



EMI Schemes: How To Avoid The Pitfalls

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A Word From Today's Chairman

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Today's Agenda

11:00 – 11:05	Chairman's Introduction
11:05 – 11:30	EMI Schemes: How To Avoid The Pitfalls
11:30 – 11:45	Questions & Answers



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EMI Options

How to avoid the pitfalls



UK tax-advantaged share awards

Choices, choices

- *Growth shares*
- *SIP (schedule 2 ITEPA)*
- *SAYE (schedule 3 ITEPA)*
- *CSOP (schedule 4 ITEPA)*
- *EMI (schedule 5 ITEPA)*

- *JSOPs / JOE plans*
- *Employee shareholder shares*

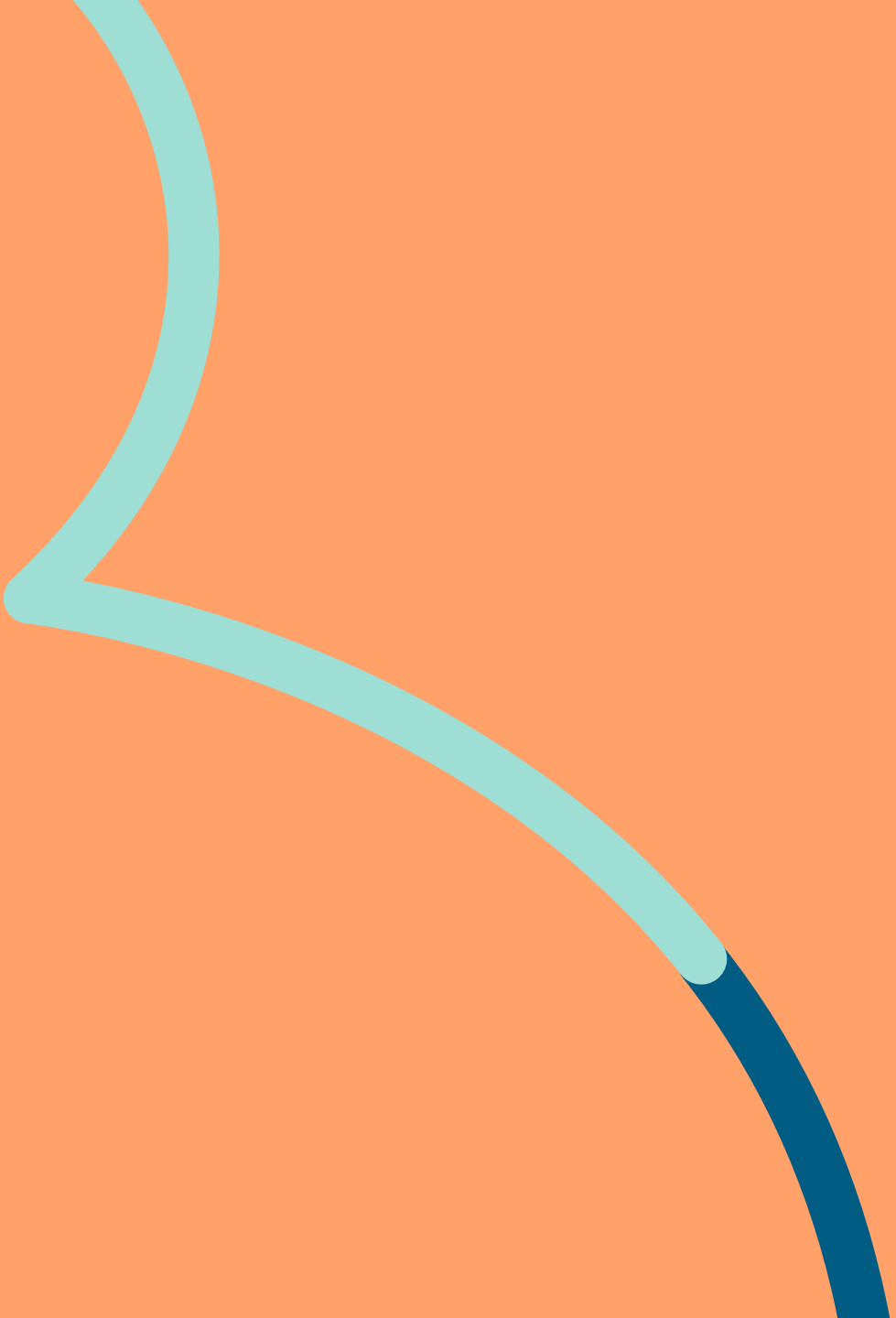


Tax delta

18%

v.

