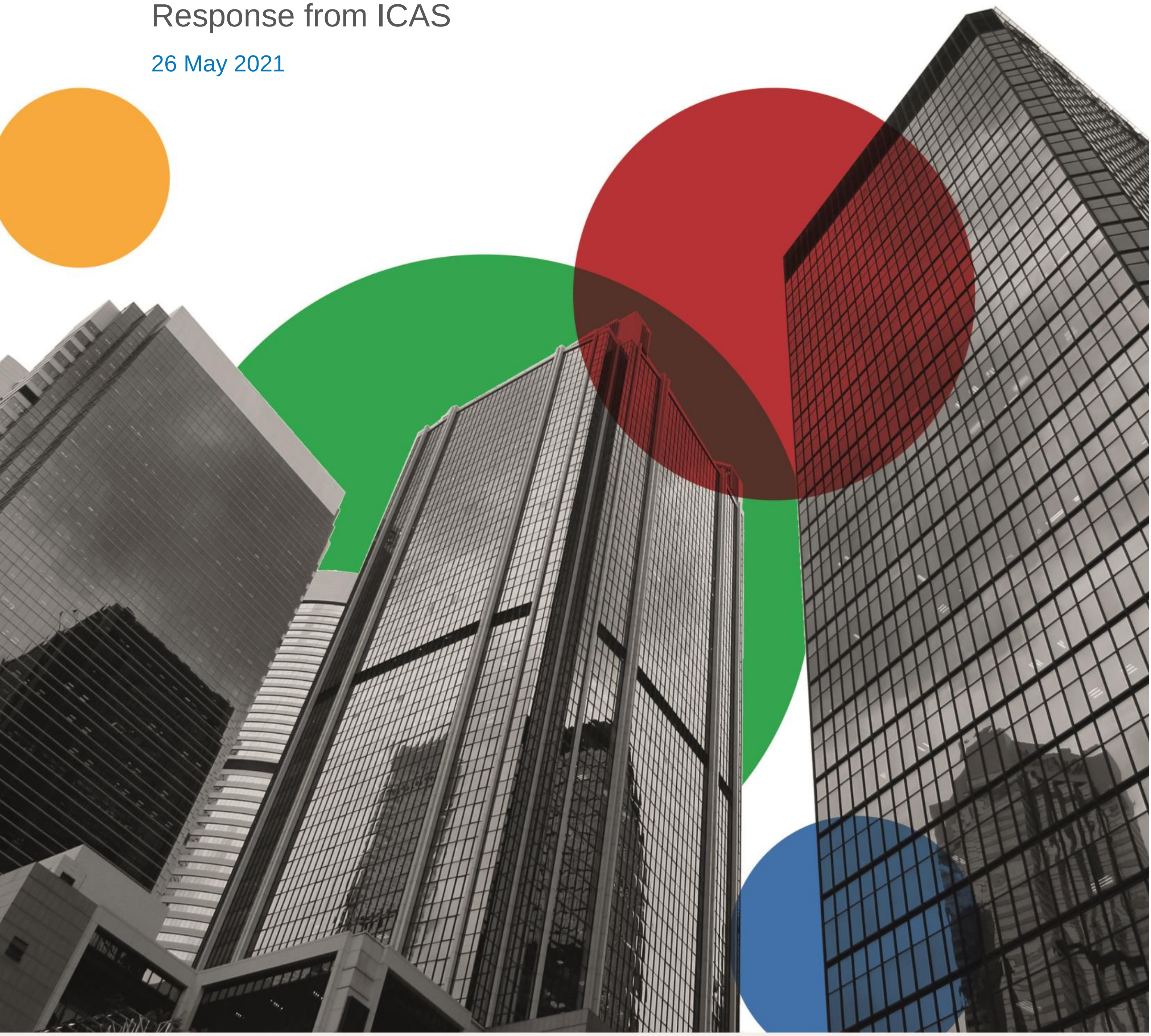
Enterprise Management Incentives: Call for Evidence – HM Treasury

Response from ICAS

26 May 2021



About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 22,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. Approximately 10,000 of our members are based in Scotland and 10,000 in England. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good.

2. The following submission has been prepared by the ICAS Tax Board. The Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community; it does this with the active input and support of over 60 committee members.

General comments

3. ICAS is pleased to be able to provide a response to the call for evidence in relation to Enterprise Management Incentives, issued by HM Treasury on 3 March 2021.

4. We have responded to some of the specific questions in the call for evidence as detailed below.

Specific questions

Question 6: To what extent do you agree/disagree that the EMI scheme is fulfilling its policy objective of helping SMEs recruit employees?

5. EMI is seen by those businesses who are eligible to use it and then actually use it, as well as the employees who are aware of it and participate in it, as an extremely effective recruitment tool.

