

ESOP 10 in 10: APAC & Middle East Guide

2026



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Foreword

Employee equity incentives — including ESOPs, stock options, restricted share units and their variants — are now firmly embedded in modern talent strategy. Across sectors and jurisdictions, equity is used not only as a form of remuneration, but as a mechanism to align interests, retain key talent and drive long-term value. The concept of shared ownership is compelling. Delivering on that promise, however, depends on the robustness and coherence of the legal and tax framework supporting these arrangements.

For multinational employers operating across Asia-Pacific and the Middle East, that framework is rarely straightforward.

In China, there is no single statute governing employee share ownership plans. Instead, ESOPs sit at the intersection of labour, civil, company, securities and foreign exchange laws, each with its own compliance considerations.

In India, the regulatory landscape is similarly layered. Listed companies must comply with the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations 2021, while equity granted by offshore parents to Indian employees is subject to a distinct and evolving foreign exchange regime.

In the UAE, complexity arises not only from substance but from structure. Employers may need to navigate three parallel legal regimes — Mainland UAE, DIFC and ADGM — each with its own employment laws, companies legislation and approach to incentive plan governance.

This joint publication by Bird & Bird and Grant Thornton addresses ten recurring and commercially significant questions for employers operating employee share plans internationally. These include governing law considerations, the treatment of awards as wages, the employer's ability to amend or withdraw incentives, standards of reasonableness, taxation across the ESOP lifecycle, cross-border tax exposure, valuation methodologies, leaver treatment and dispute resolution — analysed on a jurisdiction-by-jurisdiction basis.

This publication is intended as a general guide and does not constitute legal advice in any jurisdiction. Readers should seek specific legal, tax, and regulatory advice in relation to their particular circumstances.



Australia

Are employee incentives governed by any particular law(s) in your jurisdiction?

Employee incentives are governed by the following legislation in Australia:

- Fair Work Act 2009 (Cth) (“FW Act”);
- Superannuation Guarantee (Administration) Act 1992 (Cth) (“SGA Act”);
- Corporations Act 2001 (Cth);
- Income Tax Assessment Act 1997 (Cth); and
- Fringe Benefits Tax Assessment Act 1986 (Cth).

The applicable legislative framework will depend on the nature and structure of the incentive award (such as options, rights, restricted shares, cash-based incentives).

Are employee incentive awards considered “wages” in your jurisdiction?

No, employee incentive awards are not generally considered "wages" in Australia for the purposes of the FW Act. Instead, equity-based (such as options) and cash-based (such as discretionary bonus) incentive awards are treated as a separate component of an employee's remuneration package and do not form part of an employee's base rate of pay.

However, some incentive awards (such as bonuses or commission payments, but not equity-based awards) may form part of an employee's ordinary time earnings, for the purposes of the SGA Act, and therefore attract superannuation guarantee obligations.



Does the Company retain the right to unilaterally amend, suspend, or discontinue employee incentive awards without employee consent? If such rights exist, what restrictions or procedural requirements (such as notice periods, consultation obligations, or protection of vested rights) apply to such modifications?

Whether the Company retains the right to unilaterally amend, suspend or discontinue employee incentive awards without an employee's agreement will depend on the terms of the relevant plan rules, the employee's employment contract and the applicable legal framework.

Most employee incentive plans expressly reserve the Company's discretion to amend, suspend or terminate the plan, subject to any express limitations set out in the plan rules. Where the plan rules confer such a discretion, the Company will generally be entitled to exercise that discretion, provided it does so in accordance with the terms of the plan and subject always to the terms and conditions set out in the contract of employment.

In terms of restrictions and procedural requirements:

- An employer must exercise their discretion rationally, in good faith and for a proper purpose - not randomly, unfairly or without reason.
- Section 323 of the FW Act provides that the Company must pay an employee any amounts "payable" in relation to the performance of work in full, at least monthly.

Therefore, if, subject to the applicable plan, an incentive award has already become "payable" (for example, an equity award has already vested), then any amendment, suspension or discontinuation of that award may give rise to a claim of breach of contract and that the Company has contravened section 323 of the FW Act.

- Further, there are no specific statutory notice period requirements that apply to the amendment or discontinuation of employee incentive plans. However, reasonable notice of any material changes should be provided to affected employees as a matter of good practice and to mitigate the risk of breach of contract claims.

Is there a requirement for the Company to act reasonably in awarding and implementing changes to the employee incentive awards?

Yes, as noted in response to question 3, where the award of an incentive is a matter for the Company's discretion, the Company must still exercise its decision reasonably, honestly and in a manner consistent with the objectives of the plan rules.

What are the different tax events that employees face throughout the ESOP lifecycle (grant, vesting, exercise, sale)?

As a general rule, ESOP payments will be taxed upfront at grant unless tax deferral applies.

Tax deferral generally applies if:

- There is a real risk of forfeiture of the ESOP (i.e. vesting conditions included); or
- If the Plan Rules are subject to Subsection 83A-C tax deferral rules (expressly stated in the Plan Rules) and there is a genuine disposal restriction.

Where tax deferral applies, the taxing point will be deferred to the exercise date. Tax can be further deferred if there are restrictions on the sale of the shares or the Entity and Plan qualifies for preferential Employee Share Scheme Start up rules.

Will employees be taxed in the country they are ordinarily resident in respect of stock options granted in an offshore Company?

Yes, where the employee remains a tax resident of Australia and the taxing point occurs when the individual is a tax resident of Australia, then the entire discount will be subject to tax. A foreign tax credit may be available where the income has been doubly taxed. This is regardless of whether the stock option is over an overseas entity share i.e. it's the individual's tax residence and location during the relevant vesting/performance period that determines taxation.

However, if the individual is a non-resident of Australia at taxing point, the portion associated with Australian employment will be taxable at the deferred taxing point date.

Please note for expatriate employees, there is no concept of exit tax in Australia. As such the tax implication always arises at the relevant taxing point. This may create trailing reporting obligations.

What tax benefits, if any, are available to employees receiving employee stock options, including any preferential tax treatment, tax deferrals, or exemptions that may apply?

Generally, there are no specific tax concessions other than the deferral of taxation as outlined at 5 above. However, where certain criteria are met (per below), the ESOP may have concessions or not fall within the employee share scheme rules.

- If the Employee share scheme start-up concessions apply. The qualification for this includes the company (and associated entities) is unlisted, has an aggregated turnover <A\$50million and has not been registered for more than 10 years; or
- More Australian centric plans such as if an ESOP is a premium priced option (exercise price set at an adequate uplift from the value of the underlying share at grant date), they may qualify for concessional Capital Gains Tax treatment.



What methodologies typically govern the valuation of shares in ESOPs for private companies?

The following methodologies are commonly applied for share valuations in ESOP, particularly for private companies:

- Discounted cash flow method under the Income Approach
- Comparable market multiples under the Market Approach; and
- Option pricing methods.

What are the Company's options in respect of vested and unvested awards at the time an employee resigns?

This will ultimately be subject to the terms and conditions of the plan.

For example, the plan might set out that an employee will forfeit any unvested awards on termination of employment, or the plan might set out that an employee has 1 month to exercise any vested options following termination of employment.

Do disputes concerning or arising out of employee incentive awards fall to be determined in the local employment tribunals?

Disputes concerning or arising out of employee incentive awards will depend on the legal grounds of the claim and the terms of the applicable plan rules and employment contract.

The Federal Court of Australia and Federal Circuit and Family Court of Australia have jurisdiction to hear claims arising under the FW Act, including claims for breach of contract, contraventions of section 323 of the FW Act, and claims for penalties for breaches of the FW Act.

However, the process may be initiated through the Fair Work Commission ("FWC"), which has jurisdiction to deal with certain disputes arising under the FW Act, including general protections disputes. Where a dispute concerning an employee incentive award involves an allegation of adverse action and/or is connected to the termination of employment, the FWC may have jurisdiction to conciliate the dispute.

China

Are employee incentives governed by any particular law(s) in your jurisdiction?

There is no standalone legislation specifically governing ESOPs in the PRC.

ESOPs are regulated by a combination of:

- PRC Labor Law and Labor Contract Law (to the extent linked to employment)
- PRC Civil Code (contractual rights and obligations)
- PRC Company Law
- Securities regulations (for listed companies), and
- Foreign exchange regulations (for offshore equity plans involving PRC employees).

Are employee incentive awards considered “wages” in your jurisdiction?

This issue remains legally unsettled in the PRC, and different approaches are taken by courts across cities.

In general, the classification depends on the structure and substance of the ESOP. Where the ESOP is closely tied to the employment relationship, it may be regarded as ancillary remuneration, and there is a higher likelihood that it will be characterised as “wages”. Where the ESOP is structured as a standalone contractual arrangement (particularly for offshore plans involving a non-employing entity), it is more likely to be treated as a civil matter, and not as “wages”.

In addition, certain types of equity incentives—such as virtual shares, stock appreciation rights, dividend equivalents, or deferred cash plans—are more likely in practice to be characterised as wages, as they are typically settled in cash and resemble bonus payments in substance.



Does the Company retain the right to unilaterally amend, suspend, or discontinue employee incentive awards without employee consent? If such rights exist, what restrictions or procedural requirements (such as notice periods, consultation obligations, or protection of vested rights) apply to such modifications?

Whether the Company retains the right to unilaterally amend, suspend or discontinue employee incentive awards without employee consent depends primarily on the terms of the ESOP plan rules, the individual grant agreements, and the employment contract (if relevant).

Most ESOPs expressly reserve discretion for the Company (or plan sponsor) to amend, suspend or terminate the plan. Where such discretion is clearly provided, the Company will generally be entitled to exercise it in accordance with the plan terms.

However, the following limitations may apply:

- Vested rights protection: Once awards have vested and/or been exercised, employees typically acquire enforceable contractual rights. Such vested rights cannot be unilaterally withdrawn, and any attempt to cancel vested equity is likely to be successfully challenged.
- Contractual constraints: The Company must act within the scope of the discretion granted under the plan documentation. Any deviation may give rise to breach of contract claims.
- General legal principles: Although PRC law does not impose a strict statutory “reasonableness test, courts may apply the principle of good faith (诚实信用原则) and general fairness considerations. In practice, this means that arbitrary, inconsistent, or bad faith amendments may be subject to judicial scrutiny, whereas clearly drafted and consistently applied rules are more likely to be upheld.

