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Employee compensation in startups through equity participation

A legal analysis of employee stock option plans in Czech Republic

Diploma thesis

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I declare that I have prepared the submitted diploma thesis independently, that all sources used have been duly cited, and that the thesis has not been used to obtain any other or the same academic degree.

I further declare that the main text of this thesis, including footnotes, contains 121,932 characters including spaces.

Ondřej Smýkal

In Prague on September 4, 2025

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Introduction

An employee stock option plan, or in short, ESOP[1], is a standard and well-tested instrument used mostly by technological companies with global potential, so-called startups, to attract, motivate and retain exceptional talent. There are many examples, especially from abroad, of people who joined companies such as Google or Facebook back in the days when these companies were just starting, and who later became multimillionaires when they went public.[2]

The first thought of many is that these people were lucky, and became millionaires because Google and Facebook were successful. While this is surely true to a certain extent, it must be added in the same breath that companies like Google or Facebook succeeded only because these exceptionally talented and hard-working people were sufficiently motivated to nurture and spread the vision of their founders. In other words, had there been no ESOP in place in these companies, which have such a profound impact on the lives of each of us, it is very likely that we would have never heard of any of them.

It is a well-known fact that the behaviour of every person or entity is driven, or at least influenced, by its environment, with one of the most influential factors being the legal framework. In the Czech Republic, this framework is sadly set up in a very unfriendly manner towards awarding employee stocks, making it less attractive for local companies to grant them.[3] As a result, everybody is missing out: 1) employees on potential of very attractive compensation for their work, 2) startups on their ability to compete on an employment market against the corporates with much bigger capacity to pay their employees high salaries, 3) investors on the chance to generate high returns on their investments, and 4) Czech Republic on the opportunity to foster innovation and breed local champions that will drive its economic growth for many years to come.

It is a strong belief of the author that the employee stock option plans play an irreplaceable role in creating a strong, pro-innovation environment. The purpose of this thesis is to present the reader with the data demonstrating the impact of ESOPs, summarise the essential parameters of a well-designed plan that ensures fairness and protection for all parties involved,

[1] While the abbreviation "ESOP" is generally used to refer to any programme that awards employees with shares in their employer, it can sometimes refer specifically to an "employee stock ownership plan," a form of tax-advantaged retirement plan in the United States. In this thesis, the first approach prevails.

[2] Such as TSUKAYAMA, Hayley. Facebook: 1,000 new millionaires? [online]. Washington, D.C.: The Washington Post, 2 February 2012. Available at: https://www.washingtonpost.com/business/technology/facebook-1000-new-millionaires/2012/02/02/gIQAmr9GkQ_story.html. [accessed 7 July 2025]

[3] EUROPEAN STARTUP NATIONS ALLIANCE. EU Startup Nations Standards Report 2024 [online]. 1st ed. Lisbon: ESNA, 2024, p. 58. Available at: https://www.esnalliance.eu/multimedia/esna/sns-report-2024_members-only-1.pdf. [accessed 7 July 2025]

examine regulatory frameworks in ESOP-friendly countries, and compare them with the Czech regulation, both past and present, reviewing progress made in recent months and years, identifying persistent issues, and exploring their potential solutions.

1. What is an ESOP

Employee stock option plan, or ESOP, is an incentive program designed to attract, retain, motivate and reward employees of a company by providing them with the right to purchase its shares.[4] Though such program can be adopted by virtually any type of company, it tends to be used by startups the most. The reason is that an ESOP is an instrument designed to incentivise the maximisation of a company's value, not its profit - objectives that often directly contradict each other.

To get a deeper understanding about the why, let's define a startup as a newly established company developing an innovative technological product with the ability to be rapidly distributed to many customers at minimal marginal cost[5]. As you can see, there are three crucial defining factors: 1) recent establishment, which typically goes hand in hand with a lack of capital, 2) innovative technology, creating a need for highly qualified (and therefore scarce and expensive) workforce, and 3) rapid and cheap distribution to a large market, implying significant potential for capital gain.

It is noteworthy that all of these pillars are interconnected: it is the potential that attracts both talent and capital, and this potential can only be unlocked if both resources are successfully drawn in. Investors are willing to exchange their money for a company's share, expecting it to grow in value over time, and employees may accept below-market cash compensation, hoping for the same. This leads to a broader alignment of incentives among all crucial stakeholders and increases the likelihood of success. From the ideological standpoint, some also argue that such a scheme leads to a more fair value redistribution.[6]

1.1. Impact of ESOPs

Many factors influence the success or failure of a startup, and the relative importance of these factors also varies significantly on a case-by-case basis. For example, a company developing an app for seamless investing for consumers will face numerous regulatory challenges and financial complexities, leading it to prioritise hiring a senior general counsel and chief financial officer. In contrast, a startup developing cutting-edge artificial intelligence may

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[4] ATHAR, Mahmood. Employee Stock Option Plans: A Meta-Analysis (Understanding Impact of ESOPs through Literature). Studies in Business and Economics [online]. 2020, vol. 15, no. 1, pp. 100–114. DOI: 10.2478/sbe-2020-0009. Available at: https://sciendo.com/article/10.2478/sbe-2020-0009. [accessed 27 August 2025]

[5] BALDRIDGE, Rebeca. What Is a Startup? Forbes [online]. 16 December 2013. Available at: https://www.forbes.com/sites/natalierobehmed/2013/12/16/what-is-a-startup. [accessed 27 August 2025]

[6] Meaning that employees are not exploited by evil capitalists.

depend more heavily on the competence of its engineers. This distinction is crucial because different challenges require different types of people to solve them, and while virtually any ambitious company must hire qualified professionals, the profile of the ideal employee, as well as their salary and stock option expectations, can vary significantly. As a result, an ESOP may sometimes be instrumental, and at other times less so.

It is therefore very difficult to objectively measure the precise impact of implementing a stock option plan on the success of a particular company. The situation, however, becomes clearer once the overall performance of startups with and without an ESOP in place is compared. For instance, recent study among the smart-manufacturing companies has shown that the employee shareholding ratio is among three most powerful predictors of a company's future return on assets.[7]

The importance of ESOP, according to the aforementioned study, grows with the level of automation in a given company. This can be explained by the fact that better technology gives an employee greater leverage over their work, which means that the difference in a company's output is more heavily dependent on the ability of a specific employee to use that leverage in the most efficient manner possible. This is in line with previous findings of this thesis, which place emphasis on introducing ESOPs especially in highly innovative companies with a profound need for a qualified workforce.

If we were to disregard the impact of ESOPs on employees' increased efficiency and focus solely on calculating the immediate savings a company may realise upon their implementation, the first important point to consider is that companies granting ESOPs report an average voluntary employee turnover reduction of approximately 0.5% per quarter during the first three years after implementation[8], which is particularly significant given that, for example, France has a quarterly resignation rate of 2.7%[9]. Additionally, the ESOPs are often used as a substitute for cash compensation, with startup employees typically accepting 5–15% lower cash

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[7] HUANG, Y., HUANG, S. and CHEN, X. Predictive model on employee stock ownership impacting corporate performance. Scientific Reports [online]. 2025, vol. 15, article 22133. DOI: https://doi.org/10.1038/s41598-025-06280-7. [accessed 27 August 2025]

[8] ALDATMAZ, Serdar, OUIMET, Paige and VAN WESEP, Edward DICKERSIN. The Option to Quit: The Effect of Employee Stock Options on Turnover. [online]. SSRN, posted 21 March 2011, last revised 9 January 2018. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1787169. [accessed 29 August 2025]

[9] FINIZIO, Michela. The great turnover: record resignations and job vacancies in Europe [online]. European Data Journalism Network (in collaboration with Il Sole 24 Ore), 28 March 2023. Available at: https://www.europeandatajournalism.eu/cp_data_news/the-great-turnover-record-resignations-and-job-vacancies-in-europe/. [accessed 29 August 2025]. France is used as an example because data on voluntary quit rates (i.e., rather than general turnover) is rarely available across EU countries.

salaries compared to their established corporate counterparts[10]. Lastly, the financial impact of such a difference can be estimated by considering that replacing a senior, highly qualified employee typically costs around 150% of their annual salary[11].

Given these figures, comparing two otherwise similar companies with 200 employees, it can quickly be calculated that ESOP implementation can make a difference of almost 40 million CZK per year solely through lower turnover, reduced hiring and training costs, and lower salaries.

	Company 1	Company 2
Number of employees	200	200
Annual salary	60,000 EUR	54,000 EUR
Annual voluntary turnover	10,8%	8,8%
Training of new employee	90,000 EUR	81,000 EUR
No. of leaving employees	22	18
Wages total	12,000,000 EUR	10,800,000 EUR
Training expenses	1,296,000 EUR	950,400 EUR

The topic of stock options also resonates strongly with employees themselves, 48% of whom report that equity compensation is the most effective way to keep them engaged in their work[12], and 84% express interest in participating in ESOP schemes.[13] As for the Czech Republic, strong demand for a better legal framework for employee shares from within the local startup community, employing over 160,000 people, can also be observed.[14] According to a survey by Czech Founders, poor ESOP regulation is perceived as the biggest legal barrier to unlocking

[10] KIM, E. Han and OUIMET, Paige. Broad-based employee stock ownership: motives and outcomes. Journal of Finance [online]. 2014, vol. 69, no. 3, pp. 1273–1319. DOI: https://doi.org/10.1111/jofi.12150. [accessed 29 August 2025]

[11] TATEL, C. and WIGERT, B. 42% of employee turnover is preventable but often ignored [online]. Gallup, 10 July 2024. Available at: https://www.gallup.com/workplace/646538/employee-turnover-preventable-often-ignored.aspx. [accessed 7 July 2025]

[12] It has to be noted though, that these figures are specific to the United States and may not apply to European employees, at least not until employee stock options become more widely recognised and several success stories emerge.

[13]MORGAN STANLEY. State of the Workplace Study 2025: Voice of the Participant – Global Stock-Plan Participant Survey [online]. New York: Morgan Stanley, 2025. Available at: https://www.morganstanley.com/content/dam/msatwork/doc/pdfs/state-of-the-workplace-2021/state-of-the-workplace-study-2025.pdf. [accessed 29 August 2025]

[14] STARTUP CZECHIA. SmartMarket Report 2025 [online]. Prague: StartupCzechia, 7 April 2025. Available at: https://startupczechia.cz/en/aktuality/smartmarket-report-2025. [accessed 2 September 2025]

local potential in the global market, with 87.7% of respondents recognising this issue as the single most important matter the Czech government should address.[15]

[15] CZECH FOUNDERS. Czech Founders Impact Report 2023 [online]. Prague: Czech Founders, 2023. Available at: https://czechfounders.org/wp-content/uploads/2024/07/CF-Impact-Report-2023.pdf. [accessed 29 August 2025]

2. Structure and Key Parameters of ESOP

Dozens of years of experience with implementing and using ESOPs in Silicon Valley, the world's startup cradle[16], have crystallised into a set of standardised parameters that form the backbone of any serious stock option plan. While these terms are not typically regulated by law (provided the state allows the parties the freedom to adopt them contractually), it is the author's belief that it is still useful to have at least a basic understanding of what the general structure of such a plan looks like, which aspects of the employer-employee relationship it regulates, and how and why it does so. The aim of this chapter is to provide the reader with a brief summary and the necessary context.

2.1. Structure of a Typical ESOP

The process leading up to an employee receiving actual shares in the company can generally be divided into five stages: 1) adoption of the option plan by the company; 2) establishment of an employment (or similar) relationship with the individual; 3) award of stock options rights; 4) completion of vesting of the options by the employee; and 5) exercise of the options by the employee.[17] Most of these stages are accompanied by a corresponding legal document.

The most relevant document for our purposes is the plan itself, commonly referred to as the "employee stock option plan", "employee participation plan", "equity incentive plan", or a similar term, which sets the framework for the company's policy on employee equity.[18] It defines the most essential terms such as "option pool", "vesting schedule", "cliff", "leaver events", or "strike price", which will be described in more detail later in this thesis, and, where applicable, sets the default values for them.

In addition to the plan, several other key documents are involved. The first is the employment agreement (or, in some cases, a collaboration or similar agreement). It usually doesn't set any specific rights or obligations with respect to the shares themselves but is important as it's intertwined with the plan in various instances, such as eligibility, since

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[16] According to the STARTUP GENOME. The Global Startup Ecosystem Report 2025 [online]. San Francisco: Startup Genome, 2025. Available at:
https://startupgenome.com/report/gser2025/introduction. [accessed 29 August 2025]

[17] INDEX VENTURES. Rewarding Talent: The Founder's Guide to Stock Options [online]. London – San Francisco – New York: Index Press, 2017. Available at:
https://www.indexventures.com/rewarding-talent. [accessed 29 August 2025]

[18] CAKE EQUITY. Employee Stock Options: A Guide for Startup Teams [online]. Sydney: Cake Equity, 2023. Available at: https://www.cakeequity.com/guides/employee-stock-options. [accessed 8 July 2025]

“employee shares” can typically be awarded only to employees, or vesting,[19] which usually ends upon an employee's departure from the company.

