

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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THE APPLICABILITY OF THE GATS TO TAX MEASURES

Note by the Secretariat

Tax measures affecting service suppliers require no justification under Article XIV (General Exceptions) unless they violate an obligation or commitment under the Agreement. The two relevant provisions in this respect are Article XVII (National Treatment) and Article II (MFN).

Under Article XVII, at least three conditions must be met before a tax (or any other) measure constitutes a violation of national treatment: the service suppliers must be "like"; the distinct treatment must be based on the national origin of the service or service supplier; and the treatment must be less favourable. To the extent that service suppliers in different jurisdictions are not "like", a tax measure which distinguishes between these two suppliers on the basis of residency would not violate national treatment. Further, distinctions without a link to national origin would not normally violate national treatment provisions, such as distinctions based on objective criteria like the level of distribution of profits. Finally, any formally different treatment accorded would have to result in less favourable conditions of competition. Measures designed to ensure the neutrality or integrity of the taxation system can be viewed as ensuring that service suppliers, in the structuring of their transactions, do not benefit from conditions of competition more favourable than others in similar circumstances. In Article II (MFN) these considerations also apply: for a violation to occur, there must be likeness between service suppliers, a distinction based on national origin of the service supplier (and not simply of an affiliated person) and less favourable conditions of competition.

In summary, it would appear that relatively few tax measures affecting service suppliers would even require justification under Article XIV (General Exceptions). Most tax measures providing distinct treatment to different categories of service supplier appear to deal with unlike service suppliers, to be based on objective considerations, or not in fact to accord less favourable conditions of competition.