



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DIRECTIVE

concerning indirect taxes on the raising of capital

(Recast version)

(presented by the Commission)

EXPLANATORY MEMORANDUM

SUMMARY

This proposal relates to a recasting of Council Directive 69/335/EEC¹. The purpose of the proposal is to simplify a very complicated piece of Community legislation, phase out capital duty which is recognised as a significant obstacle to the development of EU companies, and reinforce the prohibition on creating or levying of other similar taxes.

The Directive regulates the levying of indirect taxes on the raising of capital. When adopted, the purpose of the Directive was to:

- a) harmonise the taxes on the raising of capital, with regard to both their structures and rates; and
- b) prevent Member States from creating or levying other similar taxes.

The Directive was first amended in 1973 by Directives 73/79/EEC² and 73/80/EEC³ when the normal rate of capital duty was fixed at the level of 1% and the reduced rate in respect of certain company reconstruction operations was set out to be any rate between 0% and 0,5%. In 1974, the Directive was further amended by Directive 74/553/EEC⁴ when the actual value of company shares as a minimum basis of taxation was clarified. Lastly, in 1985, it was acknowledged by Directive 85/303/EEC⁵ that capital duty should be completely abolished, given its detrimental economic effects. However, the losses of revenue which would result from such a change were unacceptable for certain Member States; and Member States were given the opportunity to either exempt transactions or charge a single rate of tax, not exceeding 1%. An implicit "standstill" obligation prevented Member States from levying capital duty once they ceased to apply it.

Since 1985, the trend has been towards an elimination of capital duty. In response to its detrimental economic effects, capital duty has been abolished by many Member States. The United Kingdom abolished its capital duty in 1988, Germany and France abolished theirs in 1992, Denmark abolished its in 1993 and Italy in 2000. Most recently, capital duty was abolished by Ireland from 7 December 2005, and by Belgium and the Netherlands from 1 January 2006. As a result, only 7 (Greece, Spain, Cyprus, Luxembourg, Austria, Poland, Portugal) of the 25 Member States continue to levy it. In Poland and Portugal, capital duty is levied already at a rate of 0,5% or less; and in Cyprus, the rate is 0,6%. In the remaining 4 Member States, the rate is 1,0%.

At Lisbon the EU set itself the strategic goal of building the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion. This recast proposes a limit of 0,5% on the rate by 2008, and a phasing out of capital duty by 2010 to fit with the Lisbon strategy. 2010 seems an

¹ Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ L 249, 3.10.1969, p.25).

² OJ L 103, 18.4.1973, p.13.

³ OJ L 103, 18.4.1973, p.15.

⁴ OJ L 303, 13.11.1974, p.9.

⁵ OJ L 156, 15.06.1985, p.23.

appropriate moment for the abolition of capital duty. By then, Member States will have had 25 years to adapt their fiscal arrangements in order to prepare for its abolition.

The recast Directive is divided into two parts, which reflects the situation to which the Directive actually applies and keeps in mind that the aim of the Directive, since the 1985 amendment, has been to abolish capital duty. The first part contains the main rules which prohibit the levying of capital duty and other similar taxes. The second part contains the special provisions on the levying of capital duty applying to those Member States which during the phasing out period opt to continue to charge capital duty. Once all Member States have abolished capital duty the provisions in the second part will become obsolete while the first part of the Directive will continue to apply.

The Member States have been consulted on the proposed changes at a technical level. The result of the consultations has confirmed that it is necessary to recast the Directive in order to clarify its provisions and that ideally capital duty should be phased out.

COMMENTARY ON THE ARTICLES

1. SUBJECT MATTER

Article 1 includes a new introduction which has been added to provide information on what the Directive deals with. According to this Article the Directive regulates the levying of indirect taxes in respect of contributions of capital for capital companies, restructuring operations involving capital companies, and the issue of certain securities and debentures. Although the Article is new, it does not constitute a substantive amendment to the Directive since the information given is merely deduced from ex-Articles 10 and 11.

2. CAPITAL COMPANY

Article 2 is basically identical to ex-Article 3. It defines the capital companies that the Directive applies to. The definition of "capital company" is in principal unchanged, yet the list in ex-Article 3(1)(a) of companies established under national law of the Member States is now presented separately in Annex I. This is due to its length and technical nature.

In order to ensure consistency of terminology, the generally used reference to: "company, firm, association or legal person" has been replaced by "capital company" throughout the Directive, that is in Article 3(e), Article 3(f), Article 5(1)(c), Article 5(1)(d)(ii), Article 6(1)(b) and (c) and Article 6(2).

Article 2(2) corresponds to the first sentence of ex-Article 3(2) and remains unchanged. The object of Article 2(2) is to prevent the choice of a particular legal form from leading to a different fiscal treatment of activities which are in principle equivalent.

The second sentence of ex-Article 3(2) has been moved to Article 9 for editorial reasons. Under this provision Member States are not obliged to consider certain entities as capital companies for the purpose of charging capital duty. Since this exception only applies to the situations where capital duty may be levied, the provision fits better into Chapter III of the Directive.

3. CONTRIBUTIONS OF CAPITAL

Article 3 establishes a new term "contributions of capital" through an enumeration of the transactions to which the Directive applies. All these transactions involve the transfer of capital or assets to a capital company or result in an effective increase in the company's capital or assets, and they are generally identical to the transactions listed in ex-Article 4(1) and (2). However, certain restructuring operations, which used to be covered by ex-Article 4(1), are now defined separately in Article 4, and the introductory part of Article 3 therefore constitutes a substantive amendment.

The provisions in ex-Article 4 dealing specifically with capital duty are now dealt with in Article 10, since they are relevant only for the Member States that continue to levy capital duty. The contributions of capital referred to in points (a) to (d) of Article 3 correspond to the transactions referred to in points (a) to (d) of ex-Article 4(1). Points (e) and (f) of Article 3 deal with the transfer from a third country to a Member State of the centre of effective management or the registered office of a capital company. These points correspond to points (e) and (f) of ex-Article 4(1), except for the condition that the capital company shall be considered as a capital company in the Member State concerned. Since this condition is only relevant for the Member States levying capital duty, it is now derivable from Article 9.

Points (g) and (h) of ex-Article 4(1) on the transfer between Member States of the centre of effective management or the registered office of certain entities have been deleted in order to simplify the definition of contributions of capital. This is a substantial amendment, since the transfers concerned used to be subject to capital duty. However, it should be noted that those provisions have a fairly limited scope of application. Firstly, they only concern transfers from one Member State to another of the centre of effective management of an entity referred to in Article 2(2) or the registered office of an entity referred to in Article 2(2) whose centre of effective management is in a third country. Secondly, they are applicable only if the two Member States referred to actually levy capital duty. Then, the entity concerned must be deemed to be a capital company in the Member State to which the transfer takes place, but not in the Member State it is transferred from. The transfers under ex-points (g) and (h) are now covered by Article 5(1)(d)(ii), which means that no indirect tax can be levied.

Points (g) to (j) of Article 3 correspond to points (a) to (d) of the first subparagraph of ex-Article 4(2) and remain unchanged.

The second subparagraph of ex-Article 4(2) permits Greece to determine which of the transactions listed in ex-Article 4 that it would subject to capital duty. Greece has done so, and the provision has therefore been deleted.

4. RESTRUCTURING OPERATIONS

Article 4 states that certain types of "restructuring operations" shall not be considered to be contributions of capital as defined in Article 3. Under the existing rule, that is ex-Article 4, a restructuring operation is only covered by the Directive if it involves an increase in the capital or assets of the capital company concerned (see Case C-152/97⁶). Such an increase is no longer required under the definition of restructuring operations in Article 4, so the Directive

⁶ Case C-152/97 *Abruzzi Gas SpA (Agas)* [1998] ECR I-06553.

will apply to such restructuring operations regardless of whether they result in an increase in capital or not. This amendment is substantive, since the scope of the Directive is enlarged.