The award letter (similarly to “employee stock option plan”, even “award letter” often goes by different names such as “grant letter”, “notice of stock options grant” etc…) formalises the company’s specific offer to the individual employee.[20] It specifies the number of stock options awarded to the respective participant, sets out a strike price, and it may also outline deviations from the plan’s default terms, such as a modified cliff or vesting schedule.

Lastly, there is an option exercise notice, which serves as a formal instrument to convert vested options into shares once the employee decides to become a company’s shareholder.[21]

2.2. Key Parameters of the Typical ESOP

The purpose of the plan is to establish a general framework for how employee stock options are managed within the company. Initially, these frameworks were rather simple - employees were given some shares. However this often led to unwanted results, such as free riders receiving significant equity despite their limited contribution to the company’s success. These trial-and-error lessons were taken into account and gave rise to a standardised set of mechanics reflecting the basic human nature, the relative importance of the average employee at each stage of the company, and the imminent potential of future conflict, maximising the incentive of each party, while also ensuring a sufficient protection of their interests.

The following section explains the key ESOP terms, outlines the mechanics of its fundamental provisions, and introduces the most common protective clauses along with their underlying logic.

2.2.1. Option Pool, Stock Options, and Employee Shares

Together with the adoption of a plan, the company reserves a fixed number of common shares, usually corresponding to 10-15 % of its share capital,[22] for the purpose of issuing them to

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[19] CARTA. Stock vesting: Options, vesting periods, schedules & cliffs [online]. 9 March 2024. Available at: https://carta.com/learn/equity/stock-options/vesting/. [accessed 8 July 2025]

[20] EQUITYBEE TECHNOLOGIES LTD. Understanding Your Employee Stock Option Grant [online]. 6 May 2025. Available at: https://equitybee.com/post/understanding-your-employee-stock-option-grant. [accessed 8 July 2025]

[21] COBRIEF. Notice of Exercise: Overview, Definition and Example [online]. 2024. Available at: https://www.cobrief.app/resources/legal-glossary/notice-of-exercise-overview-definition-and-example/. [accessed 8 July 2025]

[22] MCDONALD, Morgan and SVED, Joshua. Everything you need to know about stock options [online]. San Diego: DLA Piper, January 2023. Available at: https://www.dlapiper.com/en-us/insights/publications/2023/01/everything-you-need-to-know-about-stock-options. [accessed 8 July 2025]

employees. This block of future shares, often also referred to as an option pool,[23] forms the basis for the company's employee incentive structure.

The shares in an option pool are typically common shares[24], i.e., they have the same legal quality as shares held by the founders, including the same voting rights or right to proceeds from a company sale with equal seniority. Like founder shares, they are typically subject to various transfer restrictions, such as lock-up provisions, buy-back rights, right of first refusal, or drag along clauses, the purpose of which is to ensure that employees are continually motivated to increase the value of a company, that no third parties might enter the company's shareholding structure, and that the minor shareholders cannot block or obstruct the corporate interests.

These shares, however, are not given to the employees directly. Instead, the employees are granted with options - a contractual right, but not an obligation, to purchase a certain quantity of common shares for a set price,[25] within a stipulated period of time, once certain conditions are met. As the acquisition of shares requires a real financial expenditure, this structure discourages premature exercise and effectively defers the employee's shareholder rights, including control and voting, until the moment of exercise.

2.2.2. Strike Price, Fair Market Value, and Exit Price

As already outlined above, it isn't typical for an employee to receive the shares immediately after they start working for the company, instead, they typically receive an option to purchase the company's shares in the future for a fixed price, also known as the strike price.[26] The strike price is typically based on the company's fair market valuation at the time the stock options are granted,[27] which usually coincides with the commencement of the respective employee's employment relationship, though it may also be the time of their promotion to an ESOP-eligible position, completion of a probation period, or another relevant point.

The purpose of tying the strike price to the company's valuation at the time of grant is to reflect that the employee did not contribute to the company's value prior to joining and therefore should not benefit from value they did not help create. At the same time, it recognises that by the time of exercise, the employee will have contributed to the company's growth for several years,

[23] McDonald and Sved (2023)
[24] UPCOUNSEL. Option Pool: Everything You Need to Know [online]. San Francisco: UpCounsel, 1 January 2025. Available at: https://www.upcounsel.com/option-pool. [accessed 8 July 2025]
[25] INVESTOPEDIA. Stock Option [online]. New York: Dotdash Meredith, 2024. Available at: https://www.investopedia.com/terms/s/stockoption.asp. [accessed 8 July 2025]
[26] CARTA. What is a strike price? [online]. San Francisco: Carta, 2024. Available at: https://carta.com/learn/equity/stock-options/strike-price/. [accessed 8 July 2025]
[27] Carta (2024)

and requiring them to pay for the increase in value accrued during their tenure would essentially amount to double payment.

While the approach of awarding employees shares at their fair market value is nice in theory, and might also make sense to many from an ideological standpoint, it comes with a significant caveat - the need to determine the company's fair market value on a regular basis. The theory suggests that the value of a company equals the present value of its future cash flows.[28] The problem with application of that theory, though, is that not only do early-stage startups often not generate any revenue, they sometimes do not even have a product or service that could be sold, which means that any attempts to apply valuation techniques aimed at assessing the sum of future cash flows, such as revenue or EBITDA multiples, are destined to fail (unless one is willing to accept that the value of such a company equals zero[29]).

The other common approach would be to let the market do the pricing, i.e., derive the value of the company based on how much money others are willing to pay in order to acquire a shareholding interest in it.[30] While this method is theoretically possible and sometimes even used in a startup context, it also has its practical issues. Startups are private companies (their shares are not publicly traded on a stock exchange), and shareholders' rights to sell their shares tend to be heavily limited.[31] Shares are usually acquired only by institutional investors, so-called venture capital funds, which tend to inflate the value far beyond any price tag that could be reached using conventional methods.

To be specific, it is not unusual for a pre-product, pre-revenue startup to receive a funding of EUR 600,000 in exchange for a 15% share, corresponding to a pre-money valuation of EUR 3,400,000. In addition, VCs tend to acquire preferred shares in the company, entitling them, among other rights, to a liquidation preference corresponding to the size of their investment - this means that if the company goes bankrupt, is acquired, or sells all of its assets, the investor obtains a 1.0x multiple of their investment first, and only after this receivable is settled are the other shareholders entitled to their share.[32] Consequently, the preferred shares bear lower risk, which makes them more valuable, and extrapolating the value of the entire company based on a price of preferred share would therefore create unfairness towards the common stock holders.

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[28] KOLLER, Tim, GOEDHART, Marc and WESSELS, David. Valuation: Measuring and Managing the Value of Companies. 7th ed. Hoboken: John Wiley & Sons, 2020. ISBN 978-1-119-61088-5. p. 370.

[29] Which, trust me, the founders are not.

[30] Koller, Goedhart and Wessels (2020), p. 22.

[31] And the market's ability to do the pricing with it.

[32] BARTLETT, Robert. Preferred Stock Liquidation Preferences [online]. In: The Palgrave Encyclopedia of Private Equity. Stanford Law and Economics Olin Working Paper No. 588, 2023. Posted 7 December 2023; last revised 22 December 2023. Available at: https://ssrn.com/abstract=4657700. [accessed 29 August 2025]

Correctly choosing the method to determine the fair market value, or FMV, of shares is important as the conclusion is not merely academic, but has very practical implications. If the value is high and the strike price is set accordingly, the motivational purpose of an ESOP may be undermined, as employees may not be able to afford to exercise their options. Conversely, if the strike price is set below the FMV upon grant, most jurisdictions treat the difference as employment income and might tax it before any cash profit is actually realised. For this reason, most ESOP-friendly jurisdictions allow companies to determine their valuation by discounting the valuation of their latest investment round by a certain coefficient, or even to determine it at their own discretion.[33]

And last but not least, there is the exit price. Not surprisingly, this is the price an employee receives for each of their shares in the event of a company sale or during an IPO. Contrary to the strike price, this price is actually determined by how much the buyer is willing to pay.[34] It is probably needless to say that an employee's upside equals the difference between the strike price they paid and the exit price at which they sold each of their shares.

In practice, the employee's obligation to pay the strike price per exercised stock option can also be fulfilled by the redemption of non-exercised stock options (a so-called cashless exercise), effectively turning the entire procedure into a purely accounting operation and eliminating any need for capital expenditure on the employee's part[35]. The advantage of this approach is that it allows for exercise even in times of cash constraints. The disadvantage, on the other hand, is that it decreases the total amount of the employee's financial upside.

2.2.3. Cliff and Vesting Schedule

As already mentioned, it is not particularly clever to simply give stocks to employees without subjecting it to certain conditions. Half of startup employees stay with their company for approximately 2.2 years[36] which extends to 3.1 years[37] if they have been awarded company stock. Though it is clearly visible that granting employees the right to participate in the company's success has a positive effect on their loyalty, it does not prevent them from departing altogether, which has various implications that should be reflected in the programmes.

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[33] Index Ventures (2017)

[34] Upon an exit, the preferred shares are typically converted into common, which solves the above-described problem of different value of different class of company's shares

[35] STOCK & OPTION SOLUTIONS. Net Exercise Considerations [online]. [s.l.]: Stock & Option Solutions, 2017. Available at: https://www.sos-team.com/pdfs/SOS_Net_Exercise_Considerations.pdf. [accessed 8 July 2025]

[36] STEINFELD, Josh. Employee attrition: types, causes & trends for startups [online]. San Francisco: Carta, 23 July 2024. Available at: https://carta.com/learn/startups/compensation/employee-attrition/. [accessed 8 July 2025]

[37] SULLIVAN, Ry. Employment tenure at startups [online]. San Francisco: Carta, 7 March 2018. Available at: https://carta.com/data/employment-tenure-startups/. [accessed 8 July 2025]

For this reason, stock option plans contain two legal instruments, closely connected to each other, aiming to: 1) strengthen the retention aspect of ESOP plans by establishing a cost for leaving the firm too early, and 2) prevent non-loyal (or otherwise unfit) employees from obtaining company stock when retention attempts are unsuccessful.

The first instrument is a vesting schedule (together with a cliff), which sets a timeframe within which the employee gradually transitions from having a conditional right to exercise their options to an unconditional one.[38]

Most typically, employees' stocks are subject to a four-year, monthly, linear vesting period with a one-year cliff[39] - let's break it down. The four-year period refers to the total timeframe over which the vesting takes place; the cliff can essentially be viewed as a protection period designed to allow the company not to compensate unsuccessful hires with its scarcest asset: equity; monthly vesting means that after the cliff, employee vests a portion of shares every month; and linear vesting means that same number of shares is vested every month.

To elaborate on this example, if an employee leaves the company during the first year since they were granted any options under the ESOP, they are allowed to exercise 0% of the stock options they were granted - in other words, they leave with nothing. On the first anniversary of the starting date, they automatically vest 25% of the shares granted to them at which point the cliff is settled (25% because 1 year cliff corresponds to one quarter of 4-year vesting period). After the cliff, the employee starts to vest their options on a monthly basis, i.e., at the end of each calendar month, they vest 1/48 of the total number of options granted to them. Consequently, by the four-year anniversary of the starting date, they will have vested all the shares awarded to them.

Of course, there are other approaches to setting up a vesting scheme, two of which are important enough to be mentioned in this section. The first is gradual vesting, which is conceptually similar to the principle described above but places more emphasis on the retention aspect of ESOPs. It does so by ensuring that the majority of vesting occurs toward the end of the vesting period. For example, if the vesting period is five years, linear vesting would grant the participant (employee) 20% each year. In contrast, under gradual vesting, the employee would receive a smaller portion in the earlier years and a larger portion later on, such as 10-15-20-25-30. By this, the company creates a higher disincentive for an employee to leave.

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[38] DELOITTE. 3.4 Vesting Conditions [online]. In: DART – Deloitte Accounting Research Tool. Available at: https://dart.deloitte.com/USDART/home/codification/expenses/71x/asc718-10/roadmap-share-based-payments/chapter-3-recognition/3-4-vesting-conditions. [accessed 8 July 2025]

[39] SECFI. Stock Option Vesting Schedule: Everything You Need to Know [online]. San Francisco: Secfi, 2024. Available at: https://secfi.com/learn/stock-option-vesting-schedule. [accessed 8 July 2025]

Then there's the KPI-based approach, subjecting the vesting to the fulfilment of certain key performance indicators. This approach somewhat neglects the retention aspect and tends to be more performance-based. It therefore usually only makes sense for C-level executives, who have greater control over the company's performance and are subject to more clearly defined, measurable goals, as opposed to one of a hundred software developers, for example.

