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**Enterprise Management Incentives**

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Draft legislation and Explanatory Note  
9 December 2009

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## Introduction

Enterprise Management Incentives (EMI) is a tax and National Insurance contributions advantaged share option scheme introduced in Finance Act 2000. It is aimed at smaller, higher-risk companies to help them recruit and retain key employees. In order to qualify for EMI, a company has to meet various conditions with respect to its size, independence and trading activities.

The Government has been engaged in negotiations with the European Commission to meet its legal obligation to demonstrate that the rules governing EMI comply with the appropriate guidelines and treaties regarding the provision of State Aid. The Commission has agreed to grant EMI State Aid approval until April 2018 subject to a change to the current rules that require a qualifying company's activities to be "wholly or mainly" in the UK. This will be changed so that a company is only required to have a "permanent establishment" in the UK.

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## **Chapter 1 – Draft Legislation**

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The draft legislation is set out on the following page.

**2 Enterprise management incentives**

- (1) Schedule 5 to ITEPA 2003 (enterprise management incentives) is amended as follows.
- (2) In paragraph 8 (qualifying companies: introduction), after the entry relating to “independence” insert—  
“UK permanent establishment (see paragraph 9A),”.
- (3) After paragraph 9 insert—  
*“The UK permanent establishment requirement*  
  
9A The UK permanent establishment requirement is that the company has a permanent establishment in the United Kingdom.”
- (4) In paragraph 15(1) (meaning of “qualifying trade”), omit paragraph (a) (requirement that trade be carried on wholly or mainly in United Kingdom).
- (5) The amendments made by this section have effect in relation to options granted on or after 6 April 2010.

## Chapter 2 – Explanatory Note

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### CLAUSE X: ENTERPRISE MANAGEMENT INCENTIVES

#### SUMMARY

1. Clause x amends the qualifying company rules in the EMI legislation, which is designed to allow smaller companies to grant share options with tax and National Insurance contributions (NICs) advantages to their employees. It removes the requirement that a company granting qualifying EMI options to its employees has to operate ‘wholly or mainly’ in the UK. Instead a company granting qualifying options is now required to have a ‘permanent establishment’ in the UK. The change will have effect in relation to EMI options granted on or after 6 April 2010.

#### DETAILS OF THE CLAUSE

2. Subsection (1) provides for Schedule 5 to the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) (EMI: qualifying companies) to be amended.
3. Subsection (2) inserts a ‘UK permanent establishment’ requirement in paragraph 8 of Schedule 5 to ITEPA.
4. Subsection (3) inserts a new paragraph 9A in Schedule 5 to ITEPA, with an explanation of the UK permanent establishment requirement.
5. Subsection (4) removes the requirement that the qualifying trade be carried on ‘wholly or mainly’ in the UK contained in paragraph 15(1)(a) of Schedule 5 to ITEPA.
6. Subsection (5) provides that the amendments will apply to EMI options granted on or after 6 April 2010.

#### BACKGROUND NOTE

7. EMI is a tax and NICs advantaged share option scheme introduced in Finance Act (FA) 2000. It is aimed at smaller, higher-risk companies to help them recruit and retain key employees.
8. In order to qualify for EMI, a company has to meet various conditions with respect to its size, independence and trading activities.
9. A company can only grant qualifying EMI options if it has gross assets of less than £30 million. If the company granting the EMI options is a parent company, the assets are those of the parent company and its qualifying subsidiaries.

10. The clause removes the requirement that a company granting EMI options to its employees has to operate 'wholly or mainly' in the UK. A company granting EMI options is now required instead to have a 'permanent establishment' in the UK.
11. 'Permanent establishment' has the same meaning as in section 148 of FA 2003.
12. This change will ensure that EMI continues to meet EU State Aid guidelines.