Windeye Partners

409A Valuations for Non-US Companies in 2026: Cross-Border Equity Compensation Implications

Introduction

Startup companies now operate globally almost from inception. A software company founded in Stockholm may hire engineers in Poland, open a sales office in New York, and raise venture capital from Silicon Valley investors within its first two years.

As a result, many foreign companies quickly encounter a practical issue that earlier generations of startups did not face until much later in their development: if they wish to compensate U.S. employees, advisors, or contractors with stock options or similar equity incentives, they must comply with U.S. tax rules.

One of the most important of these rules is Internal Revenue Code Section 409A. This regulation requires private companies issuing stock options and certain other deferred compensation arrangements to demonstrate that the exercise price of those awards is not below Fair Market Value (FMV) at the time of a grant. Although this requirement is well understood among U.S. startups, foreign founders are often surprised to discover that the rules may apply even when the parent company, operating business, and capitalization structure are all located outside the United States.

The Purpose of a 409A Valuation

Section 409A was enacted in 2005 following several corporate scandals involving deferred compensation arrangements. For startup and growth companies, the regulation most commonly affects stock options, stock appreciation rights (SARs), restricted stock units (RSUs), and certain deferred bonus arrangements.

If stock options are granted below Fair Market Value, the difference between the strike price and FMV may become immediately taxable to the recipient. Additional penalties can also apply, including a 20% federal penalty tax and interest charges. For public companies, determining Fair Market Value is generally straightforward because the stock market provides a share price every day. For private companies, however, the value must usually be established through an independent business valuation.

The IRS defines Fair Market Value as the price at which property would change hands between a willing buyer and a willing seller, neither being under compulsion to act and both having reasonable knowledge of relevant facts. In practice, a properly prepared independent valuation creates a presumption that the company acted reasonably when establishing the strike price for employee equity awards (Safe Harbor), although a company could, in theory, make its own determination of value if management has sufficient expertise, or a specific formula can be used.

A valuation can generally be relied upon for up to twelve months unless a material event occurs earlier. A financing round, a major customer contract, a rapid increase in

revenue, significant AI commercialization milestones, or even a deterioration in market conditions may require the company to revisit its valuation assumptions sooner.

Why Cross-Border Companies Face Additional Complexity

While the core principles behind a 409A valuation are the same regardless of geography, companies with international operations may face additional complications.

One of the most significant developments in recent years has been the rise of globally distributed workforces and increasingly mobile employees. These individuals now regularly relocate between countries, work remotely across borders, or split their responsibilities among multiple entities within a corporate group. As a result, equity compensation now intersects with international tax, payroll, and employment rules in ways that were less common a decade ago.

A foreign company may issue options centrally from a parent entity while employees perform services in multiple jurisdictions. This creates practical questions regarding taxation, securities compliance, payroll withholding, and grant documentation. Although these issues extend beyond valuation itself, they directly affect the company's ability to support the validity and timing of option grants.

Another development affecting 409A analyses is the growing importance of secondary transactions in private company markets. Employees, early investors, and founders increasingly seek liquidity before an IPO or acquisition, particularly as venture-backed companies remain private for longer periods. These secondary transactions can provide additional market evidence regarding the value of common equity and have become increasingly important data points for auditors, investors, and valuation professionals.

For international companies, secondary transactions can create additional complexity because trading activity may occur across multiple jurisdictions with differing disclosure standards and varying levels of transparency. In some situations, transactions involving common shares, SAFEs, or other convertible instruments can become important reference points when evaluating the reasonableness of a company's valuation.

Another challenge involves international accounting standards. Many foreign companies report under IFRS or local statutory accounting systems rather than US GAAP. These frameworks may treat revenue recognition, software development costs, leases, or share-based compensation differently from US accounting standards. As a result, the financial information used in the valuation often requires normalization adjustments before it can be analyzed consistently from the perspective of U.S. investors, auditors, or tax authorities.

