



NOTE FOR PROSPECTIVE CONSULTANTS:

- If you are interested in submitting your CV for this assignment, kindly email robertj@finmark.org.za
- See the Scoring Grid (Annex 1) for the desired qualifications, skills and professional experience
- Deadline for CV submission: To be advised on request

SUPPORT TO IMPROVING BUSINESS AND INVESTMENT ENVIRONMENT (SIBE)

Terms of Reference (ToR) for Recruitment of Short-Term Expert	
Title of Assignment:	Facilitate negotiations on double taxation avoidance treaties among Member States
Reference no.:	TOR T0294/RA1.4/AWP2020-21
Activity Code:	NI 0294.1.4.1 "STE inputs"
Responsible SADC SPO:	Mário Lironel, SPO Finance and Investment, Directorate Finance, Investment and Customs
Date of issue:	30 June 2021
1. Background	
1.1 Background SADC	<p>The Southern African Development Community (SADC) was formed in 1980 as the "Southern African Development Co-operation Conference" (SADCC) by nine of the current Member States. On 17 August 1992 in Windhoek, Namibia, the SADCC was transformed into The Southern African Development Community (SADC) with the signing of the SADC Declaration and Treaty. It currently comprises sixteen¹ Member States, with a combined population of approximately 360 million and a gross domestic product (GDP) of more than USD 700 billion (2019).</p> <p>The main objectives of SADC are to achieve development, peace and security, and economic growth, to alleviate poverty, enhance the standard and quality of life of the peoples of Southern Africa, and support the socially disadvantaged through regional integration, built on democratic</p>

¹ Angola, Botswana, Comoros, Democratic Republic of the Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia, and Zimbabwe.

	<p>principles and equitable and sustainable development.</p> <p>Over the past years, significant changes in the global economy have taken place to persuade the SADC region to change its economic architecture and strategic direction. The desire to survive and participate in the global markets demands high levels of competitiveness.</p> <p>Consequently, emphasis is increasingly being placed on private sector led growth and governments of the sub-region continue to seek to establish an appropriate enabling environment to support economic growth and poverty alleviation. It was in this context that the SADC Regional Indicative Strategic Development Plan (RISDP) was revised. to take into account the region’s revised strategic direction as encapsulated in the various policy documents, such as the SADC Regional Industrialization Development Plan, the SADC Infrastructure Development Plan and the various Protocols that define regional programs.</p> <p>The Revised RISDP (2020-2030), which is the main strategic document for SADC, puts industrialisation and market integration at the forefront of SADC’s efforts to achieve the integration agenda. Furthermore, the SADC Industrialization Strategy and Roadmap (2015-2063) and Action Plan which was approved at the same time as the revised RISDP (2020-2030) informs the priorities of the SADC industrialisation agenda.</p> <p>Notably, one of the objectives outlined in the Regional Indicative Strategic Development Plan (RISDP) (2020-2030) is to promote the development of sound investment policies in Member States, to improve the investment climate and enhance the levels of intra-SADC and foreign direct investment in the region. This objective is supported by a similar objective aimed at enhancing cooperation in taxation and related matters, including tax information sharing; capacity building for Tax Administrations; and to develop common approaches and policies to the application and treatment of tax incentives and negotiation of tax agreements. This is in recognition that investors, among other things, consider tax regimes in making their investment decisions.</p> <p>The RISDP (2020-2030) also highlights enhancement of monetary cooperation to reform the SADC banking system and harmonization of banking regulatory frameworks. Furthermore, development and strengthening of the financial and capital markets is critical to facilitate free movement of capital and mobilization of financial resources for the promotion of growth and development in the region. In addition, the strengthening of financing mechanisms to be more responsive to the needs of SMEs operations remains critical, including the strengthening of financial inclusion regulatory frameworks in support of the Industrialisation Strategy and Roadmap.</p> <p>For further information see www.sadc.int</p>
1.2 Background - SIBE Programme	<p>The Support to Improving Investment and Business Environment (SIBE) Programme is a five-year Programme, implemented by the Finance, Investment and Customs (FIC) Directorate and financed to the tune of €14 million by the EU under the 11th European Development Fund (EDF). The</p>

Financing Agreement and the Contribution Agreement were signed in June 2019 and August 2019, respectively. The Programme, which covers all the 16 SADC member states in SADC, is being implemented by the SADC Secretariat over a period of 55 months from the date of signature of the Agreements. .

