ZAZEN TAX

EMI Scheme Setup

About an hour before the first grant. EMI is the most generous share scheme HMRC offers, and almost every way it fails is procedural: the valuation not agreed, the notification missed, the working-time declaration never signed. The order below is the order that works.

Company .... **Option pool** .... **Scheme date** ....

Do not let a template provider skip steps one and two. Options granted by a company that never qualified are unapproved options with EMI paperwork, and the difference, as the Share Options Tax Calculator shows, is thousands per employee at exit.

1. Qualify the company — about 10 minutes

- [ ] **Gross assets £30 million or less at grant**
  Balance sheet total, group-wide. Check it the week of grant, not the week the lawyers started.
- [ ] **Fewer than 250 full-time equivalent employees**
  Count part-timers as fractions. Breaching later does not undo existing options; breaching at grant undoes everything.
- [ ] **Independent, with a qualifying trade**
  No parent company controlling you, and the trade not on the excluded list: banking, property development, legal services and a few others. Software qualifies.

2. Qualify the people and the pool — about 10 minutes

- [ ] **Each option holder works 25 hours a week, or 75 per cent of their working time, for the company**
  The statutory working-time requirement, declared in writing at grant and kept with the agreement.
- [ ] **No holder has a material interest above 30 per cent**
  Counting shares they already own with associates. Founders topping up usually fail here, not on working time.
- [ ] **Stay inside the limits: £250,000 per employee, £3 million company-wide**
  Both measured at grant-date unrestricted market value, the employee limit over a three-year look-back. Grants beyond the limits are unapproved from the excess share onward.

3. The valuation — about 15 minutes

- [ ] **Agree the value with HMRC on form VAL231 before granting**
  Propose the actual market value and the unrestricted market value; HMRC's agreement usually arrives in weeks and removes the argument later.
- [ ] **Grant within the agreement's 90-day window**
  An agreed valuation only protects grants made within 90 days. Renegotiate or reconfirm if the round slips.
- [ ] **Set the strike at or above the agreed actual market value**
  At or above AMV means no income tax at exercise: the whole gain waits for CGT. A discounted strike is legal but taxes the discount as income at exercise.

> **6 JULY, EVERY YEAR, EVEN NIL**
> Options granted from 6 April 2024 are notified through the ERS annual return by 6 July after the tax year of grant. Miss the notification and the option is simply not an EMI option. The return is then due every year the scheme exists, even when nothing happened.

4. Grant and notify — about 15 minutes

- [ ] **Board approves the grants; agreements signed with the working-time declaration inside**
  The agreement states the strike, the vesting schedule and the restrictions on the shares. The declaration is the piece diligence most often finds missing.
- [ ] **Register the scheme on HMRC's ERS service before the first return**
  Registration takes days and the return cannot be filed without it. Do it at grant, not in June.
- [ ] **File the ERS annual return by 6 July after the tax year**
  Grants, exercises, lapses and nil returns alike. Late filing draws automatic penalties; a missed grant notification costs the EMI status itself.
- [ ] **Record every grant in the register the day it happens**
  Holder, date, shares, strike, vesting, cliff. The EMI Register workbook is the running record diligence asks for.

5. Keep it qualifying about 10 minutes

- [ ] **Watch for disqualifying events**
  The holder leaving, working time dropping, the company being taken over. Tax protection is preserved only if the option is exercised within 90 days of the event.
- [ ] **Remember the BADR clock runs from grant**
  EMI shares take business asset disposal relief at 18 per cent once two years have passed since grant, with no five per cent holding test. Early exercise is rarely needed to start the clock.
- [ ] **Re-run the limits before every new grant round**
  Pool remaining, £3 million headroom, each holder's £250,000 room. The register computes them; read it before the board minute, not after.

Zazen Tax

Accountants for software companies. zazentax.com/contact

General information, not advice for your circumstances. Rates and thresholds are 2026/27 for the UK and change from time to time. Share scheme items reflect EMI notification rules for options granted on or after 6 April 2024.