The last important topic to be covered in connection with the vesting scheme is acceleration, which addresses situations where an exit occurs prior to vesting completion, reacting to the potential unfairness of the company being sold, founders realising their return, and employees being unable to exercise their options simply because their shares are not yet vested. In such scenarios, vesting is typically accelerated, i.e., it happens sooner than initially anticipated, either automatically upon a liquidity event, known as single-trigger acceleration, or upon the employee's involuntary dismissal in connection with the exit, known as double-trigger acceleration.[40] The latter is more common and widely considered a healthier set-up, as the acquirer often buys the company largely because of its qualified workforce and does not want to lose it immediately after the deal is closed. Under double-trigger acceleration, unless the employee is involuntarily terminated, they continue to vest according to the original schedule, with their vesting obligations typically assumed by the new employer; if a qualifying termination occurs, their unvested options accelerate and become exercisable immediately.

2.2.4. Leaver Events

Employment relationships end. Even if we assume that an average employment relationship of an ESOP participant lasts for 3.1 years, such tenure is shorter than the average vesting period, and the option plans must therefore include rules for handling employee departures.

The first important distinction lies in distinguishing a departing employee's options between vested and unvested. The second concerns the categorisation of departing employees as "good leavers" and "bad leavers"[41]. The definition of a good leaver tends to be fairly robust, explicitly listing the situations under which someone is considered a good leaver, with the typical list consisting of: 1) termination without cause, typically redundancy; 2) resignation for good

[40] JACOBY, Craig. Pulling the Trigger(s): What are Single-Trigger and Double-Trigger Acceleration and How Do They Work? [online]. Cooley GO, 20 April 2022. Available at: https://www.cooleygo.com/what-are-single-and-double-trigger-acceleration-and-how-do-they-work/. [accessed 8 July 2025]

[41] DLA PIPER. Good leaver / bad leaver provisions: A guide for businesses [online]. 6 March 2018. Available at: https://www.dlapiper.com/en/insights/publications/2018/03/good-leaver-bad-leaver-provisions-a-guide-for-businesses/. [accessed 8 July 2025]

reason, such as a significant salary reduction, relocation without consent, or demotion; 3) retirement at the agreed or statutory retirement age; 4) illness of a close family member; and 5) the employee's own death, severe illness, or permanent disability.

The definition of a bad leaver, on the other hand, tends to be negative, i.e., any departure that is not a good-leaver event, plus specific misconduct-based triggers such as fraud, gross misconduct, breach of restrictive covenants, or competition with the company.

What remains non-standardised is the treatment of an employee who resigns without cause. This is problematic, as it is the most common form of departure. Some plans classify such employees as good leavers, others as bad leavers; some deem them good leavers only if the resignation occurs after the vesting period, and others only if certain post-departure obligations specified in the plan are met.

Good leavers are usually allowed to keep and exercise their vested options while forfeiting the right to unvested ones.[42] There are caveats to this, as plans sometimes stipulate a specific time window, often between 90 and 180 days after departure, within which employees must decide whether they wish to exercise their options for vested shares or let them expire. This mechanism might sometimes lead to unwanted expirations, as it requires a cash expenditure from the ex-employee corresponding to the number of vested shares multiplied by the strike price, nevertheless, it makes sense from a fairness perspective, as it is undesirable to create situations where someone benefits from the company's upside without contributing to it through either work or capital.[43]

Bad leavers, on the other hand, typically forfeit the right to their unvested options (just like good leavers), and their vested shares are typically subject to a buy-back option by the company at the lower of the exercise price and FMV.[44]

2.2.5. Realisation of profits

Finally, the company has reached the liquidity event, which usually occurs through the transfer of shares, the sale of the company's assets (together constituting an acquisition), or the listing of the company's shares on a stock exchange[45]. There are nuances to this, but these events

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[42] Index Ventures (2017)

[43] And as departing employee by definition ceases to provide the work, they should at least provide the capital.

[44] Index Ventures (2017)

[45] DEPAMPHILIS, Donald M. Mergers, Acquisitions, and Other Restructuring Activities: An Integrated Approach to Process, Tools, Cases, and Solutions. 11th ed. Amsterdam: Academic Press, 2021. ISBN 978-0-12-819782-0.

generally provide the company's shareholders (including employees) with an opportunity to realise profits - informally referred to as an exit[46] in the startup community.

The first important distinction in how the profit is realised is whether the compensation is paid in cash or in kind - in the latter case, it would take the form of an equity swap. The majority of deals involve some combination of both, and it can also be asymmetrical; i.e., the founders' shares in the company may be primarily swapped for the acquirer's shares, while the employees may be paid out in cash at the same time.

To explain the nuances of this, imagine we have a company with three employees, each awarded with 10,000 shares. The first has already vested and exercised all of their shares, the second has just started vesting and hasn't even reached a cliff, and the third has completed vesting but has not yet exercised any of their vested shares. Now imagine that the company they work for, with 3 million issued shares (Company A), is being acquired for one billion dollars by a different company valued at nine billion dollars, with 5 million issued shares (Company B). The deal was structured as a 100% equity swap.

In such an event, the first step to calculate the so-called conversion ratio, which is crucial to determine how many shares of Company B each shareholder of Company A receives for each share they own[47], is to determine the cumulative ownership stake of Company A shareholders in Company B. To achieve this, we divide the value of Company A by the sum of both companies' valuations. In our example, the formula would look like this:

$$\frac{1\,bn}{1\,bn + 9\,bn} = 0,1$$

This means that the Company A shareholders shall cumulatively own 10 % of Company B after the transaction is closed. Such transactions are typically executed by issuing new shares of the acquiring company[48]. To determine how many new shares of Company B will be issued, we use the following equation:

$$\frac{5\,mio}{1 - 0{,}1} - 5\,mio = 555,556$$

Now that we know that 3 million Company A's shares have the same economic value as 555,556 shares of Company B, the only remaining step to calculate the conversion ratio is the following formula:

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[46] NASDAQ. What is a Liquidity Event? [online]. 2023. Available at: https://www.nasdaq.com/articles/what-liquidity-event. [accessed 9 July 2025]
[47] CORPORATE FINANCE INSTITUTE. Exchange Ratio – Relative Value of Acquiring & Target Firms in M&A [online]. 2025. Available at: https://corporatefinanceinstitute.com/resources/valuation/share-exchange-ratio/. [accessed 9 July 2025]
[48] GAUGHAN, Patrick A. Mergers, Acquisitions, and Corporate Restructurings. 7th ed. Hoboken: John Wiley & Sons, 2018. ISBN 978-1-119-38076-4.

$$\frac{555{,}556}{3{,}000{,}000} = 0,1852$$

Our conversion ratio is therefore 0.1852, a number which can be used to determine how many shares of Company B each Company A's employee will receive by multiplying it by the number of their shares of Company A. In our example, the 10,000 shares each employee at Company A was awarded correspond to 1,852 shares in Company B. However, this has different implications depending on the employee's vesting and exercise status.

The first, who already holds shares in Company A, would simply forfeit them and receive shares in Company B in exchange. If they wanted to realise their profit, they would have to sell them (in case of cash exit, they would receive the proceeds directly). The second, who has just started vesting, would typically have their ESOP assumed[49] by Company B and continue vesting under it, with the only difference being that the number of shares they vest would be decreased accordingly. The situation of the third employee, who has already completed their vesting but hasn't exercised their options yet, is legally similar to that of the second - the whole ESOP scheme would be assumed by Company B, and they would receive an option for 1,852 of its shares. This scenario is listed separately because, in the case of a cash acquisition, a "cash-out" mechanism may apply, which means that such employee would receive an amount corresponding to the difference between the exit price and the strike price (the so-called spread) on each vested share, without having to exercise the options themselves.

The last important point is that employees do not necessarily have to wait for an exit to realise their capital gains. It is common for investors in later financing rounds to offer to buy out a portion of employees' shares in what is known as a secondary transaction[50].

[49] HART, Michael A. ESOPs in Corporate Acquisitions: What Every Buyer Should Know About the Target Company's ESOP. Benefits Law Journal. 2001, vol. 14, no. 1, pp. 9–31.

[50] CARTA. Secondary transactions. In: Liquidity events – Carta [online]. 2024. Available at: https://carta.com/learn/equity/liquidity-events/secondary-transactions/. [accessed 9 July 2025]

3. Key Legal Factors Affecting the Attractiveness of ESOPs

Now that the common business terms of a standard option plan have been introduced, the key differences among the legislative frameworks affecting how attractive stock options are perceived to be by both employers and employees will be analysed. To assess the level of government support for ESOP adoption, the following key pillars are evaluated[51]: 1) the scope of a plan, whether it allows any company and any employee (or contributor) to benefit from the favourable regime; 2) the bureaucracy associated with employees becoming minority shareholders and the level of flexibility the company maintains afterwards; and 3) the tax treatment of both employer and employee. The following section outlines the intricacies of each of these pillars.

3.1. The Scope of the Beneficial Regime

In order to support the entrepreneurial ecosystem and an economy driven not by assembly plants of foreign corporations reliant on low-cost labour, but by innovative local businesses creating substantial value, many countries adopt laws that provide certain tax benefits for stock option holders.[52] While these initiatives are virtuous and may indeed increase the appetite for such instruments, their effect can sometimes be neutralised by governments' fear of lost tax revenue, leading to restrictions on the number of circumstances in which such favourable tax treatment is applicable. To be objective, this fear is not entirely irrational, and there certainly are situations in which such restrictions are justified - they just need to be adopted with care.

There are essentially three common approaches to effectuate these restrictions: they can be imposed on the company, on the number of tax-benefited shares, or on the individual participant.

Regarding company restrictions, common requirements include that the company must be a joint-stock company, must not have been incorporated for longer than a certain period, must be registered to pay income tax in a given country, must not exceed a specified number of employees, and must be predominantly owned by natural persons rather than corporations.

[51] The methodology of this thesis is based on Index Ventures' Rewarding Talent handbook, which compares six main factors: 1) plan scope, 2) strike price, 3) minority shareholders & bureaucracy, 4) employee tax (timing), 5) employee tax (rate), and 6) employer taxation. In this thesis, points 2), 4), 5), and 6) are consolidated into a single category, as they all pertain to taxation. Points 1) and 3) remain as separate categories, although further subdivision would certainly be possible and is, in fact, applied at a substantive level within the relevant chapters.

[52] NOT OPTIONAL. Latest country rankings [online]. 2024. Available at: https://www.notoptional.eu/rankings.html. [accessed 9 July 2025]

Sometimes, certain sectors such as banking or energetics can be exempt from these regimes even if they otherwise meet the conditions.

The other approach is to restrict the portion of shares that can fall under the favourable umbrella. This restriction can be applied either at the company level, meaning that a company may not issue more shares than those corresponding to a certain percentage of its registered capital under such a beneficial scheme, or at the employee level, meaning that no employee may benefit from the favourable tax regime with more than a certain percentage of shareholding interest in the company.

Lastly, the limits can also be tied directly to individuals. The most common restrictions include that only actual employees are eligible, excluding both legal entities and natural persons engaged as contractors, or that only tax residents of a given country may benefit from favourable treatment.

Some jurisdictions, such as Portugal, went for a more comprehensive approach by adopting a startup law[53], which includes a clear definition of a startup. This definition takes into account the above-mentioned hard criteria, as well as softer ones such as the level of innovativeness, which affects not only the ESOP regime but also other startup-relevant areas outside the scope of this thesis, such as easier access to work visas, simplified access to public funding, and the opportunity to participate in legal sandboxes.

It is difficult to determine which approach is better or worse. From the author's perspective, nearly all of the restrictions listed above can be reasonable, provided they are not set too strictly. One exception to this reasonableness is sector-based exclusions. These can be problematic, as startups may fall within a restricted sector even when their exclusion from a more favourable regime is neither intended nor justified. If the aim is to exclude large, systemically important companies, this can be more effectively achieved by introducing turnover thresholds or similar mechanisms, which will efficiently achieve this.

3.2. Bureaucracy and Administrative Requirements

The bureaucratic burden associated with option plans may manifest on various levels, the first being the process of setting up the plan itself, then the actual issuance of shares to individual persons, and finally the overhead tied to management of employee-shareholders after they become part of the company’s shareholding structure.

