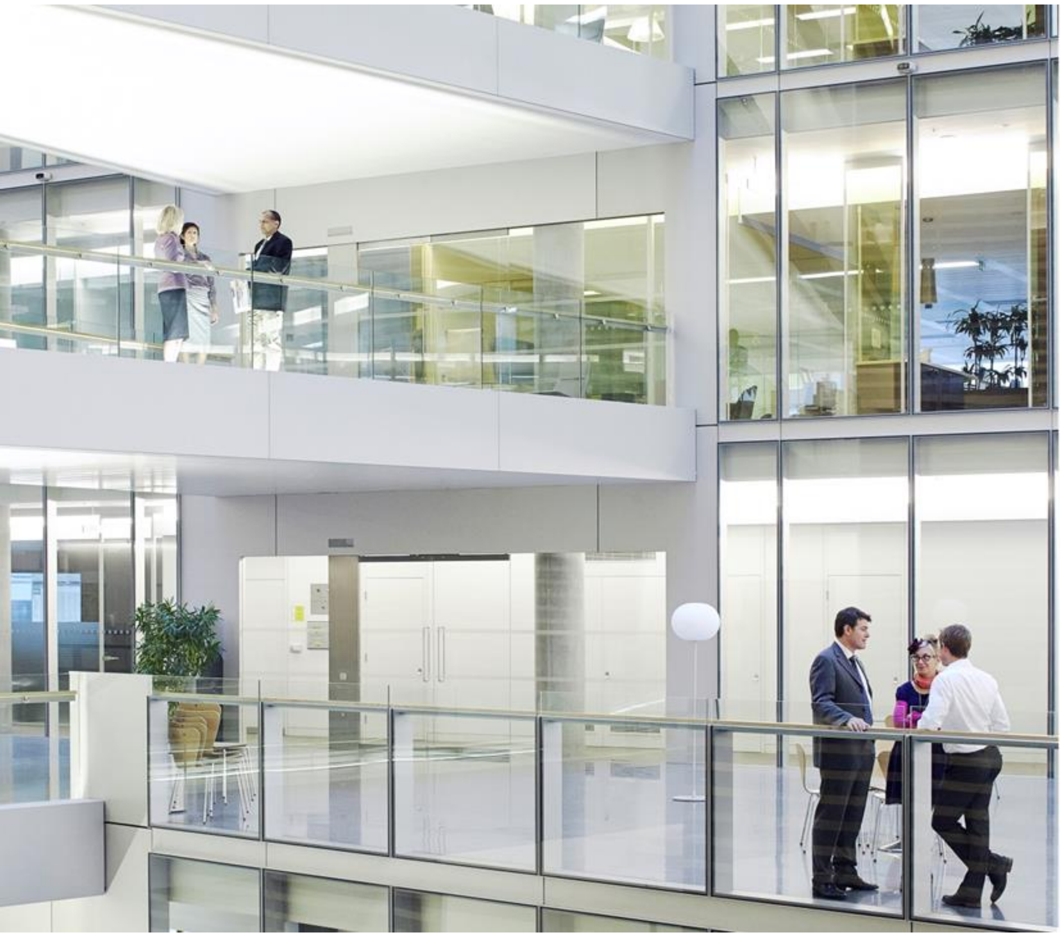
Employee Stock Ownership Programs – an Opportunity for Companies, an Opportunity for Poland

Report

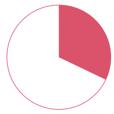


December 2017

Strona PwC: Pracownicze Programy Akcyjne

Employee stock ownership in Poland compared with other countries – principal observations

The research conducted by PwC Poland indicates that nearly **31% of the 140 largest public companies in Poland offer employee stock ownership programs.**



Countries with the lengthiest history of employee stock ownership report the highest percentage of employees holding their employer's stock:

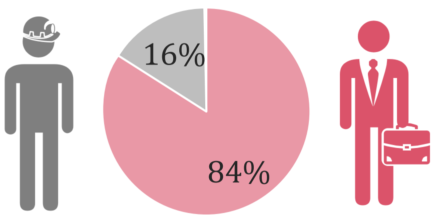
in Europe: **France, United Kingdom**

around the world: **USA**

For the sake of comparison, in 2016 there were **roughly 72 thousand** employee stockholders in Poland, i.e. more than **40 times fewer** than in **France**, where nearly **3 million** employees are stockholders.

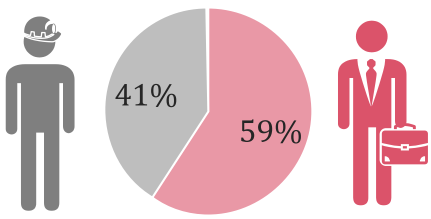
The employee stock ownership programs in Poland are most frequently addressed to the following:

- **84% – key employees**, chiefly to senior management in the financial sector
- **16% –** considerably less frequently to **all employees**



This ratio looks different in other countries around the world. Employee stock ownership programs target:

- **59% – key employees**
- 41% **–** to a lesser degree **all employees**



The research conducted by PwC shows that the tax relief offered in other countries around the world does affect the popularity of employee stock ownership programs.

77% of the countries offer tax regulations encouraging companies to offer stock to **employees**

in **32% of these countries** tax relief is directed to **employers**

Key conclusions

What is the present situation?

Poland does not presently have detailed legal regulations pertaining to stock ownership programs, thereby contributing to their low level of popularity.

There is also a dearth of specific legal incentives addressed to employees and employers.

The regulations of the personal income tax law (PIT) in force as of 2018 contemplate tax preferences for taxpayers who acquire stock in companies with which Poland has entered into a double taxation agreement.*

** Unfortunately, these regulations do not apply to the stock of Polish companies in the current state of law.*

What benefits do employee stock ownership programs offer?

from the state's point of view

GDP growth, reduction in the rate of poverty, leveling the playing field, preventing crises

from employers' point of view

higher employee motivation, retention, securing capital, ensuring succession

from employees' point of view

additional income (dividend), retirement security, feeling of appreciation, impact on the company's fate

What actions should be undertaken in the future?

By the state

- **implementing specific legal solutions** dedicated to employee stock ownership programs (ESOP), including tax incentives for employees and employers
- **conducting an information and educational campaign** in the public-at-large
- providing support to employees to **secure funding to buy stock**

By the employer

- **holding training sessions and information campaigns** for employees to highlight the advantages and risks associated with employee stock ownership
- providing employees with **current information regarding the company's financial standing**
- implementing a **Code of Best Practices** in the company to govern the rules for the operation of stock ownership in the company

Introduction

Dear Readers,

It is with great pleasure that we present yet another report prepared by the PwC Employee Tax Team. Our purpose is to present the most important aspects associated with the functioning of employee stock ownership programs in Poland compared to other European Union member states and selected countries around the world.

The publication of this report coincides with two material events:

- New regulations in the personal income tax law (PIT) take force as of January 2018 introducing preferences for taxpayers who acquire or subscribe for stock in companies with which Poland has entered into a double taxation agreement (to date, this preference applied only to stock in companies from the EU/EEA area).
- On 30 October 2017 the Ministry of Development received a bill entitled "Act on Employee Stock Ownership Programs" prepared by the Employee Stock Ownership and Domestic Capital Development Forum Foundation.

In the present times employee stock ownership programs are one of the forms of a modern compensation system with incentive and retention dimensions. Transferring equity participation in an employer to employees constitutes an additional element prefiguring employment attractiveness in this time of rapid changes on the labor market and endeavoring to retain the most valuable persons in an organization.

Employee stock ownership programs may also be a form of amassing additional funds for future retirement. Our many years of experience have demonstrated that stock ownership programs are attracting greater interest among our clients.

In this report we portray solutions in place in other countries that have successfully and extensively embraced stock ownership programs. We are also focusing on the opportunities for developing this institution in Poland.

In this report we discuss the factual and practical utilization of employee stock ownership programs in business practice; we also depict a number of legal, fiscal and socio-economic obstacles. We hope that the conclusions we have drawn in this report will stimulate discussion and prompt change to popularize this form of rewarding employees incrementally.

We hope that you find this material interesting and fruitful!

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1 Background

What do employee stock ownership programs entail?

Employee Stock Ownership Programs constitute a form of financial participation for employees in the assets of the company in which they are employed. As a result of implementing this model, employees become persons who receive compensation for the work they do (this is what happens in a traditional employment system) while also becoming co-owners of the company.

Historical background

The beginnings of employee stock ownership in the world date back to the end of the 19th century when a group of American businessmen acting as pioneers in that time elected to implement a model for sharing business ownership with employees to enhance their feeling of accountability for the company's fate. Producers cooperatives whose members were bakers, blacksmiths and ship carpenters and cooperatives consisting of waste collectors that continue to exist to the present day, albeit in a different form, which have been cultivated from the 19th century in Europe and the United States, also referred to the concept of combining the functions of employee and owner in the same persons.

Pope Pius XI also encouraged people to proliferate the idea of employee stock ownership who in his social encyclical released in 1931 and entitled *„Quadrogesimo anno"* expressed his concern for people who live on the work of their own hands. He emphasized that it is not possible to deem any of the economic systems (whether socialism or liberalism) to be a truly Christian system as socialism posits an unfair distribution of the fruits of labor while liberalism leads to the accumulation of capital in the hands of a few, leaving the employees who contributed to its generation with only an amount needed to survive and satisfy their basic needs. He also emphasized the need to create a system that would foster a community of interests between employers and employees.

The Great Depression of the 1930s suddenly stifled the development of employee stock ownership – businesses concentrated on surviving that period of economic recession, instead of on rewarding employees and making them owners.

The renewed proliferation of the idea of stock ownership to a previously unheard of extent is due to Louis Kelso, a lawyer who devoted himself to studying the causes of the Great Depression and searching for remedial measures. In the book entitled "*Capitalist Manifest*" published jointly with the philosopher Mortimer Adler he demonstrated that if people were to earn income regardless of whether they work or not, they would most certainly buy more goods, where that in turn would counter the risk of economic collapse. He also emphasized that in a free market economy rich people become richer as the fruits of the labor of capital are theirs, while the poor who live solely on their own work are condemned to engage in a ceaseless battle for existence. He anticipated that as the degree of automation grows the profit generated by capital would grow constantly while the income of workers, which were already modest, would be at risk.

To proliferate the idea of employee stock ownership (referred to as Employee Stock / Share Ownership Plans - "ESOP") Louis Kelso formed trustee institutions whose task was to buy companies from their current owners as they retire and turn them over to their employees. Thanks to the measures he took he also managed to prompt many legislative changes introducing tax incentives for businesses that elect to implement employee stock ownership. That among other things contributed to the model of employee stock ownership becoming so widespread among US businesses in the 1960s, 1970s and 1980s.

The 1960s also marked the advent for the proliferation of the idea of employee stock ownership in western European countries, in Germany and France, among others. At present, we find the largest number of businesses with employee stock ownership in the United States (where 14 million employees[1] participate in the ESOP model) and in France and the United Kingdom, among others, in Europe.

Poland does not presently have any legal or fiscal solutions that would confer special rights or that would contemplate procedures for awarding shares or stock to employees in the employer's share capital, and that would thereby encourage businesses to implement employee stock ownership programs. However, planned legislative amendments and social initiatives endeavor to alter that state of affairs.

Detailed information concerning the functioning of employee stock ownership in Poland is to be found in chapter 4 entitled "Employee Stock Ownership Programs in Poland".

[1] According to data published in June 2016 on the basis of *„Equity: Why Employee Ownership Is Good For Business"* Corey Rosen, John Case, Martin Staubus, Warsaw 2016.

Types of stock programs

The notion of employee stock ownership programs is not a homogeneous category. Different types of programs operate in various businesses. They involve directly awarding the company's stock to employees or awarding units / derivatives giving the option to acquire stock in the future.

The following types may be distinguished among stock ownership programs, among others:

Stock Purchase Plans (including Performance-Based Stock Plans)

They entail awarding stock to employees gratuitously or enabling them to purchase stock at a lower price than its current market value. The amount of stock awarded to a given employee under Performance-Based Stock Plans usually hinges on the attainment of a specific goal contemplated under the principles of a target or plan, for instance the achievement of a specific level of revenue / sales or a given annual assessment. Plans making it possible to award stock gratuitously or to acquire stock at prices below the current market value ordinarily have vesting periods during which a company may reclaim the stock awarded to an employee if the employee fails to satisfy certain conditions such as, for instance, the obligation of continuing to be employed over a given period.

Stock Option Plans

These plans contemplate awarding stock options to employees enabling them to acquire the company's stock upon remittance of the exercise price specified in the plan's rules. This price may be set at a symbolic level or it may reference the stock's market value at the time of awarding the stock options. The benefit to employees is equal to the difference between the market value of the stock at the time of exercising the option and the exercise price. If the exercise price is set at a symbolic level, this benefit will materialize in nearly every instance. If the exercise price is determined using the stock's market value at the time of awarding the options, the benefit will materialize only if the value of the stock at the time of exercising the option is higher than at the time it is awarded. This is intended to encourage employees holding key positions to expend efforts to ensure business value growth and profitability, thereby directly contributing to value growth in the stock they own. That is why options are widely used as a motivational too for management. They are especially frequently used by startups that cannot afford to pay high base compensation to managers and in this manner they enable them to become a co-owner of the business for whose growth they are toiling.

Restricted Stock Unit Plans

These plans involve awarding virtual units to employees to be subsequently converted into company's stock after the elapse of the vesting period. The number of Restricted Stock Units awarded to employees may hinge upon various factors such as the position held, annual job assessment, etc. The awarding of these units does not ordinarily trigger a necessity for employees to incur any fee at all.

