

# VISCHER

## Taxation of Founders, Employees, Advisors and Investors



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## No Profit – No Tax Issues – Right?

Often turbulent starting phase

➤ Focus not on taxes

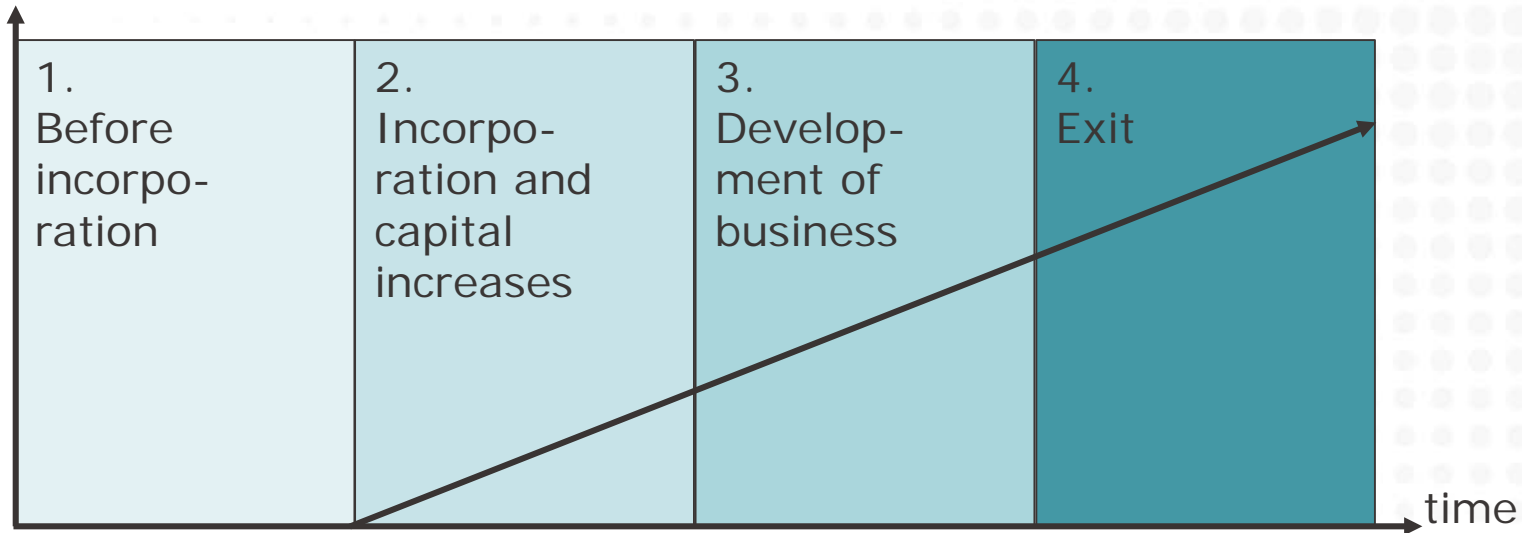
However, taxes should be considered from the start



## Tax topics change over the course of the development of a startup

### Overview

value



## Tax topics change over the course of the development of a startup

### Before incorporation: (founders)

- Avoid self-employment status

### Incorporation and capital increases (founders, investors)

- Choice regarding financing (debt or equity)
- Contribution of capital: Stamp duty and paid in capital reserves
- Development of business (employees, advisors)

### Development of Business (employees)

- Employee participation (bonus, options or shares)