The restructuring operations defined by Article 4 comprise two types of mergers: (a) mergers effected by contribution of assets, and (b) mergers effected by exchange of shares. In both cases, it is a condition that the consideration consists at least in part of securities representing the capital of the acquiring company. The definition of the restructuring operations originates in principal from ex-Article 7(1), as amended by Directive 85/303/EEC.

Ex-Article 7(1) was given the present wording by the 1985 amendment that implicitly repealed and replaced ex-Article 7(1)(b) and (bb). Under ex-Article 7(1), Member States shall exempt from capital duty transactions which were, as at 1 July 1984, exempted or taxed at a rate of 0,50 % or less. The transactions referred to are the two types of mergers mentioned in ex-Article 7(1)(b) and (bb) and, due to the stand-still provision, ex-points (b) and (bb) are still decisive for the interpretation of the Directive and they are therefore reintroduced in Article 4.

The restructuring operation described in Article 4(a) corresponds in principle to the one described in ex-Article 7(1)(b), that is restructuring operations where capital companies transfer all their assets and liabilities, or parts of their business to other capital companies. The wording of Article 4(a) differs slightly from the wording of ex-Article 7(1)(b). For example, the words "parts of their business" now reads: "branches of activity" due to the Court's reasoning in case C-164/90⁷ on ex-Article 7(1)(b) and (bb). The Court stated in point 22 of its reasoning that:

"It is clearly apparent from the wording of Article 7(1)(b) and, in particular, the reference in it to the concept of "assets and liabilities" that it concerns the case where a company transfers to another various items which, whether they constitute all or only part of its assets and liabilities, form an entity capable of operating independently."

By using the term "branches of activity" the wording is also aligned with the terminology used in Article 2(i) of Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office, of an SE or SCE, between Member States⁸.

The wording of Article 4(a) also differs as regards the consideration. Under ex-Article 7(1)(b) the consideration shall in principal consist exclusively of the allocation of shares in the acquiring company, although in some Member States the consideration may be accepted even if it includes a payment in cash not exceeding 10 % of the nominal value of the shares. Under Article 4(a), a larger cash payment may be accepted, as only a part of the consideration for the transfer shall consist of securities. These amendments which simplify the definition of restructuring operations are substantive amendments.

The restructuring operation described in Article 4(b) corresponds in principle to the one described in ex-Article 7(1)(bb), that is restructuring operations where a capital company acquires shares representing at least 75 % of the issued share capital of another capital company. However, the wording of Article 4(b) has been changed in so far as it provides that the shares acquired shall represent a majority of the voting rights. The new wording is

⁷ Case C-164/90 Muwi Bouwgroep BV [1991] ECR I-06049.

⁸ OJ L 225, 20.8.1990, p. 1.

consistent with the terminology used in Directive 90/434/EEC. Also, under Article 4(b) the consideration shall only in part consist of securities in the acquiring company, whereas under ex-Article 7(1)(bb) the consideration shall in principal consist exclusively of such securities. Further, the five year claw back period referred to in the second subparagraph of ex-point (bb) has not been reinstated. These amendments which simplify the definition of restructuring operations are substantive amendments.

5. TRANSACTIONS NOT SUBJECT TO INDIRECT TAX

Article 5 sets out the main rule of the Directive, namely that Member States shall not subject capital companies to any form of indirect tax on the raising of capital. The Article is partly based on the general prohibition of ex-Article 10 which provides that capital companies and entities deemed to be capital companies may not, apart from capital duty, be subjected to any taxes whatsoever in respect of the raising of capital. Yet, the prohibition of Article 5 is broader than that of ex-Article 10 as it prohibits capital duty also. Thus, it is a substantive amendment.

Article 5(1)(a)-(c) corresponds to ex-Article 10(a)-(c). Article 5(1)(d) corresponds to ex-Article 4(3), but the scope of Article 5(1)(d)(ii) is broader than the scope of ex-Article 4(3)(b). Article 5(1)(d)(ii) explicitly sets out that the transfers from one Member State to another of either the centre of effective management or of the registered office of a capital company shall not be subject to indirect tax, whereas under ex-Article 4(3)(b) such transfers are only exempted if the entity concerned is considered in both Member States, for the purposes of charging capital duty, as a capital company. The new wording of Article 5(1)(d)(ii) reflects the deletion of ex-Article 4(1)(g) and (h).

Article 5(1)(e) is new and sets out specifically that the restructuring operations mentioned in Article 4 are not subject to indirect tax. On the one hand, restructuring operations previously covered by ex-Article 7(1)(b), now Article 4(a), have been exempted from capital duty, since the 1985 amendment. On the other hand, Member States that charged capital duty as at 1 July 1984 (or their date of accession) on the restructuring operations covered by ex-Article 7(1)(bb), now Article 4(b), at the ordinary rate have had the possibility to continue to do so under ex-Article 7(1). This possibility no longer exists, as restructuring operations are not among the transactions that may be subject to capital duty. Article 5(1)(e) therefore constitutes a substantive amendment, which affects the Member States that currently charge capital duty on the restructuring operations in question.

Some of the restructuring operations now referred to in Article 4, namely mergers *not* involving an increase in capital, did previously fall outside the scope of the Directive, and Member States were therefore free to charge indirect taxes on those restructuring operations. Under Article 5(1)(e) Member States may no longer do so. This is a substantive amendment that affects all Member States which currently charge indirect taxes on restructuring operations not involving an increase in capital.

Article 5(2) corresponds to ex-Article 11 and remains unchanged. Article 5(2) prohibits taxation of certain activities that may otherwise result in transactions subject to indirect tax.

6. DUTIES AND VALUE ADDED TAX

Article 6 enumerates, exclusively, the duties and fees that Member States may levy on transactions mentioned in Article 5. Article 6 corresponds to ex-Article 12 and remains unchanged apart from a few editorial changes.

7. LEVYING OF CAPITAL DUTY IN CERTAIN MEMBER STATES

Article 7 determines the term "capital duty" as a duty levied on contributions of capital to capital companies. This provision corresponds partly to ex-Article 1.

According to Article 5, capital duty is in principle not to be levied. Nevertheless, Article 7 sets out that certain Member States may charge capital duty for a limited period of time. This provision that is partly based on ex-Article 7(2) implies some substantive amendments.

Only the transactions referred to in Article 5(1)(a), that is contributions of capital, may be subject to capital duty. This means that restructuring operations of the kind mentioned in Article 4(b) are no longer subject to capital duty.

The Member States that actually did levy capital duty on 1 January 2006 may opt to continue to do so. A fixed date is set in order to establish explicitly that there is a standstill of the present situation where only 7 of the 25 Member States levy capital duty. The provision ensures that the Member States which did not levy capital duty on that date or which discontinue the charging of capital duty after that date may not reintroduce it. In fact, the aim of the Directive, in particular as revised by the 1985 amendment, has been interpreted as already constituting an implicit standstill obligation. Thus, Advocate General Fennelly has, in his opinion in C-350/98, made it clear that Member States have no right to introduce new capital duties on transactions listed in the Directive once they have chosen not to do so. The Court of Justice upheld this reasoning in its judgement of 11 November 1999⁹. The general standstill obligation in Article 7 consolidates the implicit standstill obligation and replaces the standstill obligations referred to in ex-Article 4(2) and ex-Article 8.

Finally, Article 7 requires the abolition of capital duty.

8. RATE OF CAPITAL DUTY

Article 8 provides that capital duty shall be charged at a single rate. This provision is unchanged and corresponds to ex-Article 7(2). Article 8 also provides that the rate of capital duty may not exceed the rate applied by Member States at 1 January 2006, and may in no case exceed 1%. For Member States levying capital duty at a rate of 1% at 1 January 2006, this provision means that they may continue to apply that rate and that their maximum rate is 1%. For Member States applying a rate of less than 1 % at that date, Article 8 means that they may preserve that rate, which will also serve as their individual maximum rate. Thus, a Member State that levied duty at a rate of 0,5 % at 1 January 2006 may continue to tax at that rate.