Is there a requirement for the Company to act reasonably in awarding and implementing changes to the employee incentive awards?

There is no explicit statutory requirement on "reasonableness". However, courts may review whether actions were taken in good faith.

What are the different tax events that employees face throughout the ESOP lifecycle (grant, vesting, exercise, sale)?

For ESOPs over company shares, the following are likely to apply:

- Upon grant: Non-taxable event
- Upon Vest: Non-taxable event
- Upon Exercise: Taxable event (on the basis that the shares received under the ESOP are not subject to sales restriction). Where sales restrictions apply, the tax point is deferred to the point the sales restrictions lapse.
- Upon Sale: Taxable event. Capital gains derived from the transfer of shares are subject to individual income tax in China. The applicable tax rate depends on the tax residency status of the employee and the nature of the shares (e.g., shares of a PRC-listed company or an overseas-listed company).

It is important to ensure that your employees are aware of the taxing point (especially the tax when vesting/exercising) to ensure that they can manage the tax liability.

Will employees be taxed in the country they are ordinarily resident in respect of stock options granted in an offshore Company?

From the China tax perspective, China tax residents' worldwide income will be subject to China tax, and the paid foreign taxes could be claimed as the foreign tax credit. For the income due to selling the vested/exercised shares, it will also be subject to China tax accordingly.

What tax benefits, if any, are available to employees receiving employee stock options, including any preferential tax treatment, tax deferrals, or exemptions that may apply?

For incentive equity plan launched by listed companies, the tax liability for the income due to the exercising of the options could be calculated separately.

What methodologies typically govern the valuation of shares in ESOPs for private companies?

The following methodologies are commonly applied for share valuations in ESOP, particularly for private companies:

- Discounted cash flow method under the Income Approach
- Comparable market multiples under the Market Approach; and
- Option pricing methods.

What are the Company's options in respect of vested and unvested awards at the time an employee resigns?

This generally is subject to the terms and conditions of the plan and award agreement.

Do disputes concerning or arising out of employee incentive awards fall to be determined in the local employment tribunals?

Disputes relating to ESOPs may fall into different categories, depending on their nature and structure:

- Labour disputes

These are more likely where the ESOP is closely tied to the employment relationship, and the dispute concerns entitlement arising from employment. In such cases, disputes will generally be subject to:

- Labour arbitration (mandatory first step); and
- Subsequent court proceedings (if applicable).

- Civil / commercial disputes

This is more common where the ESOP is governed by separate contractual documentation; and/or the granting entity is a foreign parent company. In such cases, disputes may be resolved through civil litigation in PRC courts, or arbitration (depending on the dispute resolution clause).

India

Are employee incentives governed by any particular law(s) in your jurisdiction?

Yes, statutory incentives such as employee bonus (which is different from contractual bonuses offered to employees) are governed by the Code on Wages, 2019 and certain stock-based incentives such as stock options, restricted stock units or stock appreciation rights are regulated under specific corporate laws, depending on the entity issuing them. Specifically, for companies other than listed companies, issuance of ESOPs is governed by the Companies Act, 2013 and the Companies (Share Capital and Debentures) Rules, 2014 ("SCD Rules").


Additionally, issuance of ESOPs by Indian listed companies are regulated by the laws framed and implemented by the Securities and Exchange Board of India ("SEBI"), including the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 ("SEBI (SBEB) Regulations"). However, acquisition of foreign entity stock by employees in India and other foreign stock linked benefits are governed by the Foreign Exchange Management (Overseas Investment) Rules, 2022, the Foreign Exchange Management (Overseas Investment) Directions, 2022, and the Foreign Exchange Management (Overseas Investment) Regulations, 2022 (collectively "ODI Regulations").

Are employee incentive awards considered "wages" in your jurisdiction?

No. At the outset, please note that the Indian Government on November 21, 2025, implemented four labour codes, namely, the Code on Social Security, 2020, Industrial Relations Code, 2020 ("IR Code"), Occupational Health, Safety and Working Conditions Code, 2020, and Code on Wages, 2019 ("Wage Code") (collectively, "Labour Codes"). A key change that the labour codes have brought about is the introduction of a uniform definition of 'wages' which expressly includes all remuneration paid to an employee (whether by way of salary, allowances, or other components expressed or capable of being expressed in monetary terms), including basic pay, dearness allowance, and retaining allowance (if any), while specifically excluding certain components.

The Ministry of Labour & Employment, on December 30, 2025, and March 16, 2026, released FAQs which clarified, inter alia, that performance-based incentives, employee stock options, or the "variable part of the component" to the employee shall not be part of the wages. However, the FAQs are not law and do not carry precedential value. Similarly, under the revised definition of wages, statutory bonus has been specifically excluded from the revised definition of wages. Accordingly, employee incentive awards would not form part of wages.





Does the Company retain the right to unilaterally amend, suspend, or discontinue employee incentive awards without employee consent? If such rights exist, what restrictions or procedural requirements (such as notice periods, consultation obligations, or protection of vested rights) apply to such modifications?

Considering that statutory bonus is governed as per the Wage Code, the company does not have the discretion to unilaterally suspend/discontinue this incentive. Further, no unilateral alterations may be made by the company such that it results in non-compliance with the provisions of the Wage Code and allied rules. Further, in case the bonus provided by the company is more beneficial than the law, any change in the same to the employees' detriment would require the consent of 'worker' employees (mainly, non-managerial and non-supervisory employees) in the manner specified under applicable law.

Listed companies may modify the terms of the ESOPs by way of a special resolution, provided that the employees have not exercised their rights under the earlier scheme and the variations in deliberation are not detrimental to the employees' interest. However, such variations will not require approval by way of a special resolution if the changes are made in order to comply with regulatory requirements. Further, the notice for passing such a special resolution shall disclose full details of the proposed variation along with the rationale and details of the beneficiaries of the same. Similarly, the price of the options that have not been exercised may be varied, whether or not they have been vested, if the option is rendered unattractive due to fall in the price of the shares in the market provided that such repricing is not detrimental to the interest of the employees and subject to shareholder approval in a general meeting.

Unlisted companies may, by special resolution, vary the terms of an ESOPs not yet exercised by the employees, provided such variation is not prejudicial to the interests of the option holders. Further, the notice for passing the special resolution must disclose full details of the variation, the rationale, and the details of the beneficiary employees.

For schemes being governed by the ODI Regulations, there are no specific statutory requirements pertaining the concerned; however, under the ODI Regulations, ESOPs are to be offered globally on a uniform basis. Any amendment to the scheme that causes it to lose its globally uniform character could result in non-compliance with this requirement.

Is there a requirement for the Company to act reasonably in awarding and implementing changes to the employee incentive awards?

Please see our above response. The above conditions operate as restrictions to the company's authority to unilaterally implement employee incentive awards. A key consideration is that ESOPs can only be offered to employees of the company and/or its holding or subsidiary company. Further, companies are not permitted to grant stock options to an employee who is a promoter or a person belonging to the promoter group; or a director who either him or herself or through his or her relative or through any body corporate, directly or indirectly, holds more than 10 per cent of the outstanding equity shares of the company. These restrictions do not apply to an unlisted company which is a start up for a period of 10 years from the date of its incorporation or registration. Accordingly, the company has the discretion to award / implement employee incentive awards subject to the above conditions.

What are the different tax events that employees face throughout the ESOP lifecycle (grant, vesting, exercise, sale)?

The ESOP lifecycle typically involves four major stages: grant, vesting, exercise, and sale. The taxability at each stage is as follows:

- Grant: No income tax implications
- Vest: No income tax implications
- Exercise: For shares issued by the Company upon exercise of vested options, taxability arises in the hands of employees at the time of allotment of shares. The perquisite value of such ESOPs will be the difference between the Fair Market Value (“FMV”) of the shares on the date of exercise and the price actually paid by the employee. The FMV shall be computed in accordance with applicable Indian tax rules.

The aforesaid perquisite value will be taxable as ‘salary’ in the hands of employees of the Indian entity. The taxable value of the perquisite will be computed with reference to the date of exercise of options; however, it will be included as taxable income in the year in which the shares are actually allotted or transferred to the employees.

As per the relevant provisions of Indian tax laws, the employer is responsible for withholding taxes (TDS – Tax Deducted at Source) on perquisites taxable in the hands of employees, and such taxes shall be withheld in the year in which the perquisite is offered to tax, i.e., in the year of allotment of shares.

- Sale:

The shares or units allotted to an employee under an ESOP plan are considered a capital asset in the hands of the employee, and the sale of such capital assets attracts capital gains tax in the hands of the employee.

Any subsequent sale of shares by the employee will trigger a capital gains tax liability if the employee qualifies as a tax resident of India during the year in which the shares or units are sold. The capital gains on the sale of shares would be computed as the difference between the sale price and the FMV considered for calculating the perquisite value of such shares as stated above.

Capital gains may be classified as Long-Term Capital Gains (LTCG) or Short-Term Capital Gains (STCG) based on the period of holding. This bifurcation is necessary since the tax rates differ for STCG and LTCG. The period of holding is reckoned from the date of allotment of such shares to the employees.

Will employees be taxed in the country they are ordinarily resident in respect of stock options granted in an offshore Company?

Yes, employees who are “Resident and Ordinarily Resident” (ROR) in India are taxed in India on their global income, which includes stock options granted by an offshore company.

Individuals qualifying as Non-Resident (NR) or Resident but Not Ordinarily Resident (NOR) in India are liable to tax only on their India-sourced income. Accordingly, only the benefit attributable to the period of services rendered in India during the vesting period shall be taxable in the tax year in which the taxable event occurs.

What tax benefits, if any, are available to employees receiving employee stock options, including any preferential tax treatment, tax deferrals, or exemptions that may apply?

There are no blanket exemptions or deductions for ESOPs. These are taxable at the tax rate applicable to salary income.

