QUOTED COMPANIES ALLIANCE

Enterprise Management Incentives (EMI): simplification of the process to grant options

Response to the HMRC consultation on EMI notification changes

QUOTED COMPANIES ALLIANCE

HM Revenue and Customs
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Enterprise Management Incentives (EMI): simplification of the process to grant options

Dear HMRC Colleagues,

The Quoted Companies Alliance (QCA) welcomes the opportunity to respond to this consultation on simplifying the process of granting Enterprise Management Incentives (EMI) options. The QCA represents the interests of the UK's small and mid-sized quoted companies, and the advisers and investors that support them.

We support the objective of simplifying the process to grant EMI options, and we recognise the removal of the separate notification as a helpful administrative simplification.

Companies must notify HMRC of an EMI option grant by 6 July following the end of the tax year in which the option was granted, a deadline that already aligns with the annual return but remains a legally distinct filing.

We are concerned that, as drafted, the legislation implies an EMI option is not qualifying until it has been notified through the end-of-year return. This creates a gap for options granted early in a tax year that are exercised before the end-of-year return has been submitted, for example, where a company is sold before its return is due, in circumstances not in contemplation at grant. Assuming HMRC is not willing to dispense with the EMI notification requirement, we urge HMRC to amend the draft legislation, or publish guidance, to close this gap and confirm that such options remain qualifying for EMI treatment at the point of exercise, provided their grant is notified by 6 July following the end of the tax year in which they were granted.

Separately, we are concerned by HMRC's public communication of this change. The policy paper heading and ERS Bulletin 68 both refer to the "removal of the notification", which, read on its own, could suggest the notification requirement is being removed rather than folded into the annual return. Companies operating EMI plans need to understand that they will still be required to notify grants through the end-of-year return, and that missing the 6 July deadline could mean options are not qualifying. We call on HMRC to ensure future communications state this clearly, so that companies do not mistake simplification for removal.

There is uncertainty around the implications of a company submitting its annual return late. Paragraph 53 of Schedule 5, which deals with time limits and the possibility of a reasonable excuse for delay, is retained. We call on HMRC to confirm whether a reasonable excuse claim is required in these circumstances, what penalty would apply for late notification of option grants, and, where reasonable excuse is accepted, that the options will not be invalidated simply because of the delay.

The QCA Share Schemes Expert Group has examined the proposal and advised this response from the viewpoint of small and mid-sized quoted companies. A list of Expert Group members can be found in Appendix A.

If you would like to discuss our response in more detail, please do not hesitate to contact us.

Yours sincerely,

Sheldon Brown
Head of Policy and Engagement
Quoted Companies Alliance

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1. Appendix

Appendix A: The Quoted Companies Alliance Share Schemes Expert Group can be found here: Share Schemes Expert Group

2. About the QCA

The Quoted Companies Alliance champions the UK's community of 1000+ small and mid-sized publicly traded businesses and the firms that support them: nomads, brokers, accountants, lawyers, registrars, consultants and investors.

We believe the public markets can be the best place for companies to source the funds to grow, operate transparently and distribute wealth, fairly.

The QCA seeks to influence policy in dialogue with regulators and government, showcase the latest thinking on leadership, investment, technology and governance through our events and research, and provide a forum to share good practice among our members, whose market capitalisations range from £1m to more than £1bn and are quoted on the Main Market, AIM and the Aquis Stock Exchange.

Informed by our seven Expert Groups drawn from the membership, we campaign to ensure that regulation is proportionate, while maintaining the necessary protections for investors. Our QCA Corporate Governance Code is followed by the majority of AIM companies.

Small and midcap companies represent 91% of the quoted sector. They employ around 2.1m people and contribute more than £25bn in annual taxation.

Our goal is to create an environment where their potential is fulfilled, helping to ensure a healthy and resilient UK economy.

Quoted Companies Alliance

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