Once a Member State has chosen to charge a rate which is lower than its individual maximum rate at 1 January 2006, it may not reintroduce a higher rate.

⁹ Case C-350/98 Henkel Hellas ABEE [1999] ECR I-08013.

The standstill obligations in Article 8 are substantive amendments, since ex-Article 7(2) does not explicitly preclude that the rate is raised, so long as it does not exceed the maximum rate. Anyhow, under the current Directive an implicit standstill obligation prevents Member States from raising the rate of duty.

Finally, Article 8 states that the maximum rate must not exceed 1% until 31 December 2007 and 0,5 % until 31 December 2009. The limit of 0,5 % on the rate is new and constitutes a substantive amendment, since the maximum rate under ex-Article 7(2) is 1 %.

9. EXCLUSION OF CERTAIN ENTITIES FROM THE SCOPE OF APPLICATION

Under *Article 9*, Member States may determine whether or not the entities mentioned in Article 2(2) shall be considered as capital companies for the purposes of charging capital duty. This provision corresponds to the second sentence of ex-Article 3(2) and remains unchanged.

10. TRANSACTIONS SUBJECT TO CAPITAL DUTY AND DISTRIBUTION OF TAXING RIGHTS

Article 10 combines ex-Article 2 on the distribution of taxing rights and ex-Article 4 that makes the distinction between transactions which must be and transactions which may be subject to capital duty. Pursuant to Article 10, capital duty is to be levied on the capital company receiving the capital contribution in question. Article 10 also provides, that capital duty shall be charged only by the Member State in which the centre of effective management of the capital company is situated at the time when the contribution of capital takes place. This provision corresponds to ex-Article 2(1) and remains unchanged. As is clear from this provision, capital duty is to be charged once only in the Community, if at all. Thus where a contribution of capital falls under Article 10 and gives rise to a claim for capital duty in one Member State, the same contribution cannot give rise for capital duty in another Member State. Accordingly, if a Member State does not levy capital duty within its jurisdiction, another Member State is not entitled to tax instead.

Article 10(1) corresponds to ex-Article 2(1) and ex-Article 4(1)(a) to (f) and remains unchanged. Article 10(2) corresponds to ex-Articles 2(1) and 4(2) and remains unchanged. Article 10(3) and (4) correspond to ex-Article 2(2) and (3) and remain unchanged.

11. BASIS OF ASSESSMENT FOR CAPITAL DUTY

Article 11 establishes the basis on which capital duty must be assessed. It corresponds to ex-Articles 5(1) and 5(2) and remains unchanged. Ex-Article 5(3) has been moved to Article 12(1), as it deals with exclusions from the basis of assessment.

12. EXCLUSION FROM THE BASIS OF ASSESSMENT FOR CAPITAL DUTY

Article 12(1) provides, in order to avoid double taxation, that when capital is increased, the basis of assessment shall not include amounts on which capital duty has already been charged. Article 12(1) corresponds to ex-Article 5(3) and remains unchanged.

Under Article 12(2) a Member State has the option of exempting from capital duty the capital contributed by a member with unlimited liability. If however the share of a general partner is converted into a limited partner share, by the liability of the partner becoming limited, capital duty becomes payable. Article 12(2) correspond to ex-Article 6(1) and (2) and remains unchanged, except for the deletion of the first and second indent of ex-Article 6(2). The two indents deal with the taxation of transfers of the centre of effective management or the registered office of a capital company. The deletion is a consequence of Article 5(1)(d)(ii) as amended, under which such transfers do not give rise to a charge.

The first and second sub-paragraphs of ex-Article 7(1) are now comprised by Article 4 and Article 5(1)(e). The third subparagraph of ex-Article 7(1), which permits Greece to determine whether it would subject to capital duty certain company reconstructions, has been deleted. The provision is no longer applicable. Ex-Article 7(2) has been moved to Article 7 and 8.

Article 12(3) provides, in the case of an increase following a reduction in the company's capital as a result of losses sustained, that part of the increase may be excluded from the basis of assessment. Article 12(3) corresponds to ex-Article 7(3) and remains unchanged.

13. EXEMPTION OF CONTRIBUTIONS OF CAPITAL TO CERTAIN CAPITAL COMPANIES

Pursuant to *Article 13*, Member States may exempt from capital duty contributions of capital relating to certain capital companies that supply public services. The first subparagraph of Article 13 corresponds to ex-Article 8 and remains unchanged. The second subparagraph of Article 13 deals with the charge of capital duty on a branch of a capital company that supplies public services in the case where the registered office and the centre of effective management of the capital company are situated in a third country. Under that provision, Member States must also exempt contributions to the branches in question if they opt to exempt contributions under the first subparagraph. The aim of the provision is to ensure that activities, which from an economic point of view are equivalent, actually are treated alike. The provision is new and constitutes a substantive amendment.

14. DEROGATION PROCEDURE

Article 14 deals with the derogation procedure and corresponds to ex-Article 9. However, according to Article 14, it will no longer be possible to derogate from the provisions of this Directive by way of increasing the rate of capital duty. This is a substantive amendment. It is to be noted that, until now, the derogation procedure has not been applied frequently, and there are currently no derogations as regards an increase in the rate.

Ex-Article 10 is now Article 5(1), ex-Article 11 is Article 5(2), ex-Article 12 is Article 6 and ex-Articles 13 and 14 are now Article 15.

15. TRANSPOSITION, REPEAL, ENTRY INTO FORCE AND ADDRESSEES

Articles 15, 16, 17 and 18 on transposition, repeal, entry into force and addressees are standard articles.

16. LIST OF COMPANIES REFERRED TO IN ARTICLE 2(1)(A)

Annex I lists certain companies under national law of the Member States. The list corresponds in principle to the list of companies referred to in ex-Article 3(1)(a). However, the list is incomplete and has therefore been adapted. It now comprises a reference to companies incorporated under Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)¹⁰. It also includes companies under national law in Estonia and Lithuania. Lastly, the list of companies under national law in the Netherlands has been updated.

Companies incorporated under Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)¹¹ are not included in the list. This is due to the fact that SCE's as opposed to SE's do not necessarily take the form of capital companies in all Member States. Where a SCE takes the form of a capital company, it will be covered by the definition in Article 2.

LINGUISTIC CORRECTIONS

Specific linguistic corrections in certain language versions of the Directive may occur.

¹⁰ OJ L 294, 10.11.2001, p. 1.

¹¹ OJ L 207, 18.8.2003, p. 1.

Proposal for a

COUNCIL DIRECTIVE

concerning indirect taxes on the raising of capital

↓ 69/335/EEC (adapted)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles ~~99~~ 93 and ~~100~~ 94 thereof,

Having regard to the proposal from the Commission¹²,

Having regard to the opinion of the European Parliament¹³,

Having regard to the opinion of the ~~European~~ Economic and Social Committee¹⁴,

Whereas:

↓

- (1) Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital¹⁵ has been substantially amended several times¹⁶. Since further amendments are to be made, it should be recast in the interests of clarity.

↓ 69/335/EEC Recital 1 (adapted)

~~The objective of the Treaty is to create an economic union whose characteristics are similar to those of a domestic market and one of the essential conditions for achieving this is the promotion of the free movement of capital.~~

¹² OJ C [...].

¹³ OJ No 119, 3. 7. 1965, p. 2057/65 C [...].

¹⁴ OJ No 134, 23. 7. 1965, p. 2227/65 C [...].

¹⁵ OJ L 249, 3.10.1969, p. 25. Directive as last amended by the 2003 Act of Accession.

