



Enterprise Management Incentives: extending access for academic employees

Consultation document

Publication date: 27 June 2012

Closing date for comments: 18 September 2012

Subject of this consultation:	The Government's announcement at Budget 2012 that it would extend access to the Enterprise Management Incentives (EMI) scheme for academic employees of qualifying companies. This change will be subject to State aid clearance by the European Commission before it can be implemented.
Scope of this consultation:	A proposed relaxation of the EMI working time requirement for academic employees of companies eligible to issue EMI share options.
Who should read this:	Small or medium sized businesses eligible to issue EMI share options; academic employees of these companies; and professionals who advise businesses on EMI.
Duration:	27 June – 18 September 2012.
Lead official:	Andrew Ellis, HM Revenue and Customs.
How to respond or enquire about this consultation:	Responses, enquiries about the content or scope of the document, and requests for hard copies should be sent to Savings and Share Schemes Team, Room G53, 100 Parliament Street, London SW1A 2BQ; or by email to: shareschemes@hmrc.gsi.gov.uk .
Additional ways to be involved:	As the issue is a largely technical one, it is assumed that those wishing to offer comments will mainly do so in writing or electronically. However, HMRC will be willing to consider meeting stakeholders to discuss issues if that would be helpful. Requests for meetings should be made to the postal or email address above.
After the consultation:	Details of the Government's response to this consultation will be published in autumn 2012.
Getting to this stage:	This is the first stage of consultation on this measure, which was announced at Budget 2012.
Previous engagement:	There has been no previous consultation on this issue.

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1. Introduction

Enterprise Management Incentives

1.1 Income tax and National Insurance Contributions (NICs) are normally due where an employer awards shares or share options to its employees. However, the Enterprise Management Incentives (EMI) scheme allows certain companies with assets of less than £30 million and fewer than 250 full-time equivalent employees to award tax advantaged share options to selected employees. EMI is designed to help smaller, high risk companies recruit and retain staff with the skills and abilities they require to grow and succeed.

1.2 EMI is a popular and successful scheme which each year enables around 20,000 employees to obtain options over shares with a total value of around £250 million, and provides tax advantages on exercise of these options of around £200 million. The Government announced measures at Budget 2012 further enhancing the benefits available under EMI, including an increase in the value of options that can be granted to an employee, as well as further support to assist start up companies wishing to access the scheme.

Conditions to be met by qualifying EMI options

1.3 Legislation sets out various conditions that must be met if a share option granted by a company to an employee is to be a qualifying EMI option. For example:

- The option must be granted for commercial reasons to recruit or retain employees in a company, and not as part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax.
- The value of qualifying options held by an employee must not exceed prescribed limits.
- The company (or if that company is a parent company, the company and its subsidiaries) must meet various conditions, in particular as regards size, number of full time employees and the type of trade being carried on.
- Employees must meet certain conditions, such as not having a 'material interest' in the company in question (or if that company is a parent company, in any group companies) and committing a particular amount of their working time to the business of the company or group (the 'working time requirement').

1.4 This **working time requirement** is the main focus of this consultation. To be eligible to receive an EMI option, an employee must broadly work at least 25 hours a week (or, if less, 75 per cent of their working time) on the business of the company over whose shares the EMI option is granted (or, where the company is a parent, the business of the group). This requirement is designed to ensure that the tax advantages of EMI are available only to those employees who commit a significant part of their working time to their employer's business.

Why the Government is consulting

1.5 The Government announced at Budget 2012 that it would consult on extending access to EMI for academics employed by a qualifying company.

1.6 Academic employees who develop ideas or research into commercial products can play an important role in the success of a business. However, such employees may sometimes only work part time for a company, for example where they also have teaching or other academic commitments with a university or similar institution. This can make it difficult for these employees to satisfy the EMI working time requirement.

1.7 The purpose of this consultation is to identify an appropriate way to amend the legislation, so that EMI options may be offered by a qualifying company to academic employees who do not satisfy the present EMI working time requirement.

1.8 Where academic employees already satisfy the current EMI working time requirement, it is not proposed that they should also have to satisfy the proposed conditions set out in this consultation to be eligible to receive EMI options. These proposals are designed to relax the working time requirement for those academic employees who do not currently qualify for EMI options.

