

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

CHAPTER I

SUBJECT MATTER AND SCOPE

Article 1

Subject matter

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

- (a) contributions of capital to capital companies;
- (b) restructuring operations involving capital companies;
- (c) the issue of certain securities and debentures.

Article 2

Capital company

- 1 For the purposes of this Directive ‘capital company’ means:
 - a any company which takes one of the forms listed in Annex I;
 - 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.
- 2 For the purposes of this Directive, any other company, firm, association or legal person operating for profit shall be deemed to be a capital company.

Article 3

Contributions of capital

For the purposes of this Directive and subject to Article 4, the following transactions shall be considered to be ‘contributions of capital’:

- (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

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- the same kind as those of members, such as voting rights, a share in the profits or a share in the surplus upon liquidation;
- (e) the transfer from a third country to a Member State of the centre of effective management of a capital company whose registered office is in a third country;
 - (f) the transfer from a third country to a Member State of the registered office of a capital company whose centre of effective management is in a third country;
 - (g) an increase in the capital of a capital company by capitalisation of profits or of permanent or temporary reserves;
 - (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;
 - (i) a loan taken up by a capital company, if the creditor is entitled to a share in the profits of the company;
 - (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.

Article 4

Restructuring operations

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

- 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;
- 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.

2 Restructuring operations shall also include the transfer to a capital company of all assets and liabilities of another capital company which is wholly owned by the former company.