¹⁶ See Annex II, Part A.

↓ 69/335/EEC Recitals 2 and 8
(adapted)
⇒ new

- (2) The indirect taxes on the raising of capital, ~~in force in the Member States at the present time~~, namely the duty chargeable on contributions of capital to companies and firms ~~and~~ , hereinafter "capital duty", ~~and~~ the stamp duty on securities, ~~and~~ duty on restructuring operations, ~~and~~ ~~regardless of whether those operations involve an increase in capital~~, ~~and~~ give rise to discrimination, double taxation and disparities which interfere with the free movement of capital. ~~The same applies as regards other indirect taxes with the same characteristics as capital duty and the stamp duty on securities.~~
- (3) ~~and which,~~ Consequently, it is in the interests of the internal market to harmonise the legislation on indirect taxes on the raising of capital in order ~~to be eliminated by harmonisation~~ to eliminate, as far as possible, factors ~~which may distort conditions of competition or~~ ~~hinder the free movement of capital.~~
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↓ 69/335/EEC Recital 3 (adapted)

~~The harmonisation of such taxes on the raising of capital must be arranged in such a way as to minimise the budgetary repercussions for Member States.~~

↓ 85/303/EEC Recital 2

- (4) The economic effects of capital duty are detrimental to the regrouping and development of undertakings. Such effects are particularly harmful in the present economic situation in which there is a paramount need for priority to be given to stimulating investment.
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↓ 85/303/EEC Recital 3 (adapted)
⇒ new

- (5) ~~The best solution for attaining these objectives would be~~ ~~to abolish capital duty.~~ It is therefore appropriate ~~to abolish capital duty.~~
- (6) However, the losses of revenue which would result from ~~the immediate application of~~ such a measure are unacceptable for certain Member States ~~which currently apply capital duty.~~ ~~The~~ Those ~~Member States must~~ should ~~therefore be given~~ have ~~the opportunity~~ ~~to exempt from or~~ ~~subject to capital duty all or part of the transactions coming within its scope~~ concerned, it being understood that a single rate of tax must be charged within one and the same Member State. ~~Once a Member State has chosen not to~~

levy capital duty on all or part of the transactions under this Directive, it should not be possible for it to reintroduce such duties. ←

↓ new

- (7) It is appropriate that the maximum rate of capital duty applicable by the Member States which continue to charge capital duty should be reduced by 2008 and that capital duty should be abolished by 2010 at the latest.
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↓ 69/335/EEC Recital 4 (adapted)

~~The charging of stamp duty by a Member State on securities from other Member States introduced into or issued within its territory is contrary to the concept of a market whose characteristics are those of a domestic market. In addition, it has become evident that the retention of stamp duty on the issue of securities in respect of internal loans and on the introduction or issue on the market of a Member State of foreign securities is both undesirable from the economic point of view and inconsistent with current developments in the tax laws of the Member States in this field.~~

↓ 69/335/EEC Recital 6 (adapted)

- (8) It is inherent in the concept of ~~a common~~ ☒ an internal ☒ market ~~whose characteristics are those of a domestic market~~ that a duty on the raising of capital within the ~~common~~ ☒ internal ☒ market by a company or firm should ☒ not ☒ be charged ~~only~~ ☒ more than ☒ once. ☒ Accordingly, if the Member State to which the taxing right is attributed does not levy capital duty on certain or all transactions covered by this Directive, no other Member State is to exercise a taxing right in respect of those transactions. ~~☒ and that the level of this duty should be the same in all Member States so as not to interfere with the movement of capital.~~
-

↓ new

- (9) It is appropriate to maintain strict conditions for situations where Member States continue to levy capital duty, in particular as regards exemptions and reductions.
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↓ 69/335/EEC Recital 7 (adapted)

~~Therefore, this duty should be harmonised, with regard both to its structures and to its rates.~~

↓ 69/335/EEC Recitals 5 and 8
(adapted)

- (10) ~~The retention of other indirect taxes with the same characteristics as the capital duty or the stamp duty on securities might frustrate the purpose of the measures provided for in this Directive and those taxes should therefore be abolished.~~ ☒ Apart from capital duty, no indirect taxes on the raising of capital should be levied ☒. ~~In these circumstances, it is advisable to abolish the~~ ☒ In particular, no ☒ stamp duty ☒ should be levied ☒ on securities, regardless of the origin of such securities, and regardless of whether they represent a company's own capital or its loan capital.
-

↓ new

- (11) The list of capital companies set out in Directive 69/335/EEC is incomplete and should therefore be adapted.
- (12) Since, for those reasons, the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
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- (13) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.
- (14) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex II, Part B,

↓ 69/335/EEC

HAS ADOPTED THIS DIRECTIVE:

↓ 69/335/EEC (adapted)

⊗ CHAPTER I ⊗

⊗ SUBJECT MATTER AND SCOPE ⊗

Article 1

~~Member States shall charge on contributions of capital to capital companies a duty harmonised in accordance with the provisions of Articles 2 to 9 and hereinafter called «capital duty».~~

⊗ Subject matter ⊗

⊗ This Directive regulates the levying of indirect taxes in respect of the following: ⊗

⊗ (a) contributions of capital for capital companies; ⊗

⊗ (b) restructuring operations involving capital companies; ⊗

⊗ (c) the issue of certain securities and debentures. ⊗

~~*Article 2*~~

~~1. Transactions subject to capital duty shall only be taxable in the Member State in whose territory the effective centre of management of a capital company is situated at the time when such transactions take place.~~

~~2. When the effective centre of management of a capital company is situated in a third country and its registered office is situated in a Member State, transactions subject to capital duty shall be taxable in the Member State where the registered office is situated.~~

~~3. When the registered office and the effective centre of management of a capital company are situated in a third country, the supplying of fixed or working capital to a branch situated in a Member State may be taxed in the Member State in whose territory the branch is situated.~~

⊗ Capital company ⊗

↓ Act of Accession DK, IRL and the UK, Art. 29 and Annex I, p. 93 (adapted)
→₁ Act of Accession E and P, Art. 26 and Annex I, p. 167
→₂ Act of Accession EL, Art. 21 and Annex I, p. 95

1. For the purposes of this Directive ~~the expression~~ «capital company» means:

- (a) ⊗ any company which takes one of the forms listed in Annex I; ⊗ ~~companies under Belgian, Danish, German, →₁ Spanish, ← French, →₂ Hellenic, ← Irish, Italian, Luxembourg, Netherlands →₁, ← Portuguese ← and United Kingdom law known respectively as:~~

~~société anonyme/naamloze vennootschap, aktieselskab, Aktiengesellschaft, →₁ sociedad anónima, ← société anonyme, →₂ Ανώνυμος Εταιρία, ← companies incorporated with limited liability, società per azioni, société anonyme, naamloze vennootschap, →₁ sociedade anónima, ← companies incorporated with limited liability;~~

~~société en commandite par actions/commanditaire vennootschap op aandelen, kommandit-aktieselskab, Kommanditgesellschaft auf Aktien, →₁ sociedad comanditaria por acciones, ← société en commandite par actions, →₂ Ετερόρρυθμος κατά μετοχές Εταιρία, ← società in accomandita per azioni, société en commandite par actions, commanditaire vennootschap op aandelen →₁, ← sociedade em comandita por ações ←;~~

~~société de personnes à responsabilité limitée/ personenvennootschap met beperkte aansprakelijkheid, Gesellschaft mit beschränkter Haftung, →₁ sociedad de responsabilidad limitada, ← société à responsabilité limitée, →₂ Εταιρία Περιορισµένης Ευθύνης, ← società a responsabilità limitata, société à responsabilité limitée →₁, ← sociedade por quotas ←;~~

↓ Act of Accession A, S and FIN Art. 29 and Annex I, p. 196 (adapted)

