

## 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"> <li>Enterprise Management Incentive (EMI) scheme: more prescriptive documentation</li> <li>Unapproved: can take any form</li> </ul>	<ul style="list-style-type: none"> <li>Necessary to have a legally binding document in respect of the rules which surround the share acquisition</li> </ul>
Tax treatment	<ul style="list-style-type: none"> <li>No charge on grant of option</li> <li>EMI: if market value, max charge is 18%</li> <li>Unapproved: similar to a cash bonus, could be 50% plus NIC (employee's 1%, employer's 12.8%)</li> </ul>	<ul style="list-style-type: none"> <li>Similar tax treatment to an EMI option</li> </ul>
Flexibility	<ul style="list-style-type: none"> <li>Both types of option can be drafted with maximum flexibility</li> </ul>	<ul style="list-style-type: none"> <li>It should be possible to cover all terms necessary in the share agreement/articles etc.</li> </ul>
Issue of shares	<ul style="list-style-type: none"> <li>Only on exercise. For example at the time of a company sale</li> </ul>	<ul style="list-style-type: none"> <li>Immediately therefore there will be minority shareholders. Added complexity if an individual leaves before an exit event</li> </ul>
Certainty	<ul style="list-style-type: none"> <li>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)</li> <li>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</li> </ul>	<ul style="list-style-type: none"> <li>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</li> </ul>
Interaction with potential sale by shareholder in the future	<ul style="list-style-type: none"> <li>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)</li> <li>No immediate dilution to current shareholders</li> </ul>	<ul style="list-style-type: none"> <li>Only possible to use them if the sale occurs at the same time as the individual entering into the agreement</li> <li>Immediate dilution to current shareholders</li> </ul>

For further information or specific advice on the above please contact Craig Hughes on 0115 983 5595 or 07717 840596 or email [chughes@edftax.co.uk](mailto:chughes@edftax.co.uk).