

OVERVIEW of employee participation schemes for start-ups*

	Virtual Share Options (VSOP)	Profit Participation Rights in conjunction with § 19a EStG	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	contractual creditor rights that essentially involve capital participations typically granted to shareholders of a GmbH, without conveying membership participation	granting of shares	granting of shares with a so-called negative liquidation preference	granting of shares with deferred taxation (not to holding company)	option to acquire shares at a certain strike price at a fixed strike date (often: exit)
Recommended Application Area	participation of (a larger number of) beneficiaries (employees, freelancer, members of the advisory board etc.)	Participation of (a larger number of) employees	participation of founders at or immediately after foundation	<ul style="list-style-type: none"> • (further) incentivization of the founders • incentivization of an additional founder or a successor • participation of a larger number of beneficiaries (in the case of § 19a EStG exclusively employees of the company and/or employees of subsidiaries and other affiliated companies within the meaning of § 18 AktG) possible, whereby the interposition of an employee company (e.g. UG & Co. KG for the purpose of pooling the beneficiaries) can be recommendable; the interposition of an employee company leads to further (ongoing) costs 		participation of a larger number of beneficiaries
Taxation on Grant	none	none, if the requirements of § 19a EStG are met	<ul style="list-style-type: none"> • if granted at market value: 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 issue) 	none		
Taxation on Exit	taxable salary (up to approx. 47.5%)	<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%) 	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	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 in general; 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, especially no notarial certification required	medium, e.g., obtaining a wage tax ruling is highly recommended (cf. § 19a para. 5 EStG), however no notarial certification required	medium, especially notarial certification required	high, e.g., it is highly recommended to obtain a wage tax ruling and notarial certification required	medium, e.g., it is highly recommended to obtain a wage tax ruling for § 19a EStG (cf. § 19a para. 5 EStG) and notarial certification required	medium to high, depending on the specific circumstances and notarial certification required