~~Companies under Austrian law known as:~~

~~«Aktiengesellschaft»~~

~~«Gesellschaft mit beschränkter Haftung»;~~

~~Companies under Finnish law known as:~~

~~«osakeyhtiö — aktiebolag», «osuuskunta — andelslag», «säästöpankki —
sparbank» and «vakuutusyhtiö — försäkringsbolag»;~~

~~Companies under Swedish law known as:~~

~~«aktiebolag»~~

~~«bankaktiebolag»~~

~~«försäkringsaktiebolag».~~

↓ 2003 Act of Accession Art. 20
and Annex II (adapted)

~~companies under Czech law known as:~~

~~«akciová společnost»~~

~~«komanditní společnost»~~

~~«společnost s ručením omezeným»;~~

~~companies under Cypriot law known as:~~

~~«εταιρεία περιορισμένης ευθύνης»;~~

~~companies under Latvian law known as:~~

~~«kapitālsabiedrība»;~~

~~Companies under Hungarian law known as:~~

~~«részvénytársaság»~~

~~«korlátolt felelősségű társaság»;~~

~~Companies under Maltese law known as:~~

~~‘Kumpaniji ta' Responsabilità Limitata’~~

~~‘Soċjetajiet en commandite li l-kapital tagħhom maqsum fazzjonijiet’;~~

~~Companies under Polish law known as:~~

~~«spółka akcyjna»~~

~~«spółka z ograniczoną odpowiedzialnością»;~~

~~Companies under Slovenian law known as:~~

~~‘delniška družba’~~

~~‘komanditna delniška družba’~~

~~‘družba z omejeno odgovornostjo’;~~

~~Companies under Slovak law known as:~~

~~«akciová spoločnosť»~~

~~«spoločnosť s ručením obmedzeným»~~

~~‘komanditna spoločnosť’.~~

↓ 69/335/EEC

- (b) any company, firm, association or legal person the shares in whose capital or assets can be dealt in on a stock exchange;
- (c) any company, firm, association or legal person operating for profit, whose members have the right to dispose of their shares to third parties without prior authorisation and are only responsible for the debts of the company, firm, association or legal person to the extent of their shares.

↓ 69/335/EEC (adapted)

2. For the purposes ~~of the application~~ of this Directive, any other company, firm, association or legal person operating for profit shall be deemed to be a capital company. ~~However, a Member State shall have the right not to consider it as such for the purpose of charging capital duty.~~

↓ 69/335/EEC (adapted)
⇒ new

~~Article 43~~

⊗ Contributions of capital ⊗

~~⊗~~ ⊗ For the purposes of this Directive ⊗ ⇒ and subject to Article 4, ⇐ ~~⊗~~ the following transactions shall be ~~subject to capital duty~~ ⇐ considered to be "contributions of capital" ⇐:

↓ 69/335/EEC

- (a) the formation of a capital company;

- (b) the conversion into a capital company of a company, firm, association or legal person which is not a capital company;
- (c) an increase in the capital of a capital company by contribution of assets of any kind;
- (d) an increase in the assets of a capital company by contribution of assets of any kind, in consideration, not of shares in the capital or assets of the company, but of rights of the same kind as those of members, such as voting rights, a share in the profits or a share in the surplus upon liquidation;

↓ 69/335/EEC (adapted)

- (e) the transfer from a third country to a Member State of the ~~effective centre of~~ ☒ effective ☒ management of a ☒ capital ☒ company, ~~firm, association or legal person, whose registered office is in a third country and which is considered in that Member State, for the purposes of charging capital duty, as a capital company;~~
- (f) the transfer from a third country to a Member State of the registered office of a ☒ capital ☒ company, ~~firm, association or legal person, whose effective centre of~~ ☒ effective ☒ management is in a third country ~~and which is considered in that Member State, for the purposes of charging capital duty, as a capital company;~~

~~(g) the transfer from a Member State to another Member State of the effective centre of management of a company, firm, association or legal person which is considered in the latter Member State, for the purposes of charging capital duty, as a capital company, but is not so considered in the other Member State;~~

~~(h) the transfer from a Member State to another Member State of the registered office of a company, firm, association or legal person, whose effective centre of management is in a third country and which is considered in the latter Member State, for the purposes of charging capital duty, as a capital company, but is not so considered in the other Member State.~~

↓ 85/303/EEC Art. 1, point 1
(adapted)

~~2. The following transactions may, to the extent that they were taxed at the rate of 1 % as at 1 July 1984, continue to be subject to capital duty:~~

↓ 69/335/EEC

- ~~(a)~~(g) an increase in the capital of a capital company by capitalisation of profits or of permanent or temporary reserves;
- ~~(b)~~(h) an increase in the assets of a capital company through the provision of services by a member which does not entail an increase in the company's capital, but which does

result in a variation in the rights in the company or which may increase the value of the company's shares;

~~(e)~~ (i) a loan taken up by a capital company, if the creditor is entitled to a share in the profits of the company;

~~(d)~~ (j) a loan taken up by a capital company with a member or a member's spouse or child, or a loan taken up with a third party, if it is guaranteed by a member, on condition that such loans have the same function as an increase in the company's capital.

↓ 85/303/EEC Art. 1, point 1

~~However, the Hellenic Republic shall determine which of the transactions listed above it will subject to capital duty.~~

↓ 69/335/EEC (adapted)
⇒ new

⊗ Article 4 ⊗

⊗ Restructuring operations ⊗

⇒ For the purposes of this Directive, the following "restructuring operations" shall not be considered to be contributions of capital: ⇐

↓ reinstatement of 69/335/EEC
Art. 7(1)(b) as repealed by
85/303/EEC (adapted)
⇒ new

⊗ (a) the transfer by one or more capital companies of all their assets and liabilities, or one or more branches of activity to one or more capital companies which are in the process of being formed or which are already in existence, provided that the consideration for the transfer consists ⊗ ⇒ at least in part of securities representing the capital of the acquiring company; ⇐

↓ reinstatement of 73/79/EEC Art.
1 as repealed by 85/303/EEC
(adapted)
⇒ new

⊗ (b) the acquisition, by a capital company which is in the process of being formed or which is already in existence, of shares representing ⊗ ⇒ a majority of the voting

rights ⇐ ☒ of another capital company, provided that the consideration for the shares acquired consists ⇐ ☒ ⇒ at least in part of securities representing the capital of the former company. Where the majority of the voting rights ⇐ ☒ is reached by means of two or more transactions, only the transaction whereby ⇐ ☒ ⇒ the majority of voting rights ⇐ ☒ is reached and any subsequent transactions shall be regarded as restructuring operations. ⇐ ☒

↓ 69/335/EEC (adapted)
⇒ new

☒ CHAPTER II ☒

☒ GENERAL PROVISIONS ☒

☒ Article 5 ☒

☒ Transactions not subject to indirect tax ☒

⇒ 1. Member States shall not subject capital companies to any form of indirect tax whatsoever in respect of the following: ⇐ ☒

- ☒ (a) contributions of capital; ⇐ ☒
- ☒ (b) loans, or the provision of services, occurring as part of contributions of capital; ⇐ ☒
- ☒ (c) registration or any other formality required before the commencement of business to which a capital company may be subject by reason of its legal form; ⇐ ☒

↓ 69/335/EEC (adapted)

~~3.(d) Formation, within the meaning of paragraph 1 (a), shall not include any alteration of the constituent instrument or regulations of a capital company, and in particular ☒ the following ⇐ ☒ :~~

↓ 69/335/EEC

~~(a)(i) the conversion of a capital company into a different type of capital company;~~

↓ 69/335/EEC (adapted)

~~(b)(ii) the transfer from a Member State to another Member State of the effective centre of ☒ effective ⇐ ☒ management or of the registered office of a~~

~~☒ capital ☒ company, firm, association or legal person which is considered in both Member States, for the purposes of charging capital duty, as a capital company;~~

↓ 69/335/EEC

~~(e)(iii)~~ a change in the objects of a capital company;

~~(d)(iv)~~ the extension of the period of existence of a capital company;

↓ new

(e) the restructuring operations referred to in Article 4.

