



Thirty-Fifth Meeting of the IMF Committee on Balance of Payments Statistics

Washington, D.C.
February 22–25, 2021

BOPCOM VM1—21/03
For discussion

C.8 Recording of Fines and Penalties

Prepared by the Current Account Task Team (CATT)

INTERNATIONAL MONETARY FUND

C.8 Recording of Fines and Penalties¹

This Guidance Note (GN) discusses several issues related to the recording of fines and penalties in the balance of payments. Although the Balance of Payments and International Investment Position Manual, sixth edition (BPM6) covers these concepts, some uncertainties remain, and as these transactions have become large and more frequent, compilers have asked for further clarification. The GN discusses these issues and proposes amendments to be considered in the updated BPM6 and other manuals.

SECTION I: THE ISSUE

BACKGROUND

1. ***Fines and Penalties: Cross-border fines and penalties imposed on institutional units by courts of law or other government bodies² are treated as miscellaneous current transfers in the secondary income account of the balance of payments (BPM6 paragraph 12.54).***^{3,4} Fines and penalties have become more frequent and are sometimes very large.⁵ There are an increasing number of large transactions involving fines related to corruption, banking supervision, and antitrust.
2. ***Role of Multinational Enterprises: These transactions often involve multinational enterprises, which introduces additional complexity in terms of implementing the methodological guidance, mainly the identification of the institutional unit responsible for settling the fine or penalty.*** Complete information on the enterprise involved, such as the unit responsible for the fine (headquarter or affiliate/subsidiary), the timing of the ruling, the amount of the fine, the appeals process, etc. can be difficult for compilers to obtain. Absent complete information, compilers must make assumptions, which can result in large bilateral asymmetries depending on the amounts of the fines.
3. ***Time of Recording: These transfers are to be recorded “when a legal claim to the funds is established, which may be when a court renders judgment or an administrative ruling is***

¹ Prepared by Ms. Kristy Howell (in her previous capacity at the U.S. Bureau of Economic Analysis) and Mr. Thiago Vieira (Brazil) with input from Ms. Jessica Hanson and Mr. C. Omar Kebbeh (United States), and Mr. Renan Sousa (Brazil).

² This includes international or supranational governing bodies, which may issue fines against government units, for example, in the case of a European Union institution issuing a fine against a member country's government.

³ However, penalties agreed to as part of a contract are not included in current transfers and instead should be treated along with the associated good, or service, or income, as appropriate (BPM6 paragraph 12.54).

⁴ Similarly, the *2014 Government Finance Statistics Manual (GFSM 2014)* defines fines and penalties as “compulsory current transfers imposed on units by courts of law or quasi-judicial bodies for violations of laws or administrative rules” (paragraph 5.142). This same treatment is also described in the *2008 System of National Accounts (2008 SNA)*, paragraph 8.135, such that all three manuals are consistent.

⁵ For example, in 2015 the U.S. Department of Justice announced the final settlement against BP for the Deepwater Horizon oil spill totaling \$20.8 billion, which included a penalty of \$5.5 billion for Clean Water Act violations (see <https://www.justice.gov/opa/speech/attorney-general-loretta-e-lynch-delivers-remarks-press-conference-announcing-settlement>). In 2018, Petrobrás agreed to pay \$2.95 billion to settle a corruption scandal (<https://www.nytimes.com/2018/01/03/business/dealbook/brazil-petrobras-corruption-scandal.html>). In 2015, Deutsche Bank was fined \$7.2 billion over an investigation into mortgage-backed securities (<https://www.bbc.com/news/business-38412816>).

published” (BPM6 paragraph 12.18). However, significant fines are often appealed after they are issued, such that the final amount due may not be known until many years after the judgement is announced. To further complicate the matter, the company subject to the fine may recognize either a provision and a contingent liability or an expense and a liability in their financial accounting before the judgement has been finalized. Therefore, compilers may have difficulty determining when the fine should finally be recorded and, again here, the likelihood of introducing large bilateral asymmetries is great. Often in the case of large fines/penalties, amounts may be deposited in escrow accounts following the initial court judgment and pending exhaustion of appeals.⁶