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[53] CUATRECASAS. Legal regime on startups and scaleups [online]. Lisbon: Cuatrecasas, 1 June 2023. 20 p. Available at: https://www.cuatrecasas.com/resources/lf-eng-64809d1ce9165827104311.pdf?v1.63.1.20231123. [accessed 9 July 2025]

In ESOP favourable jurisdictions, the plan set-up and issuance of shares are usually two separate steps. First, a certain number of shares is authorised by a board of directors and/or general meeting and dedicated to an option plan. Once an employee vests their options and decides to exercise them, no further approval to increase the company's share capital from any authority or corporate body is required, and the review is limited to verifying whether the formal conditions for such issuance have been fulfilled.[54]

In other systems, with a lower ESOP-readiness, the complexity to achieve the same effect tends to be significantly higher. This is caused by the fact that each issuance of new shares may trigger a process linked to an increase in the company's share capital, and the newly issued shares may need to be assigned to a specific person and recorded in the commercial register. Additionally, the involvement of a notary or a similar public authority may be, and often indeed is, required.[55] The plan's setup therefore offers little practical benefit, as the whole procedure must be repeated each time any employee exercises their options. There are workarounds to this, such as introducing exercise windows, limiting employee's right to exercise their options only to a specific dates,[56] or assigning the newly issued shares to some of the existing shareholders who have the obligation to transfer them to employees at strike price once they exercise their options, but these approaches also have their flaws, the most significant of which is that in the latter case, the commitment to fulfil the obligations is transferred from the company to the shareholders, imposing additional risks and responsibilities on them.

The next topic to be addressed in this chapter is which rights are associated with employees' shares once they become actual shareholders of the company. The situation regarding the economic rights associated with employee shares is relatively straightforward as they rank pari passu with those held by the founders of the company and are junior to the shares held by investors.[57] That is, investors typically receive a certain portion of the proceeds from a liquidity event first, and only after their priority rights are satisfied do the employees and founders receive their share, distributed on a pro rata basis. With controlling rights, it is

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[54] DLA PIPER ACCELERATE. Authorized shares vs. outstanding shares vs. reserved shares [online]. 2017. Available at: https://www.dlapiperaccelerate.com/knowledge/2017/authorized-shares-vs-outstanding-shares-vs-reserved-shares.html. [accessed 9 July 2025]

[55] This is the case with Czech "s.r.o." companies, as will be explained later. However, German GmbHs face a similar issue, as illustrated by ORRICK, HERRINGTON & SUTCLIFFE LLP. ESOPs, VSOPs & Co.: Structuring / Taxes / Practical Issues [online]. June 2021. Available at: https://media.orrick.com/Media%20Library/public/files/insights/2021/olns-8-esops-vsops-co.pdf. [accessed 9 July 2025].

[56] LEDGY. ESOP Guide for Employees [online]. Available at: https://ledgy.com/guides/esop. [accessed 9 July 2025]

[57] LEBRET, Hervé. Equity in Startups: An analysis of the equity split in more than 400 successful startups [online]. ArXiv, 2 November 2017. Available at: https://arxiv.org/abs/1711.00661. [accessed 9 July 2025]

considerably more complex, as the list of ESOP participants can become quite extensive[58] over the course of a company's lifecycle, and certain protective mechanisms must be in place in order to ensure that a single discontented employee cannot cause substantial harm to other shareholders acting in good faith.

These mechanisms may arise directly from the law, from a company's statutory documents such as the articles of association, or can be purely contractual. The flexibility is also determined by whether the startup is set up as a joint-stock or limited liability company, as joint-stock companies generally allow broader limitations on minority shareholders' rights than limited liability ones. However, the decision about a company's form is driven by various factors, and in some jurisdictions[59], limited liability companies tend to be more suitable for startups overall, though from the ESOP perspective, it would be more beneficial to opt for a joint-stock company.

One of the major questions is whether to create a separate share class dedicated exclusively to employees, stripped of voting rights, or to grant them common shares with the same legal quality as those held by the founders. The advantage of employees not having a right to vote at general meetings is clear, the risk, however, is hidden. Some jurisdictions may require the consent of each share class for certain resolutions, sometimes even in cases where such class doesn't normally have a right to vote.[60] This means that by separating employees into a stand-alone category, they can actually gain more control over the company than if they were part of the common share class and their voting power was diluted by those shares held by the founders, who usually have a much larger shareholding interest and therefore dispose of an overruling capacity.[61]

One way often used in practice to tackle the impossibility of completely restricting an employee's, or any shareholder's, voting or any other right, which might result in placing a minority shareholder in a blackmailer's position on a statutory level, is to address such a

[58] NATIONAL CENTER FOR EMPLOYEE OWNERSHIP. Employee Ownership by the Numbers [online]. Oakland: National Center for Employee Ownership, 2024. Available at: https://www.nceo.org/research/employee-ownership-by-the-numbers. [accessed 9 July 2025]

[59] Such as Czech Republic

[60] For example, under § 242(b)(2) of the Delaware General Corporation Law (Delaware is the single most important jurisdiction in the world when it comes to startups), even a non-voting share class must consent separately to any charter amendment that would adversely affect its rights, such as a reduction in its pro-rata ownership. This scenario commonly arises in subsequent financing rounds, which is a matter of absolute importance with regard to the company's success.

[61] WEINER, Perrie, GOODMAN, Aaron and CHANDER, Paul. Chancery Court Provides Roadmap for Retroactive Validation of Shareholder Votes. In: The Harvard Law School Forum on Corporate Governance [online]. Cambridge (MA): Harvard Law School, 8 April 2023. Available at: https://corpgov.law.harvard.edu/2023/04/08/chancery-court-provides-roadmap-for-retroactive-validation-of-shareholder-votes/. [accessed 9 July 2025]

situation in a shareholders' agreement.[62] The exercise of an option is typically connected to an automatic accession to an SHA, and though this contractual approach doesn't give the company the same level of protection as if such a right were statutory, it can still be enforced through contractual penalties or similar instruments.

There are also residual administrative requirements, which might include the obligation for companies to maintain and report a list of granted and exercised options[63], or to have their valuation determined or confirmed by an independent expert or by the tax authorities[64].

3.3. Tax Regime Imposed on Employees' Stock Options

The last, and arguably the most significant area of regulation is taxation. There are several variables that a legislator can adjust, such as tax timing, tax rate, the applicability of a time test, and the impact on social security contributions, all of which have a substantial impact on the overall attractiveness of the scheme. The aim of this chapter is not to provide the reader with a comprehensive tax overview, but rather with a summary of the most common problems, as well as the best practices, related to the taxation of employee shares.

The first common legal provision that creates a significant and unnecessary barrier to ESOP adoption is tied to the timing of the tax deduction. In the real world, there is only one moment upon which an employee realises their profit, and that is the moment they sell their shares. However, there are several points at which an employee may be deemed to have made an on-paper profit, even before that profit is actually realised. A typical example of such moments is the time of grant, if the strike price is lower than what the tax authority considers to be the FMV of the share, or the time of exercise, again if the strike price is below the FMV at that point.[65] It is very problematic if these circumstances form a trigger to the tax deduction obligation, not only because the employee does not yet dispose of cash they could use to pay off their tax obligations, but also because it is not unlikely they might never have it. It is therefore important for

[62] Though not universally applicable across jurisdictions, one of the leading rulings frequently cited in the literature is the judgment of the House of Lords of 26 November 1992 in the case Russell v. Northern Bank Development Corp. Ltd, [1992] 1 WLR 588.

[63] See official UK government website: HM REVENUE & CUSTOMS. Submit an Enterprise Management Incentives (EMI) notification [online]. Great Britain: HM Revenue & Customs, 4 March 2014. Available at: https://www.gov.uk/guidance/submit-an-enterprise-management-incentives-emi-notification. [accessed 10 July 2025]

[64] WARREN, Kristoffer. 409A valuation [online]. Carta, 5 June 2025. Available at: https://carta.com/learn/startups/equity-management/409a-valuation/. [accessed 9 July 2025]

[65] OECD. The Taxation of Employee Stock Options [online]. Paris: OECD Publishing, 2005. (OECD Tax Policy Studies; 11). ISBN 92-64-01248-6 (print); ISBN 978-92-64-01249-3 (PDF). Available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2006/01/the-taxation-of-employee-stock-options_g1gh5dd1/9789264012493-en.pdf. [accessed 9 July 2025]

regulators to stick to the “no tax before cash” principle and adopt laws that ensure the deferment of tax payment[66], regardless of the rate they decide to impose on the employee's profit.

Another controversial topic that often stirs up passionate discussion is the type of tax regime that is applied to an employee’s profit. There are essentially three most common approaches - the profit may be taxed as income from dependent work, as a capital gain, or under a dedicated regime. The rule of thumb is that the own regime tends to be the best, the capital gains regime second best, and the regime applicable to dependent work is usually the least favourable. The benefit of the capital gains regime is that, on top of lower rates, it is often subject to a time test, a legal instrument exempting the profit from the tax obligation in case it is realised after a certain period of holding the underlying financial instrument.[67]

In reality, these regimes are often combined, meaning that part of the financial upside may be treated as income from dependent work and another part as a capital gain. A typical example would be that, from grant until exercise, the upside is taxed as dependent work income, and from exercise until exit, it would be a capital gain. Note the important nuance that options tend to be exercised only shortly before the company sale, which means that the later the capital gains regime starts to apply, the smaller the portion of profit subject to the lower tax rate, and the possibility of an employee enjoying the benefits of the time test is effectively diminished.

[66] EUROPEAN COMMISSION. Commission Staff Working Document accompanying the Communication “The EU Startup and Scaleup Strategy – Choose Europe to start and scale” [online]. Brussels: European Commission, 2025. SWD(2025) 138 final. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52025SC0138. [accessed 9 July 2025], p. 32.

[67] OECD. Taxing Capital Gains: Country Experiences and Challenges [online]. Paris: OECD Publishing, 2025. Available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/02/taxing-capital-gains_76a32327/9e33bd2b-en.pdf. [accessed 9 July 2025], p. 18.

4. Foreign Legal Frameworks in ESOP-friendly Jurisdictions

Now that the common business terms of a standard option plan have been introduced and a summary of the critical nuances necessary for assessing the legal favourability of ESOPs has been provided, the foreign legal frameworks can be analysed in depth. As the aim of this thesis is to cover systems that are not only favourable but also relevant, three jurisdictions were selected based on a combination of the favourability of their legal environments towards stock options[68] and the level of development of their startup ecosystems, while ensuring representation from both within and outside the European Union: the United States, the United Kingdom, and Estonia.

4.1. United States' ISOs and NSOs

There are two types of stock options American startups typically use to award their employees with equity. The first of them is incentive stock options, so-called ISOs, and the second, nonqualified stock options, also known as NSOs. The ISOs' regime can generally be considered more favourable from an employee's perspective, but the conditions for its usage are also more heavily restricted, while NSOs offer less favourable tax treatment, but their scope is significantly broader.[69]

ISOs can only be granted to employees, not to contractors, advisors, or persons having any relationship with the company other than employment. In addition, such a grant may only happen based on a formal plan approved by the shareholders of the company, that has to be compliant with several other legal requirements, such as that the strike price must not be lower than the FMV at the time of the grant, that the options must be exercised within 10 years from their grant or 3 months after the employee departs from the company, or that they cannot be transferred except upon the death of their holder.

If all of these conditions are met, the employee can benefit from the favourable tax regime associated with ISOs up to the limit of USD 100,000 on the value of stock becoming exercisable each year, calculated based on the FMV at the time of grant.[70] In other words, if an

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[68] The initial filter of legal favourability was based on the existing Index Ventures' Rewarding Talent handbook, followed by a more thorough analysis of the selected jurisdictions.

[69] BUSHMAN, Anne, BORMAN, Michelle and TAMAI, Frank. Deciding between incentive and nonqualified stock options: Which stock option plan is right for your company? [online]. Washington, D.C.: RSM US LLP, November 2022. Available at: https://www.rsmus.com/insights/services/business-tax/deciding-between-incentive-and-nonqualified-stock-options.html. [accessed 9 July 2025]

[70] MOYLAN, Carol and YORGASON, Susan. Treatment of Employee Stock Options in the U.S. National Economic Accounts [online]. Washington, D.C.: U.S. Bureau of Economic Analysis, 2000. Working Paper Series, No. 6. Available at: https://www.bea.gov/sites/default/files/papers/P2000-6.pdf. [accessed 19 July 2025]

employee is granted ISOs with the total FMV of USD 500,000, subject to the four-year linear vesting, they are eligible to receive tax benefits only to the extent of 80% of them, and the remaining options corresponding to USD 100,000 are treated as NSOs.

There are two major tax benefits an ISO holder can enjoy, the first being that no tax has to be paid either at the moment of grant or at the time of exercise. There is, however, one exception concerning top-earning employees: the spread between the strike price and the FMV at the time of exercise is taken into account for the purposes of the alternative minimum tax (AMT)[71], an instrument designed to prevent the wealthiest Americans from avoiding their tax obligations. If this spread exceeds a certain threshold, tax must be paid already at the time of the exercise.

