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Let's chat

Employee incentives – November 2025

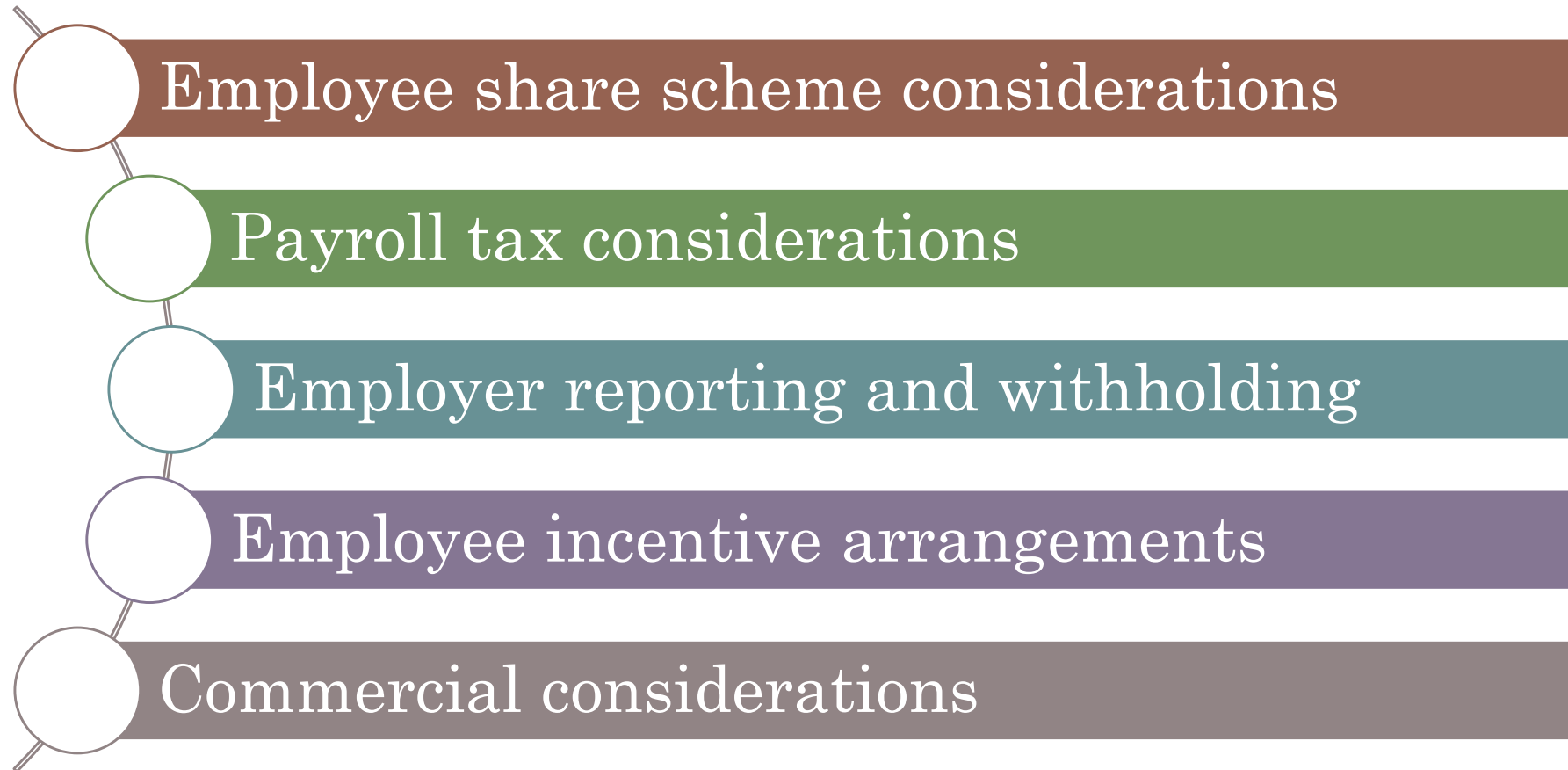
With:

