

COUNCIL DIRECTIVE

of 17 July 1969

concerning indirect taxes on the raising of capital

(69/335/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 99 and 100 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament¹;

Having regard to the Opinion of the Economic and Social Committee²;

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

Whereas the indirect taxes on the raising of capital, in force in the Member States at the present time, namely the duty chargeable on contribution of capital to companies and firms and the stamp duty on securities, give rise to discrimination, double taxation and disparities which interfere with the free movement of capital and which, consequently, must be eliminated by harmonisation;

Whereas 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;

Whereas 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 common market whose characteristics are those of a domestic market; whereas, 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;

Whereas, in these circumstances, it is advisable to abolish the stamp duty on securities, regardless of the origin of such securities, and regardless of whether they represent a company's own capital or its loan capital;

Whereas it is inherent in the concept of a common market whose characteristics are those of a domestic market that duty on the raising of capital within the common market by a company or firm should be charged only once 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;

Whereas, therefore, this duty should be harmonised, with regard both to its structures and to its rates;

Whereas 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;

HAS ADOPTED THIS DIRECTIVE:

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'.

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.

¹ OJ No 119, 3.7.1965, p. 2057/65.

² OJ No 134, 23.7.1965, p. 2227/65.

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.

Article 3

1. For the purposes of this Directive the expression 'capital company' means:

- (a) companies under Belgian, German, French, Italian, Luxembourg and Netherlands law* known respectively as:
- société anonyme/naamloze vennootschap, Aktiengesellschaft, société anonyme, società per azioni, société anonyme, naamloze vennootschap;
 - société en commandite par actions/commanditaire vennootschap op aandelen, Kommanditgesellschaft auf Aktien, société en commandite par actions, società in accomandita per azioni, société en commandite par actions, commanditaire vennootschap op aandelen;
 - société de personnes à responsabilité limitée/personenvennootschap met beperkte aansprakelijkheid, Gesellschaft mit beschränkter Haftung, société à responsabilité limitée, società a responsabilità limitata, société à responsabilité limitée;
- (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

* The technical adaptation work has resulted in the following being presented by the Commission to the Council

In Article 3 (1) (a)

— substitute a comma for the word 'and'

— add after the word 'Netherlands': 'United Kingdom, Irish, Danish and Norwegian'

— in the first indented paragraph, add after the words: 'naamloze vennootschap':

'companies incorporated with limited liability, companies with limited liability which are formed and registered under the Companies Acts or the Joint Stock Companies Acts or which are incorporated by charter or private Act of Parliament, Aktieselskab, Aksjeselskap.'

— in the second indented paragraph, add after the words 'commanditaire vennootschap op aandelen':

'Kommandit-aktieselskab, Kommandittaksjeselskap'.

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 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.

Article 4

1. The following transactions shall be subject to capital duty:

- (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;
- (e) the transfer from a third country to a Member State of the effective centre of management of a 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 company, firm, association or legal person, whose effective centre of 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 com-

pany, 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.

2. The following transactions may be subject to capital duty:

- (a) an increase in the capital of a capital company by capitalisation of profits or of permanent or temporary reserves;
- (b) an increase in the assets of a capital company through the provision of services by a member which do not entail an increase in the company's capital, but which do result in variation in the rights in the company or which may increase the value of the company's shares;
- (c) a loan taken up by a capital company, if the creditor is entitled to a share in the profits of the company;
- (d) 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.

3. 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:

- (a) the conversion of a capital company into a different type of capital company;
- (b) the transfer from a Member State to another Member State of the effective centre of management or of the registered office of a company, firm, association or legal person which is considered in both Member States, for the purposes of charging capital duty, as a capital company;
- (c) a change in the objects of a capital company;
- (d) the extension of the period of existence of a capital company.

Article 5

1. The duty shall be charged:

- (a) 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 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 until the contributions have been effected;

- (b) 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), (e), (f), (g) and (h); on 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) 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 the nominal amount of such increase;
- (d) in the case of an increase in the assets, as referred to in Article 4 (2) (b): on 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) in the case of loans referred to in Article 4 (2) (c) and (d): on the nominal amount of the loan taken up.

2. In the cases referred to in paragraph 1 (a), (b) and (c), the amount on which the duty is charged shall not, however, be less than the actual value of the shares in the company allotted or belonging to each member or the nominal amount of such shares if the latter exceeds their actual value.

3. The amount on which the duty is charged in the case of an increase in capital shall not include:

- 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;
- 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

1. Each Member State may exclude from the basis of assessment, 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 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.

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.

Article 7

1. Until the entry into force of the provisions to be adopted by the Council in accordance with paragraph 2:

- (a) the rate of capital duty may not exceed 2% or be less than 1%;
- (b) this rate shall be reduced by 50% or more when one or more capital companies transfer all their assets and liabilities, or one or more parts of their business to one or more capital companies which are in the process of being formed or which are already in existence.

This reduction shall be subject to the condition that:

- the consideration for the contributions shall consist exclusively of the allocation of shares in the company or companies, although Member States shall have the right to extend application of the reduction to cases in which the consideration for contributions consists of the allocation of shares in the company or companies together with a payment in cash not exceeding 10% of the nominal value of the shares;
 - the companies taking part in the transaction have their effective centre of management or their registered office within the territory of a Member State;
- (c) the rate of capital duty may be reduced to 0.5% until 1 January 1973 and to 1% from that date in the case of formation of, or increase in, the capital of holding or investment companies whose sole object is the holding of shares in other undertakings and the management and

turning to profitable account of such shares, subject to the condition that such companies do not engage in industry or commerce on their own account and do not operate a commercial establishment open to the public.

2. In order to enable the Council to determine the common rates for capital duty before the end of the transitional period, the Commission shall submit a proposal to the Council on this subject before 1 January 1971.

3. In the case of an increase in a company's capital in accordance with Article 4 (1) (c), following a reduction in the company's capital as a result of losses sustained, the rate may be reduced for that part of the increase which corresponds to the reduction in capital, if this increase occurs within four years of the reduction in capital.

4. Where a Member State exercises the power provided for in Article 4 (2), capital duty may be charged at a reduced rate.

Article 8

A Member State may partially or totally exempt from capital duty the transactions referred to in Article 4 (1) and (2) relating to:

- 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;
- capital companies which, in accordance with their regulations and in fact, pursue exclusively and directly cultural, charitable, relief or educational objectives.

Article 9

Certain types of transactions or of capital companies may be the subject of exemptions, 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 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.

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

This Directive is addressed to the Member States.

Done at Brussels, 17 July 1969.

For the Council

The President

H. J. WITTEVEEN