4. **Classification: The classification of fines and penalties can be compared to the classification of taxes—which are also compulsory payments and are recorded as current or capital transfers—and to payments of compensation for injury or damages—which can be either “compulsory payments awarded by courts of law” or “ex gratia payments agreed to out of court” (GFSM 2014 paragraph 6.123), and are recorded in the current or the capital account, depending upon the nature of the damages.** According to the *BPM6*, payments of compensation for damages are to be recorded as capital transfers instead of current transfers when the payments are “for extensive damages (e.g., oil spillages or side effects of pharmaceutical products)” (*BPM6* paragraph 12.56). The *BPM6* further defines these capital transfers as “major nonrecurrent payments in compensation for extensive damages or serious injuries” (paragraph 13.29).

5. **In the international standards, fines and penalties are treated similarly to current taxes on income, wealth, etc. However, in practice they are often more closely tied to payments for compensation for damages.** For example, following a major event such as an oil spill, fines owed by the responsible party to the government and compensation owed by the responsible party to the affected parties are often determined in the same settlement; sometimes these amounts are reported indistinguishably.

ISSUES FOR DISCUSSION

Role of Multinational Enterprises

6. **Where a fine is issued against a multinational enterprise (MNE), identifying which part of the MNE (resident or nonresident entity) is liable for the fine can be challenging.**⁷ These legal cases can be quite complex and difficult for compilers to unravel.⁸ The part of the MNE that actually pays the fine is not necessarily the part of the MNE that responds to the court. It has been the drafting team’s experience that some regulatory authorities explicitly issue fines against the nonresident direct investor or ultimate beneficial owner, while others issue fines against the domestic subsidiary; in certain cases joint liability between an immediate owner and a direct investment enterprise (DIE) may be assessed.⁹

⁶ The recording of escrow accounts was considered as part of GN F.10 on cash collaterals. Currently, recording of deposits was recommended.

⁷ Given the relevance for MNEs, this GN will need to be considered along with GNs related to direct investment, including GN D.15, on “Treatment of payments made by nonresident affiliated enterprises on behalf of DIEs.”

⁸ See section 3.1 of Karavias, M., “Shared Responsibility and Multinational Enterprises,” *Netherlands International Law Review* 62 91–117 (2015) <https://link.springer.com/article/10.1007/s40802-015-0008-z>.

⁹ The 2013 *External Debt Statistics Guide (EDS 2013)* raises the issue “about whether a government has jurisdiction to impose such charge on nonresidents” (see Chapter 2, footnote 2).

7. **Identifying which part of the MNE is liable and which part pays the fine is crucial for determining the proper treatment of these transactions in the BOP.** For example, if the fine is imposed on the domestic DIE, there is no current transfer because it would be a resident-to-resident transaction. However, the profits earned by the DIE—which are recorded in the primary income account of the BOP—could be affected by the payment of the fine. Direct investment income is measured according to the Current Operating Performance Concept (COPC) described in the *Benchmark Definition of Foreign Direct Investment, fourth edition (BD4)* (see paragraph 208). BD4 Box A.6.2 includes a list of extraordinary items that should be excluded from COPC; fines and penalties are not listed explicitly. Many compilers, including US-BEA, allow fines and penalties to negatively impact DIE income. However, since fines and penalties are not included in *BD4* Box A.6.2, a compiler may take an alternative interpretation that fines/penalties incurred by a DIE should be considered extraordinary items and thus be excluded from COPC.

8. **Other balance of payments accounts could also be impacted.** Continuing with the example, the DIE can pay the fine using resources from the direct investors. In this case, the fine is still a resident-to-resident transaction, but it would result in another transaction, between resident and nonresident, recorded in the financial account as direct investment.

9. **Given the differences in treatment of fines and penalties that could arise when MNEs are involved, this GN catalogues them in Annex I.** For each case, the table identifies whether the fine or penalty would be recorded in secondary income and whether other accounts in the balance of payments would be impacted. The table provides a listing of scenarios where the entity issuing the fine/penalty is a resident; however, each of the scenarios in reverse, where the issuing entity is nonresident, would also apply.

