

Employee Share Ownership and its Tax Treatment in Germany

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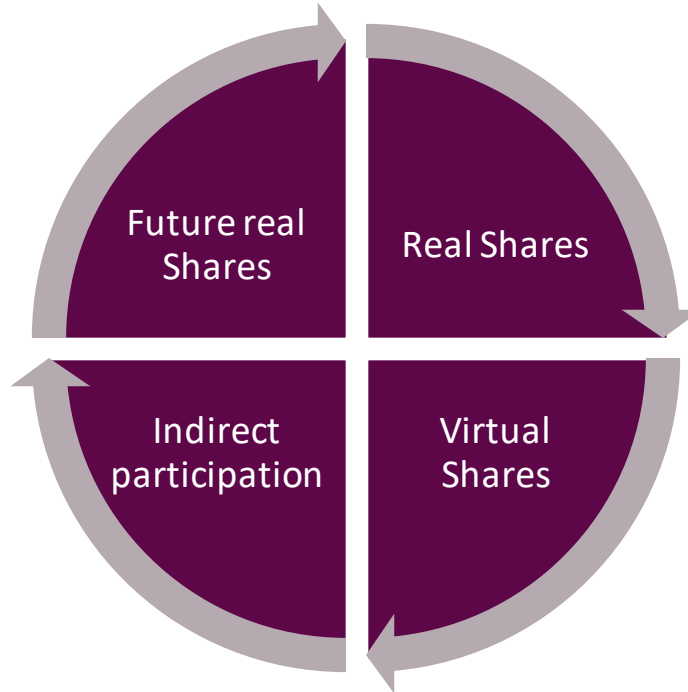
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I. Overview of forms of employee participation

- Options to purchase real shares (so-called ESOP)
- Actual participation only upon exercise

- Bundling of employee rights in an employee participation company
- Possibility of a waiver agreement subject to a condition precedent



- Direct granting of shareholder shares
- Co-determination
- Profit sharing
- Increase in value

- No shareholder rights
- Purely economic incentives
- Possibility of staggering and dependence on performance targets
- Subject to deferral due to liquidity event

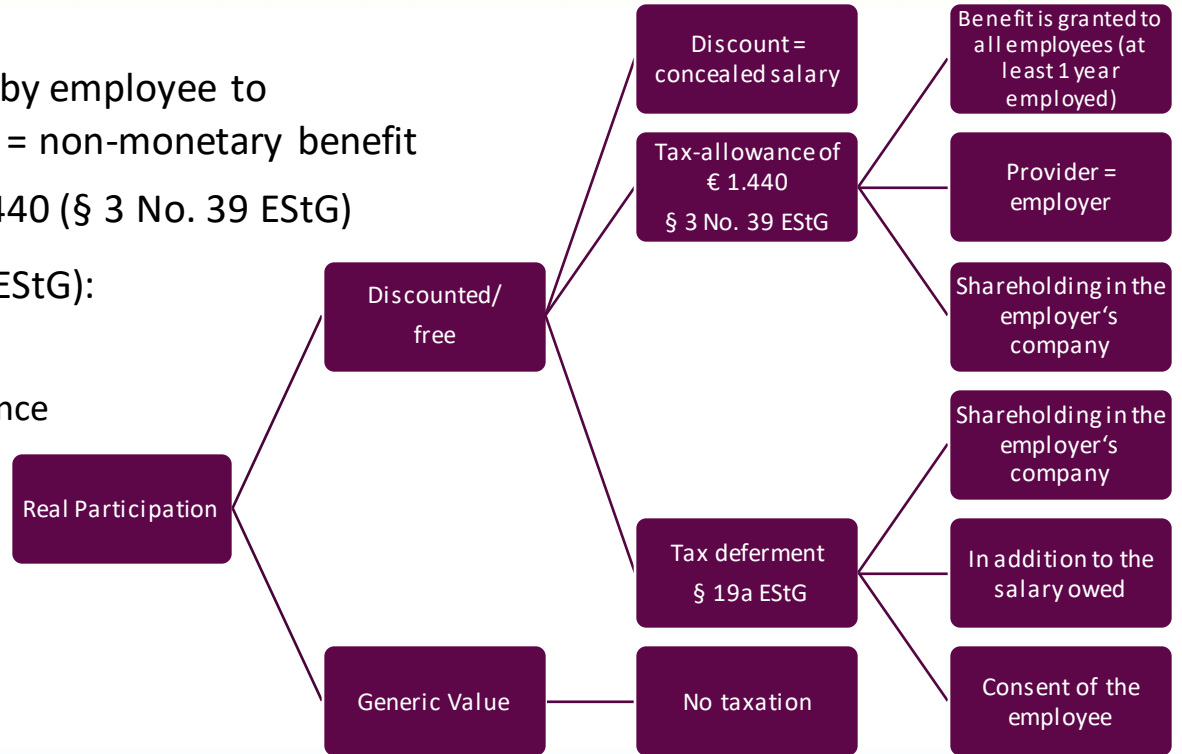
II. Status quo: Real Shares - Tax related Concerns

