

CHAPTER 16

GENERAL PROVISIONS AND EXCEPTIONS

Article 16.1: Disclosure of Information

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

Article 16.2: Confidentiality

Unless otherwise provided in this Agreement, where a Party provides information to the other Party in accordance with this Agreement and designates the information as confidential, the Party receiving the information shall maintain the confidentiality of the information, use it only for the purposes specified by the Party providing the information, and not disclose it without specific written permission of the Party providing the information, except where the disclosure of information is necessary to comply with the legal requirements of a Party.

Article 16.3: General Exceptions

1. For purposes of Chapters 2 (Trade in Goods), 3 (Rules of Origin), 4 (Customs Procedures and Trade Facilitation), 5 (Sanitary and Phytosanitary Measures) and 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*.¹

2. For purposes of Chapters 8 (Cross-Border Trade in Services), 9 (Temporary Entry for Business Persons), 10 (Telecommunications Services), 11 (Investment) and 12 (Digital Trade),² Article XIV of GATS including its

¹ The Parties understand that the measures referred to in subparagraph (b) of Article XX of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that subparagraph (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

² This paragraph is without prejudice to whether a digital product should be classified as a good or service.

footnotes is incorporated into and made part of this Agreement, *mutatis mutandis*.³

Article 16.4: Security Exceptions

1. Nothing in this Agreement shall be construed:
 - (a) to require a Party to furnish any information the disclosure of which it considers contrary to its essential security interest;
 - (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interest:
 - (i) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials, or relating to the supply of services, as carried on directly or indirectly for the purpose of supplying or provisioning a military establishment;
 - (iii) taken so as to protect critical public infrastructure⁴ including communications, power and water infrastructures; or
 - (iv) taken in time of national emergency, war or other emergency in international relations; or
 - (c) to prevent a Party from taking any action in pursuance of its obligations under the *Charter of the United Nations* for the maintenance of international peace and security.
2. The Joint Committee shall be informed to the fullest extent possible of measures taken under paragraph 1(b) and of their termination.

³ The Parties understand that the measures referred to in subparagraph (b) of Article XIV of GATS include environmental measures necessary to protect human, animal or plant life or health.

⁴ For greater certainty, this includes critical public infrastructure whether publicly or privately owned.

Article 16.5: Taxation

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.
2.
 - (a) Nothing in this Agreement shall affect the rights and obligations of either 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; and
 - (b) 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, Article 2.3 (National Treatment on Internal Taxation and Regulation) 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.
4. Subject to paragraph 2:
 - (a) Articles 8.3 (National Treatment) shall apply to taxation measures on income, on capital gains, or on the taxable capital of corporations that related to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory;
 - (b) Articles 8.3 (National Treatment), 8.4 (Most-Favoured-Nation Treatment), 11.4 (National Treatment) and 11.5 (Most-Favoured-Nation Treatment) shall apply to all taxation measures, other than those on income, on capital gains, or on the taxable capital of corporation, or taxes on estates, inheritances, gifts, and generation-skipping transfers; and
 - (c) Article 12.18 (Non-Discriminatory Treatment of Digital Products) shall apply to taxation measures on income, on capital gains, on the taxable income of corporations, that relate to the purchase or consumption of particular digital products, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular

digital products on requirements to provide the digital product in its territory;

except that nothing in the Articles referred to in subparagraphs (a), (b) and (c) shall apply:

- (d) to any most-favoured-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;
- (e) to a non-conforming provision of any existing taxation measure and its amendments;
- (f) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;
- (g) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes (as permitted by Article XIV(d) of GATS); or
- (h) to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, a pension trust or pension plan on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan.

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, Articles 11.10.2, 11.10.3 and 11.10.4 (Performance Requirements) shall apply to taxation measures.

6. Article 11.8 (Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 11.8 (Expropriation and Compensation) as the basis for a claim where it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 11.8 (Expropriation and Compensation) with respect to a taxation measure must first refer to the Competent Authorities, at the time that it gives its notice of intent under Article 11.18.2 (Submission of a Claim to Arbitration), the issue of whether that taxation measure is not an expropriation. If the Competent Authority does 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 months of the referral, the investor may submit its claim to arbitration under Article 11.18 (Submission of a Claim to Arbitration).

7. For purposes of this Article:

- (a) **tax convention** means an agreement for the avoidance of double taxation and the prevention of fiscal evasion with

respect to taxes on income or other international taxation agreement or arrangement to which both Parties are party;

(b) taxes and taxation measures do not include customs duties as defined in Article 1.2 (General Definitions); and

(c) **Competent Authorities** means:

(i) for Korea, the Deputy Minister for Tax and Customs, Ministry of Economy and Finance or its successor; and

(ii) for Malaysia, the Minister of Finance or the Minister's authorised representative.