

7b. Fact Sheet – German ESOP

Premises: (1) Problem of business succession in SMEs urgent; (2) EFP = economic policy; key question: “who will own European SMEs”; (3) ESOPs successfully implemented in EU (GB, IRL); (4) in US = best practice (2009: 11.500 ESOPs, 10 mln. employee shareholders)

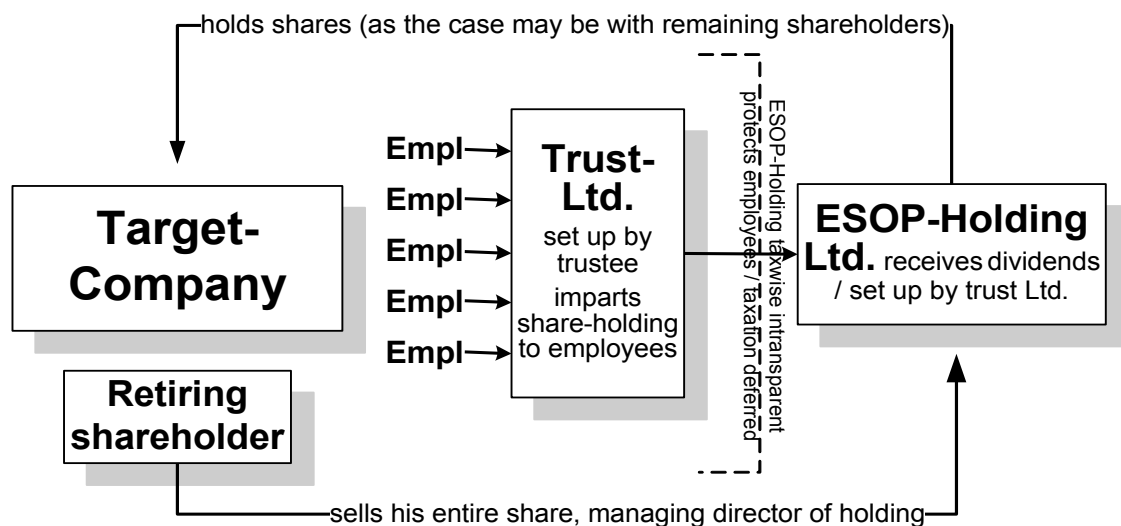
Aims, Focus: the retiring Entrepreneur

The target business is a typical family enterprise (as a rule a Ltd.; but this could also be a limited partnership). If one or more shareholders want to cash out, maximum profit is not necessarily the sole aim, but also:

- The continuance of the enterprise,
- A rearrangement of the ownership structure,
- The protection of jobs,
- A gradual transfer of management,
- and a tax efficient exit for the retiring owner.

Provided that the scheme takes into account these aims sufficiently, the retiring owner(s) might be interested in selling to an ESOP as intermediary entity.

Structure of the German ESOP and procedure



1. Trustee sets up Trust Ltd. / retiring owner in supervisory/advisory council.
 - > Employee enter into an escrow agreement and
 - > contribute, e.g., 100 x 250 € to trust ltd. (max 360,- € employer equity participation tax-free)
2. Trust Ltd. Sets up ESOP-holding Ltd. / retiring owner chairs holding as managing director
 - > Holding acquires former owner's complete shares
 - > controls target company (together with remaining owners) / holds employees' shares
3. Purchase of shares financed by bank loan / loan collateralised by value of target company
 - > interest / repayment of loan from dividends of employees' shares (indirect profit sharing)
 - > voluntary employee's contribution (max. 10% of salary)
4. Retiring owner leaves management of holding Ltd. after loan is repaid

Unique features of the German ESOP-model

- Alternative of sale to third parties / transfer of enterprise without immediate loss of control
- ESOP profits tax-free + losses carried forward / single taxation at level of target enterprise
- Direct participation = link to employer firm / Diversification 5 yrs prior to employee's retirement
- Transferability of Ltd shares warranted / easy exchange of employee shareholders
- Deferred taxation of employee financial participation
- No double risk, profit sharing “on top” / voluntary employee contributions insolvency insured

Time horizon Buy-Out: with employee contribution, 7-9 yrs / without, 10-12 yrs.

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