Restricted ("Letter") Stock Plans

They entail awarding stock to employees gratuitously for partial payment that is subject to the restrictions prescribed by the plan. Usually from the time when the stock is awarded the employees become the legal owners thereof and they hold the voting rights and dividend rights attached to this stock; however, the plan rules curtail the negotiability of the stock until the end of the restricted period.

Stock Appreciation Right Plans (distributed in stock)

The benefit to employees in this case is equal to the difference between the stock value at the time of awarding the Stock Appreciation Right and the stock value at the time of exercise, after the elapse of a period stipulated in the plan rules (thus similar to stock options this benefit will emerge solely if the stock value rises over time). The difference is distributed in the company's stock and ordinarily it does not involve the necessity of employees incurring any additional charge.

2

Why is it worthwhile to implement employee stock ownership programs?

Implementing employee stock ownership programs in a business produces a host of benefits to **employees** and **employers**, alike. These benefits should also be viewed positively from the vantage of the functioning of the entire **state**.

Employee benefits

Above all, one may refer to the ability to **accumulate wealth in the long-term** among the employee benefits. This wealth will not just generate earnings on an ongoing basis through the **distribution of dividends** on the stock held by employees; it will also constitute an additional source of income for them but it can also serve as additional security in the event of higher spending (changing apartments, childbirth), lower income (caused by illness, disability) or ending vocational activity – at the time of retirement. It is especially in this last instance, giving consideration to economists' forecasts according to which the dependency ratio in 20-30 years (the ratio of the retirement benefits paid to the amount of the final salary received for work), depending on how long contributions are paid, will oscillate from 30% up to a maximum of 50%.

For the goal of building private wealth constituting security and a source of additional income at the time of retirement and thereafter to be achieved, allowing employees to participate in employee stock ownership programs must be an additional source of gratification, afforded to them on top of their regular wages, and not within the scope thereof.

Below we present simulations of how this additional stock income may affect future retirement benefits using the examples of three types of employees whose level of income varies.

An employee who has a gross monthly salary of PLN 4 thousand and who receives company stock worth 1% of his or her net annual salary may count on his or her retirement benefits growing by PLN 320 thousand per month

Simulation 1

Assumptions:

- A 30-year-old man started working at the age of 18 and currently draws a gross salary of approximately 4 thousand.
- He has another 35 years of work to go before reaching the retirement age (65 is the posited retirement age).
- The total number of contribution months is equal to 564. Assuming that real wage growth will on average be 3%, while the average yield generated by the open-end retirement fund (OFE) is 4%, our future retiree will amass approximately PLN 434 thousand in his open-end retirement fund and PLN 442 thousand in his sub-account in Poland's Social Security Administration known as ZUS.
- If this employee draws retirement benefits for 13.3 years (the assumed mean duration), his retirement benefits will be equal to a total of PLN 5.5 thousand, which will merely correspond to 49% of his potential earnings at the time when he retires.

If the employer of our 30-year-old additionally transfers to him company stock as part of his compensation forming the equivalent value of 1% of his net annual salary, then when coupled with salary growth complying with the foregoing assumptions, and also provided that his company's stock price will grow on a long-term basis at an average pace of 3% per annum, **then at the time of retiring, he will roughly amass an additional PLN 39 thousand.**

Our employee may retain the additional savings procured in the foregoing way in stock and every month distribute a fixed amount, thereby raising his retirement benefits by roughly PLN 320 per month. This will drive up the dependency ratio of his last salary by approximately 3 percentage points. At first glance, this does not appear to be an extensive increase, but let's recall that he will obtain 1% of his annual net income with limited effort.

On top of the benefits to employees, this will protect the interests of the current business owners and will not permit excessive dilution of stock ownership while simultaneously enhancing employee loyalty. In practice, there will be many companies whose value growth will be sufficiently dynamic that they will be able to offer their employees larger equity stakes.

Employee Stock Ownership Programs may also be a good element for experts and middle-level managers (directors) to build long-term retirement savings.

An employee who has a gross monthly salary of PLN 8 thousand and who receives company stock worth 5% of his or her net annual salary may get an additional PLN 3.7 thousand per month of retirement benefits

Simulation 2

A 30-year-old programmer earns a gross income of PLN 8 thousand. During his 35 years of working he amasses approximately PLN 1.3 million in ZUS and his open-end retirement fund (assuming that his salary will grow at an average pace of 3% per annum). The retirement benefits he can count on receiving from these two pillars total roughly PLN 8.3 thousand per month. Compared to the expected level of his final salary, this will represent a mere 38%.

If the company for which he works – as do his future employers – offers him the ability to join an employee stock ownership program from which he will be able to receive **company stock constituting the equivalent of 5% of his net annual salary**, then this programmer will amass an additional **PLN 460 thousand** by the time he reaches retirement age if the stock price growth rate is 3% per annum. **This employee may be able to receive an additional PLN 3.7 thousand per month** by distributing a fixed amount and retaining the rest in stock growing at a similar rate of return, meaning that he will gain nearly 54% of his final salary combining this with pillar i and II.

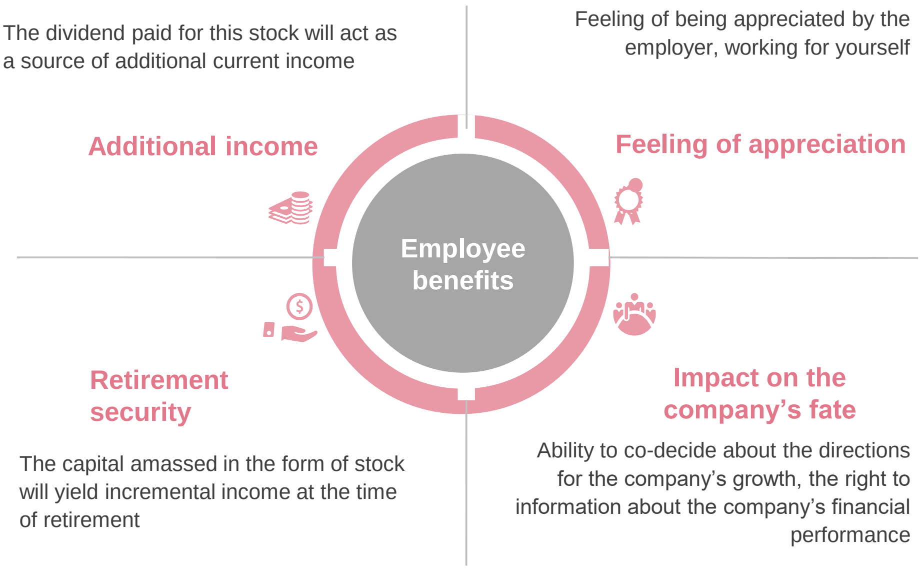
A director who earns PLN 20 thousand and who receives stock worth 5% of his or her net annual salary may earn an additional PLN 6.6 thousand per month during his or her retirement

Simulation 3

A 40-year-old director in a large corporation earns a gross income of PLN 20 thousand. The capital accumulated in pillar I and II will be equal to PLN 1.8 million, while his retirement benefits will be under PLN 12 thousand. Considering the cap on the annual amount of retirement contributions, the dependency ratio measured against his final salary may only be 29%.

Company stock worth 5% of his net compensation up to the time of reaching retirement age will give this director the ability to amass roughly an additional **PLN 820 thousand** under the same equity yield assumptions as above, though over a shorter (25 years) asset accumulation period. This means that this **director may be able to spruce up his retirement benefits by another PLN 6.6 thousand per month**, i.e. by more than 16% of his final salary.

Intangible aspects are also of the essence on top of the unchallenged financial benefits ensuing from participation in employee stock ownership programs. Employees who have been enabled to acquire company stock or who have been awarded stock from their employer **feel more appreciated**. They also have a greater **feeling of being able to influence the company's fate, the directions of its growth and they participate in planning its future.** They gain **access to more extensive knowledge concerning the company's current economic standing** thanks to the educational programs that ordinarily accompany the rolling out of employee stock ownership. Endowing employees with an equity stake and enabling them to obtain further tranches in the future give them the **feeling of working for themselves** and enables them to perceive to a greater extent the reason and expedience of the efforts being pursued.



Employer benefits

Implementing employee stock ownership programs in companies yields above all **higher employee motivation and greater job commitment**, thereby translating into **higher business productivity and improved competitiveness**.

Employee stock ownership programs also play a **role in retention**, which is particularly important in small and medium-sized enterprises that grapple with the problem of employee turnover, especially higher ranking qualified employees. Rolling out such a program, provided that it is appropriately shaped, will make it possible to tie employees more strongly to the company and instill in them the conviction of switching employers being "unprofitable", especially in the longer run. Moreover, a company that implements an employee stock ownership program is perceived as being a modern company that stands out positively on the market place when it comes to the package of non-salary-related benefits provided to employees.

Employee stock ownership programs also incentivize employees to **undertake actions that are conducive to innovation and look for savings in spending** – they are aware that every amount spent from the company's cash till reduces its income, thereby affecting its stock price (what is known as the magic of the multiplier is in operation in this case, i.e. according to economists, the expansion in the firm's earnings in the eyes of investors does not drive the share price on a 1-to-1 ratio but on a 1-to-15 ratio).

Implementing a model predicated on employee stock ownership programs may also constitute a **business succession method**, especially in small family businesses in which there is no natural successor. Conveying a business to its employees may facilitate its transfer to committed people who are well-versed with its specific nature and who are strongly tied to it. It may also enable an owners to step back from the business gradually (by transferring subsequent tranches of stock to its employees) instead of selling a company to a single investor.

Employee stock ownership programs also constitute a response to the challenges companies face when grappling with **sourcing the capital needed for business development**, especially privately-held joint-stock companies and limited liability companies. The additional capital obtained from employees through issuing employee stock (e.g. at preferential prices) may be used for new investments, constituting a very attractive alternative to a bank loan.

Nor can one overestimate the **possibility of employing employee stock ownership programs during crises** when the company's very existence, and thus employees' jobs, are in jeopardy. As they strive to retain their jobs, in exchange for conferring stock, employees are ready to make far-reaching concessions regarding their demands for pay, which in many instances proves to be of crucial importance to the further existence of the business. **Offering an employee stock ownership program to employees makes it possible to create a community of shared interest between employees and the employer**, especially in those circumstances, and this can contribute to overcoming a crisis and procuring a company's economic growth, while this in turn directly translates into the value of the stock held by employees.

For instance:

As the National Center for Employee Ownership in the United States reports, research conducted by Rutger's University in 2000 demonstrates that **companies in which shareholders are significant stockholders** go bankrupt less frequently than very similar companies in which employee stock ownership programs were not implemented. They also report a **revenue growth rate that is 2.3%-2.4% higher** and **greater employee productivity** as employees are mobilized by their own equity exposure to work better.

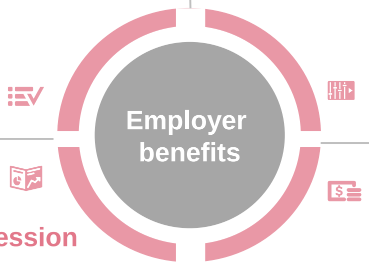
In France where employee stock ownership programs enjoy extensive popularity these types of companies have an **absenteeism rate that is 50% lower than in other companies**.

Greater job commitment translates into enhanced productivity and higher competitiveness.

Employee motivation

Properly shaping such a program will make it possible to tie employees more strongly to the company and instill in them the conviction of switching employers being "unprofitable".

Retention



Ensuring succession

What happens particularly in family businesses in which a natural successor is lacking is that the company is gradually transferred to the employees.

Acquiring capital

Possibility of sourcing additional capital for business development (this is especially attractive to limited liability companies).

Benefits to the state

The proliferation of employee stock ownership programs is also in the interest of the overall state in the short and long-term.

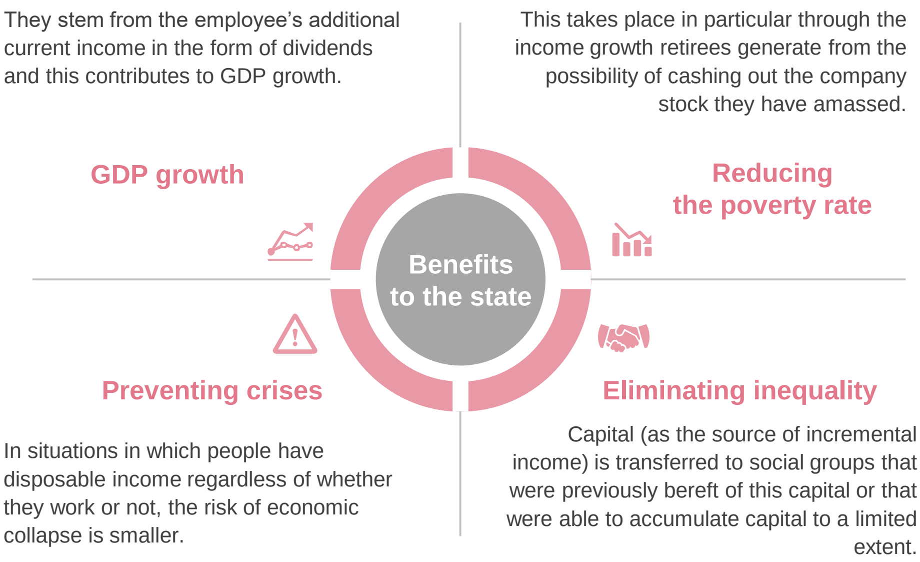
Offering stock to employees is a source of incremental current dividend income, thereby translating into a higher disposable income, thereby giving **their households greater purchasing power**. This has a **direct impact on the size of GDP.**

Stock may constitute additional security in the future after withdrawing from vocational activity thereby generating incremental income on top of retirement benefits. **Therefore, employee stock ownership programs offer the possibility of contributing to reducing the poverty rate** among this social group and the number of households compelled to take advantage of social assistance.

