

7. Subject to paragraphs 2 and 3, and without prejudice to the rights and obligations of the Parties under Article 10.7(4) (Investment – Performance Requirements) applies to a taxation measure.

8. Notwithstanding paragraphs 2 and 3, Article 10.11 (Investment – Expropriation) applies to a taxation measure, but an investor may not invoke that Article as the basis for a claim under Article 10.19 (Investment – Claim by an Investor of a Party on its Own Behalf) or Article 10.20 (Investment – Claim by an Investor of a Party on Behalf of an Enterprise), if the designated authorities of the Parties have determined under this paragraph that a taxation measure is not an expropriation. The investor shall refer the issue of determining whether a measure is not an expropriation to the designated authorities of the Parties at the time that the investor gives notice under Article 10.21 (Investment – Notice of Intent to Submit a Claim to Arbitration). If, within a period of 6 months from the date of this referral, the designated authorities do not agree to consider the issue or, having decided to consider it, fail to decide that the measure is not an expropriation, the investor may submit its claim to arbitration under Article 10.23 (Investment – Submission of a Claim to Arbitration).

9. In order to give effect to paragraphs 1 to 3:

- (a) If an issue arises as to whether a measure of a Party is a taxation measure in a dispute between the Parties, a Party may refer the issue to the designated authorities of the Parties. The designated authorities shall decide the issue of whether the measure is a taxation measure, and their decision shall bind a panel established under Article 21.11 (Institutional Arrangements and Dispute Settlement Procedures – Panel Composition) for the dispute. If a Party has referred the issue to the designated authorities and they have not decided the issue within 6 months of the referral, the panel shall decide the issue.
- (b) If an issue arises as to whether a measure of a Party is a taxation measure in connection with a claim by an investor of a Party, the Party that has received notice of intention to submit a claim to arbitration or against which an investor of the other Party has submitted a claim may refer the issue to the designated authorities the Parties. The designated authorities shall decide whether the measure is a taxation measure, and their decision shall bind a Tribunal with jurisdiction over the claim. A Tribunal seized of a claim in which the same issue arises may not proceed while the designated authorities are considering the issue. If a Party has referred the issue to the designated authorities and they have not decided the issue within 6 months of the referral, the Tribunal shall decide the issue.