However, certain deferral benefits have been specified in the law for the eligible start-ups.

An eligible start-up (as defined under the relevant provisions of Indian tax laws) and its employees are entitled to the benefit of deferred TDS and tax payment on perquisites arising from ESOPs. The tax is deferred until the earliest of:

- 48 months from the end of the relevant assessment year; or
- Sale of shares; or
- Cessation of employment

What methodologies typically govern the valuation of shares in ESOPs for private companies?

The following methodologies are commonly applied for share valuations in ESOP, particularly for private companies:

- Discounted cash flow method under the Income Approach
- Comparable market multiples under the Market Approach; and
- Option pricing methods.

What are the Company's options in respect of vested and unvested awards at the time an employee resigns?

In the event of resignation / termination of employment, all options which have been granted but not vested in the employee as on that day expire. However, the employees can exercise the ESOPs granted to them which are vested within the specified period, subject to the terms and conditions of the ESOP Scheme, meaning thereby that the Company has the discretion to set the conditions governing exercise of vested awards post-resignation. Please note that the cessation of employment due to retirement or superannuation is covered separately under law. In those cases, options continue to vest in accordance with the respective vesting schedules even after retirement.

Do disputes concerning or arising out of employee incentive awards fall to be determined in the local employment tribunals?

No, only disputes relating to statutory employee benefits such as bonus under the Wage Code would be deemed to be industrial disputes under the IR Code and accordingly, would fall under the jurisdiction of an industrial tribunal (which are local employment tribunals). However, disputes related to ESOPs and stock linked benefits would have to be determined by civil courts or the Company Law Tribunal based on the nature of the dispute.

Indonesia

Are employee incentives governed by any particular law(s) in your jurisdiction?

Employee allowances that are granted continuously and are not linked to the employee's attendance or the achievement of any specific performance are generally categorized as fixed allowances (Article 94 of Manpower Law) (i.e. position allowance)

Employee allowances that are granted based on the employee achieving certain performance or targets are generally categorized as non-fixed allowances (GR 35/2021) (i.e. meal allowance, transportation allowance)

Employee incentives specifically on ESOP are not recognised under Indonesian Manpower Law. We view that ESOP is not categorised as either of the above, but rather as equity-based or long-term incentives.

Are employee incentive awards considered “wages” in your jurisdiction?

Only fixed allowance is considered as wage (Article 16 par 2 of GR 35/2021).

Does the Company retain the right to unilaterally amend, suspend, or discontinue employee incentive awards without employee consent? If such rights exist, what restrictions or procedural requirements (such as notice periods, consultation obligations, or protection of vested rights) apply to such modifications?

In principle, the Manpower Law and its derivatives do not specifically regulate the obligation to obtain employee consent to amend, suspend, or discontinue employee incentives. In practice, companies typically include an umbrella provision in the Company Regulation (CR) or employment agreement, allowing the company, at its sole discretion and at any time, to amend such benefits.

However, this may not apply in the context of a Collective Labour Agreement (CLA), as any amendment to provisions under a CLA requires prior approval from the relevant labour union.

Is there a requirement for the Company to act reasonably in awarding and implementing changes to the employee incentive awards?

There is no specific requirement under Indonesian manpower laws requiring employee incentives or benefits to be awarded “reasonably.” However, Article 6 of Manpower Law provides that all employees are entitled to equal treatment without discrimination from the employer.

This means that while the Company generally has discretion in awarding and modifying employee incentives, such discretion must not be exercised in a discriminatory manner. Any differentiation in the granting or adjustment of incentives should be based on objective and justifiable grounds (e.g., performance or role), rather than unlawful discriminatory factors.

What are the different tax events that employees face throughout the ESOP lifecycle (grant, vesting, exercise, sale)?

For ESOPs over company shares, the following are likely to apply:

- Upon grant: Non-taxable event
- Upon Vest: Non-taxable event
- Upon Exercise: Taxable event (when employees decide to exercise their stock options and acquire the shares, the difference between the market value of the shares at the exercise date and the exercise price paid shall be classified as the employee's income).

This treatment is consistent with SE-13/PJ.43/1999, which states that the difference between market value and exercise price will be deemed as a taxable income.

This amount shall be subject to WHT Art. 21 Income Tax for Indonesian tax residents with a progressive tax rate of maximum 35% and WHT Art. 26 Income Tax for non-residents with a rate of 20%.

- Upon Sale: Taxable event when the acquired shares listed in the Indonesian stock exchange are later sold, any proceeds from the sale are subject to Final Income Tax on share transactions. The prevailing rates are:
 - 0.1% of the gross selling price for shares traded on the stock exchange.
 - However, for the non-listed shares in the Indonesian stock exchange, then the individual tax rates for capital gain (i.e. difference between book value and transaction value which the transaction value is higher) received by the Indonesian tax resident shall be at a progressive rate of maximum 35%.

Will employees be taxed in the country they are ordinarily resident in respect of stock options granted in an offshore Company?

The taxability of a stock option does not depend on where the employee lives or where the company granting the option is located.

What actually determines whether a stock option is taxable in Indonesia is whether the option is connected to employment performed in Indonesia. If the option is granted while the employee is working in Indonesia, or relates to work done in Indonesia, then any gain from the stock option will be taxable in Indonesia, even if the option comes from an overseas company, since Indonesia adopts a worldwide income basis.

What tax benefits, if any, are available to employees receiving employee stock options, including any preferential tax treatment, tax deferrals, or exemptions that may apply?

Indonesia does not offer special tax benefits nor facilities for employee stock options.

What methodologies typically govern the valuation of shares in ESOPs for private companies?

The following methodologies are commonly applied for share valuations in ESOP, particularly for private companies:

- Discounted cash flow method under the Income Approach
- Comparable market multiples under the Market Approach; and
- Option pricing methods.

What are the Company's options in respect of vested and unvested awards at the time an employee resigns?

In principle, Indonesian law does not specifically regulate the treatment of vested and unvested incentive awards upon resignation. Accordingly, the Company's options will primarily depend on the terms and conditions set out in the applicable incentive plan, employment agreement, Company Regulation, or Collective Labour Agreement.

In practice, unvested awards are typically forfeited upon resignation, while vested awards may either remain exercisable for a certain period or lapse, depending on the governing terms. However, any vested or accrued entitlements that qualify as employee rights may not be unilaterally withdrawn.

We recommend that the Company clearly regulates the treatment of vested and unvested awards upon resignation to mitigate the risk of such awards being treated as unconditional employee entitlements.

In particular, the Company should clearly distinguish between unvested awards (which may be forfeited) and vested awards (which may be subject to specific post-termination conditions, such as an exercise period or lapse mechanism).

Do disputes concerning or arising out of employee incentive awards fall to be determined in the local employment tribunals?

In principle, disputes relating to employee incentive awards may be resolved in Civil Court - considering ESOP is mentioned briefly under Indonesian Company Law.

To accommodate potential disputes, the company should clearly stipulate that any disputes arising in connection with the ESOP shall be governed by, and resolved before, the Civil Court.



Japan

Are employee incentives governed by any particular law(s) in your jurisdiction?

There is no single law that directly and comprehensively regulates employee incentives (such as bonuses, allowances and stock options). However, several laws are relevant to the design and administration of incentives.

- The Labour Standards Act

This is the law most directly relevant to incentive payments.

Definition of Wages (Article 11): Where bonuses or incentives constitute "wages", the wage regulations under the Labour Standards Act (such as methods and timing of payment, and the principle of payment in currency) apply.

Work Rules (Articles 89 and 90): Employers who regularly employ 10 or more workers are obliged to include matters concerning wages and bonuses in their work rules and to notify the Labour Standards Inspection Office. Incentive schemes are also included in this.

- Companies Act

This is important in relation to stock options and equity-based incentive schemes.

Article 236 et seq. (Share Subscription Rights): This stipulates the procedures for issuing stock options, the conditions thereof, and the requirements for resolutions at general meetings of shareholders.

Remuneration Regulations (Article 361): The remuneration of directors and other officers must be determined by a resolution of the general meeting of shareholders; this also applies to performance-related pay and share-based remuneration.

- Financial Instruments and Exchange Act

This relates to cases where listed companies grant shares, share subscription rights, etc., to employees.

Insider trading regulations (Articles 166 and 167) apply, and strict controls are required regarding the granting and exercise of shares by employees who possess material non-public information.

Disclosure regulations concerning the offering and sale of securities may also apply.

Are employee incentive awards considered “wages” in your jurisdiction?

In Japan, whether incentive awards constitute "wages" is not determined uniformly; rather, each case is assessed individually through a comprehensive consideration of factors such as the basis for payment, the conditions attached, the certainty of the amount, and whether there is an obligation to pay.

Incentive awards are more likely to be treated as wages where the conditions for payment and the amount are clearly set out in the employment contract, work rules, or wage regulations, or where the obligation to pay has been definitively established (such as so-called "agreed bonuses" or "fixed bonuses").

On the other hand, stock options generally involve the risk of share price fluctuation, and the payment amount is not fixed; accordingly, they are in many cases not considered to constitute "wages" under the Labour Standards Act. However, where the exercise conditions and calculation method are specifically defined such that payment can be regarded as effectively certain, the question of whether they qualify as wages may arise.

Does the Company retain the right to unilaterally amend, suspend, or discontinue employee incentive awards without employee consent? If such rights exist, what restrictions or procedural requirements (such as notice periods, consultation obligations, or protection of vested rights) apply to such modifications?

In Japan, the employer's right to unilaterally amend, suspend, or discontinue incentive awards is significantly restricted. Where any such change is to be made, it is essential to carefully consider all of the following elements in a comprehensive manner:

- the reasonableness of the change;
- the procedures for amending and communicating the work rules;
- the obligation to seek the opinions of trade unions and other employee representatives and to bargain in good faith; and
- the provision of adequate notice and transitional measures. In respect of awards where the entitlement to payment has already been established, such awards are protected as wages and, as a matter of principle, unilateral modification is not permitted.

Is there a requirement for the Company to act reasonably in awarding and implementing changes to the employee incentive awards?

