

Every company can implement these three kinds of scheme. To that end, a specific collective labour agreement or an act of adherence (for the companies without union delegations) should be established.

Every employer who opts for this kind of scheme receives a tax concession. Indeed, the scheme can't be viewed as a remuneration and is therefore exempt from personal income tax. However, an additional tax can be determined related to the scheme the company has implemented (profit participation plan, capital shareholdings or investment savings plan)

b) Bonus plan

With this scheme, the employees are paid cash if an objective is achieved. The objective is closely related to the implemented scheme, which can involve every single worker of the company (wether interim or permanent). The management can't be part of the scheme and the employees should be selected through an objective and transparent procedure without prejudice and discrimination. All the staff can get involved or just a definite group.

The objective should be collective, not individual. Moreover, it should be measurable, clearly defined and should be communicated to all. While implementing this scheme, the achievement of the common objective can't be certain. If the objective is achieved, the employees receive a certain amount. In other cases (the objective is not or partly achieved), no percentage of the amount is distributed.

The objective should'nt be time-related but needs to last more than three months. While being part of the scheme, the staff should be aware of the remaining work to meet the objective. This kind of scheme can be implemented by every type of company and needs to be viewed as way of remunerating. Therefore, social security contributions and payroll tax are fees to be calculated.

c) Convertible bonds

This scheme allows the holders to convert their bonds into shares (equity). The interest rate is usually lower than the one proposed by the banks. The conversion implies a capital increase. This principle can be related to warrants (see below). Indeed, securities can be converted into shares.

Only limited companies can implement this type of scheme at the time of issuance. There is no restriction for the obligated person. However, there will be a capital increase that needs to respect the conditions applying to contributions in kind. The conversion period has a maximum of ten years. The conversion allows a tax reduction for a natural person. In this way, the worker who takes part in the scheme is eligible for a tax incentive, which corresponds to his/her investment multiplied by 30% or 40%, i.e., a "special average rate including a tax break". However, the maximum eligible amount is set at 600 EUR. Capital gains can't be taxed.

d) Share subscription without a discount

Here, The company (limited company or limited partnership) can get the employees interested by increasing the capital. The staff can buy different shares at a favourable price. Some conditions must be respected to implement such a scheme :

- The share price can't be lower than 20 % of its price.
- Two dividends must be distributed for the three last financial years.
- The amount of the capital increase must be lower than 20% of the share capital.
- The shareholders have a voting right.
- Each share is personal and non-transferable for five years (except for death, dismissal, ...).
- The employees must have a seniority between 6 and 36 months when the subscription is opened.

Procedure :

- Company board gathers to decide modalities and conditions
- Proposal and presentation of the plan to the staff which meets the objective criteria.

- Capital increase.

e) Tax shelter

The objective of this scheme is to attract investors for the start-ups. The tax shelter scheme gives the investors an access to tax incentives when they acquire parts of the company or company shares. This scheme can be set up when the company is established or when there is a capital increase four years after its registration.

Some conditions must be respected to implement such a scheme :

- The head office of the company must be in Belgium and the start-up must have been registered after 2013.
- The company can't be the result of a merger.
- The company must be considered "small" according to the article 15 of the Belgian Company Code.
- The company can't be involved in treasury, financing, investing and managing functions.
- The company can't be active in the construction or housing industry.
- The company is not a listed company.
- The company has never experienced a capital decrease and has never distributed dividends.
- The company has never been the subject of collective insolvency proceedings.
- The amounts invested can't be used to distribute dividends, get parts or take out a loan.
- The company has never received 250.000 EUR before via this scheme.

The tax incentive this scheme gives cannot be combined with tax cuts resulted from the purchase of parts or shares of the employer. No member of the management is allowed to use this scheme to exploit this benefit. However, the employees have the right to use it. The investment made is limited to 30% of the share capital of the company. If the investment exceeds this amount, the excess won't be taken into account for the tax cut calculation. This scheme must be kept for 48 months.

The person who invested in such a company has to state this scheme in his/her tax declaration and prove that his/her investment was eligible.

Tax cut represents 30% of the amount (45% if the company is regarded as a microenterprise). This amount is limited to 100.000 EUR per tax period and per person.

If the above-mentioned conditions or the duration of 48 months are not respected, the investor will have to pay back the tax cut corresponding to the remaining period.

f) The purchase of shares granted to employees

Both "SPRL" (private limited company) and "SA" (public liability company) can buy their stock to give it to their employees.

