



# **INFORMATION GUIDE**

**NOVEMBER 2020**

**AN INTRODUCTION TO ESOPs AND  
FREQUENTLY ASKED QUESTIONS**

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## INTRODUCTION

This booklet has been designed to explain what ESOPs are, how they operate in practice and the related tax implications. In addition, it is intended to provide details on the principal aspects of the ESB ESOP and provide answers to some frequently asked questions.

Any questions may be sent by e-mail to: [esop@esb.ie](mailto:esop@esb.ie)

While all reasonable care has been taken to ensure that the facts set out in this short guide are accurate as regards ESOPs, this document is intended merely as a **general guide only** and should be read as such.

Understandably, the legal documentation establishing the ESOT Trust Deed and Rules and the APSS Trust Deed and Rules entered into between ESB, ESB ESOP Trustee Limited and participating wholly owned Irish registered ESB subsidiary companies will take precedence over and may qualify the explanatory material contained within this booklet. This booklet is also subject to the provisions contained within legislation, the Regulations of ESB and the constitution of ESB ESOP Trustee Limited.

The information in this booklet reflects current legislation and tax regulations as at 1 November 2020, both of which are subject to change.

If you require legal or financial advice, or have any doubt about how the ESOP impacts on you, you should consult an appropriate professional adviser.

This booklet is not an offer, inducement or invitation to make any investment in any securities and is not intended to be relied on and must not be relied on by any person in connection with making any investment in securities.

A glossary of terms used in this document is included overleaf.

## **GLOSSARY OF TERMS**

### **Act**

Taxes Consolidation Act 1997, as amended, consolidated, replaced, extended or re-enacted from time to time.

### **Appropriation**

The formal setting aside of Shares for individual Participants in the APSS. Although the Shares may remain in the ESOP after Appropriation, the beneficial ownership and entitlement has transferred to the individual Participant.

### **APSS**

Approved Profit Sharing Scheme – a trust established under tax legislation which will receive the Shares from the ESOT and will appropriate and release the Shares to individual Participants.

### **Contract of Participation**

The contract which an employee must sign and return in order to be eligible to participate in an ESOP.

### **ESB Group**

ESB (the Company) and any wholly owned, Irish resident, Participating Subsidiary Companies.

### **ESOP**

Employee Share Ownership Plan – the overall scheme, designed to hold and transfer the ESOP stake to the Participants through the ESOT and the APSS.

### **ESOT**

Employee Share Ownership Trust – a trust established under tax legislation to acquire and hold the Shares on behalf of Participants.

### **Forced Sales**

Applies to situations where Participants will be required to sell their Shares within a specific time frame e.g. due to death or cessation of employment.

### **Notional Allocation**

The 'earmarking' of particular Shares in the ESOT for individual Participants according to an agreed formula. Notional allocation does not give an entitlement to any Shares so allocated to Participants.

### **Participants**

All employees who have completed an agreed qualifying period of service with the Company or Participating Subsidiary Company and who sign and return a Contract of Participation.

### **Retention Period**

The period during which the Participant is required to allow his Shares remain in the ownership of the trustee. This is normally a minimum of two years from the date the Shares are acquired by the ESOT.

### **Shares**

ESB is a statutory corporation not a company established under the Companies Act 2014. The statutory corporation's equivalent to fully paid ordinary shares is fully paid Capital Stock.

### **Trustee**

ESB ESOP Trustee Limited acts as corporate Trustee of the ESOT and the APSS.