Under Japanese law, employers are not subject to an express obligation of "reasonableness" as such; however, through the principles of good faith and the prohibition on abuse of rights under the Labour Contract Act, as well as the statutory reasonableness requirement applicable to changes to work rules, employers are in substance required to act reasonably in the award and modification of incentive payments. In particular, where an adverse change is to be made, the reasonableness requirement is expressly prescribed by statute, and any change that fails to satisfy this requirement will be rendered void.

What are the different tax events that employees face throughout the ESOP lifecycle (grant, vesting, exercise, sale)?

For ESOPs over company shares, the following are likely to apply:

- Upon grant: Non-taxable event
- Upon Vest: Non-taxable event
- Upon Exercise: Taxable event

The gain realized on the exercise date, calculated as fair market value (FMV) minus the exercise price, is treated as employment income. It is aggregated with other types of income and subject to national income tax (progressive 5%-45%) and local inhabitant tax (flat 10%).

- Upon Sale: Taxable event

Capital gain equivalent to sales price less FMV on the exercise date is taxed at a flat 20.315% (national income tax of 15.315% and local inhabitant tax of 5%) separately from other types of income.

It is assumed herein that the employee is a tax resident of Japan at each taxing point.

It is important that your employees are made aware of the taxing point to ensure that they can manage the tax liability.

Will employees be taxed in the country they are ordinarily resident in respect of stock options granted in an offshore Company?

Residence and location of the company generally does not impact whether a stock option is taxable.

What drives whether an exercise gain of stock option is taxable is whether it is derived from assignment/employment in Japan. Where it is derived from (or in respect of) Japan assignment/employment, any profit/gain arising from the stock option would be subject to Japan tax upon the tax point (even if it is granted from an offshore company). More specifically, the taxable amount will be prorated according to the ratio of days spent in Japan to the total duration between the grant and exercise dates.

Whether a capital gain of stock option is taxable or not depends on the tax residency status of the employee at the time of sale.

What tax benefits, if any, are available to employees receiving employee stock options, including any preferential tax treatment, tax deferrals, or exemptions that may apply?

In Japan, tax treatment of stock options will generally depend on whether the options are qualified or non-qualified. Stock options of offshore companies are non-qualified stock options.

Stock options granted under the Japanese Company Law may be qualified if certain conditions are satisfied. Qualified stock options are subject to national income tax and local inhabitant tax only at the time the shares are sold, whilst non-qualified stock options are subject to national income tax and local inhabitant tax upon both exercise and sale.

What methodologies typically govern the valuation of shares in ESOPs for private companies?

The following methodologies are commonly applied for share valuations in ESOP, particularly for private companies:

- Discounted cash flow method under the Income Approach
- Comparable market multiples under the Market Approach; and
- Option pricing methods.



What are the Company's options in respect of vested and unvested awards at the time an employee resigns?

In Japan, vested incentive awards are strongly protected as wages, and forfeiture or reduction of such awards on the grounds of resignation is, as a matter of principle, not permitted. In respect of unvested incentive awards, on the other hand, it is generally accepted that the employee's entitlement will lapse upon resignation in accordance with the provisions of the work rules or incentive scheme rules.

However, caution is required in cases where the conditions for continued employment are insufficiently clear, or where an employee resigns immediately before the payment date; in such circumstances, whether pro-rated payment calculated on a daily basis ought to be made may become a point of contention. The courts have assessed the validity of employment-on-payment-date requirements on a case-by-case basis, and there are instances where such requirements have been found to impose an unjustifiable restriction on the payment of wages.

Do disputes concerning or arising out of employee incentive awards fall to be determined in the local employment tribunals?

In Japan, disputes concerning employee incentive awards are in most cases resolved through the Labour Tribunal system or ordinary civil litigation. Rather than a single specialised body such as the Employment Tribunal in the United Kingdom, Japan operates a framework in which multiple institutions may be involved, depending on the nature of the dispute, the amount in question, and the choice of the parties.

Malaysia

Are employee incentives governed by any particular law(s) in your jurisdiction?

Yes, employee incentives are generally covered by legislation depending on the nature of the incentive. The primary statute is the Employment Act 1955 which regulates employee benefits and wages (which can include certain incentive payments). For example, certain bonus and commissions may fall within the wage definition and attract statutory protections accordingly. The Income Tax Act 1967 is relevant towards tax treatment of incentive payments. Other legislations may come into play depending on the nature of the incentive - eg: contractual incentives are subject to general contract law principles under Contracts Act 1950 etc.

Are employee incentive awards considered “wages” in your jurisdiction?

Yes, depending on the nature of the incentive and how it is structured. "Wages" under the Employment Act is generally any sum payable to an employee in respect of work done but expressly excludes certain payments such as annual bonus or travelling allowance.

Does the Company retain the right to unilaterally amend, suspend, or discontinue employee incentive awards without employee consent? If such rights exist, what restrictions or procedural requirements (such as notice periods, consultation obligations, or protection of vested rights) apply to such modifications?

Generally, employee consent should be obtained before amending, suspending or discontinuing employee incentive awards unless such awards are expressly referred to as discretionary, or where the Company has expressly retained the right to unilaterally amend, suspend or discontinue the employee incentive award in the contract.

Is there a requirement for the Company to act reasonably in awarding and implementing changes to the employee incentive awards?

Generally, no, unless it is a contractual requirement that the Company will act reasonably.

What are the different tax events that employees face throughout the ESOP lifecycle (grant, vesting, exercise, sale)?

Under Malaysian tax rules, ESOP which is known as Employee Share Option Scheme (“ESOS”) are generally treated as follows:

- Upon grant: Non-taxable event
- Upon Vest: Non-taxable event
- Upon Exercise: Taxable event. The benefit arising from the exercise of the option is taxed as a perquisite, computed as the difference between the share price paid and the lower of the market value of the shares on the date the option is exercisable or exercised.
- Upon Sale: Non-taxable event (as Malaysia does not impose any capital gain tax on individuals).

However, real property gains tax (“RPGT”) may apply if the shares are in real property company (“RPC”), i.e. it is a controlled company and it owns real property situated in Malaysia and shares in another RPC or both with combined defined value (market value) is at least 75% of its total tangible assets.

Will employees be taxed in the country they are ordinarily resident in respect of stock options granted in an offshore Company?

Employees may still be taxed in Malaysia even if they are ordinarily resident in another country and the stock options are granted by an offshore company. Malaysia taxes share-scheme benefits based on the location where the employment duties that gave rise to the benefit were performed or exercised (i.e. Malaysia), and not by the location of the employer or the residence of the employee.

Therefore, if the duties of an overseas employment are exercised in Malaysia such that the employment income is taxable in Malaysia, then a charge to Malaysian tax is likely to arise on the benefit from the exercise of the ESOS offered by the employer overseas but the ESOS were exercised while exercising employment in Malaysia.

What tax benefits, if any, are available to employees receiving employee stock options, including any preferential tax treatment, tax deferrals, or exemptions that may apply?

Malaysia does not provide any preferential tax treatment, tax deferrals or exemptions for employees receiving stock options.

Gains arising from exercising the ESOS upon tax point will be taxable as employment income. Any gain or loss arising from disposal of the share likely to be capital in nature and not subject to income tax. Unless the shares are in RPC, then RPGT may apply on the disposal of the share.

What methodologies typically govern the valuation of shares in ESOPs for private companies?

The following methodologies are commonly applied for share valuations in ESOP, particularly for private companies:

- Discounted cash flow method under the Income Approach
- Comparable market multiples under the Market Approach; and
- Option pricing methods.

What are the Company's options in respect of vested and unvested awards at the time an employee resigns?

The Company's options and rights will primarily be governed by the terms of the relevant incentive plan documents and the employee's employment contract, as there is no law or legislation that specifically regulate the treatment of incentive awards upon resignation.

Do disputes concerning or arising out of employee incentive awards fall to be determined in the local employment tribunals?

Depending on the nature of the incentive and the type of dispute. For example, wage claims may be determined by the Labour Court (i.e. the Director General of Labour). General breach of contract claims (relating to incentives) may also be brought and determined before the civil courts.

Philippines



Are employee incentives governed by any particular law(s) in your jurisdiction?

The term “employee incentives” may be interpreted in different ways in Philippine jurisdiction. It may mean statutory employee incentives such as 13th month pay and service incentive leaves. These statutory incentives are governed by the Labor Code of the Philippines.

On the other hand, the term “employee incentives” may also mean—which is usually often regarded as such—as the incentives given by employers to employees based on the latter’s job performance. It is likewise often referred to as “performance bonus” or simply “bonus”. Being purely based on the employee’s performance and discretionary on the part of the employer, there is no particular law governing the same.

However, in the event that the employee incentives are indicated in the employee’s employment contract, then the laws on contracts may also govern. In addition, in view of the fact that the same are given by virtue of the employment relationship of the employer and the employee, then the Labor Code of the Philippines shall likewise govern as applicable.

For consistency purposes in answering the subsequent queries, we shall regard employee incentives as “bonus”. Jurisprudence dictates that a bonus is an amount granted and paid to an employee for his industry and loyalty which contributed to the success of the employer’s business and made possible the realization of profits. It is an act of generosity granted by an enlightened employer to spur the employee to greater efforts for the success of the business and realization of bigger profits. The granting of a bonus is a management prerogative, something given in addition to what is ordinarily received by or strictly due the recipient.

Whether employee incentives refer to statutory incentives or to bonuses as aforementioned, it is certain that the employee incentives shall be considered as benefits under labor standards which are covered under the Labor Code of the Philippines. Please be informed that labor standards under the Labor Code of the Philippines deal with the minimum terms and conditions of employment (e.g., wages, hours of work, and other benefits, etc.).

Are employee incentive awards considered “wages” in your jurisdiction?

Generally incentive awards are not considered wages. However, it may be considered to be part of wages in the following instances:

- The incentives are categorically indicated in the employee’s employment contract as component of the employee’s monthly salary;
- If the Company is an organized establishment, and there exists a collective bargaining agreement (CBA), and the CBA specifically provides that incentives are part of wages of the employees;
- The bonuses are considered as wages based on Company practice.

