

OVERVIEW of employee participation schemes for start-ups*

	Virtual share options (VSOP)	Real shares & variants			
		Real shares	Hurdle shares	§ 19a EStG	ESOP
Explanation	does not give ownership in the company, but gives a contractual payment claim to the beneficiary as if he/she was a shareholder; entitlement to (cash) payment on exit	granting of shares	granting of shares with a so-called negative liquidation preference	granting of shares with deferred taxation (not to own holding company)	option to acquire shares at a certain strike price at a fixed strike date (often: exit)
Recommended area of application	participation of a larger number of beneficiaries, especially in the pre-seed and seed phase	participation of founders at or immediately after foundation	<ul style="list-style-type: none"> • (further) incentivization of the founders • incentivization of an additional team member or a successor • participation of a larger number of beneficiaries possible (usually via employee pooling company, e.g. GmbH & Co. KG) 		participation of a larger number of beneficiaries
Taxation on grant	none	if granted free of charge or at a discount: Taxation as non-cash benefit (= difference between market value and purchase price) → taxable salary (up to approx. 47.5%) (dry income problem)	none		
Taxation on exit	taxable salary (up to approx. 47.5%)	capital income (approx. 26.4% or 40% or 95% tax-free if held via own holding company)		<ul style="list-style-type: none"> • company value until the grant: taxable salary (up to approx. 47.5%) • increase in value since the grant: capital income (approx. 26.4% or 40% tax-free) 	taxable salary (up to approx. 47.5%)
Information and participation rights	generally none	extensive rights as a shareholder, e.g. information and voting rights; restriction of rights in the articles of association, e.g. non-voting shares possible; however, complete exclusion of shareholder rights not permitted			<ul style="list-style-type: none"> • until exercise: generally none • after exercise: as with real shares
Comparison of implementation efforts	low	medium	high (e.g. it is highly recommended to obtain a wage tax ruling before or after granting) (for § 19a EStG: see § 19a para. 5 EStG))		medium to high, depending on the specific circumstances
			if a larger number of beneficiaries are involved, it is generally advisable to use an employee pooling company as an intermediary, which leads to additional (ongoing) costs		

* This overview was prepared by Dr. Henrik Lay and Ariane Neubauer. The contents of this overview exclusively reflect the professional opinion of the authors. The contents represent general, non-binding information which, in particular, cannot take into account the specific circumstances of individual cases. This overview does not claim to be exhaustive. For example, the granting of profit participation rights (*Genussrechte*) or silent participations as well as participation via so-called trust models may also be considered.