Employee stock ownership programs also contribute to eliminating social inequality - capital as a source of additional income is transferred to a group of people who on account of the amount of their earnings have been entirely bereft of this to date, or could accumulate capital only to a very limited extent.

However, for the attainment of these objectives to be plausible, it is necessary to shape the program in a manner that would make it impossible to cash out the stock in the near term after receiving it and use it for short-term consumption.

Employee stock ownership programs may also contribute to preventing economic crises. Assuming that employees would generate income on their stock regardless of whether they work or not, they would most certainly buy more goods, and that would in turn offset the risk of economic collapse. This theory has not lost any of its factual allure in the face of progressing automation in production.



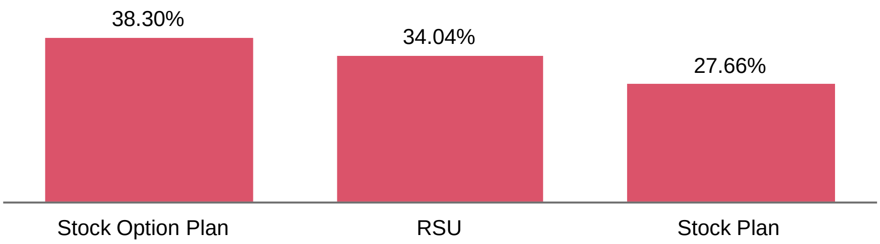
3 Employee stock ownership programs in the European Union and in selected countries around the world

The most popular forms of employee stock ownership programs in Europe and around the world

The research conducted by PwC Poland shows that the more popular programs in Europe and in selected countries across the globe include **Stock Option Plans, Restricted Stock Units and Stock Plans**.

The popularity of these programs is undoubtedly driven by the fact that the stock is conferred after the term defined by a given program and most frequently after an employee satisfies additional conditions (e.g. length of employment). This gives the employer an opportunity to defer the moment of handing over the stock to an employee, and thereby the incurring of the actual costs of his or her participation in such a program, while also achieving the retention effect, without having to raise the employee's base salary.

Figure 1. Popularity of various employee stock ownership programs



Source: data obtained on the basis of the research conducted by PwC Poland among 30 countries around the world.

In practice, these programs are introduced in a given corporate group, most frequently by the mother company domiciled in a country with a lengthy tradition of employee stock ownership programs (e.g. the United States, France, United Kingdom).

The research conducted among the PwC companies has also demonstrated that many startups decide to introduce an employee stock ownership program as a form of compensation that is less of a burden to the company. This solution makes it possible to reward employees while simultaneously not adversely affecting the company's cash flow.

The popularity of employee stock ownership programs among companies and employees

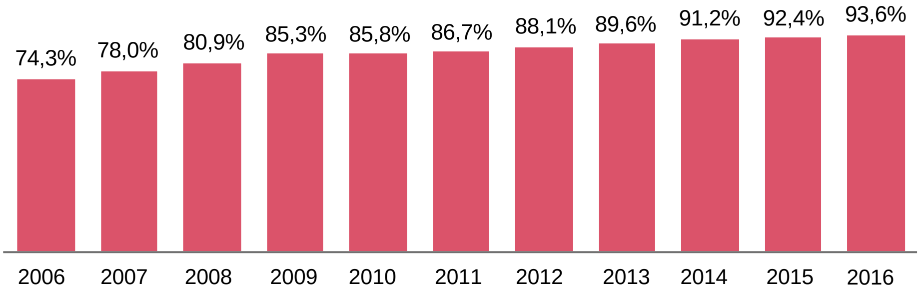
The number of businesses offering employee stock ownership programs is steadily rising, just as the value of employee stock, despite the decline in the number of people participating in them.

The research conducted by the European Federation of Employee Share Ownership indicates that the number of companies with employee stock ownership programs is steadily on the rise from year to year among the 2,636 largest European companies.

As one may observe from the research conducted among the PwC companies, one of the reasons for this is the implementation of employee stock ownership programs in a given corporate group, including its local companies.

Something that continues to be a fairly rare phenomenon is the implementation of incentive programs based on stock issued directly by an employer, which translates into the still limited popularity of these types of programs in small and medium enterprises that do not belong to international corporate groups.

Figure 2. Percentage of companies that have employee stock ownership programs



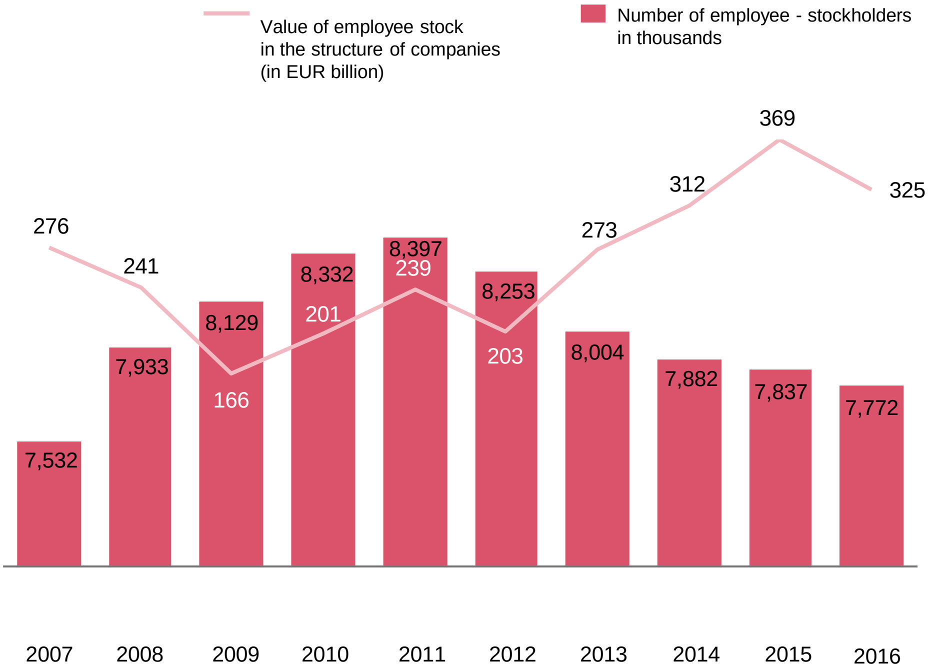
Source: Annual Economic Survey of Employee Share Ownership in European Countries 2016 on the basis of the 2,636 largest European companies from 31 countries in 2016.

The crisis on the financial markets in 2008 significantly affected the popularity of employee stock ownership programs among employees. On one hand, employees holding stock sustained a decline in the value of their stock; on the other hand, to prevent the recurrence of crises national governments worked on implementing mechanisms to increase the accountability of decision makers in companies.

Starting in 2009, the value of employee stock in the structure of companies declined drastically from EUR 243 billion in 2008 to EUR 167 billion in 2009. Undoubtedly, this exerted an impact on the attractiveness of these programs. Although the value of the stock held by employees slumped substantially in 2009, the employee attrition effect in these programs was deferred in time. The number of employees participating in these programs started to slacken in 2012. Since 2014 the number of these employees has remained steady among the surveyed companies at a level of 7.8 - 8 million employees.

Since 2012 the number of employees participating in employee stock ownership programs has been dwindling even though the value of the stock they hold is on the rise.

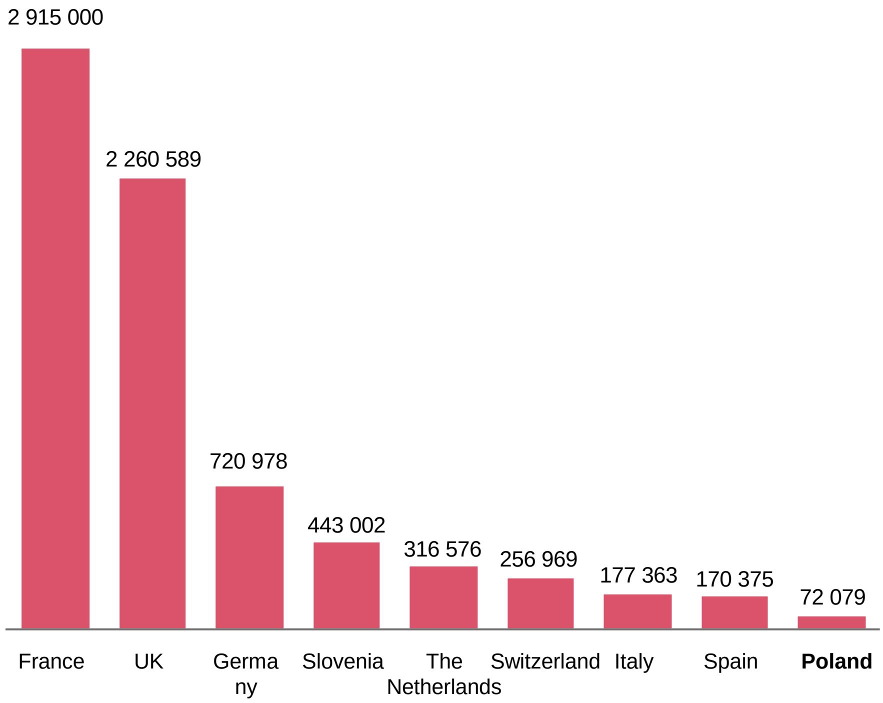
Figure 3. Number of employees – stockholders versus the value of their stock



Source: Annual Economic Survey of Employee Share Ownership in European Countries 2016 on the basis of the 2,636 largest European companies from 31 countries in 2016.

European countries with the longest history of employee stock ownership report the highest percentage of employees holding their employer's stock (France, the United Kingdom, Germany).

Figure 4. The number of employee stockholders in selected European countries in 2016



Source: Annual Economic Survey of Employee Share Ownership in European Countries 2016 on the basis of the 2,636 largest European companies from 31 countries in 2016.

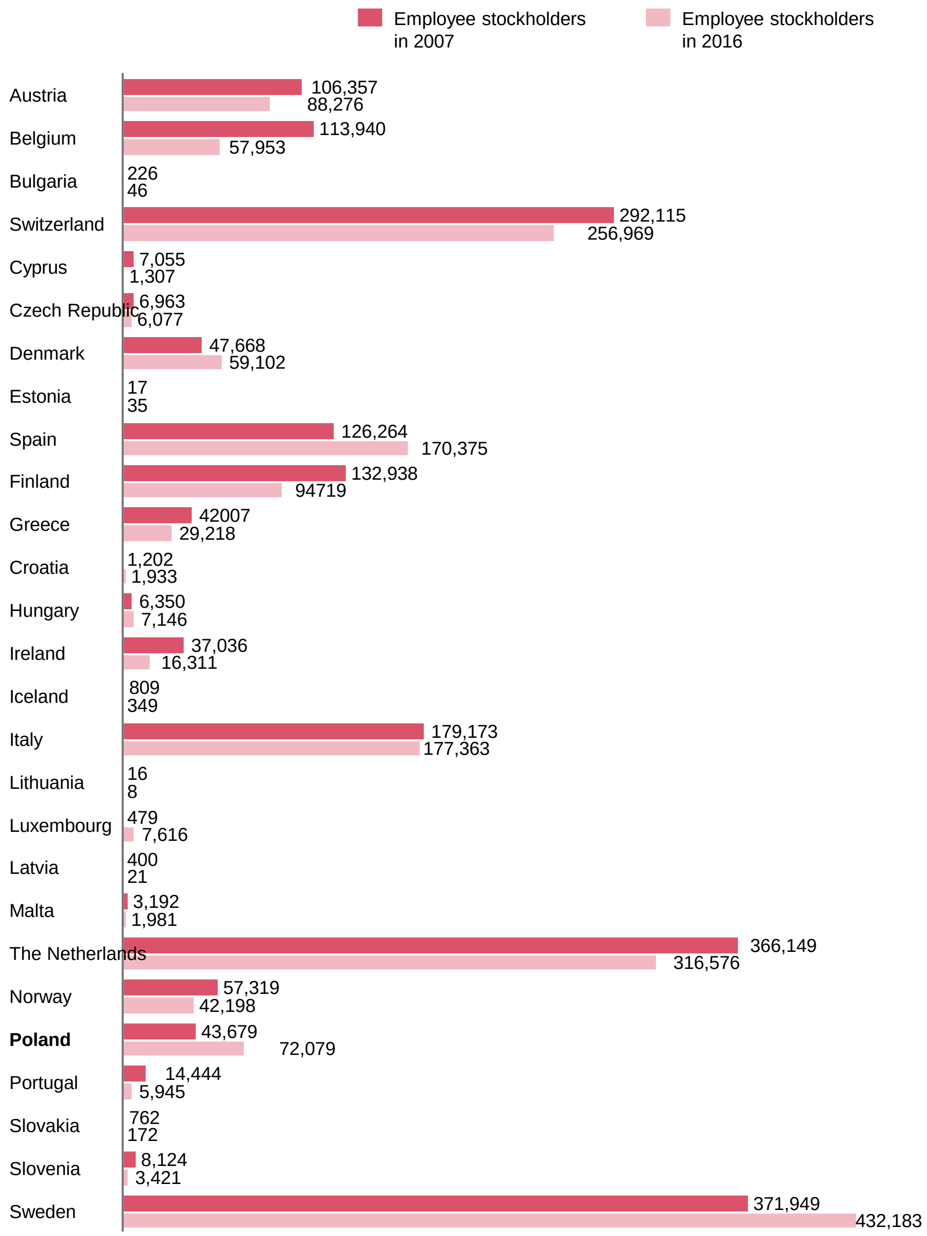
Additionally, **France and the United Kingdom fended off the impact exerted by the crisis on the popularity of incentive programs based on stock.** The systemic solutions that exist in these countries undoubtedly exert an impact on that, e.g. **in France the obligation of employee stock ownership if more than 50 employees are employed**, or the **competitive rules of taxation as in the United Kingdom** (what is referred to as Employee Shareholder Status, shares are subject to taxation only at the time when stock is awarded, and thus the incremental growth in the value of the stock fully accrues to employees, provided that the appropriate conditions are satisfied).

