GUIDELINES FOR CO-OPERATION IN VALUE ADDED TAXES IN THE SADC REGION

Disclaimer: These Guidelines have been produced for the use of tax officials in the SADC Region as part of regional co-operation in taxation and related matters as mandated by the SADC Protocol on Finance and Investment. In no way must these Guidelines be construed to be law, or an interpretation of the law, or of any policy or practice of any of the Member States or of the SADC region. The accuracy or completeness of the information contained in these Guidelines has not been verified by independent sources and no reliance should be placed on it in any legal or other context.
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PREAMBLE

1. RECOGNISING:

(a) the need to take such steps as are necessary to maximise the co-operation of Member States in taxation matters and to co-ordinate the tax regimes of Member States;

(b) the objective of establishing a common market in the SADC region;

(c) the desirability of facilitating legitimate business and regional trade through fair and efficient tax regimes;

(d) the need for Member States to sustain and enhance their domestic tax revenues on an equitable and efficient basis; and

(e) that Value Added Taxes (VATs) are indirect taxes that are commonly applied to a broad range of goods and services that are taxes on consumption that are economically efficient.

2. RECALLING the provisions of Article 6 of Annex 3 of the SADC Protocol on Finance and Investment (FIP) that require State Parties (Member States) to effectively co-operate in the harmonisation of the administration of indirect taxes summarised as follows:

(a) each State Party shall gradually substitute taxes on internationally traded goods and services with broad-based indirect taxes on consumption;

(b) each State Party shall, 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 rates or sales tax rates;

(c) State Parties shall 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;

(d) State Parties shall in an effort to combat cross-border smuggling activities, identify areas of co-operation and agreement for: (i) the protection of their respective tax bases; and (ii) addressing the problem of tax leakage and gaps in tax compliance;

(e) State Parties shall give consideration to entering into bilateral agreements with each other for the exchange of information on VAT and sales tax and to make provision for mutual assistance;

(f) State Parties shall identify and explore areas of possible co-ordination and co-operation in the formulation of policy and the administration of VAT and sales tax; and
(g) State Parties shall take such steps as are necessary to harmonise their VAT regimes and shall set minimum standard VAT rates and harmonise over time: (i) the application of zero-rating; and (ii) VAT exemption of goods and services.

3. ACKNOWLEDGING that the following Guidelines represent a framework for co-operation in the design and application of VAT in the SADC region.

4. APPRECIATING the differing levels of economic development in the Region and that the VAT regimes in Member States are similarly diverse.

5. MINDFUL that these Guidelines are not binding on Member States and hence do not require Member States to undertake or refrain from any actions.

6. DETERMINED to co-operate with each other with regard to indirect taxes.

7. MEMBER STATES AGREE to these Guidelines and endeavour to implement them.
CHAPTER 1: COMMON VAT DESIGN

GUIDELINE 1 - PRINCIPLES APPLICABLE TO VAT IN THE SADC REGION

1. RECOGNISING the desirability of facilitating legitimate business and SADC regional trade through fair and efficient tax regimes and the need for Member States to sustain and enhance their domestic tax revenues on an equitable and efficient basis.

2. RECALLING the provisions of Paragraph 2 of Article 6 of Annex 3 of the FIP, that Member States shall gradually substitute taxes on internationally traded goods and services with broad-based indirect taxes on consumption; and Paragraph 10 that Member States shall take such steps as are necessary to harmonise their VAT regimes.

3. MEMBER STATES AGREE that:
   (a) each Member State shall implement a VAT as its primary broad-based indirect tax on consumption;
   (b) the VAT implemented in each Member State should be designed to achieve:
       (i) a broad tax base;
       (ii) revenue generation;
       (iii) economic neutrality;
       (iv) administrative efficiency;
       (v) similarity;
       (vi) equity;
       (vii) certainty; and
       (viii) simplicity;
   (c) each VAT in the Region should be:
       (i) a multi-stage transaction tax applied to all of the stages of the production and distribution of goods, including both on imports and at the retail stage;
       (ii) applied to the provision of services used, consumed or supplied in each Member State; and
       (iii) calculated by the tax credit method.

GUIDELINE 2 - MINIMUM STANDARD VAT RATES

1. RECALLING the provisions of Paragraph 10 of Article 6 of Annex 3 of the FIP that includes a commitment to set minimum standard VAT rates in the SADC region.

2. MEMBER STATES AGREE to set a VAT standard rate of not less than ten per cent (10%).
GUIDE
LINE 3 - MULTIPLE POSITIVE VAT RATES

1. RECOGNISING that multiple positive VAT rates increase the complexity of both compliance and administration and may create opportunities for tax fraud.