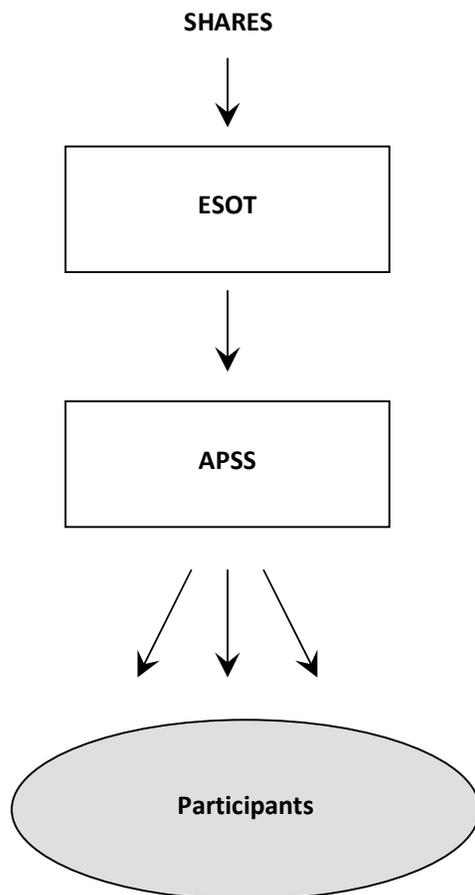
## What is an ESOP?

“ESOP” means “Employee Share Ownership Plan”. It is a tax efficient mechanism designed to allow employees of a company to hold shares in that company or its parent company.

The basic structure of the ESB ESOP contains two trusts as follows: -

- ESOT - Employee Share Ownership Trust. This is the trust which acquires the Shares on behalf of the Participants, holds them collectively for the required holding period and then passes them to the next trust to be distributed.
- APSS - Approved Profit Sharing Scheme. This is a related trust which is set up to ensure the tax efficiency of the scheme. It receives the Shares from the ESOT when the required holding period has expired and passes the Shares on to the Participants, subject to the annual statutory limit.

The following diagram shows how the ESOP process works.



### The ESOT:

- acquires Shares in the Company on behalf of Participants
- holds blocks of Shares on behalf of Participants for the required holding period (or longer)
- transfers Shares to the APSS

### The APSS:

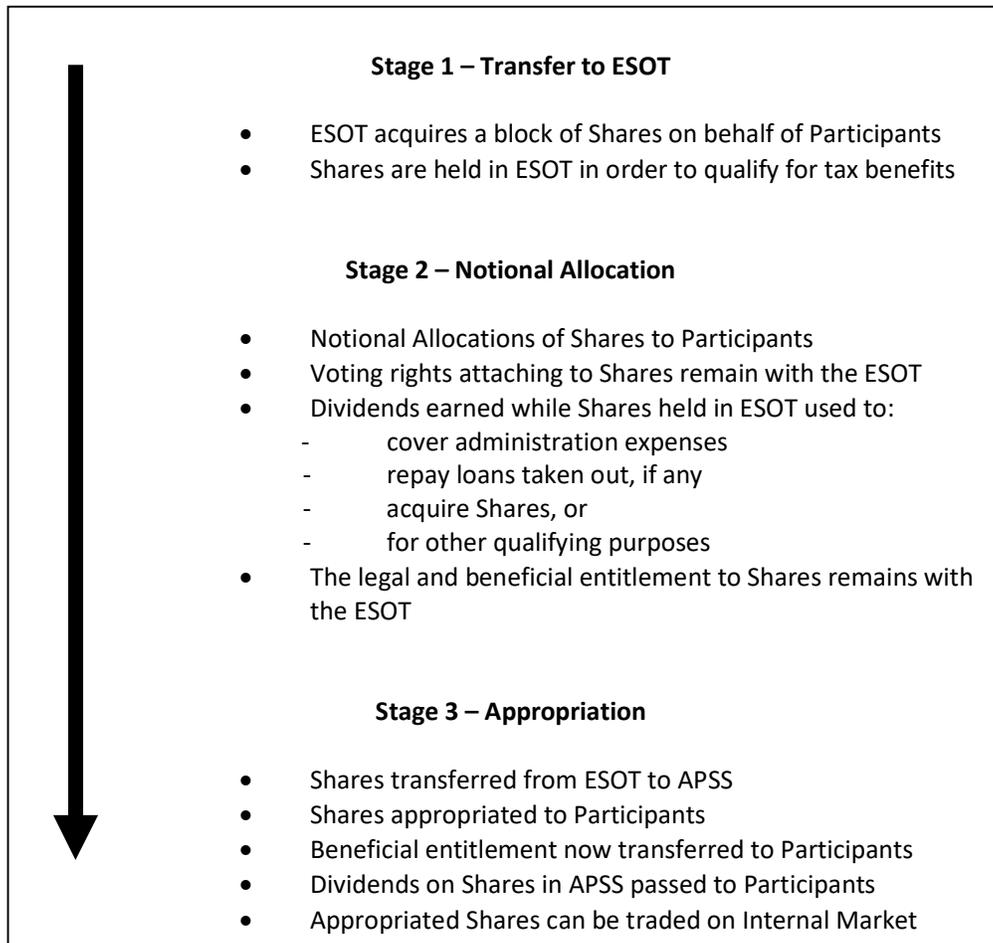
- receives Shares from the ESOT
- appropriates Shares to individual Participants

