



**Southern African Development Community**

**Agreement**

**on**

**Assistance in Tax Matters**

# TABLE OF CONTENTS

## PREAMBLE

ARTICLE 1 _____	Definitions
ARTICLE 2 _____	Object
ARTICLE 3 _____	Taxes covered
ARTICLE 4 _____	Exchange of information
ARTICLE 5 _____	Tax examinations abroad
ARTICLE 6 _____	Simultaneous examinations
ARTICLE 7 _____	Assistance in collection
ARTICLE 8 _____	Confidentiality
ARTICLE 9 _____	Costs
ARTICLE 10 _____	Implementation legislation
ARTICLE 11 _____	Other international agreements or arrangements
ARTICLE 12 _____	Mutual agreement procedure
ARTICLE 13 _____	Depositary
ARTICLE 14 _____	Notification of competent authorities
ARTICLE 15 _____	Ratification and entry into force
ARTICLE 16 _____	Amendment
ARTICLE 17 _____	Accession
ARTICLE 18 _____	Signature
ARTICLE 19 _____	Withdrawal

# DRAFT AGREEMENT ON ASSISTANCE IN TAX MATTERS

## PREAMBLE

**WE**, the Heads of State or Government of:

The Republic of Angola  
The Republic of Botswana  
The Democratic Republic of Congo  
The Kingdom of Lesotho  
The Republic of Madagascar  
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

**RECALLING** the provisions of Annex 3 of the Protocol on Finance and Investment that require the State Parties to draw up effective guidelines for the effective exchange of information and the implementation of Mutual Agreement Procedures;

**DESIRING** to facilitate assistance in tax matters;

**HEREBY AGREE** as follows:

## ARTICLE 1 DEFINITIONS

1. In this Agreement, unless the context otherwise requires:
  - (a) "Competent Authority" means the authority designated by a State Party and notified to the Executive Secretary in accordance with this Agreement;
  - (b) "State Party" means a Member State that has ratified or acceded to this Agreement;
  - (c) "Executive Secretary" means the Executive Secretary of the Southern African Development Community;

- (d) "information" means any fact, statement or record in any form whatsoever;
  - (e) "Member State" means a member of the Southern African Development Community;
  - (f) "person" includes an individual, a company and any other body of persons;
  - (g) "Requested Party" means the State Party requested to provide information or render assistance;
  - (h) "Requesting Party" means the State Party requesting the information or assistance;
  - (i) "tax" means any tax to which this Agreement applies.
2. As regards the application of the Agreement at any time by a State Party, any term not defined herein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party for the purposes of the taxes to which the Agreement applies and any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **ARTICLE 2 OBJECT**

- 1. The objective of this Agreement is to enable the State Parties to assist each other in tax matters.
- 2. The assistance referred to in paragraph 1 above shall be with regard to:
  - (a) the exchange of information in tax matters;
  - (b) the carrying out of tax examinations abroad;
  - (c) the carrying out of simultaneous tax examinations; and
  - (d) assisting in the collection of taxes.

## **ARTICLE 3 TAXES COVERED**

This Agreement shall apply to all taxes on income, capital and goods and services imposed by or on behalf of the State Parties with the exception of customs duties.

**ARTICLE 4**  
**EXCHANGE OF INFORMATION**

1. State Parties shall through their Competent Authorities, provide each other, spontaneously, automatically or upon request with such information as may be relevant for carrying out the provisions of this Agreement or for the administration or enforcement of the domestic laws of the Requesting Party concerning the taxes covered by this Agreement insofar as the taxation under those laws is not contrary to any other instrument entered into between the Requesting and Requested Party.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on a State Party the obligation:
  - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other State Party;
  - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other State Party;
  - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.
3. If information is requested by a State Party in accordance with this Article, the Requested Party shall use its information gathering measures to obtain the requested information, even though the Requested Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 2 but in no case shall such limitations be construed to permit the Requested Party to decline to supply information solely because it has no domestic interest in such information.
4. In no case shall the provisions of paragraph 2 be construed to permit the Requested Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

**ARTICLE 5**  
**TAX EXAMINATIONS ABROAD**

1. A Requested Party may allow representatives of the Requesting Party to enter the territory of the Requested Party to interview individuals with the written consent of the taxpayer concerned. The Competent Authority of the Requesting Party shall notify the Competent Authority of the Requested Party of the time and place of the meeting with the individuals concerned.