When looking at the other countries, one may take note that **the crisis did not adversely affect the popularity of employee stock ownership programs in all these countries**. Countries such as **Spain, Denmark, Luxembourg** and **Poland** managed to avoid this impact.

Moreover, the experience gleaned from the period of collapse on the global capital markets contributed to changes whose purpose is to prevent such crises in the future. **Directive CRD III** (Capital Requirements Directive) **was implemented in 2010** in the European Union to govern the rules for establishing the policy on variable components of compensation for persons holding managerial positions in financial institutions. Its implementation was supposed to have been completed by 31 December 2011. One of the rules introduced by Directive CRD III was to make the variable components of compensation dependent on not just individual performance but also on the performance of the entire financial institution over a period of many years. This was also manifested by incorporating the stock of a given institution in the variable components of compensation.

Luxembourg is a country in which the effects of implementing Directive CRD III and additional legal regulations are the most visible. Implementing a requirement that makes the compensation of persons discharging managerial functions in financial institutions dependent on prudent risk management and the obligation of disbursing bonuses in the form of stock has contributed to growth of several hundred percent in the number of employees who are stockholders in their employers. The number of employees who are stockholders among the 2,636 companies surveyed in 2016 by the European Federation of Employee Share Ownership has grown from 479 in 2007 to 7,616 in 2016, i.e. by more than 1,589%.

Figure 5. Comparison of the number of employee stockholders in selected countries in 2007 and 2016



Source: Annual Economic Survey of Employee Share Ownership in European Countries 2016 on the basis of the 2,636 largest European companies from 31 countries in 2016.

Motives for introducing employee stock ownership programs

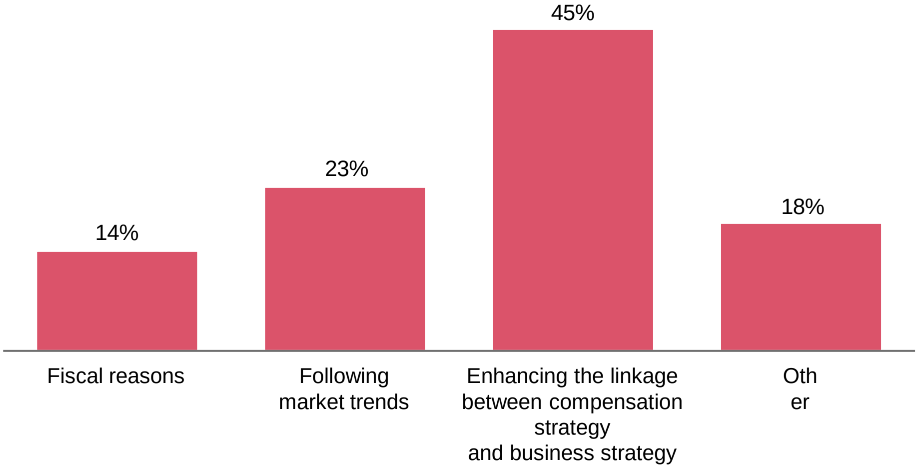
Interesting conclusions pertaining to the **motives for implementing employee stock ownership programs** also follow from the research published in the "2015 Global Equity Incentives Survey" written by PwC USA in collaboration with NASPP.

The companies surveyed in this research pointed to their desire of **tying the level of compensation to a given company's condition** as being of paramount importance. For companies the most important thing is to instill in their employees the feeling of accountability for the results of their work, which subsequently translate into the company's condition and the level of compensation.

The second most important thing one may observe is how **companies are following in the footsteps of the overall trends** as they materialize on the market place. The research has demonstrated that more and more companies in a given country are electing to enact a policy on employee stock ownership programs that functions in a given corporate group.

What is interesting is that **fiscal reasons** were named last as a factor contributing to the decision to implement an employee stock ownership program in a company. This may be caused by tax relief being subject to numerous conditions where the failure to satisfy them makes it impossible to take advantage of tax relief. The lack of clarity concerning taxation rules may also contribute adversely as it does not facilitate the evaluation of profitability on the stock being offered.

Figure 6. Reasons for introducing employee stock ownership programs (outside the United States)



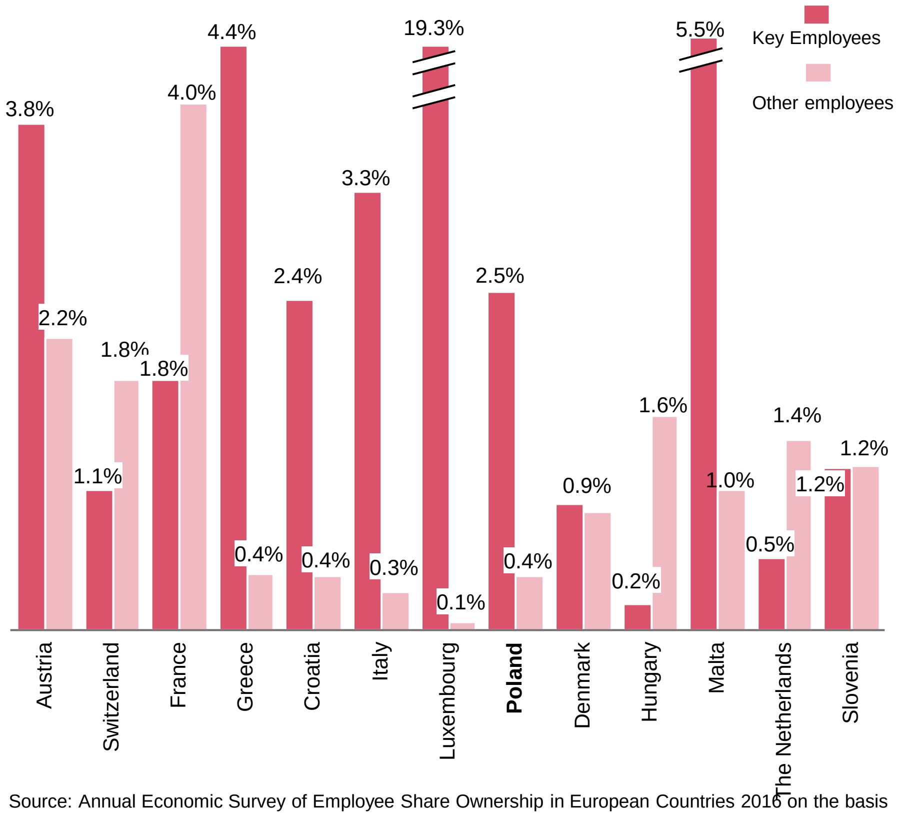
Source: 2015 Global Equity Incentives Survey pertaining to incentive programs prepared by PwC USA in collaboration with NASPP.

Share of equity held by employee stock ownership programs

The research conducted among the 2,636 largest European companies shows that in most cases **these companies elect to transfer roughly 3% of their equity to employees.**

Only Luxembourg **can brag about employees holding a 20% equity stake**, with the bulk of them being senior management, in particular in financial institutions. Once again, this is the impact exerted by Directive CRD III, which is all the more visible in Luxembourg on account of the considerable number of financial institutions domiciled in this country.

Figure 7. Capital held by employees in selected countries in 2016



Source: Annual Economic Survey of Employee Share Ownership in European Countries 2016 on the basis of the 2,636 largest European companies from 31 countries in 2016.

Target groups of employee stock ownership

The research conducted by PwC Poland indicates that **in Poland a company's capital is chiefly given to the key persons in that company**. This is due to the fact that stock most frequently constitutes a form of a reward in long-term incentive programs, while these for the most part target person who have a decisive say in the operations of companies. Stock may also constitute an instrument for retaining the best employees. If, in turn, a company would like to contribute to engaging most employees to work for the company's benefit, it elects to implement a plan that is open to all employees. Of course, the rules of these programs vary greatly.

There are also countries in which there is a straight-forward legal and fiscal requirement for participation in an employee stock ownership program to be offered to all employees. The failure to fulfill this condition leads, for instance, to the forfeiture of favorable conditions for the taxation of the awarded stock. For example, in **France, Ireland** and **Slovenia**, certain types of programs must be offered to all employees. In turn, in **Germany** and the **United Kingdom** the failure to fulfill this requirement means that it is not possible to take advantage of tax relief. In **Sweden**, whether participation will be open to all employees or merely to select employees hinges on company size: larger public companies in most cases offer stock to all employees.

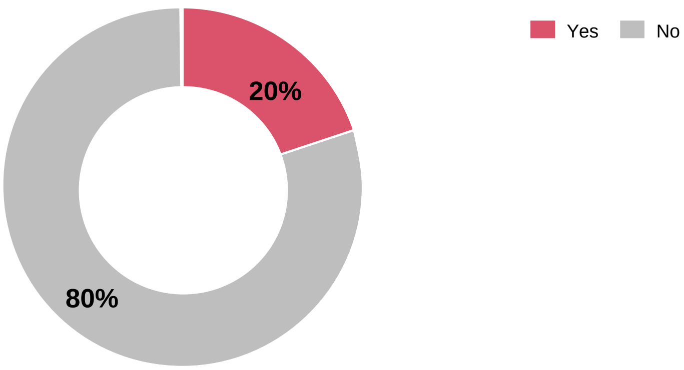
Figure 8. Target groups of employee stock ownership in the surveyed countries

Source: data obtained on the basis of the research conducted by PwC Poland among 30 countries around the world.

Legal and fiscal regulations

In most of the surveyed countries there are no legal regulations concerning the offering of employer's stock to employees. Only 20% the surveyed countries have implemented such regulations.

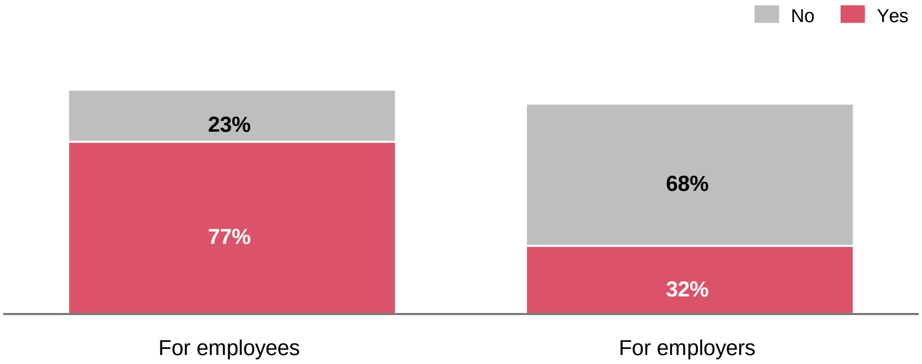
Figure 9. Legal regulations pertaining to employee stock ownership programs in the surveyed countries



Source: data obtained on the basis of the research conducted by PwC Poland among 30 countries around the world.

A prevailing number of surveyed countries, however, had regulations in their tax law which one may consider to be incentives to offer the employer's stock to employees or in a group company (most frequently the mother company).

Figure 10. Tax regulations encouraging companies to offer stock to employees in the surveyed countries



Source: data obtained on the basis of the research conducted by PwC Poland among 30 countries around the world.

If a given country elects to implement tax regulations pertaining to employee stock ownership programs, the **tax relief is addressed to employees** to a predominant extent.

Employees most frequently take advantage of the following tax relief:

- the amount of income obtained by virtue of receiving stock is tax-free;
- one moment of taxation (taxation most frequently occurs at the time of sale);
- free of social security and health insurance contributions or payable at a lower rate;
- reduced taxable income depending on the holding period.

In most cases employers have the following possibilities:

- treating the costs incurred to convey stock (newly issued or bought back from the market) to employees as tax deductible expenses;
- not having to pay the social security contributions paid by the employer or paying a lower amount thereof.

This tax relief constitutes material support, considering the fact that in most of the surveyed countries there are two moments when taxation takes place (at the time of conferring the right to receive stock / receiving stock and at the time of the sale of this stock).

In addition, in many countries there is an obligation to pay social security contributions at the first moment of taxation as this income is treated as income from the employment relationship.

In some countries the relationship between amendments to the tax law and the popularity of employee stock ownership programs is visible.

In **Slovenia**, the law enacted in 2008 awarding higher tax relief to employers and employees alike precipitated incremental growth of more than 10% in the numbers of employees holding stock in their employers from 372 thousand in 2007 to 415 thousand in 2008.

In **Croatia**, the reduction of tax relief in 2012 and 2013 drove down the number of employees holding stock in their employers by nearly 6 times from nearly 11 thousand in 2011 to fewer than 2 thousand in 2016.

In turn, in **Belgium**, even though the rules on the taxation of stock options employees receive have been favorable since 1999, the number of employees holding stock in their employers has steadily declined (from roughly 114 thousand in 2007 to approximately 58 thousand in 2016).

As the research conducted by PwC Poland shows, in the recent past **more and more countries are electing to introduce fiscal regulations to incentivize people to take part in stock plans**.

Thus, for instance, in **China** regulations were enacted in September 2016 according to which it is possible to **defer the taxation of the stock awarded until the time of sale** in the case of some incentive plans based on stock/stock options/restricted stock units. Moreover, the applicable tax rate plummets from 45% (a progressive tax) to 20% (a flat rate tax). The condition for taking advantage of the preferential rules of taxation is not to transfer the stock/options for a specified period (3-4 years).

