

## EMI: where are we now?

Those involved in the implementation and administration of EMI schemes will be aware that the current EU State Aid approval for EMI expired on Friday 6 April 2018. HM Revenue & Customs issued an update on EMI in their ERS Bulletin #27 (available at <https://www.gov.uk/government/publications/employment-related-securities-bulletin/employment-related-securities-bulletin-no-27-april-2018> ) on Wednesday 4 April, and we shared that update with ProShare members and contacts via email and social media.

So, where are we now that approval has expired? Representatives of ProShare, the Share Plan Lawyers Group, the ESOP Centre and of Temple Tax Chambers met with officials from HM Treasury and HM Revenue & Customs on 16 April to discuss this and to raise the following key concerns from plan issuers and advisors.

### ***Will HMRC's SAV team continue to issue assurances and valuations for EMI whilst the Commission considers its decision?***

Yes. The SAV team's work continues on a 'business as usual' basis. In instances where advisers or issuers have any concern around a valuation then the correct course of action is to contact HMRC's SAV team.

Concerns relating to the mechanics of operating the EMI scheme should still be referred to [shareschemes@hmrc.gsi.gov.uk](mailto:shareschemes@hmrc.gsi.gov.uk).

### ***Will there be backdating of approval for EMI options granted after 6 April but before the Commission's decision is known?***

The decision on whether to 'backdate' the effect of approval, to cover any EMI options granted whilst the decision is still pending, rests solely with the Commission.

The ERS Bulletin states: *'EMI share options granted in the period from 7 April 2018 until EU State Aid approval is received may not be eligible for the tax advantages presently afforded to option holders, and accordingly share options granted in that period as EMI share options may necessarily fall to be treated as non-tax advantaged employment-related securities options.'*

*Companies may wish to consider delaying the grant of employee share options intended to qualify as EMI share options until fresh EU State Aid approval has been given.'*

Some practitioners and their clients may still feel that there are compelling commercial reasons to proceed with an EMI option grant, for example in order to secure a key and urgent hire. When considering whether to grant fresh options which might otherwise have been expected to qualify as EMI options, such options should be granted, if at all, on the basis that they may not be treated as qualifying for any favourable tax treatment.

The treatment of EMI options granted before 7 April 2018 which are rolled-over during the period before any decision is notified by the Commission is also a matter for the Commission, and we hope will be covered in its State Aid decision.

### **What's next?**

HM Treasury officials continue to work with the Commission with the aim of obtaining renewed approval for EMI. Once made, the Commission will issue their decision in writing to the Foreign Secretary, and will also publish it online. Whilst a firm timetable for the decision cannot and should not be inferred, current indications are that the remainder of the process is more likely to take weeks, rather than months, to complete.

ProShare will remain in contact with HM Treasury and HMRC, and will keep members and contacts informed on further progress.