It is a jurisprudential rule that whether or not bonus forms part of wages depends upon the circumstances or condition for its payment. If the “bonus” (employee incentives) is an additional compensation which the employer promised and agreed to give without any conditions imposed for its payment, such as success of business or greater production or output, then it is part of the wage. But if it is paid only if profits are realized or a certain amount of productivity achieved, it cannot be considered part of the wages.

Does the Company retain the right to unilaterally amend, suspend, or discontinue employee incentive awards without employee consent? If such rights exist, what restrictions or procedural requirements (such as notice periods, consultation obligations, or protection of vested rights) apply to such modifications?

Yes, being generally discretionary on the part of the Company, it may rightfully and unilaterally amend, suspend, or discontinue the employee incentive awards without the employee's consent.

However, bonus (employee incentives) may be considered to be a demandable and enforceable obligation, and hence considered vested rights, in the following instances:

- If it is stipulated in the employment contract or CBA;
- If the employer promised and agreed to give without any conditions imposed for its payment, such as success of business or greater production or output, and thus part of wage;
- If the grant of bonus has become a company policy or practice.

As such, in the aforementioned instances, the Company cannot unilaterally amend, suspend, or discontinue the employee incentive awards without the employee's consent. Otherwise, the Company runs the risk of facing a labour complaint on illegal deductions and/or non-payment of wages.

If the Company thus intend to amend, suspend, or discontinue the grant of employee incentives/bonus, the procedural requirements for the same shall depend on the existing policies of the Company, if any. In the absence of the same, the following jurisprudential limitations on the exercise of management prerogative may be considered by the Company in coming up with its own appropriate notice periods and/or consultation obligations:

- Limitations found in law, CBA, or the general principles of fair play and justice.
- Limitations imposed by labour laws and the principles of equity and substantial justice.

Is there a requirement for the Company to act reasonably in awarding and implementing changes to the employee incentive awards?

As mentioned, since incentives/bonuses are generally discretionary and made in the exercise of the employer's management prerogative, there is no specific requirement on how the same may be awarded or how changes to incentives can be specifically implemented. The course of action of the Company shall depend on how the said incentives/bonus are given to the employees concerned (e.g., contractual, company practice, etc.).

Please see our response to question 3 for further discussion.

What are the different tax events that employees face throughout the ESOP lifecycle (grant, vesting, exercise, sale)?

For ESOPs over company shares, the following are likely to apply:

- Upon Grant: Non-taxable event
- Upon Vest: Non-taxable event
- Upon Exercise: Taxable event (provided, if the book value or fair market value, whichever is higher, of the shares exceed the exercise price, the difference shall be deemed additional taxable compensation). This rule applies to its own shares of stock or shares of stock it owns. Subject also to the documentary stamp tax on actual issuance of shares of stocks to the employee.
- Upon Sale: Taxable event (capital gains tax on sale/transfer with consideration, and donor's tax for transfer without consideration).

Will employees be taxed in the country they are ordinarily resident in respect of stock options granted in an offshore Company?

Employees who are ordinarily resident are taxed on their worldwide income.

A stock option is taxable when granted or acquired by the employee under an employer-employee relationship (e.g., as part of a compensation package or as an incentive granted by the employer), irrespective of the location of the company whose shares are the subject of the option and will be subjected to taxes accordingly.

Upon exercise, the employee any gain on the difference of the book value or fair market value of the shares versus the exercise price shall be included as part of his/her compensation package and subjected to withholding tax on salaries/wages.

Subsequently, should there be any transfer of the shares acquired through the stock options, the employee will then be liable for capital gains or documentary stamp tax, whichever is applicable.

What tax benefits, if any, are available to employees receiving employee stock options, including any preferential tax treatment, tax deferrals, or exemptions that may apply?

There are no specific tax incentives or preferential tax treatments for employee stock options in the Philippines.

What methodologies typically govern the valuation of shares in ESOPs for private companies?

The following methodologies are commonly applied for share valuations in ESOP, particularly for private companies:

- Discounted cash flow method under the Income Approach
- Comparable market multiples under the Market Approach; and
- Option pricing methods.

What are the Company's options in respect of vested and unvested awards at the time an employee resigns?

An employee who resigns is entitled to his/her final pay. The final pay of a resigning employee is generally composed of his unpaid salary up to his last working day, proportionate 13th month pay, and commutation of his service incentive leave.

A bonus/incentive may only form part of a resigning employee's final pay if the same is considered as either part of wages or it has become a demandable/enforceable right as discussed above.

Do disputes concerning or arising out of employee incentive awards fall to be determined in the local employment tribunals?

Yes, in the Philippines, disputes concerning employee incentive awards/bonus fall under the jurisdiction of labour tribunals.

Singapore

Are employee incentives governed by any particular law(s) in your jurisdiction?

Singapore does not have a single standalone legislation specifically governing employee incentive schemes such as ESOPs.

However, the regulatory framework is drawn from a combination of statutes depending on the nature and structure of the incentive:

- The Employment Act 1968 (to the extent the incentive relates to the employment relationship and may constitute a term of employment);
- The common law of contract (governing the rights and obligations under plan rules and grant agreements);
- The Companies Act 1967 (where the scheme involves the issuance of shares or options by a Singapore-incorporated company);
- The Securities and Futures Act 2001 (where the offer of shares or options may constitute an offer of securities, subject to applicable exemptions); and
- The Income Tax Act 1947 (governing the tax treatment of gains arising from employee share schemes).

Are employee incentive awards considered “wages” in your jurisdiction?

Employee incentive awards such as ESOPs are generally not considered "salary" under the Employment Act 1968. The Employment Act defines "salary" as remuneration payable for work done under a contract of service but expressly excludes certain payments.

Equity-based incentives (such as stock options and restricted share units) are typically treated as a separate component of the employee's remuneration package and do not form part of the employee's base salary for the purposes of the Employment Act.

However, for income tax purposes, gains arising from employee share options or share awards are treated as taxable employment income under Section 10(1)(b) of the Income Tax Act 1947 and are subject to tax as income from employment.



Does the Company retain the right to unilaterally amend, suspend, or discontinue employee incentive awards without employee consent? If such rights exist, what restrictions or procedural requirements (such as notice periods, consultation obligations, or protection of vested rights) apply to such modifications?

Whether the Company retains the right to unilaterally amend, suspend or discontinue employee incentive awards without employee consent depends primarily on the terms of the plan rules, the individual grant agreements, and the employment contract. Most ESOPs expressly reserve the Company's (or plan sponsor's) discretion to amend, suspend or terminate the plan. Where such discretion is clearly provided, the Company will generally be entitled to exercise it in accordance with the plan terms.

However, the following limitations may apply:

- **Vested rights protection:** Once awards have vested and/or been exercised, employees typically acquire enforceable contractual rights. Vested entitlements cannot be unilaterally withdrawn without the employee's consent, and any attempt to do so may give rise to a breach of contract claim.
- **Contractual constraints:** The Company must act within the scope of the discretion granted under the plan documentation. Any deviation from the plan terms may give rise to breach of contract claims.
- **Implied duty of good faith:** Under Singapore common law, there is an implied duty not to exercise contractual discretions in a manner that is arbitrary, capricious, or in bad faith. While Singapore courts have not adopted a general implied duty of good faith in all contracts, discretionary powers (particularly those affecting an employee's entitlements) may be subject to judicial scrutiny if exercised irrationally or for an improper purpose.

Is there a requirement for the Company to act reasonably in awarding and implementing changes to the employee incentive awards?

There is no express statutory requirement under Singapore law for the Company to act "reasonably" in awarding or implementing changes to employee incentive awards.

However, where the plan confers a discretion on the Company, Singapore courts may imply a term that such discretion must not be exercised arbitrarily, capriciously, or in bad faith.

In practice, clearly drafted plan rules that are consistently applied are more likely to be upheld.

What are the different tax events that employees face throughout the ESOP lifecycle (grant, vesting, exercise, sale)?

For ESOPs over company shares, the following are likely to apply:

- **Upon Grant:** Non-taxable event
- **Upon Vest:** Non-taxable event
- **Upon Exercise:** Taxable event* (on the basis that the shares received under the ESOP are not subject to sales restriction). Where sales restrictions apply, the tax point is deferred to the point the sales restrictions lapse.
- **Upon Sale:** Non-taxable event (as there is no capital gain tax in Singapore)

**Deemed exercise rule apply when a foreign individual employee is subject to tax clearance before the tax point has arisen (i.e. holding unexercised stock options). This brings the taxable event forward to the deemed exercise date, which is grant date or the date one month before departure, whichever is later.*

It is important to ensure that your employees are aware of the taxing point (especially tax clearance) to ensure that they can manage the tax liability, especially where they cannot sell the underlying shares to fund the tax liability.

Will employees be taxed in the country they are ordinarily resident in respect of stock options granted in an offshore Company?

Residence and location of the company generally does not impact whether a stock option is taxable but it may impact the timing of the tax (e.g. tax clearance brings the tax point forward) or the amount of tax (non-residents can be subject to higher rates of tax).

What drives whether a stock option is taxable is whether it is granted to the employee when exercising a Singapore employment. Where it is granted whilst (or in respect of) on Singapore employment, any profit/gain arising from the stock option would be subject to tax upon the tax point (even if it is granted from an offshore company).

Where ESOPs are granted over foreign companies, then it is important to take advice to see whether they are still treated as companies for Singapore income tax purposes. For example, we have seen cases where the IRAS do not deem a US Limited Liability Company as a “Company” and therefore, slightly different rules may apply.

What tax benefits, if any, are available to employees receiving employee stock options, including any preferential tax treatment, tax deferrals, or exemptions that may apply?

Unlike some countries like US where stock option can be designed as Incentive Stock Option to enjoy tax concession, there is no such concept for ESOP here. Gain arising from ESOP upon tax point will be taxable as employment income with any subsequent increase in value (e.g. at sale of the share) likely to be capital in nature and not taxed.

Individuals may apply for the payment of tax on gains from ESOP with IRAS to be deferred for up to 5 years, subject to certain qualifying criteria, and deferred tax is subject to an interest charge as well.

