Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital

COUNCIL DIRECTIVE 2008/7/EC

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concerning indirect taxes on the raising of capital

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Whereas:

(1) Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital[(3)] has been substantially amended several times[(4)]. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) The indirect taxes on the raising of capital, namely the capital duty (the duty chargeable on contributions of capital to companies and firms), the stamp duty on securities, and duty on restructuring operations, regardless of whether those operations involve an increase in capital, 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) 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 eliminate, as far as possible, factors which may distort conditions of competition or hinder the free movement of capital.

(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.

(5) The best solution for attaining these objectives would be to abolish capital duty.

(6) However, the losses of revenue which would result from the immediate application of such a measure are unacceptable for Member States which currently apply capital duty. Those Member States should therefore have the opportunity to continue to subject to capital duty all or part of the transactions 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.

(7) It is inherent in the concept of an internal market that a duty on the raising of capital within the internal market by a company or firm should not be charged 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.

(8) It is appropriate to maintain strict conditions for situations where Member States continue to levy capital duty, in particular as regards exemptions and reductions.

(9) Apart from capital duty, no indirect taxes on the raising of capital should be levied. 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.

(10) The list of capital companies set out in Directive 69/335/EEC is incomplete and should therefore be adapted.

(11) Since 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.

(12) 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.

(13) 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.

(14) In view of the detrimental effects of capital duty, the Commission should report every three years on the operation of this Directive with a view to abolishing this duty,

HAS ADOPTED THIS DIRECTIVE:

(**1**) Opinion of the European Parliament of 12 December 2007 (not yet published in the Official Journal).

(**2**) OJ C 126, 7.6.2007, p. 6.

(**3**) OJ L 249, 3.10.1969, p. 25. Directive as last amended by Directive 2006/98/EC (OJ L 363, 20.12.2006, p. 129).

(**4**) See Annex II, Part A.