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Negotiating Group on the Multilateral Agreement on Investment (MAI)

Expert Group No.3 Expert Group No.3 on Treatment of Tax Issues in the MAI

REPORT TO THE NEGOTIATING GROUP

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I am pleased to forward to the MAI Negotiating Group this report by Expert Group N° 2 on the "Treatment of Tax Matters in the MAI", which met on 9-11 December 1996. The report has been prepared in accordance with the Group's mandate.

The Group confirmed that all tax matters should be dealt with in a separate article, following the approach involving a general "carve-out" of taxation in the MAI, with some aspects of taxation "carved-in".

This report contains a draft article on taxation including provisions on expropriation and transparency. There is agreement in principle on inclusion of these matters, but the text needs refining.

The Group has also considered possible inclusion of other provisions. However, further consideration of these matters would be needed before a final determination could be made, taking into account any changes in the formulation of the general provisions in the MAI.

The Group recommends that its mandate be extended to allow it to complete the task of preparing text, where necessary, on taxation matters, and to review the implications for taxation as the overall framework and specific provisions of the MAI become clearer.

Chair

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DRAFT ARTICLE ON TAXATION

1. Nothing in this Agreement shall apply to taxation measures except as expressly provided in paragraphs 2 to ... below:

2. Article ... (Expropriation) shall apply to taxation measures, except that no claim that a tax measure involves an expropriation shall be submitted to dispute settlement by an investor of a contracting party pursuant to Article ... (Investor-State Dispute Settlement)[1]:

a) Unless the investor concerned has first referred to the Competent Tax Authorities of both Contracting Parties involved in the dispute the issue of whether the tax measure involves an expropriation, nor shall the claim be submitted to dispute settlement within the [24] month period immediately following such referral; and

b) If, within [24] months of the date of referral, the Competent Tax Authorities of both Contracting Parties concerned determine that the tax measure does not involve an expropriation.

3. Article ... (Transparency) shall apply to taxation measures[2], except that nothing in this Agreement shall require a Contracting Party to furnish or allow access to information covered by tax secrecy or any other domestic laws protecting confidentiality, in particular and including:

a) any agreement or arrangement between a tax authority and an investor;

b) any agreement with a foreign government concerning the application or interpretation of a tax treaty in the case of an individual investor;

c) information concerning the identity of an investor or other information which would disclose any trade, business, industrial, commercial or professional secret or trade process;

d) information pertaining to individual taxpayers received from another government; or

e) information the disclosure of which would impede the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxation, or any information the disclosure of which would aid or assist in the avoidance or evasion of taxes.

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[1] One delegation reserves its position on MAI dispute settlement procedures.

[2] One delegation would have preferred a separate article on transparency for taxes.

4. National Treatment

Alternative 1

No carve-in provision on National Treatment with respect to taxation measures.

Alternative 2

Article XX paragraph 1.1 (National Treatment) shall apply to taxation measures [if a convention for the avoidance of double taxation is not in effect between the Contracting Parties concerned.] However, nothing in the above-mentioned Article shall:

1. prevent the adoption or enforcement by the Contracting Parties of any measure which:

a) differentiates treatment between taxpayers who are not in the same circumstances, in particular with respect to residence; or

b) is aimed at ensuring the equitable or effective imposition, payment or collection of taxes; or

c) is aimed at preventing the avoidance or evasion of taxes;

provided that the measure does not arbitrarily discriminate between investors or investments of Contracting Parties or arbitrarily restrict benefits accorded under the provisions of this Agreement.

[2. have the effect of extending fiscal advantages granted by any Party on the basis of any international agreement or arrangement by which it is or may become bound, or its membership of any Regional Economic Integration Organisation.]

Alternative Approach

One delegation put forward the following text:

"Nothing in this Agreement shall impose any obligation on any Party, or create rights, with respect to taxation measures, provided that the existing or future differences of treatment operated by a Party fro tax purposes, which are established between a foreign investor and an investor of this Party, or between an investment performed abroad and investment performed on its territory, are justified on one of the following grounds:

- a difference between investors with respect or their tax residence;

- differences between investors or investments with respect to their tax compliance situations;

- differences between investors or investments with respect to the capacity of the tax administration to perform effective tax control and measures aimed at combating tax fraud and evasion and tax competition, and tax collection;

- a provision in a tax Treaty concluded between two Parties.