6. The main difficulty with EMI in achieving its policy objective is that it is complex. Business owners that are not particularly tax savvy can easily fall foul of the requirements and timetabling (especially at the outset) even with assistance from tax professionals, and thereby end up with a non-qualifying scheme, which can be expensive and potentially result in an adverse reaction from employees.

Question 7: To what extent do you agree/disagree that the EMI scheme is fulfilling its policy objective of helping SMEs retain employees?

7. EMI is very widely used, and acts as an excellent retention tool provided the employees concerned understand and value the options and have an appreciation of the prevailing market conditions. Furthermore, it can promote a healthy level of engagement between scheme participants and owners in terms of how the business can flourish over time.

8. In our experience, the IT and web-based business sectors as well as start-up companies are very keen on the idea of EMI to aid talent attraction and retention. The expectations amongst those workers are high – especially in those aged mid 30's to mid-40's at executive level. However, for some, EMI does not engender loyalty – the employees move on to bigger and better things if they are sufficiently tempted.

9. One downside of EMI is that the scheme can be exclusive to certain employees who are viewed as key to the business, or where the scheme has reached its maximum number, potentially acting as a disincentive to others within the same business whose reward may not be comparatively as beneficial (and who may be aware of the existence of the EMI in their company).

Question 8: To what extent do you agree/disagree that the EMI scheme is fulfilling its policy objective of helping SMEs grow and develop?

10. There is no doubt that for many qualifying SMEs, EMI is assisting growth and development – and the concept is well known for producing results.

11. However, as stated in paragraph 6 above, the EMI is complex – this alone can put some qualifying SMEs off. Ideally there needs to be more communication and guidance on how complex EMI actually is and how closely monitored (by HMRC) the schemes are. This is not a concept for amateurs and to this end, if EMI is to be expanded, it would be helpful if it could be simplified and have a lot less administration attached to it, which can become expensive for the client in terms of professional fees. It is perhaps worthy of a project by the Office of Tax Simplification.

12. A good example of unnecessary complexity is the notification process – this seems to be a 'one way street' whereby the notifications are never seen again once submitted through ERS. Ideally HMRC could issue a record of these to the employer to ensure their records tally with those of the employer and nothing has been missed. (HMRC used to issue such a notice, so it would be helpful if this could be reinstated, or a record of all notifications shown clearly on the online registration portal.) It is also not possible for an employer to correct a notification made though ERS.

13. The return on investment of EMI is largely dependent on how tax savvy the employer is. Additionally, there are issues with non-share scheme specialist tax advisers dabbling in EMI and other share schemes which can lead to problems as well as fall foul of Professional Conduct in Relation to Taxation (PCRT) guidelines. SME businesses can find that they have been inexpertly advised and have fallen foul of the strict criteria and rules.

Question 9: In your view, what aspect of the EMI scheme is most valuable in helping SMEs with their recruitment and retention objectives?

14. Undoubtedly, the flexibility of the EMI is its biggest asset because it can be structured in a way which suits the business.

Question 15: In your view, how does the tax-advantaged employee share schemes' offer in the UK compare with other countries?

15. The UK is generally considered to have more tax-advantaged share schemes compared to other countries apart from perhaps the United States, who are on a par with the UK in terms of focusing on growing businesses through investment and incentivisation of key workers. Other countries, Ireland being an example, are not as focussed on tax-advantaged share schemes.

Question 17: In your view, do the current EMI scheme criteria have a distorting effect on companies' growth insofar as the companies try to remain within the scheme's limits?

16. SMEs who grow beyond the limits of EMI can and do turn to alternative mechanisms to recruit and retain, such as growth shares, or fall back on more traditional remuneration methods such as unapproved options or cash bonuses.

17. That said, EMI is ripe for review. The qualifying conditions, independence test and growth assets test (which is potentially open to manipulation) all need to be re-evaluated to move with the times and align with the businesses and technologies which exist now and over the medium future term.

18. It is not particularly clear, for example, why future control by another business should automatically disqualify a business with EMI share options – this can stifle business growth and opportunities. Likewise, Private Equity-backed companies are automatically disqualified – it is not clear why this is necessary - and it may be worth examining how this could be changed.

19. A qualifying trades review would be most helpful, and consideration should be given to including other businesses such as those granting licences and royalty fees.

Question 18: In your view, could widening the current eligibility criteria to support larger companies affect smaller companies' ability to recruit and retain employees?

20. If larger companies were eligible to operate EMI, this would be likely to adversely affect the attractiveness of emergent SMEs in the eyes of the talent pool, apart from in the most risk-prone cases who enjoy the thrill of the chase.

21. There has to be something which an SME can offer a talented individual other than just money, because often money is in short supply and economies of scale mean that SMEs simply have materially less to offer.

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