Darius Hii – Tax and estate planning lawyer; Chartered Tax Advisor; and Director at Chat Legal

Information provided is general in nature; precise application depends on specific circumstances

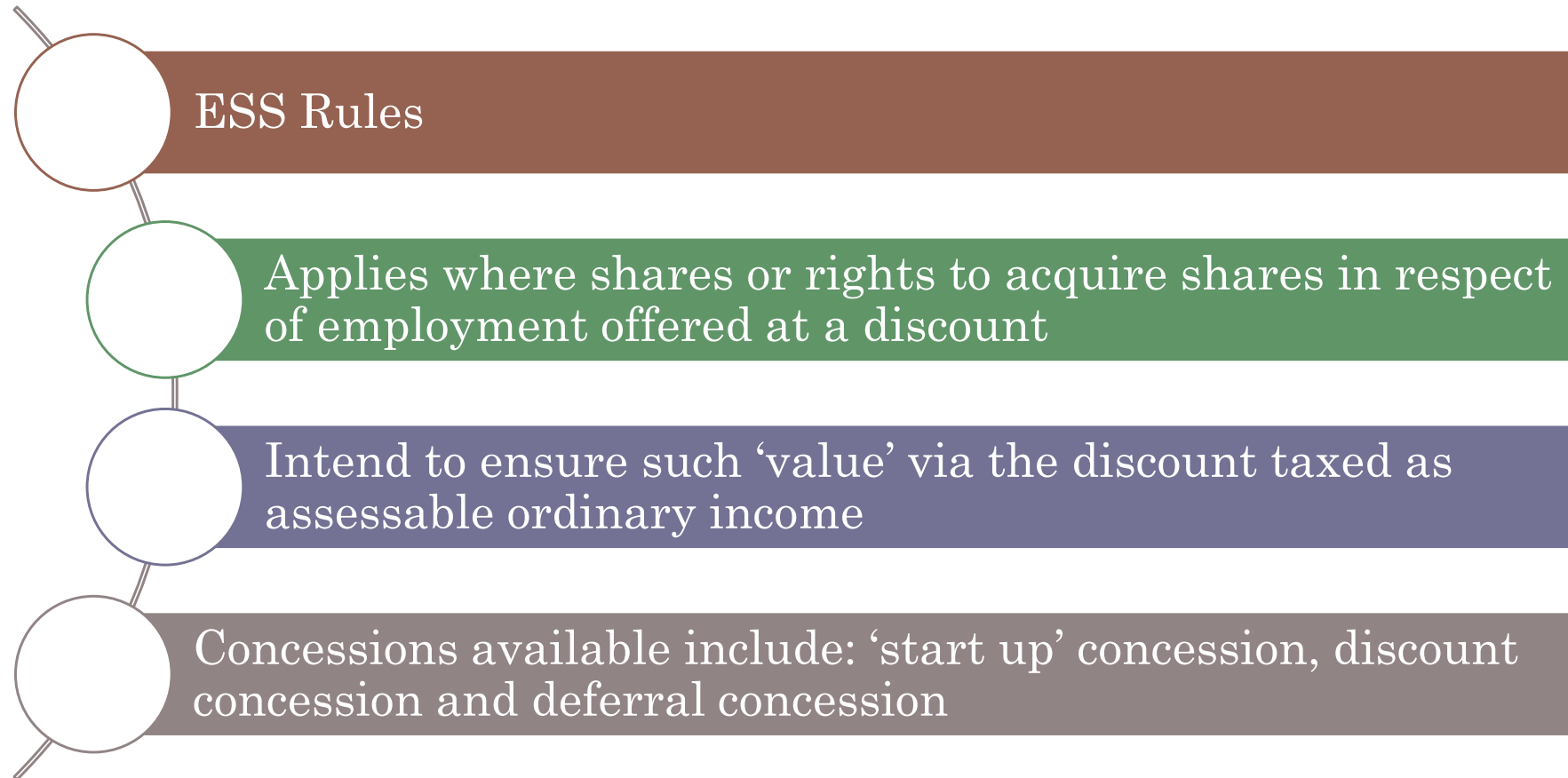


Overview





Division 83A





Start up concession

- Start up company (unlisted, Australian resident, incorporated less than 10 years)
- Meet employee incentive concessions
- Minimum holding period (earlier of 3 years/employment ceases)
- Discount cannot exceed 5% (if issuing shares)
- Capital gains tax discount for ESS interest under start up concession from original grant date rather than exercise of option date