It is understood that the term “foreign investor” includes an enterprise of a Party the capital of which is partly or totally owned by a national of another Party, or a permanent establishment of an enterprise of another Party; the term “investment performed abroad” includes an investment made in relation with an enterprise of a Party the capital of which is owned party or totally by a national of another Party, or with a permanent establishment of an enterprise of another Party.”

COMMENTARY

Expropriation

1. The Group agreed to carve in taxes though the text needs to be refined and a few delegations maintain a reservation pending clarification and finalisation of the text.

2. The Group reconfirmed that taxes as such are not expropriatory. It then developed a clarifying text providing elements to be considered when determining whether a specific measure should be considered expropriatory. The form in which the text would appear remains open. The following text might be included in the MAI as an interpretative note[3]:

Taxation Measures and Expropriation: Clarifying Text

"MAI Parties understand that no taxation measures of the Parties effective at the time of signature of the Agreement could be considered as expropriatory or having the equivalent effect of expropriation."

The Group agreed that the following text should be included in some manner such as an interpretative note to the MAI. [4]

"When considering the issue of whether a tax measure effects an expropriation, the following elements should be borne in mind:

a) The imposition of taxes does not generally constitute expropriation. A claim of excessive burden imposed by a tax measure is not in itself indicative of an expropriation.

b) A tax measure will not be considered to constitute expropriation where it is generally within the bounds of internationally recognised tax policies and practices. When considering whether a tax measure satisfies this principle, an analysis should include whether and to what extent tax measures of a similar type and level are used around the world.

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[3] One delegation considers that such a statement is, at the least, premature.

[4] One delegation did not regard an interpretative note as essential.

c) While expropriation may be constituted even by measures applying generally (eg, to all taxpayers), such a general application is in practice less likely to suggest an expropriation than more specific measures aimed at particular nationalities or individual taxpayers. A tax measure would not be expropriatory if it was in force and was transparent when the investment was undertaken.

d) Tax measures may constitute an outright expropriation, or while not directly expropriatory they may have the equivalent effect of an expropriation (so-called "creeping expropriation"). Where a tax measure by itself does not constitute expropriation it would be extremely unlikely to be an element of a creeping expropriation."

3. Different views were expressed on the appropriate period of time to be inserted in paragraph 2 a) and b) of the draft Article. It was agreed however that the clock should start running only when the competent Tax Authorities of both Parties to the dispute had received all the information necessary to making a judgement on whether the measure concerned amounted to expropriation. It was also agreed that the period should not be too long so as not to delay unreasonably the tine when the issue could be brought to dispute settlement under the MAI.

4. The term "competent Tax Authorities" needs to be defined, possibly by reference to the Energy Charter Treaty (ECT). Most delegations emphasised the need to define "tax measure" for purposes of the MAI[5].

5. The Group agreed that the Tax Authorities of only two countries should be involved in the procedure described in paragraph 2 and both should be MAI Parties. One of the Parties would certainly be the host country to the investment, but the other might need to be defined taking into account the extent to which indirect investments will be covered by the MAI [see Consolidated Text, DAFFE/MAI(96)16/REV1, paragraphs 15-21].

6. The procedure set out in paragraph 2 addresses only investor-state disputes. The Group considered that in the case of state-to-state disputes, the competent tax authorities should automatically be involved.

7. The role of Tax Authorities in any MAI dispute settlement procedure involving taxes is taken up elsewhere in this Commentary. The remedies in the case of expropriation would be those defined in the expropriation Article itself, namely compensation.

[5] One delegation does not consider it useful to define tax measures.