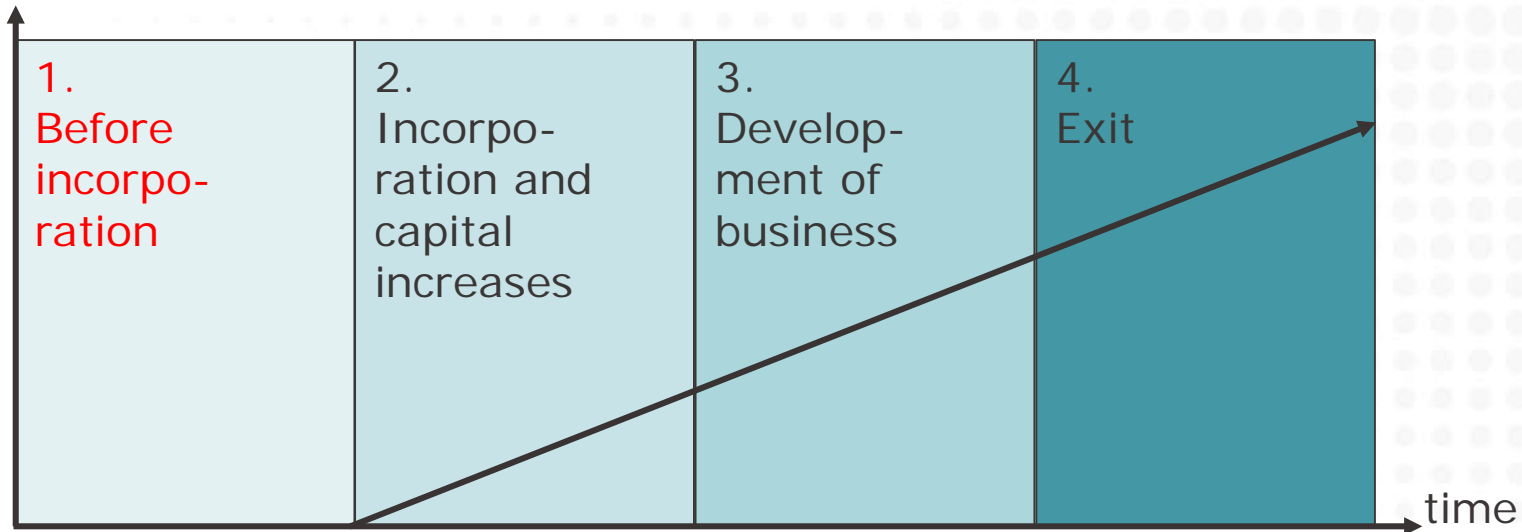
### Exit (founders, investors, employees)

- Sale of entire startup or only part of it; ongoing employment / earn out?

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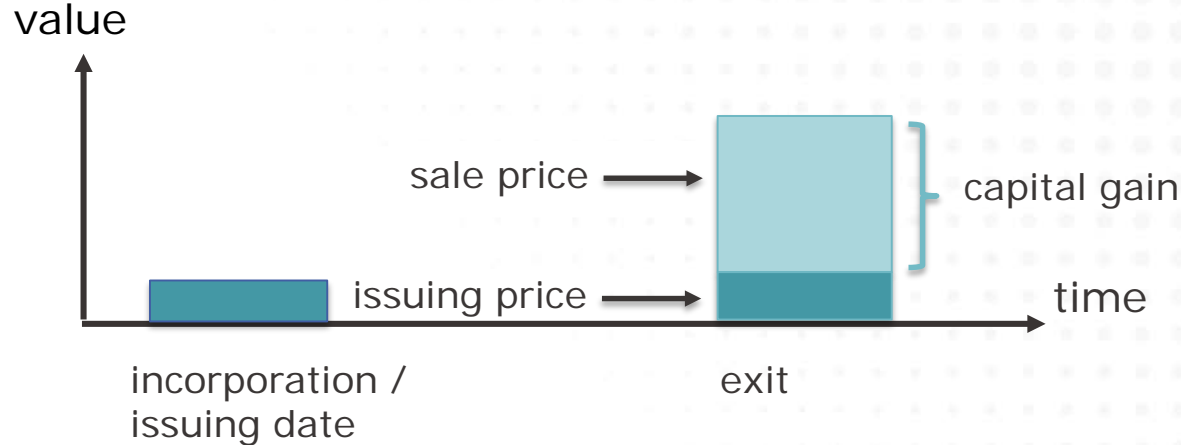
value



## Incorporation of a startup: Do not wait too long

Success of startup is typically hard to predict

In Switzerland a tax free capital gain can only be realized by selling shares held privately



