

CHAPTER 6: TAX

Article 6.1: Scope and Purpose

1. The Parties recognize that the allocation of taxing rights and taxable profits can no longer be exclusively circumscribed by reference to physical presence or corporate registration. Businesses can develop an active and sustained engagement in a market jurisdiction, beyond the mere conclusion of sales, without necessarily investing in local infrastructure and operations. This means that the profits attributable to the physical operations that a business undertakes in a jurisdiction may no longer be solely or fully reflective of its sustained and significant engagement in the market, or of its substance.

2. The Parties further recognize that businesses that provide automated and standardized digital services to a large and global customer or user base are able to provide digital services remotely to customers in markets using little or no local infrastructure. The ability to develop an active and sustained presence in remote markets through the channels identified above can be considered of general applicability to businesses that provide an automated service on a digital platform.

3. The Parties also recognize that other businesses generate revenues from selling goods or services, whether directly or indirectly, to consumers. This is a broad set of businesses that includes traditional businesses that manufacture physical products, sell those products through physical distribution channels and support sales with less sophisticated marketing methods such as television and banner advertising. However, there is an increasing use by these businesses of digital technologies to more heavily interact and engage with their customer base. The fact that this customer interaction and engagement can be carried out from a remote location means that these businesses are increasingly able to have an active non-physical presence in market jurisdictions through which they substantially improve the value of their products and increase their sales.

4. Finally, the Parties recognize that tax payments form a critical source of revenue and affect the Parties' ability to provide essential services and otherwise discharge their sovereign duties. Because trade facilitates profit shifting and tax liability avoidance, the Parties consider disclosure of information regarding business tax payments to be an important aspect of this Agreement.

Article 6.2: Exchange of Information

Each Party is authorized to obtain and exchange information, including information held by financial institutions and other fiduciaries, pursuant to a request under a tax information exchange agreement, regardless of whether the requested party has a domestic tax interest in such information.

Article 6.3: Reporting

1. Each Party shall require a stateless enterprise group with one or more affiliates located in the territory of that Party to file, for each fiscal year, a report identifying:

- (a) All tax jurisdictions where the affiliates included in the stateless enterprise group's audited consolidated financial statements, or in the financial information filed on public record, are resident for tax purposes; and
- (b) For each jurisdiction in paragraph (a):
 - (i) Names of the affiliates;
 - (ii) Primary activities of the stateless enterprise group;
 - (iii) Number of employees, and the basis of calculation of this number;
 - (iv) Revenues from third-party sales;
 - (v) Revenues from intra-group transactions with other tax jurisdictions;
 - (vi) Profit/loss before tax;
 - (vii) Tangible assets other than cash and cash equivalents;
 - (viii) Corporate income tax paid on a cash basis;
 - (ix) Corporate income tax accrued on profit/loss;
 - (x) Reasons for the difference between corporate income tax accrued on profit/loss and tax due if the statutory tax rate is applied to profit/loss before tax; and
 - (xi) The fiscal year for which the information is provided.

2. Each Party shall provide that when compiling the information specified in Paragraph 1, the stateless enterprise group shall report information for the time period covered by the most recent audited consolidated financial statements or financial information filed on public record. If information is not available for this time period, the organization may report information for the time period covered by the audited consolidated financial statements, or the financial information filed on public record, immediately preceding the most recent ones.

3. Each Party shall provide that when compiling the information in paragraph 1, the stateless enterprise group shall:

- (a) reconcile the data reported in paragraphs (1)(b)(iv) through (viii) with the data stated in its audited consolidated financial statements, or the financial information filed on public record, for the time period reported in paragraph (1)(b)(xi). Where

the data reported does not reconcile with the audited consolidated financial statements, or the financial information filed on public record, the stateless enterprise group shall provide an explanation for this difference;

- (b) for paragraph (1)(b)(ix), include corporate income tax accrued in the time period reported in paragraph (1)(b)(xi). and exclude deferred corporate income tax and provisions for uncertain tax positions;
- (c) in cases where an affiliate is deemed not to be resident in any tax jurisdiction, provide the information for this affiliate separately.

2. Each Party shall make the reports described in paragraph 1 public.

Article 6.4: Notification of State Aid

- 1. The Parties recognize that waiving tax obligations for specific companies as a condition of investment in a particular territory can have distortive effects on trade between the Parties.
- 2. Each Party shall provide that any waivers under Paragraph 1 shall be notified to the other Party.

Article 6.5: Nationality

- 1. Where a person of a Party is part of a stateless enterprise group, and enterprises of the Group are resident for tax purposes in two Parties, then the provisions of Chapter 3 (National Treatment) do not apply with respect to that person as between those Parties.
- 2. The Parties may decide, in light of information produced pursuant to Article 6.3 (Reporting), to revise Article 1.

Article 6.6: Definitions

For purposes of Article 6.5:

Stateless enterprise group means any Group that includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction.

Group means a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange.

Affiliate means

- (i) any separate business unit of an stateless enterprise group that is included in the Consolidated Financial Statements of the stateless enterprise group for financial reporting purposes, or would be so included if equity interests in such business unit of a stateless enterprise group were traded on a public securities exchange;
- (ii) any such business unit that is excluded from the stateless enterprise group's Consolidated Financial Statements solely on size or materiality grounds; or
- (iii) any permanent establishment of any separate business unit of the stateless enterprise group included in (i) or (ii) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;

tax jurisdiction means a country, or a territory with autonomous taxing powers similar to a country.