Similarly, in **Romania** there are regulations as of 2016 according to which company stock awarded at a discount or free of charge is not considered to be income received under the employment relationship, meaning that it does not constitute the basis for charging social security insurance contributions and that it is not subject to taxation. The condition is for at least one year to elapse from the moment when the stock is awarded until the stock is acquired. Nevertheless, this modification has thus far not stemmed the dwindling number of employee stockholders.

Conclusions

- **The numbers of companies offering treasury stock or stock in a group company to their own employees are systematically rising.** This has been precipitated by the opening up of programs in force in given corporate groups to companies operating on local markets.
- **Employee stock ownership programs are a form of incremental compensation** as well as an **instrument for retaining valuable employees**. That is why such a program is most frequently offered to a selected group of employees and more rarely to all employees.
- **The legal regulations** implemented in a given country **also exert an impact on the popularity of employee stock ownership programs.**
- In some countries in turn the **relationship between amendments to the tax law and the popularity of stock plans is visible.**

4 Employee Stock Ownership Programs in Poland

Genesis of employee stock ownership programs in Poland

We can find traces of the idea of employee stock ownership in Poland's history already in 1920 when the employee stock ownership plan applicable to all employees referred to as "permanent" employees was accepted in a company doing business as Gazolina and headquartered in Lviv. They obtained the possibility of becoming co-owners of the business by buying stock at preferential prices – they were supposed to allocate their thirteenth salary (bonus) for this purpose. On top of the stock acquired obligatorily, they had the possibility of buying any amount of additional stock. In exchange for that, they obtained the right to what was known as remuneration, namely equivalent consideration depending on their share of the company's profit plus the amount of the dividend due for the stock in their possession.

In Poland, employee stock ownership developed later than in western countries due to various geopolitical determinants. The institution of employee stock ownership was initiated by the process of ownership transformation in state-owned enterprises and was regulated by the Act of 13 July 1990 on the Privatization of State-Owned Enterprises[2]. The essence of that law was rooted in forming companies which most employees joined.

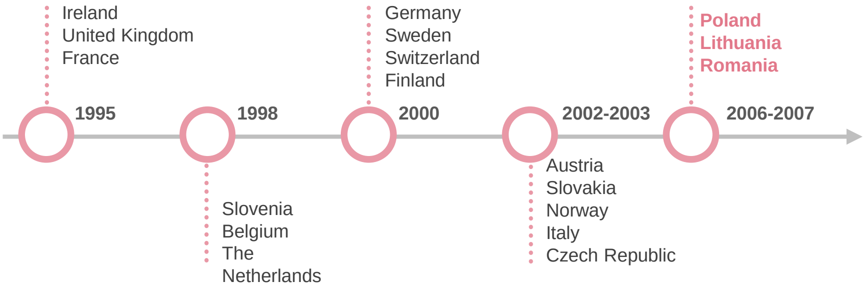
The second statute constituting the foundation of employee stock ownership in Poland was the Act of 30 August 1996 on the Commercialization and Privatization of State-owned Enterprises[3] whose intention was to enable employees to acquire stock in State Treasury-owned companies gratuitously. This law provided for the employees being able to acquire gratuitously 15% of the stock in a company owned by the State Treasury. A possibility was also created to establish companies with the participation of the State Treasury and employees provided that the employees have a contribution enabling them to cover 10% of the share capital.

Despite having created the legal possibilities, privatization in the 1990s did not contribute significantly to the dissemination of the idea of employee stock ownership in Poland – most employees sold the stock they received shortly after the elapse of the restricted period (or even earlier). Many enterprises that underwent employee privatization failed to survive or were sold to third party investors.

However, the statutes described above that kicked off the process of "privatization" contemplated employee participation solely in the capital of companies with partial State Treasury ownership. With the passage of time, that overall undertaking is now criticized, chiefly because of the low employee culture at that time focused on short-term consumption instead of accumulating capital, and because of the volatile political context.

The first employee stock ownership programs that were not obligatorily related to participation in the State Treasury's property did not start to operate in Poland until quite late, for it was 2006-2007.

Figure 11. Time of implementing employee stock ownership programs in Poland compared to other countries



To the present day, however, there are no legal regulations that address the unique subject of employee stock ownership programs, which means that it is necessary to rely on the general regulations set forth in the Commercial Company Code[4] and the Act on Trading in Financial Instruments[5].

[2] Act of 13 July 1990 on the Privatization of State-Owned Enterprises (Journal of Laws of 1990, no. 51 as amended).

[3] Act of 30 August 1996 on the Commercialization and Privatization of State-Owned Enterprises (Journal of Laws of 1996, no. 118 as amended).

[4] Act of 15 September 2000 entitled Commercial Company Code (Journal of Laws of 2000, no. 94, item 103 as amended).

[5] Act of 29 July 2005 on Trading Financial Instruments (Journal of Laws of 2005, no. 183, item 138 as amended).

At present, work is in progress to create comprehensive legal regulations pertaining to employee stock ownership authored by the Employee Stock Ownership and Domestic Capital Development Forum Foundation. This project calls for employee stock ownership programs, among other things, to constitute a voluntary form of investment in a company's share capital by having eligible employees subscribe for, or acquire, its stock. They facilitate a participant's direct investments in the assets of his or her employer company and the employee-stockholder's direct influence over the company's development, market position, financial performance and value growth.

"Under the Employee Stock Ownership and Domestic Capital Development Forum Foundation we have devised a Polish model for employee stock ownership predicated on the best models and experience of countries that already have sophisticated legislation governing the formation and operation of employee participation in capital. Poland's experience in this subject, pre-war and contemporary alike, constitutes a source of inspiration for our efforts in this area.

The Foundation's team of experts drafted the bill on employee stock ownership programs that was submitted to the Ministry of Development on 30 October of this year. The work on this law, which in our opinion will modernize the model of entrepreneurship in Poland, by benchmarking it against what is functioning in the most sophisticated countries in the world, is proceeding under the conviction that an innovative economy needs an innovative economic system."

Krzysztof Ludwiniak
Employee Stock Ownership and Domestic Capital Development Forum Foundation

The prevalence of employee stock ownership programs in Poland compared to other European Union member states

Research shows[6] that in the last several years the popularity of employee stock ownership programs in Poland has gained traction; however, in the last two years it has dwindled by nearly 10%. This characteristic is in line with the trend seen in most European countries and may be associated with the instable and volatile economic context. The percentage of capital employees are obtaining in connection with their participation in these programs is nevertheless gradually rising.

Table 1. Employees participating in employee stock ownership programs in various European countries

State	2007	2010	2012	2014	2016	Difference 2007-2016	Difference 2011-2016
Poland	43,679	92,386	121,394	105,144	72,079	65%	-27.6%
France	2,559,168	3,169,599	3,219,427	2,991,099	2,915,000	-49.1%	-30.3%
Belgium	113,940	97,571	57,256	63,395	57,953	-30.3%	5.1%
Hungary	6,350	6,546	7,850	7,976	7,146	12.5%	-6.5%
United Kingdom	2,015,254	2,070,591	1,985,403	2,146,025	2,260,589	12.2%	11.8%
Norway	57,319	62,044	51,952	45,868	42,198	-27.9%	-26.4%
Portugal	14,444	14,520	15,220	7,262	5,945	-58.8%	-60.7%
Greece	42,007	41,702	35,788	33,037	29,218	-30.4%	-26.2%
Italy	179,173	186,371	158,339	130,351	177363	-1%	-1.1%
Finland	132,938	127,957	115,701	106,363	94,719	-28.7%	-24.2%
Germany	1,027,872	1,023,173	893,191	805,001	720,978	-29.9%	-24.3%
Czech Republic	6,963	6,622	5,951	6,367	6,077	-12.7%	0.4%
Slovakia	762	426	199	195	172	-77.5%	-40.9%

Source: Annual Economic Survey of Employee Ownership in Europe 2007-2016. On the basis of the 2,636 largest businesses in the EU in 2016.

[6] Source: Annual Economic Survey of Employee Ownership in Europe 2007-2015.

The ratio of assets stemming from employee stock ownership programs to company value is lower in Poland than the European mean. In most countries this ratio is equal to 3.09%, while in Poland it is 2.52%.

The percentage of employees taking part in the management of a company in the form of stock is also lower. Incorporating this criterion illustrates the great difference between Poland (where this percentage is 14.52%) and the European mean of 22.57%. This fact may be explained by the still insufficiently developed employee culture of accumulating capital for the future, but also by the fears of employers (companies) concerning changes in their ownership structure. Chapter 5 entitled "Obstacles to developing employee stock ownership programs in Poland" contains more information on that subject.

The operation of employee stock ownership programs in Poland is in line with European trends. Comparative analysis of the largest companies in Poland and the largest companies in the other European Union member states illustrates that Poland is under the European mean in terms of the equity stake stated as a percentage held by employees in the capital of their employer, and the number of employees in these employee stock ownership programs.

Table 2. Poland compared to Europe in terms of the ratio of assets held by employees in employee stock ownership programs to company value

France	4.01%
Austria	2.20%
Italy	0.28%
Mean for 31 countries	1.64%
United Kingdom	1.46%
Poland	**0.40%**
Spain	0.26%
The Netherlands	1.43%
Norway	1.16%
Germany	0.89%
Hungary	1.61%
Ireland	0.91%
Romania	0.2%

Table 3. Percentage of employees holding stock in their employer's company

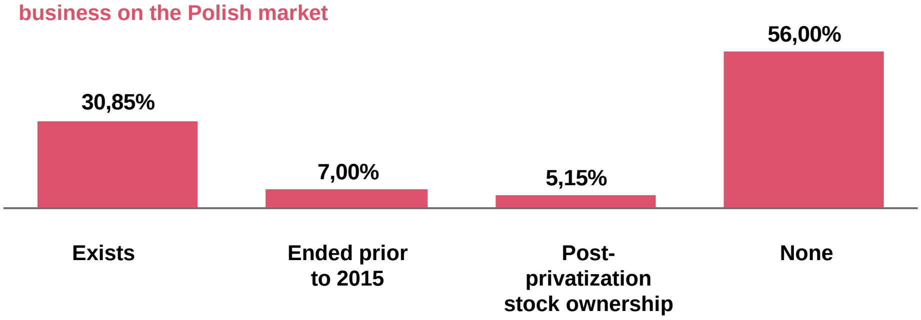
France	35.8%
Sweden	28.6%
United Kingdom	27.4%
Romania	47.6%
EU Average	21.7%
Austria	25.4%
Finland	19.5%
The Netherlands	17.9%
Switzerland	13.8%
Poland	**16.2%**
Germany	13.2%
Greece	5.2%
Italy	9.4%

Source: Annual Economic Survey of Employee Ownership in Europe 2007-2016. On the basis of the 2,636 largest businesses in the EU in 2016.

Employee Stock Ownership Programs in Polish companies[7]

The research conducted by PwC Poland on a representative sample of the 140 largest public companies in Poland (WIG 20, WIG 40 and WIG 80) indicates that nearly 31% of them offer employee stock ownership programs. Several of the surveyed entities decided to end it prior to 2015 and have not continued the program. In our research we also incorporated separately the entities that were privatized in the 1990s.

Figure 12. Structure of employee stock ownership programs in companies doing business on the Polish market



Nearly 31% of the 140 public companies in Poland (WIG 20, WIG 40, WIG 80) have employee stock ownership programs.

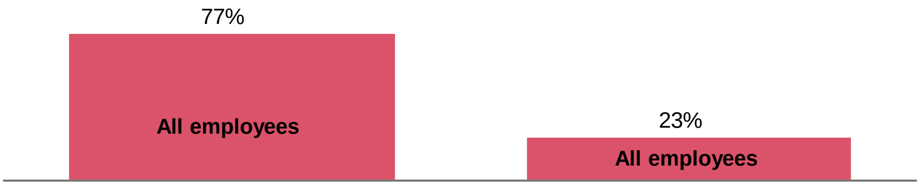
[7] Source: proprietary research done by PwC Poland on a selected sample of 140 public companies (WIG 20, WIG 40, WIG 80).

[8] When conducting the research we also took into consideration companies that were included in the privatization program in the 1990s.

[9] This refers to the following: Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC as well as the Regulation of the Finance Minister of 2 December 2011 on the rules for a brokerage house to establish the policy of variable compensation components for persons holding managerial positions (hereinafter "CRD IV restrictions").

Companies with an employee stock ownership program for the most part are focused on a selected group covering especially senior management (managers, management board members) or on a selected group of employees having regard for a specific property. It is more rarely the case that the selected option is for the employee stock ownership program to apply to all employees. This trend is consistent with European trends.

Figure 13. Employee Stock Ownership Programs in Poland with an eye to the target group

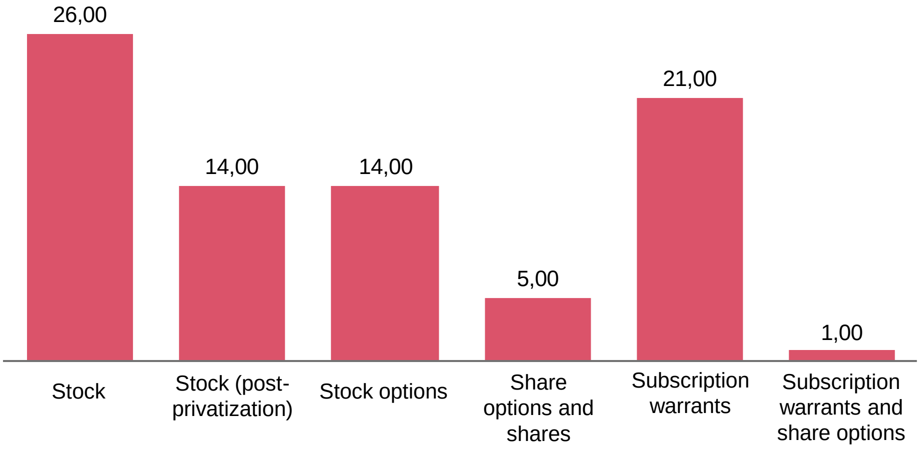


Employee stock ownership programs may take various forms (e.g. stock options, stock acquisition at a preferential price, performance-based stock program). Their detailed assumptions reveal certain differences that are characteristic of each program; however, the basic rules are held in common: an eligible person obtains the right to acquire a company’s stock, while after the elapse of a certain restriction period (usually several years in length) he or she obtains the right to dispose of the stock – he or she can sell that stock or exercise stockholder rights (e.g. the right to a dividend).