Discount concession

- Reduce discount on receipt of ESS interest by \$1,000 in any year
- Relates to ordinary shares held for at least 3 years (or until employment ceases)
- Taxpayer must be employed by company and hold no more than 10% interest (and voting rights)
- Taxpayer taxable income, reportable fringe benefits and superannuation...no more than \$180,000
- Scheme is non-discriminatory (available for all full-time employees) and there must be **no risk** of forfeiture in respect of the ESS interest

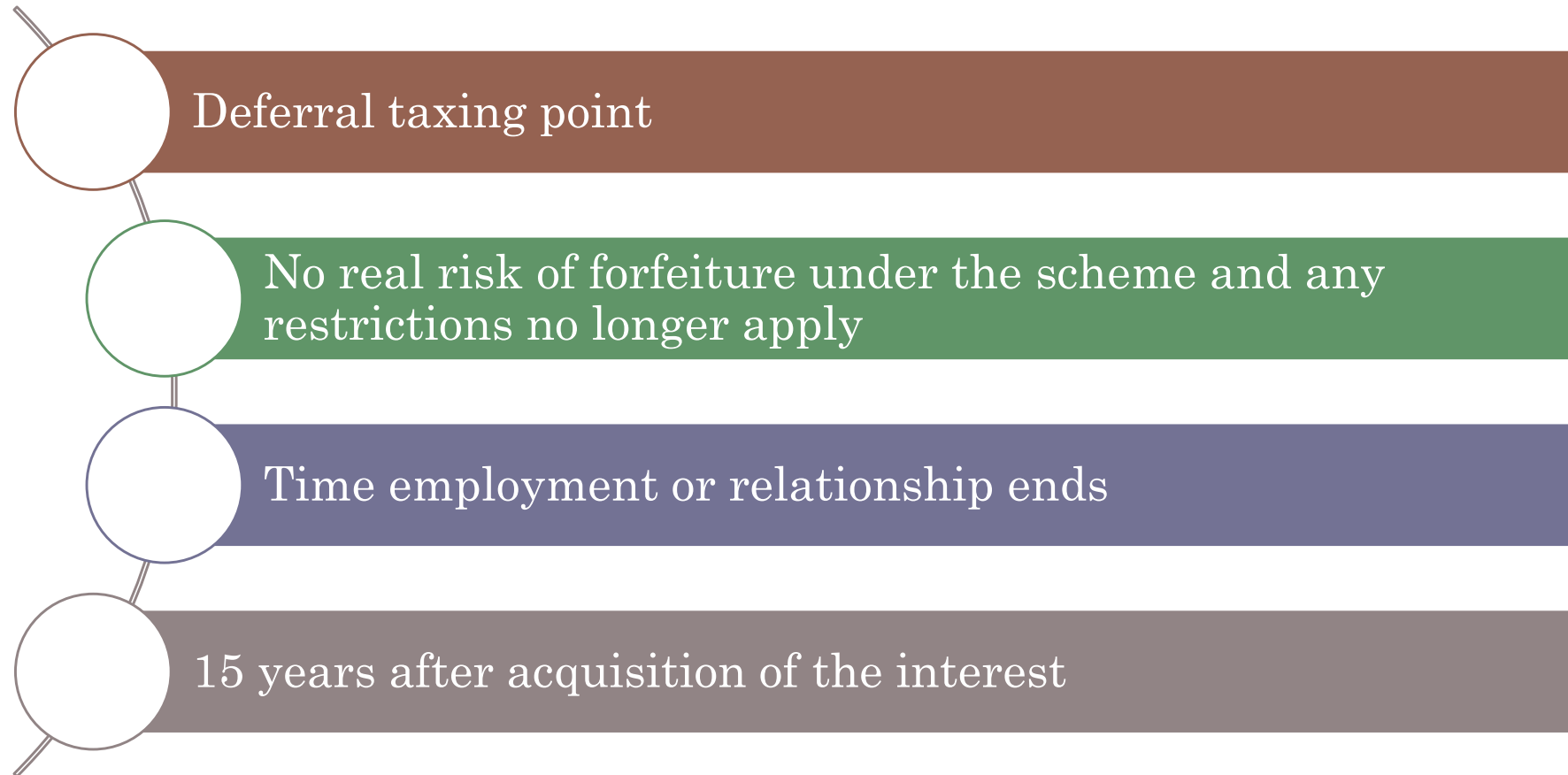


Deferral concession

- ESS rules deferred until a later time (not triggered on issue or grant)
- Taxpayer employed and ESS interests relate to ordinary shares equal to less than 10% of the total interest
- At least 75% of permanent participants with more than 3 years of service have or are entitled to acquire such interest*
- Such interest at risk of forfeiture (need for employment of a reasonable period or dependent on real performance criteria being met)
- Plan rules allow concession to apply*