## Incorporation of a startup: Do not wait too long

### Avoid becoming self-employed before incorporation

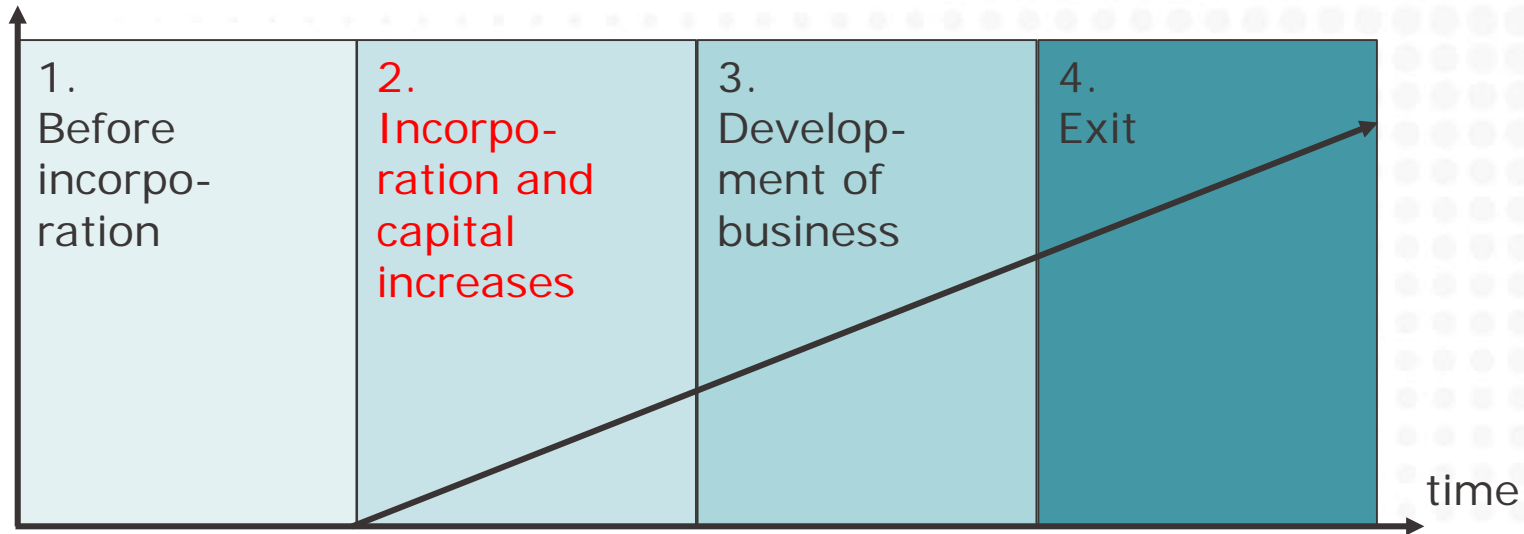
- Avoid transfer of IP from self-employment activity to startup
- Instead: Foundation of a corporate entity from the outset



Startup AG

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## Incorporation of a startup: Do not wait too long

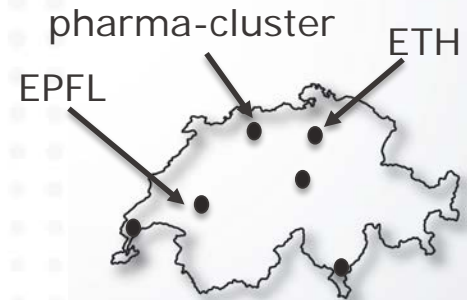
Where is the right (tax) domicile for your startup? Factors to consider:

Important:

- Infrastructure, availability of know-how (universities, research facilities)
- Proximity to skilled workers, customers and business partners (cluster) and founders

Slightly less important:

- Taxation of startup
- Possibility of tax holidays?
- F&E super deduction?
- At the beginning mainly capital taxes