55.25%



“

"EMIs are simple and quick to operate ... They have been designed that way because smaller companies have told us they want an incentive that is simple to operate and flexible"

Economic Secretary (HM Treasury), House of Commons debate, 19 July 2000

Setting up an EMI scheme

Strict requirements

1. *Complex eligibility criteria*
 - *for the company*
 - *for the optionholders*
2. *Written agreements (and plan rules)*
3. *HMRC-approved valuation*
4. *Notifying HMRC following grant*
5. *Beware CSOP grants to the same individuals*





Running an EMI scheme

Maintaining effectiveness

- *Day-to-day compliance*
- *Annual reporting and record-keeping*
- *Monitoring changing requirements that could affect the scheme's qualifying status*

What's at stake if things go wrong?

Issues are not uncommon

- *Non-tax advantaged treatment*
 - *Income tax (and potentially NICs / PAYE)*
 - *Leap to 55.25% tax potentially*
- *Is there a tax indemnity? Not enough.*
- *Does not solve everything...*





Commercial impact

Disruption can be significant

- *Unhappy option holders*
 - *Motivation and retention post-completion*
 - *Expensive compensation*
 - *Claim?*
- *Further legal costs, tax analysis and documentation*
- *Delays to timelines*

Implementation pitfalls

A common problem area

- *HMRC notifications: missing/incorrect notifications, reasonable excuse code*
- *Valuation: timing/full disclosure*
- *Independence test & arrangements*
 - *Distress vs unacceptable swamping rights*
 - *Mutual understanding re a sale*
- *Other common errors: changing a fundamental term; use of general discretions; change in employment status*





Drafting pitfalls

Generally less problematic but beware DIY plans

- *Paragraph 37 of Schedule 5 (including that the option is granted under the provisions of Schedule 5)*
- *Consideration*
- *Exercise trigger*
 - *none*
 - *on completion*
- *Missing tax indemnity*

Transactional pitfalls

Planning and coordination is key

- *Cashless exercise not built into plan documentation*
- *Exercise timing*
 - *Bring forwards?*
 - *Beware of options lapsing*
- *Requirement to give notice*
- *Confidentiality*
 - *Split exchange and completion dates*
 - *Redacted agreements*
 - *Deed of accession*





Solutions?

Depends when issues are uncovered...

- *Take a view*
- *Approach HMRC*
- *Accept non-tax advantaged treatment*
 - *Pay employer NICs*
 - *Compensate option holders*
 - *Past liabilities?*
- *Tactical solutions*
 - *Specific indemnity*
 - *Insurance*
 - *Escrow*
 - *Reduce sale price*

Pre-emptive solutions

Prevention is cheaper than the cure

- *Invest in specialist advice upfront*
- *Establish strong operational processes*
- *Get a compliance health check*
- *Involve specialist advisors early in the transaction process (ideally before anything is set in stone)*



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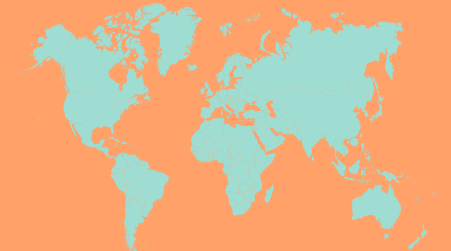


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WELCOME

In this issue

PRESIDENT'S COLUMN

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From the life president



Welcome to the fresh-minted Eso Centre.

Some readers will notice that the familiar 'Eso Centre' logotype is quietly giving way to Eso Centre to signify our full name - The Employee Share Ownership Centre.

The redundant 'p' has been left in the debris of the past, not because employee share ownership plans are any less important, but because they are no longer the whole story.

When the Centre was founded, the Employee Share Ownership Plan (Esop) was itself an exciting innovation. Today, employee share ownership is realised through many different mechanisms: SIPs, SAYE, CSOPs, EMI, EOTs and others. These vehicles continue to evolve, but they all serve a common purpose, enabling employees to share in the success of the enterprises they help to build. Our full name expresses that wider mission. The Centre exists not to champion specific vehicles, but to promote the broader concept and reality of employee share ownership in all its forms.

Successful enterprise creates wealth. A healthy society is one in which more people can share in that wealth through ownership as well as work. That has been the Centre's purpose since its foundation, and it remains our purpose today.

Malcolm Hurlston CBE

AWARDS

Nineteenth *newspad* share plan awards launch

The *newspad* employee share plan awards recognise organisations that have demonstrated outstanding achievement in employee share ownership and hold up best practice models for other companies to follow.

If your company or client made a notable contribution to employee share ownership, issued an inspirational share plan, or showed excellence in its communication and presentation; been creative in using share plans to overcome significant changes or challenging situations, or maybe its chairman, CEO, or share plan team leader has upped the game with enthusiasm for employee share ownership; then why not tell the world about it?

