

Share Incentives – an overview

Consideration	Share options	Restricted Shares
Complexity/documentation (Note: all choices require that the company documentation is reviewed and potentially amended)	<ul style="list-style-type: none"> Enterprise Management Incentive (EMI) scheme: more prescriptive documentation Unapproved: can take any form 	<ul style="list-style-type: none"> Necessary to have a legally binding document in respect of the rules which surround the share acquisition
Tax treatment	<ul style="list-style-type: none"> No charge on grant of option EMI: if market value, max charge is 18% Unapproved: similar to a cash bonus, could be 40% plus NIC (employee's 1%, employer's 12.8%) 	<ul style="list-style-type: none"> Similar tax treatment to an EMI option
Flexibility	<ul style="list-style-type: none"> Both types of option can be drafted with maximum flexibility 	<ul style="list-style-type: none"> It should be possible to cover all terms necessary in the share agreement/articles etc.
Issue of shares	<ul style="list-style-type: none"> Only on exercise. For example at the time of a company sale 	<ul style="list-style-type: none"> Immediately therefore there will be minority shareholders. Added complexity if an individual leaves before an exit event
Certainty	<ul style="list-style-type: none"> EMI: valuation is determined prior to the date of grant, therefore on grant the individual will be aware of tax treatment (other than CGT which will depend on sale value) Unapproved: valuation not required until exercise. As the tax/NIC is based on the valuation at the time of exercise it will not be possible to quantify the potential liabilities 	<ul style="list-style-type: none"> It is not possible to agree a valuation per share until after the date of issue. It is possible to formulate an opinion of what the valuation may be, but there will be a risk that this is not agreed by HMRC which could lead to a tax liability, or individuals paying in excess of the tax valuation
Interaction with potential sale by shareholder in the future	<ul style="list-style-type: none"> If the shareholder wants to exit before a company sale these shares can be acquired by an employee benefit trust (following a loan from the company) No immediate dilution to current shareholders 	<ul style="list-style-type: none"> Only possible to use them if the sale occurs at the same time as the individual entering into the agreement Immediate dilution to current shareholders