1.9 Chapter 2 of this document discusses in detail the issues to be addressed in the consultation and the policy objectives, and poses various questions. The Government welcomes views on how these objectives may best be achieved.

How the consultation will be carried out

1.10 This consultation will run from 27 June to 18 September 2012.

1.11 A summary of the questions in this consultation is included at Chapter 4. Details of how to respond are set out at Chapter 5.

1.12 As this is a largely technical issue, this consultation will be a primarily a written exercise. However, HMRC will be willing to consider requests for meetings with interested stakeholders where that would be helpful.

1.13 At the end of the consultation the Government will consider responses. Details of the Government's response to this consultation will be published in autumn 2012, together with draft legislative clauses for Finance Bill 2013. This is, however, subject to the proviso that EMI is a notified State aid, and changes to the EMI legislation or other aspects of the scheme must be cleared with the European Commission before they can be implemented.

Scope of the consultation

1.14 This consultation is only concerned with the limited issue of allowing access to EMI for certain academic employees who do not currently meet the working time requirement.

1.15 The Government is not seeking views during this consultation on broader issues, such as:

- whether there are employees other than academics for whom the present EMI working time requirement should be relaxed;
- the limits that apply to the value of EMI options that may be held by an employee or granted by a company;
- the requirement that EMI options may only be issued to employees of a qualifying company or group; or
- the features or requirements of any tax advantaged employee share scheme other than EMI.

2. Extending access to EMI for academic employees

Broad parameters of consultation

2.1 EMI provides generous tax and NICs reliefs on qualifying share options for both companies and employees. The rules of EMI are designed to ensure that these reliefs are effectively targeted.

2.2 The Government wishes to introduce a relaxation of the EMI working time requirement to allow certain academic employees who are unable to satisfy the present requirement to be eligible to receive EMI options. This may be the case, for example, because part of their working time is committed to academic activities at a university or research institution.

2.3 The aim of this consultation is to identify an approach that ensures that any extension to EMI will be properly targeted on those academic employees engaged in relevant work developing products and ideas for a qualifying company, while at the same time taking account of:

- simplicity and ease of use for EMI qualifying companies and employees;
- the requirement that EMI options can only be granted for the purpose of recruiting or retaining an employee in a company;
- the nature of EMI as a targeted employee share option scheme for small and medium sized businesses;
- the need to protect the scheme from abuse; and
- the desirability of ensuring that, where appropriate, any new rules and definitions are based on provisions currently used within the tax system, with which businesses may already be familiar.

2.4 In designing a targeted relaxation of the current EMI working time requirement, there are at least three broad questions that need to be addressed:

- How should 'academic employee' be defined for the purposes of the proposed relaxation?
- What minimum level of commitment to the business of the company or group would an academic employee need to make, in order to qualify?
- What qualifying requirement should there be as to the type of activity an academic employee is carrying out for the company or group?

2.5 In order to consider these issues further, the Government would welcome responses on the following:

Question 1: Can you provide details and evidence on the typical working patterns and arrangements of academic employees engaged by EMI qualifying companies – for example, whether this involves a regular and permanent weekly commitment of time, or whether working time is concentrated at particular times of the academic year?

2.6 This Chapter focuses on each of these issues in turn, and poses detailed questions.

How should 'academic employee' be defined?

2.7 The aim of the proposed relaxation to the EMI working time requirement is to recognise that some academic employees of EMI companies¹ may be unable to satisfy the present requirement because of academic commitments at a university or research institution.

2.8 Against the parameters for this consultation discussed above, the Government envisages that an 'academic employee' should be defined for the purposes of the proposed relaxation broadly as a person who is working in an academic field at a university or similar educational or research institution.

2.9 Sections 451–460 Income Tax (Earnings and Pensions) Act 2003 (ITEPA) concern tax and shares in research institution spin-out companies. While not relating to EMI, section 457 ITEPA contains a definition of 'research institution', as follows:

457 Meaning of "research institution"

(1)"research institution" means —

(a) any university or other institution that is a publicly funded institution as defined in section 41(2) of the Higher Education Act 2004, or

(b) any institution that carries out research activities otherwise than for profit and that is neither controlled nor wholly or mainly funded by a person who carries on activities for profit.

