

**THE SOUTHERN AFRICAN DEVELOPMENT  
COMMUNITY**

**MEMORANDUM OF UNDERSTANDING**

**ON**

**CO-OPERATION IN TAXATION AND  
RELATED MATTERS**

## PREAMBLE

### The Governments of:

The Republic of Angola  
The Republic of Botswana  
The Democratic Republic of the Congo  
The Kingdom of Lesotho  
The Republic of Malawi  
The Republic of Mauritius  
The Republic of Mozambique  
The Republic of Namibia  
The Republic of Seychelles  
The Republic of South Africa  
The Kingdom of Swaziland  
The United Republic of Tanzania  
The Republic of Zambia  
The Republic of Zimbabwe

**CONSCIOUS** of their collective duty to - attain the objectives of the Southern African Development Community (SADC); achieve, amongst other things, development and economic growth; achieve complementarity between national and regional strategies and programmes; harmonise their political and socio-economic policies and plans; develop policies aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services and of the peoples of the SADC Member States (Member States); improve economic management and performance through regional co-operation and reduce economic imbalances;

**RECOGNISING** the need to take such steps as are necessary to maximise the co-operation of Member States in taxation matters and to harmonise the tax regimes of the Member States in accordance with Articles 21 and 22 of the Treaty of the Southern African Development Community (Treaty);

**DETERMINED** to take such steps as are necessary to maximise the co-operation of the Member States in taxation matters;

**CONVINCED** of the need to make sufficient own financial resources available, to enable SADC to advance the multi-faceted aspects of economic integration;

**HAVE DECIDED**, through their duly authorised representatives, to hereby record the understanding of the Member States on the steps to be taken to co-operate in taxation matters and to harmonise the tax regimes of the Member States, as follows:

## ARTICLE 1

### DEFINITIONS

In this Memorandum of Understanding (MOU), unless the context otherwise requires, a word defined in the Treaty bears the same meaning, and:

**“Committee of Ministers for Finance and Investment”** means the Committee of Ministers responsible for policy development and policy making for finance and investment matters or any such similar body that Council may establish;

**“Committee of Senior Treasury Officials”** means the technical advisory body to the Committee of Ministers for Finance and Investment, consisting of Heads of Treasuries;

**“customs duty”** means a tax normally applied to imported goods;

**“direct tax”** means a tax levied under its domestic laws, by a country on persons including legal persons, in respect of income, capital gains, net worth, property and gifts and includes death duties;

**“double taxation”** means an imposition of similar taxes by two or more tax jurisdictions on the same taxpayer in respect of the same income or capital;

**“E-Commerce, E-Billing, or E-Customs clearance”** means the conduct of financial transactions or customs clearance by electronic means;

**“exceptional cases”** means, in relation to tax incentives, agreed exceptions to the guidelines envisaged in Article 4 (4) of this MOU, on the use of tax incentives within the Community, especially following natural disasters or wars;

**“excise duty”** means a duty, imposed by a country under its domestic law on certain goods manufactured or produced in the country or imported into that country, being a tax levied on a specific basis, either on the basis of the weight or volume of the goods, or on an *ad valorem* basis, or on a profit basis;

**“harmful tax competition”** means a situation where the tax systems of a jurisdiction are designed in such a way that they erode the tax bases of other jurisdictions and attract investments or savings originating elsewhere, facilitating the avoidance of taxes in other jurisdictions;

**“indirect tax”** means any tax, other than a direct tax that a country imposes on consumption or transactions under its domestic law, and includes value added tax, sales tax, excise duties, stamp duties, services taxes, registration duties, and financial transaction taxes;

**“levy”** means a tax normally applied to specific items, transactions, or events and is charged at a fixed or flat rate;

**“luxury goods or services”** means goods or services with an income elasticity of greater than one;

**“mutual assistance”** means any arrangements made between two or more countries or jurisdictions to resolve difficulties with regard to taxation;

**“SADC Tax Database”** means a tax database into which Member States will deposit information on tax on a continuous basis;