Time of Recording

10. **Considering the legal dimension of the matter, the recognition of the obligation on an accrual basis after the first decision will not necessarily hold.** Even with a court decision settling the payment of a fine or penalty, the subsequent appealing courts may rule against this obligation. Thus, recording the transaction may backfire because of the multiple appeals and its contingent liability nature. The act of effective payment, though, cannot be disputed. Therefore, a cash-basis approach to the time of recording of fines and penalties transactions has some appeal. However, recording these transactions on a cash basis would introduce other inconsistencies within the balance of payments and with national accounts and GFS.

11. **As the counterpart entity of fines/penalties is classified inside general government, a time of recording similar to taxes may be envisaged in order to avoid distorting government finance statistics.** For taxes, only amounts that are irrevocable (unconditional) should be regarded as government revenue and the recording of uncollectible amounts as government revenue should be avoided. In fact, *GFSM 2014* already specifies that fines and penalties should be recorded “when the general government unit has an unconditional claim to the funds” (paragraph 5.144). The reference to an “unconditional claim” is only included in the *GFSM*; it is missing from the similar passages in the *System of National Accounts 2008 (2008 SNA)* and *BPM6*. Regarding judgments or rulings that may not be final, the *GFSM* states that if the “judgment or ruling is subject to further appeal, then the time of recording is

when the appeal is resolved” (paragraph 3.85, emphasis added). Both clarifications should be made in SNA and BPM to bring the standards into alignment.¹⁰

12. If a fine/penalty is accrued in the current period but not paid, the corresponding entry should be recorded as other accounts receivable/payable.¹¹ In practice, the compiler will need to consider whether the amounts are already captured in their source data, or whether additional adjustments are necessary.

Classification

13. A fine/penalty levied against a company for a major event, such as an oil spill, could be rather large and result in a significant impact on the country’s current account, which has implications for policy analysis. For this reason, there may be some appeal to treating significant fines and penalties transactions as capital transfers instead of as current-account transactions (in the same way that major payments for compensation of damages can be treated as capital transfers instead of current transfers, under the current standards). However, despite the benefit of reducing volatility from the current account, only conceptual definitions should be taken into account to record a transaction.

14. Another complexity to consider is that in certain cases an amount identified as a fine/penalty may still be used to compensate for damages in some manner. In the Deepwater Horizon settlement, the payment for violation of the Clean Water Act was referred to as a penalty, whereas the payment for damages under the Oil Pollution Act and payments to state and local governments were referred to as payments of damages. However, the statement continues that “80 percent of the Clean Water Act penalty will go to help the Gulf recover from the injuries it has suffered.”¹²

15. Since fines/penalties are compulsory, and payments of compensation for damages can also be compulsory, it may be helpful to expand the definition of fines and penalties to further distinguish the two types of transactions. Fines/penalties could be defined as compulsory payments that are punitive in nature, that is, are intended to punish and/or deter certain activities or behavior, while compensation payments are intended to remedy specific harms, such as property damage or loss of income. Under these new definitions, it may be appropriate for a compiler to treat certain fine/penalty payments that are identified in legal documents as a fine/penalty, but are actually intended to compensate for damages, as payments for compensation of damages for the purposes of recording the transaction in the balance of payments.

16. Clarification on the economic meaning of “major compensation payments for extensive damages” would also be welcome to identify properly a capital account transaction. The current

¹⁰ Regarding the time of recording, the specific rules in the *European System of Accounts (ESA) 2010* paragraph 20.189 may also be useful to consider: “when the claimants have an automatic and incontrovertible right for a given amount that can be individually determined.”

¹¹ *EDS 2013* also discusses penalties arising from commercial contracts and recommends that “The debt should be recorded from the time when the resident becomes liable under the contract for penalty,” following the accrual basis recording (see Appendix 1, part 2).