The second benefit is that if the stock is sold more than two years after the grant and more than one year after the exercise, the entire upside, corresponding to the spread between the strike price and the sale price, is treated as a capital gain. In the case of a disqualifying disposition, i.e., a sale of the stock prior to the lapse of any of the above-mentioned periods, the employee is obliged to pay ordinary income tax on the spread between the strike price and the FMV at the time of exercise, and capital gains tax on any additional income resulting from the subsequent increase in the company’s value. From the employer's perspective, they are able to deduct the amount on which the employee paid ordinary income tax as a tax deductible expense.

The regime of NSOs is similar to that of ISOs in the case of a disqualifying disposition, in the sense that the spread between the strike price and the fair market value upon exercise is taxed as ordinary income, that such amount is a tax-deductible cost from the employer's perspective, and that the residual income is taxed as a capital gain. The difference is that NSOs require the grantee to pay ordinary income tax at the moment of exercise, making them even less attractive from a tax perspective than ISOs disposed of in a disqualifying manner.[72]

The reason why NSOs may sometimes be perceived as more attractive is that they offer much greater flexibility. Apart from the requirement that the strike price must not be set below the fair market value at the time of grant, they are not subject to the same restrictions as ISOs and can, for example, be granted to persons other than employees, without the need for approval of a formal plan, and without the obligation to be exercised within a stipulated timeframe.

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[71] NATIONAL CENTER FOR EMPLOYEE OWNERSHIP. Stock options and the alternative minimum tax (AMT) [online]. Oakland: NCEO, 2022. Available at: https://www.nceo.org/articles/stock-options-alternative-minimum-tax-amt. [accessed 19 July 2025]

[72] DIMOV, George. What You Need to Know About Nonqualified Stock Options [online]. Dimov Tax, 31 December 2024. Available at: https://dimovtax.com/nso-tax-options/. [accessed 19 July 2025]

4.2. EMI and Other UKs Option Schemes

The United Kingdom offers several option scheme regimes, the most important and widely used of which is the Enterprise Management Incentive (EMI), which will therefore be the primary focus. Other schemes, including Save As You Earn (SAYE), the Company Share Option Plan (CSOP), and the Share Incentive Plan (SIP), will also be briefly mentioned, as well as so-called growth options,[73] i.e., options under no regulatory regime, being governed by the general provisions of the UK law. EMIs are conceptually very similar to ISOs, as they also allow the company to grant their employees options under the tax-favourable regime. Compared to the ISOs, the EMI regime can generally be viewed as even more favourable, but the scope of the plan, on the other hand, is a little more restrictive.

With regard to the plan scope, EMIs may only be adopted by a company that is independent and not more than 50% owned by another company, has permanent establishment in the UK, has gross assets under GBP 30 million, fewer than 250 employees, and does not conduct its business in any of the restricted sectors, such as banking, farming, or legal services. Options under EMI plan can only be granted to employees, not contractors, who must work in the business for at least 25 hours per week or devote at least 75% of their total working time to it, the employees must also not own 30% of the company in order to be eligible for such options[74]. Additionally, the company must not award a single employee options worth more than GBP 250,000 based on their fair market value upon the moment of grant, and cannot have cumulatively more than GBP 3,000,000 unexercised options.

If the eligibility requirements are met, the company can proceed with plan adoption and its formal approval by the board of directors. The process further involves slightly more steps than in the US but offers greater legal certainty for both the company and its employees. To grant options to an employee, the company submits an assessment of its up-to-date valuation to His Majesty's Revenue and Customs (HMRC) for approval. Such valuations are often significantly below the valuations of the latest funding round, reflecting the higher risk profile of shares offered to the employees. Once approved, the company has a 90-day window to grant options to its employees. If it wishes to grant additional options after this period has lapsed, or if there is a material change in the circumstances under which the valuation was approved, the entire process

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[73] BRENNAN, Joe. Enterprise Management Incentive (EMI) Schemes & Options [online]. Ledgy, 2024. Available at: https://ledgy.com/blog/emi-guide. [accessed 9 July 2025]

[74] GOV.UK. Enterprise Management Incentives (EMIs) [online]. In: Tax and Employee Share Schemes. London: Government Digital Service. Available at: https://www.gov.uk/tax-employee-share-schemes/enterprise-management-incentives-emis. [accessed 9 July 2025]

must be repeated. The company is also required to notify HMRC of each grant by 6 July following the end of the tax year in which the grant was made.

Once all the formalities have been met and the employee has received their option, a substantially beneficial tax regime is triggered. Specifically, the moment of tax payment is deferred, so the exercise of the option does not trigger any immediate payment obligation. Additionally, the tax is calculated only on the spread between the strike price and the sale price, and the capital gains regime applies to the whole amount, with one further benefit being that if the shares are sold more than two years after the grant, the tax rate is further reduced to 10% under the business asset disposal relief. Employers also benefit, as EMI options are exempt from the national insurance contribution. These favourable conditions continue to apply even if a disqualifying event occurs, most notably the employee's departure or the company ceasing to qualify for EMI relief, provided the options are exercised within 90 days thereafter.[75]

As for the other schemes to which the UK government offers favourable treatment, none are nearly as relevant as EMIs in the context of this thesis and will therefore be introduced only briefly. SAYEs allow employees to contribute a portion of their salary to a company savings scheme, which can later be used to purchase shares at a discounted price. SIPs enable companies to award employees up to approximately GBP 4,000 worth of shares each year and are particularly suitable for large enterprises, and CSOPs are structurally similar to EMIs, but their design does not make them nearly as attractive.[76]

The final remark related to the UK's system concerns the so-called non-tax-advantaged options, i.e., options under no specific regulatory regime. These are often used by companies that do not meet the EMI eligibility criteria or require a higher level of flexibility for any reason. Such options can be granted to anyone, without the need for strike price approval. However, they are subject to stricter tax regimes similar to US NSOs. Specifically, the first taxable moment arises at the time of exercise, when the spread between the strike price and FMV is subject to income tax, and later at sale, when capital gains tax applies. These options also do not allow employers to avoid national insurance contributions.

[75] HM REVENUE & CUSTOMS. Employee Tax-Advantaged Share Scheme User Manual – ETASSUM50000 [online]. London: Government Digital Service, 2015–. Available at: https://www.gov.uk/hmrc-internal-manuals/employee-tax-advantaged-share-scheme-user-manual/etassum50000. [accessed 19 July 2025]

[76] Brennan (2024)

4.3. Estonia

The progressive approach and openness to innovation in the Baltic states is well known, fostering an ecosystem that helped now-multibillion-dollar companies such as Skype, Bolt, Wise, or Vinted to emerge. Their regulation of stock options is no exception, having repeatedly ranked first in the international comparison conducted annually by Index Ventures.

It is interesting that, unlike the US's ISOs or the UK's EMIs, Estonia does not have any separate statutory regime for employee shares; instead, the favourable treatment is embedded within the general tax framework. This is immediately reflected in the breadth of the scope, as the terms are applicable to essentially any company, and no conditions such as number of employees, certain turnover, or maximum value of granted shares apply. Additionally, the scope of persons who can be awarded such options is also unusually wide, as it isn't limited to employees, but includes board members, contractors, or even individuals working under employer-of-record arrangements.[77] The only relevant non-eligible category are legal persons, especially with individuals providing services through their own entity in mind.

The bureaucratic burden tied to the management of options is also very low. The only notable remark in this sense is that the exercise of an option less than three years after the grant triggers a tax obligation, as further explained below, which causes local tax authorities to require a signed option grant to be emailed within five days from the date of its acceptance[78], in order to verify it wasn't backdated, or to use electronic signatures with a verified timestamp under EU law. Additionally, companies often set up the plans in a way which prohibits their employees from actually exercising their option prior to the lapse of this period to avoid these tax obligations. Apart from that, there are no obligations for valuation approval, shareholders consent, or similar formalities.

With regard to taxation, the first taxable moment arises if an option is exercised less than three years after its grant. In such a case, a tax obligation is triggered, the structure of which is, however, rather unusual. The value realised by the employee upon exercise is treated as a fringe benefit, and employees are not subject to any tax on fringe benefits in Estonia. The entire tax burden falls on the employer, with the rate calculated to ensure a 22/78 split after taxation.[79]

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[77] KOLTS, Tõnu. Comprehensive guide to taxation and key aspects of equity and cash-based compensation plans in Estonia [online]. Cobalt Legal, 14 August 2024. Available at: https://www.cobalt.legal/news-cases/comprehensive-guide-to-taxation-and-key-aspects-of-equity-and-cash-based-compensation-plans-in-estonia/. [accessed 29 August 2025]

[78] ESTONIAN TAX AND CUSTOMS BOARD (MTA). Conditions of share options [online]. Handbook Article, last update 8 January 2025. Available at: https://www.emta.ee/en/admin/content/handbook_article/267. [accessed 29 August 2025]

[79] Kolts (2024)

For example, if an employee exercises an option with a strike price of EUR 100 to acquire stock worth EUR 1,000, they realise a benefit of EUR 900, which translates into the employer's tax obligation calculated as 900 / 78 * 22, i.e., EUR 254. The amount corresponding to the sum of the benefit and the tax[80] is further subject to 33% social tax, further increasing the tax by EUR 380, resulting in a combined tax rate of approximately 70.5%.

It is very interesting that if an employee is contractually obliged to compensate the employer for the paid tax, two consequences arise: the first is that the tax reduces the fringe benefit amount, and the second is that the value of the stock is no longer regarded as a pre-tax value but as a post-tax value. To demonstrate this effect, we can compare this situation with the previous example, where the tax was calculated as 900 * 70.5%, resulting in a total paid tax of approximately EUR 634. In the case of the employee's obligation to reimburse the employer, however, we use the following formula to calculate the tax: 900 - 900 / (1 + 70.5%), which gives a total tax of EUR 373. In other words, the tax rate is almost halved when it is the employee who pays.

It is important to point out that in the case of exercise of the option three years or more after its grant, such benefit is exempt from tax, and no tax obligation arises. Furthermore, if the option is exercised earlier due to any qualifying event, such as a 100% company sale or the employee's death or disability, the proportion of the taxable benefit is reduced pro rata to the number of years that preceded such exercise. For example, if the benefit is EUR 900 and the options are exercised after two years, only EUR 300 is taxed. Such benefit is independent of the strike price of the option, which can therefore be provided to the employees at any price the company decides without adversely affecting their tax situation. Such an opportunity is not left unused, and it is common practice for Estonian companies to grant options at nominal value.

Lastly, employees are subject to a flat 22% tax on the difference between the share's strike price and price paid by an acquirer at sale, with the tax payable in October of the year following the sale.

[80] In our example, the amount would be 1.154 EUR.

5. Comprehensive Analysis of Legal State in Czech Republic

As an attentive reader has probably already noticed, ESOPs are indeed a multidisciplinary issue, intersecting significantly with labour, contract, corporate, and financial law. Until very recently, they existed in a complete legal vacuum, when four paragraphs, totalling 374 words, were added to the Czech Income Tax Act[81], now forming the entirety of the regulation on this topic. Naturally, such a lack of a comprehensive legal framework creates significant practical issues, forcing those subject to the law to search for workarounds.

In this chapter, it will be examined how awarding an employee with an option to purchase a stock of the company they work for taps into the current Czech regulatory environment, identifies its weakest points, and thinks of possible solutions.

5.1. Employees and Service Providers in Context of Stock Options

Before diving into the specifics of stock options, it should be noted that they are typically designed as an incentive tool for the motivation of employees, i.e., not other types of services providers.

As of now, the distinction between employees and other types of service providers has no practical impact, as there is no legal framework for stock options for either employees or anyone else in the Czech Republic, however, if such a framework was adopted and anyone other than employees were excluded, the implications for adoption could be significant, as it is the author's experience that many of the contributors are actually engaged with the company under a different than employment regime, often as sole traders under the collaboration agreement or similar arrangement, and wide group of individuals therefore would not be able to benefit from such framework.

Even though this distinction is not crucial at the moment, it may still be useful to recall that an employee is a natural person who has committed to dependent work, i.e., work where the employee is subordinated to the employer, performed on behalf of the employer, according to their instructions, and personally by the employee. Such work must further be carried out for a wage, salary, or other remuneration, at the employer's expense and responsibility, during working hours at the employer's workplace or, where agreed, at another location under the employment relationship.[82]

Additionally, if a company engages sole traders, it must do so only with respect to those whose work does not meet the characteristics of dependent work. Otherwise, it may be subject to

[81] Specifically, Section 6, paragraphs 14 to 17 of Act No. 586/1992 Coll., the Income Tax Act.
[82] Section 2, 3 and 6 of Act No. 262/2006 Coll., Labour Code

severe fines or even a prohibition of activity for up to two years.[83] Typically, these providers use their own equipment, work outside any schedule organised by the employer (or company, in this case), and from any location they deem suitable. Additionally, the instructions regarding their work are usually broad and leave considerable discretion to the sole trader in determining how to achieve the desired goal.