(2) The Treasury may by order amend subsection (1) to include in or exclude from the definition of "research institution" a person specified in the order or persons of a description specified in the order.

2.10 The Government recognises the potential benefit of using legislative definitions with which businesses and advisers may already be familiar, and which work effectively for other purposes of the tax system. It proposes therefore that to be eligible for the relaxation in the EMI working time requirement, **an academic employee should be defined as a person who, in addition to their employment on the business of an EMI company, also works in an academic field for a research institution as defined in section 457 ITEPA.**

¹ Where the expressions "the EMI company" or "EMI companies" are used in this consultative document, they should be read as meaning "the company [companies] whose shares are subject to the EMI option, or a qualifying subsidiary [subsidiaries] of that company [those companies]".

2.11 It is further proposed that where, after the issue of an EMI option, a change in the academic's working arrangements means that they no longer meet this definition of academic employee, that should be a disqualifying event for EMI purposes. Unless therefore the employee then satisfies the current general EMI working time requirement, the EMI option would need to be exercised within the 40 day period specified in the legislation in order to benefit from tax advantages.

Question 2: Would the proposed definition of an academic employee be effective in meeting the policy objective? If not, what alternatives could be used?

Question 3: Are there any cases where this proposed definition might exclude academic employees that ought to be covered by any relaxation of the working time requirement? Please provide specific examples.

What minimum level of commitment to the business of the EMI company would an academic employee need to make?

2.12 Effective targeting of EMI requires that employees who benefit should demonstrate a significant level of commitment to the EMI company. It would not be appropriate, for example, to allow individuals to benefit from EMI options where they spend only a small or even a nugatory amount of time working for a company.

2.13 To meet this policy objective the EMI legislation has always contained a requirement that employees must commit a specified minimum amount of their working time to the business of the EMI company. Successive governments have taken the view that this is the simplest and most appropriate test that may be applied for this broad purpose.

2.14 However, the Government accepts that the present working time requirement (25 hours a week or, if less, 75 per cent of the employee's working time to be committed to the EMI company) can create too high a threshold in the case of academic employees who also pursue other academic commitments outside the EMI company.

2.15 Against this background the Government considers that one possible approach to extending EMI for academic employees would be **to relax the current working time requirement to take into account relevant academic work for a research institution.**

2.16 Under such an approach, academic employees might satisfy the EMI working time requirement if:

- their average hours employed by the EMI company, and
- their average hours employed on relevant academic work for a research institution

when combined, are 25 hours or more per week. However, within this new working time requirement, a specified minimum number of average hours per week would need to be spent on the business of the EMI company.

2.17 Under this approach, similar arrangements could be put in place, on a pro rata basis, for academic employees whose total working time is less than 25 hours per week on average, but whose work for the EMI company and relevant academic work for a research institution, when combined, accounts for 75 per cent of their total working time.

2.18 For the purposes of this test, it is proposed that 'relevant academic work for a research institution' should be work relevant to the academic expertise for which the employee has been engaged by the EMI company. As at present, working time should take into account all remunerative work performed by the employee, including employment and any self employment.

2.19 It is further proposed that where, after the issue of an EMI option, a change in the academic's working arrangements means that they no longer meet the working time requirement set out above, that should be a disqualifying event for EMI purposes. Unless therefore the employee then satisfies the current general EMI working time requirement, the EMI option would need to be exercised within the 40 day period specified in the legislation in order to benefit from tax advantages.

Question 4: Is a modified working time requirement for academic employees a suitable approach? If not, what alternatives could be used?

Question 5: If a modified working time requirement for academic employees was adopted, what would be a reasonable average working time to be spent on the business of the EMI company, based on current practice; and over what period of time should this be applied? For example, it could be a set number of hours over a week, or over a longer period of time.

Question 6: Are there any cases where the proposed modified working time requirement for academic employees would be too restrictive? Please provide specific examples.

What requirement should there be as to the type of activity an academic employee is carrying out for the EMI company?

2.20 Two elements fall to be addressed under this heading.

2.21 **First**, the Government is concerned to ensure effective targeting of any relaxation to the EMI working time requirement. For example, it would not on the face of it be appropriate for any relaxation to apply where an academic employee's work for the EMI company had no connection with their own area of academic expertise. The Government proposes therefore that **the academic employee's work for the EMI company must be relevant to the academic discipline for which they are engaged by the research institution.**

Question 7: Would the proposed condition that the academic employee's work for the EMI company must be relevant to the academic discipline for which they are engaged by the research institution be a suitable approach? If not, what alternatives could be used?