- Participants may then hold or deal in Shares on the Internal Market (subject to rules)
- Current employee Participants may buy Shares on the Internal Market
- Trustee and ESB may buy Shares on the Internal Market
- Until sold, Shares held in the APSS

## The Employee Share Ownership Plan

### What steps are involved in the ESOP?

There are three key stages involved in the allocation of Shares through the ESOP – transfer into the ESOT, Notional Allocation and Appropriation.



### Stage 1 – Transfer into the ESOT

The ESOT acquires Shares in the Company.

To ensure the tax efficiency of the scheme, it was agreed that the Shares would be held in the ESOT, on behalf of Participants, for a minimum of three years - the current required holding period. While Shares are held in the ESOT, they will be voted as a block by the ESB ESOP Trustee. In certain circumstances, the ESB ESOP Trustee will ballot all Participants for direction as to how to exercise the vote. Dividends paid on the Shares held in the ESOT are income of the Trust and the Taxes Act and Trust Deed set out what this income can be used for.

## **Stage 2 – Notional Allocation**

At this stage, Shares are held in the ESOT in the name of ESB ESOP Trustee Limited and individual Participants do not have a legal or beneficial entitlement to any of the Shares.

In order to keep track of the number of Shares which each Participant may eventually receive, a system of Notional Allocations will take place while the Shares are held in the ESOT. This system will “ earmark ” a number of Shares for each individual qualifying Participant. Shares will be allocated equally between all those Participants who qualify for each Notional Allocation.

Participants do not actually receive their Shares at this stage - Notional Allocations are merely a method of indicating how many Shares may be appropriated to Participants at the next stage (i.e. at appropriation). A statement showing the balance of your Notional Allocation account will be sent to each Participant annually.

## **Stage 3 – Appropriation**

The next stage is the transfer of Shares from the ESOT to the APSS. Appropriation can then take place.

When Shares are appropriated to you, you become the beneficial owner of those Shares and have an irrevocable entitlement to them. At this stage, you are free to trade your Shares on the Internal Market.

Under the Taxes Acts, there is a limit to the value of Shares that can be appropriated to an individual in any tax year. This is currently €12,700 per annum.

Once appropriated, each Participant will be entitled to receive all dividends paid on those Shares and to exercise the voting rights attaching to those Shares.

If you leave or are no longer employed by the ESB Group, you must, under the terms of the ESB ESOP, offer to sell all your Shares within six years of the later of either your date of leaving or the date the Shares were appropriated to you. Conditions relating to Forced Sales in the Internal Market will apply to these participants’ Shares in any Internal Market held in the years prior to the expiry of that six year period. Namely, at markets held in years 1-3 you will not be required to offer to sell your Shares but may choose to do so. At markets held in each of years 4-6 you will be required to offer for sale one-third of your remaining appropriated Shares.

## Outline of Key Terms on Eligibility

### Eligibility to Participate in ESOP

Subject to satisfying the relevant qualifying criteria and having twelve months Continuous Service with ESB or any wholly owned Irish resident ESB subsidiary company participating in the ESOP ('the ESB Group') on the relevant date, all employees of the ESB Group who are chargeable to Irish tax under Schedule E will be eligible to participate in the ESOP.