Transparency

8. The Group agreed to carve in transparency.

9. The Group also agreed that the general Article on transparency in the consolidated text (paragraphs 2.1, 2.2 and 2.3) should apply to taxes. However the Group considers the term "policies or practices" in paragraph 2.3 of the general Article on Transparency to be necessary for tax purposes, and additional text needs to be included in the Taxation Article to protect the confidentiality of certain types of information specific to tax matters, including information shared between the Authorities of different countries on a confidential basis. The Group developed a text for this purpose (paragraph 3 of the Draft Article on Taxation), subject to further refinement.

National Treatment

10. A large majority of delegations supported Alternative 1 which provides no carve-in for taxes with respect to National Treatment. These delegations emphasised the need to see tax measures affecting National Treatment in the context of international treaty obligations and tax policy as a whole, and the need of governments to preserve the freedom to introduce new measures especially in the light of economic and technological developments. These delegations also emphasised the extent to which tax treaties, including the obligation of non-discrimination, provide comprehensive protection to investors. Moreover these delegations emphasised that, as double taxation Agreements cover most OECD countries, subjecting taxes to the national treatment obligation would undermine both tax Agreements (through forum shopping) and the MAI. This problem could be aggravated by the accession to the MAI of Non-OECD Members, particularly certain countries with which OECD Members have decided not to conclude tax treaties. Problems of legal interpretation were also mentioned as creating uncertainty and exposing Tax Authorities to unjustified dispute settlement claims. One delegation indicated that under its legal interpretative framework, Alternative 2 would not allow the effective operation of its anti-avoidance measures and tax treaty network.

11. Some delegations favoured Alternative 2 which would carve in taxes to the National Treatment obligation subject to safeguards specific to taxation. These delegations considered that the MAI would lack credibility if taxes were excluded from this core obligation given the importance of taxation in investment decisions. The tax treaty network, though extensive, does not cover all likely signatories to the MAI (nor even all OECD countries). Some treaties do not contain a sufficiently comprehensive non-discrimination provision. Incorporating the National Treatment obligation in the body of the text would strengthen the accession criteria from a tax policy viewpoint. These delegations also felt that the tax policy concerns that had been identified were adequately covered by the text in alternative 2.

12. A few delegations indicated that they had not yet decided between Alternatives 1 and 2.

13. One delegation wondered whether a National Treatment provision limited to procedural aspects might be acceptable in regard to tax matters.

An Alternative Approach

14. One delegation put forward an alternative approach under which a broader carve-in of tax measures could be accommodated by designing a text for dealing with tax matters under the MAI based on elements of the non-discrimination article in the OECD Model Convention. This alternative would cover both National Treatment and tax incentive questions.

Most Favoured Nation Treatment

15. The Group agreed that direct taxes and social security contributions/taxes should definitely not be carved into the MFN provision of the MAI.

16. The Group also agreed to proceed on the working assumption that indirect taxes would not be carved-in either for this purpose. However a few delegations expressed support for including indirect taxes within the MFN provision, provided Agreement could be reached on a suitable definition of indirect taxes and provided unnecessary overlap with WTO obligations could be avoided. Value-added taxes and transfer taxes for immovable property were mentioned as possible candidates for coverage because they were both important for investors and there would usually be no need for different treatment on the basis of nationality.

Performance Requirements

17. The Group noted that paragraph 3 of the draft Article on performance requirements prepared by EG3 would prohibit specific performance requirements linked to receipt of an "advantage". In the absence of further clarification, the term "advantage" could be understood to include a tax advantage.

18. The issue of "carving in" taxes with respect to performance requirements needs further consideration to ensure that all appropriate policy objectives of governments are taken into account and to take into account any changes in the text on performance requirements, which has not been finalised.

19. One delegation emphasised the need to take into consideration the current transition periods available to economies in transition for export subsidies under the WTO Subsidies Agreement.

20. One delegation put forward the following text:

"Article ... (Performance Requirements) shall apply to tax measures, but nothing in that Article shall be construed to prevent a Contracting Party from conditioning the receipt or continued receipt of a tax advantage, in connection with an investment in its territory of an investor of a Contracting Party or of a non-Contracting Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory."

Transfers

21. One delegation proposed the following text:

"Article ... (Transfers) shall apply to taxes. For the avoidance of doubt that article shall not limit the right of a Contracting Party to impose or collect a tax by withholding or other means."

