

# Tax treatment: elimination of capital duty and other indirect taxes on the raising of capital (repeal. Directive 69/335/EEC). Recast

2006/0253(CNS) - 12/02/2008 - Final act

**PURPOSE:** to establish new rules on capital duty.

**LEGISLATIVE ACT:** Council Directive 2008/7/EC concerning indirect taxes on the raising of capital.

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

1. contributions of capital to capital companies;
2. restructuring operations involving capital companies;
3. the issue of certain securities and debentures.

The objective of this Directive is to contribute to legal certainty by enhancing clarity, and simplification of legislation in this field. The Directive also reflects certain developments arising out of well-established case law of the EU Court of Justice.

It provides the opportunity for Member States which currently apply capital duty to continue to subject to capital duty all or part of the transactions concerned. It provides, however, that once a Member State has chosen not to levy capital duty, it is no longer possible for that Member State to reintroduce such duty. Since 1985, capital duty has been abolished by many Member States, while seven Member States continue to levy it.

The Directive states that 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. 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. The best solution for attaining these objectives would be to abolish capital duty. 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 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 will not be possible for it to reintroduce such duties.

**Rate of capital duty:** capital duty shall be charged at a single rate. The rate 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. The rate of capital duty may not in any event exceed 1%.

**Review:** the Commission must report to the Council every three years on the operation of the Directive notably with the view to abolish capital duty. Member States must provide the Commission with information in respect of the revenue from capital duty.

**ENTRY INTO FORCE:** 12/03/2008.

TRANSPOSITION: 31/12/2008.