### Continuous Service

'Continuous Service' means service with the ESB Group which is unbroken. Service is not broken in the following cases:

- Maternity leave, adoptive leave, parental or compassionate leave (with or without pay).
- Prolonged disability (where the individual remains an employee of the ESB Group).
- Special leave with pay (including secondments with pay).
- Special leave without pay for up to four weeks' duration.
- Sick leave providing that sick leave procedures have been complied with.

Service is broken in the following cases:

- Absence from work which is not authorised and approved.
- Special leave without pay in excess of four weeks which is approved by the ESB Group.

### Special Leave without Pay (e.g. career break, certain unpaid secondments, religious vocation)

Where an employee takes special leave without pay (for a period in excess of four weeks), he/she will not be eligible for any Notional Allocations while on leave. If and when the employee returns to work, he/she may become eligible for future Notional Allocations (if any).

### Leaving ESB

If you leave ESB you will have no further entitlement to any future Notional Allocations of Shares and you will not be permitted to buy Shares on the Internal Market.

Under the terms of the ESOP, Shares already Notionally Allocated to leaving employees will be held in the ESOP for appropriation on the same terms as all other Shares.

Participants who are no longer employed with the ESB Group will have six years from the later of the date of leaving or the date of Appropriation to offer their Shares for sale (if they have not already done so by then).

Conditions relating to Forced Sales on the Internal Market will apply to these participants' Shares in any Internal Market held in the years prior to the expiry of that six year period. Namely, at markets held in years 1-3 you will not be required to offer your Shares for sale but may choose to do so. At markets held in each of years 4-6 you will be required to offer for sale one-third of your remaining appropriated Shares.

## **Death**

If a person dies before Shares which have been Notionally Allocated to them have been appropriated, the Trustee may, at its discretion, make a cash payment to their personal representatives provided the Trust has sufficient funds to do so. This payment will take account of the market value of Notionally Allocated Shares not yet appropriated, reduced to reflect ESOP borrowings, if any, and other liabilities attributable to the Shares.

## **Practical Points**

### **How do I qualify?**

All employees of ESB or any of its wholly owned Irish resident subsidiaries participating in the ESOP who are chargeable to Irish tax under Schedule E, will be eligible to participate subject to the qualification criteria.

To qualify for a Notional Allocation, you must have had 12 months continuous service with the ESB Group (as defined on page 8) on the relevant Notional Allocation date. You must then have completed and returned a signed Contract of Participation agreeing to be bound by the rules of the ESOP by the specified date.

### **How many Shares will I get?**

This will depend on the number of Shares available for any Notional Allocation and the number of employees eligible to participate in such Notional Allocation.

All qualifying participants will be allocated the same number of Shares.

You will be notified of the number of Shares allocated to you.

## **Former Employees**

Under the Taxes Acts, former employees can only benefit from any Shares Notionally Allocated to them up to a maximum of 18 months after they have left the employment of the Company.

## What are the Tax Implications?

The ESOP has been designed to facilitate the Release of Shares to Participants in the most tax efficient manner. References to Income Tax also include PRSI, USC and other charges. While it is acknowledged that each Participant's individual tax circumstances may differ significantly, this section provides a summary of the general tax consequences of each stage of the ESOP process.

The table below is a summary of general tax rules and does not constitute tax advice. Tax payable by individual Participants will depend on your own personal circumstances. If you require advice as to how tax rules apply to you and your own personal circumstances, you should seek professional advice.

Stage of ESOP Process	Tax Implications for Participants
• When Shares are held in the ESOT	<b>None</b>
• ESOT receives dividends	<b>None</b>
• If the Participant receives dividends from ESOT	<b>Income Tax/Dividend Withholding Tax</b> on any dividends received
• When Shares are appropriated to Participants through APSS (up to current tax limit €12,700 per annum)	<b>No income tax but USC and PRSI may apply</b>
• Participant receives dividends following Appropriation	<b>Income Tax /Dividend Withholding Tax</b> on any dividends received
• When a Participant disposes of his or her Shares following Appropriation	<b>Capital Gains Tax</b> on any increase in value of the Shares from the date of Appropriation (see below)
• When a Participant purchases Shares on the Internal Market	<b>Stamp Duty</b>
• When a Participant sells Shares purchased on the Internal Market	<b>Capital Gains Tax</b> on any increase in value of the shares