The figure below illustrates the number of companies in which employee stock ownership programs function and their split into different types of programs

The research done by PwC Poland shows that among the 69 companies in the WIG20, WIG40 and WIG80 portfolio, the most programs are stock plans (40 companies have them). Programs using subscription warrants are the second most popular (they are used in 21 companies). Stock option programs are in third place (14 companies have implemented them). Interestingly enough, there are companies in which two programs function concurrently: an employee stock ownership program and a stock option program (5 companies) and a stock option program and a subscription warrant program (1 company).

Figure 14. Types of employee stock ownership programs by number of companies

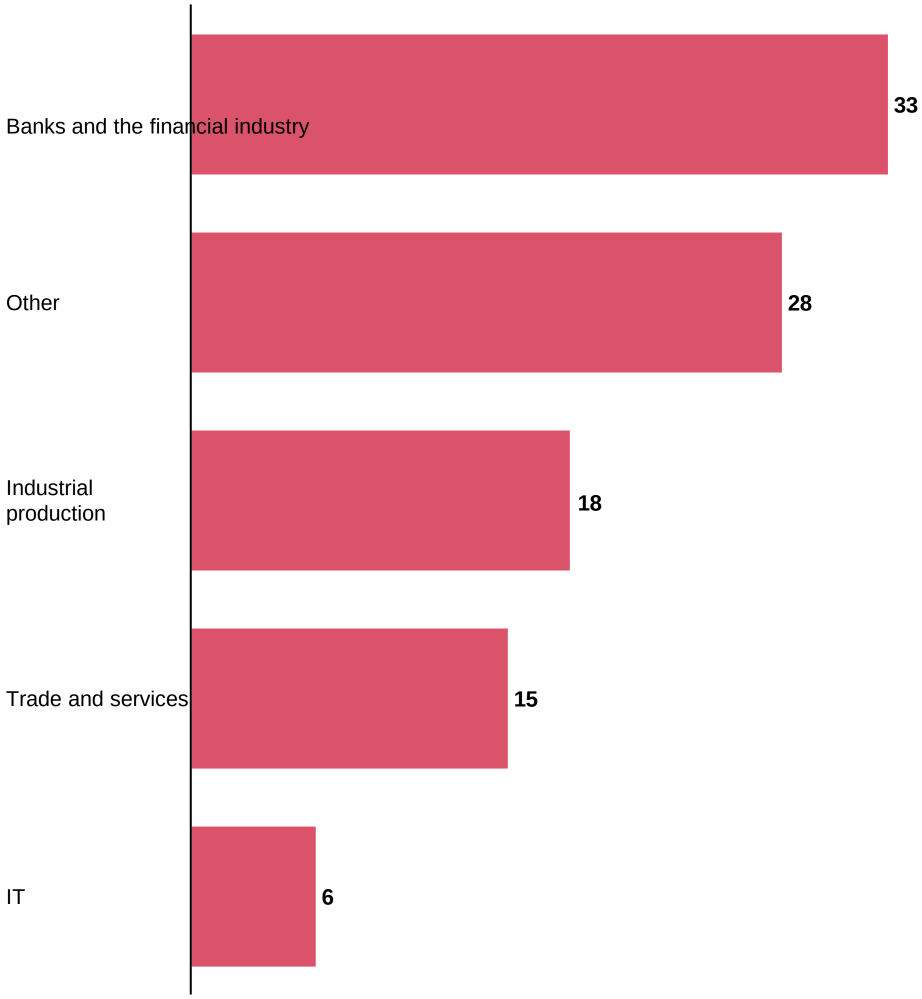


When analyzing the industry in which companies having an employee stock ownership program operate as a criterion, one can see that banking sector entities exhibit a significant prevalence.

The compensation paid to persons holding the status of Material Risk Takers (MRT) who affect a bank’s risk profile, is subject to the restrictions stemming from the provisions of EU directives and local regulations and the acts of domestic law to implement them[9]. According to the assumptions for the acts introducing the CRD IV restrictions, the compensation for MRT should be divided into fixed and variable portions to be paid in stock or financial instruments after the elapse of the vesting period (restriction period).

Nearly 16% of the entities that implemented employee stock ownership programs constitute entities from the financial industry. This fact is partially rooted in the CRD IV EU restrictions.

Figure 15. Employee stock ownership programs in Poland by various industries



Conclusions

- Employee stock ownership programs were introduced later in Poland than in most European countries.
- There are no official data pertaining to the extent to which these programs are present in Poland; nor are there any special legal regulations that would refer specifically to employee stock ownership programs. Employee stock ownership programs in Poland are therefore functioning according to the general rules stemming from commercial and financial law (including tax law).
- The research conducted by PwC Poland on a group of 140 public companies in Poland (WIG 20, WIG 40 and WIG 80) indicates that nearly 31% of them offer employee stock ownership programs. Employee stock ownership is therefore not an institution that is widely present on the Polish market. Programs are implemented especially by companies operating in the banking and finance sector.
- Poland is under the European mean in terms of popularity measured by the equity stake held by employees in their employer companies and the position of the employees designated to participate in an employee stock ownership program.
- The legal, fiscal and socio-economic obstacles described in the next chapter play an extensive role in impeding the development of employee stock ownership programs in Poland.

5 Obstacles to developing employee stock ownership programs in Poland

Legal obstacles

In contrast to the re-privatization rules described in chapter 4 of this report, in Poland there are no separate statutes dedicated to offering the stock of private employers (companies) to their employees. In principle, employees may therefore acquire stock in their employers according to the general rules. In practice, **on one hand, there are no major limitations to the operation of employee stock ownership programs, while on the other hand, there are no additional incentives for employers to implement such programs.**

Above all, employee stock ownership programs are subject to the provisions of the Commercial Company Code and the Act on Public Offerings governing, among other things, the public offering of stock, and thus also an offering directed to at least 150 persons[11].

Rules stemming from the Commercial Company Code

On the basis of the Commercial Company Code, with respect to joint stock companies, the Polish lawmaker contemplated certain facilities for the idea of employee stock ownership programs, and the following may be included among them:

- limiting the ban against a joint stock company acquiring treasury stock if the stock is to be acquired for the purpose of transfer to its employees, and also
- limiting some standards referring to the ban against a company financing the acquisition of, and subscription for, treasury stock if the financing is being accomplished for the purpose of making it easier for employees to acquire and subscribe for this stock,
- possibility of conditionally raising share capital and issuing securities (warrants) to facilitate the implementation of employee stock ownership programs.

Even though one may in reality speak of the existence of preferential solutions in support of employee stock ownership programs based on the Commercial Company Code, the practical application of these solutions may sometimes be problematic. As an example one may invoke the **lack of a cohesive interpretation on whether an employer's financing of a stock issue undertaken to make it easier for employees to acquire stock** (which is free of further reaching restrictions related to financing) **may involve full financing thereof (e.g. extending a loan for 100% of the value of the stock subscribed for by an employee or awarding the stock free of charge).** According to some, such an action goes beyond the notion of facilitation and should therefore be accomplished while observing all the rigorous rules pertaining to this ban, and not on the basis of an exception from the general rule on financing the acquisition of, and subscription for, stock. In practice, the latter interpretation makes the ability to apply the foregoing facility in financing the acquisition of, and subscription for, stock, useless.

Capital market regulations

Another obstacle an employer may encounter on its path if it wishes to roll out an employee stock ownership program involves the regulations of the Act on Public Offerings. Namely, according to the Act on Public Offerings, providing information related to stock and the conditions for buying stock to at least 150 persons, in any form and in any manner, provided that such information is sufficient to make an investment decision constitutes what is referred to as an initial public offering. To run an initial public offering it is in principle required to draw up a prospectus, have it approved by the Polish Financial Supervision Authority, publish it and engage the mandatory intermediation of an investment firm, inter alia for stock orders to buy the issued stock. **In practice, conducting an initial public offering constitutes a fairly complicated and costly process.**

[11] Act of 29 July 2005 on Public Offerings and the Conditions for Introducing Financial Instruments on an Organized Trading System and on Public Companies (Journal of Laws of 2016, item 1639 as amended).

Guided by the rules established by the EU lawmaker, the Polish lawmaker, however, simplified the holding of a public offering directed by the issuer or a subsidiary thereof to current or former managers or its employees. In the event of a public offering directed to the foregoing persons, there is no requirement to draft a prospectus or have it approved by the Polish Financial Supervision Authority and engage an investment firm to act as a middleman. Insofar as it is not possible to take advantage of other exceptions contemplated by the Act on Public Offerings, an employer will be obliged solely to draw up what is known as an information memorandum[11].

The contents of the memorandum are regulated in detail by legal regulations and contain, among others, information concerning the issuer's legal and economic standing. After being drafted, the memorandum should be presented to the employees so that they can familiarize themselves with its contents prior to making their investment decision. Even though the memorandum was supposed to constitute a simplified prospectus, its preparation most frequently requires the assistance of external legal advisors. This means that **implementing employee stock ownership programs in large companies will necessitate close cooperation with third party entities, thereby making the overall process more complicated and potentially costly.**

Having the employer's mother company domiciled outside the EEA[12] offer stock to Polish employees, for instance, also leads to practical difficulties. In practice, in such a case, it is not possible to take advantage of the exception permitting the preparation of a memorandum, whereby a company from outside the EEA, in order to be able to offer stock to Polish employees numbering at least 150, will be obligated to draft a prospectus and have it approved in Poland or in some other EEA member state. In practice, such employers avail themselves of the passport option for a prospectus approved in another EEA member state. There is a view that in such an instance the employer will have to utilize the obligatory intermediation of an investment firm, which is, for obvious reasons, an additional and unwarranted requirement; moreover, it appears to be totally unique in comparison with other EU jurisdictions. The obligation concerning an investment firm's intermediation stems from legislative imperfection in the Act on Trading in Financial Instruments and the Public Offering Act[13]. **The participation of an investment firm may generate incremental costs and thereby constitute an excessive burden.** In practice, on account of the foregoing interpretation, some issuers from outside the EU abandon the idea of offering their stock in Poland, thereby bypassing their Polish employees.

Personal data protection

The regulations in the Personal Data Protection Act also place certain limitations on building employee stock ownership programs[14]. Some programs are structured in such a way that the stock is not offered to the employees directly by their employer, but rather through an entity related by equity, e.g. the mother company listed in some other jurisdiction (issuer). In that event, the actions of the Polish employer involve, among others, defining the circle of eligible employees to receive stock, checking the satisfaction of the criteria for stock to be awarded by the designated employees (e.g. length of service, holding a specific position, achievement of a given result), acting as an intermediary in the conveyance of documents, sometimes also the remittance of payment for the stock to be transferred to the employees. These actions necessitate the processing of the employees' personal data and they also involve the provision of these data to the issuer or some other entity acting as a middleman in the employer-issuer relationship. If the issuer or the middleman is domiciled outside the EEA, it is not infrequent that employees' personal data are transferred to what is known as a third state.

These actions call for determining the legal basis for the employer to engage in such processing and provide the employees' personal data, also including the transfer of personal data to a third state. Employee consent is frequently the legal basis used under the provisions of the Personal Data Protection Act. However, considering the case law of the Polish courts, the ability to obtain such consent from an employee correctly is highly limited. Consent should be given voluntarily.

[11] For instance, in accordance with present regulations, a public offering under which the issuer's proceeds obtained from the said offering in the territory of the European Union are under EUR 100 thousand does not require the drafting of a prospectus or information memorandum.

[12] A prospectus approved once in a single EEA member state by the competent regulatory authority does not have to be approved in some other member state. Such a prospectus is in that case merely subject to a simplified passporting procedure.

[13] See article 37 of the Act on Public Offerings and article 19 section 1 item 2 of the Act on Trading in Financial Instruments.

[14] Personal Data Protection Act of 29 August 1997 (Journal of Laws of 2016, item 922 as amended).

In an employer-employee relationship, as the employee is economically dependent on the employer, it is rarely the case that one may speak of an employee's action being purely voluntary. This leads to an event that does not happen every day, namely, an employee, in the light of the foregoing case law, cannot express consent to this "gift" of stock. Accordingly, employers are compelled to structure employee stock ownership programs so as to limit the employer's transfer of the employees' personal data to the issuer. The method used in such a case might be a tool for direct communication between employees and the issuer, or the middleman (e.g. a web platform) to eliminate the employer's additional intermediation.

As of 25 May 2018 the currently binding regulations on personal data protection will be superseded by the provisions of the EU regulation on data protection (that are directly in force in all EU member states)[15]. Pursuant to these regulations, even greater emphasis will be placed on the expression of consent to be voluntary for the processing of personal data and on the invalidity of consent expressed in circumstances in which the party giving consent is dependent on the party collecting the consent (e.g. in cases of economic dependence). The incorrect collection of consent leading to its invalidity will involve the risk of a business incurring a financial penalty of up to EUR 20 million or 4% of its annual sales.