Currency exposure also plays a much larger role in international valuations than in purely domestic engagements. A company may raise capital in U.S. dollars, generate revenue in euros, and incur payroll costs in rupees or yuan. Exchange-rate volatility can materially affect projected cash flows, operating margins, and discount rates. In

periods of significant currency movement, even strong operating performance may produce valuation volatility when viewed from the perspective of U.S. investors.

Venture Capital, AI Companies, and Increased Scrutiny

The venture capital market has also evolved considerably since the early years of Section 409A. In the last decade, auditors have become increasingly focused on the relationship between preferred share pricing and common stock valuations. Large valuation gaps between venture financing prices and employee option strike prices are now scrutinized more carefully, particularly when companies are raising capital at aggressive valuations.

This issue has become especially important in the AI sector. Many AI companies possess limited operating histories yet command substantial valuations based on intellectual property, proprietary models, data assets, engineering teams, or anticipated market opportunities. Traditional valuation methods can be more difficult to apply in these circumstances because historical financial performance may provide only limited guidance regarding future value.

As a result, valuation analyses increasingly require more detailed assessments of scalability, infrastructure costs, customer concentration, monetization assumptions, and competitive positioning. In some cases, companies that previously updated valuations annually now reassess assumptions internally every quarter due to the speed at which market conditions evolve.

Cross-border AI companies can add another layer of complexity because intellectual property ownership, software development, and customer relationships are sometimes spread across multiple jurisdictions. A holding company in one country may own the IP, developers may be located elsewhere, and commercial operations may be centered in the United States. Understanding where the economic value resides within a corporate structure then becomes an important part of the valuation process.

Governance and Investor Readiness

One of the most common problems encountered during venture financings or acquisition diligence is the discovery that historical equity grants were made without adequate valuation support.

Foreign startups sometimes assume that U.S. valuation requirements can be addressed later, particularly if the company initially operated outside the United States. In practice, however, investors, auditors, and acquirers increasingly review historical grant practices in detail. Missing valuations, inconsistent grant dates, informal board approvals, or poorly maintained cap tables can delay transactions and create avoidable negotiation issues.

Attempting to reconstruct historical valuations retroactively is typically expensive and difficult. In many cases, the absence of contemporaneous documentation becomes a governance concern as much as a technical valuation issue.

For that reason, a 409A valuation today should not be viewed only as a tax compliance exercise. Increasingly, it forms part of a company's broader institutional readiness. Well-documented valuation procedures help demonstrate operational maturity to financing and transaction counterparties while also reducing the risk of future disputes involving employees or tax authorities.

Choosing the Right Valuation Advisor

Cross-border engagements require familiarity not only with valuation methodologies but also with international accounting frameworks, venture financing terms, multi-entity corporate structures, and foreign market dynamics. The valuation advisor should understand how regulators, auditors, and institutional stakeholders are likely to evaluate historical equity practices, particularly in rapidly evolving industry sectors.

For companies operating internationally, practical experience matters as much as technical methodology. A valuation provider who understands both the regulatory requirements and the realities of global startup operations will be better positioned to produce analyses that withstand scrutiny during financings, audits, and transactions.

Summary

As startups globalize earlier in their development, 409A valuations are no longer a purely domestic U.S. concern. Foreign companies with U.S. employees, contractors, or operations increasingly need to ensure that they obtain defensible valuations to comply with tax regulations as well as satisfy expectations from other parties.

At the same time, international businesses face additional complications involving remote workforces, cross-border tax structures, currency exposure, differing accounting standards, and globally distributed intellectual property.

In this environment, a well-prepared 409A valuation serves a broader purpose than simple tax compliance. It helps establish credibility with investors, auditors, employees, and acquirers while supporting the company's long-term financing and transaction readiness.

About Windeye Partners

Windeye Partners provides assistance regarding corporate finance, business valuations, and mergers & acquisitions to companies, business owners, entrepreneurs, family offices, investment funds, and other investors.

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