¹² Note that this penalty was not cross border, but if it was, would be a good example of a compulsory payment identified as a penalty that was intended to provide some compensation to third parties.

guidelines provide some examples (e.g., oil spills or side effects of pharmaceutical products) but do not provide clear rationale for what aspects of these damages should be considered in making the determination. Using a Pigouvian approach,¹³ “extensive damages” can be interpreted as negative externalities with impacts across several sectors or the whole economy. In this sense, major compulsory payments related to antitrust and competition laws, for example, that also seek compensation to the negative widespread effects of one-off events on society, could also be treated as capital account transfers. However, this definition may be difficult to apply in practice. The drafting team considered this and, drawing on the experience of compilers, determined that a more practical way to determine which payments meet the threshold of being classified as capital transfers are those that are linked to the recovery of losses incurred over a multi-year period, or to the replacement of an asset (financial or nonfinancial). This criterion is consistent with the definition of a capital transfer in the *BPM6* as a transfer that “results in a commensurate change in the stocks of assets of one or both parties to the transaction” (paragraph 12.13). The *GFSM 2014* already includes accumulated losses as part of the definition of major compensation payments (paragraph 3.16), while the *BPM6* and *2008 SNA* do not, so there is room for closer alignment.

17. **Some fines and penalties established in contracts (not imposed by courts of law) of mergers and acquisitions (M&A) may also be difficult to classify.** Many M&A transactions are not entirely settled immediately, and contracts may include contingent fines or penalties. For instance, as performance criteria, if the profitability or the revenues of the enterprise is above a threshold, the nonresident buyer must pay an additional value to the resident seller. On the other hand, if the enterprise loses a lawsuit, the resident seller must pay the same amount for the nonresident buyer, as compensation. In these cases, the fines and penalties would be interpreted as an adjustment/update of the market price of the acquired enterprise, and therefore a direct investment (or a portfolio investment if the buyer has less than 10 percent of the voting power) transaction, instead of a current transfer.

SECTION II: OUTCOMES

18. **The recommendations include:**

- *Revise the international standards to define a fine/penalty payment as one that is “punitive in nature” and to more clearly distinguish these payments from payments of compensation, which are intended to compensate for injury or damages.¹⁴*
- *Revise the international standards to indicate that major compensation payments should be recorded as capital transfers (instead of current transfers) if they are “intended to recover losses incurred over a multi-year period or to replace an asset (financial or nonfinancial).”*

¹³ The externality concept was first introduced in the 1920s by Arthur Pigou in “The Economics of Welfare.” Since then, economists have studied extensively the resolution of externality problems through the design of taxation and the imposition of fines and penalties.

¹⁴ A few members of the Advisory Expert Group (AEG) on National Accounts were uncertain about the definition or expressed concern about characterizing some fines/penalties as payment for compensation as described in paragraph 15.

- *Given the number of appeals that often follow an initial ruling, clarify that fines and penalties transactions should not be recorded until the unit issuing the fine has an “unconditional claim to the funds” and clarify that if a judgment or ruling is subject to further appeal, an unconditional claim exists “when the appeal is resolved.”* The BPM6 could also be modified to state that the corresponding entry to fines/penalties accrued but not yet paid should be recorded as other accounts receivable/payable. As noted, an MNE subject to a fine/penalty may recognize the liability in their financial accounting before the judgement has been finalized, so compilers may need to make adjustments to ensure the transactions are recorded in the appropriate period. Some CATT and DITT members expressed concerns about the feasibility of making such adjustments; therefore, further practical guidance on this issue may be necessary.
- *Clarify in the updated BD4 that fines and penalties should impact direct investment income (COPC) when DIEs are the responsible party in these transactions and update the direct investment sections of the BPM6 to mention that fines and penalties can impact the profits of DIEs.*¹⁵
- *Explicitly treat contingent fines and penalties in contracts of M&A as price adjustments/updates — and therefore direct investment (or portfolio investment) transactions, and not as transfers.*¹⁶
- *Add guidance regarding possible fines and penalties related transactions.* For the next Compilation Guide, provide detail on how compilers can use public information, such as court documents, to identify fines/penalties as well as related direct investment transactions (as described under “indirectly impacted accounts” in Annex I).

19. **The recommendations would require additions or clarifications to the BPM and to the SNA and GFSM in order to maintain consistency across the sets of accounts.** A preliminary list is in Annex II.