**“sales tax”** means a tax imposed as a percentage of the price of goods or services and which is borne by the buyer but the liability for rendering payment of the tax to the authorities is placed on the supplier of the goods or services;

**“tax”** means a compulsory unrequited financial contribution imposed by a government or jurisdiction;

**“tax incentives”** means fiscal measures that are used to attract local or foreign investment capital to certain economic activities or particular areas in a country;

**“tax sparing arrangement”** means an arrangement whereby the government of residence of an international investor recognises tax incentives granted by a host country for the purposes of attracting investments and providing relief for income tax under its domestic laws, as if normal tax had been imposed in the host country;

**“tax treaty”** means any bilateral or multilateral treaty concluded by the Member States between or amongst themselves or with countries outside the Community for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and capital gains;

**“Value Added Tax (VAT)”** means a tax, imposed on goods or services, which is levied at each stage in the production and distribution process and is borne by the final consumer but the liability for rendering payment of the VAT to the authorities is placed upon the supplier of goods or services.

## ARTICLE 2

### SADC TAX DATABASE

1. Member States accept that it is in the interest of the Community to have in place a comprehensive database, which is publicly accessible.
2. Member States will take such steps as are necessary to develop the SADC Tax Database and to provide the Secretariat with such information as is required to devise, introduce and maintain the SADC Tax Database.
3. The SADC Tax Database will, for each Member State, include details of:

- (a) all direct and indirect taxes and levies, including applicable rates, implementation dates, exemptions and allowances;
  - (b) all tax incentives offered, including implementation dates and conditions imposed;
  - (c) all tax treaties between Member States and with countries outside the Community, and their implementation dates; and
  - (d) appropriate statistics on revenue collection and the revenue importance of various instruments in Member States including -
    - (i) the sales volumes or value of products and services that are subject to indirect taxes and the revenue collected from such products and services; and
    - (ii) the revenue collected from direct taxes.
4. Member States agree to provide, on an annual basis or when significant changes occur, information to update the SADC Tax Database.

### **ARTICLE 3**

#### **CAPACITY BUILDING**

1. Member States accept that it is in the interest of the Community to develop the professionalism and expertise of tax officials throughout the Community, and to develop an effective enabling environment that -
- (a) is supportive of life-long training, development of skills and learning for the Member States' personnel in respect of tax design, policy development and revenue administration;
  - (b) will effectively equip such personnel to utilise their expertise to protect individual tax bases of Member States against the practices of tax avoidance or evasion by both domestic and international taxpayers operating within their jurisdictions; and
  - (c) will enable such personnel to introduce, develop, maintain and engender good practices in their Member States.
2. In order to fully implement the wide-ranging steps envisaged in this MOU, Member States undertake to:
- (a) actively support initiatives aimed at developing skills and best practices across the Community, including exchanges of personnel and information, mutual assistance, training workshops, seminars, and training events; and

- (b) make from internal budgets and/or appropriate donor aid funding, provision of resources to defray the costs of ongoing training development and interaction of their tax officials across all capacities or disciplines.
3. Member States accept the importance of meeting the information technology and digital challenges they are faced with and will work together in responding to such challenges, including the review of issues relating to E-Commerce, E-Billing, or E-Customs clearance and the impact they may have on tax revenue collection and on the flow of goods and services.

## **ARTICLE 4**

### **APPLICATION AND TREATMENT OF TAX INCENTIVES**

1. Member States will endeavour to achieve a common approach to the treatment and application of tax incentives and will, amongst other things, ensure that tax incentives are provided for only in tax legislation.
2. Tax incentives may include any one or more of the following:
- (a) investment allowances in addition to full depreciation allowances;
  - (b) an investment tax credit where a certain percentage of the acquisition cost is deducted in addition to normal depreciation deductions, from the tax liability;
  - (c) the full cost of acquisition of the asset is allowed as a deduction from the taxable profits of the year in which the investment was made;
  - (d) accelerated depreciation allowances;
  - (e) declining balance depreciation allowances;
  - (f) tax privileged export processing or enterprise zones; and
  - (g) tax holidays.
3. A Member State will, in the treatment and application of tax incentives, endeavour to avoid:
- (a) harmful tax competition as may be evidenced by:
    - i) zero or low effective rates of tax;
    - ii) lack of transparency;
    - iii) lack of effective exchange of information;