Conditions :

- Only the employees of the company can receive shares.
- The company can own maximum 20% of the subscribed capital
- The purchasing of shares can be made via the distributable net income available to the company.
- The share buyback necessarily involves fully paid shares
- In order to respect their rights, the shareholders have to agree with the procedure.

After buying its shares, the company has to distribute them within a year (during this period of time, the voting right is suspended for these parties). All the non-distributed shares are to be considered null and void.

These shares are irrevocably to be cancelled by the company board. When a company buys its own stock, a withholding of 30% is applied. This kind of scheme is viewed as a remuneration and is therefore taxable.

g) Spontaneous purchase of shares by the employees (Monory-bis)

The employees can get shares of the company they work for.

Some conditions must be respected to implement such a scheme :

- The shareholder must be part of the company. He/she must be paid by the company.
- The employees need to keep the shares for at least 5 years.

- This scheme can't absolutely be added up to a pension savings plan.
- Securities representing the capital must be released in cash and are to be deducted from the employees' wages.

h) Warrants-subscription option

This scheme allows to buy shares at a specified price when a capital increase is decided.

For the stock options (warrants), the shares need to be issued by the company on its own treasury shares. The issuing of a notarial deed is necessary to certify these changes.

These schemes afford some flexibility to the employees. They can decide when they want to exercise their option. However, the beneficiary should know that his/her shares are taxable while being sold. In this way, he/she should sell them when the profit is higher than the amount of the tax. An example of warrants-subscription is on annexe 1.

This kind of scheme is available to any employee who has business relationships with the company (staff, managers, suppliers, ...). Only public limited companies can implement this type of scheme.

The maximum amount of the shares for allocation can't exceed 20 % of the company capital. One should know that warrants are taxable while being granted. However, the profit made when the employee exercises his/her option can't be taxable.

There are other schemes without specific regulations such as the issuance of beneficiary shares for staff (sale of shares that do not represent the capital, at a reduced price in exchange for assets (either in cash or in kind)), share purchase program with discount (free share distribution gratuitement or with a discount), Being less well-known and used, these schemes are not part of this work. A comparison of the different profit sharing is on annexe 2.

Protective measures for shareholders

When it comes to an equity stake, it is usually preferable, if not necessary, to take protective measures for the company and its shareholders. When a member of the staff owns shares, it gives him/her many rights. He or she can access to all information they need and they have an intervention and control right. However, the establishment of such a scheme can be strictly limited to restrictive terms and clauses.

Besides, a shareholders' agreement should be recorded in order to protect the company and its shareholders. This agreement has to be viewed as a contract containing certain rules that cannot be contrary to company's articles and company code. Unlike the articles, this agreement is private and needs to be signed by each shareholder.

Valuation of a start-up

When a scheme aiming at transferring and selling shares to employees is implemented, it is important to know the value of the company. This value will determine the social and tax costs related to the established plan. However, it is not easy to determine the valuation of a start-up. Indeed, most of them don't have capital assets and their growth are impossible to foresee. Many start-ups won't generate any revenue in the first years.

In this way, two options can be considered while implementing a profit-sharing scheme:

- The company has already been valued through the subscription of new shareholders. The start-up keeps this valuation.
- Assessment methods will be used because the company has never been valued. Different methods can be used (multiple EbitDA, comparison with other companies, sales revenue, ...).

Checking and estimating the valuation of a start-up can become a difficult task because it is not a fixed value. That is the reason why the tax administration will use any available information to give a market value to the shares.

IV. Questionings

Key questions and their answers related to the topic. These questions can be linked to section 3 and offer new insights into the importance of some crucial points.

What needs to be considered while implementing a scheme?

It is extremely important to get advised if one wants to avoid unpleasant surprises when implementing incentive schemes. For example, if an employee has received some parts of the company, steps must be taken to make sure that he or she will lose them if they leave the company. This detail becomes highly important if we consider that the employee in question joins the competition. He or she can't be a member of the board (like any other shareholder).

What are the disadvantages of such a scheme?

The ultimate goal of a scheme is to get the company's employees motivated and to give them aims to achieve. It is about sharing the same interests. The aims need to be realistic, demanding and challenging. The worst mistake the company could make is to set an objective that cannot be achieved. This scheme could demotivate the staff and have a reverse effect.

