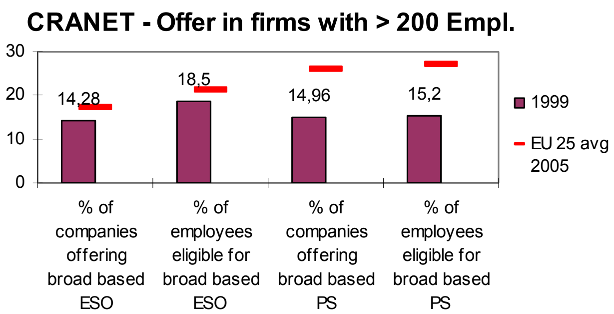
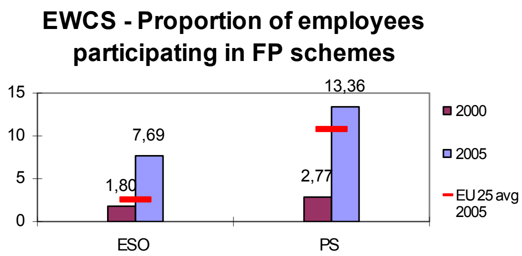
XIII. Ireland

Although employee financial participation has been discussed in Ireland since the mid-1970s, not until 1982 was the first tax incentivised plan introduced (Approved Profit-Sharing Scheme/APSS). Additional tax incentives came in 1986. During the tax reform of 1997, additional plans (Approved Savings-Related Share Option Scheme/SAYE and Employee Share Ownership Trust/ESOT) were added. In 2001 another plan (Approved Share Option Scheme/APOS) was approved.

There are now six share-based plans linked to tax incentives – the four approved schemes enumerated above plus the purchase of new shares and restricted stock schemes. In addition there is an unapproved stock option plan. According to statistics provided by the Irish Business and Employers Confederation (IBEC), in 2002 there were in operation 400 APSS plans, 15 APOS plans and 90 SAYE plans with 140,000 employees. Whereas the number of new schemes has declined after 2001, it has been increasing again since 2004. In 2008, 10 per cent of the private sector workforce (estimated 135,000 employees) participated in 500 APSS schemes according to the Irish ProShare Association Revenue Review of APSS. Although there were only 125 SAYE plans in 2008, they seem to be the most popular judging by the number of participating employees. Many companies combine several approved plans and also operate unapproved ones (no statistics are available). The majority of plans are found in listed multinational companies.





1. General Attitude

Employee financial participation, especially share ownership, has been supported by successive governments, as a means of aligning the interests of employees with employers and making retirement more secure. However, it has not been linked with pension policy so far. Employee Financial Involvement (EFI) is addressed in national economic programmes and in national wage agreements, but is regulated only by local collective agreements or by in-house agreements.

Since the beginning of the 1980s, the Irish Business and Employers' Confederation (IBEC) has supported tax-efficient share schemes and regard them as a key element in recruiting and retaining personnel, but only if they remain voluntary. The Irish ProShare Association, which promotes and conducts research on employee financial participation, was founded by IBEC. Trade unions also support those financial participation plans which provide explicit financial rewards as well as a sense of participation. Representatives of both employers and trade unions support partnership initiatives at the enterprise level.

2. Legal and Fiscal Framework

Employee financial participation plans fall into two categories: either they are approved or unapproved. Plans introduced under the annual finance acts and approved by and registered with the Inland Revenue enjoy tax advantages as well as exemption from PRSI (compulsory social security contributions), which especially benefit employees. Unapproved plans may be designed and introduced at the employer company's discretion but receive no specific tax advantages. Approved plans must be designed in accord with legal specifications whereas unapproved plans enjoy more flexibility. Under current legislation, all approved plans (and typically unapproved plans as well) are share-based, including profit-sharing, share ownership and stock option plans. Tax incentives for approved plans are governed by the Taxes Consolidation Act of 1997, as amended (Part 17, Schedules 11, 12, 12A, 12B and 12C). Unapproved plans are used for granting shares or options to individual employees, where the company does not operate an approved scheme or where the company wishes to award shares in excess of the amount that can attract favourable tax treatment or in contravention of the rules of any of the approved schemes. Unapproved plans are usually combined with approved plans.

a) Share Ownership

An approved share ownership plan (purchase of new shares) as well as three stock option plans (SAYE, APOS and restricted stock) are supported by tax incentives. There is also an unapproved stock option plan which exempts employees from PRSI contributions but imposes the full personal income tax at exercise.

Share Ownership Plans – Purchase of New Shares: If employees pay full price for newly issued shares and hold them for three years, the subscription cost (subject to a lifetime ceiling of Euro 6,350 as of 2006) is exempt from both personal income taxes and PRSI. A capital gains tax is based on the issue price. The employer company is also exempt from PRSI. In a *Restricted Stock Scheme*, participants are given a future interest in shares, subject to certain restrictions. On shares held for at least one year, the employee may deduct a specific percentage of the benefit from the personal income tax base (from 10 per cent for one year to 55 per cent for more than five years).