22. This suggestion was not further discussed. However, in its earlier work the Group had agreed that the general transfer obligation should not prevent the imposition of withholding taxes,, jeopardy assessments or taking other measures to ensure the proper determination, assessment or collection of taxes or the satisfaction of tax obligations. The Group also took into account the views of expressed by DG3 that the free transfer obligation applies to earnings and other remuneration net after deduction of any withholding for tax or social security purposes [DAFFE/MAI(96)16/REV1, page 31]. Therefore, most delegations saw no need to carve in taxation with respect to the transfer obligation. A difference of view remained on whether it is necessary or desirable to provide an explicit general or limited exclusion of taxes from the transfer article. Bilateral investment treaty practice was suggested as a possible guide in this regard.

Investment Incentives

23. The Group noted that in EG3 there had been broad agreement that investment incentives should be subject to NT and MFN obligations and that proposals to establish an agenda for future work on additional disciplines were under consideration.

24. Different views were expressed concerning the desirability of subjecting tax incentives to NT and MFN obligations, or to any additional disciplines. Most delegations believed there is no difference in treatment issues between tax measures and tax incentives.

25. Most delegations considered that it would be difficult not only to clearly define "tax incentives", but also to distinguish between desirable and undesirable incentives. They also considered that it would be important to avoid any duplication or conflict with other agreements, particularly the ASCM and GATS.

26. Some delegations felt that tax and non-tax incentives should be considered in an integrated fashion under the MAI. It was pointed out that insofar as investment incentives are subject to MAI obligations, notably NT and MFN, if such obligations do not extend to tax incentives then countries could be induced to substitute tax incentives for non-tax incentives.

27. Many delegations felt that agreements in other fora concerning disciplines on tax and non-tax incentives should to be taken into account in deciding the extent to which tax incentives should be covered by MAI obligations. In this regard, specific reference was made to WTO Agreements, particularly the Agreement on Subsidies and Countervailing Measures (ASCM) and ongoing developments under the auspices of the GATS, as well as OECD activities, in particular the CFA project on unfair tax competition and the Industry Committee project". One delegation considered that developments in these other fora are not in competition with the MAI.

28. One delegation expressed interest in a provision that would prohibit positive discrimination based on the nationality or residence of investors. However, another delegation suggested that instances of tax incentives embodying positive discrimination based on nationality were rare, if not non-existent, in OECD Member countries.

Dispute Settlement

29. The Group considered that dispute settlement would not only arise for taxation to the extent that taxation matters were carved back into the MAI, but also for the purpose of determining what constitutes a tax measure for the purpose of the carve-out.

30. It was not clear at this stage how the tax carve-out will interact with the MAI dispute settlement resolution proposals. To the extent that tax matters are covered, the Group agreed that primacy should be given to mutual agreement procedures under tax treaties and tax authorities should have the necessary flexibility to settle tax related disputes. Tax expertise should be required at all stages of MAI dispute settlement including consultations and arbitration procedures although this might not need to be explicit in the case of state-to-state disputes. One suggestion was that an independent tax expert (independent of the parties to the dispute) should be automatically involved in investor to state disputes.

31. Some delegations reserved their position on whether the MAI dispute resolution provisions should or could apply in respect of tax measures. One of these delegations raised constitutional concerns in relation to taxation, and others raised concerns over the lack of specific detail on what the MAI dispute resolution procedures would look like and how they would operate.

32. This lack of specific details made it difficult to make progress on this matter and the Group noted that there is considerably more work to be undertaken on tax issues in this area.

33. This further work should include consideration of the form which the primacy of the mutual agreement procedures should take for example, absolute primacy or subject to a time limit after which an unresolved dispute would be referred to a dispute settelement panel under the MAI.

Relationship between the MAI and International Tax Agreements

34. The Group noted that EG4 had drafted a "non-derogation" clause [DAFE/MAI/EG3(96)7] designed to ensure that investors would not lose the benefit of more favourable treatment available under laws or international agreements containing obligations to them by MAI Parties. The Group needs to consider further the potential implications of such a provision, depending on its final text.