Deferral concession



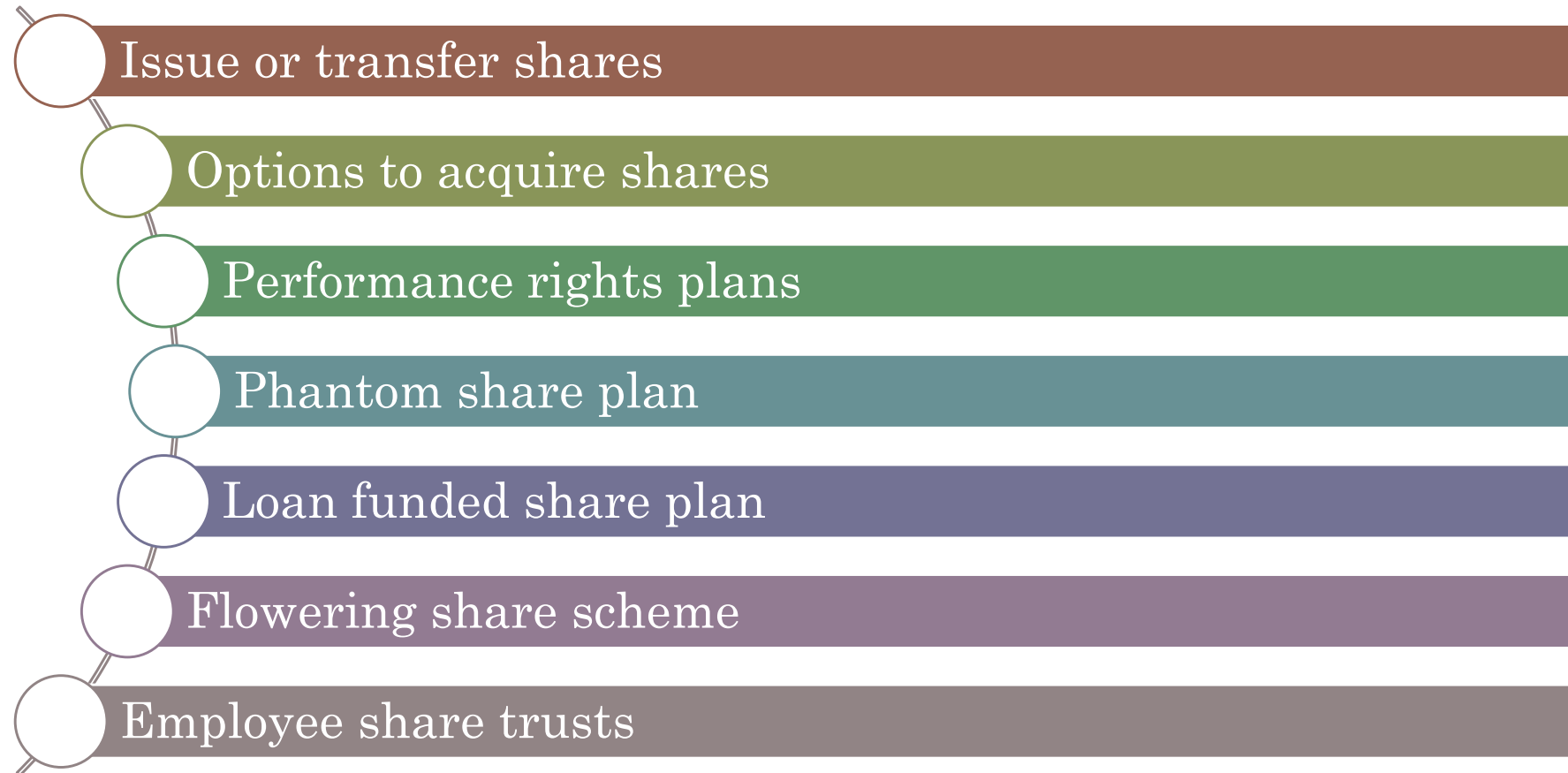


Other considerations

- FBT not applicable under an incentive plan subject to the ESS rules
- Non-equity plans (i.e. phantom share plans) result in participants paying tax on marginal rate on value of any benefits received
- Plans offering no discount not subject to ESS rules
- Division 7A and financial assistance considerations where company lends to prospective shareholder



Available options





Cash bonus

- So simple as not to include in prior slide
- Measurable performance hurdles
- Cash flow dependent
- Avoids ESS rules