Another problem could arise if the advantage is given to the whole staff even though a member of the group doesn't deserve it. It can have negative and destructive effects on the company and its cohesion. Indeed, some employees wouldn't understand why a member who is not heavily involved in the company receives exactly the same advantages.

What advice can be given to a start-up that wants to implement this scheme?

A key person is a must if the company's wish is to implement such a scheme. If a start-up thinks it needs an employee who can grow up with it, the scheme can become a solution. Besides, the company can first offer the employee a "normal" wage and then propose him/her to receive some shares if the goals are reached. A person who does not meet the requirements should not be given shares or social parts because it would be very hard to get them back (or at a very outrageous price).

Is it necessary to meet lawyers, notaries or other specialists to implement schemes?

It depends on the schemes to implement. For some, it is useless to meet specialists. However, even if this stage is not compulsory, having a meeting with such specialists allows to avoid damage that could be irreversible to the company.

V. Examples et illustrations

Paul wants to launch a start-up offering a software that enables an automatic calculation of the hours the workers have spent on the site. Having received favourable responses from different companies active in the same sector, he would like to develop the software.

However, he is an accountant by profession and he is not trained to develop a such a software. He needs to hire a computer scientist, a complex task if we consider that this profile is one of the most sought after.

Paul hired Thomas, the ideal candidate to develop his software. To attract him, he offered him a standard contract and also the opportunity to purchase social parts of the start-up by the end of his first year in the company. Paul is ready to give 5% of his company if the first version of the software is developed by the end of the year. This strategy allows Paul to hire Thomas to ensure the product development. Paul has not taken a high risk because he hired Thomas under certain conditions: Thomas will only receive social parts of the company after one year if he meets Paul's requirements and if he shows interest in the company.

VI. To learn more about my work

I would like to express my sincere thanks to the following people:

Mr Hansenne Paul: He helped me to better understand incentive and profit-sharing schemes. He wrote his masters thesis on incentive schemes.

Mr Fellin Benoit: Employee for Meusinvest. He has good knowledge of implementing incentive schemes and knows therefore how this process works.

Mr Brogniez Hubert: Manager of a company who has implemented a profit-sharing scheme. He gave me professional advice and explained the methods used to implement such schemes.

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VII. Annexes

Annexe 1 : example of Warrants-subscription option (french) (<https://www.ibr-ire.be>)

Exemple

Données

- Options portant sur 5.000 actions
- Date d'octroi: 1^{er} mars 2006
- Prix d'exercice: 20 EUR / action
- Valeur de l'action: 20 EUR
- Levée de l'option: au plus tôt le 1^{er} mars 2009
- Durée de l'option: 10 ans
- Pas de contribution personnelle
- Revente des actions acquises pour 40 EUR / action
- Les conditions sont réunies pour bénéficier du forfait de 7,5 % au lieu de 15 %

Valeur de l'avantage imposable

- 7,5 % + (5 x 0,5 %) = 10 %	
- 5.000 x 20 EUR x 10 % =	10.000 EUR
- Avantage imposable	10.000 EUR
- Moment de l'imposition: exercice d'imposition 2006	
- Impôt: 10.000 EUR x 50 % (taux marginal) =	5.000 EUR
- Plus-value (exonérée) lors de la revente: (40 - 20) x 5.000 actions =	100.000 EUR

Annexe 2 : profit sharing comparison (french) (<https://matheo.uliege.be>)

