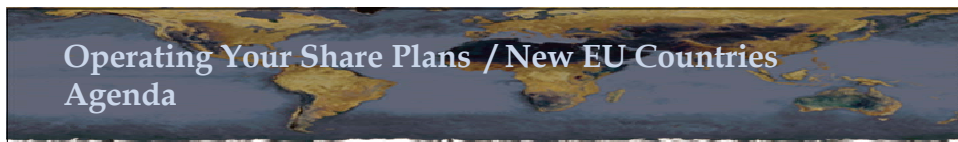




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# Operating Your Share Plans in the New EU Countries


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## Operating Your Share Plans / New EU Countries Agenda

- **General Information & Practical Tips**
- **EU Directives**
- **Country analysis of Tax regulations**
- **Country analysis of Legal ramifications**
- **Questions**

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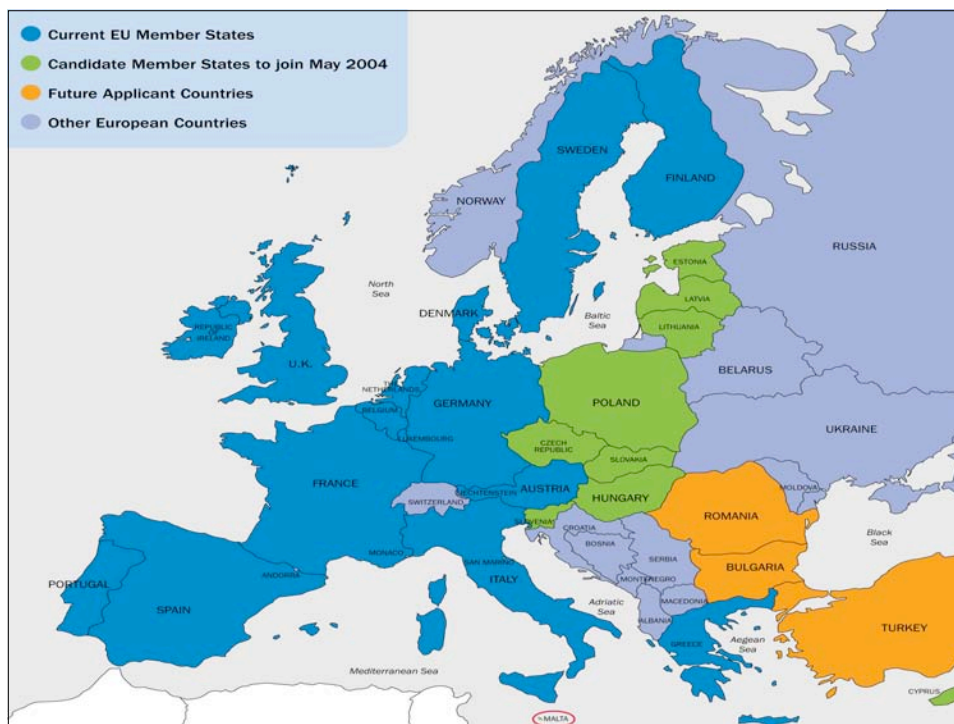
## How the EU Works

- **EC and EU**
- **EC Treaty, Regulations, Directives**
- **Fundamental Rights and Freedoms**



## Enlargement – General

- **Who?**
  - Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovak Republic, Slovenia, Malta and Cyprus
- **When?**
  - May 1, 2004
- **Biggest enlargement ever in terms of scope and diversity**
- **Variety of histories and cultures**



## Enlargement – General

|                                   | Hungary           | Czech Republic    | Poland           |
|-----------------------------------|-------------------|-------------------|------------------|
| Population                        | 10 million        | 10.3 million      | 39 million       |
| GDP per capita / EU average       | 11,700 EUR / 51 % | 13,500 EUR / 59 % | 8,700 EUR / 39 % |
| Industry, share of employment     | 33.8 %            | 40 %              | 31 %             |
| Agriculture, share of employment  | 6.5 %             | 5 %               | 19 %             |
| Services, share of employment     | 6.5 %             | 55 %              | 50 %             |
| Votes in the Council of Ministers | 12 out of 345     | 12 out of 345     | 27 out of 345    |
| Seats in the European Parliament  | 20 out of 732     | 20 out of 732     | 50 out of 732    |
| Member of OECD/NATO/WTO           | Yes               | Yes               | Yes              |

