

COMPARISON OF U.S. AND UK MARKET PRACTICE IN RELATION TO EQUITY AWARDS

	United States	United Kingdom
Types of Equity Awards¹	Stock options are the market standard for private growth companies. ²	Stock options are the market standard for private growth companies. ³
Tax-Qualified Status of Equity Awards	<p>U.S. companies grant tax-qualified options, called “incentive stock options” (or “ISOs”) whenever possible. Only up to \$100k worth of options that become exercisable in a calendar year may be treated as incentive stock options. Any excess is automatically converted to a non-qualified stock option, called a “nonstatutory stock option” (or “NSO”).</p> <p>ISOs offer the ability to convert the entire gain on an option to capital gains, which is taxed at a maximum of 20%, as compared to ordinary income, which is taxed at up to 37% at exercise.</p>	<p>Companies who meet the relevant requirements (including as to relevant business) grant tax-qualified options, called “enterprise management incentive” options (or “EMIs”) when they have not exceeded the EMI limitations, including asset-based and employee-based limitations. Once those limitations are exceeded, EMI options can no longer be used.</p> <p>EMIs offer the ability to have no income tax or modified income tax (and associated social security charges) on exercise, and any capital gains on the sale of the underlying option shares taxed at as low as 10%, as compared to a unapproved option which may be subject to an income tax rate of up to 45% (or higher in Scotland) at exercise (plus potential additional social security charges and levies for both employee and employer).⁴</p>
Vesting Provisions	<p>Time-based vesting is the overwhelming market standard. Performance-based awards are sometimes provided to senior-level employees or in connection with particular projects.</p> <p>Market standard in the U.S. is a 4-year vesting period with a one-year cliff and monthly vesting thereafter. Some companies grant refresh grants without a cliff.</p>	Market practice is in line with U.S. practice, although it is more common for UK companies to deviate from a 4-year vesting schedule.

¹ Equity awards, or cash awards, other than stock options are often used, as briefly described here. This comparison focuses on stock options.

² Early-stage companies also frequently issue stock subject to vesting, called “restricted stock” when the fair market value of a share is low. Companies begin to consider restricted stock units (RSUs) as they approach a liquidity event.

³ As companies grow beyond EMI options, growth shares are considered. CSOP options are also sometimes considered but investor-backed companies often do not qualify.

⁴ Some companies may grant CSOP options if they do not meet EMI requirements. CSOP options offer tax-free exercise but are subject to rigid requirements which differ from much of the contents of the table. Further advice can be provided if required

Exercise Period (i.e., Expiration Date)	Options are typically granted with a 10-year expiration date.	Options are typically granted with a 10-year expiration date.
Exercise Price	Options must be granted with an exercise price no less than the fair market value of a share on the date of grant, as determined pursuant to a third-party valuation. Failure to comply with this requirement will likely result in adverse tax treatment.	EMI Options are generally granted with an exercise price no less than the fair market value of a share on the date of grant. Non-tax favoured options granted by UK companies may have lower exercise prices (often nominal value) though if granted via a U.S. sub-plan, practice is to follow the U.S. pricing to ensure consistency of treatment.
Option Exercise Provisions	Options are almost always exercisable as they vest.	It is common to have a program that only permits exercise at an exit event, and that requires that the optionee is employed at the exit event in order to exercise. Companies often permit exercise upon a termination of employment when the optionee is a good leaver, but it is also common for a good leaver to be required to hold the vested portion of their option until an exit event before being able to exercise.
Compulsory Share Repurchase on Cessation of Employment	It is rare in the U.S. that the company have the right to repurchase or require forfeiture of shares under almost any circumstances.	In the UK it is more common to provide for a compulsory repurchase/forfeiture of shares in the event that an optionee terminates employment (though this is more common if the shares were not acquired through an option exercise). However, UK companies more frequently achieve this result by limiting the ability to exercise options; and repurchase provisions can have tax and company law complications.
General Leaver Rights	U.S. companies typically grant options that remain exercisable when an optionee terminates employment but must be exercised within 3 months of a termination of employment. There is increasing pressure in the U.S. to have an extended period of time to exercise (e.g., 2 years or more after termination of employment), but that is not market standard at this point.	If exercisable, options generally must be exercised within 90 days of a termination of employment. Some companies allow vested options to remain outstanding and exercisable only on an exit event.
Bad Leaver / Breach of Non-Solicit Following Leaver	U.S. companies most often do not provide for a distinction between good and bad leavers. A small minority of companies have option programs that require forfeiture in the event of a termination for "cause."	Bad leavers generally are not eligible to exercise options and usually lose all options (whether vested or not) immediately. Only a minority of companies have provisions relating to the forfeiture of options or claw back of shares. Use of non-

	Non-solicit and non-compete provisions can be problematic in the U.S., and only a minority of companies seek forfeiture of options or clawback of shares in this context.	solicits may need careful review as such provisions can be unenforceable in the UK.
Acceleration Rights on Termination of Employment	Any acceleration on termination of employment is rare in the case of employees other than founders and the C-suite.	Market practice is in line with U.S. practice.
Acceleration Rights in Connection with a Sale of the Company	U.S. companies generally do not grant equity awards that provide for acceleration upon a sale of the company. More employee-favorable programs provide that if options are not converted to buyer options that are eligible for continued vesting, then such options will accelerate vesting in full. More employer/investor-favorable programs do not provide for any acceleration in the event options are not converted to buyer options (i.e., cancelled).	It is not market (although more common than in the U.S.) to provide for automatic acceleration upon a sale of the company.
Acceleration Rights in Connection with a Listing Event / IPO	It is extremely rare for U.S. companies to grant options that provide for any accelerated vesting in connection with a listing event / IPO, other than in connection with negotiated agreements with particular employees.	It is uncommon (although more common than in the U.S.) to provide for automatic acceleration upon an IPO.

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