Accession

35. Two broad aspects were considered: what might to be done to ensure that non-member countries wishing to accede to the MAI meet minimum standards in terms of their tax systems and how to treat the application of MAI provisions to overseas territories from the tax standpoint.

36. The argument was made that, so far as non-member countries are concerned, a very broad carve-out of tax issues from relevant MAI obligations would leave open the possibility of introducing discriminatory measures through the tax code. Where there is no bilateral DTA in force, there may be no other investor protection available.

37. Another argument was that the greater the extent to which tax measures were carved into the MAI, the greater the importance of having strict accession requirements. For example, if taxes were carved into NT, the problems identified earlier would arise, and, in addition, the Group would need to look more closely at accession requirements, such as the existence of extensive tax treaty networks and bank secrecy laws.

38. It was noted that the Negotiating Group has determined that all accession criteria should apply equally to member and non-member countries. The Group therefore considered that the tax authorities should be involved in the process by which accession candidates are judged. One delegation considered that, in addition to the MAI obligations in the tax area, broader tax policy considerations should be taken into account.

Definition of Tax Measures

39. Different views were expressed concerning the need for a definition of "tax measures". Most delegations considered that a definition would be necessary in order to distinguish between those measures that would be subject to the taxation "carve-out" and those which would not. Some delegations felt that it would be difficult to define such measures, and that no definition was necessary.

40. Some delegations believed that the definition should include social security contributions/taxes. The question was also raised as to whether the definition should encompass tax procedures, including accounting requirements.

41. One delegation suggested the following definition:

> "-- Taxation measures include any administrative practices of the Contracting Party relating to taxes, or provision relating to taxes of the law of the Contracting Party or of a political subdivision thereof or a local authority therein; and any provision relating to taxes of any convention for the avoidance of double taxation or of any other international agreement or arrangement by which the Contracting Party is bound.
>
> -- Taxation shall be taken for this purpose to include all taxes set out in ... (see Annex) or any identical or substantially similar taxes which are imposed after the entry into force of the MAI in addition to, or in place of, existing taxes".

ANNEX: DEFINITION OF TAXES

The following extract from pages 27-30 of the OECD publication entitled *Revenue statistics of OECD Member Countries (1965-1994)* is relevant for the definition of taxes in the MAI. The definitions found therein have been agreed to by the OECD, International Monetary Fund and the United Nations System of National Accounts (SNA).

I. General criteria

1. In the OECD classification, the term "taxes" is confined to compulsory, unrequited payments to general government. Taxes are unrequited in the sense that benefits provided by government to taxpayers are not normally in proportion to their payments.

2. The term "tax" does not include fines unrelated to tax offences and compulsory loans paid to government. Borderline cases between tax and non-taxes revenues in relation to certain fees and charges are discussed in paragraphs 9 and 13.

3. General government consists of supra-national authorities, the central administration and the agencies whose operations are under its effective control, state and local governments and their administrations, social security schemes and autonomous governmental entities, excluding public enterprises. Apart from the reference to supra-national authorities, this definition of government follows that of the "System of National Accounts" (SNA), United Nations 1968 (page 79, Table 54.1)[1].

4. Compulsory payments to supra-national bodies, such as the Commission of the European Communities and their agencies are included as taxes and are treated as part of the tax revenues of the country in which they are collected. They are separately identified in the data on subsectors of government. In countries where the church forms part of general government church taxes are included, provided they meet the criteria set out in paragraph 1 above. As the data refer to receipts of general government, levies paid to non-government bodies, welfare agencies or social insurance schemes outside general government, trade unions or trade associations, even where such levies are compulsory, are excluded. Compulsory payments to general government earmarked for such bodies are, however, included provided that the government is not simply acting in an agency capacity[2]. Profits from fiscal monopolies are distinguished from those of other public enterprises and are treated as taxes because they reflect the exercise of the taxing power of the state by the use of monopoly powers (see paragraphs 63-65), as are profits received by the government from the purchase and sale of foreign exchange at different rates (see paragraph 71).

