SMEs compete with larger firms to recruit high skilled employees and retaining key members of staff. By helping companies attract and retain talent, the scheme should help companies develop and grow their business both in terms of employment and output.

3.4 In 2018, Ipsos MORI published an evaluation of EMI, which examined how the scheme was working for businesses and the impact it has had on recruitment, retention and firm performance.

3.5 On retention, interviews with companies found that the vast majority of adopters perceived EMI to be successful in helping companies to retain key skilled staff and improve staff morale. However, robust quantitative analysis found that EMI had no measurable effect on retention rates.

3.6 On recruitment, interviews with companies found that just over half of the employers believed that EMI had helped with recruitment of key workers and attracting higher quality employees. Robust quantitative analysis showed that adopting EMI did help the growth in the number of employees.

3.7 Employers perceived EMI to be successful in helping companies grow and develop. The survey data which collected baseline characteristics on the number of employees, turnover, equity, profit, R&D and exports of businesses also indicated that EMI adopters are expanding.

3.8 In general, the 2018 study found that companies were finding it harder to recruit and retain staff since they joined the scheme, although this was likely the result of wider trends in the labour market.

3.9 In light of these findings, the government would like to explore these issues in greater detail and to seek evidence on whether the EMI scheme is fulfilling its policy objectives. When responding to the questions it would be helpful if you could provide quantitative evidence or case studies to support your views.

Box 3.B: Questions

- 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.
- 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.
- 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.
- 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.

Recruitment and retention of key employees in high-growth companies

3.10 The aim of EMI is to help SMEs overcome disadvantages they face in the labour market to recruit and retain employees, with the ultimate aim of supporting their growth and development. The government would like to understand whether high-growth companies which are no longer eligible for EMI because they have outgrown its limits are experiencing structural recruitment and retention issues that EMI could help to address.

3.11 EMI is not the only benefit companies can offer employees in order to meet their recruitment and retention objectives. For example, companies may offer employees share options under one of the other tax-advantaged share schemes or offer other forms of remuneration such as participation in non-tax advantaged share schemes, or other employee benefits.

3.12 The government would like to explore whether other forms of remuneration provide similar benefits for retention and recruitment to EMI for high-growth companies. When responding to the questions it would be helpful if you could provide quantitative evidence or case studies to support your views.

Box 3.C: Questions

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?

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?

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.

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.

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

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

EMI eligibility criteria

3.13 In this section the government would like to seek views on whether the EMI scheme should be extended to include more companies and if so how. The government would also welcome views on whether expanding the scheme risks affecting SMEs' ability to recruit and retain employees. When responding to the questions it would be helpful if you could provide quantitative evidence or case studies to support your views.

Box 3.D: Questions

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?

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?

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.

HM Treasury contacts

This document can be downloaded from www.gov.uk

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