

EMI UPDATE – NEW TRANSPARENCY REQUIREMENTS

Everyone involved with the Enterprise Management Incentive scheme will have breathed a collective sigh of relief when it was finally confirmed in mid-May that the European Commission had finally granted its approval of the ‘prolongation’ of State Aid for this scheme.

The Ipsos MORI research which was submitted in support of the Government’s application is now available here – <https://www.gov.uk/government/publications/enterprise-management-incentives-scheme-evaluation> - practitioners and advisers may find this useful.

However, the more eagle-eyed amongst us will have spotted a new transparency requirement lurking in the Commissioners’ approval letter, available via this link:

http://ec.europa.eu/competition/state_aid/cases/273796/273796_1989381_134_2.pdf

After discussion with HMRC, ProShare can confirm that information about businesses receiving State aid of more than €500,000 on or after 1 July 2016 is now published on a European Union (EU) website under EU transparency rules. The Finance Act 2016 permits the publication of certain information about businesses which are beneficiaries of State aid tax reliefs but EMI was not included at that time. However, the UK Government was required to commit to adding EMI as part of the re-notification of EMI State aid.

The commitment is to publish information on companies that receive aid in excess of €500,000 here <https://webgate.ec.europa.eu/competition/transparency/public/search/home?lang=en>

The information required to be published includes the name of the business, its region and trade sector.

We are informed that the Statutory Instrument to give effect to this requirement has already been laid before the House of Commons, and it is expected to come into force on 11 July 2018.

http://www.legislation.gov.uk/ukSI/2018/737/pdfs/uksi_20180737_en.pdf

The information is required to be published within 12 months of the date the aid is actually granted so HMRC’s view is that there is sufficient time to work on the precise details as nothing needs to be published for several months yet.

HMRC considers that the State aid is awarded when share options are granted. Section 2.2 of the decision letter demonstrates that the tax relief granted under the measure is not the same as the aid awarded which is discussed under section 4.1. Paragraph 29 explains the economic advantage that EMI provides to eligible SMEs as it allows a company to deliver the same post tax benefit to its employees with options over fewer shares than would otherwise be required. HMRC therefore considers that the aid can be quantified by comparing the value of EMI share options against the value of share options under the standard tax treatment.

HMRC believes that there could be mathematical models that would allow that comparison to be made and thereby quantify the aid as opposed to the cost of the tax reliefs. It is expected that the value of the aid will be much lower than the tax relief given. HMRC believes that very few companies (if any) will receive aid in excess of €500,000.

HMRC proposes to publish an ERS Bulletin with information on this requirement around the time that the legislation comes into force i.e. around 11 July.

ProShare will be meeting with HMRC in July – any members with particular concerns regarding this transparency requirement should get in touch with us without delay.