5. Taxes paid by governments (e.g., social security contributions and payroll taxes paid by governments in their capacity as an employer, consumption taxes on their purchases or taxes on their property) are not excluded from the data provided. However, where it is possible to identify the amounts of revenue involved[3], they are shown in a memorandum item.

6. The relationship between this classification and that of SNA is set out in Section E. Because of the differences between the two classifications, the data shown in national accounts are sometimes calculated or classified differently from the practice set out in this guide. these and other differences are mentioned where appropriate (e.g. paragraph 17) but it is not possible to refer to all of them. there may also be some differences between this classification and that employed domestically by certain national administrations (e.g., see paragraph 9 below), so that OECD and national statistics data may not always be consistent; any such differences , however, are likely to be very slight in terms of amounts of revenues involved.

II. Social security contributions

7. Compulsory social security contributions, as defined in paragraph 36, paid to general government are treated as tax revenues. Being compulsory payments to general government they clearly resemble taxes. They may, however, differ from taxes in that the receipt of social security benefits depends, in most countries, upon appropriate contributions having been made, although the size of the benefits is not necessarily related to the amount of the contributions. Better comparability between countries is obtained by treating social security contributions as taxes, but they are listed under a separate heading so that they can be distinguished in any analysis.

8. Social security contributions which are either voluntary or not payable to general government (see paragraph 1) are not treated as taxes, though in some countries, as indicated in the country footnotes, there are difficulties in eliminating voluntary contributions and compulsory payments to the private sector.

III. Fees, user charges and licence fees

9. Apart from vehicle licence fees, which are universally regarded as taxes, it is not easy to distinguish between those fees and user charges which are to be treated as taxes and those which are not, since, whilst a fee or charge is levied in connection with a specific service or activity, the strength of the link between the fee and the service provided may vary considerably, as may the relation between the amount of levy and the cost of providing the service. Where the recipient of a service pays a fee clearly related to the cost of providing the service, the levy may be regarded as requited and under the definition of paragraph 1 would not be considered as a tax. In the following cases, however, a levy could be considered as “unrequited”:

a) Where the charge greatly exceeds the cost of providing the service;

b) where the payer of the levy is not the receiver of the benefit (e.g., a fee collected from slaughterhouses to finance a service which is provided to farmers);

c) where the government is not providing a specific service in return for the levy which it receives even though a licence may be issued to the payer (e.g., where the government grants a hunting, fishing or shooting licence which is not accompanies by the right to use a specific area of government land);

d) where benefits are received only by those paying the levy but the benefits received by each individual are not necessary in proportion to his payments (e.g., a milk marketing levy paid by dairy farmers and used to promote the consumption of milk).

10. In marginal cases, however, the application of the criteria set out in paragraph 1 can be particularly difficult. The solution adopted -- given the desirability of international uniformity and the relatively small amounts of revenue usually involved -- is to follow the predominant practice among tax administrations rather than to allow each country to adopt its own view as to whether such levies are regarded as taxes or as non-tax revenue.[4]

11. A list of the main fees and charges in question and their normal[5] treatment in this bulletin is as follows:

Non-tax revenues: court fees; driving licence fees; harbour fees; passport fees; radio and television licence fees where public authorities provide the service.

Taxes of 5200: permission to perform such activities as distributing films; hunting, fishing and shooting; providing entertainment or gambling facilities; selling alcohol or tobacco; permission to own dogs or to use or own motor vehicles or guns; severance taxes.

12. In practice it may not always be possible to isolate tax receipts from non-tax revenue receipts when they are recorded together. If it is estimated that the bulk of the receipts derive from non-tax revenues, the whole is treated as a non-tax revenue; otherwise they are included and classified according to the rules provided in paragraph 28.

13. Two differences between the OECD classification and SNA regarding the borderline between tax and non-tax revenues are:

a) SNA classifies a number of levies as indirect taxes if paid by enterprises, but as non-tax revenues if paid by households, a distinction which is regarded as irrelevant in this classification for distinguishing between tax and non-tax revenues[6].

b) Predominant practice among most OECD tax administrations, which is occasionally used in this classification for distinguishing between tax and non-tax revenues, is not a relevant criterion for SNA purposes.