2.22 The **second** issue is how to define the type of work the academic employee must be carrying out for the EMI company in order to benefit from the new relaxation.

2.23 As mentioned earlier, the Government recognises the potential benefit of using legislative definitions with which businesses and advisers may already be familiar, and which work effectively for other purposes of the tax system. Two alternative approaches, based on current legislative provisions, are therefore proposed for comment on their relative impacts and effectiveness.

Approach 1 - The academic employee must have been recruited to carry out research and development

2.24 Under this approach, a relaxation of the EMI working time requirement could apply for **academic employees recruited by the EMI company to carry out research and development, as currently defined in relation to relief against Corporation Tax.**

2.25 The relevant legislative provision is section 1138 Corporation Tax Act 2010, which (where relevant) defines research and development as follows:

1138 Research and development

...

(2) "Research and development" means activities that fall to be treated as research and development in accordance with generally accepted accounting practice. This is subject to subsections (3) and (4).

(3) Activities that are "research and development" for the purposes of section 1006 of ITA [Income Tax Act] 2007 as a result of regulations under that section are "research and development" for the purposes of this section.

(4) Activities that are not "research and development" for the purposes of section 1006 of ITA 2007 as a result of regulations under that section are not "research and development" for the purposes of this section.

(5) Unless otherwise expressly provided, "research and development" does not include oil and gas exploration and appraisal.

2.26 The effect of this provision is that the research and development is defined with reference to generally accepted accounting practice, modified for tax purposes by guidelines issued by the Department for Business, Innovation and Skills (BIS).

2.27 The relevant accounting standards for this purpose are Statement of Standard Accounting Practice 13², or if the company has adopted International Accounting Standards, IAS 38³. The BIS guidelines which modify these standards for tax purposes broadly provide that research and development activity takes place where a project seeks to achieve an advance in science or technology through the resolution of scientific or technological uncertainty. The advance being sought must constitute an advance in the overall knowledge or capability in a field of science or technology, not a company's own state of knowledge or capability alone. Further guidance and definitions are provided within the BIS guidelines⁴.

² <http://www.hmrc.gov.uk/manuals/cirdmanual/CIRD99100.htm>

³ <http://www.hmrc.gov.uk/manuals/cirdmanual/CIRD99200.htm>

⁴ <http://www.bis.gov.uk/assets/biscore/corporate/docs/r/rd-tax-purposes>

2.28 Under these rules, an activity will only be research and development for tax purposes where it is aimed at the resolution of scientific or technological uncertainty. However, the Government recognises that even after a scientific or technological uncertainty has been resolved, academics working for EMI qualifying companies can also play an important role in the subsequent development of a product or business idea.

2.29 The Government proposes therefore, if this approach was adopted, that where research and development activity ceases because the scientific or technological uncertainty has been resolved, that should not be a disqualifying event for EMI purposes, so long as:

- the academic was recruited by the EMI company to work on activities which qualify as research and development as defined above;
- after that research and development work has ceased, the academic remains employed by the EMI company in activities relevant to their academic expertise; and
- the academic employee continues to meet the other relevant requirements of the EMI scheme.

Approach 2 - The academic employee must have been recruited in connection with research relating to intellectual property

2.30 Under this approach, a relaxation of the EMI working time requirement could apply for **academic employees recruited by the EMI company in connection with research relating to that company's intellectual property.**

2.31 It is proposed that, if this approach was adopted, intellectual property should be defined with reference to section 456 ITEPA, which (where relevant) provides as follows:

456 Meaning of "intellectual property"...

...*"intellectual property" means—*

(a) any patent, trade mark, registered design, copyright or design right, plant breeders' rights or rights under section 7 of the Plant Varieties Act 1997,

(b) any right under the law of a country or territory outside the United Kingdom corresponding to, or similar to, a right within paragraph (a),

(c) any information or technique not protected by a right within paragraph (a) or (b) but having industrial, commercial or other economic value,

(d) any licence or other right in respect of anything within paragraph (a), (b) or (c),
or

(e) any goodwill (having the meaning that it has for accounting purposes) associated with anything within paragraphs (a) to (d).