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## Enlargement – Practical Tips

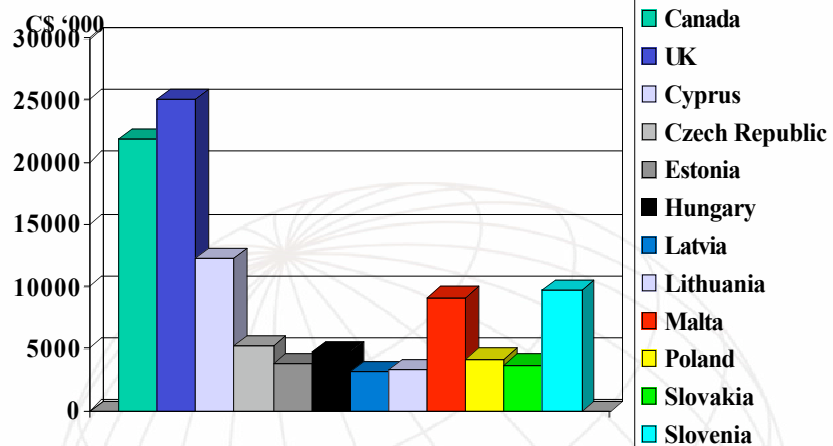
- ‘Eastern Europe’ vs. ‘Central Europe’
- Check out the map – any ideas where Latvia is...?
- Communist past – mentality, legal system
- Maturity of the legal market

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## Average Annual Income



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## European Union Directives

- **Directive 2001/34/EC: EU Prospectus Directive - Home state selection**
  - Provides 18 months for member states to put Prospectus Directive into local Law (June 30<sup>th</sup>, 2005)
  - Non-EU issuers - First time an issuer offers securities after December 31, 2003, the issuer effectively “selects” that first jurisdiction as its home member state, meaning the state that will have the authority to approve the issuer’s prospectus once the Prospectus Directive is effective under local law
- **Directive 2002/14/EC: General framework for informing and consulting with EU employees**
  - Adopted in February 2002 and must be implemented in member countries by March 23, 2005. The goal is to set out minimum requirements to inform/consult with works’ councils.



## Country Specific Information

## Legal consequences of equity plans - Estonia

- **New Securities Market Act: Offers to fewer than 50 employees will not be subject to registration and prospectus requirements**
- **No exchange control restrictions**
- **Personal Data Protection Act: Must obtain employee's consent for processing personal data**
- **Estonian Language Act: All employee related communication materials should be translated into Estonian**

## Taxation of equity plans - Estonia

- **No employee tax providing employer has paid fringe benefit tax**
- **Fringe benefit tax payable at a rate of 26/74 (35.14%)**
- **Social taxes are 33% but based on gain on option or FMV of free shares plus fringe benefit tax paid on receipt**
- **High overall tax rate ie 79.9%**
- **Employer must withhold tax**
- **Fringe benefit tax can be avoided if no recharge made**
- **Monthly and annual reporting**

## Legal consequences of equity plans – Cyprus

- **Exchange control restrictions still apply to acquisition of foreign stock by employees**

## Taxation of equity plans - Cyprus

- **No particular legislation but most likely taxed as benefit in kind**
- **Employee taxed on exercise of options**
- **Free shares or discounted shares taxed on receipt**
- **Employer should withhold tax in practice this does not happen**
- **The highest marginal rate of tax is 30%**
- **Employee tax consequences do not depend on a recharge**
- **Recharged costs should be deductible**

## Taxation of equity plans - Cyprus

- **Employee's social taxes are 6.3% with a cap of C€22,932**
- **Employer's Redundancy Fund 1.2%, Employer's social security 6.3%, Employer's Industrial Training 0.5% all capped at C€22,932**
- **In addition there is a 2% contribution to the Social Cohesion Fund – uncapped**
- **In practice most employers do not apply social taxes to benefits in kind but this is likely to change**