Summary

To recapitulate, one may contend that the **Polish regulations do have** some legal facilities making it possible for private employers (companies) **to implement employee stock ownership programs**, although some of these facilities come from community legislation. On the other hand, one should take note that on account of imperfect legislation, the practical application of these facilities may constitute a challenge of sorts. In its desire to facilitate the construction of employee stock ownership programs, the lawmaker, on top of enacting new regulations, should also be tempted to remedy the pre-existing legislative solutions.

Fiscal obstacles

Presently, the provisions of the Personal Income Tax Act do not contain separate regulations for the taxation of income generated in connection with participation in employee stock ownership programs (save for one exception referred to below).

Absence of tailor-made regulations applicable to employee stock ownership programs in the Personal Income Tax Act

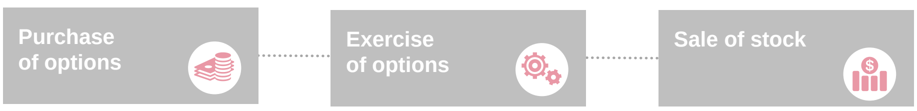
By analyzing the generally applicable regulations, one may arrive at the conclusion that persons who receive stock free of charge (or acquire stock at a preferential price) receive **income in principle** at the **time when they receive the stock**.

Nevertheless, by reference to how typical employee stock ownership programs are construed, one may in principle distinguish three possible moments of taxation:

- first – at the time of awarding the options/Restricted Stock Units/rights to acquire stock at a preferential price,
- second – at the time of acquisition, subscription of stock,
- third – at the time of its sale.

However, it is worthwhile to alert attention to this action possibly leading to multiple taxation of the very same income, and in extreme instances – to taxation of income a taxpayer ultimately does not receive (e.g. in a circumstance in which it remits tax on the income at the time of acquisition but as a result of a change in the stock price it records a loss at the end of the day).

Figure 16. Potential moments for the emergence of a tax obligation (using the example of a stock option program)



[15] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

Tax preferences in force until the end of 2017 in Personal Income Tax

The provisions of the Personal Income Tax Act in force until the end of 2017 allow for **deferring the moment of taxation** by virtue of the preferential **acquisition of (subscription for) stock** until the time of **its sale** in the event that:

- the stock is conferred on the basis of a **resolution adopted by the shareholder meeting** of the company that is its issuer,
- the stock coming from a **new issue** or **bought back from the market** belongs to companies whose registered office is located in the territory of **EU member states** or the **EEA**.

Upon the satisfaction of the foregoing conditions, **income emerges only once** – at the time of the **sale of the stock**. This income is taxed using the 19% capital gains tax.

Analysis of the foregoing provision signifies that taxpayers who receive stock in companies domiciled in the EU/EEA are in a more favorable position than taxpayers who receive stock in companies from outside this area (e.g. from the US or Switzerland).

As a result, participants in employee stock ownership programs from outside the EU/EEA are unclear on what income should be taxed. In extreme cases the tax burdens of a participant in an employee stock ownership program in a company from the EU/EEA and in a company from outside this area may total up to nearly twenty percent.

In addition, **special provisions on the exemption from paying social security and health insurance contributions (to the ZUS social security administration) are lacking** in a situation in which the moment of taxation is deferred on account of preferential acquisition of (subscription for) stock until the moment of its sale.

Table 4. Variation in the possible tax burdens faced by a participant in an employee stock ownership program in a French company and an American company

Country of the stock received	France	USA
Return on sales	100	100
Tax on the purchase of stock*	0	10
Sales tax	19	19
Net Profit generated	81	71

* Under the assumption that after the acquisition of stock income equal to 50 is recognized as capital cash income (e.g. in a stock option program).

Tax preferences in force as of 2018 in Personal Income Tax

The amended Personal Income Tax Act introduces a favorable amendment for taxpayers as of 1 January 2018 in the form of extending the possibility of deferring the taxation of income generated by virtue of the acquisition of or subscription for stock until the time it is sold to include **stock in companies from outside the EU / EEA** (e.g. the **US, Switzerland**).

Taxpayers acquiring stock in companies whose **registered office or management board** is located in the territory of countries with which **Poland has concluded a double taxation agreement** will be able to avail themselves of this preference. Preferential treatment will not apply to limited liability companies that confer stock to eligible parties.

It is also worth pointing out that in the course of legislative work the lawmaker, when amending the provisions on this subject, unintentionally excluded the application of preferential treatment to taxpayers who receive stock in Polish companies. Comprehensive analysis of the amended provisions leads to the conclusion that this action was unintended and that the exclusion of stock in domestic companies transpired as a result of an oversight. Therefore, the lawmaker should undertake efforts to eliminate the foregoing error as soon as possible.

One new element in the Personal Income Tax Act is the introduction of a **definition of the term incentive program**. It has been stated with greater precision that the **income** generated by virtue of acquisition or subscription of stock does not appear until the **time when this stock is transferred for consideration**.

However, the lawmaker has continued to refrain from speaking out in a straight forward manner on the classification of the income and the rules for establishing taxable expenses when it comes to employee stock ownership programs that do not satisfy the conditions for utilizing the foregoing preferences.

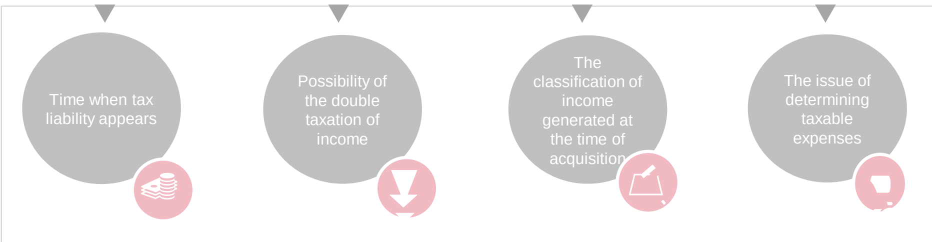
Other obstacles couched in Personal Income Tax

On top of the provision mentioned above in the Personal Income Tax Act offering the possibility of deferring the taxation of income generated as a result of the acquisition of / subscription for stock until the time of its sale, the lawmaker also failed to contemplate the inclusion of any other specific tax incentives in the tax law.

The **non-uniform approach to the taxation of income from employee stock ownership programs** expressed by the individual tax rulings previously issued on behalf of the Ministry of Finance by authorized Directors of Tax Revenue Chambers (presently known as directors of the National Tax Revenue Information Service) and in the case law of the administrative courts (WSA - Regional Administrative Court and NSA - Supreme Administrative Court) also acts as an obstacle to the development of these types of programs.

The tax discrepancies in this area pertain not only to determining at what stage the tax duty appears but also to when double taxation occurs, and also how one can properly determine the taxable expenses at the time of transferring the stock.

Figure 17. Issues forming the subject matter of discrepancy in interpretation and jurisprudence



Another tax obstacle taxpayers encounter in practice is the **refusal to issue individual tax rulings** on account of the reasonable supposition that the General Anti-Avoidance Rule (abbreviated GAAR) may be applicable. This rule has been in force in the tax law since 15 July 2016 and is applicable if a tax benefit or the sum total of benefits an entity obtains by virtue of a single transaction or a set of transactions does not exceed PLN 100,000 in a settlement period. From that time, the number of individual rulings, also rulings pertaining to incentive programs based on stock has fallen off dramatically.

In practice, on account of the dearth of clear provisions on the taxation of employee stock ownership programs, the payers and taxpayers of Personal Income Tax frequently submit applications for such rulings. A ruling somehow constitutes confirmation that the tax authority concurs or does not concur with the stance put forward by the applicant. In this manner, the failure to issue a ruling leaves a taxpayer or a payer at the starting point.

In practice, the refusals to issue a ruling pertain, among other things, to employee stock ownership programs organized by international companies that offer the acquisition of, or subscription for, stock to selected employees of their daughter companies in various countries across the world (in Poland, too). Therefore, it would be difficult to concur with the reasoning presented by the directors of the National Tax Revenue Information Service contending that the question posed in the application for an individual ruling concerning the fiscal repercussions of a taxpayer's participation, or for confirmation of a payer's obligations stemming from an international employee stock ownership program, aims to evade taxation.

Absence of tailor-made regulations applicable to employee stock ownership programs in the Corporate Income Tax Act

Nor do the provisions of the Corporate Income Tax Act contain any separate regulations concerning employee stock ownership programs, in particular, pertaining to the **taxation of employers' expenditures to implement employee stock ownership programs.**.

In practice, this translates into a host of problems involving interpretation in reference to the various schematics, in particular with reference to the following:

- **operations on treasury stock,**
- **costs associated with the issuance, buyback and retirement thereof.**

Additionally, the provisions of the Corporate Income Tax Act do not contain regulations that could incentivize employers to embrace employee stock ownership programs more extensively.

Socio-economic obstacles from the viewpoint of employees

Social and economic obstacles somehow come in pairs as the resistance to participation in employee stock ownership programs ensues from the still **insufficient affluence of the public-at-large**, which designates its salary rather to satisfy its current needs than to invest in future earnings. Programs of this type do not enjoy extensive popularity when taking into account the simultaneous **lack of legal and tax incentives** for implementing a system of compensation that would entail fixed and variable components. In other words, the public's low level of affluence translates into a low capacity to invest and problems with finding initial funding to participate in a program.

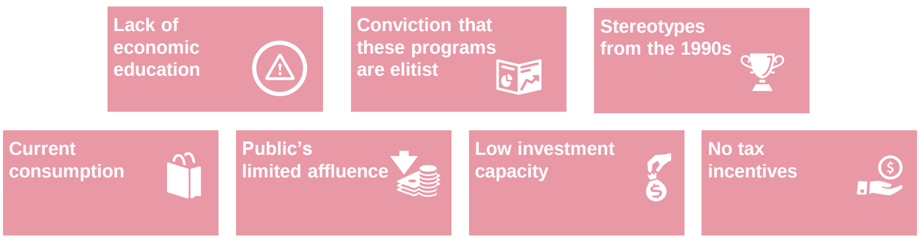
The stereotypes associated with the unsuccessful privatization efforts in the 1990s in which after a period of upward movement their stock constantly depreciated and ultimately the employees failed to generate a profit continue to linger. Moreover, when planning their savings, Poles tend to choose safe forms of investment, e.g. treasury bonds instead of their employer's stock.

Another social obstacle is the absence of **sufficient knowledge concerning the mechanisms governing employee stock ownership programs**. The public's low level of economic awareness and its lack of trust in employers constitute repercussions of the previous socio-economic system.

Employees are not convinced of the genuine governance opportunities which participation in the employer's capital theoretically gives them. At the same time, **no educational and informational campaigns have been organized by the governing echelons**. Therefore, employee stock ownership as it is broadly conceived is associated with solutions transplanted from western countries with respect to which there is no certainty concerning the consequences it will produce on the Polish market. When rolling out employee stock ownership programs for their employees, employers do not devote due attention to informational campaigns to explicate the rules, benefits and outcomes ensuing from participating in them. At the same time, the conviction is still widespread that employee stock ownership programs are elitist as they target solely the directors and officers and upper level management of companies.

Since the essence of these employee stock ownership programs is to generate a profit after the elapse of the restricted period (ordinarily several years in length), employees also feel concerned that their mobility on the labor market will be curtailed. **The risk of forfeiting the profit anticipated in connection with taking part in an employee stock ownership program** that comes from casting their lot with their employer **constitutes excessive risk for many employees and thereby discourages them from participating in such a program**. This obstacle largely hinges on how the program is construed.

Figure 18. Socio-economic obstacles impeding the development of employee stock ownership programs in Poland – from an employee standpoint



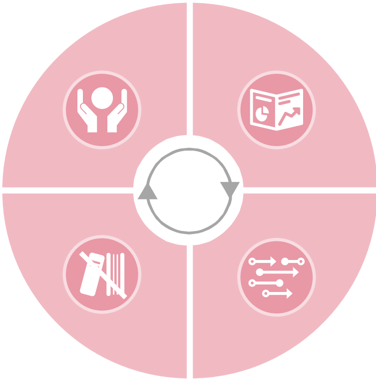
Obstacles on the part of the employer

Socio-economic obstacles also pertain to employers. The main one is the **necessity of incurring financial and organizational effort to initiate an employee stock ownership program in a company** such as the costs of legal advice, organizing training for employees, publishing informational materials and the obligation of reporting to the Polish Financial Supervision Authority, etc.

As this report has underscored multiple times, faced with the dearth of legal and fiscal incentives, the decision to implement an employee stock ownership program in a company is even more difficult to make.

Employers, especially the owners of small family businesses that are prospering very well and are nevertheless generating considerable earnings (referred to as PCSs) also frequently have concerns regarding the dilution of control over the company in the event of sharing ownership with employees. In turn, larger employers face fears of extending the bottom-up influence wielded by employee organizations (such as trade unions and workers councils). There is also in this area a lack of informational and educational campaigns at the central level that would explain in an easy to fathom manner the mechanisms, effects and benefits ensuing from stock ownership programs.

Employers continue to hold the belief that it is more beneficial to raise employee salaries than to reward employees by giving them the opportunity to invest in the company.



Conclusions

- **The absence of a friendly and approachable legal and regulatory environment and of a framework in the form of tax relief and exemptions or fiscal preferences** is the chief contributor to the relatively limited popularity of employee stock ownership programs in Poland.
- Until recently, one negative factor was the **absence of clear regulations concerning the tax treatment of stock in companies from outside the EU/EEA**, which contributed not only to the uncertainty involving the application of law but also to the real value of the earnings generated by taxpayers participating in these programs. That means it was possible to speak of tax discrimination against persons participating in the programs of companies from outside the EU/EEA. **As of 2018 the lawmaker has decided to apply this tax preference also to companies from outside the EU/EEA, which should be assessed positively.**
- The **low level of employee culture, the ongoing insufficient investment capacity and the public's insufficient level of economic knowledge**, as well as the mentality of employees and employers lacking mutual confidence may also be counted among the obstacles. Older generation employees additionally remember the generally unsuccessful privatization of the 1990s, which causes negative connotations concerning programs involving investments in an employer's stock.
- A campaign designed at the state level to disseminate the rules, mechanisms and benefits ensuing from employee stock ownership would undoubtedly produce the greatest effects.