(2) The Treasury may by order amend the definition of "intellectual property" in subsection (1).

2.32 It is recognised that this approach may provide a broader definition of the work to be carried out by an academic employee than an approach that requires the academic to be engaged in research and development. However, this approach would only be of benefit to those EMI qualifying companies who hold rights to intellectual property, as defined above.

Question 8: Do you have any views on the relative merits, including potential scope, impact, costs and benefits, of the two proposed alternative approaches to defining the type of work the academic employee must be carrying out for the EMI company in order to benefit from the new relaxation?

Summary

2.33 The proposal in this consultation document is that the EMI working time requirement should be relaxed, so that EMI options can be issued to academics who meet the following conditions:

- The academic is an employee of the company whose shares are subject to the EMI option (or a qualifying subsidiary of that company), but also works in an academic field for a research institution as defined in section 457 ITEPA.
- The academic employee meets a relaxed working time requirement, whereby their average hours employed by the EMI company, together with their average hours employed on relevant academic work for a research institution, when combined, are 25 hours or more per week (or, if less, 75 per cent of their working time). Within this new working time requirement, a specified minimum number (or proportion) of average hours per week would need to be spent on the business of the EMI company.
- The academic employee's work for the EMI company must be relevant to the academic discipline for which they are engaged by the research institution.

Either:

- The academic was recruited by the EMI company to work on activities which qualify as research and development in accordance with section 1138 Corporation Tax Act 2010.

Or

- The academic was recruited by the EMI company in connection with research relating to that company's intellectual property. Intellectual property for this purpose would be as defined in section 456 ITEPA.

2.34 The Government would welcome general views on the proposals set out in this consultation, and in particular on the following:

Question 9: Overall, do these proposals represent an appropriate and workable basis for relaxing the EMI working time requirement for academic employees?

Question 10: What impact would these proposals have for the number of academics eligible to receive EMI share options?

Question 11: Would these proposals present any difficulties of implementation for businesses?

Question 12: What impact would these proposals have for businesses in terms of one-off or continuing costs / savings?

3. Tax Impact Assessment

Summary of Impacts

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17
Economic impact	<p>This measure is expected to have a cost, the magnitude of which will depend on the outcome of this consultation. The final costing will be subject to scrutiny by the Office for Budget Responsibility, and will be set out at Budget 2013.</p> <p>These changes may benefit small and medium enterprises that have academic employees. It is expected to have no significant macroeconomic impacts.</p>				
Impact on individuals and households	<p>Individuals participating in EMI currently benefit from tax and NICs relief. EMI also enables these individuals to own a stake in the companies for which they work, and to share in the growth of these companies.</p> <p>The changes proposed in this consultation will encourage further take up of EMI options by the target category of employees, by removing a potential barrier to their participation.</p> <p>Further assessment of any impact on individuals and households will be informed by this consultation.</p>				
Equalities impacts	<p>Data from the Higher Education Statistics Agency shows that in 2011/12 55.8 per cent of academic staff at UK Higher Education Institutes were male and 87.6 per cent white. Information about other protected characteristics, and about the subset of academics who will be granted EMI options as a result of the proposed changes, is not known. However, it is not anticipated that the proposed changes within this consultation would impact disproportionately on any individuals with protected characteristics. Further assessment of potential equalities impacts will be informed by this consultation.</p>				

Impact on businesses and Civil Society Organisations	<p>No business is required to offer EMI options, but the available evidence suggests that those businesses which do offer schemes report positive benefits. These include benefits in relation to recruitment and retention of employees and in the flexibility of remuneration packages. Businesses offering EMI options can also benefit from relief of employer NICs and a Corporation Tax deduction.</p> <p>The proposed changes within this consultation could increase the flexibility available to those businesses eligible to award EMI options. It is not thought that the proposed changes would increase the cost to businesses of offering EMI options.</p> <p>Further assessment of any impact on businesses and civil society organisations will be informed by this consultation.</p>
Impact on HMRC or other public sector delivery organisations	<p>No major impact expected.</p>
Other impacts	<p>Small firm impact test: No additional costs for small firms are expected from the proposed changes. As set out above, the proposed changes should increase the flexibility available to those businesses eligible to offer EMI options. Further assessment of any impact upon small firms will be informed by this consultation.</p>