## Legal consequences of equity plans – Czech Republic

- **Act on Securities took effect on January 1, 2001: Exemption from registration and prospectus requirements exists if public offer of securities are shares offered to employees**
- **Exchange control notification requirements for resident individuals has been abolished**
- **New Data Privacy Law adopted on July1, 2000**

## Taxation of equity plans – Czech Republic

- **Employee taxed on exercise of options**
- **Tax charge is based difference between fair market value of the shares and the exercise price**
- **Free shares or discounted shares taxed on receipt**
- **Maximum tax rate is 32%**
- **Employer must withhold tax if the cost is borne by the local employing company ie recharge**
- **Recharge should be deductible for corporation tax purposes**

## Taxation of equity plans – Czech Republic

- **Both employer's and employee's social tax is payable only if the cost is borne by the local employing company**
- **Maximum employer and employee social taxes are 12.5% uncapped, made up of 8% social security and 4.5 % health insurance**
- **The employer must report only if the cost is borne by the local employer**

## Legal consequences of equity plans – Hungary

- **May offer Plans using either newly issued or treasury shares without seeking the State Supervision of Financial Institutions' approval**
- **If newly issued shares are used, must take precautions to ensure that administration of Plans is handled outside of Hungary**
- **As of June 16, 2001, all foreign exchange licensing and reporting requirements have been abolished**
- **Data protection restrictions: Act No. LXIII of 1992 on the protection of personal data governs use, handling and disclosure of personal data**

## Taxation of equity plans – Hungary

- **Employee taxed on exercise of options**
- **Tax charge is based difference between fair market value of the shares and the exercise price**
- **Free shares or discounted shares taxed on receipt**
- **Maximum income tax charge is 40%**
- **If costs are recharged the amount will be treated as “salary” income, if the costs are not recharged it is treated as “other” income**
- **Employer must withhold tax if the cost is borne by the local employing company either directly or by way of a recharge**

## Taxation of equity plans – Hungary

- **Salary income is subject to pension contributions at 8%, on income up to HUF 3,909,500 Health Insurance Contributions 3% and Unemployment Contribution 1% uncapped.**
- **Other income is subject to Health Care contribution of 11% uncapped**
- **There is no employer reporting other than through withholding**
- **For newly issued shares, preferred tax treatment under QSOP regime – several conditions must be met**

## Legal consequences of equity plans – Latvia

- **Securities law could apply if offered to fewer than 50 employees**
- **Current view is that options are exempt, future is uncertain**
- **No exchange control restrictions**
- **Adopted Data Privacy laws**
- **Latvian Labor Code: Employees should receive one-month notice prior to all changes in salary or other employment benefits**

## Taxation of equity plans – Latvia

- **No income tax or social taxes on the exercise of options or the award of free shares or discounted shares if there is no recharge**
- **If the costs are recharged to the local employing company both income tax and social taxes apply**
- **On the exercise of options the tax charge is based difference between fair market value of the shares and the exercise price**
- **Free shares or discounted shares taxed on receipt**
- **Income tax is charged at a flat rate of 25%**
- **If costs are recharged employer's and employee's social insurance contributions will apply at a rate of 9% capped at Ls19,900 per annum**
- **Employer must withhold tax and social insurance if a recharge is made**

## Legal consequences of equity plans – Lithuania

- **No exchange control restrictions apply**
- **Must obtain the employee's written consent for the collection, use, and transfer of personal data prior to implementation of Plans – may only be used for purposes of administering Plans**

## Taxation of equity plans – Lithuania

- **On the exercise of options the tax charge is based difference between fair market value of the shares and the exercise price**
- **Free shares or discounted shares taxed on receipt**
- **Income tax is charged at a flat rate of 33%**
- **There are no social taxes in Lithuania**
- **Employer must withhold tax if a recharge is made otherwise the employee pays through the annual tax return**