### Capital Gains Tax Liability on Disposal of Appropriated Shares

A liability to Capital Gains Tax (CGT) may arise on the disposal of Shares. CGT is calculated based on any gain made on the sale. The gain is calculated as the difference between the sales proceeds and the value of the Shares on the date of Appropriation or purchase price if bought on the Internal Market. Where a participant holds Shares that have been appropriated/acquired on different dates, the Shares appropriated/acquired at the earlier date are deemed to be disposed first – this is known as the first in, first out rule or FIFO.

The current rate of CGT is 33%. Each individual has an annual CGT allowance (currently €1,270) which can be set against any gains from the disposal of assets (including Shares) in that tax year for the purposes of calculating CGT. Participants may also be eligible for other deductions or loss relief depending on their personal circumstances.

## Frequently Asked Questions

**Q1. *Who will be eligible to participate in ESOP?***

A: Subject to satisfying the relevant 12 months continuous service criteria, all employees of ESB or any wholly owned Irish resident ESB subsidiary company participating in the ESOP (“the ESB Group”) who are chargeable to Irish tax under Schedule E, will be eligible to participate i.e.

- Full time employees, apprentices, job sharers, part time staff, regular reduced hours staff, temporary and fixed term employees;
- Employees of ESBI and other fully owned Irish subsidiaries of ESB participating in the ESOP.

**Q2. *How do I qualify for a Notional Allocation?***

A: To qualify for a Notional Allocation you must have both:

- (i) 12 months continuous service with the ESB Group on the Notional Allocation Date for the particular Notional Allocation concerned; and
- (ii) completed and returned a signed Contract of Participation to the ESOP Office by the specified date.

**Q3. *How will employees on special leave with pay be treated?***

A: All employees who meet the eligibility requirements who are on special leave with pay will be eligible for Notional Allocations.

**Q4. *How will employees on special leave without pay be treated?***

A: Employees on special leave without pay in excess of four weeks will not receive Notional Allocations in respect of the period when on special leave.

**Q5. *How will employees on career breaks be treated?***

A: Employees on career breaks will not receive Notional Allocations while on career break.

**Q6. *How will new recruits participate in the ESOP?***

A: When new recruits have served 12 months continuous service with the ESB Group, they will be eligible to participate in any future Notional Allocations on the same basis as all other eligible employees and will then be able to take part in the Internal Market.

**Q7. *If I retire will I have to sell the Shares?***

A: You will have a total of six years from the later of the date of leaving or the date of Appropriation to offer your Shares for sale. However, some of your Shares will be subject to Forced Sales on the Internal Market prior to the expiry of that period.

**Q8. *What happens to my Shares if I die?***

A: Where your Shares have already passed into the APSS, the sale of the appropriated Shares by your personal representatives (e.g. executor) will receive priority in the Internal Market.

Where the Shares remain in the ESOT and have not yet been appropriated to you (i.e. have not yet passed into the APSS), then your personal representatives will receive payment based on the most recent market value in lieu of the shares Notionally Allocated to you.

**Q9. *If the ESOP buys back Shares from Participants, what then happens to those Shares?***

A: The ESOP Trustee may allocate the Shares to participants who meet the eligibility requirements at the time of allocation or, alternatively, may offer the Shares for sale on the Internal Market. The ESOP Trustee is not obliged to sell Shares at less than the purchase price.

**Q10. *Who manages and administers the ESOP?***

A: The ESOP is managed and administered by ESB ESOP Trustee Limited (the "Trustee"). The Trustee has a duty to act fairly and in the best interests of all Participants and is independent from both ESB and the Group of Unions.

Decisions of the Trustee are made by its board of seven directors. Four of these directors are nominated by the ESB Group of Unions on behalf of the employees of the ESB Group, two are nominated by ESB and there is an independent professional director who also acts as chairperson.