When structuring an ESOP, it is important to be aware of what:

- impacts the tax point so you can structure ESOP to align with the intention of the plan. (e.g. to tie the tax point to a liquidity event)
- the ESOP is being granted over. There are different rules for where the ESOP is not over shares in a company. There are some fluidity and uncertainty on how the IRAS classifies foreign entities, for example, so advice should be sought to confirm the tax point and reporting obligations.

Deemed exercise is a very unique tax point for ESOP. It creates a cash-flow challenge as the ESOP is taxable upon an individual's departure from employment/Singapore when they are caught by tax clearance rules.

However, it would be beneficial in the sense that it provides a cap to the tax liability on the ESOP as no additional tax is needed if the share value subsequently rises and could get a potential refund of tax if the share value subsequently falls within 4 years.

Companies can avoid the deemed exercise rule if they wish to implement the tracking option rules, which also requires certain criteria to be met and approval from the IRAS.

What methodologies typically govern the valuation of shares in ESOPs for private companies?

The following methodologies are commonly applied for share valuations in ESOP, particularly for private companies:

- Discounted cash flow method under the Income Approach
- Comparable market multiples under the Market Approach; and
- Option pricing methods.

What are the Company's options in respect of vested and unvested awards at the time an employee resigns?

This will generally be subject to the terms and conditions of the plan rules and the individual award agreement. Singapore law does not prescribe default rules for the treatment of incentive awards upon resignation.

In practice, most ESOP plans provide that unvested awards lapse automatically upon cessation of employment, while vested but unexercised options may be subject to a limited post-termination exercise period (commonly 30 to 90 days). The plan may also distinguish between "good leavers" (e.g., redundancy, retirement, ill health) and "bad leavers" (e.g., voluntary resignation, termination for cause), with more favourable treatment afforded to the former.

It is advisable for the Company to ensure that the plan documentation clearly sets out the treatment of both vested and unvested awards upon resignation to avoid ambiguity and potential disputes.

Do disputes concerning or arising out of employee incentive awards fall to be determined in the local employment tribunals?

Disputes concerning employee incentive awards may be resolved through different forums depending on the nature of the claim:

- **Employment Claims Tribunals (ECT):** The ECT has jurisdiction over statutory salary-related claims under the Employment Act 1968 and contractual salary-related claims. However, the ECT's jurisdiction is limited to claims not exceeding SGD 20,000 (or SGD 30,000 where the claim is referred by a union). Equity-based incentive disputes may fall outside the ECT's jurisdiction if they do not constitute "salary" under the Employment Act.
- **Civil courts:** Where the dispute concerns contractual rights under the plan rules or grant agreements (e.g., breach of contract, wrongful forfeiture of vested awards), the claim would generally be brought before the civil courts (i.e., the State Courts or the High Court, depending on the quantum of the claim).
- **Arbitration:** Where the plan documentation contains an arbitration clause, disputes may be resolved through arbitration in accordance with the agreed rules.

Taiwan

Are employee incentives governed by any particular law(s) in your jurisdiction?

Yes. Employee incentives are generally governed by the Labor Standards Act in Taiwan.

Are employee incentive awards considered “wages” in your jurisdiction?

Whether an employee incentive award is considered wages in Taiwan depends on its nature. If the incentive award can be earned solely through the employee’s individual efforts and is paid regularly and consistently, it is more likely to be regarded as wages. By contrast, if the payment of the incentive award depends on other factors beyond the employee’s control, such as the company’s overall performance, it is less likely to be regarded as wages.

Does the Company retain the right to unilaterally amend, suspend, or discontinue employee incentive awards without employee consent? If such rights exist, what restrictions or procedural requirements (such as notice periods, consultation obligations, or protection of vested rights) apply to such modifications?

If the incentive award constitutes wages, the Company generally may not unilaterally amend, suspend, or discontinue it without the employee’s consent. By contrast, if the incentive award does not constitute wages, and either is not incorporated into the employment contract, or, even if incorporated into the employment contract, is expressly stated to be an ex-gratia payment, the Company may revise the relevant policy unilaterally, provided that the revised policy is duly announced to employees.

Is there a requirement for the Company to act reasonably in awarding and implementing changes to the employee incentive awards?

If the incentive award does not constitute wages, then, as to awarding, Article 29 of the Labor Standards Act provides that, where there are net profits, the employer shall pay bonuses to employees who worked the entire preceding year without fault or misconduct. As to implementing changes, there is no explicit statutory requirement that the Company act reasonably.

What are the different tax events that employees face throughout the ESOP lifecycle (grant, vesting, exercise, sale)?

For ESOPs over company shares, the following are likely to apply:

- Upon grant: Non-taxable event
- Upon Vest: Non-taxable event
- Upon Exercise: Taxable event (on the basis that the shares received under the ESOP are not subject to sales restriction). Where sales restrictions apply, the tax point is deferred to the point the sales restrictions lapse.
- Upon Sale: Depends. For shares listed abroad, this would be regarded as foreign source income and would be subject to Alternative Minimum Income Tax. For shares listed in Taiwan, there is no capital gains tax.

Employers in Taiwan are obligated to report ESOP income to the tax office. Accordingly, it is important to ensure that employees are aware of the tax implications of exercising their ESOP.

Will employees be taxed in the country they are ordinarily resident in respect of stock options granted in an offshore Company?

Residence and location of the company generally does not impact whether a stock option is taxable, but it may impact the timing of taxation (e.g., tax clearance brings the tax point forward) or the amount of tax (non-residents can be subject to higher rates of tax).

Stock option income would be considered Taiwan source income if it is granted to the employee in connection with employment exercised in Taiwan. Where it is granted whilst on (or in respect of) Taiwan employment, any profit/gain arising from the stock option would be subject to tax upon the tax point (even if it is granted from an offshore company).

For stock option income earned from working abroad for a foreign company, this would be considered foreign source income. Foreign source income would be subject to AMT if the beneficiary is a Taiwan tax resident.

What tax benefits, if any, are available to employees receiving employee stock options, including any preferential tax treatment, tax deferrals, or exemptions that may apply?

In general, there is no preferential tax treatment for stock option income. ESOP is generally rolled out for business reasons and not tax reasons in Taiwan.

What methodologies typically govern the valuation of shares in ESOPs for private companies?

The following methodologies are commonly applied for share valuations in ESOP, particularly for private companies:

- Discounted cash flow method under the Income Approach
- Comparable market multiples under the Market Approach; and
- Option pricing methods.

What are the Company's options in respect of vested and unvested awards at the time an employee resigns?

This will depend on how the relevant contractual documents provide for the treatment of vested and unvested awards upon resignation.

Do disputes concerning or arising out of employee incentive awards fall to be determined in the local employment tribunals?

Yes. In Taiwan, such disputes would generally be treated as labour disputes and handled by the labour division of the courts.

Thailand

Are employee incentives governed by any particular law(s) in your jurisdiction?

Yes. Employee incentives, which are securities-based incentives, i.e. shares, convertible bonds and warrants (“Incentives”) granted by listed and non-listed public limited companies in Thailand, are governed by the Securities and Exchange Act B.E. 2535 (1992) and the Notification of the Capital Market Supervisory Board No. TorJor. 32/2551 Re: Offering of Newly Issued Securities to Directors or Employees dated 15th December 2008 as amended (“Notification No. 32/2551”).

For other types of incentives or those provided by private limited companies, no specific laws apply. Instead, these are governed by the employment agreement and/or each company’s specific incentive plan.

Are employee incentive awards considered “wages” in your jurisdiction?

No. ESOPs and similar incentive awards (such as shares, debentures, or warrants) are not considered as “wages” under Section 5 of the Labour Protection Act B.E. 2541(1998) as amended (“LPA”) as they are granted as an incentive or reward rather than remuneration for the work done under an employment contract during regular working period.

Does the Company retain the right to unilaterally amend, suspend, or discontinue employee incentive awards without employee consent? If such rights exist, what restrictions or procedural requirements (such as notice periods, consultation obligations, or protection of vested rights) apply to such modifications?

Yes. The Company can retain the right to unilaterally amend, suspend, or discontinue employee incentive awards without employee consent as Thai law neither specifically prohibits such actions nor prescribes procedural requirements for them. Consequently, the Company must strictly adhere to the terms and conditions of the employment contract and/or its specific incentive plan, which may specify the requirements for obtaining a prior employee consent before taking such actions.

Is there a requirement for the Company to act reasonably in awarding and implementing changes to the employee incentive awards?

Yes. Listed companies and certain types of public limited companies prescribed under the Notification No. 32/2551 are required to act reasonably and provide clear justifications in awarding the employee incentive awards. These include, but are not limited to the objectives, the necessity of the awards, the impacts on shareholders (e.g. price and control dilution), the right of the shareholders to object the awards, etc. These requirements do not apply to other types of companies.

However, there are no specific statutory requirements for the Company to act reasonably in implementing changes to the employee incentive awards.

What are the different tax events that employees face throughout the ESOP lifecycle (grant, vesting, exercise, sale)?

For ESOPs over company shares, the following are likely to apply:

- Upon grant: Non-taxable event
- Upon Vest: Non-taxable event
- Upon Exercise: Taxable event upon ownership transfer regardless of whether such shares are subject to transfer restrictions.
- Upon Sale: Capital gain is a taxable income in Thailand.

If it is a non-Thai company share, the gain is considered foreign source income which will be taxed only if it is earned by Thai tax residents and only when it is remitted into Thailand.

Will employees be taxed in the country they are ordinarily resident in respect of stock options granted in an offshore Company?

In Thailand, a stock option is not generally taxed based on the residency status.

Stock options received from employment will be taxable in Thailand when they are considered Thai source income if:

- the employee performed duties in Thailand during the vesting period; or
- the Thai employer absorbs the cost of stock options granted to the employee.

What tax benefits, if any, are available to employees receiving employee stock options, including any preferential tax treatment, tax deferrals, or exemptions that may apply?

There are no specific tax incentives or preferential tax treatments for employee stock options in Thailand. The taxable amount is generally the difference between the fair market value of the shares at the time of exercise and the exercise price. This amount is treated as employment income and taxed at the progressive personal income tax rates.