Rejected Proposals

20. **The drafting team considered a proposal to change the recording of fines and penalties from accrual to cash basis to address concerns about the multiple appeals that often occur before a fine/penalty is finalized.** This proposal was rejected because it would deviate from the existing standards of accrual recording and introduce other inconsistencies within the balance of payments and with other accounts.¹⁷

21. **The drafting team also considered but rejected a proposal to reclassify certain fines and penalties from the current account to the capital account,** to align the treatment of fines and penalties with the treatment of other compulsory payments, such as payments of compensation for damages.¹⁸ While this proposal had some appeal given that settlements for major events often include compulsory payments of both fines/penalties (meant to be punitive) and damages (meant to be compensatory), the

¹⁵ One member of the DITT and two members of the AEG disagreed with this recommendation.

¹⁶ One member of the CATT disagreed with this recommendation.

¹⁷ During CATT review, one member expressed a preference for cash-basis recording for fines/penalties.

¹⁸ During CATT review, two members expressed a preference for allowing certain large and one-off fines/penalties to be treated as capital transfers.

team determined that all fine/penalty payments should be treated as current transfers because they are recorded as current income of the general government unit that received the payment.

22. **Lastly, the drafting team considered defining compensation payments that should be recorded as capital transfers according to whether the payments were “meant to alleviate negative externalities,”** but concluded that this definition would not be easy to put in practice. Instead, the team decided to use the definition of a payment that is “intended to recover losses incurred over a multi-year period or to replace an asset (financial or nonfinancial)” since this is what many compilers already use in practice.

Questions for Discussion:

1. *Does the Committee agree with the recommendation to define fines and penalties transactions as being punitive in nature, in order to differentiate these payments from payments for compensation of damages?*
2. *Does the Committee agree that fines and penalties involving DIEs should impact their earnings and therefore the primary income account?*
3. *Does the Committee agree with the proposed clarification on the economic meaning of “major compensation payments for extensive damages”?*
4. *What are the Committee’s views on time of recording of fines and penalties considering the possibility of various appealing courts and subsequent changes in the decisions?*
5. *Does the Committee agree that fines and penalties in M&A contracts, related to the value of the enterprise, should be treated as direct investment (or portfolio investment) transactions, and not as transfers?*

Annex I. Scenarios for Fines and Penalties (FP) Transactions

	Scenario	Recorded as FP in secondary income	Indirectly impacted accounts	Notes
1	Unaffiliated nonresident entity named (as the responsible party) and paying	Yes	None	“Classic” cross-border FP scenario
2	Resident direct investment entity (DIE) named; DIE pays using its own resources	No	Primary income, potentially	The FP is a resident-to-resident transaction, so it is not recorded in the balance of payments. Although the fine/penalty itself is not recorded in the balance of payments, it could affect the primary income account if the expense of the fine is considered COPC.
3	Resident DIE and nonresident immediate or ultimate owner of DIE both named	Yes	Primary income potentially	Criteria about how to split the fine should be adopted. Only the portion related to nonresident is recorded in secondary income. DIE or ultimate owner of DIE might provide additional details if requested. Some legal documents might provide this information, if they are made public. Although the portion related to the resident would not be recorded in the balance of payments, it could affect the primary income account if the expense of the fine is considered COPC.
4	Resident DIE named; Nonresident immediate or ultimate owner sends the resources to the DIE	No	Direct investment	Since the DIE was named in the legal documents, the FP is a resident-to-resident transaction. If the direct investors send the resources for the DIE to pay, this is a direct investment transaction, in equity or in intercompany lending.
5	Nonresident immediate or ultimate owner of DIE named; DIE pays	Yes	Direct investment	Since the immediate or ultimate owner of the DIE was named in the legal documents, the FP transaction should be recorded in secondary income as a transaction between the issuer (resident) and the direct investor (nonresident). If the resident DIE did not receive resources to make the payment on behalf of the direct investor, this is equivalent to a withdrawal in the DIE capital.
6	Nonresident immediate or ultimate owner of DIE named and paying	Yes	None	Since the immediate or ultimate owner was named in the legal documents, the FP transaction should be recorded in secondary income. There would be no direct investment flows related since the DIE is not involved.

