

## CHAPTER 18 : EXCEPTIONS

### ARTICLE 18.1 : GENERAL EXCEPTIONS

1. For purposes of Chapters 2 through 7, Article XX of the 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 the GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.
2. For purposes of Chapter 10 (Investment), Chapter 11 (Cross-Border Trade in Services), Chapter 12 (Temporary Entry for Business Persons) and Chapter 13 (Electronic Commerce)<sup>18-1</sup>, Article XIV of the 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 the GATS include environmental measures necessary to protect human, animal, or plant life or health.

### ARTICLE 18.2 : 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 interests.

### ARTICLE 18.3 : 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

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<sup>18-1</sup> This Article is without prejudice to whether digital products should be classified as goods or services.

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. Articles 10.10 (Expropriation and Nationalisation) and 10.17 (Investor-State Dispute Settlement) shall apply to taxation measures to the extent that such a taxation measure constitute expropriation as provided for therein<sup>18-2</sup>. An investor that seeks to invoke Article 10.10 (Expropriation and Nationalisation) with respect to a taxation measure must first refer to the competent authorities described in paragraph 4, at the time that it gives notice under Article 10.17 (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 six (6) months of such referral, the investor may submit its claim to arbitration under Article 10.17 (Investor-State Dispute Settlement).

4. For the purposes of this Article, competent authorities means:

- (a) for Singapore, Chief Tax Policy Officer, Ministry of Finance, or his successor or such other public officer as may be designated by Singapore; and
- (b) for Peru, Ministerio de Economía y Finanzas, or his successor or such other public officer as may be designated by Peru.

#### ARTICLE 18.4 : 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

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<sup>18-2</sup> With reference to Article 10.10 (Expropriation and Nationalisation), in assessing whether a taxation measure constitutes expropriation, the following considerations are relevant:

- (a) the imposition of taxes does not generally constitutes 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 itself constitute expropriation;
- (b) taxation measures which are consistent with internationally recognised 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.

interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

#### ARTICLE 18.5 : DEFINITIONS

For purposes of this Chapter:

1. **tax convention** means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and
2. **taxation measures** do not include:
  - (a) customs duties; or
  - (b) the measures listed in sub-paragraphs (b) and (c) of paragraph 5 of Article 2.2 (Definitions).