



Employee Stock Option (ESOP)

FAQ Series (IV)

Scope of the Presentation

- This presentation is the last part (IV) in the FAQ Series on ESOP:
 - I: Conceptual queries (<https://lnkd.in/gc7e6tN>)
 - II. Who can participate? (<https://lnkd.in/geNsy4W>)
 - III. Key terms & Procedure
(<https://www.linkedin.com/feed/update/urn:li:activity:6807706490493771778>)
 - **IV. Tax aspects, Exit and Miscellaneous.**
- The presentation is for informational purposes.

Series IV: Tax Liability, Exit and Misc...

- *Q1: Is there any tax liability on grant /vesting / exercise of options and who is liable?*
- *Q2: What happens if an employee resigns or his employment is terminated?*
- *Q3: What happens to ESOP Plan if the start-up is merged or acquired by another company?*
- *Q4: What is Stock Appreciation Rights (SAR) and will any plan offering SAR be treated as ESOP?*
- *Q5: Whether creating an Employee Trust necessary to implement ESOP Plan?*

Tax Liability, Exit and Misc. : Q1

➤ *Is there any tax liability on grant /vesting / exercise of options and who is liable?*

The tax liability is at the hands of the **Employee** and tax liability occurs at **2 stages**:

- a) At the **time of exercising** the right to subscribe/purchase the shares: the difference between the exercise price and the value of the shares is treated as **perquisite** in the hand of the employee.
- b) At the **time of selling** the shares: at the time of selling the shares, it will attract **capital gains tax** and the period of holding will determine whether it will attract short-term capital gain tax or long-term capital gain tax.

Tax Liability, Exit and Misc. : Q2

➤ *What happens if an employee resigns or his employment is terminated?*

Such scenarios are usually covered in the ESOP Plan documents.

The resignation or termination determines the “**Vested Options**” and “**Unvested Options**”. All “Unvested Options” gets cancelled and the Employee will be required to “Exercise” his rights over the “Vested Options” within the Exercise Period.

The Exercise Period may vary in the event of resignation or termination compared with an Employee who is in continued employment.

Tax Liability, Exit and Misc. : Q3

➤ *What happens to ESOP Plan if the start-up is merged or acquired by another company?*

This Scenario is decided based on the **acquisition/merger terms** between the Companies.

The Employees of the acquired/merged Company is often allowed to continue participating in the Plan with certain changes like instead of acquired/merged company shares, they may exercise the right to subscribe/purchase the shares of the acquiring company or continuing Company.

Tax Liability, Exit and Misc. : Q4

➤ *What is Stock Appreciation Rights (SAR) and will any plan offering SAR be treated as ESOP?*

SAR or **Stock Appreciation Rights** is one kind of share based incentivisation plan which can be simply understood as difference between the price between the share on the date of grant and the date of exercise. In SAR, only the **price differential is paid** and no issue/transfer of shares are involved.

SAR is treated one of the way for ESOP Plan under *SEBI (Share based Employee Benefits) Regulations, 2014* which are applicable to listed public companies.

Tax Liability, Exit and Misc. : Q5

➤ *Whether creating an Employee Trust necessary to implement ESOP Plan?*

Not necessarily. It's dependent on the model adopted by the Company to implement the ESOP Plan.

Usually, if the Model is to monetize/offer exit to the Employees through re-purchase of shares from Employees from time to time, creating **an Employee Trust can offer such flexibility**. Such Employee Trusts can undertake secondary transactions.

What next?

- In case of any query/clarification, please write to us at interact@linkjuris.com
- In case you wish to attend ESOP Workshop, Please indicate your interest by filling up the form at: <https://forms.office.com/r/FBh1piq9cF>.
- This information contained in the presentation is *not a legal advise*. In case of any specific legal query, please seek necessary professional help.

Thank You!!!!