For the purpose of this thesis, however, this nuance will be disregarded, and only the employment aspect will be analysed.

5.2. Legal Nature of Stock Options in Labour Law

Building on the distinction between employees and other types of service providers, and assuming that stock options are granted only to employees, the next step is to examine how stock options are treated within the framework of labour law. A key point of uncertainty arises immediately when attempting to qualify the legal nature of the benefit corresponding to the difference between the strike price and FMV upon exercise. In particular, it has to be distinguished whether such benefit can be classified as a wage (in Czech: *mzda*) or as a different kind of remuneration. A question not only academic, but one that has a profound impact on various other matters, such as severance pay or vacation compensation, as will be explained later in this chapter.

It is mandatory that an employee receives a wage as compensation for the work they perform for their employer.[84] Furthermore, a wage is defined as a cash payment or a non-monetary (in-kind) payment with monetary value provided by the employer to the employee for their work.[85] While it is clear that stock options are not a cash payment, they might fall under the scope of in-kind wage.

It is further clarified in the Labour Code, under which conditions an employer may remunerate their employees in kind and which methods are used to determine the monetary value of such compensation.[86] The list of assets eligible to be provided as in-kind wage, consisting of products, performances, work, or services, is also contained therein. Though it could be argued that a stock option does not fall within the scope of any of these categories and therefore cannot be deemed a wage, this appears to be an overly formal argument, and it is the belief of the author

[83] Section 5, letter e), number 1) in connection with Section 140, paragraphs 4 and 5 of the Act No. 435/2014 Coll., Act on Employment
[84] Under the Section 109 of the Labour Code
[85] Paragraph 2 of the same Section 109 of the Labour Code
[86] Specifically under its Section 119.

that further analysis must be conducted to properly determine the legal nature of such compensation.[87]

Another important aspect differentiating wage from other rewards is that wage is claimable, whereas it is typically at the employer's discretion whether to provide the other reward.[88] This distinction is also reflected in the law, which, to ensure such claimability, requires that the wage be must agreed contractually, determined by the employer in its internal regulation (in Czech: *vnitřní předpis*), or set by a wage resolution (in Czech: *mzdový výměr*). While participation in stock option plans is typically not established in the employment agreement, it is usually agreed upon contractually through the employee's acceptance of an award letter, forming a legally binding right of the employee, which should be sufficient to meet this requirement. This condition is therefore met and cannot give ground for ESOPs disqualification from the wage regime.

The next approach that can be used in order to make the correct qualification is to review which mechanisms are used to connect wage size with the employee's work performance, and to assess whether the stock option falls within any of these categories known by theory. The most common approaches to employee remuneration are to determine the size of employee's wage based on the time they performed the work, the tasks they were able to fulfil, or the value they delivered.[89] In each case, there has to be a direct link between the employee's performance, and their compensation.

In the case of stock options, this link is missing, as the size of an employee's compensation is not directly influenced by their performance. Even though stock options might appear to constitute "value wage," it is the author's opinion that such a conclusion would be incorrect. This is because: 1) once the vesting period lapses, the number of options an employee may exercise ceases to increase - ad absurdum, this would imply that the employee's work ceases to have value after, say, year four; and 2) the size of an employee's benefit corresponds to the spread between the strike price and the fair market value per share, with the FMV being an objective factor outside of their control, i.e., not directly linked to performance - a basic requirement for wage, according to the Czech Supreme Court.[90]

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[87] It is explicitly prohibited to provide employees with alcohol or tobacco as in-kind wage. The purpose of this provision is clearly protection of employees' health. There is no such interest in the case of stock options, and as they are surely to be considered a 'thing' under Section 489 of Act No. 89/2012 Coll., Civil Code, which has monetary value, the eligibility of stock options to be provided as wage should at least be considered.

[88] For example Czech Supreme Court ruling 21 Cdo 3104/2022, dated December 20, 2022, but also from Section 157 of Treaty on Functioning of the European Union.

[89] HŮRKA, P., RANDLOVÁ, N., DOLEŽÍLEK, J., ROUČKOVÁ, D., VYSOKAJOVÁ, M., DOUDOVÁ, S., KOŠNAR, M., HORNA, V. et al. Labour Code: Commentary. Prague: Wolters Kluwer, 2024. ISBN 978-80-7676-803-1.. Commentary on § 113.

[90] Under its ruling 21 Cdo 2688/2007, dated July 18, 2008

To further support this conclusion the provisions such as the following are often included in stock option plans: "*The Award of Phantom Shares serves as a retention scheme to retain talented individuals in the Group and/or maintain cooperation with service providers under the Relationship Agreement. The Award of Phantom Shares is not linked to any performance criteria.*[91]", which aim to exclude the application of the wage regime to ESOPs.

Instead, a stock purchased at a lower than fair market price seems to be a benefit, with a legal regime similar to a discretionary bonus provided by an employer upon the employee's work jubilee[92], or even the provision of a company car for personal use.

5.3. Implications of Exclusion of Stock Options from the Wage

Probably the most important consequence of the employee benefit resulting from the discounted share acquisition not being classified as a wage is that it does not increase the basis for calculating their average earning (in Czech: *průměrný výdělek*).[93]

This distinction is crucial, as average earning serves as the basis for calculating entitlements such as severance pay[94] or compensation for wage during annual leave[95]. To demonstrate the importance of such exclusion, and the potentially absurd situations that might arise from classifying ESOP benefits as wage, Wiz can be used as an example. Founded in 2020, the company provides enterprise customers with cloud security services. It reached an annual recurring revenue of 100 million USD just 18 months after its establishment, achieved a valuation of 10 billion USD by 2023, and was acquired by Google for 35 billion USD in 2025. A remarkable example of how rapidly startups can grow.[96]

Imagine being among the first engineers who received an option to acquire shares corresponding to a 0.3% shareholding interest in Wiz at their nominal value, exercised the option by 2023, and left for a two-week holiday immediately afterwards. The benefit realised upon such exercise would amount to 30 million USD, or 668 million CZK, translating into the employer's obligation to pay wage compensation of approximately 22.8 million CZK. If this employee had

[91] This wording specifically was taken from the Growth Plan template, made by the Czech Startup Documentation initiative (https://czechstartupdocs.com/) though it is in the knowledge of the author that similar provisions are to be found in essentially any legally thorough ESOP programme.
[92] Section 224, paragraph 2 of the Labour Code.
[93] As defined under Section 351 et seq. of the Labour Code. It is clearly one of its mandatory provisions; that is, the parties may not define it otherwise.
[94] Section 67, paragraph 1 of the Labour Code.
[95] Section 222 of the Labour Code.
[96] LYONS, Kim. Google is buying Wiz for $32B to beef up in cloud security [online]. TechCrunch, 18 March 2025. Available at: https://techcrunch.com/2025/03/18/google-is-buying-wiz-for-32b-to-beef-up-in-cloud-security/. [accessed 26 July 2025]

been dismissed due to redundancy immediately after returning from the holiday, the employer's obligation to pay severance would amount to 167 million CZK.

A further consequence of classifying income arising from ESOPs as wage would be a significant expansion of the employee's liability for damages.[97] Additionally, ESOPs' exclusion from wage means that the employee protection of it is much lower, in particular, the employee would not be entitled to terminate the employment relationship with immediate effect if it was not provided in time,[98] although they would likely still be entitled to claim damages,[99] with such claim even being classified as coming from the employment relationship and protected under the Insolvency Act,[100] making them privileged in comparison to the standard receivable regime.

Although ESOPs are exempt from the legal regime governing wages, this does not mean they fall entirely outside the scope of the Labour Code. In particular, they still form part of the employee's remuneration in a broader sense,[101] and employers are required to treat all employees equally,[102] including with respect to conditions of remuneration.

This provision goes beyond the general prohibition of discrimination, restricting employers to treat employees differently based on their sex, race, sexual orientation, or other different factors,[103] and further requires the employer to avoid making arbitrary decisions about the matter related to compensation. It is therefore advisable for the employer to have internal regulations that tie the grants not to specific individuals, but rather to positions, taking into account criteria such as the complexity and intensity of the work, the level of responsibility associated with the position,[104] or the outcome of a formal review, with room for discretion based on individual employee performance, for example.

In the context of equal treatment in remuneration, potential indirect discrimination must be noted, as the majority of grants are typically awarded to engineers, most of whom are men. It is therefore important for the employers to be able to prove that such measure is legitimate and proportionate.[105]

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[97] Under Section 257 of the Labour Code.
[98] As foreseen by Section 56, paragraph 1, letter b) of the Labour Code.
[99] Under Section 265 of the Labour Code.
[100] Specifically under Section 169, paragraph 1, letter a) of Act No. 182/2006, the Insolvency Act
[101] BUKOVJAN, Petr. Nenárokové složky mzdy. Praktická personalistika. Olomouc: ANAG, 2018, č. 5–6.
[102] See in Section 16, paragraph 1 of the Labour Code.
[103] Though this aspect is also important and as such governed by Section 5, paragraph 1 of Act No. 198/2009 Coll, Antidiscrimination Act.
[104] Compare Section 110, paragraph 2 of the Labour Code.
[105] Otherwise, such behaviour could fall within the scope of Section 3, paragraph 2 of the Antidiscrimination Act.

5.4. Employee Share Schemes under Czech Corporate and Contractual Law

The first problem associated with setting up an employee stock option plan under the Czech law arises from the fact that our BCA[106] does not recognise any concept of statutory stock options. This means that Czech companies and their shareholders lack the tools to establish a simple and transparent regime in which a stock option plan is approved and subsequently serves as the basis for a self-executing stock issuance mechanism, triggered upon the exercise of a duly granted and vested option by an employee. Such regulation would make the entire procedure faster, cheaper, and more easily enforceable.[107] Instead, an employee's right to the issuance of new shares is established purely contractually[108] rendering the process significantly more demanding from the administrative perspective.

Furthermore, the complexity of ESOP set-up is partially dependent on whether it is intended to be set up for a limited liability company (s.r.o.), or joint-stock company (a.s.). Despite the vast majority of Czech startups being established as an s.r.o., this text will cover the intricacies of dealing with stock options under the a.s. first, as its regime, though still not optimal, is much more favourable towards ESOPs and would therefore serve as an anchor for a later comparison with the s.r.o..

Since each share of a joint-stock company represents a proportionate right of its holder to the company's registered capital, and the exercise of a stock option requires the company to issue new shares, any such exercise goes, by default, hand in hand with an increase in registered capital and all the formal requirements associated with it,[109] in particular, the consent of the general meeting, consisting of an affirmative vote by two-thirds of the present shareholders is required,[110] with such resolution having to be certified by a notary.[111]

Alternatively, the law allows the joint-stock company[112] to adopt a resolution valid for a period of up to five years, by which the discretion to increase the company's registered capital is de facto transferred to the board of directors, authorising it to, even repeatedly, decide on the registered capital increase without the need for approval by the general meeting. This approach provides the company with significantly greater flexibility and constitutes a more suitable

[106] Act No. 90/2012 Coll., the Business Corporations Act.
[107] As is common in developed systems, such as the United States, see GALUSTIAN, Alec. Stock-Based Compensation in Startups: Employee Implications & Potential Solutions. UC Law SF Business Law Journal [online]. 2024, vol. 20, no. 2, pp. 239–274. Available at: https://repository.uclawsf.edu/hastings_business_law_journal/vol20/iss2/4. [accessed 5 August 2025]
[108] Including any mechanisms intended to enforce these rights, such as contractual penalties.
[109] As required by Section 474 and the following provisions of the BCA.
[110] Under Section 416, paragraph 1 of the BCA.
[111] See Section 416, paragraph 2 in connection with Section 776, paragraph 2 of the BCA.
[112] See Section 511 of the BCA. It is important to stress that this regime really only applies to joint-stock companies.

framework for employee share schemes, although notarial approval is still required each time such a resolution is adopted.[113]

Another important caveat to the process of issuing new shares in joint-stock company is a statutory pre-emption right of all shareholders to participate in the capital increase pro-rata to their shareholding interest,[114] which further cannot be limited in Company's Articles of Association.[115] There are essentially three ways out of this situation.