The overall objective of the Programme is to achieve sustainable and inclusive growth and support job creation through the transformation of the region into a SADC investment zone and promoting intra-regional investment and foreign direct investment (FDI) in the SADC region., in particular for small and medium enterprises (SMEs).

The specific objective of the SIBE Programme is to develop the region into a SADC investment zone, promoting intra-regional investment and FDI in the SADC region, in particular for SMEs.

The Programme focuses its support on the following Results Areas (RAs):

RA1 - An enabling investment policy framework across SADC Member States is supported.

This result area covers the following main activities:

- (i) Set-up a dialogue at regional level on improving investment and business environment in SADC;
- (ii) Provide ad-hoc support to Member States in developing structured public-private dialogue mechanisms for improving investment and business environment in SADC;
- (iii) Harmonise SADC Member States' investment and business environment related laws and regulations; and
- (iv) Enhance the SADC Tax regime in support of a conducive investment and business environment.

RA2 - Enhanced integration of financial markets in the SADC region is promoted;

Under this Result area, the programme will assist in:

- (i) Development of financial markets in the SADC region
- (ii) Developing policies and strategies to address risks to financial stability at regional and national levels.
- (iii) Strengthen SADC-Real Time Gross Settlement System (RTGS), Committee of Insurance, Securities and Non-banking Authorities (CISNA), Committee of SADC Stock Exchange (CoSSE), SADC Committee of Central Bank Governors (CCBG) and SADC Bank Association (SADCBA).

RA3 - Enhanced financial inclusion is supported.

This Result Area focuses on developing proper and specific action plans aimed at reducing costs of remittances and developing financial products for SMEs.

The SIBE Programme is being implemented by the SADC Secretariat,

	<p>supported by long - and short-term experts. The tasks envisaged for the Secretariat include procurement, managing the resulting contracts, payments, reporting to the various stakeholders as well as monitoring and evaluation. The Programme is coordinated by a Task Manager, the Senior Programme Officer – Finance and Investment under the operational oversight and guidance of the Director of Finance, Investment and Customs (FIC).</p> <p>The SADC Secretariat has contracted a consortium composed of FinMark Trust, GFA Consulting Group and Southern Africa Trust, under a Service Contract for a Technical Assistance Team including one Long Term Expert to coordinate and manage the implementation of activities across the 3 result areas, and a pool of Long and Short-Term Experts.</p> <p>These Terms of Reference (ToRs) are a request for the provision of consultancy services to the SIBE Programme to carry out an assignment on: “Facilitate negotiations on double taxation avoidance treaties among Member States”.</p>
<p>1.3 Background - Assignment</p>	<p>The Protocol on Finance and Investment (FIP) is one of the protocols entered into by SADC Member States. The FIP is a legal document and therefore, binding. As such, it complements the objectives of the SADC Treaty. The objectives of the Protocol are to improve the investment climate in each Member State and the region as a whole; and achieve the preparation, co-operation and harmonisation necessary for regional economic integration.</p> <p>The FIP was signed in August 2006 and reviewed in 2016. It was ratified by a two-thirds majority of Member States; and consequently, the FIP came into force on 16 April 2010.</p> <p>Article 5 of the FIP states: <i>“State Parties shall co-operate in taxation matters and co-ordinate their tax regimes within the Region as set out in Annex 3”</i>.</p> <p>The FIP has 13 Annexes among which is Annex 3 that relates to the Co-operation in Taxation and related matters.</p> <p>Article 5, Paragraph 3 of the Annex 3 states: <i>“State Parties shall, collectively, take such steps as are necessary to establish amongst themselves a comprehensive network of agreements for the avoidance of double taxation that will assist in expediting the effective exchange of information, mutual agreement procedures and co-operation amongst themselves”</i>.</p> <p>The SADC Model Double Taxation Avoidance Agreement (DTAA) was developed in 2011 to serve as a reference basis to assist Member States in the negotiation of their tax agreements. The Model was developed based on two worldwide models: the OECD Model and the UN Model.</p> <p>Ten years have elapsed since the SADC Model Tax Agreement was developed. In the meantime, it has been observed that there are new</p>