2. RECALLING the provisions of Paragraph 4 of Article 6 of Annex 3 of the FIP that includes a commitment that Member States shall 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 rates.

3. MEMBER STATES AGREE:
   (a) to avoid the use of multiple positive VAT rates; and
   (b) that where the application of rates of tax higher than the standard VAT rate are desired such as on luxury goods or services, to use as far as possible an excise tax on an ad valorem basis as an alternative.

GUIDE
LINE 4 - ZERO-RATING AND EXEMPTION

1. RECOGNISING that zero-rating and exemption from VAT undermine the revenue efficiency and neutrality of the tax.

2. RECALLING the provisions of Paragraph 10 of Article 6 of Annex 3 of the FIP that includes a commitment that Member States shall harmonise, over time, the application of zero-rating and VAT exemptions of goods and services.

3. MEMBER STATES AGREE:
   (a) that it is best practice that exemptions and zero-rating (other than for exports consistent with the destination principle), should be minimised; and
   (b) to develop as a benchmark for the Region, a standardised minimum list of exemptions and zero-rates.

GUIDE
LINE 5 - RELIEFS

1. RECOGNISING the benefits of equal treatment across the Region and that it is appropriate to provide relief from VAT in specific circumstances.

2. MEMBER STATES AGREE to limit the granting of relief from VAT to:
   (a) persons or institutions identified under a Member State’s diplomatic immunities and privileges legislation; or
   (b) persons or institutions identified under international agreements, conventions or treaties to which Member States are signatories, to the extent that they provide for relief from VAT; and
   (c) public benefit or similar charitable organisations, to the extent that they conduct philanthropic, benevolent or charitable activities.
GUIDELINE 6 - SUPPLY OF GOODS AND SERVICES

1. RECOGNISING the benefits of equal treatment across the Region and the need to avoid double taxation or unintended non-taxation.

2. MEMBER STATES AGREE to strive to achieve a common approach to the supply of goods or services for VAT purposes, including with respect to the:
   (a) time of supply; and
   (b) place of taxation.

GUIDELINE 7 - ENTITLEMENT TO INPUT TAX

1. RECOGNISING the importance of maintaining neutrality in the VAT regimes in the Region.

2. MEMBER STATES AGREE that subject to reasonable requirements with regard to administration and compliance, it is best practice that:
   (a) a credit of input tax should in principle be given to VAT registered persons on goods or services acquired to the extent to which the goods or services are acquired for the purposes of making taxable supplies; and
   (b) such entitlement to input tax should include tax incurred on:
      (i) acquisitions made in the course or furtherance of making taxable supplies;
      (ii) acquisitions made prior to making taxable supplies; and
      (iii) assets held at the time of registration.

GUIDELINE 8 - SPECIAL SCHEMES

1. RECOGNISING that VAT special schemes are important tools in facilitating both tax administration and tax compliance.

2. MEMBER STATES AGREE to strive to coordinate the design and application of VAT special schemes across the Region.
CHAPTER 2: VAT ADMINISTRATION

GUIDELINE 9 - HARMONISED APPROACH TO VAT ADMINISTRATION

1. RECOGNISING the benefits to Member States of maximising domestic revenues, including by minimising opportunities for tax fraud and avoidance and by encouraging taxpayer compliance.

2. RECALLING the provisions of Paragraph 1 of Article 6 of Annex 3 of the FIP that Member States shall effectively co-operate in the harmonisation of the administration of indirect taxes.

3. MEMBER STATES AGREE to the adoption of a common approach to VAT administration including:

   (a) the management of VAT; and
   
   (b) the following:

      (i) registration and de-registration (Guideline 10);
      (ii) record keeping, return requirements and payments (Guideline 11);
      (iii) refunds (Guideline 12);
      (iv) powers of revenue administration officials (Guideline 13); and
      (v) compliance (Guideline 14).

GUIDELINE 10 - REGISTRATION AND DE-REGISTRATION

1. RECOGNISING the benefits of equal treatment of registered persons across the Region including businesses operating in more than one Member State.

2. MINDFUL that compulsory registration for VAT has consequences, including that:

   (a) it imposes requirements on persons to account for the tax and on revenue administrations to administer the tax; and
   
   (b) denial or termination of VAT registration may have a detrimental impact on some persons.

