

Chapter 18 Exceptions

Article 18.1: Definitions

For purposes of this Chapter:

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement ; and

taxes and **taxation measures** do not include:

- (a) **customs duties** as defined in Article 1.4 (Definitions of General Application); or
- (b) the measures listed in exceptions (b) and (c) to the definition of **customs duties** in Article 1.4 (Definitions of General Application).

Article 18.2: General Exceptions

1. For purposes of Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin), Chapter 4 (Customs), Chapter 5 (Sanitary and Phytosanitary Measures) and Chapter 6 (Technical Barriers to Trade), Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For purposes of Chapter 10 (Trade in Services), Chapter 11 (Investment) and Chapter 12 (Electronic Commerce), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures necessary to protect human, animal, or plant life or health.

Article 18.3: Essential Security

Nothing in this Agreement shall be construed:

- (a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

- (b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests³⁴.

Article 18.4: Taxation

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.
2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.
3. Notwithstanding paragraph 2:
 - (a) Article 2.3 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of GATT 1994; and
 - (b) Article 2.6 (Export Taxes) shall apply to taxation measures.
4. Articles 11.10 (Expropriation and Nationalization) and 11.16 (Investor-State Dispute Settlement) shall apply to taxation measures to the extent that such a taxation measure constitutes expropriation as provided for therein³⁵. An investor that seeks to invoke Article 11.10 (Expropriation and Nationalization) with respect to a taxation measure must first refer to the competent authorities described in paragraph 5, at the time that it gives

³⁴ For greater certainty, nothing in this Agreement shall prevent a Party from taking any action which it considers necessary for the protection of critical public infrastructure, including but not limited to communications, power and water infrastructure, from deliberate attempts intended to disable or degrade such infrastructure.

³⁵ With reference to Article 11.10 (Expropriation and Nationalization), in assessing whether a taxation measure constitutes expropriation, the following considerations are relevant: (a) the imposition of taxes does not generally constitute expropriation. The mere introduction of new taxation measures or the imposition of taxes in more than one jurisdiction in respect of an investment, does not in and of itself constitute expropriation; (b) taxation measures which are consistent with internationally recognized tax policies, principles and practices do not constitute expropriation and in particular, taxation measures aimed at preventing the avoidance or evasion of taxes should not, generally, be considered to be expropriatory; and (c) taxation measures which are applied on a non-discriminatory basis, as opposed to being targeted at investors of a particular nationality or specific individual taxpayers, are less likely to constitute expropriation. A taxation measure should not constitute expropriation if, when the investment is made, it was already in force, and information about the measure was made public or otherwise made publicly available.

written notice under Article 11.16 (Investor-State Dispute Settlement), the issue of whether that taxation measure involves an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of 6 months of such referral, the investor may submit its dispute to arbitration under Article 11.16 (Investor-State Dispute Settlement). However, no investor may invoke Article 11.10 (Expropriation and Nationalization) as the basis of a dispute where it has been determined pursuant to this paragraph that the measure is not an expropriation.

5. For purposes of this Article:

competent authorities means

- (a) in the case of Costa Rica, the *Ministerio de Hacienda*;
 - (b) in the case of Singapore, the *Ministry of Finance*;
- or their successors.

Article 18.5: Restrictions to Safeguard the Balance of Payments

1. With respect to matters covered by this Agreement, the Parties may adopt or maintain restrictions to safeguard the balance of payments in a manner consistent with the conditions established in the WTO Agreement and with the *Articles of Agreement of the International Monetary Fund*.
2. For purposes of this Article, any notification or consultation with respect to any restriction to safeguard the balance of payments shall be carried out between the Parties, in accordance with the applicable agreements referred to in paragraph 1.
3. For greater certainty, it is clarified that such restrictions shall be applied on a non-discriminatory basis.

Article 18.6: Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to confidential information the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.