Mécanismes en ESPECES		Plan de participation aux bénéfices	Plan d'épargne investissement	Plan bonus	Parts bénéficiaires
Lois/articles principaux		22-mai-01	22-mai-01	Accord interprofessionnel de 2007-2008 (loi du 21-dec-2007).	Art 460 et 483 du Code des sociétés
Principe		Partie des bénéfices octroyée en espèces aux employés	Partie des bénéfices directement réinvestie en immobilisations par l'entreprise, et dont le montant constitue un prêt non-subordonné remboursé aux bénéficiaires du plan (intérêts compris)	Versement d'une prime en espèces	Emission de parts non représentative du capital à prix réduit ou à titre gratuit en échange d'un apport en numéraire ou en nature
Société pouvant en bénéficier		Toutes les sociétés assujetties à la T.V.A.		Toute société	S.A. et S.C.A.
Mise en place pour les Start-up		Décision de l'AG - Processus d'acte d'adhésion ou CCT			Décision du CA - changement dans les statuts
Bénéficiaires		Salariés uniquement		Salariés uniquement	Travailleurs, dirigeants ou tiers (sous condition d'apport en nature ou en numéraire)
Proposé à l'ensemble du personnel ?		Oui	Oui	Oui	Non
Montant attribuable maximal		Max. 10 % de la masse salariale brute totale et 20 % du bénéfice de l'exercice après déduction des impôts		Intéressant fiscalement jusque 3255€	Si droit de vote, puissance votale inférieure à celui des actions
Imposition dans le chef de l'employé	Fiscale	Taxation à la source de 25%	Taxation à la source de 15%	Exonéré d'IPP à hauteur de 3255€	Taux normal (possibilité d'exemption si caractère incessible et conditionnel des parts)
	Sociale	Cotisations supp. de solidarité de 13,07% du montant liquidé	Cotisations supp. de solidarité de 13,07% du montant liquidé	Taux normal	Taux normal si parts octroyées en échange d'une prestation
Imposition dans le chef de l'employeur	Fiscale	Frais non-déductibles / déjà taxé à l'impôt des sociétés	Frais non-déductibles / déjà taxé à l'impôt des sociétés	Montant déductible dans le chef de l'employeur	Taux normal (possibilité d'exemption si caractère incessible et conditionnel des parts)
	Sociale	N'est pas considéré comme une rémunération - pas de charges sociales		Taux normal	Taux normal si parts octroyées en échange d'une prestation
Objectif(s) à atteindre?		Oui	Oui	Oui	Non
Durée du mécanisme		\	Entre 2 et 5 ans	Objectifs à atteindre en min. 3 mois	Pas de durée minimale ni maximale - Incessibilité de 2 ans
Disposition(s) supplémentaire(s)		Ne peut remplacer la rémunération		Réalisation de l'objectif incertaine au moment de l'octroi - Méthode de suivi de l'objectif à mettre en place	L'apport du bénéficiaire ne doit obligatoirement être financé - grande flexibilité

Mécanismes en CAPITAL	Plan de participation au capital	Rachat d'actions propres en vue de les distribuer au personnel	Souscription d'actions avec décote	Option sur actions et warrant
Loi/articles principaux	22-mai-01	Art 620 et suivants (S.A.) et 321 et suivants (S.P.R.L.) - Circ 21-juin-1995	26-mars-1999 - Art 609 + Circ 21-juin-1995	26-mars-99
Principe	Partie des bénéfices distribuée en capital (actions ou parts) aux bénéficiaires	Rachat d'actions propres en vue de les distribuer à un prix inférieur ou à titre gratuit	Souscription d'actions à prix inférieur ou à titre gratuit	Droit d'acquies (option sur action) ou de souscrire (warrant) à un prix fixé d'avance, un certain nombre d'actions ou de parts bénéficiaires
Société pouvant en bénéficier	Toute société assujettie à la T.V.A.	S.P.R.L. et S.A.	S.A. et S.C.S.	Toutes - Warrants seulement pour les S.A.
Mise en place pour les Start-up	Décision de l'AG - Processus d'acte d'adhésion ou CTT	Décision de l'AG (S.P.R.L.) ou du CA (S.A.)	Décision de l'AG (S.C.S.) ou du CA (S.A.)	Décision de l'AG
Bénéficiaires	Salariés uniquement	Travailleurs et administrateurs	Travailleurs et administrateurs - ancienneté de 6 mois à 3 ans	Travailleurs, dirigeants ou tiers
Proposé à l'ensemble du personnel ?	Oui	Non	Oui	Non
Montant maximal	Max. 10 % de la masse salariale brute totale et 20 % du bénéfice de l'exercice après déduction des impôts	Max 20% du capital social de l'entreprise	Les augmentations de capital des 4 derniers exercices ne peuvent être supérieur à 20% du capital social	Limité par les règles d'augmentation de capital (warrants)
Imposition dans le chef de l'employé	Fiscale	Taxation à la source de 15%	Taux normal sur la décote	Décote non-imposable
	Sociale	Pas de charge sociale	Cotisations sociales sur la décote	Pas de charge sociale sur la décote
Imposition dans le chef de l'employeur	Fiscale	Frais non-déductibles / déjà taxé à l'impôt des sociétés	Décote non déductible	Décote exonérée d'impôt
	Sociale	Pas de charge sociale	Cotisations sociales sur la décote	Pas de charge sociale sur la décote
Augmentation de capital?	Choix	Non	Oui	Potentielle
Rapport d'évaluation par réviseur?	Non	Non	Oui	Oui
Objectif(s) à atteindre?	Oui	Non	Non	Non
Durée du mécanisme	Indisponibilité entre 2 et 5 ans	1 an (S.A.) et 2ans (S.P.R.L.) pour distribuer les actions au personnel	Libération après max. 3 ans - actions incessibles durant 5 ans	Exercice entre 4 et 10 ans après l'octroi - cession impossible
Dispositions supplémentaires	Ne peut remplacer la rémunération - Possibilité de création d'une société coopérative de participation	Egalement applicable pour les parts bénéficiaires et les stocks-options	Au moins 2 dividendes auront du être distribués durant les 3 derniers exercices - Doit respecter les règles générales d'augmentation de capital	L'octroi des actions se fera sur décision de l'AG (le pool d'action sera distribué suivant des critères définis objectivement)