3. MEMBER STATES AGREE that it is in the best interests of SADC for Member States to take a common approach to VAT registration and de-registration including:

   (a) applying the following best practice:

      (i) that a threshold for compulsory registration is put in place that maximises the number of registered taxpayers, whilst taking account of the capacity of the revenue administration, the compliance costs to persons compulsorily registered and revenue efficiency;
(ii) to consider, in addition to the compulsory registration threshold, the option of specific registration requirements for selected activities;
(iii) that voluntary registrations should be permitted; and
(iv) that persons situated outside a Member State supplying services that are consumed in the Member State, may be required to register for VAT;

(b) that common principles should be applied to:

(i) setting the VAT compulsory registration threshold; and
(ii) de-registration.

GUIDELINE 11 - RECORD KEEPING, RETURN REQUIREMENTS AND PAYMENTS

1. RECOGNISING the benefits of equal treatment of registered persons across the Region including for businesses operating in more than one Member State.

2. MEMBER STATES AGREE that it will benefit the Region for Member States to adopt:

   (a) uniform VAT return periods;
   (b) a VAT return model;
   (c) standardised periods of grace for the submission of returns and payments;
   (d) common arrangements for the payment of VAT at importation;
   (e) a model for VAT invoices;
   (f) common rules for the records required to be maintained by registered persons and the periods of retention; and
   (g) common requirements for registered persons to produce records to revenue administration officials.

GUIDELINE 12 - REFUNDS

1. RECOGNISING that:

   (a) delaying a refund of tax to a person entitled to such a refund has a negative impact on that person; and
   (b) cross border VAT transactions create risks of fraud.

2. RECALLING that Paragraph 8 of Article 6 of Annex 3 of the FIP encourages Member States to enter into tax agreements.

3. MEMBER STATES AGREE that subject to reasonable requirements with regard to administration and revenue security that it is best practice to:

   (a) make VAT refunds/credit on valid claims as soon as is practicable;
(b) expedite refunds to low risk registered persons; and

(c) consider entering into cross border arrangements with other Member States to avoid the need for importers to have to reclaim VAT from the export Member State and to pay VAT to the Member State of import.

GUIDELINE 13 - POWERS OF REVENUE ADMINISTRATIONS

1. RECOGNISING that tax leakage and gaps in tax compliance undermine the revenue efficiency of the tax system.

2. MEMBER STATES agree that subject to reasonable oversight and control, it is best practice for revenue administrations:

(a) to have sufficient powers to enable them to efficiently administer the tax including powers:

   (i) to determine the requirements for registration and de-registration for VAT;

   (ii) to require the production of and to inspect records, stocks and assets including at business premises;

   (iii) to make inspections at any time announced or unannounced;

   (iv) to be able to access records of third parties including suppliers, customers and contractors;

   (v) to raise assessments for tax due;

   (vi) to counter tax avoidance, including tax avoidance schemes, contrived VAT refunds or manipulation of input tax in respect of exempt supplies; and

   (vii) where fraud or evasion is suspected, to:

       • impose financial penalties (including by compounding);
       • enter, inspect and search premises, equipment and vehicles;
       • take goods as evidence;
       • freeze bank accounts and or seize assets;
       • arrest (either directly or in collaboration with another government agency); and
       • seal or close-down premises;

(b) to ensure that its officials comply with legislation including instituting:

   (i) safeguards and sanctions against improper actions by officials;

   (ii) procedures governing requests for reconsideration and appeals; and

   (iii) accessible and independent complaints procedures;

(c) to ensure that all legal powers and procedures governing complaints, requests for reconsideration and appeals, are clear and transparent and are published.
GUIDELINE 14 - COMPLIANCE

1. RECOGNISING the benefits of voluntary compliance by taxpayers, including revenue efficiency and reductions in the costs of compliance and administration.

2. MEMBER STATES AGREE that it is best practice:

(a) that revenue administrations have in place a VAT compliance strategy that:

   (i) includes a commitment to the promotion of voluntary compliance; and
   (ii) sets out how the revenue administration will enforce compliance and address non-compliance;

(b) for revenue administrations to encourage compliance by actively seeking to reduce the cost of compliance and by providing quality services to taxpayers including:

   (i) electronic channels of communication;
   (ii) accessible information facilities to taxpayers and consumers including accessible web-based information; and
   (iii) publishing:
       - a charter setting out the rights and obligations of taxpayers;
       - VAT service standards; and
       - public rulings;

(c) that revenue administrations maintain professional standards by providing and supporting capacity building for revenue administration officials;

(d) in addressing non-compliance, for revenue administrations to:

   (i) adopt procedures that minimise the occurrence and level of VAT debt by registered persons;
   (ii) implement standardised and effective penalties and sanctions to discourage non-compliance;
   (iii) be cognisant that where penalties or sanctions are imposed they should be proportionate and reflect behaviour; and
   (iv) deter criminal behaviour such as fraudulent claims of refunds by prosecution in the criminal courts.
CHAPTER 3: EXCHANGE OF INFORMATION AND MUTUAL ASSISTANCE

GUIDELINE 15 - EXCHANGE OF INFORMATION AND MUTUAL ASSISTANCE

1. RECOGNISING that it is in the interests of Member States to combat VAT non-compliance including fraud and smuggling.

2. RECALLING Paragraph 6 of Article 6 of Annex 3 of the FIP that enjoins Member States to exchange information and mutually assist each other to prevent unlawful activities.

