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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**

**DEFINITION OF TAXES**

**(Note by the Chairman)**

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The attached extract taken 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).

*Question:*

*a) Should these definitions of taxes be adopted for purposes of the MAI?*

## A. COVERAGE

### 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)<sup>1</sup>.

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<sup>2</sup>. 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<sup>3</sup>, 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 required 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 accompanied 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.<sup>4</sup>

11. A list of the main fees and charges in question and their normal<sup>5</sup> 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<sup>6</sup>.

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

<sup>1</sup> All references to the SNA are to the 1968 edition.

<sup>2</sup> See Annex 1 for a discussion of the concept of agency capacity.

<sup>3</sup> It is usually possible to identify amount of social security contributions and payroll taxes, but not other taxes paid by government.

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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

*Memorandum item on the social security contributions and payroll taxes paid by government*

*Memorandum item on compulsory loans collected through the tax system*