↓ 69/335/EEC (adapted)

☒ 2. Member States shall not subject the following to any form of indirect tax whatsoever:
☒

☒ (a) the creation, issue, admission to quotation on a stock exchange, making available on the market or dealing in stocks, shares or other securities of the same type, or of the certificates representing such securities, by whomsoever issued; ☒

☒ (b) loans, including government bonds, raised by the issue of debentures or other negotiable securities, by whomsoever issued, or any formalities relating thereto, or the creation, issue, admission to quotation on a stock exchange, making available on the market or dealing in such debentures or other negotiable securities. ☒

☒ Article 6 ☒

☒ Duties and Value Added Tax ☒

☒ 1. Notwithstanding Article 5, Member States may charge the following duties and taxes: ☒

☒ (a) duties on the transfer of securities, whether charged at a flat rate or not; ☒

☒ (b) transfer duties, including land registration taxes, on the transfer, to a capital company, of businesses or immovable property situated within their territory; ☒

☒ (c) transfer duties on assets of any kind transferred to a capital company, in so far as such property is transferred for a consideration other than shares in the company; ☒

☒ (d) duties on the creation, registration or discharge of mortgages or other charges on land or other property; ☒

☒(e) duties in the form of fees or dues; ☒

☒(f) value added tax. ☒

☒2. The amount charged by way of the duties and taxes listed in points (b) to (e) of paragraph 1 shall not vary according to whether or not the centre of effective management or the registered office of the capital company is situated within the territory of the Member State charging the duties or taxes. Those amounts may not exceed those of duties or taxes applicable to like transactions which take place within the Member State charging them. ☒

☒CHAPTER III☒

☒ SPECIAL PROVISIONS☒

☒ Article 7 ☒

☒ *Levying of capital duty in certain Member States* ☒

↓ new

1. Notwithstanding Article 5(1)(a), a Member State which as at 1 January 2006 charged a duty on contributions of capital to capital companies, hereinafter "capital duty", may continue to do so until 31 December 2009 provided that it complies with Articles 8 to 14.

2. If, at any time after 1 January 2006, a Member State discontinues the charging of capital duty, it may not reintroduce it.

3. If, at any time after 1 January 2006, a Member State discontinues the charging of capital duty on the contributions of capital referred to in Article 3(g) to (j), it may not reintroduce capital duty on such contributions of capital, notwithstanding Article 10(2).

4. If, at any time after 1 January 2006, a Member State discontinues the charging of capital duty on the supplying of fixed or working capital to a branch, it may not reintroduce duty on the contributions of capital concerned, notwithstanding Article 10(4).

5. If, at any time after 1 January 2006, a Member State allows exemptions under Article 13, it may not subsequently charge capital duty on the contributions of capital concerned.

↓ 69/335/EEC (adapted)
⇒ new

⊗ Article 8 ⊗

⊗ **Rate of capital duty** ⊗

- ⊗ 1. Capital duty shall be charged at a single rate. ⊗
- ⇒ 2. The rate of capital duty applied by a Member State may not exceed the rate applied by that Member State at 1 January 2006. ⇐
- ⇒ Where, after that date, the Member State reduces the rate applied, it may not reintroduce a higher rate. ⇐
- ⊗ 3. The rate of capital duty may not in any event exceed 1%, ⊗ ⇒ and after 31 December 2007 it may not exceed 0,5%. ⇐
-

↓ 69/335/EEC (adapted)

⊗ Article 9 ⊗

⊗ **Exclusion of certain entities from the scope of application** ⊗

⊗ Member States may for the purposes of levying capital duty choose not to regard as capital companies the entities referred to in Article 2(2). ⊗

⊗ Article 10 ⊗

⊗ **Transactions subject to capital duty and distribution of taxing rights** ⊗

⊗ 1. Where, pursuant to Article 7(1), a Member State continues to charge capital duty, it shall subject to capital duty the contributions of capital referred to in Article 3(a) to (d), if the centre of effective management of the capital company is situated in that Member State at the time when the contribution of capital is made. ⊗

⊗ It shall also subject to capital duty the contributions of capital referred to in Article 3(e) and (f). ⊗

⊗ 2. Where a Member State continues to charge capital duty, it may do so on the contributions of capital referred to in Article 3(g) to (j), if the centre of effective management of the capital company is situated in that Member State at the time when the contribution of capital is made. ⊗

3. Where the centre of effective management of a capital company is situated in a third country and its registered office is situated in a Member State which continues to charge capital duty, contributions of capital shall be subject to capital duty in that Member State.

4. Where the registered office and the centre of effective management of a capital company are situated in a third country, the supply of fixed or working capital to a branch situated in a Member State which continues to charge capital duty may be subject to capital duty in that Member State.

Article ~~5~~11

Basis of assessment for capital duty

1. ~~The duty shall be charged:~~

~~(a)~~ 1 In the case of ~~formation of a capital company or of an increase in its capital or assets, as referred to in Article 4 (1) (a), (c) and (d): on~~ contributions of capital as referred to in Article 3(a), (c) and (d), the basis of assessment for capital duty shall be the actual value of assets of any kind contributed or to be contributed by the members, after the deduction of liabilities assumed and of expenses borne by the company as a result of each contribution.

~~Member States may postpone the charging of capital duty~~ The charging of capital duty may be postponed until the contributions have been effected.

~~(b)2.~~ 2 In the case of ~~conversion into a capital company or of the transfer of the effective centre of management or of the registered office of a capital company, as referred to in Article 4 (1) (b), (c), (f), (g) and (h): on~~ contributions of capital as referred to in Article 3(b), (e) and (f), the basis of assessment for capital duty shall be the actual value of the assets of any kind belonging to the company at the time of the conversion or transfer, after the deduction of liabilities and expenses for which the company is responsible at that time.

~~(c)3.~~ 3 In the case of ~~an increase in the capital by capitalisation of profits reserves, or provisions, as referred to in Article 4 (2) (a): on~~ contributions of capital as referred to in Article 3(g), the basis of assessment for capital duty shall be the nominal amount of such increase.

~~(d)4.~~ 4 In the case of ~~an increase in the assets, as referred to in Article 4 (2) (b): on~~ contributions of capital as referred to in Article 3(h), the basis of assessment for capital duty shall be the actual value of the services provided, after deduction of the liabilities assumed and the expenses borne by the company as a result of the provision of such services.

~~(e)5.~~ 5 In the case of ~~loans referred to in Article 4 (2) (c) and (d): on~~ contributions of capital as referred to in Article 3(i) and (j), the basis of assessment for capital duty shall be the nominal amount of the loan taken up.

↓ 74/553/EEC (adapted)

~~26.~~ In the cases referred to in paragraphs 1 ~~(a)~~ and ~~(b)~~ 2, ~~Member States may base the amount on which to charge capital duty on~~ the actual value of the shares in the company allotted or belonging to each member may be used as the basis of assessment for capital duty, except where . ~~This does not apply to those cases in which~~ contributions are made only in cash.

The amount on which duty is charged shall in no circumstances be less than the nominal amount of the shares in the company allotted or belonging to each member.

↓ 69/335/EEC (adapted)

Article 12

Exclusion from the basis of assessment for capital duty

~~3.~~ 1. In the case of an increase in capital, the basis of assessment for capital duty shall not include the following:

~~(a)~~ the amount of the assets belonging to the capital company which are allocated to the increase in capital and which have already been subjected to capital duty;

~~(b)~~ the amount of the loans taken up by the capital company which are converted into shares in the company and which have already been subjected to capital duty.

