

Employee participation and tax rulings

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

Equity participation is an essential part of the remuneration of employees in biotech start-ups, because these companies cannot pay salaries comparable to those of the large groups. Swiss tax law on employee participations was codified by a federal act that entered into force in 2013. Shares received by employees are taxed as income at the time of acquisition on the difference between their market value and the price paid.¹ Options that are not listed or are subject to restrictions are taxed only when they are exercised. Restricted shares benefit from a discount of six per cent per year of restriction, up to ten years. A later gain on the sale of the shares is in principle a tax-free capital gain for a private investor.

The central practical problem is the valuation of the shares of an unlisted start-up for tax purposes. If the tax authorities apply the price paid by venture investors in the latest financing round, employees may face high tax bills on shares that they cannot sell. The Swiss Tax Conference addressed this problem in a circular on the valuation of securities without a market price, which allows start-ups to be valued at their net asset value during an initial phase, with financing rounds disregarded under certain conditions.² In practice, Swiss start-ups usually obtain an advance tax ruling from the cantonal tax administration before introducing an employee participation plan. In Basel-Stadt and Basel-Landschaft such rulings are a routine part of the legal work for life-sciences companies, which shows how closely tax, corporate and employment law are intertwined in the financing of innovation.

1 Notes

1. Federal Act on the Taxation of Employee Participations of 17 December 2010, in force 1 January 2013, with Art. 17a–17e of the Federal Act on Direct Federal Tax (DBG) and the corresponding provisions of the StHG; Circular No. 37 of the Federal Tax

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Administration on the taxation of employee participations. To be verified. ↩

2. Swiss Tax Conference, Circular No. 28 on the valuation of unlisted securities for wealth tax purposes, with the practice note on the valuation of start-ups adopted in 2021. Status to be verified. ↩

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