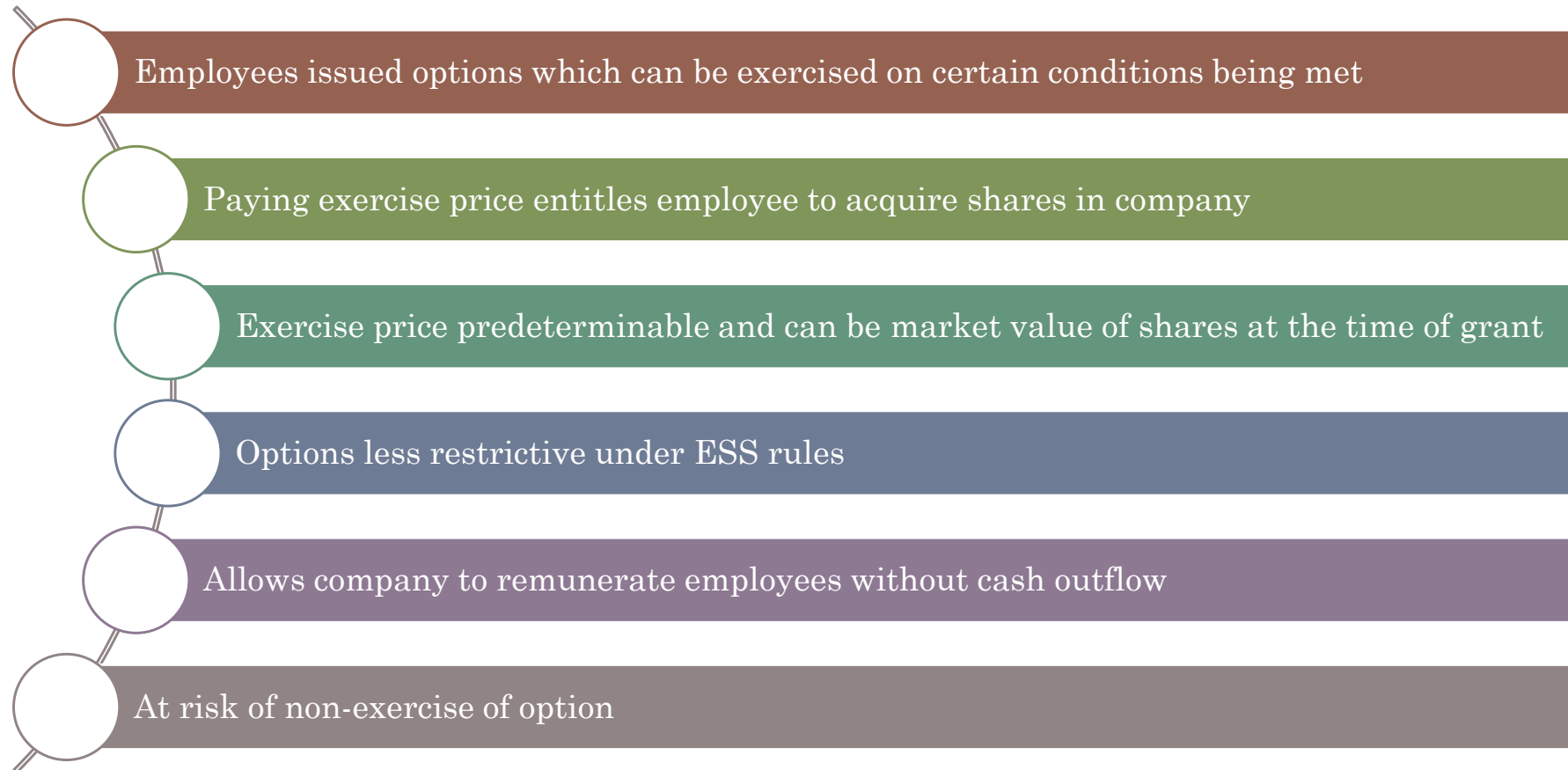


Issue or transfer shares

- Employees issued or transferred shares
- Immediately subject to vesting conditions
- One amount or over various tranches
- ESS rules can apply if issued at a discount
- Funding considerations for employee if they required to be consideration



Options





Performance rights

- Performance rights exercisable on performance hurdles met
- Shares issued for no consideration
- Like options, allows remuneration without cash outflow and provides flexibility around taxing point
- Performance hurdles can be a mixture of financial and non-financial