- Subsidised or free employee shares = non-monetary benefit
 - Taxable as concealed salary
- Problem= Dry Income Taxation
 - Normally taxable upon inflow
 - At that time, no liquidity from shares
 - Solution offered by § 19a EStG (→ see below)



III. Real participation - current taxation regulations

- Generic value - value paid by employee to employer for participation = non-monetary benefit
- Tax-free allowance of € 1,440 (§ 3 No. 39 EStG)
- Taxation only once (§ 19a EStG):
 - Shares are transferred;
 - 12 years have passed since the original transfer;
 - In the event of an exit



IV. Amendment resulting from the ZuFinG

- Future Financing Act
- Reform of the taxation of employee share ownership
- Implementation status:



IV.1 Amendment resulting from the ZuFinG - § 3 No. 39 EStG

- Tax-free allowance is increased from €1,440 to €2,000
- Introduction of a holding period in § 20 para. 4 EStG
 - Monetary benefits do not constitute acquisition costs if they are sold or transferred within 3 years



IV.2 Amendment resulting from the ZuFinG - § 19a EStG (1/2)

- Extended deferral of taxation: 20 years (Section 19a (4) EStG)
- No taxation after 20 years or after termination of the employment relationship if the employer
 - on a voluntary basis
 - irrevocably declares that he
 - accepts liability for the wage tax to be withheld and paid
- Extension of the formation period from 12 to 15 years



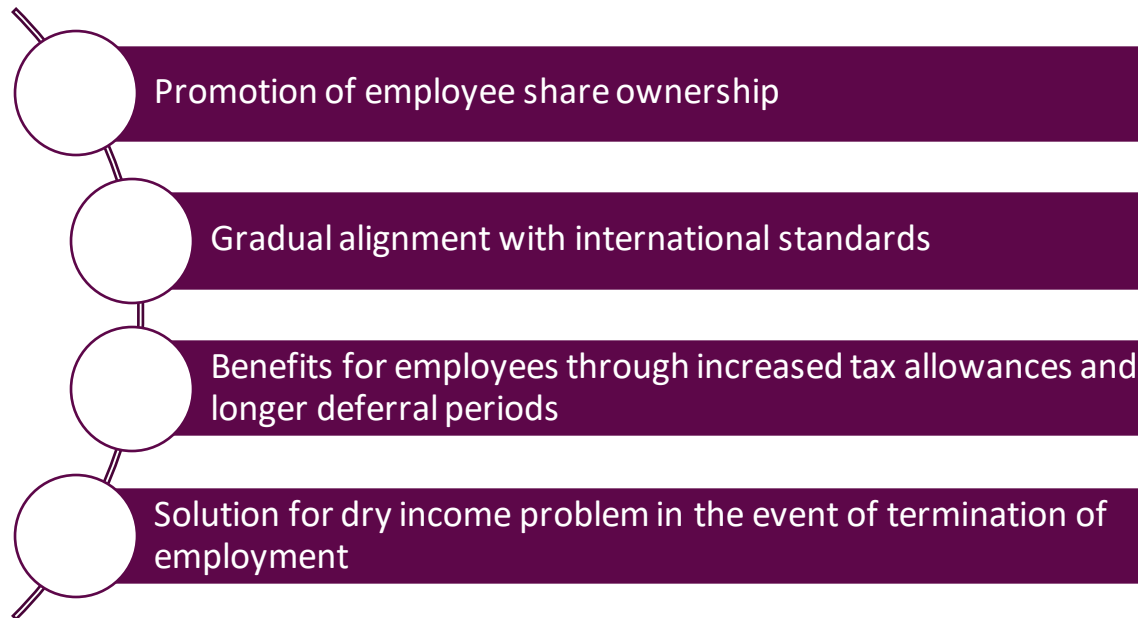
IV.2 Amendment resulting from the ZuFinG - § 19a EStG (2/2)

- Extension of the scope of application

Status Quo	As of 2024
Less than 250 employees	Less than 1000 employees
Annual turnover of less than EUR 50 million or annual profit of less than EUR 43 million	Annual turnover of less than EUR 100 million or annual profit of less than EUR 4863 million
Loss of status if the limits are exceeded in two consecutive years	Thresholds may not be exceeded in the transfer year or in the previous six calendar years (7 years in total)
Year of company age < 12 years	Year of company age < 20 years
No transfer of shares by shareholders	Transfer of shares by shareholders possible

V. Significance of the amendment

- Amendments are overall desirable
- Continuing aspects of criticism:
 - Uncertainty in valuation, especially for start-up companies
 - Notary service required for GmbH share transfers
 - Double tax burden when selling shares
 - Problems with restructuring



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