

2. The Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties may amend the value referred to in Article 33(4) of the Protocol on administrative cooperation and combating fraud in the field of value added tax and on mutual assistance for the recovery of claims relating to taxes and duties.

TITLE II

SERVICES AND INVESTMENT

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 123

Objective and scope

1. The Parties affirm their commitment to establish a favourable climate for the development of trade and investment between them.

2. The Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as: the protection of public health; social services; public education; safety; the environment, including climate change; public morals; social or consumer protection; privacy and data protection or the promotion and protection of cultural diversity.

3. This Title does not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party or to measures regarding nationality, citizenship, residence or employment on a permanent basis.

4. This Title shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of its borders and to ensure the orderly movement of natural persons across them, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Title. The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under this Title.

5. This Title does not apply to:

(a) air services or related services in support of air services¹, other than:

(i) aircraft repair and maintenance services;

(ii) computer reservation system services;

(iii) ground handling services;

(iv) the following services provided using a manned aircraft, subject to compliance with the Parties' respective laws and regulations governing the admission of aircrafts to, departure from and operation within, their territory: aerial fire-fighting; flight training; spraying; surveying; mapping; photography; and other airborne agricultural, industrial and inspection services; and

(v) the selling and marketing of air transport services;

(b) audio-visual services;

¹ Air services or related services in support of air services include, but are not limited to, the following services: air transportation; services provided by using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services; the rental of aircraft with crew; and airport operation services.

(c) national maritime cabotage¹; and

(d) inland waterways transport.

6. This Title does not apply to any measure of a Party with respect to public procurement of a good or service purchased for governmental purposes, and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale, whether or not that procurement is "covered procurement" within the meaning of Article 277.

7. Except for Article 132, this Title does not apply to subsidies or grants provided by the Parties, including government-supported loans, guarantees and insurance.

¹ National maritime cabotage covers: for the Union, without prejudice to the scope of activities that may be considered cabotage under the relevant national legislation, transportation of passengers or goods between a port or point located in a Member State and another port or point located in that same Member State, including on its continental shelf, as provided for in the United Nations Convention on the Law of the Sea and traffic originating and terminating in the same port or point located in a Member State; for the United Kingdom, transportation of passengers or goods between a port or point located in the United Kingdom and another port or point located in the United Kingdom, including on its continental shelf, as provided for in the United Nations Convention on the Law of the Sea and traffic originating and terminating in the same port or point located in the United Kingdom.

ARTICLE 124

Definitions

For the purposes of this Title, the following definitions apply:

- (a) "activities performed in the exercise of governmental authority" means activities which are performed, including services which are supplied, neither on a commercial basis nor in competition with one or more economic operators;¹
- (b) "aircraft repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;
- (c) "computer reservation system services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;
- (d) "covered enterprise" means an enterprise in the territory of a Party established in accordance with point (h) by an investor of the other Party, in accordance with the applicable law, existing on the date of entry into force of this Agreement or established thereafter;

¹ For greater certainty, the term "activities performed in the exercise of governmental authority" when used in relation to measures of a Party affecting the supply of services, includes "services supplied in the exercise of governmental authority" as defined in point (p) of Article 124.

- (e) "cross-border trade in services" means the supply of a service:
 - (i) from the territory of a Party into the territory of the other Party; or
 - (ii) in the territory of a Party to the service consumer of the other Party;
- (f) "economic activity" means any activity of an industrial, commercial or professional character or activities of craftsmen, including the supply of services, except for activities performed in the exercise of governmental authority;
- (g) "enterprise" means a legal person or a branch or a representative office of a legal person;
- (h) "establishment" means the setting up or the acquisition of a legal person, including through capital participation, or the creation of a branch or representative office in the territory of a Party, with a view to creating or maintaining lasting economic links;
- (i) "ground handling services" means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering; air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning; ground handling services do not include: self-handling; security; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra airport transport systems;

- (j) "investor of a Party" means a natural or legal person of a Party that seeks to establish, is establishing or has established an enterprise in accordance with point (h) in the territory of the other Party;
- (k) "legal person of a Party"¹ means:
- (i) for the Union:
 - (A) a legal person constituted or organised under the law of the Union or at least one of its Member States and engaged, in the territory of the Union, in substantive business operations, understood by the Union, in line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), as equivalent to the concept of "effective and continuous link" with the economy of a Member State enshrined in Article 54 of the Treaty on the Functioning of the European Union (TFEU); and
 - (B) shipping companies established outside the Union, and controlled by natural persons of a Member State, whose vessels are registered in, and fly the flag of, a Member State;

¹ For greater certainty, the shipping companies referred to in this point are only considered as legal persons of a Party with respect to their activities relating to the supply of maritime transport services.

(ii) for the United Kingdom:

(A) a legal person constituted or organised under the law of the United Kingdom and engaged in substantive business operations in the territory of the United Kingdom;
and

(B) shipping companies established outside the United Kingdom and controlled by natural persons of the United Kingdom, whose vessels are registered in, and fly the flag of, the United Kingdom;

(l) "operation" means the conduct, management, maintenance, use, enjoyment, or sale or other form of disposal of an enterprise;

(m) "professional qualifications" means qualifications attested by evidence of formal qualification, professional experience, or other attestation of competence;

(n) "selling and marketing of air transport services" means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution, but not including the pricing of air transport services nor the applicable conditions;

(o) "service" means any service in any sector except services supplied in the exercise of governmental authority;

- (p) "services supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers;
- (q) "service supplier" means any natural or legal person that seeks to supply or supplies a service;
- (r) "service supplier of a Party" means a natural or legal person of a Party that seeks to supply or supplies a service.

ARTICLE 125

Denial of benefits

1. A Party may deny the benefits of this Title and Title IV of this Heading to an investor or service supplier of the other Party, or to a covered enterprise, if the denying Party adopts or maintains measures related to the maintenance of international peace and security, including the protection of human rights, which:

- (a) prohibit transactions with that investor, service supplier or covered enterprise; or
- (b) would be violated or circumvented if the benefits of this Title and Title IV of this Heading were accorded to that investor, service supplier or covered enterprise, including where the measures prohibit transactions with a natural or legal person which owns or controls any of them.

2. For greater certainty, paragraph 1 is applicable to Title IV of this Heading to the extent that it relates to services or investment with respect to which a Party has denied the benefits of this Title.

ARTICLE 126

Review

1. With a view to introducing possible improvements to the provisions of this Title, and consistent with their commitments under international agreements, the Parties shall review their legal framework relating to trade in services and investment, including this Agreement, in accordance with Article 776.
2. The Parties shall endeavour, where appropriate, to review the non-conforming measures and reservations set out in Annexes 19, 20, 21 and 22 and the activities for short term business visitors set out in Annex 21, with a view to agreeing to possible improvements in their mutual interest.
3. This Article shall not apply with respect to financial services.