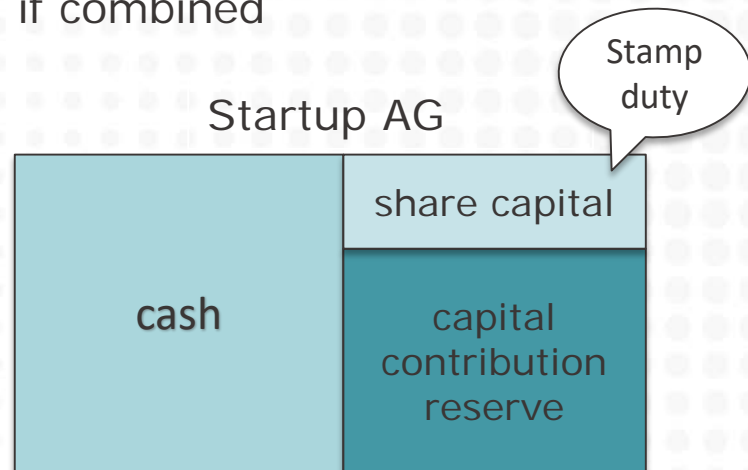
## Incorporation and capital increase: Fulfil your duties and keep your options open

**Tax view:** Debt financing → tax deductible unless deemed equity

**Business view:** Equity financing → taxable

- 1% stamp duty (CHF 1 million tax exempt if combined with a capital increase)

**Wealth tax:** Substance value



## Incorporation and capital increase: Fulfil your duty and keep your options open

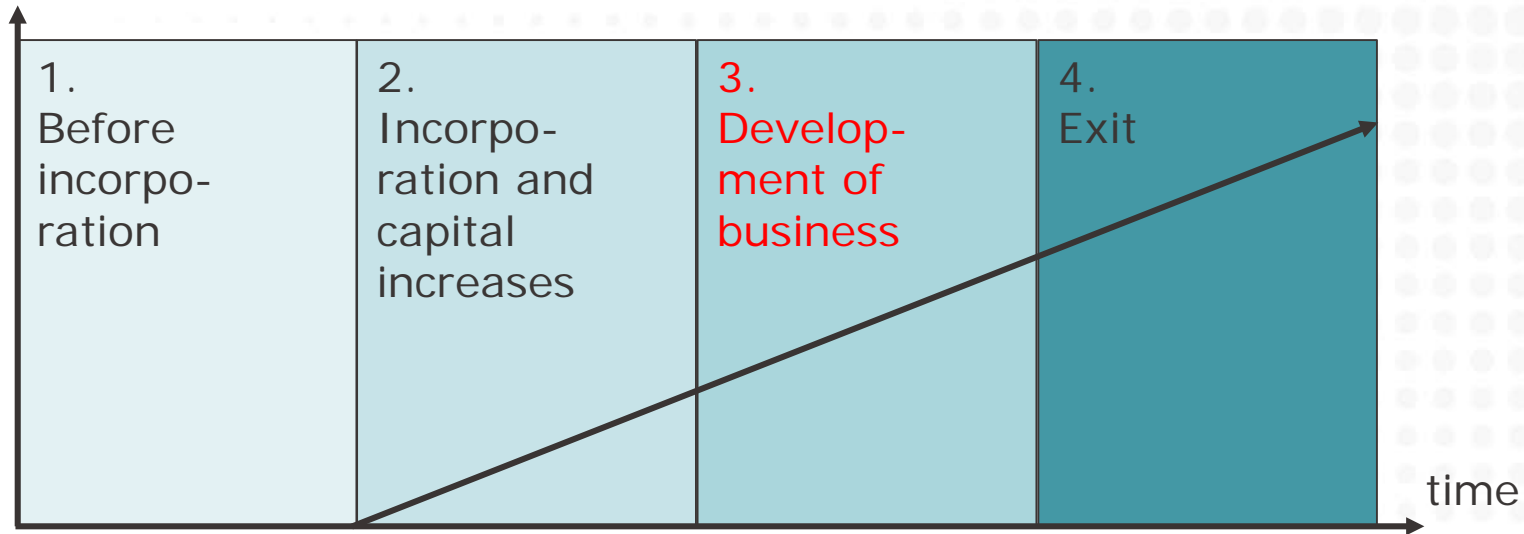
No tax optimization possible re stamp duty