- iv) restricting tax incentives to particular tax payers, usually non-residents;
  - v) promotion of tax incentives as vehicles for tax minimisation; or
  - vi) the absence of substantial activity in the jurisdiction to qualify for a tax incentive;
- (b) introducing tax legislation that prejudices another Member State's economic policies, activities, or the regional mobility of goods, services, capital or labour.
4. Member States will develop guidelines for tax incentives in SADC, including provision for exceptional cases.
5. In order to advance a competition policy in SADC, Member States will develop a fiscal framework for tax incentives that will, amongst other things, focus on:
- (a) the effectiveness of proposed tax incentives in achieving their stated policy goals;
  - (b) the revenue costs likely to be suffered by the fiscus of Member States as a result of the application of proposed tax incentives;
  - (c) the extent to which the absence of tax sparing arrangements in treaties of Member States for the avoidance of double taxation reduce the effectiveness of tax incentives, specifically those aimed at attracting foreign direct investments;
  - (d) the impact that proposed tax incentives will have on the costs of, or burden on tax administration in the Community; and
  - (e) the effects that tax incentives have on the overall distribution of the tax burden within a Member State.

## **ARTICLE 5**

### **TAX TREATIES**

1. Member States will develop a common policy for the negotiation of tax treaties between or amongst themselves or with countries outside the Community.
2. Member States will in accordance with their constitutional procedures strive to ensure the speedy negotiation, conclusion, ratification and effective implementation of tax treaties.
3. Member States will take such steps as are necessary to establish amongst themselves a comprehensive treaty network, which will assist in expediting the

effective exchange of information, mutual agreement procedures and co-operation between and amongst themselves.

4. Member States will, in pursuit of a common policy for dealing with tax treaties, develop a model tax treaty for SADC that, amongst other things, takes account of the particular socio-economic development needs of Member States.
5. Member States will, on completion of the envisaged model tax treaty for SADC, draw up guidelines for the effective exchange of information and the implementation of mutual assistance and co-operation procedures.

## **ARTICLE 6**

### **INDIRECT TAXES**

1. Member States accept that it is in the interest of the Community that there be effective co-ordination and harmonisation in the administration of indirect taxes.
2. Member States will, in line with the World Trade Organisation (WTO) Agreements, gradually substitute taxes on internationally traded goods and services with broad-based taxes on consumption.
3. Member States will explore areas of possible co-ordination for policy formulation and administration in respect of excise duties on:
  - (a) tobacco products;
  - (b) alcoholic beverages;
  - (c) non-alcoholic beverages;
  - (d) fuel products;
  - (e) luxury goods; and
  - (f) any other excisable goods.
4. Member States will, as far as is possible, promote the use of excise duty on an *ad valorem* basis on luxury goods and services as an alternative to the application of multiple VAT or sales tax rates, provided that it is accepted that the classification of goods and services as being "luxury" may, due to shifts in economic and social conditions, change from time to time.
5. Member States will, in an effort to minimise incidents of smuggling, take such steps as are necessary to harmonise the application of excise duty rates, with specific regard to tobacco products, alcoholic beverages and fuel products.

6. Member States will take such steps as are necessary to exchange information among themselves and to engage in such programmes of mutual assistance and co-operation as may be appropriate, to prevent unlawful activities and in particular the smuggling of goods and importation of counterfeit items.
7. Member States will, in an effort to combat cross border smuggling activities, identify areas of co-operation and agreement for the protection of their tax bases and for addressing the problem of tax leakage and gaps in tax compliance.
8. Member States will give consideration to entering into bilateral and multilateral agreements with each other in order to deal with, amongst other things, the exchange of information on VAT and sales tax, the avoidance of double taxation, and mutual assistance on matters such as effective revenue collection.
9. Member States will identify and explore areas of possible co-ordination and co-operation in the formulation of policy on, and the administration of, VAT and sales tax.
10. Member States will take such steps as are necessary to harmonise their VAT regimes and will:
  - (a) set minimum standard rates;
  - (b) harmonise, over time, the application of zero-rating and VAT exemption of goods and services; and
  - (c) establish a SADC forum for collectively dealing with VAT matters.