Approved Stock Option Plans – The *Approved Savings-Related Share Option Scheme (SAYE)*, introduced by the Finance Act of 1999, is currently the most popular plan judging by the number of participants relative to the number of companies operating such schemes. It must be open to all employees on similar terms, with possible exception of employees with less than three years of service. The plan is structured as follows: the employee make a save-as-you-earn (SAYE) contract with a bank, agreeing to save a specified monthly amount (Euro 12 to 500) through deductions from after-tax remuneration for a period of three or five years service (In the five year plan the monies saved can be left on deposit with the financial institution for a further two years), while the employer corporation grants him share options for the maximum number of shares his SAYE savings will be able to buy at the exercise price. The SAYE contract always includes a tax-free bonus to be awarded at completion, the amount depending on the term. The exercise price may be up to 25 per cent lower than the market value of the shares at the time of grant. At maturity of the SAYE contract, the employee may choose to exercise the option, selling or retaining the shares, or to receive the savings and bonus in cash. These requirements fulfilled, the employee is exempt from the personal income tax at the time of grant or exercise; the capital gains tax, however, is levied at the time of sale. Neither the employee nor employer must pay PRSI.

The *Approved Share Option Scheme (APOS)* was introduced in the Finance Act of 2001. Eligibility requirements are the same as for the share option scheme described above. It is further required that at least 70 per cent of options are transferred to the broad-based plan; shares may not be sold within three years of grant. These requirements fulfilled, the employee is exempt from the personal income tax at grant or exercise; at sale, the capital gains tax must be paid on the difference between proceeds and option price. Neither the employer company nor the employee is liable for PRSI.

b) Profit-Sharing

The oldest form of financial participation is the approved profit-sharing, introduced in 1982. It is a share-based leveraged profit-sharing plan. Cash-based and/or direct share-based profit-sharing plans are also possible, but have no tax advantages. Individual gain-sharing based on performance-related indicators, promoted by the government since 2000, may be more widespread than cash-based profit-sharing.

Approved Profit-Sharing Scheme (APSS) – The APSS must apply to all employees on similar terms, with the possible exception of those having less than three years service. Any shares allocated under APSS cannot be subject to restrictions other than restrictions which apply to all shares of the same class. An exception to the general rule on restrictions exists, when the company's articles of association require an employee or director to dispose of his/her shares on leaving the company.[133] Employee shares are held in trust and cannot be withdrawn for two years; not until the third year do tax incentives apply. The trust must allocate the shares to the employees within 18 months and subsequently is not held liable for the tax on dividends. Employee benefits of up to Euro 12,700 (2006)

133 This provision could prove to be an obstacle to introducing these plans in non-listed companies if the employees – unlike shareholders who are not employees – have to sell the shares to the company after leaving, which in turn might create tax complications arising from the obligatory sale.

are exempt from both income taxes and PRSI contributions. If the shares are sold during the blocking period, the employee is liable to personal income tax on the lesser amount of the market value of the shares or the proceeds of sale. Shares sold after the blocking period are subject only to the capital gains tax.

Subsidiary schemes to APSS are the *'relinquished salary' scheme*, where the employee is allowed to deduct up to 7.5 per cent of his base pre-tax salary to increase his share-based profit-sharing, and the employer matching scheme (so-called *BOGOF*, that is, *buy-one-get-one-free*), where the employee buys shares with his after-tax income and the employer matches his purchases. The employing company can deduct costs of setting up and operation of the plan and costs of providing shares to employees, and it is not liable to PRSI.

Employee Stock Ownership Trust (ESOT) – Since 1997 the APSS has been allowed to combine with an ESOT, similar to the American Employee Stock Ownership Plan (ESOP). In contrast to the APSS trust, the ESOT is empowered to hold shares for 20 years; it may also borrow funds and sell shares. The trust pays no tax on dividends used for specified purposes (for example, acquiring shares, repaying loans, etc.). Shares transferred to the ESOT must be common shares, fully paid for and irredeemable. There are three types of trust structure permitted: single trustee; majority of trustees are employees; and equal employee/company representation plus an independent trustee. On shares not transferred directly to employees but first to the APSS trust, tax incentives for APSS apply. The ESOT is not subject to capital gains tax on disposal of shares provided the proceeds are used for specified purposes. The ESOT was widely used for privatisation of state-owned enterprise. Usually 14.9 per cent of the equity capital of the company undergoing privatisation was accumulated in the ESOT for employees. Shares were typically acquired by a combination of loans and a direct state grant, in exchange for productivity concessions and the agreement of trade unions to privatise. A well known example is the Eircom ESOP whereby the employees own 35 per cent of the shares through an ESOT which has a representative on the board of the now privatised company.

c) Participation in Decision-Making

Participation in decision-making and financial participation have no direct connection, nor can existing decision-making rights be extended by a financial participation plan. General provisions of labour law, such as equal pay and prohibition of discrimination, also apply. Employee representatives in Ireland's single-tier boards are only found in the state-owned sector, where they normally account for a third of the total. Privatisation has cut the number of companies covered and the process is continuing. There is no statutory system for workplace representation in Ireland. Those who work in unionised workplaces – about half of the entire workforce – have representation through the union. New procedures have been introduced as a result of the EU directive on information and consultation, but they may not make much difference. National pay pacts have provided a framework for bargaining in Ireland since 1987. Agreed between the unions, employers and government, they are not legally binding, but have been widely observed.