2. At the request of the Competent Authority of a Requesting Party, the Competent Authority of the Requested Party may allow representatives of the Competent Authority of the Requesting Party to be present at any appropriate part of a tax examination in the Requested Party.
3. If the request referred to in paragraph 2 is acceded to, the Competent Authority of the Requested Party shall, as soon as possible, notify the Competent Authority of the Requesting Party about the time and place of the examination, and the procedures and conditions, required by the Requested Party for the conduct of the examination.
4. The Requested Party shall notify the taxpayers concerned of the presence of officials of the Requesting Party at the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **ARTICLE 6 SIMULTANEOUS EXAMINATIONS**

1. At the request of the Competent Authority of one of the State Parties, two or more Competent Authorities of the State Parties may consult together for the purposes of determining cases and procedures for simultaneous tax examinations. Each Competent Authority involved shall decide whether or not it wishes to participate in a particular simultaneous tax examination.
2. The term "simultaneous tax examinations" as used in paragraph 1, means an arrangement between two or more State Parties to examine simultaneously, each in its own territory, the tax affairs of a person in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain.

## **ARTICLE 7 ASSISTANCE IN COLLECTION**

1. The Requested Party shall upon request lend assistance to the Requesting Party in the collection of revenue claims.
2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes that are covered by this Agreement and imposed by a State Party in terms of its domestic law, insofar as the taxation thereunder is not contrary to any other instrument entered into between the Requesting Party and Requested Party, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.
3. When a revenue claim of a State Party is enforceable under the laws of that Party and is owed by a person who, at that time, cannot, under the laws of that Party, prevent its collection, that revenue claim shall, at the request of the Competent Authority of that Party, be accepted for purposes of collection by the Competent Authority of the Requested Party. That revenue claim shall be collected by that Requested Party in

accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that Requested Party.

4. When a revenue claim of a State Party is a claim in respect of which that Party may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of that Party, be accepted for purposes of taking measures of conservancy by the Competent Authority of the Requested Party. The Requested Party shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of the Requested Party even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned Party or is owed by a person who has a right to prevent its collection.
5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Requested Party for purposes of paragraph 3 or 4 shall not, in that Party, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that Party by reason of its nature as such. In addition, a revenue claim accepted by a Requested Party for the purposes of paragraph 3 or 4 shall not, in that Party, have any priority applicable to that revenue claim under the laws of the Requesting Party.
6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Requesting Party shall not be brought before the courts or administrative bodies of the Requested Party.
7. Where, at any time after a request has been made by a Requesting Party under paragraph 3 or 4 and before the Requested Party has collected and remitted the relevant revenue claim to the Requesting Party, the relevant revenue claim ceases to be:
  - (a) in the case of a request under paragraph 3, a revenue claim of the Requesting Party that is enforceable under the laws of that Party and is owed by a person who, at that time, cannot, under the laws of that Party, prevent its collection; or
  - (b) in the case of a request under paragraph 4, a revenue claim of the Requesting Party in respect of which that Party may, under its laws, take measures of conservancy with a view to ensure its collection;

the Competent Authority of the Requesting Party shall promptly notify the Competent Authority of the Requested Party of that fact and, at the option of the Requested Party, the Requesting Party shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a State Party the obligation to:
  - (a) carry out administrative measures at variance with the administrative practice of that or of the Requesting Party;

- (b) carry out measures which would be contrary to public policy;
- (c) provide assistance if the Requesting Party has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- (d) provide assistance in those cases where the administrative burden of that Party is clearly disproportionate to the benefit to be derived by the Requesting Party.

## **ARTICLE 8 CONFIDENTIALITY**

Any information received pursuant to this Agreement by a State Party shall be treated as secret or confidential in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes covered by the Agreement, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the Competent Authority of the Requested Party.

## **ARTICLE 9 COSTS**

1. Subject to paragraph 2, the State Parties shall waive all claims for reimbursement of costs incurred in the execution of this Agreement.
2. As soon as the Requested Party anticipates that expenses of a substantial or extraordinary nature may be incurred in the provision of assistance pursuant to this Agreement, it will, before incurring such costs, notify the Competent Authority of the Requesting Party and both Competent Authorities shall decide the manner in which the costs shall be borne.