Compliance has to be ensured

- Avoidance of additional costs
  - Confirmation of the capital contribution reserve with the tax authority
  - Declaration and payment of stamp duties
  - Verification re VAT obligation / option

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## Development of business: Keeping employees and advisors motivated and dedicated

### Motivate employees and advisors

#### Three ways to motivate financially

- Bonus payments
- “Artificial” employee participation instruments, e.g. phantom stocks
- “Real” employee participation instruments: Options / shares

## Development of business: Keeping employees and advisors motivated and dedicated

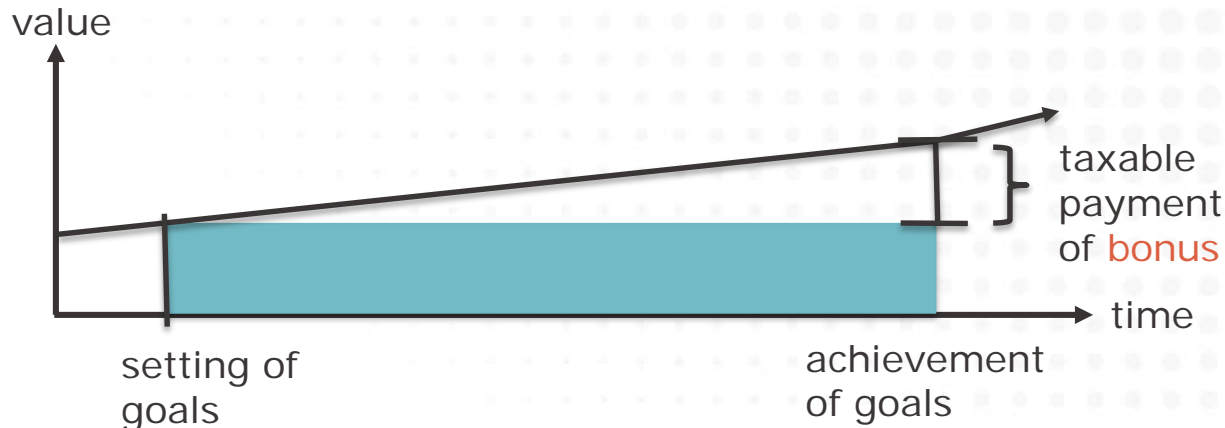
### Motivate employees and advisors

- Bonus payments: Classic but difficult as cash is often tight
- Artificial employee participation instruments: Phantom stocks / virtual shares

## Development of business: Keeping employees and advisors motivated and dedicated

### Taxation of bonus and phantom stocks

- Employees and advisors: taxable income
- Startup: Tax deductible expense
- Down side: No possibility of tax free capital gain



## Development of business: Keeping employees and advisors motivated and dedicated

### Real employee participation instruments

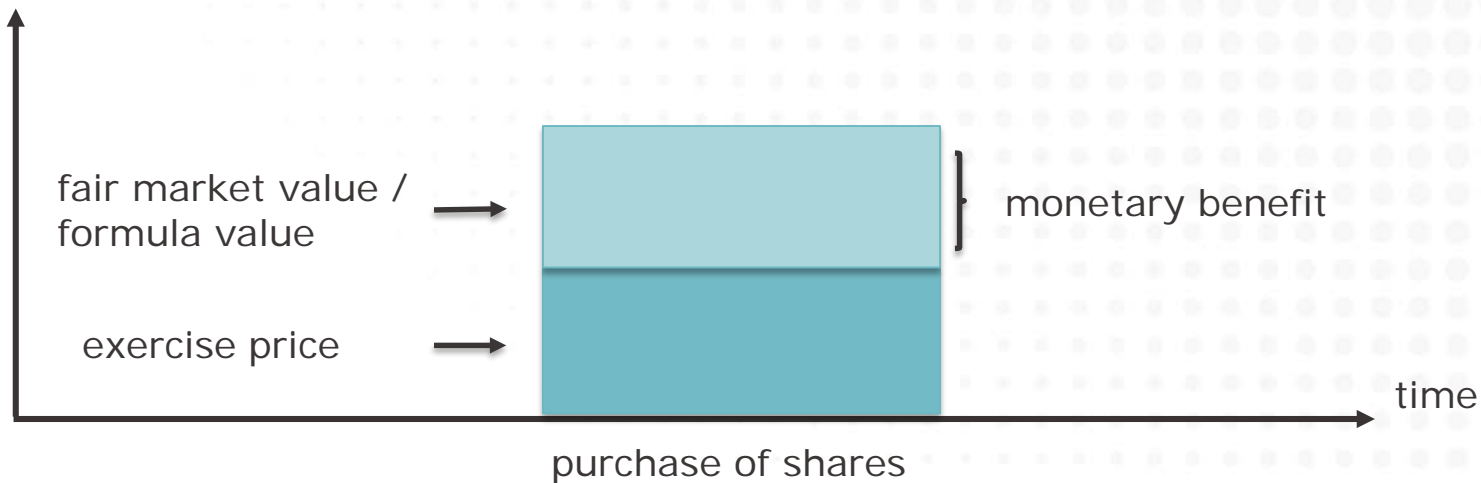
- Stock options
  - Right to buy a share in the startup
  - Linked to certain vesting conditions
  - Generally, not publicly traded
- Shares