First option is that anytime the general meeting or board of directors adopts a resolution, all of the shareholders waive their pre-emption right. Such an approach works, but is not very practical, as it requires each shareholder's action each time an option is exercised and puts even the most minor shareholders in a position to obstruct or delay the whole process.[116]

Second option is that shareholders waive their pre-emption rights prior to the resolution of the general meeting or the board.[117] The question of whether such a waiver can be given for any future capital increase or only in relation to a specific one is subject to academic dispute,[118] with the author's view being that the general intent of the law prohibits shareholders from validly waiving their right altogether for all future instances, but should allow for a broader than one-time waiver, as long as it is limited by the scope of the plan, maximum number of shares to be issued, or timeframe within which such waiver is valid.[119]

The third option is to limit this pre-emption right by the resolution of the general meeting if such resolution is adopted to protect an important interest of the company.[120] While ensuring the fulfilment of the company's legal obligations towards its employees should, in the author's opinion, fall within the scope of an "important interest of the company," the relevant provision is clearly of an *ad hoc* nature and should serve as a measure of last resort rather than a standard tool in the ESOP implementation arsenal.

After the fulfillment of all above-described formalities, the company may issue the employee-shares, and it might even decide to cover a portion of the issue price from its own

[113] It is notable that the registered capital may only be increased by up to one half of its original amount; however, this limit is more than sufficient in the context of ESOPs.
[114] Section 484 of the BCA.
[115] Section 487 of the BCA.
[116] In practice, this is usually addressed in shareholder agreements by imposing a contractual obligation on shareholders to waive their pre-emption right when the conditions are met.
[117] Such procedure foreseen by Section 490 of the BCA
[118] ŠUK, Petr. § 490 [Zánik a vzdání se přednostního práva]. In: ŠTENGLOVÁ, Ivana, HAVEL, Bohumil, CILEČEK, Filip, KUHN, Petr, ŠUK, Petr. Zákon o obchodních korporacích. 3rd ed. Praha: C. H. Beck, 2020, p. 1003..
[119] Such a conclusion is supported by Section 512 of the BCA, as it would not make sense to allow shareholders to delegate their power to increase the registered capital while prohibiting them from waiving their pre-emption right to participate in such increase at the same time.
[120] Section 488 of the BCA.

capital, effectively enabling it to issue the shares at their fair market value while allowing employees to purchase them at a discounted strike price at the same time.

To effectuate the capital increase, the employee must also enter into a written agreement with the company, with an officially certified signature.[121] This agreement must specify the issued shares, their issue price, address the waiver of shareholders' pre-emption rights, and include other required formalities. The issuance of the new shares must then be recorded in the Commercial Register.[122]

The law also allows a joint-stock company to acquire its own shares if the sole purpose of such ownership is to hold them before they are transferred to employees, provided that such transfer is effectuated within one year.[123] This allows the company to issue a certain number of shares it expects to be vested and exercised within a given year, reducing the administrative burden associated with the exercise, as it is legally simpler to transfer a stock[124] than to issue it.

The regulation of Czech limited liability company is a little more delicate from the ESOP perspective, given the quite strong personal element[125] present in this form of legal entity. This is problematic as the vast majority of startups emerging from the Czech Republic have the form of an s.r.o., due to its simpler corporate governance and lower capital requirements.

The main differences are that a limited liability company doesn't have shares (in Czech: *akcie*), but rather shareholding interests (in Czech: *podíly*), which are legally more difficult to dispose of.[126] Furthermore, the BCA does not contain any provision that would allow the general meeting of a limited liability company to authorise the executive director to adopt a resolution to increase the registered capital, and, in the author's opinion, it is not legally possible to introduce such competence in the articles of association, as this would reduce the protection of existing shareholders, which is a value to which greater emphasis is placed in a limited liability company than in a joint-stock company. Any exercise of option therefore has to be approved and effectuated directly by the general meeting and formalised in the form of a notarial deed.[127]

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[121] Section 479 of the BCA

[122] Section 48, paragraph 1), letter a) of Act No. 304/2013 Coll., Public Registers Act

[123] The letter of the law is quite complex in this case, as this rule is set out by Section 305 of the BCA, which sets an exception to its Section 301, paragraph 1), letter a), which develops the rule contained in Section 298 of the BCA.

[124] The process of transferring stock is governed by Section 269 and the following provisions of the BCA, and differs based on the type of stock the company has, which is determined in its articles of association.

[125] HAVEL, Bohumil. § 132 [Vymezení společnosti s ručením omezeným]. In: ŠTENGLOVÁ, Ivana, HAVEL, Bohumil, CILEČEK, Filip, KUHN, Petr, ŠUK, Petr. Zákon o obchodních korporacích. 3rd ed. Praha: C. H. Beck, 2020, p. 342.

[126] By default, a shareholding interest can only be transferred with the consent of the general meeting, and a written agreement with certified signatures is required (see Section 207 and following of the BCA).

[127] The standard procedure for a registered capital increase applicable to an s.r.o. under Section 216 and the following sections of the BCA therefore applies.

The list of shareholders and the size of their respective shareholding interests usually form part of the company's articles of association and are published in the Commercial Register,[128] which means that any exercise of stock options goes hand in hand with amendment of articles of association. The need for such amendment could theoretically be avoided by issuing a share certificate (in Czech: *kmenový list*), though this instrument is used rather rarely, and its practicality is limited by the fact that the transferability of a share certificate must be unrestricted[129], which is highly undesirable for companies providing shares through an ESOP, as they typically aim for the exact opposite through various lock-up provisions, etc.

In addition to the preceding, compared to a joint-stock company, a limited liability company is also more legally restricted in holding its own shareholding interests, and there is no statutory mechanism allowing the company to offer employees ownership interests at a discounted price.[130]

As for shares themselves (or shareholding interests, respectively), it is legally permitted to issue a new class of shares without voting rights attached in both joint-stock and limited liability company. The purpose of this new class, in the context of an ESOP, is to provide employees with the economic benefits of the company's activities without granting them the power to influence its commercial decisions and potentially limit its actionability. The issue, however, is that notwithstanding the removal of voting rights from these shares, such rights continue to exist in a dormant state and may, under certain circumstances, be revived, oftentimes in situations least desirable from the company's perspective.

In case of a limited liability company, for example, the consent of each and every shareholder is required, regardless of whether their share is associated with a right to vote or not, in case of a change to the company's articles of association that affects the rights of all shareholders.[131] This is exactly the case of a new investor joining the company and providing it with fresh capital in exchange for newly issued shares. While such an investment is almost always a good thing, it dilutes the shareholding interest of all existing shareholders and thereby affects their rights, and it may also come with new preferential rights, which, again, would affect the rights of the existing shareholders, and therefore, their consent to such an investment is required. As a result, fearing that the employees could block future funding, the company may be unwilling to grant shares to employees whatsoever, or seek to prevent such a scenario by addressing it in the SHA or plan itself, thereby increasing the complexity (and legal costs)

[128] Compare with Section 48, paragraph 1), letter j) of Public Registers Act
[129] Under Section 137, paragraph 2) of the BCA
[130] Simply put, there is no equivalent of the regime under Section 258 of the BCA for joint-stock companies.
[131] Under Section 171, paragraph 2) of the BCA

associated with ESOP adoption. In case of a joint-stock company, the ability to restrict the rights of minority shareholders in the company's statutory documents is generally broader, but also subject to various limitations.[132]

The solutions to bypass the above restrictions have, of course, been developed. The first, already mentioned above, is regulating the mutual relationship between the shareholders and the company by a shareholders' agreement introducing a contractual obligation to vote and/or act in a certain manner once an exit or future round occurs. This approach is flexible, but the fact that these obligations are purely contractual effectively lowers their enforceability, as it often requires reliance on high contractual penalties, which may be subject to moderation by court.[133] An alternative approach would be to create a special-purpose vehicle controlled by the founders, whose sole function is to unite the ESOP participants under one legal umbrella. The founder of the main company would also serve as the managing director of this SPV, and would act on behalf of the employees in all cases of corporate governance of the main company, such as approval of its articles of association.[134]

Establishing a full-scope ESOP without significant legal costs and excessive administrative burden is rather complicated in an early-stage company, often with fewer than ten employees. In practice, standardised workarounds have been developed to enable startups to capture most of the advantages that option plans provide, supporting talent attraction, motivation, and retention, while avoiding the associated downsides. These include, in particular, phantom or virtual stock options and share appreciation plans. The essence of these legal constructs is that they do not provide employees with a share or shareholding interest associated with a statutory right to a portion of the company's proceeds, typically from its sale, but potentially also from dividends, but instead entitle them contractually to receive a bonus whose amount is derived from the company's value.[135] The difference between phantom shares and share appreciation rights is that, in the case of a phantom share, an employee typically receives an amount corresponding to the full value of the share, whereas SARs entitle them only to a bonus corresponding to the increase in the share's value since the date the right was granted.

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[132] One example could be voting by share class under Section 276, paragraph 3) of the BCA, or during a so-called squeeze-out under Section 375 and following of the BCA.

[133] Under Section 2051 of Civil Code

[134] The good thing about this structure is that even though a change to the main company's articles of association requires the consent of all its shareholders, the corporate governance of the SPV remains unaffected. The SPV can therefore be represented by its executive director, and there is no need for any engagement from the employees.

[135] NATIONAL CENTER FOR EMPLOYEE OWNERSHIP. Phantom Stock and Stock Appreciation Rights (SARs) [online]. Available at: https://www.nceo.org/articles/phantom-stock-appreciation-rights-sars. [accessed 12 August 2025]

To effectuate the phantom scheme, certain shareholders, typically the founders, must enter into a parallel agreement with the company, allocating a portion of the proceeds arising from the future sale of their shares to it, in order for the company to have sufficient cash to cover the employees' claims. The main disadvantage of phantom shares also stems from this structure, as if the obligated shareholders fail to fulfil their obligations towards the company, there is no direct route for the employees to enforce this right against them, though, as long as the payout of the bonus is structured as mandatory (which is not always the case), the employees would likely be able to claim it against the acquirer,[136] who would then be entitled to claim damages against the breaching shareholders. To complicate matters further, it is theoretically possible for the company and the shareholders to cancel the underlying agreement. While this should not affect the rights of the employees towards the company, it would impact the acquirer's right to claim damages, as the original shareholders would not, in such a case, be in breach of any of their obligations. It is therefore standard practice to include in the exit documentation a founders' warranty to the acquirer that the company has no outstanding ESOP obligations it would be unable to fulfil. This ensures that the occurrence of the above-described scenario would constitute a contractual breach, thereby entitling the acquirer to compensation nonetheless. Luckily, it is highly uncommon for these problems to arise, as the companies and their founders typically honour these arrangements in recognition of the employees' contributions.

The biggest advantage of phantom shares, on the other hand, is the fact that the employees have no control over the company, meaning they not only cannot vote at the general meeting but also do not have the right to attend it or to receive information from the company,[137] thus not adding any more complexity to the corporate governance.

5.5. Tax Treatment of Employee Share and Phantom Equity Programmes

While there is no reason to exempt ESOP participants from the general obligation to pay taxes, the application of the general provisions of the Income Tax Act is sometimes not fully appropriate, and even though some changes have been made recently to the Income Tax Act regarding the taxation of stock options, the current legal framework remains, in the author's opinion, insufficient and leaves room for improvement.

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[136] Under Section 61, paragraph 1) of Act No. 125/2008 Coll., the Act on Transformations of Corporations in case of share sale acquisition, or under Section 2177 of the Civil Code in the case of an asset sale.
[137] Under Section 155 of the BCA

From the tax perspective, the profit corresponding to the difference between the strike price and fair market price realised upon exercise of the stock option is currently subject to the tax from the dependent work[138] and as such also subject to social and healthcare contributions.

Notably, the Income Tax Act was recently amended[139] with the intent to make the current legal framework more favourable and, to a certain extent, it did. While the difference between the strike price and the FMV upon exercise continues to be taxed as income from dependent work, the taxation event is at least deferred until the occurrence of any of the events listed in the Income Tax Act.[140] While this amendment is crucial because it implements the "no tax before cash" principle, its main problem is that the list of circumstances triggering the taxation moment is too wide. Particularly, a tax payment triggered by an employee's departure from the company, the employer's liquidation, the exercise of the option, or the lapse of 10 years since the grant is problematic, as these events have no relation to the employee's cash situation and may even indicate that such a cash flow event will never occur.[141]

As already mentioned, it is the difference between the strike price and fair market value, which is subject to the taxation, which brings up a simple question: how is the fair market value of the company determined? While there is no standard practice established yet due to the low usage of the ESOP schemes for their unfriendliness, the Income Tax Act explicitly mentions[142] that the valuation determined under the Act on Valuation of Property[143] can be used, if it is lower, than valuation determined otherwise.[144] There are several methods recognised by the Act on Valuation of Property for determining the value of any asset, the most notable being 1) the comparative approach, 2) the revenue approach, and 3) the asset value approach, each of which may lead to radically different conclusions in the case of a startup's enterprise. And as different stakeholders have different interests regarding whether the valuation should be high or low, it will probably take some time before judicial review provides a more definitive answer.[145]

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[138] Under Section 6 of the Income Tax Act, particularly paragraph 1, letter d) and paragraphs 3 and 14 to 17.
[139] Specifically new paragraphs 14 to 17 were added to its Section 6 by Act No. 462/2023 Coll.
[140] Specifically, under its Section 6, paragraph 14. Interestingly, the implementation of the tax deferral came with certain complications. Specifically, it was initially overlooked that deferring the payment of income tax does not automatically defer the payment of social security and healthcare contributions, which had to be addressed retroactively through an amendment introduced by a rider to Act No. 84/2025, which is otherwise related to the provision of childcare services in children's groups.
[141] Taxing an employee upon their employer's entrance into liquidation essentially corresponds to taxing someone for holding something of no value.
[142] Section 6, paragraph 15 of the Income Tax Act
[143] Act No. 151/1997 Coll., Act on Valuation of Property
[144] Probably by reference to the valuation of the latest financing round.
[145] In the author's opinion, especially due to the wording of Section 24, paragraph 1 of the Act on Valuation of Property, the asset value approach, determining the value of a company by the sum of the value of its assets, should prevail, which would effectively result in a significant tax decrease, as startups tend to own very few assets.