4. Summary of Consultation Questions

1. Can you provide details and evidence on the typical working patterns and arrangements of academic employees engaged by EMI qualifying companies – for example, whether this involves a regular and permanent weekly commitment of time, or whether working time is concentrated at particular times of the academic year? (paragraph 2.5)
2. Would the proposed definition of an academic employee be effective in meeting the policy objective? If not, what alternatives could be used? (paragraphs 2.7 - 2.11)
3. Are there any cases where this proposed definition might exclude academic employees that ought to be covered by any relaxation of the working time requirement? Please provide specific examples. (paragraphs 2.7 - 2.11)
4. Is a modified working time requirement for academic employees a suitable approach? If not, what alternatives could be used? (paragraphs 2.12 - 2.19)
5. If a modified working time requirement for academic employees was adopted, what would be a reasonable average working time to be spent on the business of the EMI company, based on current practice; and over what period of time should this be applied? For example, it could be a set number of hours over a week, or over a longer period of time. (paragraphs 2.12 - 2.19)
6. Are there any cases where the proposed modified working time requirement for academic employees would be too restrictive? Please provide specific examples. (paragraphs 2.12 - 2.19)
7. Would the proposed condition that the academic employee's work for the EMI company must be relevant to the academic discipline for which they are engaged by the research institution be a suitable approach? If not, what alternatives could be used? (paragraph 2.21)
8. Do you have any views on the relative merits, including potential scope, impact, costs and benefits, of the two proposed alternative approaches to defining the type of work the academic employee must be carrying out for the EMI company in order to benefit from the new relaxation? (paragraphs 2.22 - 2.32)
9. Overall, do these proposals represent an appropriate and workable basis for relaxing the EMI working time requirement for academic employees? (paragraphs 2.33 - 2.34)
10. What impact would these proposals have for the number of academics eligible to receive EMI share options? (paragraphs 2.33 - 2.34)
11. Would these proposals present any difficulties of implementation for businesses? (paragraphs 2.33 - 2.34)
12. What impact would these proposals have for businesses in terms of one-off or continuing costs / savings? (paragraphs 2.33 - 2.34)

5. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of consultation is to seek views on the detailed policy design and a framework for implementation of specific proposals.

How to respond

A summary of the questions in this consultation is included at Chapter 4.

Responses should be sent by 18 September 2012, by e-mail to shareschemes@hmrc.gsi.gov.uk or by post to: Employee Shares and Securities Unit, Room G53, 100 Parliament Street, London SW1A 2BQ

Telephone enquiries should be made to 020 7147 2658 (from a text phone prefix this number with 18001)

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from the HMRC Internet site at <http://www.hmrc.gov.uk/consultations/index.htm>. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The Consultation Code of Practice

This consultation is being conducted in accordance with the Code of Practice on Consultation. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in Annex A.

Annex A: The Code of Practice on Consultation

About the consultation process

This consultation is being conducted in accordance with the Code of Practice on Consultation.

The consultation criteria

1. When to consult - Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Duration of consultation exercises - Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Clarity of scope and impact - Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Accessibility of consultation exercise - Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. The burden of consultation - Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Responsiveness of consultation exercises - Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Capacity to consult - Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you feel that this consultation does not satisfy these criteria, or if you have any complaints or comments about the process, please contact:

Amy Burgess, Consultation Coordinator, Budget & Finance Bill Co-ordination Group,
HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ

e-mail hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Annex B: Relevant (current) Government Legislation

The main legislation for EMI is set out in sections 527–541 and Schedule 5 to [Income Tax \(Earnings and Pensions\) Act 2003](#).

The EMI 'working time requirement' is set out in paragraph 26 of Schedule 5 to that Act.

The definition of research institution that it is proposed to use for the purposes of this relaxation of the EMI working time requirement is set out in section 457 Income Tax (Earnings and Pensions) Act 2003.

The definition of research and development that may be applied for the purposes of this relaxation of the EMI working time requirement is set out in section 1138 [Corporation Tax Act 2010](#).

The definition of intellectual property that may be applied for the purposes of this relaxation of the EMI working time requirement is set out in section 456 Income Tax (Earnings and Pensions) Act 2003.