

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

CHAPTER III

SPECIAL PROVISIONS

Article 7

Levying of capital duty in certain Member States

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 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.

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 on 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 %.

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).

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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 11

Basis of assessment for capital duty

1 In the case of 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.

The charging of capital duty may be postponed until the contributions have been effected.

2 In the case of 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.

3 In the case of contributions of capital as referred to in Article 3(g), the basis of assessment for capital duty shall be the nominal amount of the increase.

4 In the case of 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.

5 In the case of 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.

6 In the cases referred to in paragraphs 1 and 2, 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 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.

Article 12

Exclusion from the basis of assessment for capital duty

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.

2 A Member State may exclude from the basis of assessment for capital duty 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.

Where a Member State exercises 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.

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.

3 In the case of 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 contribution of capital which corresponds to the reduction in capital may be excluded from the basis of assessment, provided that the contribution of capital occurs within four years of the reduction in capital.

Article 13

Exemption of contributions of capital to certain capital companies

Member States may exempt from capital duty contributions of capital made to the following:

- (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, social, relief or educational objectives.

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).

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Article 14

Derogation procedure

Certain types of contributions of capital or of capital companies may be the subject of exemptions or reductions 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 97 of the Treaty.