

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90) 94 final

Brussels, 23 March 1990

Proposal for a COUNCIL DIRECTIVE

amending Directive 69/335/EEC concerning
indirect taxes on the raising of capital

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Within the same Member State, collective investment undertakings may, depending on their legal form, be subject to two different sets of rules governing tax on the raising of capital.

In the case of investment companies with variable or fixed capital, the rules laid down by Directive 69/335/EEC must necessarily be applied. Essentially these provide that Member States may either exempt all transactions from capital duty or make them subject to a uniform rate not exceeding 1%.

Other companies, firms, associations or legal persons operating for profit, such as investment funds, are also covered in principle by the Directive, but the Member States are left free to exclude them and, consequently, not to apply the harmonized capital duty.

The Commission takes the view that this differential treatment is unjustified and that Member States should be put in a position to avoid it. The attached proposal for a Directive therefore makes it possible for Member States to exempt from the general rules contributions of capital to collective investment undertakings established in the form of investment companies.

2. A second justification for the proposal lies in the fact that tax rules which are more favourable to collective investment companies are a logical response to the economic and, above all, social function which they fulfil. This is because small savers too often find it difficult

to turn directly to the stock exchange, partly because they are unfamiliar with the mechanism and procedures, but also because of the small amounts which they are generally able to invest and which rule out any adequate spreading of risks.

Collective investment undertakings are therefore very useful intermediaries for this type of saver.

3. In defining collective investment undertakings for the purposes of this proposal for a Directive, the definition of the UCITS (undertaking for collective investment in transferable securities) contained in Directive 85/611/EEC¹ has been adhered to as closely as possible. However, the following departures have proved necessary:

- (a) the proposed definition covers only collective investment undertakings constituted under statute, i.e. investment companies. This is because, as indicated at point 1 above, other undertakings such as investment funds or unit trusts may already be excluded from the scope of capital duty.
- (b) there is no requirement that collective investment companies invest solely in transferable securities, a restriction that has been deemed neither appropriate nor necessary.

¹ OJ No L 375, 31.12.1985, p. 3.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Directive 69/335/EEC,¹ as last amended by Directive 85/303/EEC,² harmonized taxes on the raising of capital; whereas that Directive applies to capital companies and to any other company, firm, association or legal person operating for profit; whereas Member States may, however, refrain from applying it to the second category of undertaking;

Whereas Member States may either exempt transactions falling within the scope of the Directive, or make them subject to capital duty at a uniform rate not exceeding 1%;

Whereas collective investment undertakings may or may not take the legal form of a capital company; whereas they might consequently be governed within the same Member State by two different sets of tax rules; whereas that possibility should be eliminated;

1 OJ No L 249, 3.10.1969, p. 25.

2 OJ No L 156, 15.6.1985, p. 23.

Whereas it is desirable, for both economic and social reasons, that access to collective investment undertakings be facilitated;

Whereas these aims may be achieved by authorizing Member States to exempt contributions of capital to collective investment undertakings constituted under statute as investment companies,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 7 of Directive 69/335/EEC is hereby amended as follows:

1. Paragraph 3 shall become paragraph 4.
2. The following paragraph 3 shall be inserted after paragraph 2:

"3. By way of derogation from paragraph 2, Member States may exempt contributions of capital to collective investment undertakings.

For the purposes of this Directive, collective investment undertakings means undertakings constituted under statute (investment companies) which have as their sole object the collective investment of capital raised from the public and which operate on the principle of risk-spreading."

Article 2

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

FICHE SME

Competitiveness and employment impact statement

The proposal intends to amend the Directive 69/335/EEC in order to permit Member States to exempt contributions of capital to collective investment companies from indirect taxes on the raising of capital. It does not involve new obligations for enterprises; on the contrary, this tax relief should stimulate the development of collective investment companies

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