Annex II. List of Proposed Updates

Changes marked in **bold**

BALANCE OF PAYMENTS AND INTERNATIONAL INVESTMENT POSITION MANUAL

(New) Fines and penalties imposed on multinational enterprises by courts of law or other government bodies can be complex and may affect the direct investment accounts as well, or in addition to, the secondary income account where cross border fines and penalties are recorded in the balance of payments. Compilers should review the legal documents to determine which part of the multinational is responsible for paying the fine or penalty. If a DIE is the responsible party named in the legal documents the fine or penalty will negatively impact direct investment income, flows, and positions. The income on equity (earnings) of the DIE will be negatively impacted by paying the fine or penalty. This will decrease the reinvested earnings of the DIE and therefore the reinvestment of earnings in the direct investment financial transactions in the financial account. The value of the DIE will decrease as a result of paying the fine or penalty and this will decrease the direct investment position. If the DIE receives funds from its immediate or ultimate owner to pay the fine or penalty, compilers should record additional direct investment financial transactions in addition to those mentioned above. If the immediate or ultimate owner of the DIE is the responsible party in the legal documents, the fine or penalty should be recorded in the secondary income account.

8.16 Reinvestment of earnings may be negative in some cases, for example, in case of losses by the direct investment enterprise, **if a fine or penalty is payable by the DIE**, or if dividends payable in a period are larger than net earnings in that period. Just as positive reinvested earnings are treated as being an injection of equity into the direct investment enterprise by the direct investor, negative reinvested earnings is treated as a withdrawal of equity.

11.44 Reinvested earnings are measured on the basis of net saving before reinvested earnings are deemed distributed, and thus linked to the concept of operational earnings generated from production, lending and borrowing financial assets, and renting natural resources, and current transfers. Reinvested earnings **include the impact of fines or penalties imposed by courts of law or other government bodies** but do not include any realized or unrealized holding gains or losses. Holding gains and losses may arise from valuation changes, including exchange-rate-related gains and losses, revaluation of fixed assets, and changes in market prices of financial assets and liabilities. Reinvested earnings also do not include gains or losses due to other changes in volume of assets, such as write-offs of nonproduced, nonfinancial assets, write-offs of bad debts, and uncompensated seizures of assets. Because business accounting measures of profits often include holding gains or losses, adjustments to business accounting records may be necessary. Holding gains and losses and other changes in volume of financial assets and liabilities are described in Chapter 9, Other Changes in Financial Assets and Liabilities Account. Provisions for various types of losses, such as for bad debts, are internal bookkeeping entries that should not be taken into account in determining the net saving and reinvested earnings.

12.13 Capital transfers are transfers in which the ownership of an asset (other than cash or inventories) changes from one party to another; or that oblige one or both parties to acquire or dispose of an asset (other than cash or inventories); or where a liability is forgiven by the creditor. Cash transfers involving disposals of noncash assets (other than inventories) or acquisition of noncash assets (other than

inventories) are also capital transfers. A capital transfer results in a commensurate change in the stocks of assets of one or both parties to the transaction without affecting the saving of either party. Capital transfers are typically large and infrequent, but capital transfers cannot be defined in terms of size or frequency. A transfer in kind without a charge is a capital transfer when it consists of (a) the transfer of ownership of a nonfinancial asset (other than inventories, i.e., fixed assets, valuables, or nonproduced assets) or (b) the forgiveness of a liability by a creditor when no corresponding value is received in return. However, capital equipment provided by a direct investor to its direct investment enterprise is not a capital transfer, but involves a transaction in direct investment equity. A transfer of cash is a capital transfer when it is linked to, or conditional on, the acquisition or disposal of a fixed asset by one or both parties to the transaction (e.g., an investment grant). **Major nonrecurrent payments in compensation for accumulated losses or extensive damages or serious injuries not covered by insurance policies are also capital transfers.**

12.18 Taxes and other compulsory transfers should be recorded when the activities, transactions, or other events occur that create the government's claim to the taxes or other payments. The time of recording of taxes is the time at which tax liability arises. Accordingly, the amount of taxes is determined by the amount due for payment as evidenced by tax assessments, declarations, or other instruments, such as sales invoices or customs declarations, that create liabilities in the form of obligations to pay on the part of taxpayers. Some compulsory transfers, such as fines, penalties, and property forfeitures, are determined at a specific time. These transfers are recorded **on an accrual basis** when **the general government unit has an unconditional legal claim to the funds or property**, which may be when a court **provides** judgment or a administrative ruling is published. **If such judgement or ruling is subject to further appeal, then the time of recording is when the appeal is resolved.** If data on taxes are on a cash basis, adjustments should be made for large differences to approximate the accrual basis of recording.