	<p>emerging issues in tax treaties. One of the key important developments in this matter is the conclusion of the negotiations in November 2016 by over 100 jurisdictions on the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS). The BEPS is swiftly implementing a series of tax treaty measures aiming at updating international tax rules and lessening the opportunity for tax avoidance by multinational enterprises. The Convention entered into force on 1 July 2018.</p> <p>Furthermore, it has been noted that there is need for more cooperation and mutual assistance between countries in line with the Convention on Mutual Administrative Assistance in Tax Matters which is a freestanding multilateral agreement designed to promote international co-operation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers.</p> <p>The Convention provides for all possible forms of administrative cooperation between the parties in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion.</p> <p>Tax co-operation in SADC is overseen by the SADC Tax Subcommittee that is made up of senior tax officials from each of the Member States. The SADC Secretariat supports the work of this Subcommittee which has three Working Groups to make progress in the main technical areas of tax co-operation, namely: Tax Incentives, Tax Agreements and Indirect Taxes.</p> <p>Based on the request for manifestation of interest and readiness from Member States, the Secretariat will organise and facilitate a negotiation forum on double taxation agreements.</p>
2. Description of the Assignment	
2.1 Global objective	<p>The overall objective of this assignment is to create an enabling investment and business environment in the region through harmonisation and cooperation among Member States in tax and related matters.</p>
2.2 Specific objectives	<p>The specific objectives of the assignment are as follows:</p> <p>(I) Enhance cooperation among Member States in tax related matters through negotiations of their tax treaties among SADC State partners;</p> <p>(ii) encourage Member States in exchange of information related to tax matters; and</p> <p>(iii) Provide for mutual administrative assistance in the assessment and collection of taxes with a view to combating tax avoidance and evasion;</p> <p>The results of the assignment will lead to increasing the tax agreement network among SADC Member States.</p>
2.3 Requested services	<p>The following tasks are requested from the consultant for this assignment:</p> <p>(i) Undertake an assessment of tax treaty templates and other existing tax treaties from identified negotiating Member States;</p>

	<ul style="list-style-type: none"> (ii) Support the Secretariat in organizing the negotiation forum on tax agreements among SADC Member States; (iii) As resource person, facilitate negotiations of tax agreements among the negotiating Member States; and (iv) Prepare and submit to the Secretariat a comprehensive report with copies of tax treaties negotiated and/or signed.
2.4 Deliverables	<p>The main expected deliverables of this assignment are as follows:</p> <ul style="list-style-type: none"> • An Inception Report; • A progress report on the assessment of tax treaty templates and existing tax agreements from identified negotiating Member States; • A report on tax agreements negotiated with related annexes; and • A PowerPoint presentation summarizing the outcomes of tax agreement negotiations. <p>Note: All deliverables will be the property of the SADC Secretariat.</p>
2.5 Management	<p>The Consultant's report will be addressed to and will be under the day-to-day supervision the SIBE Programme Coordinator and the SADC Senior Programme Officer Macroeconomic Policies and Convergence (SPO Macro).</p>
2.6 Methodology	<p>The services will be delivered in following separate but interrelated Parts. It should be noted that the timings and locations below are indicative and may be subject to change.</p> <p>PART 1 – Inception Phase – (10 fee days)</p> <p>Undertaking desk review of:</p> <ul style="list-style-type: none"> • key documentation including reports on FIP implementation, especially on Annex 3 relating to cooperation on tax and related matters, and records of meetings of Ministers of Finance and Investment, and substructures under FIP; • SADC Revised Model Double Taxation Avoidance Agreement • the Draft SADC Vision 2050 and RISDP 2020-2030; • the SADC Protocol on Finance and Investment; • the SADC Industrialisation Strategy and Roadmap (2015-2063) and its Action Plan; Protocol on Industry; and • the international instruments on tax cooperation. <p>The review of these documents is important as they will be used for facilitating the negotiations of tax treaties in a dedicated forum.</p> <p>PART 2 – Undertake an assessment of the tax treaty templates and</p>

