POLAND

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Q&A

Please provide a brief overview on how an ESOP in a start-up is usually structured in your jurisdiction (of particular interest: virtual or real participation programs, market practice with regard to vesting, participation (exits, proceeds and dividends) and voting rights).

(a) The ESOPs in Poland used to be commonly based on subscription warrants, however, virtual instruments (eg. phantom shares or exit proceeds' schemes) are gaining increased popularity, in particular in start-up businesses. Combinations of real and virtual participation programs is also not uncommon.

(b) The startup market is not mature enough to indicate any strong market trends, but it is safe to assess that typical vesting periods are 2-4 years (seed / round A phase) with annual vesting cliffs (sometimes shorter).

(c) ESOP instruments are usually non-voting and unless they are based on preference stock (unlikely in case of start-ups) they do not enjoy dividend rights. ESOP instruments are normally not protected against dilution.

(d) Good Leaver & Bad Leaver provisions are also standard for ESOPs in Poland.

Please provide an overview of the respective tax situation an employee finds him-/herself in when he/she participates in a real/virtual equity investment program (applicable taxes and approximate tax burden (a) at the time of the investment and (b) at the time when revenues therefrom are received).

(a) Since 2018 there are certain PIT incentives for ESOP participants which apply in case the underlying program is structured in the following manner:

- ESOP must be implemented by a joint-stock company established in Poland;
- ESOP must be adopted through a resolution of the general meeting of a joint-stock company or its parent company;
- ESOP may only be based on shares or share-based instruments (such as subscription warrants).

(b) The main tax benefit for the ESOP participant is that the taxation is postponed to the moment of disposal of shares acquired or subscribed for under this program. The income from such disposal is subject to flat 19% income tax rate. Also, the participants' expenses on acquisition of ESOP instruments constitute tax deductible cost.

Are there any tax advantages for an employee if the revenues based on the equity investment are reinvested in start-ups or other companies?

No, there are no tax advantages in such situations.

Are there any tax advantages for the company if an ESOP is established in the company?

No, the incentive are designed for the participants' benefit, not for the company's.

Please highlight one pro and one con of the legal set up with regard to ESOPs in your jurisdiction.

PRO: Since 2018 the Polish tax law introduced incentives to businesses which establish ESOPs. The incentives are directed to ESOP participants, who benefit economically in such participation, in particular if they are normally subject to progressive tax scale.

CON: The tax incentives are limited to ESOPs in joint stock companies, which due to their complexity and costs are not that attractive for start-ups. There are also no direct incentives to employers, apart - of course - from their employees' increased motivation.