12.54 Fines and penalties imposed on institutional units by courts of law or other government bodies **(including international bodies), which are punitive in nature**, are treated as miscellaneous current transfers. **(However, fines and penalties imposed by courts of law or other government bodies that are actually intended to compensate for damages should be considered as payments for compensation of damages for the purposes of recording in the balance of payments, and recorded as either current or capital transfers as explained in paragraph 12.55 and 12.56.)** Early or late repayment penalties agreed as part of the original contract are not included in current transfers; they should be treated along with the associated good, or service, or income, as appropriate.

Payments of Compensation

12.55 Payments of compensation consist of current transfers paid by institutional units to other institutional units in compensation for injury to persons or damage to property caused by the former that are not settled as payments of nonlife insurance claims. Payments of compensation could be either compulsory payments awarded by courts of law or settlements agreed out of court. Compensation may cover nonfulfillment of contracts, injuries to persons, damages to property, or other losses that are not covered by insurance policies. This heading covers compensation for injuries or damage caused by other institutional units. It also includes ex gratia payments made by government units or NPISHs in compensation for injuries or damages caused by natural disasters.

12.56 Major compensation payments related to extensive damages (e.g., oil spillages, side effects of pharmaceutical products, **or anti-competitive behavior**) are treated as capital rather than current transfers (see also paragraph 13.29). **Major compensation payments are intended to recover losses incurred over a multi-year period or to replace an asset (financial or nonfinancial).**

13.29 Major nonrecurrent payments in compensation for extensive damages or serious injuries not covered by insurance policies are included in capital transfers. **Major compensation payments are intended to recover losses incurred over a multi-year period or to replace an asset (financial or nonfinancial).** The payments may be awarded by courts of law or by arbitration, or settled out of court. They include payments of compensation for damages caused by major explosions, oil spillages, the side effects of pharmaceutical products, and so forth. However, if an amount payable under a court order or settlement is identifiable to a specific unpaid debt, it should be recorded under the relevant financial account item. See also paragraphs 12.55–12.56 for payments of compensation included in current transfers.

SYSTEM OF NATIONAL ACCOUNTS

8.135 Fines and penalties are compulsory payments imposed on institutional units by courts of law or quasi-judicial bodies, **which are punitive in nature**. However, fines or other penalties imposed by tax authorities for the evasion or late payment of taxes cannot usually be distinguished from the taxes themselves and are, therefore, grouped with the latter in practice and not recorded under this heading; nor are payments of fees to obtain licenses, such payments being either taxes or payments for services rendered by government units (see paragraph 8.54). **Fines and penalties imposed by courts of law or other government bodies that are actually intended to compensate for damages should be considered as payments for compensation of damages for the purposes of recording in the national accounts, and recorded as either current or capital transfers as explained in paragraphs 8.140 and 10.212(a).**

8.140 Payments of compensation consist of current transfers paid by institutional units to other institutional units in compensation for injury to persons or damage to property caused by the former that are not settled as payments of nonlife insurance claims. Payments of compensation could be either compulsory payments awarded by courts of law, or ex gratia payments agreed out of court. This heading covers compensation for injuries or damages caused by other institutional units and ex gratia payments made by government units or NPISHs in compensation for injuries or damages caused by natural disasters. **Major compensation payments related to extensive damages (e.g., oil spillages or side effects of pharmaceutical products) are treated as capital rather than current transfers (see also paragraph 10.212(a)). Major compensation payments are intended to recover losses incurred over a multi-year period or to replace an asset (financial or nonfinancial).**