	<p>signed tax treaties from negotiating Member States who have shown their readiness for negotiating tax treaties (5 fee days).</p> <p>PART 3 – Facilitate negotiations of tax treaties among Member States during a dedicated forum to be organised by the SADC Secretariat, and/or in Member States (4 fee days).</p> <p>PART 4 – Prepare and submit the final report (4 fee days).</p> <p>The consultant is expected, where necessary, to engage (at his cost) in-country data gathering associates to facilitate the completion of the assignment.</p> <p>The working days required are estimated and may be adjusted in light of experience during the Assignment.</p>
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3. Resources allocated

3.1 Resources from the Technical Assistance contract:

	Part 1	Part 2	Part 3	Part 4
Up to 23 STE days	10	5	4	4
Per diem days (approximate)	0	0	0	8
Mobilisation travel	0	0	0	1
Regional travel	0	0	0	0

3.2 Other related resources allocated from the SIBE budget

Translation of documents	The translation of deliverables will be arranged by SADC Secretariat separately. It should be noted that a minimum of 5 weeks is required for translation.
Interpretation	Interpretation when/if necessary will be arranged by the SADC Secretariat separately.
Equipment	The STE is expected to utilise his/her own laptop computer/s, internet, and cellular telephones. He/she should have access to a stable and reliable internet service.

3.3. Expert profile

Qualifications and skills	<p>The following are the qualifications and skills required from the STE:</p> <ul style="list-style-type: none"> • At least a Master's degree in Relevant minimum academic qualifications: i.e. in taxation policy and administration, Economy, Finance or related fields from a recognised institution; or at least a Bachelor's Degree together with a minimum of 10 years of specific experience. • Fluency in English. Knowledge of French and Portuguese will be considered as an asset; and • Proficient in the use of computers and computer software relevant to the assignment.
General professional experience	<p>The Following is the general experience required from the STE:</p> <ul style="list-style-type: none"> • Minimum 7 years of general professional experience working on tax incentives in revenue authorities; and/or Ministries of Finance/Tax policy; and or investment promotion agencies; and/or Ministries of Trade and Industry; • Experience in economic modelling within a public or private sector, working with a regional or an international organization.
Specific professional experience	<p>The following is the specific experience required from each STE:</p> <ul style="list-style-type: none"> • At least 5 years of experience in dealing with tax policy and regulatory frameworks at national, regional and international levels, tax administration and related field; • Experience in negotiation of tax agreements and related matters; • Knowledge and experience of the SADC Protocol on Finance and Investment, especially in the Annex 3; • Experience in conducting research especially in tax and fiscal matters; and • Ability to facilitate the implementation of capacity building in Tax and related matters in the SADC region.
4. Location, duration and planning	
4.1 Location of work	The Assignment will be carried out from the STE's home base and, further, at the Secretariat level, or at a hosting Member State jurisdiction.
4.2 Duration	<p>The indicative expected start date is 25 January 2022</p> <p>The indicative expected end date is 22 March 2022</p>
4.3 Working week	<p>The working week is from Monday to Friday, except in case of official holidays or SADC closure days as recorded in Annex 2.</p> <p>Weekends are not normally considered as working days unless specifically requested and confirmed in advance in writing by the SADC Secretariat. However, with the prior authority of the SADC Secretariat, due to the timing of the negotiations, some weekend dates may be utilised in Part 3.</p>