## Legal consequences of equity plans – Malta

- **To offer securities, approval from Malta Financial Services Authority is required**
- **Adopted External Transaction Act and issued Legal Notice 427 of 2003**
- **Maltese employees may now annually exercise options and hold shares in foreign company in excess of LM100,000**

## Taxation of equity plans – Malta

- **Income tax arises on the exercise of options**
- **Free shares or discounted shares taxed on receipt**
- **The maximum income tax rate is 35%**
- **Employer and employee social taxes are payable at a rate of 10% capped at Lm675**
- **Employee social taxes deductible from taxable emoluments**
- **Employer must withhold tax and social insurance irrespective of whether a recharge is made or not**

## Legal consequences of equity plans – Poland

- **Securities laws do not apply, provided that stock is not advertised by mass media or offered to more than 300 investors or unspecified offerees**
- **New Foreign Exchange Law took effect on October 1, 2002: No longer any exchange control restrictions (applies to options/purchase rights granted prior to October 1, 2003)**
- **Act on Personal Data Protection: employee's written consent is necessary for transfer of personal data**
- **Electronic signature enforceable since August 16, 2002**

## Taxation of equity plans – Poland

- **On the exercise of options the tax charge is based difference between fair market value of the shares and the exercise price**
- **Free shares or discounted shares taxed on receipt**
- **Income tax is charged at a flat rate of 40%**
- **No social taxes on the exercise of options or the award of free shares or discounted shares if there is no recharge**
- **No withholding or reporting if no recharge**
- **Employer must withhold tax and social insurance if a recharge is made**

## Taxation of equity plans – Poland

- **Employer must report if costs are recharged**
- **If costs are recharged employer's and employee's social insurance contributions will apply at a rates of:**
  - Employee 18.71%, 10.46 capped at PLN 68,700, the remainder uncapped
  - Employer 22.72% , 14.47% capped at PLN 68,700, the remainder uncapped
- **Corporation tax deduction should be available for recharge**

## Legal consequences of equity plans – Slovakia

- **Slovak subsidiary is prohibited from being involved in the Plans in such a way that its activity might amount to acting as an intermediary of sale**
- **Slovak exchange control laws took effect as of January 1, 2004: repatriation obligation lifted**
- **We recommend that employee consents in writing to collection, use and transfer of personal data**

## Taxation of equity plans – Slovakia

- **Income tax arises on the exercise of options**
- **Free shares or discounted shares taxed on receipt**
- **A flat rate of income tax of 19% applies**
- **Employer and Employees pay the following social taxes:**
  - Sickness insurance 1.4%- capped @ SKK 20,267
  - Retirement insurance 4% – capped @ SKK 40,533
  - Permanent disability 3% – capped @ SKK 40,533
  - Unemployment insurance 1% - capped @SKK 40,533
  - Health insurance 4% - capped @ SKK 32,000
- **Employer must withhold tax and social insurance irrespective of whether a recharge is made or not**
- **A ruling should be obtained to secure a corporation tax deduction for recharged amounts**

## Legal consequences of equity plans – Slovenia

- Slovenian law unclear, but Law on Securities Market Law applies: can avoid by using treasury shares
- If not possible to issue treasury shares, private placement exemption available if offered to fewer than 50 employees
- As of February 1, 2003, employees will no longer be required to exercise via an “authorized participant
- Bank of Slovenia has not yet enacted any foreign exchange regulations to replace previous requirements
- May use cashless exercise method to exercise options without any restrictions
- Law on Protection of Personal Data: employee’s written consent must be obtained for collection, use, and transfer of personal data

## Taxation of equity plans – Slovenia

- No income tax or social taxes on the exercise of options or the award of free shares or discounted shares if there is no recharge
- If the costs are recharged to the local employing company both income tax and social taxes apply
- On the exercise of options the tax charge is based difference between fair market value of the shares and the exercise price
- Free shares or discounted shares taxed on receipt
- Income tax is charged at a maximum rate of 50%
- If costs are recharged employer’s and employee’s social insurance contributions will apply at a rate of 16.1% and 22.1% respectively
- Employer must withhold tax and social insurance if a recharge is made
- A corporation tax deduction should be available for costs recharged



**Any Questions?**

**Thank You**

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