As for the size of the tax, it is subject to generally applicable tax rates, i.e., 15% with regard to an amount up to thirty-six times the average monthly income[146], and 23% for an amount surpassing this threshold.[147] The fact that stock options are taxed as income from dependent work is crucial, as it means that both the Act on Social Security Contributions[148] and the Act on Public Health Insurance Contributions[149] apply, and that such income serves as the basis for the calculation of the payable contributions under the respective laws, namely 24.8% by the employer and 6.2% by the employee for social security contributions, and 9% by the employer and 4.5% by the employee for health insurance contributions.

The procedural aspect related to the tax payment is also important, as even though it is the employee who has the obligation to pay tax, it is the employer who is obliged to actually process the payment.[150] Specifically, an employer must increase an employee's wage by the amount of their benefit from receiving the shares, calculate the tax, and deduct the corresponding amount from the salary that will be transferred to the employee. While this approach generally makes sense, it can be problematic in this particular instance, as the benefit may sometimes be significant and reduce the employee's net salary to a level that makes receiving stock options unattractive, given that people generally require a certain minimum cash flow to cover their living expenses.

Lastly, the income corresponding to the increase in a share's value after it has been acquired by an employee is also subject to taxation in the Czech Republic upon its sale. Such income is taxed as other income,[151] and may even be eligible for tax exemption provided that the sale occurs at least 3 years after the exercise in the case of a joint stock company, or 5 years in the case of a limited liability company,[152] and the realised profit does not exceed 40,000,000 CZK.[153]

5.6. Proposed Legal Reforms and Policy Recommendations

On June 27, 2025, the Chamber of Deputies of the Parliament of the Czech Republic approved, in its third reading, draft Act No. 926 in the wording of amendment No. 6823 submitted by Michael Kohajda, introducing several changes that would solve most of the issues described above. Even though this resolution was approved by a majority of 119 out of 143

[146] Published on a quarterly basis by the Czech Ministry of Labour and Social Affairs
[147] Section 16 of the Income Tax Act.
[148] Act No. 589/1992 Coll., Act on Social Security Contributions.
[149] Act No. 592/1992 Coll., Act on Public Health Insurance Contributions.
[150] The employer functions as a so-called withholding agent under Section 38h of the Income Tax Act.
[151] Under Section 10 of the Income Tax Act
[152] Section 4, paragraph 1, letter q) and u), respectively.
[153] Section 4, paragraph 3 of the Income Tax Act.

present deputies, it was later rejected by the Senate and therefore now has to be voted on again.[154]

While this draft isn't perfect, it is definitely a step in the right direction. The main change is the addition of an entirely new Section 6a to the Income Tax Act, introducing so-called "qualified employee options" with a preferential tax regime, subjecting the difference between the strike price and the fair market value upon the exercise to tax not as income from dependent work but as other income,[155] the most notable implication of which is that it is not subject to social security or healthcare contributions. Additionally, it is stipulated that this income is realised only when the stock acquired through the exercise of a qualified employee option is subsequently transferred,[156] meaning that employees will not have to pay taxes before they actually realise the gain.[157] The only downside compared to the regime currently applicable is that shares acquired through the exercise of qualified employee options would be excluded from the general tax exemption that applies to share transfers after three or five years since their acquisition.[158]

This draft act, however, imposes certain limits on the quality of the option as well as on both the employer and the employee in order for them to enjoy the benefits described above. The first restriction being that qualified employee options can only be granted to the employees, i.e., not contractors or other types of service providers. The employees to whom these options are granted must be employed with the given employer for at least 12 months, must have a monthly salary from that employer of at least 1.2x the minimum wage, and the total size of their grant must not surpass a 5% shareholding interest in their employer.[159] The employers, on the other hand, have to be sufficiently small[160], i.e., not generate more than 2.5 billion CZK in annual revenue or have assets exceeding 2 billion CZK, and not operate in one of the restricted fields such as banking, insurance, or coal mining. Lastly, the options must be provided free of charge based on a written agreement, which must be reported to the financial administration. The strike price must also not be lower than the fair market value of the share at the time of the grant, and

[154] CHAMBER OF DEPUTIES OF THE PARLIAMENT OF THE CZECH REPUBLIC. Draft Act No. 926 – History and Documents [online]. Available at: https://www.psp.cz/sqw/historie.sqw?O=9&T=926. [accessed 21 August 2025]
[155] Under Section 10 of Income Tax Act.
[156] With the notable exception if the share is not sold within 10 years of its exercise, which is not optimal, but it is important that unexercised options are never taxed.
[157] A further advantage for employers is that they are not withholding agents with regard to income under Section 10 of the Income Tax Act and therefore do not have to exert any additional administrative effort.
[158] Three years in case of joint-stock companies, and five years in case of limited liability companies.
[159] Technically, the draft act also allows granting options to acquire shares of the company that controls the employer, driven by the fact that employees are often employed by a Czech company fully owned by, say, a Delaware entity, which is a common requirement of foreign investors who do not trust Czech jurisdiction.
[160] The purpose of this scheme is to support small companies driving innovation, not multinational corporations.

the option must not be exercised earlier than three years after the grant unless it is exercised in connection with an exit.

To be honest, with the adoption of the draft act described above, 80% of the problems associated with the regulation of employee stock option plans in the Czech Republic would be solved. Therefore, the author's first recommendation to the legislator is to adopt this law in the first place, after which the focus can be put on further incremental improvements, such as removing the exclusion from the time test or limiting the number of requirements for the parties to be considered qualified.

After this step is completed, there are several other conceptual steps to be taken that would help ensure the fast and smooth adoption of stock options by both employers and employees. The first would be to establish a clear and unambiguous process for determining the fair market value of the stock, in order to increase the legal certainty of the participants and ensure that the valuation is not artificially inflated. This could be achieved by deriving the valuation from the last financing round's valuation after applying a certain discount, together with granting the tax administration only a limited period to dispute it. The second improvement, not covered by the draft act, should focus on making the process of increasing the registered capital of a limited liability company in connection with the exercise of stock options simpler, for example, by requiring a notarial deed only for the conditional resolution of the general meeting to increase the registered capital adopted together with the plan, and then allowing the executive director to effectuate the individual increases, provided they are in line with the plan. The third suggestion, and also the most ambitious, is to allow the granting of stock options under a certain preferential regime (though not necessarily as preferential) also to other types of service providers, not only to employees, as startups often require a more flexible approach than the employment regime can provide.

Conclusion

This thesis has analysed employee stock option plans from legal, tax, commercial, and corporate governance perspectives, focusing on their role in attracting and retaining talent in startups. By comparing the Czech regulatory environment with frameworks in the United States (namely Delaware), the United Kingdom, and Estonia, it has become clear that the Czech Republic lags behind these jurisdictions that actively support employee equity participation and their innovation environment with it.

The Czech framework lacks statutory recognition of stock options, has inconsistent tax treatment, and imposes procedural barriers to granting employee equity, especially in limited liability companies. While the adoption of Act No. 926 introducing a concept of qualified employee options would mean a significant step forward, particularly by adopting the "no tax before cash" principle and offering partial tax relief, several shortcomings persist. These include the exclusion of qualified options from existing time-based exemptions, as well as still rather limited flexibility and a high administrative and corporate governance burden.

Experience from ESOP-friendly jurisdictions demonstrates that a predictable, coherent, and innovation-focused legal framework is crucial for fostering competitive startup ecosystems. To unlock the full potential of employee equity in the Czech Republic, further reforms would be required to harmonise corporate, labour, and tax laws and to reduce administrative complexity.

ESOPs are more than a compensation tool, as they are a strategic mechanism for aligning incentives, supporting innovation, and enhancing the global competitiveness of Czech, or any country's for that matter, startups. With comprehensive reforms, the Czech Republic can establish an environment that empowers startups, attracts investment, and enables employees to share in the value they help create.

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Occasional consultations with ChatGPT, mainly for inspiration, grammar review, and sanity checks

Abstract

Employee stock option plans (ESOPs) represent a key instrument for attracting, motivating, and retaining highly qualified talent, particularly within innovation-driven startups as they do not dispose with sufficient proceeds to compete with established corporations in the realm of traditional cash-based remuneration. Globally, jurisdictions such as the United States, the United Kingdom, and Estonia have introduced comprehensive legal frameworks that facilitate the efficient implementation of ESOPs and actively promote their use as a driver of economic growth and technological innovation. By contrast, the Czech Republic continues to face significant legislative, administrative, and tax-related challenges that have hindered the development of a competitive employee equity environment.

This thesis provides an in-depth analysis of ESOPs from legal, corporate governance, and tax perspectives, combining doctrinal research with a comparative study of foreign frameworks. It examines the structural mechanics of ESOPs, evaluates their impact on company performance, employee retention, and investor incentives, and identifies regulatory barriers within the Czech context that limit broader adoption. Particular attention is given to the interplay between labour law, corporate law, and taxation, the administrative complexity of issuing and managing employee equity, and the practical challenges faced by startups seeking to align with global best practices.

The findings highlight the urgent need for targeted reforms to strengthen the Czech Republic's competitiveness in the global startup ecosystem. The thesis proposes adopting the "no tax before cash" principle, simplifying share issuance procedures, broadening access to preferential tax regimes, and reducing bureaucratic burdens. Implementing these measures would enhance the Czech innovation landscape, improve talent acquisition, attract investment, and support sustainable economic growth through the creation of a more ESOP-friendly regulatory environment.

Keywords: ESOP, Employee equity, Startups

Abstrakt

Zaměstnanecké opční programy (ESOPy) představují klíčový nástroj pro přilákání, motivaci a udržení vysoce kvalifikovaných zaměstnanců, zejména ve světě startupů přinášejících technologické inovace, jelikož ty obvykle nedisponují dostatečnými prostředky, aby mohly výší nabízené mzdy konkurovat zavedeným korporacím. Země jako jako Spojené státy americké, Spojené království a Estonsko zavedly komplexní právní úpravu usnadňující efektivní implementaci ESOPů, čímž aktivně podporují jejich využívání coby nástroje ke zvýšení hospodářského růstu a rozvoje technologických inovací. Naproti tomu Česká republika nadále čelí významným legislativním, administrativním a daňovým překážkám, které masové adopci zaměstnaneckých opčních programů brání.

Tato diplomová práce poskytuje podrobnou analýzu ESOPů z právního, korporátního a daňového hlediska, přičemž kombinuje doktrinální výzkum s komparativní analýzou právních režimů výše zmíněných jurisdikcí. Popisuje strukturální mechaniku fungování ESOPů, hodnotí jejich dopad na výkonnost firem, spokojenost zaměstnanců, motivaci investorů a identifikuje regulatorní bariéry, které širšímu využívání tohoto nástroje brání. Zvláštní pozornost je věnována vzájemnému propojení pracovního, smluvního, korporátního a daňového práva, administrativní složitosti správy zaměstnaneckých podílů a praktickým problémům, kterým České startupy v souvislosti s ESOPy ve snaze dostát zahraničním standardům čelí.

Závěry práce zdůrazňují naléhavou potřebu cílených reforem ke zvýšení konkurenceschopnosti České republiky na globálním startupovém hřišti. Diplomová práce navrhuje zavedení principu „no tax before cash“, zjednodušení vydávání zaměstnaneckých podílů, rozšíření přístupu ke zvýhodněnému daňovému režimu a snížení byrokratické zátěže. Implementace těchto opatření by posílila inovační prostředí, zvýšila atraktivitu České republiky pro talentované zahraniční zaměstnance, přilákala investice a podpořila udržitelný hospodářský růst.

Klíčová slova: ESOP, Zaměstnanecké akcie, Startupy