5. Reporting	
5.1 Language	The Assignment language and all reporting are in English.
5.2 Progress reporting	<p>Submission and approval procedure for inception and progress reports</p> <p>All written deliverables shall be submitted in soft copy by email, with Arial font size 12, in a format provided by FinMark Trust to the STE and shall include deliverables as annexes.</p> <p>The soft copy must not be in PDF format preventing formatting.</p> <p>All reports will be submitted to the Consortium through the SIBE Programme Coordinator for quality control; then they will be submitted to the RA Manager for preliminary endorsement, who will then submit them to the Task Manager / Senior Programme Officer Finance and Investment, with recommendation for approval. Comments to the reports, if any, will be communicated in writing to the STE within 10 working days of receipt of each report.</p> <p>Part 1: Inception and assimilation phase</p> <p>The STE will complete an Inception Report and submit it by the end of Part 1. The Report will include a detailed work-plan, draft research tool/questionnaire, timeframe and approach to undertake the assignment.</p> <p>At the end of Part 1 the STE will also prepare and present a brief PowerPoint presentation of the report to the Secretariat.</p> <p>Part 2 : Progress report</p> <p>At the end of Parts 2 and 3 the STE will submit a progress report within 2 working days at the end of each Part.</p> <p>The STE will also prepare and present a brief PowerPoint presentation of the reports to the Secretariat.</p> <p>It is important to note that, at the end of Part 2, the STE will submit a detailed progress report concerning the data gathering in each negotiating Member State, summarising the process.</p> <p>It is also important to note that in this phase, the STE will assimilate data received from the Secretariat, Member States and from desk research at international level for facilitating the negotiations.</p> <p>Part 3: Facilitation of the negotiation forum on tax treaties</p> <p>Based on the information gathered in parts 1 and 2, the STE facilitate the negotiations on tax treaties among the Member States.</p> <p>Part 4: Submission of the final report with copies of treaties negotiated</p> <p>Once the negotiations forum is over, it is expected from the STE to</p>

	<p>submit the final report with copies of tax treaties negotiated as annexes.</p> <p>Note: The PowerPoint presentations is a deliverable to be attached as an annex to the final report.</p> <p>The reports will be submitted by the STE to the Consortium through the Programme Coordinator, copied to the Secretariat. After quality control by the Consortium, the Programme Coordinator will formally submit the report to the SADC Secretariat (SPO Finance and Investment) for approval.</p> <p>After submission, the Secretariat will consider the report and provide any feedback within 5 working days.</p>
<p>5.3 End of Assignment Reporting</p>	<p>End of Assignment Report (EoAR) and presentation</p> <p>The STE will submit the EoAR for approval at the completion of the Assignment. The report shall be submitted in the format provided and will include the following:</p> <ul style="list-style-type: none"> • An executive summary of the whole Assignment. • List of activities carried out during the Assignment. • Methodology/Discussion of key issues. • Main Conclusions and Lessons Learned. • Any recommendations for further support to the Secretariat and Member States. • Key Annexes, all deliverables produced including the completed updated reports. • In addition to the report, the STE will also prepare and deliver a PowerPoint presentation of the EoAR to the Secretariat on the last day of the assignment. The presentation is a deliverable and should be annexed to the report. <p>EoAR Submission and approval procedure:</p> <ul style="list-style-type: none"> ▪ At the end of the assignment, EOAR will be submitted by email to Consortium through the Programme Coordinator, for quality control; then, it will be submitted to the RA Manager for technical comment. Technical comments will be issued within 10 working days. ▪ The STE shall address all the technical comments within 15 calendar days of receiving comments and submit the final EoAR to SADC for final technical and administrative approval. If no comments are not received from SADC Secretariat within one month since submission, the EOAR will be deemed satisfactory. ▪ Upon acceptance (or if the one-month period has elapsed since submission without comments being received), the EoAR shall be submitted to the RA Manager and the SIBE Task Manager for administrative approval.

	<ul style="list-style-type: none"> ▪ The Assignment will not be considered to be complete until the approval of the SIBE Task Manager to the EoAR has been obtained. ▪ The EoAR shall be delivered in soft copy. The soft copy shall include deliverables produced as annexes. The soft copy must not be in pdf format preventing formatting.
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6. Administrative Information