~~Article 6~~

~~12.~~ ~~Each~~ A Member State may exclude from the basis of assessment for capital duty ; ~~as determined in accordance with Article 5,~~ the amount of the capital contributed by a member with unlimited liability for the obligations of a capital company as well as the share of such a member in the company's assets.

~~2.~~ Where a Member State exercises ~~the~~ that power ~~provided for in paragraph 1,~~ the following shall be subject to capital duty:

~~the transfer of the effective centre of management of a capital company to another Member State which does not exercise that power;~~

~~the transfer of the registered office of a capital company whose effective centre of management is in a third country to another Member State which does not exercise that power;~~

~~any transaction as a result of which the liability of a member is limited to his share in the company's capital, in particular when the limitation of liability results from the conversion of a capital company into a different type of capital company , shall be subject to capital duty .~~

↓ 69/335/EEC

Capital duty shall be charged in all such cases on the value of the share in the company's assets belonging to members with unlimited liability for the company's obligations.

↓ 85/303/EEC Art. 1, point 2
(adapted)

~~Article 7~~

~~1. Member States shall exempt from capital duty transactions, other than those referred to in Article 9, which were, as at 1 July 1984, exempted or taxed at a rate of 0,50 % or less.~~

~~The exemption shall be subject to the conditions which were applicable, on that date, for the grant of the exemption or, as the case may be, for imposition at a rate of 0,50 % or less.~~

~~The Hellenic Republic shall determine which transactions it shall exempt from capital duty.~~

~~2. Member States may either exempt from capital duty all transactions other than those referred to in paragraph 1 or charge duty on them at a single rate not exceeding 1 %.~~

3. In the case of an increase in a company's capital in accordance with Article 4 (1) (e) a contribution of capital as referred to in Article 3(c) , following a reduction in the company's capital as a result of losses sustained, that part of the increase contribution of capital which corresponds to the reduction in capital may be exempted excluded from the basis of assessment , provided this increase that the contribution of capital occurs within four years of the reduction in capital.

↓ 69/335/EEC (adapted)

Article ~~8~~13

Exemption of contributions of capital to certain capital companies

↓ 85/303/EEC Art. 1, point 3
(adapted)

~~Subject to Article 7 (1), Member States may exempt from capital duty the transactions referred to in Article 4 (1) and (2) concerning~~ contributions of capital made to the following :

↓ 69/335/EEC (adapted)

(a) capital companies which supply public services, such as public transport undertakings, port authorities or undertakings supplying water, gas or electricity, in cases where the State or regional or local authorities own at least half of the company's capital;

(b) capital companies which, in accordance with their regulations and in fact, pursue exclusively and directly cultural, ~~charitable~~ social , relief or educational objectives.

↓ new

Member States which exempt such contributions of capital from capital duty shall also apply the exemption to the supply of fixed or working capital to a branch within its territory as referred to in Article 10(4).

↓ 69/335/EEC (adapted)

Article 914

Derogation procedure

Certain types of ~~transactions~~ contributions of capital or of capital companies may be the subject of exemptions, or reductions ~~or increases~~ in rates in order to achieve fairness in taxation, or for social considerations, or to enable a Member State to deal with special situations.

The Member State which proposes to take such a measure shall refer the matter to the Commission in good time, having regard to the application of Article ~~102~~ 97 of the Treaty.

Article 10

~~Apart from capital duty, Member States shall not charge, with regard to companies, firms, associations or legal persons operating for profit, any taxes whatsoever:~~

~~(a) in respect of the transactions referred to in Article 4;~~

~~(b) in respect of contributions, loans or the provision of services, occurring as part of the transactions referred to in Article 4;~~

~~(c) in respect of registration or any other formality required before the commencement of business to which a company, firm, association or legal person operating for profit may be subject by reason of its legal form.~~

~~Article 11~~

~~Member States shall not subject to any form of taxation whatsoever:~~

- ~~(a) the creation, issue, admission to quotation on a stock exchange, making available on the market or dealing in stocks, shares or other securities of the same type, or of the certificates representing such securities, by whomsoever issued;~~
- ~~(b) loans, including government bonds, raised by the issue of debentures or other negotiable securities, by whomsoever issued, or any formalities relating thereto, or the creation, issue, admission to quotation on a stock exchange, making available on the market or dealing in such debentures or other negotiable securities.~~

~~Article 12~~

~~1. Notwithstanding Articles 10 and 11, Member States may charge:~~

- ~~(a) duties on the transfer of securities, whether charged at a flat rate or not;~~
- ~~(b) transfer duties, including land registration taxes, on the transfer, to a company, firm, association or legal person operating for profit, of businesses or immovable property situated within their territory;~~
- ~~(c) transfer duties on assets of any kind transferred to a company, firm, association or legal person operating for profit, in so far as such property is transferred for a consideration other than shares in the company;~~
- ~~(d) duties on the creation, registration or discharge of mortgages or other charges on land or other property;~~
- ~~(e) duties paid by way of fees or dues;~~
- ~~(f) value added tax.~~

~~2. The duties and taxes referred to in paragraph 1 (b), (c), (d) and (e) shall be the same, whether the effective centre of management or the registered office of the company, firm, association or legal person operating for profit is situated within the territory of the Member State charging the duties or taxes or not; nor may these duties and taxes exceed those which are applicable to like transactions in the Member State charging them.~~

☒ CHAPTER IV ☒

☒ FINAL PROVISIONS ☒

~~Article 13~~

~~Member States shall bring into force by 1 January 1972 such provisions by way of law, regulation or administrative action as may be necessary to comply with the provisions of this Directive and shall forthwith inform the Commission thereof.~~

~~Article 14~~

~~Member States shall ensure that the texts of the main provisions of internal law which they subsequently adopt in the field covered by this Directive are forwarded to the Commission.~~



Article 15

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 3, 4, 5, 7, 8, 10, 12, 13 and 14 by 31 December 2006 at the latest. They shall forthwith communicate to the Commission the texts of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 16

Repeal

Directive 69/355/EEC, as amended by the Directives listed in Part A of Annex II, is repealed with effect from 1 January 2007, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Part B of Annex II.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

Article 17

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Articles 1, 2, 6, 9 and 11 shall apply from 1 January 2007.

Article ~~1815~~

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council
The President*

↓ 69/335/EEC (adapted)
⇒ new

⊗ **ANNEX I** ⊗

⊗ **LIST OF COMPANIES REFERRED TO IN ARTICLE 2(1)(a)** ⊗

⇒ (1) Companies incorporated under Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)¹⁷ ⇐

⊗ (2) companies under Belgian law known as: ⊗

⊗ (i) société anonyme/naamloze vennootschap ⊗

⊗ (ii) société en commandite par actions/commanditaire vennootschap op aandelen ⊗

⊗ (iii) société privée à responsabilité limitée/besloten vennootschap met beperkte aansprakelijkheid ⊗

⊗ (3) companies under Czech law known as: ⊗

⊗ (i) akciová společnost ⊗

⊗ (ii) komanditní společnost ⊗

⊗ (iii) společnost s ručením omezeným ⊗

⊗ (4) companies under Danish law known as: ⊗

⊗ (i) aktieselskab ⊗

⊗ (ii) kommandit-aktieselskab ⊗

⊗ (5) companies under German law known as: ⊗

⊗ (i) Aktiengesellschaft ⊗

⊗ (ii) Kommanditgesellschaft auf Aktien ⊗

⊗ (iii) Gesellschaft mit beschränkter Haftung ⊗

↓ new

(6) companies under Estonian law known as:

¹⁷ OJ L 294, 10.11.2001, p. 1.