## Development of business: Keeping employees and advisors motivated and dedicated

### Taxation of real employee participations: Monetary benefit

- Employees and advisors: Taxable income / profit
- Startup: Stamp duty value

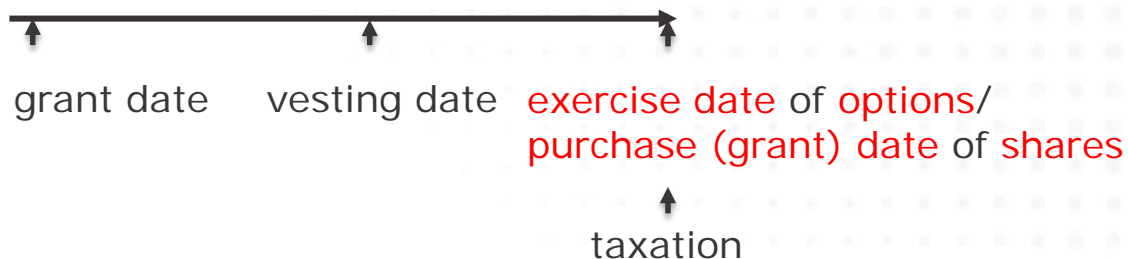


## Development of business: Keeping employees and advisors motivated and dedicated

### Real employee participation instruments (options / shares)

#### Taxation – Timing:

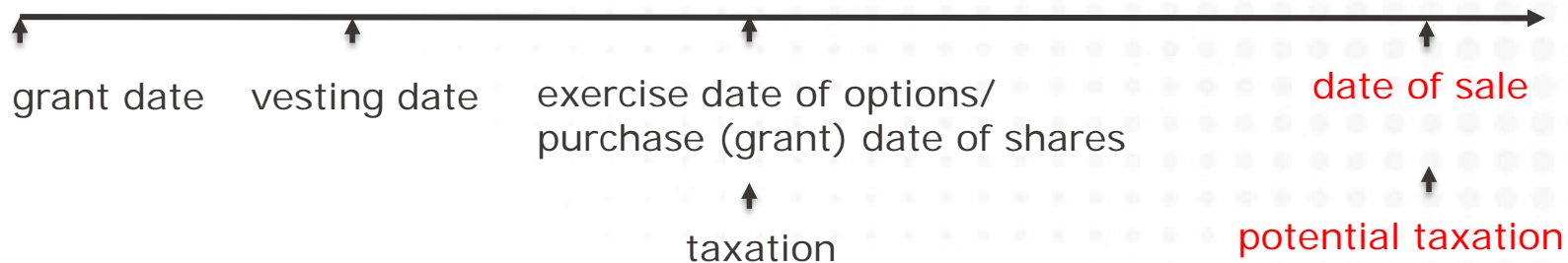
- Options: Taxation at the time of the exercise of the options / purchase of the shares as long as company is not listed
- Shares: Taxation at the time of the grant of the shares / purchase of shares



