

# COVID-19 and EMI Share Options

## Q&A for Employers

<b>Q: What are EMI Share Options?</b>	<b>A:</b> Enterprise management incentive options (EMI Options) have become one of the most popular ways for companies to recruit, retain and incentivise talent. EMI Options enable companies to be flexible with the terms on which they are granted, for example relating them to individual or company performance. This coupled with the significant tax advantages for both employee and employer in relation to income tax and CGT has led to a huge increase in the use of the scheme.
<b>Q: How could furlough impact an EMI Option holder?</b>	<b>A:</b> One of the conditions to be met in order to benefit from the various tax advantages is that the EMI Option holder must work at least 25 hours per week, or 75% of their total working time for the company. If an EMI Option holder is furloughed, these working time qualifying requirements will not be met. Technically this will be the trigger for a “disqualifying event”, leading to the loss of the tax benefits and perhaps even the lapse of the EMI Options.
<b>Q: Will the government protect EMI Options?</b>	<b>A:</b> We believe it is likely that common sense will prevail and HMRC will confirm that the tax benefits attaching to EMI Options will not be lost for furloughed employees. HMRC has already confirmed this for employees failing to satisfy the minimum working time requirement because they are reservists called up for military action.
<b>Q: What if the company is sold while an EMI option holder is on furlough?</b>	<b>A:</b> Another condition attaching to EMI Options, and specifically exit only EMI options, is the condition that the EMI Option holder must be employed by the company at the point the company is sold. If EMI Option holders are on furlough at the point of sale, it is expected that they will satisfy that condition as they remain employed.
<b>Q: What about EMI Option holders who are made redundant?</b>	<b>A:</b> Where EMI Option holders are made redundant and the company subsequently sold, their EMI Options would lapse. It is unlikely HMRC will issue any comment or make an exception where EMI Option holders are ultimately made redundant as a result of the impact of COVID-19.
<b>Q: Is there anything the business can do to avoid negative impact for EMI option holders?</b>	<b>A:</b> We are currently helping both EMI Option holders and companies to engage in constructive dialogue. This centres around the likely impact of COVID-19 on the company and the employment status of EMI Option holders. Steps can be taken to either approach HMRC or, in some cases, make changes to existing EMI Option documentation to find a pragmatic solution.

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<p><b>Q: Can I still take action to furlough or dismiss EMI Option holders?</b></p>	<p><b>A:</b> You can, but we would recommend giving extra thought to the impact of furlough or dismissal on employees who are also EMI Option holders. Businesses are likely to want to do all they can to ameliorate the tough circumstances their employees will face so some forward planning when it comes to EMI Options can be a valuable exercise.</p>
<p><b>Q: How will the economic impact of COVID-19 on my business affect EMI Options?</b></p>	<p><b>A:</b> The price at which the EMI Options are exercised is frequently a market value agreed with HMRC. It is estimated that the repercussions of the COVID-19 crisis may lead to significant reductions in the value of UK private limited companies. This could result in issues for both EMI Option holders and/or companies who have granted, or are about to grant, EMI Options to employees.</p> <p>Reviewing the market value and exercise price will be an important step. For example, if it becomes clear that the exercise price of the EMI Options is going to be higher than the share value when the options become exercisable, then it's likely employers will need to consider replacing the existing options with new options at a revised exercise price. Without this, the key incentives and benefits of the EMI Option will be lost.</p> <p>The terms attaching to the exercise (and ultimately the value) of the EMI Options will often relate to the performance of the EMI Option holder or the company itself or, in the case of exit only EMI Options, the value at which the company is sold. If those parameters materially change, this will have an effect on the value of the EMI Options and/or even the ability for them to be exercised at all.</p> <p>Our understanding is that HMRC will be producing guidance on how various share schemes may be affected by COVID-19. Follow us for further updates but in the meantime we are working with employees and companies to help them plan for the likely scenarios to come out of that guidance.</p>
<p><b>Q: Is there any other way I can compensate my employees?</b></p>	<p><b>A:</b> We are assisting employees and companies on using EMI Options as a way to compensate key employees who may, in the immediate short term, be subject to a reduction in other forms of remuneration.</p>

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