Companies can nominate themselves or advisers can make submissions on behalf of clients. Entrants can apply for awards in more than one category. Submitting nominations is free and simple. Required information kept to a minimum. Clarity matters more than length. The deadline for nominations is **17:00 on Wednesday December 16 2026**.

The awards present a great opportunity to celebrate your company or clients' achievements.

The award categories this year are:

1. **Best all-employee share plan**
2. **Best equity scheme in a start-up or scaling company**
3. **Best share plan communications**
4. **Best share plan response to significant changes or challenging situations**

Guidance for entrants including category descriptions, judging criteria and rules of entry can be viewed on the [awards webpage](#).



FS Club Bulletins

From 43,000 curated sources, you get a machine summary of the key point(s) from forward-looking articles, not just article titles:

Machine Summary

(F.1.12) Reduced Inequalities

In September 2017, 101 world leaders agreed to 17 Global Goals for Sustainable Development. If these Goals are completed, it would mean an end to extreme poverty, inequality and climate change by 2030. One of the goals is to **Reduce inequality within and among countries**.

- If the distribution of income, income trends increase, and income trends follow CBO's projections, income inequality will be greater in 2025 than it is now.
- High growth over the past decade has been based on economic expansion, increasing the resulting growth in inequality and environmental cost will be critical to ensure social stability and to ensure strong sustainable growth in the coming decades.
- The income inequality observed in the past 20 years is a serious threat to future social mobility.
- America's policy approach to income inequality is a problem that will further increase income inequality of a time when income and wealth gaps are already widening.
- A failure to give the world's poorest regions needed to end their status as **poor** is a failure to achieve global goals aimed at ending poverty by 2030.
- Under French leadership, the 17 goals of the United Nations Sustainable Development Goals will be a key to ending poverty by 2030.
- Ending poverty requires progress in social problems and progress in **change in global inequality**, including in work poverty.
- Achieving the 17 Sustainable Development Goals, which include clean water, clean energy, sustainable cities, climate action, responsible consumption, reduced inequality and more, will require a major expansion of the welfare by 2030.
- The world leaders will be expected to address all these goals and inequality and change development policies to ensure that infrastructure helps lower well-being, health and sustainable cities.
- To achieve the 17 goals, including poverty by 2030, will require both **double-digit GDP growth** and double-digit **income inequality**, illustrating the scale of the economic challenges ahead.
- The income gap of up to \$100 billion will be the most critical challenge to achieving global inequality among countries and among social classes.

(F.3.0.5) Employee Share Ownership

Considering 75 percent of the 2019 global workforce (2.7 billion) is in the informal and Gig economy, it is critical that organizations take a proactive approach to **employee engagement** and in a way that is consistent with how the emerging generational workforce.

- Work will not be a traditional office-based design; understanding of workplace experience with design that meets office needs and employee wellness is a key to building a competitive work environment.
- For 2020, Global Productivity Data by McKinsey & Company (McKinsey Global Institute) has found that **employee engagement** is a key driver of productivity.
- With progress in income to the UK Corporate Governance Code, from 2019, companies will be required to report on employee engagement, as measured under this year for Financial Reporting Council.
- The UK has been leading in better business, the attitudes that drive employee behavior and income retention, using all to provide insight into **employee engagement** will be critical.
- By 2025, Artificial Intelligence (AI) will allow the rate of innovation in New Zealand to **increase by 1.5 times** in New Zealand by 2025.
- Artificial intelligence will be a key driver of productivity and improve employee productivity by 1.5 times in New Zealand by 2025.
- AI health benefits can **increase productivity** by 1.5 times a year, despite higher than inflation and less than the double-digit increase seen in years past.
- With a high labor cost, most businesses will see a **1.5 times a year** to **double** by 2025, **employee engagement** and happiness.
- Work in 2025 will be a key driver of productivity and income retention, using all to provide insight into **employee engagement** will be critical.
- Employee productivity has been on trend for years, but not to the same high levels as in 2018.
- By 2025, automation and artificial intelligence will **reduce employee engagement** in business shared service centers by 15 percent, while up to the RPA market will be 15% by 2025.
- The year, most organizations will look to employee retention, including in active programs aimed at creating, building and managing employee retention that includes services to assist in the selection process and ensure that an active role in the selection process is a key driver of productivity and income retention.

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Thank You For Listening

Forthcoming Events

- Wed, 14 October (13:30-17:30) Magical Thinking (in person)
- Wed, 21 October (18:00-20:30) Busan: Korea's Maritime Capital (in person)
- Thur, 29 October (09:00-09:40) Launch Of China Construction Bank Global Green Finance Index 18 (webinar)

Visit <https://fsclub.zyen.com/events/forthcoming-events/>

Watch past webinars <https://www.youtube.com/zyengroup>