Timesheets	<p>The STE is expected to avail himself for the Assignment for all the days shown in the Gantt chart (Annexe 3). It is noted that, apart from the break for translation before the Validation workshop and the period for the Secretariat to respond with comments on the Final Report, there are no provisions for major breaks in the Assignment. The STE will complete a monthly timesheet according to the template provided, recording days worked.</p> <p>Fees will be due only for working days recorded in timesheets that are countersigned by:</p> <ul style="list-style-type: none"> - the SIBE Task Manager; - SIBE Programme Co-ordinator and Team Leader; and - Result Area Manager (Programme Officer Financial Sector). <p>The monthly Timesheet should be accompanied by the monthly Progress Report (as shown in paragraph 5.2) and both should be submitted by e-mail for review and approval.</p> <p>Note: Travel days (if any) for mobilisation and demobilisation are not fee-paying days. Travel days for mission-related travels between SADC countries will be recorded as working days and will be fee paying days.</p>
Travel approval forms	In the event that regional travel becomes possible and is necessary the consultant will apply through the SIBE Task manager. If travel is approved, the consultant will complete the SADC travel form and submit to the SIBE Task Manager for processing.
Travel support documents	In the event of any travel, boarding passes of regional and mobilisation trips, copies of hotel invoices and other support documents will be handed over to the Consortium.

7. Endorsement

SIBE Programme Coordinator	SPO/ Tax Related Matters	Task Manager	Director-Finance, Investment and Customs
Mike Nyamazana	Samuel Dlamini	Mario Lironel	S.L. Mtonakutha
Signature:	Signature:	Signature:	Signature:

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ANNEXES TO TOR 029/KRA1.3/AWP5

ANNEX 1: Experts scoring grid

ANNEX 2: Botswana official holiday 2021/22 (non-working/fee days)

ANNEX 3: Gantt chart

ANNEX 4: Estimated budget

ANNEX 1: Scoring grid

Expert in Tax Policy and Administration	Points*
Qualifications and skills:	20
At least a Master's degree in relevant minimum academic qualifications: i.e. in taxation policy and administration, Economy, Finance or related fields from a recognised institution; or at least Bachelor's Degree for a candidate with a minimum of 10 years of specific experience	10
Fluency in English. Knowledge of French and/or Portuguese will be considered as an asset	5
Proficient in the use of computers and computer software relevant to the position.	5
General professional experience:	30
Minimum 7 years of general professional experience working on tax and related matters in revenue authorities; and/or Ministries of Finance/Tax policy; and or investment promotion agencies; and/or Ministries of Trade and Industry	15
Experience within a public or private sector, working with a regional or an international organization	15
Specific professional experience:	50
At least 5 years of experience in dealing with tax policy and tax administration at national, regional and international levels;	20
Experience in negotiation of tax agreements and related matters	15
Knowledge and experience of the SADC Protocol on Finance and Investment, especially in the Annex 3	5
Experience in conducting research especially in tax and fiscal matters	5
Ability to facilitate the implementation of capacity building in tax and related matters in the SADC region.	5
Score	100

ANNEX 2: Botswana Official Holidays – 2021-2022²

Date	Day	Occasion
1 January	Friday	New Year's Day
2 April	Friday	Good Friday
3 April	Saturday	Public Holiday
5 April	Monday	Easter Monday
1 May	Saturday	Labour Day
13 May	Thursday	Ascension Day
1 July	Thursday	Sir Seretse Khama Day
19 July	Monday	President's Day
20 July	Tuesday	Public Holiday
30 September	Thursday	Botswana Day
1 October	Friday	Public Holiday
25 December	Saturday	Christmas
26 December	Sunday	Boxing Day
27 December	Monday	Public Holiday
1 January 2022	Saturday	New Year's Day
3 January 2022	Monday	Public Holiday

² These dates are indicative and subject to confirmation by the Government of the Republic of Botswana

ANNEX 3: Gantt Chart

Task ID	Task Description	Duration (days)	Start Date	End Date	Timeline								
					January 22	February 22					March 22		
					Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9
1	Inception period	10	25 Jan 22	7 Feb 22	X	X							
2	Assessment of the existing Tax treaties from negotiating Member States	5	8 Feb 22	14 Feb 22			X						
3	Facilitation of negotiations of tax treaties among Member States during a dedicated forum	4	15 Feb 22	16 Feb 22				X					
	Translation of the documents	5 weeks											
4	Preparation and Submission of the final report	4	17 Mar 22	22 Mar 22								X	

ANNEX 4: Estimate budget