(i) täisühing

(ii) usaldusühing

(iii) osaühing

(iv) aktsiaselts

(v) tulundusühistu

↓ 69/335/EEC (adapted)

⊗ (7) companies under Greek law known as: ⊗

⊗ (i) Ανώνυμος Εταιρία ⊗

⊗ (ii) Ετερόρρυθμος κατά μετοχάς Εταιρία ⊗

⊗ (iii) Εταιρία Περιορισμένης Ευθύνης ⊗

⊗ (8) companies under Spanish law known as: ⊗

⊗ (i) sociedad anónima ⊗

⊗ (ii) sociedad comanditaria por acciones ⊗

⊗ (iii) sociedad de responsabilidad limitada ⊗

⊗ (9) companies under French law known as: ⊗

⊗ (i) société anonyme ⊗

⊗ (ii) société en commandite par actions ⊗

⊗ (iii) société à responsabilité limitée ⊗

⊗ (10) companies under Irish law known as: companies incorporated with limited liability
⊗

⊗ (11) companies under Italian law known as: ⊗

⊗ (i) società per azioni ⊗

⊗ (ii) società in accomandita per azioni ⊗

⊗ (iii) società a responsabilità limitata ⊗

⊗ (12) companies under Cypriot law known as: εταιρείες περιορισμένης ευθύνης ⊗

⊗ (13) companies under Latvian law known as: kapitālsabiedrība ⊗

↓ new

(14) companies under Lithuanian law known as:

(i) akcinė bendrovė

(ii) uždaroji akcinė bendrovė

↓ 69/335/EEC (adapted)

⊗ (15) companies under Luxembourg law known as: ⊗

⊗ (i) société anonyme ⊗

⊗ (ii) société en commandite par actions ⊗

⊗ (iii) société à responsabilité limitée ⊗

⊗ (16) companies under Hungarian law known as: ⊗

⊗ (i) részvénytársaság ⊗

⊗ (ii) korlátolt felelősségű társaság ⊗

⊗ (17) companies under Maltese law known as: ⊗

⊗ (i) Kumpaniji ta' Responsabilità Limitata ⊗

⊗ (ii) Soċjetajiet in akkomandita li l-kapital tagħhom jkun maqsum f'azzjonijiet ⊗

↓ 69/335/EEC (adapted)

⇒ new

⊗ (18) companies under Dutch law known as: ⊗

⊗ (i) naamloze vennootschap ⊗

⇒ (ii) besloten vennootschap met beperkte aansprakelijkheid ⇐

⊗ (iii) open commanditaire vennootschap ⊗

↓ 69/335/EEC (adapted)

⊗ (19) companies under Austrian law known as: ⊗

⊗ (i) Aktiengesellschaft ⊗

- ⊗ (ii) Gesellschaft mit beschränkter Haftung ⊗
- ⊗ (20) companies under Polish law known as: ⊗
 - ⊗ (i) spółka akcyjna ⊗
 - ⊗ (ii) spółka z ograniczoną odpowiedzialnością ⊗
- ⊗ (21) companies under Portuguese law known as: ⊗
 - ⊗ (i) sociedade anónima ⊗
 - ⊗ (ii) sociedade em comandita por acções ⊗
 - ⊗ (iii) sociedade por quotas ⊗
- ⊗ (22) companies under Slovenian law known as: ⊗
 - ⊗ (i) delniška družba ⊗
 - ⊗ (ii) komanditna delniška družba ⊗
 - ⊗ (iii) družba z omejeno odgovornostjo ⊗
- ⊗ (23) companies under Slovak law known as: ⊗
 - ⊗ (i) akciová spoločnosť ⊗
 - ⊗ (ii) spoločnosť s ručením obmedzeným ⊗
 - ⊗ (iii) komanditná spoločnosť ⊗
- ⊗ (24) companies under Finnish law known as: ⊗
 - ⊗ (i) osakeyhtiö - aktiebolag ⊗
 - ⊗ (ii) osuuskunta - andelslag ⊗
 - ⊗ (iii) säästöpankki - sparbank ⊗
 - ⊗ (iv) vakuutusyhtiö - försäkringsbolag ⊗
- ⊗ (25) companies under Swedish law known as: ⊗
 - ⊗ (i) aktiebolag ⊗
 - ⊗ (ii) försäkringsaktiebolag ⊗
- ⊗ (26) companies under the law of the United Kingdom known as: companies incorporated with limited liability. ⊗



ANNEX II

Part A

Repealed Directive with list of its successive amendments (referred to in Article 16(1))

Council Directive 69/335/EEC	(OJ L 249, 3.10.1969, p. 25)
Point VI.1 of Annex I to 1972 Act of Accession	(OJ L 73, 27.03.1972, p. 93)
Council Directive 73/79/EEC	(OJ L 103, 18.4.1973, p. 13)
Council Directive 73/80/EEC	(OJ L 103, 18.4.1973, p. 15)
Council Directive 74/553/EEC	(OJ L 303, 13.11.1974, p. 9)
Point VI.1 of Annex I to 1979 Act of Accession	(OJ L 291, 19.11.1979, p. 95)
Council Directive 85/303/EEC	(OJ L 156, 15.6.1985, p. 23)
Point V.1 of Annex I to 1985 Act of Accession	(OJ L 302, 15.11.1985, p.167)
Point XI.B.I.1 of Annex I to 1994 Act of Accession	(OJ C 241, 29.08.1994, p.196)
Point 9.1 of Annex II to 2003 Act of Accession	(OJ L 236, 23.09.2003, p.555)

Part B

List of time limits for transposition into national law (referred to in Article 16(1))

Directive	Time-limits for transposition
Council Directive 69/335/EEC	1 January 1972
Council Directive 73/79/EEC	-
Council Directive 73/80/EEC	-
Council Directive 74/553/EEC	-
Council Directive 85/303/EEC	1 January 1986

ANNEX III

CORRELATION TABLE

Directive 69/335/EEC	This Directive
Article 1	Article 7
–	Article 1
Article 2(1)	Article 10(1), first subparagraph, and Article 10(2)
Article 2(2)	Article 10(3)
Article 2(3)	Article 10(4),
Article 3(1), introductory words	Article 2(1), introductory words
Article 3(1)(a)	Article 2(1)(a) and Annex I
Article 3(1)(b)	Article 2(1)(b)
Article 3(1) (c)	Article 2(1)(c)
Article 3(2), first sentence	Article 2(2)
Article 3(2), second sentence	Article 9
Article 4(1)(a)-(f)	Article 3 (a)-(f) and Article 10(1)
Article 4(1)(g) and (h)	Article 5(1)(d)(ii)
Article 4(2), first subparagraph	Article 3 (g)-(j), Article 7(3) and Article 10(2)
Article 4(2), second subparagraph	–
Article 4(3)	Article 5(1)(d)
Article 5(1)(a)	Article 11(1)
Article 5(1)(b)	Article 11(2)
Article 5(1)(c)	Article 11(3)
Article 5(1)(d)	Article 11(4)
Article 5(1)(e)	Article 11(5)
Article 5(2)	Article 11(6)

Article 5(3)	Article 12(1)
Article 6(1)	Article 12(2), first subparagraph
Article 6(2)	Article 12(2), second and third subparagraph
Article 7(1), first and second subparagraph	Article 4, Article 5(1)(e)
Repealed Article 7(1)(b)	Article 4(a)
Repealed Article 7(1)(bb)	Article 4(b)
Article 7(1), third subparagraph	-
Article 7(2)	Articles 7 and 8
Article 7(3)	Article 12(3)
Article 8	Article 7(5) and Article 13, first subparagraph
-	Article 13, second subparagraph
Article 9	Article 14
Article 10	Article 5(1)(a)-(c)
Article 11	Article 5(2)
Article 12	Article 6
Article 13	Article 15(1)
Article 14	Article 15(2)
-	Article 16
-	Article 17
Article 15	Article 18
-	Annex I
-	Annex II
-	Annex III