**ARTICLE 10  
IMPLEMENTATION LEGISLATION**

The State Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

**ARTICLE 11  
OTHER INTERNATIONAL AGREEMENTS OR ARRANGEMENTS**

The possibilities of assistance provided by this Agreement do not limit, nor are they limited by, those contained in existing international agreements or other arrangements between the State Parties which relate to co-operation in tax matters.

**ARTICLE 12  
MUTUAL AGREEMENT PROCEDURE**

1. Where difficulties or doubts arise between two or more State Parties regarding the implementation or interpretation of this Agreement, the Competent Authorities of those State Parties shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the Competent Authorities of two or more State Parties may mutually agree:
  - (a) on the procedures to be used under Articles 4, 5, 6 and 7;
  - (b) on the language to be used in making and responding to requests in accordance with the Agreement.
3. The Competent Authorities of the State Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. Any agreement between the Competent Authorities of two or more State Parties shall be effective only between those State Parties.
5. Where two or more State Parties are unable to reach agreement as contemplated in this Article, the matter shall be resolved as stipulated in Article 7 of Annex 3 of the Protocol on Finance and Investment.
6. At the request of one or more of the State Parties, the Executive Secretary may convene a meeting of the Competent Authorities or their representatives, to discuss significant matters related to interpretation or implementation of this Agreement.

**ARTICLE 13  
DEPOSITARY**

1. This Agreement and all instruments of ratification or accession shall be deposited with the Executive Secretary, who shall transmit certified copies thereof, to all the Member States.
2. The Executive Secretary shall register this Agreement with the United Nations, the Commission of the African Union and such other organizations as Council may determine.

**ARTICLE 14  
NOTIFICATION OF COMPETENT AUTHORITIES**

1. Each State Party shall designate a Competent Authority that is responsible for the implementation of this Agreement in terms of its domestic law.
2. Each State Party shall submit notification of their Competent Authority to the Executive Secretary together with their instruments of ratification.
3. The Executive Secretary shall, when it receives notification in accordance with the provisions of this Article, circulate copies of the notifications to all the State Parties.

**ARTICLE 15  
RATIFICATION AND ENTRY INTO FORCE**

1. This Agreement shall be ratified by Member States in accordance with their constitutional procedures.
2. This Agreement shall enter into force thirty calendar days after two thirds of the Member States have submitted their instrument of ratification to the Executive Secretary.
3. Once the Agreement has entered into force, a Member State may only become a party thereto by accession.
4. The Agreement shall apply in respect of any information, taxes or revenue claims referred to in the Agreement even if such information, taxes or revenue claims pre-date the entry into force of this Agreement.

**ARTICLE 16  
AMENDMENT**

1. In the case of a proposal to amend an existing Article of this Agreement, the Committee of the Ministers of Finance and Investment shall adopt the proposal by a two thirds decision of the State Parties.
2. A proposal adopted by the Committee of the Ministers of Finance and Investment in accordance with paragraph 1 above shall form an integral part of this Agreement.

**ARTICLE 17  
ACCESSION**

This Agreement shall remain open to accession by any Member State.

**ARTICLE 18  
SIGNATURE**

This Agreement shall be signed by the duly authorised representatives of the Members States.

**ARTICLE 19  
WITHDRAWAL**

1. Any State Party may withdraw from this Agreement by serving a notice of its intention in writing to the Executive Secretary who shall inform other Member States accordingly.
2. Such withdrawal shall become effective on the first day of the month following the expiration of a period of 90 days after the date of receipt of the notification by the Executive Secretary.
3. Any State Party that withdraws from this Agreement shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

IN WITNESS WHEREOF, WE, the Heads of State or Government, or our duly authorised representatives, have signed this Agreement.

Done at MAPUTO, Mozambique this 18<sup>th</sup> day of August 2012, in three (3) original texts in the English, French and Portuguese languages, all texts being equally authentic.

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Republic of Angola

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Democratic Republic of Congo

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Republic of Madagascar

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Republic of Mauritius

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Republic of Namibia

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Republic of South Africa

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United Republic of Tanzania

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Republic of Zimbabwe

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Republic of Botswana

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Kingdom of Lesotho

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Republic of Mozambique

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Republic of Seychelles

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Kingdom of Swaziland

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Republic of Zambia