Capital Duty Directive

DG TAXUD C2

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European Commission

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.

Capital Duty Directive: general

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

Recasts Directive 69/335/EC as amended in 1973, 1974 and 1985;

Originally: harmonise taxes on raising of capital by capital companies (structures and rates) and prevent MS from creating or levying other similar taxes.

Now (since 1985): acknowledged that the best solution is to **abolish** capital duty; given that capital duty is detrimental for

Restructuring operations

Development of EU companies.

Capital Duty Directive: general

But: losses of revenue unacceptable for MS applying capital duty **=> MS have the option to:**

- Exempt transactions
- Or to continue to charge (if MS charged duty as at 1/1/2006) at a single rate ≤ 1%

MS **cannot re-introduce capital duty** once abolished (in part or altogether).

Trend has been towards elimination of capital duty : according to our information only four MS continue to levy it: Cyprus, Greece, Poland, Portugal

New MS: as a rule (unless derogation) if as at 1/1/2006 no capital duty is applied, not possible to introduce it.

Capital Duty Directive: scope

Directive applies to **capital companies** (as listed in Annex I or companies incorporated with limited liability, but wider definition is possible: Art. 2 and 9);

Directive regulates levying of indirect taxes in respect of (Art. 1 and 3):

- Contributions of capital (e.g. formation of or conversion into capital company, increase in capital, tranfers from third countries)

- Restructuring operations (merger/division/partial division of capital companies effected by contribution of assets or acquisition by a capital company of majority of voting rights of another capital company by exchange of shares)

- Issue of certain securities and debentures

Capital Duty Directive: general rule

prohibition on levying of indirect tax on (Art. 5):

- **Contributions of capital**
- **Loans or services provided as part of contributions of capital**
- **Registration or other formalities** required before commencing business
- **Alteration of the instruments constituting the company**, (in particular the conversion into a different type of capital company, transfer of centre of effective management or registered office from a MS to another MS, a change in the company's objects or the extension of its period of existence)
- **Restructuring operations**
- **Issue** of **certain securities** essentially shares and debentures (including government bonds)
- HOWEVER, MS may charge certain **transfer duties**, **duties in the form of fees or dues and VAT** (Art. 6)

Capital Duty Directive: special rules

Special rules (Art. 7 and 8) for MS that charged capital duty as at 1/1/2006:

They **may continue** to levy the duty at **a single rate** not exceeding rate applied at 1/1/2006 with a max of 1%.

Capital duty **may be charged on contributions of capital only** and not on other transactions such as restructuring operations.

As a rule capital duty may only be levied by the MS **where the centre of effective management is situated** at the time when the contribution is made.

Capital duty is **charged only once in EU**

Capital Duty Directive: special rules

Basis of assessment (Art.11 and 12):

- as a rule the actual value of the contribution, after deduction of liabilities and expenses borne by company;
- Increase in capital already subject to capital duty is excluded;
- Contributions by a member with unlimited liability may be excluded.

Exemptions (Art. 13) may be applied where company supplies public services or has an exclusively cultural, social, relief or educational aim.

Derogations in form of exemptions or reductions in rates may be granted for fairness or social reasons or to deal with special situations (Art.14).