What methodologies typically govern the valuation of shares in ESOPs for private companies?

The following methodologies are commonly applied for share valuations in ESOP, particularly for private companies:

- Discounted cash flow method under the Income Approach
- Comparable market multiples under the Market Approach; and
- Option pricing methods.

What are the Company's options in respect of vested and unvested awards at the time an employee resigns?

The Company's option specified under the Notification No. 32/2551 if the employee incentive awards are convertible bonds or warrants ("Convertible Securities") and the resigning or terminated employee returns their awards to the Company, is to reallocate them to other employees, subject to the prescribed requirements.

There are no other statutory options for shares and Convertible Securities. However, additional arrangements are subject to the terms of the employment agreement and/or the company's specific incentive plan.

Do disputes concerning or arising out of employee incentive awards fall to be determined in the local employment tribunals?

Thailand does not have the employment tribunals. However, disputes concerning or arising out of employee incentive awards may fall within the jurisdiction of the Labor Court in Thailand which is the specialized court authorized to adjudicate disputes arising from employment agreements, work rules, or any benefits and rights derived from the employer-employee relationship.



United Arab Emirates (UAE)

Are employee incentives governed by any particular law(s) in your jurisdiction?

UAE Mainland

There is no standalone legislation specifically governing employee incentive schemes. The primary framework is the UAE Labour Law (Federal Decree-Law No. 33 of 2021, as amended by Federal Decree-Law No. 20 of 2023) and its Implementing Regulation (Cabinet Resolution No. 1 of 2022) (together the "Labour Law"), which do not directly regulate the structure or mechanics of incentive schemes but are relevant where any award may constitute a wage component or contractual entitlement.

Where the scheme involves shares in a UAE mainland company, the UAE Commercial Companies Law (Federal Law No. 32 of 2021) ("Commercial Companies Law") is relevant. Article 228 expressly permits public joint stock companies to establish employee share schemes. No equivalent express provision exists for LLCs, and share-based arrangements must be carefully structured to comply with restrictions on share transfers and shareholder numbers.

Dubai International Financial Centre (DIFC)

The DIFC Employment Law (DIFC Law No. 2 of 2019, as amended) is the primary employment statute. Incentive plan documentation may also be governed by the DIFC Contract Law (DIFC Law No. 6 of 2004, as amended), which expressly recognises good faith and fair dealing as a source of implied contractual obligations.

Where a DIFC entity issues shares or options, the DIFC Companies Law (DIFC Law No. 5 of 2018, as amended) applies. It contains an express reference to "Employee Share Scheme".

Abu Dhabi Global Market (ADGM)

The ADGM Employment Regulations 2024 govern the employment relationship. Incentive plan agreements may also be subject to the English common law, applied pursuant to the ADGM Application of English Law Regulations 2015.

Where an ADGM entity issues shares or options, the ADGM Companies Regulations 2020 apply. These are modelled on English companies law and contain specific provisions referencing to employee share schemes.



Are employee incentive awards considered “wages” in your jurisdiction?

UAE Mainland

The UAE Labour Law defines "wage" broadly under Article 1 to include the basic salary and all allowances (including benefits in-kind).

The New Civil Transactions Law reinforces this: Articles 844–846 provide that remuneration includes commissions, bonuses, benefits in kind, and allowances, and that where such payments are regularly made and of a determinable and calculable amount, they are more likely to be regarded as remuneration rather than a mere gratuity.

Note that 'basic wage' is different from wages/remuneration.

DIFC

The DIFC Employment Law addresses different remuneration components like " Basic Wage," "Remuneration," and "Additional Payment". Incentives are treated as part of Additional Payment.

Note that 'basic wage' is different from Remuneration. Remuneration is basic wages and additional payment together.

ADGM

The ADGM Employment Regulations 2024 addresses different remuneration components like " Basic Wage," "Wage," and "Variable Payment". Incentives are treated as part of Variable Payment and the definition of “Wage” excludes Variable Payment.

Does the Company retain the right to unilaterally amend, suspend, or discontinue employee incentive awards without employee consent? If such rights exist, what restrictions or procedural requirements (such as notice periods, consultation obligations, or protection of vested rights) apply to such modifications?

UAE Mainland

Where an incentive scheme forms part of the employment contract (by express incorporation or consistent practice), unilateral amendment or withdrawal is not possible and will be considered a breach of contract.

The New Civil Transactions Law reinforces this that a binding contract cannot be unilaterally withdrawn, varied, or rescinded except by mutual consent, judicial decision, or legal provision. Under Articles 120(2) and 120(11) of the New Civil Transactions Law, contracts must be interpreted in good faith.

DIFC

Article 14(3) of the DIFC Employment Law requires that employment contract amendments be in writing and signed by both parties (save for purely administrative changes where prior written notice suffices). Where incentive plan terms form part of the employment contract, this requirement applies. If an amendment is detrimental to an employee (e.g., reducing the number of options or increasing the exercise price), the employer generally needs the employee's consent, or the amendment must fit within specific, permitted exceptions within the plan documents and subject to DIFC Contract law principles.

ADGM

As ADGM applies English common law (pursuant to the Application of English Law Regulations 2015), employer amendment rights expressly reserved in plan documentation are generally enforceable, subject to the following: vested or accrued entitlements cannot be forfeited unilaterally; discretionary amendment powers may not be exercised irrationally, perversely, or in bad faith; and changes to core employment terms must comply with the ADGM Employment Regulations 2024 and common law principles. Clear drafting and adherence to plan procedures when exercising amendment rights are essential.

Is there a requirement for the Company to act reasonably in awarding and implementing changes to the employee incentive awards?

UAE Mainland

Whilst the UAE Labour Law does not contain an express provision requiring reasonableness in the administration of incentive schemes, reasonableness is nonetheless an expected standard under UAE law. The New Civil Transactions Law gives this expectation meaningful legal grounding: Article 221(1) requires that contracts be performed in accordance with their terms and in a manner consistent with good faith; Article 221(2) extends contractual obligations to all incidental duties arising by law, prevailing custom, and the nature of the obligation; and Article 121(1) provides that pre-contractual negotiations are governed by good faith, with bad-faith withdrawal capable of giving rise to liability for actual loss. Taken together, these provisions mean that an employer who exercises a plan discretion in an arbitrary or capricious manner, or in a way that defeats an employee's legitimate expectations, is exposed to challenge on contractual and statutory grounds, even in the absence of a specific reasonableness requirement.

The spirit of the UAE Labour Law similarly supports this position: Article 65(3) and (5) confirm that the Law sets minimum protections for workers, and any exercise of employer discretion that undermines those protections or operates to deny an employee an expected benefit may be scrutinised accordingly.

DIFC

Whilst the DIFC Employment Law does not contain an express reasonableness requirement for incentive scheme administration, reasonableness is nonetheless an expected standard under DIFC law. The DIFC Contract Law expressly recognises good faith and fair dealing as a source of implied contractual obligations, meaning that employer discretions, including the power to award, adjust, or withhold incentive payments, are expected to be exercised reasonably and not arbitrarily or capriciously. This implied standard cannot easily be excluded by plan documentation, and a rational, non-arbitrary basis for any decision should be demonstrable, particularly where employees have a reasonable expectation of receipt based on plan terms or past practice.

ADGM

Whilst there is no single express provision in the ADGM Employment Regulations 2024 imposing a reasonableness requirement on incentive scheme decisions, the exercise of employer discretion is subject to the usual common law principles.

What are the different tax events that employees face throughout the ESOP lifecycle (grant, vesting, exercise, sale)?

Employees in the UAE generally face no local tax events throughout the ESOP lifecycle, as the UAE does not impose personal income tax or capital gains tax on individuals.

Will employees be taxed in the country they are ordinarily resident in respect of stock options granted in an offshore Company?

The United Arab Emirates does not impose personal income tax on individuals, including on income derived from employment, dividends, capital gains, or stock options.

It is important to note that if the individual is a tax resident or citizen of another country (e.g., a US citizen), tax rules of that other country may need to be considered.

What tax benefits, if any, are available to employees receiving employee stock options, including any preferential tax treatment, tax deferrals, or exemptions that may apply?

There is no personal income tax on salaries, capital gains, or other personal income for individuals in the UAE.

What methodologies typically govern the valuation of shares in ESOPs for private companies?

There are no valuation mechanisms prescribed under employment regulations and are subject to accounting and valuation principles.

What are the Company's options in respect of vested and unvested awards at the time an employee resigns?

UAE Mainland

The Labour Law does not address the treatment of incentive awards upon resignation. The position is governed primarily by the plan documentation and, where silent, the New Civil Transactions Law.

Where an award is vested at the date of resignation (i.e., all applicable conditions have been satisfied and the entitlement has crystallised), the employer cannot unilaterally forfeit it without risking a breach of contract claim. Plan rules should ideally adopt a good leaver / bad leaver framework, preserving a pro-rated portion of unvested awards for employees who leave involuntarily (e.g., redundancy or ill health) whilst providing for forfeiture where an employee resigns voluntarily or is dismissed for cause.

DIFC

The DIFC Employment Law does not prescribe default rules for the treatment of incentive awards upon resignation. The position is governed by the plan documentation, subject to DIFC contract law principles.

A good leaver / bad leaver framework is equally advisable in the DIFC context, with plan rules clearly specifying the treatment of both vested and unvested awards in each scenario.

ADGM

As with the DIFC, the ADGM Employment Regulations 2024 do not prescribe default rules for the treatment of incentive awards upon resignation, and the position is governed by the plan documentation and common law principles.

A good leaver / bad leaver framework is advisable in the ADGM context, with plan rules clearly specifying the treatment of both vested and unvested awards in each scenario.

Do disputes concerning or arising out of employee incentive awards fall to be determined in the local employment tribunals?

UAE Mainland

Labour disputes are subject to a mandatory MoHRE conciliation process before referral to the labour courts, pursuant to Cabinet Resolution No. 1 of 2022. Where an incentive plan dispute is characterised as a labour claim (e.g., because the plan is incorporated into the employment contract), the labour courts are likely to assert jurisdiction. Where the plan is structured as a separate commercial or shareholders' arrangement, the civil or commercial courts may have concurrent or exclusive jurisdiction. Forum selection clauses may not be enforceable to oust labour court jurisdiction over claims that are in substance employment claims; under the UAE Labour Law, any provision purporting to waive statutory labour rights is void.