## **ARTICLE 7**

### **REVIEW OF SADC PROGRAMME ON CO-OPERATION IN TAXATION AND RELATED MATTERS**

The Committee of Ministers for Finance and Investment, may review the SADC programme on co-operation in taxation and related matters.

## **ARTICLE 8**

### **PROTOCOL ON FINANCE AND INVESTMENT MATTERS**

Member States will develop a protocol on finance and investment matters in accordance with the understanding herein recorded and the objectives set out in the Treaty.

## **ARTICLE 9**

## **SETTLEMENT OF DISPUTES**

Member States will give consideration to introducing mechanisms and procedures for the settlement of tax disputes between Member States, including the establishment of a SADC body for tax dispute settlement purposes.

### **ARTICLE 10**

#### **REVISION**

A proposal for the revision of this MOU shall be made to the Committee of Senior Treasury Officials by any Member State and, three months after notification, be placed for consideration by the Committee of Senior Treasury Officials before the Committee of Ministers for Finance and Investment.

### **ARTICLE 11**

#### **AMENDMENT**

1. A proposal to amend this MOU may be made through the Committee of Senior Treasury Officials, provided, however, that the proposed amendment shall not be submitted to the Committee of Ministers for Finance and Investment, for preliminary consideration, until all the members of the Committee of Ministers for Finance and Investment have been duly notified of such proposed amendment, and a period of three months has elapsed after such notification.
2. Amendments to this MOU shall be adopted by a decision of three-quarters of the Committee of Ministers for Finance and Investment.

### **ARTICLE 12**

#### **ENTRY INTO FORCE**

This MOU shall enter into force thirty (30) days after signature by two-thirds of the Ministers responsible for finance and investment and, thereafter, shall remain open for signature.

### **ARTICLE 13**

#### **TERMINATION**

Any Member State intending to terminate its participation in this MOU shall, through its Minister responsible for finance and investment, give six (6) months notice of its intention to terminate. Such intention shall be communicated to the Ministers responsible for finance and investment through the Committee of Senior Treasury Officials.

**ARTICLE 14**

**DEPOSITARY**

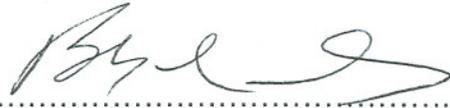
This MOU shall be deposited with the Executive Secretary who shall transmit certified copies thereof, to all Member States.

IN WITNESS WHEREOF, WE, the duly authorised representatives of Governments, have signed this Memorandum of Understanding.

DONE AT Pretoria on 8<sup>th</sup> August 2002 in three (3) original texts in the English, French and Portuguese languages, all texts being equally authentic.



.....  
The Republic of Angola

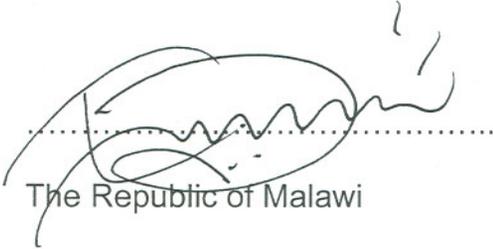


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The Democratic Republic of the Congo

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The Kingdom of Lesotho



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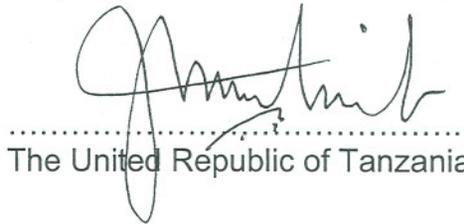


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The Republic of Zimbabwe