Mécanismes en CAPITAL	Acquisition spontanée d'actions par le travailleur	Tax shelter	Plan d'achat d'actions avec décote	Les obligations convertibles
Loi/articles principaux	Art 145/7 CIR 92	Loi-programme du 10 août 2015	Circ 21-juin-1995	Art 485 Code des sociétés
Principe	Acquisition spontanée d'actions en numéraire de la société par le travailleur	Lors de l'achat d'actions dans une start-up, possibilité de réduction d'impôt	Distribution d'actions à un prix inférieur ou à titre gratuit	Prêt du travailleur à la société à des conditions intéressantes - le montant prêté peut ensuite être converti en actions si le salarié le souhaite
Société pouvant en bénéficier	Toutes	Start-up uniquement	Toutes	S.A.
Mise en place pour les Start-up	Décision du salarié	Décision du salarié	Décision de l'AG	Décision de l'AG- Changement statuts
Bénéficiaires	Salarié uniquement	Habitants du Royaume à l'exception des dirigeants d'entreprise	Travailleurs et administrateurs	Travailleurs, dirigeants ou tiers
Proposé à l'ensemble du personnel ?	Non	Non	Non	Non
Montant maximal	L'avantage global est plafonné à 600€ à indexer et à multiplier par le taux moyen spécial élaboré d'imposition	Investissement de max 30% du capital social ou 100.000€	Max 20% du capital social de l'entreprise	L'avantage global est plafonné à 600€ à indexer et à multiplier par le taux moyen spécial élaboré d'imposition
Imposition dans le chef de l'employé	Fiscale	Le travailleur peut réduire sa base imposable du montant de son investissement (à hauteur du montant maximal de 600€).	Taux normal	Le travailleur peut réduire sa base imposable du montant de son investissement (à hauteur du montant maximal de 600€).
	Sociale	Pas de charge sociale - Sauf si non respect de la période de 5 ans	Taux normal - décote exonérée si indisponibilité de 5 ans (jurisprudence)	Pas de charges sociales
Imposition dans le chef de l'employeur	Fiscale	\	Décote non déductible	Précompte de 30% sur les intérêts - charges des intérêts déductibles
	Sociale	Pas de charge sociale - Sauf si non respect de la période de 5 ans	Taux normal - décote exonérée si indisponibilité de 5 ans (jurisprudence)	Pas de charges sociales
Augmentation de capital?	Non	Non	Non	Potentielle
Rapport d'évaluation par réviseur?	Non	Non	Non	Non
Objectif(s) à atteindre?	Non	Non	Non	Non
Durée du mécanisme	Les actions doivent rester la propriété durant une période de minimum 5 ans	Maintien de la participation pendant 48 mois	\	Conversion dans les 10 ans maximum après l'octroi du prêt
Dispositions supplémentaires	Non cumulable avec un plan d'épargne pension - également applicable aux actions de la société mère ou grand-mère	Seulement pour nouvelles actions émises en contrepartie d'un apport en numéraire - Non cumulable avec options, warrants, ...	Les dividendes peuvent être considérés comme un revenu professionnel si les parts ne donnent d'autre droit que les dividendes	Si plus de 1/5 des titres en circulation, assemblée générale des obligataires