Royalties

14. Royalty payments for the right to extract oil and gas or to exploit other mineral resources are normally regarded as non-tax revenues since they are property income from government-owned land or resources.

Fines and penalties

15. Receipts from fines and penalties paid for infringement of regulations identified as relating to a particular tax and interest on payments overdue in respect of a particular tax are recorded together with receipts from that tax. Other kinds of fines identifiable as relating to tax offences are classified in the residual heading 6000. Fines not relating to tax offences (e.g., for parking offences), or not identifiable as relating to tax offences, are not treated as taxes.

NOTES

[1] All references to the SNA are to the 1968 edition.

[2] See Annex 1 for a discussion of the concept of agency capacity.

[3] It is usually possible to identify amount of social security contributions and payroll taxes, but not other taxes paid by government.

[4] If, however, a levy which is considered as non-tax revenue by most countries is regarded as a tax, or raises substantial revenue, in one or more countries, the amounts collected are footnoted at the end of the relevant country tables, even though the amounts are not included in total tax revenues.

[5] Names, however, can frequently be misleading. For example, though a passport fee would normally be considered a non-tax revenue, if a supplementary levy on passports (as is the case in Portugal) were imposed in order to raise substantial amounts of revenue relative to the cost of providing the passport, the levy would be regarded as a tax of 5200.

[6] There are often practical difficulties in operating the distinction made by SNA.

OECD CLASSIFICATION OF TAXES

1000 *Taxes on income, profits and capital gains*

- 1100 Taxes on income, profits and capital gains of individuals
  - 1110 On income and profits
  - 1120 On capital gains
- 1200 Corporate taxes on income, profits and capital gains
  - 1210 On income and profits
  - 1220 On capital gains
- 1300 Unallocable as between 1100 and 1200

2000 *Social security contributions*

- 2100 Employees
- 2200 Employers
- 2300 Self-employed or non-employed
- 2400 Unallocable as between 2100, 2200 and 2300

3000 *Taxes on payroll and workforce*

4000 *Taxes on property*

- 4100 Recurrent taxes on immovable property
  - 4110 Households
  - 4120 Other
- 4200 Recurrent taxes on net wealth
  - 4210 Individual
  - 4220 Corporate
- 4300 *Estate, inheritance and gift taxes*
  - 4310 Estate and inheritance taxes
  - 4320 Gift taxes
- 4400 Taxes on financial and capital transactions
- 4500 Other non-recurrent taxes on property
  - 4510 On net wealth
  - 4520 Other non-recurrent
- 4600 Other recurrent taxes on property

5000 *Taxes on goods and services*

- 5100 Taxes on production, sale, transfer, leasing and delivery of goods and rendering of services
  - 5110 General taxes
    - 5111 Value added taxes
    - 5112 Sales taxes
    - 5113 Other general taxes on goods and services
  - 5120 Taxes on specific goods and services
    - 5121 Excises
    - 5122 Profits of fiscal monopolies
    - 5123 Customs and import duties
    - 5124 Taxes on exports
    - 5125 Taxes on investment goods
    - 5126 Taxes on specific services
    - 5127 Other taxes on international trade and transactions
    - 5128 Other taxes on specific goods and services
    - 5130 Unallocable as between 5110 and 5120
- 5200 Taxes on use of goods or on permission to use goods or perform activities
  - 5210 Recurrent taxes
    - 5211 Paid by households in respect of motor vehicles
    - 5212 Paid by others in respect of motor vehicles
    - 5213 Other recurrent taxes
  - 5220 Nonrecurrent taxes
- 5300 Unallocable as between 5100 and 5200

6000 *Other taxes*

- 6100 Paid solely by business
- 6200 Paid by other than business or unidentifiable

Memorandum item on the financing of social security benefits

- A. Taxes on 2000 series
- B. Other taxes earmarked for social security benefits
- C. Voluntary contributions to the government
- D. Compulsory contributions to private sector
- E. Total

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Memorandum item on compulsory loans collected through the tax system