DIFC

The Small Cases Tribunal has jurisdiction over employment claims arising under the DIFC Employment Law where the value of the claim is below AED 500,000. Anything above the threshold would fall within the jurisdiction of the DIFC Courts (Court of First Instance).

ADGM

ADGM does not operate a separate employment tribunal. All disputes, including employment claims, are heard directly by the ADGM Courts, which apply English common law. Employment claims are subject to the mandatory provisions of the ADGM Employment Regulations 2024 regardless of any contractual forum selection. Disputes involving equity-based incentives or shareholder arrangements fall within the civil jurisdiction of the ADGM Courts.

Vietnam

Are employee incentives governed by any particular law(s) in your jurisdiction?

Vietnam does not have a single, unified law governing employee incentive plans. Instead, the regulatory framework is fragmented across multiple instruments depending on whether the ESOP is issued by a domestic company or an offshore parent:

For Incentive and Bonus in general:

- Labor Code 2019;

For Onshore ESOPs (domestic public companies):

- Law on Securities 2019;
- Decree No. 155/2020/ND-CP elaborating on some articles of the Law on Securities.

For Offshore ESOPs (foreign parent companies granting shares to Vietnamese employees):

- Decree No. 135/2015/ND-CP regulating outward portfolio investments;
- Circular No. 10/2016/TT-NHNN guiding certain contents in the Government's Decree No. 135/2015/ND-CP dated December 31, 2015 providing for regulations on outward portfolio investment (amended by Circular No. 23/2024/TT-NHNN guiding certain contents in the Government's Decree No. 135/2015/ND-CP dated December 31, 2015 providing for regulations on outward portfolio investment)

For Personal Income Tax:

- Law on Personal Income Tax (as amended);
- Circular No. 111/2013/TT-BTC on the implementation of the Law on Personal Income Tax, the Law on the Amendments to the Law on Personal Income Tax, and the Government's Decree No. 65/2013/ND-CP elaborating a number of articles of the law on Personal Income Tax and the Law on the Amendments to the Law on Personal Income Tax.



Are employee incentive awards considered “wages” in your jurisdiction?

Under labour laws perspective: No. According to the Labor Code, an incentive award (bonus) is distinctly separate from the base "wage". A wage comprises a task/title-based salary, salary allowances, and other additional payments. A "bonus" is a separate amount or asset given to employees based on business results and the level of task completion.

Under tax laws perspective: Yes. For tax purposes, all bonuses in cash or not in cash (including bonuses in securities) are considered taxable income from wages and remuneration, except for some very specific state-awarded prizes or technical innovations.

Does the Company retain the right to unilaterally amend, suspend, or discontinue employee incentive awards without employee consent? If such rights exist, what restrictions or procedural requirements (such as notice periods, consultation obligations, or protection of vested rights) apply to such modifications?

It depends on how the incentive is established and whether a specific mechanism was pre-agreed. However, the employer shall always comply with the key principle of promises of rewards under the Civil Code "A promisor may withdraw its promise of a reward at any time prior to the commencement of the performance of the act. A withdrawal of a promise of reward must be made in the same manner and by the same media in which the promise of reward was announced."

- If specified in the Labour Contract (LC) or a Collective Labour Agreement (CLA):
- If the LC or CLA explicitly outlines a mechanism or specific conditions under which awards can be amended, suspended, or discontinued, the Company can execute these actions according to those pre-agreed terms, provided that such mechanism/conditions are compliant with the principle of the Civil Code.
- If no such mechanism exists, the Company cannot unilaterally amend or discontinue the awards. Modifying a LC requires at least 3 days' advance notice and mutual agreement. Any amendment or supplement to a CLA must be made through a voluntary mutual agreement via a collective bargaining process, requiring the approval of over 50% of the employees in the enterprise. If no agreement is reached, the original terms must continue to be performed.
- If established in a Company Policy/Bonus Regulation: The Company can explicitly state the mechanisms and conditions for amending, suspending, or discontinuing employee incentive awards within the policy itself (e.g., specifying under what business circumstances bonuses will be suspended), provided that such mechanism/conditions are compliant with the principle of the Civil Code.
- If the policy does not contain these mechanisms and the Company needs to amend the policy itself, it generally retains the right to unilaterally do so. However, the procedural requirement is that the employer must publicly announce the revised regulation at the workplace after consulting with the grassroots employee representative organization (e.g., labour union).
- If established in a stock award plan/agreement: there is no express requirement to obtain employees' consent or consultation. but the key principle as mentioned above still applies. We opine that any amendment, suspension or removal of the incentive award should be made with good faith and reasonable consideration of the employees' interest.

Is there a requirement for the Company to act reasonably in awarding and implementing changes to the employee incentive awards?

Vietnamese civil and labour legal systems do not contain an express "reasonableness" standard. However, a combination of fundamental legal principles imposes this obligation on the Company:

- Good faith and honesty: Article 3 of the Civil Code 2015 requires civil transactions to be established and performed in good faith and honesty.
- Prohibition on abuse of rights: Article 3 and Article 10 of the Civil Code 2015 state that the exercise of civil rights must not infringe upon national interests, public interests, or the lawful rights and interests of others, and individuals/legal entities must not abuse their civil rights to cause damage to others.

Therefore, while there is no standalone "act reasonably" test similar to some common law systems in practice, employers who amend ESOP or bonus policies without procedural compliance, without adequate notice, or in a discriminatory/malicious manner may face high exposure to dispute with the employees.

What are the different tax events that employees face throughout the ESOP lifecycle (grant, vesting, exercise, sale)?

For ESOPs over company shares, the following are likely to apply:

- Upon grant: Non-taxable event
- Upon Vest: Non-taxable event
- Upon Exercise: Non-taxable event (tax deferred until transfer the shares/sales event)
- Upon Sale: Taxable event: ESOP is taxable upon sale. Vietnam tax law provides for two tax components levied upon sale:
 - Component 1: Personal Income Tax from Wages and Salaries; and
 - Component 2: Securities Transfer Tax.

Both ESOP issuers and participants are recommended to be aware of above anticipated taxes to ensure they can manage tax liabilities and proper tax filing in Vietnam.

Will employees be taxed in the country they are ordinarily resident in respect of stock options granted in an offshore Company?

Tax resident individuals in Vietnam are required to declare and pay tax on income from both Vietnam-source and overseas-source.

A Vietnam resident individual taxpayer participating in an offshore ESOP, stock options (e.g., parent company shares held abroad) is still subject to Vietnamese taxation regardless of company's location.

However, taxes will be payable when said individual taxpayer realize the income from disposing stock options, granted from offshore company.

There are two tax components levied upon sale as mentioned above. There are challenges for both individuals and issuers:

- for individuals, to identify the taxable amount and tax obligations for each component when conducting tax filing directly with local tax authorities; and
- for issuers, to identify withholding tax responsibility therein.

Then, it is advisable to conduct detailed tax analysis and provide necessary guidance for implementation of ESOP, whereby being involved of participants in Vietnam.

What tax benefits, if any, are available to employees receiving employee stock options, including any preferential tax treatment, tax deferrals, or exemptions that may apply?

Vietnam provides a tax deferral scheme on ESOP and stock options, whereby the individual owner incurs taxes upon sale, when the wealth is realised.

When structuring an ESOP, it is important to be aware of what:

- Impacts on taxes and the parties to bear the taxes (applied both Personal Income Tax from Wages and Salaries and Securities Transfer Tax). Then the ESOP can be carefully designed to manage tax compliance requirement in Vietnam
- Both ESOP issuers and participants are recommended to clearly obtain mutual understanding and agreements on the taxes levied upon sale of rewarded shares, stock options and take into account related tax costs.

The tax deferral scheme upon sale is a favourable treatment, with tax required to be paid and declared at the time participants realise the income. However, there are challenges in identifying appropriate tax obligations and complying with tax filing requirements within the deadline.

Per Vietnam tax practice, there are the cases that both issuers and participants overlooked on incurring Personal Income Tax from Wages and Salaries or incorrectly identify the tax bases, then it is crucial to have details tax assessments upon designing an ESOP.

What methodologies typically govern the valuation of shares in ESOPs for private companies?

The following methodologies are commonly applied for share valuations in ESOP, particularly for private companies:

- Discounted cash flow method under the Income Approach
- Comparable market multiples under the Market Approach; and
- Option pricing methods.



What are the Company's options in respect of vested and unvested awards at the time an employee resigns?

The law does not specifically prescribe options for vested/unvested awards upon resignation; this is largely left to the company's internal policies and award plan.

Vietnamese laws only require that ESOP shares be restricted from transfer for at least 1 year from the end of the issuance. However, the Company has the option to explicitly state in its ESOP policy that it will repurchase the shares from the employees. According to Decree 245/2025/ND-CP, shares that are still within the transfer restriction period, if repurchased by the company under the ESOP rules, will no longer be restricted from transfer, and the company is permitted to resell them.

Do disputes concerning or arising out of employee incentive awards fall to be determined in the local employment tribunals?

Vietnam does not have a separate "employment tribunal" system in the common law sense. For this question, we will assume that the employment tribunal refers to one of the regulated labour dispute resolution mechanisms under Vietnamese laws, which are: Labor Conciliator; Labor Arbitration Council; or People's Court.

Nature of ESOP disputes and applicable forum: Because an ESOP serves as both an employee benefit and a corporate share issuance, the dispute forum may either be an employment or civil/commercial dispute resolution mechanism.

- The dispute can be deemed a labour dispute and resolved by employment tribunals especially if it is relevant to the employment status of the employee, e.g. in case of unlawful termination of employment, and the ESOP is a relevant benefit claimed by the employee.
- The dispute can be deemed a civil/commercial dispute and not resolved by employment tribunals in cases concerning the right of the employee as a shareholder, such as dividends, voting, transfer restrictions.

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