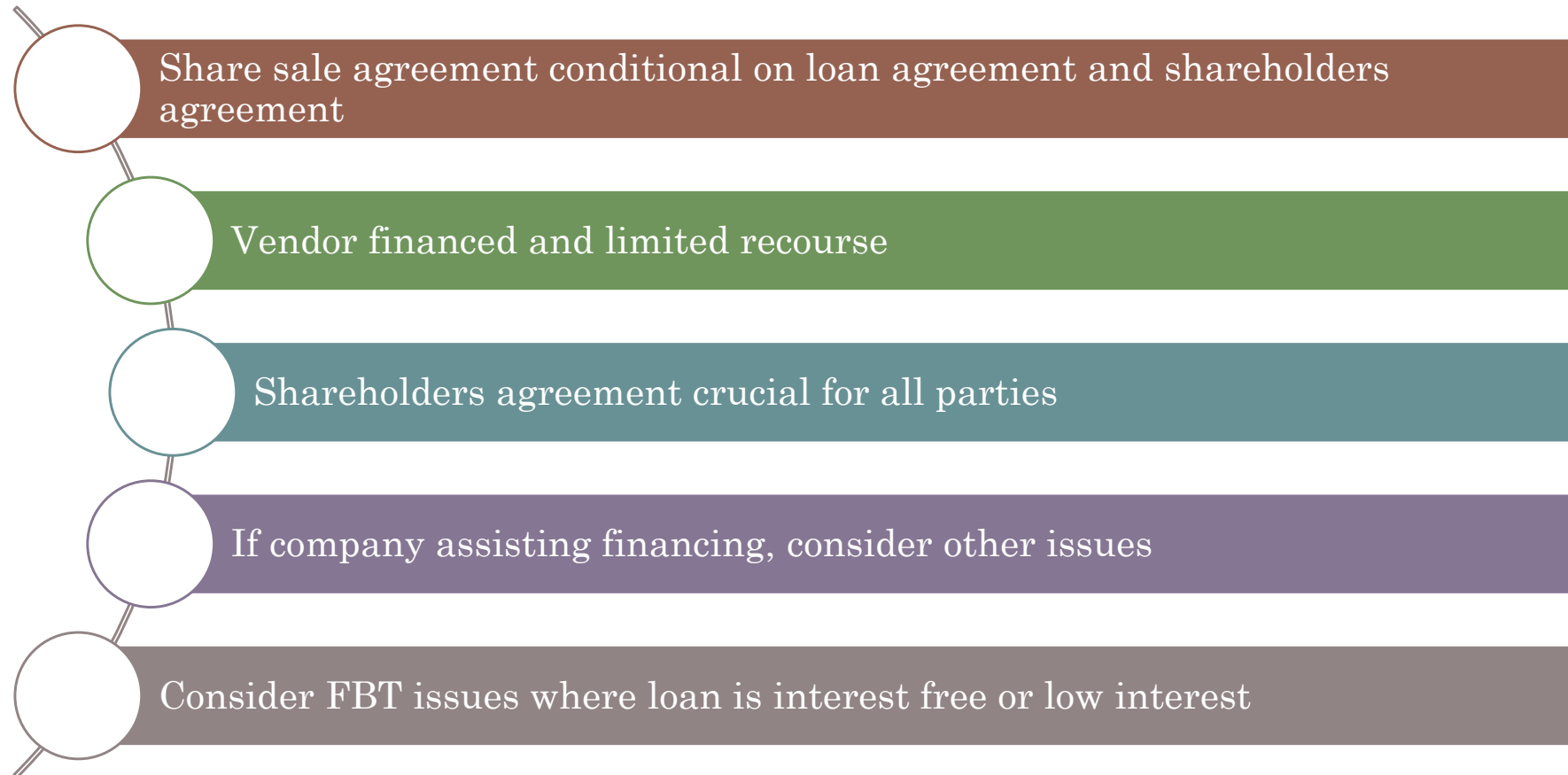


Phantom share plan

- 1 Mimics employee share plan without the formal equity offering
- 2 Growth met with cash bonuses upon a sale, liquidation or exit event
- 3 As no shares offered, employees have no voting rights
- 4 Protects equity holders without introducing additional shareholders
- 5 Downside for employees in that they receive no shares and that cash bonuses subject to payroll tax and taxable as income