**Q11. *What is the role of the Trustee?***

The role of the Trustee is to:

- make all day to day decisions about the management and administration of the ESOT and APSS
- when Shares are held in the ESOT, act on behalf of the Participants by voting at Company shareholder meetings using the whole ESOP stake as a block
- calculate Notional Allocations
- maintain a register of Participants
- communicate with Participants, including issuing annual statements of Shares held
- arrange any authorised borrowings and repay loans
- receive dividends and apply them accordingly
- comply with the Revenue Commissioners' requirements
- keep records and accounts
- take independent advice when it is appropriate
- if relevant, pay cash sums to the personal representatives of deceased Participants
- manage the transfer of Shares to the APSS
- appropriate the Shares from the APSS to individual Participants
- facilitate the Internal Market

**Q12. *Does the ESOP have a representative on the Board of ESB?***

A: The ESOP is entitled to have one ESOP Representative on the Board of ESB. This position will normally be held by one of the four existing Worker Directors on the Board of ESB. The ESOP representative must consult with the Trustee Board before taking positions in his/her capacity as ESOP representative.

**Q13. Will I receive dividends on my Shares?**

A: Any dividends received on Shares held in the ESOT are income of the ESOT. The Taxes Acts and the Trust Deed set out what the Trustee can do with this income. It can be used for a number of qualifying purposes set down in legislation, including payment of administrative expenses, repaying borrowings, if any, and acquiring Shares.

When Shares have been transferred from the ESOT to the APSS, Participants will automatically receive any dividends paid on their appropriated Shares.

Participants who acquire Shares on the Internal Market will receive any dividends paid on those Shares.

**Q.14. Will there be voting rights attaching to the Shares?**

Shares held by the ESOP (whether allocated or appropriated or acquired on the Internal Market) will carry voting rights. While Shares are held in the ESOT, the Trustee will exercise the voting rights attached to the Shares. If the issue is of material importance, Participants may be balloted on their voting preference. The Trustee then exercises the block vote in accordance with the majority preference expressed.

When Shares have been appropriated to individuals or acquired by Participants on the Internal Market, the Trustee will no longer exercise voting rights with respect to those Shares. The voting rights then rest with the individual Participants. A Participant may authorise the Trustee to continue to exercise those voting rights on his/her behalf.

The Trustee will continue to exercise voting rights attached to the unappropriated and undistributed Shares still held in the ESOT.

**Q15. When will I be able to sell my Shares?**

A: Shares may be traded on the Internal Market after they have been appropriated to you. An Internal Market Day will be held once every 12 months.

**Q16. Can I use Notional Allocations as security for a loan?**

A: No. As you will not have a legal or beneficial entitlement to the Shares until after Appropriation, Notional Allocations may not be used by you as security for a loan.

**Q17. Do I have to pay tax on the Shares?**

A: The ESOP was designed specifically to minimise the amount of tax you will have to pay on your Shares. You should refer to the summary of the tax implications of the ESOP on page 10 of this booklet.

**Q.18. How will the Internal Market work?**

A: The Trustee will appoint an administrator to operate an Internal Market for buying and selling appropriated Shares. An Internal Market Day will be held once every 12 months and the Trustee will give participants 30 days notice of the Market Day.

In summary, the Market Rules currently in place provide:

- Shares are offered for sale by participants at prices equal to or above the published Minimum Reserve Price
- current employee participants can offer to purchase Shares at a price equal to or above the published Minimum Reserve Price
- the Trustee and ESB can offer to purchase Shares at a price within the published Fair Market Value Range
- the market price is the average of the successful bid prices
- all successful sellers receive the market price
- successful buyers pay the price they bid.

**Q.19. How do I get more information?**

A: For more information about the ESOP, please contact the ESOP Office in any of the following ways:

Telephone: (01) 702 7970  
Email: [esop@esb.ie](mailto:esop@esb.ie)  
Post: ESB ESOP Office, 43 Merrion Square, Dublin 2  
Website: [www.esbesop.ie](http://www.esbesop.ie)