6 What actions may be undertaken to extend the uptake of employee stock ownership programs in Poland?

The idea of including support for employee stock ownership programs in the strategic vision for Poland's development appears to be promising. To enlarge the group of investors in the public-at-large providing themselves with a capital annuity and thinking about their future with foresight, it would be worthwhile to give consideration to actions that could help achieve that vision.

Undoubtedly, to popularize the idea of employee stock ownership programs, actions should be undertaken to enhance the awareness of employers and employees. The proliferation and promulgation of successful examples of such an action undertaken by other companies appears to be an important element, as it may contribute to raising public awareness on this subject.

Below we focus on actions the state, employers and employees may take in this area.

Actions by the state

The issue of **enacting legal regulations dedicated strictly to employee stock ownership programs** comes to the forefront. Such regulations should on one hand contemplate a system of tax relief for employers who choose employee stock ownership while on the other hand they should unambiguously specify the moment when taxes fall due and the form of taxation to which income generated by this source for an employee-stockholder is subject. Such regulations should also allow for the avoidance of doubt on whether stock sold after the elapse of a specified restricted period is free of taxation or else they should govern the issue of how to treat the costs of running a program as tax-deductible expenses.

It is also worth noting that in countries with developed employee stock ownership programs, there are also various kinds of regulations that enable these programs to operate in companies of various sizes. That is why there are separate laws for startups, small and medium enterprises and large companies. To promote an employee stock ownership program effectively, it is therefore not necessary to implement universal or homogeneous regulations applicable to all entities.

Possibly **providing support to employees to secure funding to buy stock** is another thing to be considered. For example, under the American model, employees can elect not to spend their own money to buy stock and despite that they become stock owners. That happens because there are dedicated loans for that purpose.

Conducting an informational and educational campaign in the public-at-large regarding the very idea of employee stock ownership programs is also an essential issue. It should incorporate information concerning the benefits flowing from this form of investment and it should present the long-term effects of the operation of employee stock ownership in other countries.

STATE

Legal and fiscal incentives

Customizing the program to a given entity

> *"Employee stock ownership expands the catalogue of forms of ownership in the economy and is clearly part of a market economy. We should start talking about it, expand the awareness of the public. Tax incentives are important, but reaching social awareness is crucial. In particular, it is worthwhile to look for an effective method of promulgating the idea of employee stock ownership among employers and employees. A program to popularize employee stock ownership is within the responsible development strategy the government is pursuing. It should be remembered that examples work the most effectively on social awareness and they should be supported and advanced."*
>
> **Mariusz Haładyj, Undersecretary of State in the Ministry of Development**

Actions by employers

Activity to **make employees aware of the advantages and the risks stemming from employee stock ownership programs through the organization of training and informational campaigns** seems to be the most important on the side of the employers. Advancing the benefits they can obtain from such a program is crucial. However, one cannot forget that participation in an employee stock ownership program also entails certain limitations. Participation in an employee stock ownership program involves the risk of the company's stock value declining. To attenuate this risk, it is recommended to distribute current information concerning the company's financial standing to stockholders.

It is very important for the employer to provide accurate information to employees about the company's status and facilitate to a certain extent their influence over corporate management, as this builds an awareness of the processes transpiring in the company. An aware employee ownership structure is the most desirable, i.e. one that does not rely solely on transferring stock to employees, but also on education, explanation how the market operates, what investing generally involves and commitment to the processes in the company. As a result, an employee's relationship to his or her own company and the company's performance may change as this is in part the employee's own company.

For instance:

In France, all companies that have sold even a portion of their stock to employees deliver training and open special internet pages on this subject matter.

After making the decision to roll our an employee stock ownership program, one may additionally consider appointing a team with the participation of employee representatives whose task it would be to devise the model to be used for such a program in the company. It also appears to be expedient to engage the representatives of the trade unions active in a company in the process of communication.

Moreover, it would be worthwhile to give consideration to the introduction of a Code of Best Practices, a type of guide for employers interested in employee stock ownership programs. Such a document could facilitate the correct implementation of programs, by referencing such issues as the ones below:

- The obligation of preparing an analysis of the company's standing prior to program implementation
  (for example in the form of a business plan) and a company valuation (to establish the value of its stock)
- Practical training for employees, for instance, on skills related to reading corporate performance, analyzing a company's standing based on data presented in financial statements
- Monitoring the program with an eye to fulfilling its intended objectives and the possible need for modification

The Code of Best Practices as a non-binding document devoid of legal power would constitute a certain type of agreement between employees and the employer in terms of how a given employee stock ownership program should function in their specific organization.

EMPLOYERS

Information

Transparency

“

"For employee stock ownership to be successful, it is above all essential to build employee awareness. In Auchan, we deliver training to our employees on business economics. That enables them to grasp the program better and make conscious decisions about their participation in it. Our objective is to build the economic awareness of our employees and emphasize the benefits the process of long-time savings can produce. The structure of Auchan's program is of no small consequence as it is founded on transparency, clear rules and open communication. The representatives of stockholders play an important role in Auchan (persons selected by employees during elections); they receive additional training and in their own locations (stores) they conduct animation and reach employees. This leads to the outcome that 90-95% of a company's employees buy stock every year. The program in operation in Poland since 2000 presently spans more than 21,000 employee stockholders, while across the world Auchan Holding has nearly 300,000 employee stockholders."

Dorota Patejko, Director of Communication and CSR, Auchan Polska Sp. z o.o.

Actions to benefit employees

The function which they may fulfill in the process of disseminating the idea of employee stock ownership programs is inextricably linked to the actions undertaken by the state and employers.

The **issue of educating the public-at-large** should be emphasized once again. It will most assuredly be easier to persuade employees to acquire their employer's stock if they have knowledge on the subject of long-term savings. It is also desirable to make people aware of the benefits that ensue from accumulating capital in connection with social changes, the development of technology and changes on the labor market (progressing automation may spark unemployment in the future).

It should be comprehensible to employees that having capital may augment an individual's profit while simultaneously gaining an influence over business development and decision-making processes. This may also contribute to higher employee motivation and retention for a longer period by a single employer.

The Code of Best Practices mentioned earlier may also contain the pertinent clauses regarding clear and regular communication between an employer and its employees. This information should state the program's rules and the accompanying risks; it should also illustrate the possible actions at the program's various stages as one an employee can undertake at a given stage. Securing the commitment and support of the trade unions in this process is also essential.

EMPLOYEES

Education

Motivation

"The purpose of the employee stock ownership program run by BZ WBK is to create a link between each individual's interest with the organization's long-term objectives. Clear and transparent communication with employees plays an extraordinarily important role. Our program accomplishes our employee retention and strategic objectives. These values may coincide with one another and the employee stock ownership program is an excellent tool to achieve this goal."

"We have two major goals related to employee stock - one is to retain the bank's key employees (the retention component) by having the program address key employees – who are also known as talents, while the other exceptionally important goal from a business point of view is to link each individual's interest with the organization's long-term interests (achievement of strategic goals)."

"It is vital to communicate the targets to be achieved to the employees. The goals must be known to, and understood by, employees. Employees must have a feeling of having an influence over the attainment of these goals."

"The aspect of elevating the role of employees is also of no small importance; the employees participating in the program feel that they have been distinguished by their employer."

Sylwia Gołębiowska
Director of the Compensation Department in Bank Zachodni WBK

7 Summary

Analysis of the rules applicable to, and the availability of, employee stock ownership programs functioning in Poland shows that this is not a popular form of employee motivation. Even public companies more frequently elect to offer traditional bonus schemes than to introduce a system predicated on long-term capital accumulation and giving shareholders the ability to exert real influence over the company. The split of compensation into fixed and variable components based on securities is therefore not a generally accepted practice that operates in Poland. The relatively largest percentage of stock ownership programs is present in the financial industry to which regulatory concerns related to the European legal requirements have an indubitable influence.

The reasons for the non-proliferation of employee stock ownership programs in Poland should be ascribed in part to historical factors; for unsuccessful privatization efforts in the 1990s are still vivid in the memory of the public-at-large. The public's insufficient level of affluence, which continues to be prevalent, and the ensuing limited capacity to invest are of no small consequence. Nor should one forget about the lack of education and information pertaining to fundamental mechanisms, rules and benefits that may be involved with participating in (or organizing) an employee stock ownership program.

On the other hand, there are no legal incentives for employers or employees that could directly or indirectly stimulate the development of stock ownership in Poland. In comparison with this system's level of regulatory development in other countries in Europe and the world, Poland's regulations come across as being very modest. The possibility of introducing a program according to the general rules without offering any preferences or even regulations, giving consideration to the specific nature of programs of this type, will not contribute to the development of employee stock ownership programs in Poland. The following are positive factors:

- the development of fiscal preferences contemplated to take force as of 1 January 2018 and
- the bill of the employee stock ownership act wholly devoted to this institution.

To propagate the stock ownership idea, measures should be undertaken on several fronts and they should be addressed to various target groups. The first thing to do would be to lay a foundation, not just to facilitate proliferation but also presentation of the mechanics and benefits that flow from employee stock ownership programs to larger social groups. A centrally-run, large-scale education and information campaign could serve as a means to attain this objective. Embedding an awareness in the public-at-large that stock ownership programs constitute part of the state's socio-economic policy would serve to proliferate and endorse the idea of stock ownership in the perception of employees and employers.

It is most assuredly necessary to create a legal framework for employee stock ownership programs and devise preferential solutions, which could perhaps draw on inspiration from the regulations in force in other countries. One should treat legal and extra-legal measures as being of equivalent importance, for regulatory activity will not produce the expected outcome if it is directed to a public with a low level of economic awareness and limited experience in the context of innovative forms of compensation. The drafting of a Code of Best Practices forming a non-binding document in the field of soft law could prove to be a good solution. It would illustrate the rules of interpretation regarding stock ownership regulations when it comes to specific solutions.

Methodology

This report presents the findings of research conducted among the largest companies offering employee stock ownership programs in Poland and across the world.

For the purposes of this research we assumed that employee stock ownership programs constitute a form of employee motivation in which ultimately employees receive stock in material form (in this research we took into consideration direct stock ownership programs, stock option programs and subscription warrant programs). In turn, we did not take into account programs in which eligible persons receive a cash disbursement based on stock value / stock value appreciation (e.g. phantom stock programs, i.e. stock appreciation rights [SAR]).

We assumed at the same time that employee stock ownership programs may target all employees or selected groups of employees. Having regard for the specific legal and economic determinants in Poland, in our research we also took into consideration State Treasury companies that transferred a portion of their stock to their employees pursuant to re-privatization laws, which stock is or may still be in their possession.

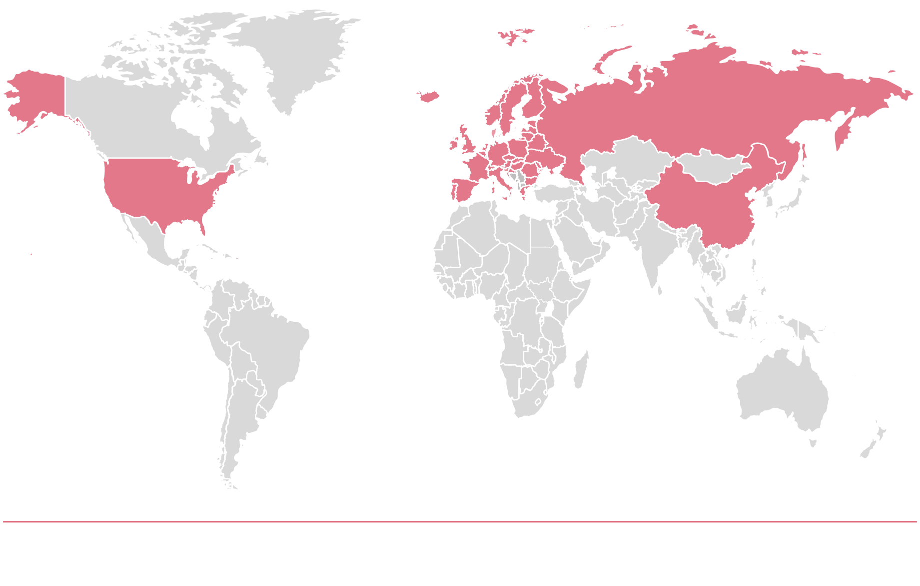
In this report we included the findings of PwC Poland's survey administered to PwC's international companies from 30 countries that deal with employee stock ownership programs in their day-to-day work.

This study also incorporates the findings of research set forth in the Annual Economic Survey of Employee Share Ownership in European Countries 2016 administered by the European Federation of Employee Share Ownership. This study was conducted on a sample of Europe's 2,636 largest businesses from 31 countries for 2016.

In addition, this report contains the results of the survey conducted by PwC in the United States entitled "2015 Global Equity Incentives Survey" among 245 international companies with their headquarters in 12 countries around the world and that have employees from more than 75 countries.

In the research pertaining to stock ownership structure in Poland we relied on the data gleaned from PwC Poland's proprietary research conducted among 140 public companies (the large cap companies belonging to WIG-20, the mid cap companies in WIG-40 and the small cap companies in WIG-80).

This report incorporates research findings from a total of 34 countries around the world



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