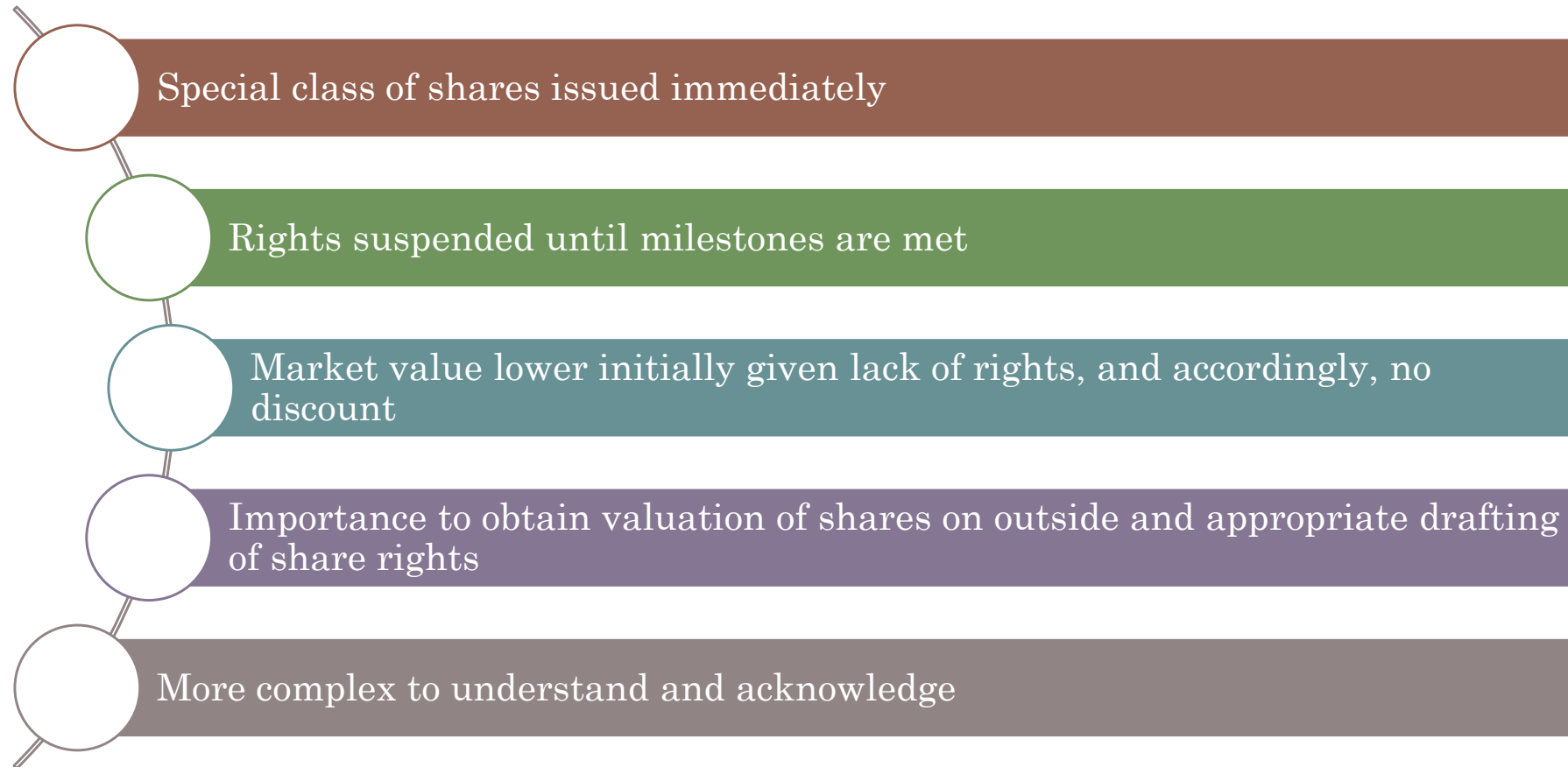


Loan funded share plan





Flowering share scheme





Employee share trusts

- Trust established to hold shares and rights for employees
- Employees buy into the trust
- Trust acquires shares in company
- Complicated as control of structure needs to be considered
- Valuing can be difficult to buy into the trust



What's best?

Objective

- What are the key objectives of the incentive plan?
- Attracting or retaining staff; or motivating performance?

Eligibility

- Will participation in the incentive plan be available to all employees, or only a specific few

Funding

- How much funding is available for the scheme?
- Will participants be required to pay in order to participate in the incentive plan?
- Will the company or other person fund?

Tax implications

- Consider tax implications for the existing participants and incoming



What's best?

Vesting conditions

- Are any conditions required to be met?

Impact

- What is the impact on existing equity holders?

Implementation

- How will the plan be implemented

Ongoing administration

- How will the ongoing administration be managed

Exit strategy

- How will employees be able to sell or otherwise deal with their shares, rights or options?



What's out there?

- Succession plans for the next generation
- Motivates key employees to stick around and grow the business
- Too many cooks can make the broth difficult when it comes to leaving
- Incoming equity holders being unreasonable with requests
- Rewarding the team
- Sceptism with performance milestones

Contact details

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