## Development of business: Keeping employees and advisors motivated and dedicated

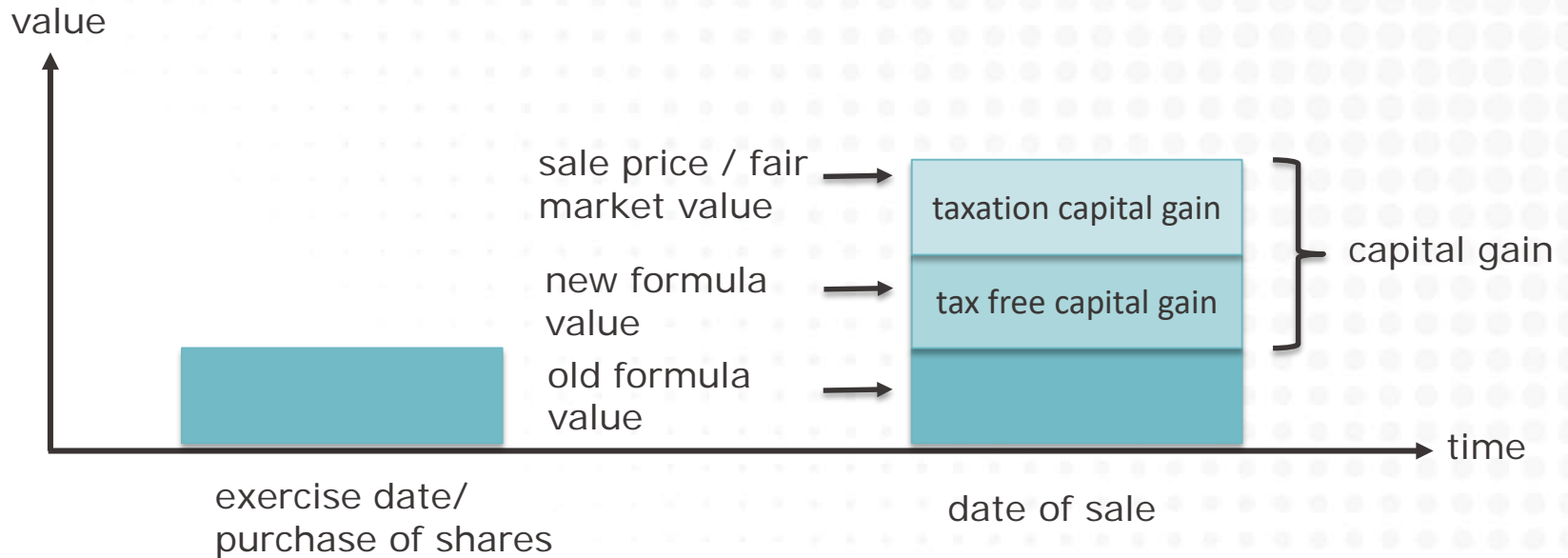
### Consequences at the time of the sale of the shares?

- Tax consequences depend on the valuation method used at the time of the purchase:
  - Fair Market Value
  - Formula Value



## Development of business: Keeping employees and advisors motivated and dedicated

### Consequences at the time of the sale of the shares?



## Development of business: Keeping employees and advisors motivated and dedicated

### Bonus payments and phantom stocks

- + Easy and cost-effective to implement
- + Taxes to be paid coincide with cash payment
- + Startup: Tax deductible
- Employees/advisors: taxable income
- No tax free capital gain
- Requirement of cash

