

**EXPLANATORY MEMORANDUM TO  
THE INCOME TAX (LIMITS FOR ENTERPRISE MANAGEMENT  
INCENTIVES) ORDER 2012**

**2012 No. 1360**

**1.** This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This Order provides that the maximum total value of shares in respect of which qualifying Enterprise Management Incentives share options may be granted to an employee is increased from £120,000 to £250,000 with effect from 16 June 2012.

2.2 This Order will take effect from 16 June 2012.

**3. Matters of special interest to the Select Committee on Statutory Instruments**

None.

**4. Legislative Context**

4.1 The legislation on EMI is contained in sections 527 - 541 and Schedule 5 to Income Tax (Earnings and Pensions) Act 2003. This Order amends section 536(1)(e) of, and paragraphs 5(1)(a), 6(1) and 6(3) of Schedule 5 to, Income Tax (Earnings and Pensions) Act 2003.

4.2 This Order is made under paragraph 54 of Schedule 5 to Income Tax (Earnings and Pensions) Act 2003.

**5. Territorial Extent and Application**

This Order applies throughout the United Kingdom.

**6. European Convention on Human Rights**

Although subject to the negative resolution procedure, this instrument amends primary legislation.

The Exchequer Secretary to the Treasury, David Gauke, has made the following statement regarding Human Rights:

“In my view the provisions of the Income Tax (Limits for Enterprise Management Incentives) Order 2012 are compatible with the Convention rights.”

## **7. Policy background**

- *What is being done and why*

7.1 The EMI scheme provides tax and National Insurance contributions (NICs) advantages for qualifying share options granted by companies with gross assets not exceeding £30 million, to help them recruit and retain employees. In addition to the gross assets test, EMI is limited to companies or groups which are independent and whose trade does not consist in excluded trading activities.

7.2 Currently, an employee may not hold unexercised qualifying EMI options (which includes for these purposes any unexercised Company Share Option Plan options also granted to that employee), over shares with a total market value of more than £120,000 at date of grant. The limit applies to options granted by the employing company or by companies which are members of the same group of companies.

7.3 The Order increases the limit for unexercised qualifying EMI options to £250,000 in order to help small and medium enterprises recruit and retain high calibre employees.

## **8. Consultation outcome**

8.1 No consultation has been undertaken, since this Order relates to straightforward changes to the amount that qualifying businesses may offer to their employees.

## **9. Guidance**

9.1 HMRC already publish guidance on the detailed working of EMI. This guidance will be updated to take account of the change made by this Order.

## **10. Impact**

10.1 This measure is designed to help small and medium enterprises carrying on a qualifying trade recruit and retain high calibre employees. No additional one-off or on-going costs to businesses are expected from this change. The change applies only to those businesses that choose to offer tax-advantaged EMI options to their employees. Where a qualifying business does grant EMI options, the change will increase the maximum value of the options that can be offered to an employee.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note covering this instrument was published on 21 March 2012 alongside Budget 2012 and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 No special action has been taken to minimise the impact of the requirements on firms employing up to 20 people. The change applies only to those small businesses that choose to offer tax-advantaged EMI options to their employees. Given EMI's qualifying criteria, the changes will benefit small and medium enterprises with fewer than 250 employees and assets not exceeding £30m that are carrying on a qualifying trade. There will be no resulting additional impact for firms employing up to 20 people.

## **12. Monitoring & review**

12.1 HMRC will monitor the number and value of options granted and exercised and the costs of the tax reliefs using the published National Statistics. General scrutiny of the working of EMI to ensure it is not subject to abuse will focus in particular on the impact of the increased limit.

## **13. Contact**

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