II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 7 November 1974

amending Article 5 (2) of Directive 69/335/EEC concerning indirect taxes on the raising of capital

(74/553/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 Parliament [1];

Having regard to the Opinion of the Economic and Social Committee [2];

Whereas Article 5 (2) of Council Directive 69/335/EEC [3] of 17 July 1969 concerning indirect taxes on the raising of capital provides that, in the cases referred to in paragraph 1 (a), (b) and (c) thereof, the amount on which capital duty is charged shall not be less than the actual value of the shares in the company allotted or belonging to each member or the nominal amount of these shares if the latter exceeds their actual value;

Whereas the adoption of the actual value of the shares as a minimum basis of taxation does not in some of the above cases conform to the principles on which the harmonized capital duty is based and which aim at introducing a system whereby capital duty is to be charged only on transactions legally constituting a raising of capital and only in so far as such transactions contribute towards strengthening the economic potential of the company,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 5 (2) of Directive 69/335/EEC is replaced by the following:

'2. In the cases referred to in paragraph 1 (a) and (b), Member States may base the amount on which to charge capital duty on the actual value of the shares in the company allotted or belonging to each member. This does not apply, to those cases in which 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 2

This Directive is addressed to the Member States.

Done at Brussels, 7 November 1974.

For the Council

The President

A. JARROT

---

[1] OJ No C 76, 3. 7. 1974, p. 9.
[2] OJ No C 109, 19. 9. 1974, p. 35.
[3] OJ No L 249, 3. 10. 1969, p. 25.