10.212 Capital transfers may take various other forms, of which some examples are given below:

(a) Major payments in compensation for extensive damages or serious injuries not covered by insurance policies. **Major compensation payments are intended to recover losses incurred over a multi-year period or to replace an asset (financial or nonfinancial).** The payments may be awarded by courts of law or settled out of court. They may be made to resident or nonresident units. They include payments of compensation for damages caused by major explosions, oil spillages, the side effects of drugs, etc.;

BENCHMARK DEFINITION OF FOREIGN DIRECT INVESTMENT

4.3.3 Direct investment income

207. Direct investment earnings measure earnings from current operations. Therefore, this amount should be calculated before recognition of holding gains and losses and extraordinary items. **Fines and penalties imposed by courts of law or other government bodies should be included in direct investment earnings.** Operational earnings of the direct investment enterprise should be reported after deducting provisions for depreciation and for corporate taxes charged on these earnings by the government in the host economy. Depreciation should, in principle, be measured at current replacement cost, particularly if market values are available for stock figures. If data on depreciable assets and on depreciation are available only on a book value or historical cost basis, those values should be adjusted wherever possible to a current replacement cost basis. Compilers should base the estimates of direct investment earnings, and of direct investment positions, on a current market value basis. If market values are unavailable, FDI data at book value should be adjusted to estimates of market value.

4.3.3.1 Direct Investment Income on equity

(New) Fines and penalties imposed on multinational enterprises by courts of law or other government bodies can be complex and may affect the direct investment accounts as well, or in addition to, the secondary income account where cross border fines and penalties are recorded in the balance of payments. Compilers should review the legal documents to determine which part of the multinational is responsible for paying the fine or penalty. If a DIE is the responsible party named in the legal documents the fine or penalty will negatively impact direct investment income, flows, and positions. The income on equity (earnings) of the DIE will be negatively impacted by paying the fine or penalty. This will decrease the reinvested earnings of the DIE and therefore the reinvestment of earnings in the direct investment financial transactions in the financial account. The value of the DIE will decrease as a result of paying the fine or penalty and this will decrease the direct investment position. If the DIE receives funds from its immediate or ultimate owner to pay the fine or penalty, compilers should record additional direct investment financial transactions in addition to those mentioned above.

GOVERNMENT FINANCE STATISTICS MANUAL

3.16 Capital transfers are transfers in which the ownership of an asset (other than cash or inventories) changes from one party to another, or that obliges one or both parties to acquire or dispose of an asset (other than cash or inventories), or where a liability is forgiven by a creditor. Cash transfers involving disposals of noncash assets (other than inventories) or acquisition of noncash assets (other than inventories) are also capital transfers. A capital transfer results in a commensurate change in the stock position of assets of one or both parties to the transaction. Capital transfers are typically large and infrequent, but capital transfers cannot be defined in terms of size and frequency. A transfer in kind without a charge is a capital transfer when it consists of: the transfer of ownership of a nonfinancial asset (other than inventories); and the forgiveness of a liability by a creditor when no corresponding value is received in return. Major nonrecurrent payments in compensation for **losses incurred over a multi-year**

period or extensive damages or serious injuries not covered by insurance policies are also capital transfers. A transfer of cash is a capital transfer, when it is linked to, or conditional on, the acquisition or disposal of an asset by one or both parties to the transaction.

5.142 Fines and penalties are compulsory current transfers imposed on units by courts of law or quasi-judicial bodies for violations of laws or administrative rules, **which are punitive in nature**. Out-of-court agreements are also included. Forfeits are amounts that were deposited with a general government unit pending a legal or administrative proceeding and that have been transferred to the general government unit as part of the resolution of that proceeding. **Fines and penalties imposed by courts of law or other government bodies that are actually intended to compensate for damages should be considered as payments for compensation of damages for the purposes of recording in the accounts, and recorded as either current or capital transfers as explained in paragraphs 6.123–6.124.**

6.124 The most important types of capital transfers included here are:

- [second bullet] Major, nonrecurrent, exceptional payments in compensation for extensive damages or serious injuries such as those arising from catastrophes not covered by insurance policies are included as a capital transfer. **Major compensation payments are intended to recover losses incurred over a multi-year period or to replace an asset (financial or nonfinancial).**