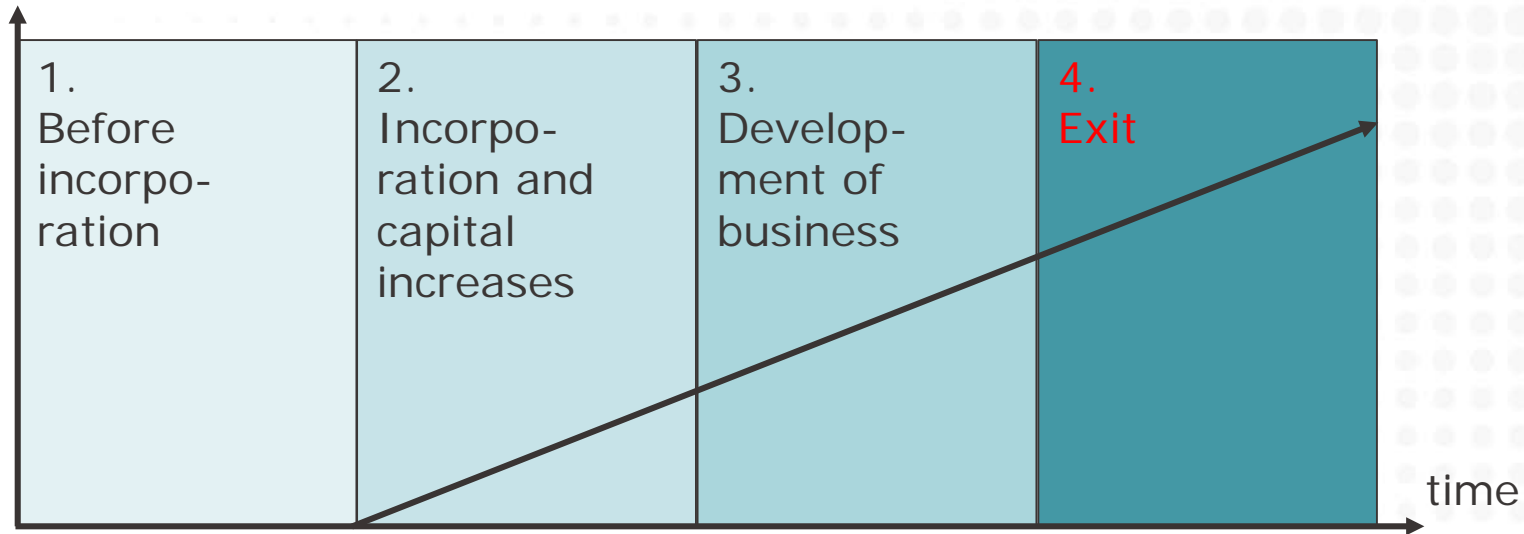
## Development of business: Keeping employees and advisors motivated and dedicated

### Options and shares

- + Employees/advisors: Possibility to realize a (partial) tax free capital gain
- + Startup: Paid in capital reserve
- Complex and costly to implement
- Employees/advisors:
  - Shares: Taxes to be paid even if no capital gain is realized
  - Options: Limited possibility of tax free capital gain
- Fair market value / formula value has to be determined

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## Exit: Ensure a positive finish for your adventure

Sale of company or only part of it?

➔ If sale of whole company is not desired: Consider tax neutral spin off

Consider IPO as alternative to sale of shares

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## Exit: Ensure a positive finish for your adventure

### Requirements for a tax free capital gain:

- Hold shares privately
- In order to avoid being classified as a professional securities dealer
  - Comply with a minimum holding period of six months;
  - Realize only a few annual securities transactions;
  - Capital gains should not be required to finance costs of living;
  - Financing the securities with from private funds;
  - Use derivative financial instruments for hedging purposes only.

## Exit: Ensure a positive finish for your adventure

### What could jeopardize the tax free capital gain?

- Ongoing employment or consultancy agreement after sale
- Earn out clauses
- Anti competition clauses

## And what about VAT?

### VAT is relevant if

- A turnover of above CHF 100'000 is realized:
  - Duty to register
  - File quarterly tax declarations
  - Pay VAT
  - Be cautious if services are «imported» from abroad: considered as turn over
- Optional registration: To be considered if high input VAT has to be paid to third parties

## Wrap-up: High risks – high rewards

### Founders and investors:

- Early incorporation
- Hold shares privately and avoid self-employment status

### Employees and advisors considered to be employees:

- Tax view only: Take shares not options or phantom stock

### Startup:

- Keep in mind tax compliance and VAT

### All:

- Be aware of earn out clauses and future activities for the company

# VISCHER

Thank you.

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