3. MEMBER STATES AGREE to share information and mutually assist each other to protect revenues and combat non-compliance such as fraud and smuggling, including:

   (a) using existing agreements and mutual assistance channels;

   (b) entering into new agreements for mutual assistance or sharing information between and amongst themselves and to use these arrangements to share information and intelligence including on inter-jurisdictional transactions;

   (c) establishing standardised VAT registration databases and making standardised arrangements for the:

       (i) routine transfer of data between revenue administrations; and

       (ii) verification of specific transactions.
### DEFINITIONS AND GLOSSARY

The definitions in these Guidelines that are as in Annex 3 of the FIP are marked *

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ad valorem</strong></td>
<td>Means according to value, where the tax chargeable is expressed as a percentage of the value of goods or services or of a transaction.</td>
</tr>
<tr>
<td><strong>Appeal</strong></td>
<td>For the purposes of these Guidelines means, a request by a person that a decision of the tax authorities should be reconsidered.</td>
</tr>
<tr>
<td><strong>Compounding</strong></td>
<td>Means, a financial settlement as an alternative to prosecution.</td>
</tr>
<tr>
<td><strong>Credit of input tax</strong></td>
<td>Means, VAT on the acquisition (purchase) of any goods or services by a taxable person in relation to the making of taxable supplies that is offset against any VAT payable on supplies (sales) of goods or services and that may result in a net credit balance in favour of a taxable person.</td>
</tr>
<tr>
<td><strong>Destination principle</strong></td>
<td>Means, a principle by which VAT is levied only in the jurisdiction of final consumption.</td>
</tr>
<tr>
<td><strong>Double taxation (Note - this differs from the definition in the FIP)</strong></td>
<td>For the purposes of these Guidelines means, taxation at a positive VAT rate of the same supply of goods or services in any jurisdiction including both a country of export or of import of goods or services.</td>
</tr>
<tr>
<td>* <strong>Excise duty (or excise tax)</strong></td>
<td>Means, a tax or 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.</td>
</tr>
<tr>
<td><strong>Exemption</strong></td>
<td>For the purposes of these Guidelines means, exclusion from taxation for VAT by legislation of specified supplies of goods or services.</td>
</tr>
<tr>
<td><strong>Exempt supplies</strong></td>
<td>For the purposes of these Guidelines means, supplies of goods or services by a person that are excluded from the tax by law.</td>
</tr>
<tr>
<td><strong>FIP</strong></td>
<td>Means, the SADC Protocol on Finance and Investment.</td>
</tr>
<tr>
<td>* <strong>Indirect tax</strong></td>
<td>Means, any tax (other than a direct tax) imposed on consumption or transactions (includes VAT, sales taxes, excise duties, stamp duties, services taxes, registration duties and financial transaction taxes).</td>
</tr>
<tr>
<td><strong>Input tax</strong></td>
<td>Means, the VAT incurred on the acquisition of any goods or services by a person, including on imported goods.</td>
</tr>
<tr>
<td>* <strong>Luxury goods and services</strong></td>
<td>Means, goods and services with an income elasticity of greater than one.</td>
</tr>
<tr>
<td>* <strong>Mutual assistance</strong></td>
<td>Means such arrangements as are made between two countries or jurisdictions in order to improve the efficiency of their respective taxation systems.</td>
</tr>
<tr>
<td><strong>Output tax</strong></td>
<td>For the purposes of these Guidelines means, VAT that is added to the value of supplies of goods or services.</td>
</tr>
<tr>
<td><strong>Person</strong></td>
<td>For the purposes of these Guidelines includes individual persons (sole proprietors or traders); partnerships; limited, public and other companies; parastatals; joint ventures; clubs and associations; and trusts.</td>
</tr>
<tr>
<td><strong>Place of taxation (supply)</strong></td>
<td>Means, the jurisdiction in which a supply of goods or services is</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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<td>-------------------------------------------</td>
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</tr>
<tr>
<td>Refund</td>
<td>Means, a payment of VAT made by a revenue administration to a person in respect of input tax claimed or output tax overpaid.</td>
</tr>
<tr>
<td>Registration/compulsory registration</td>
<td>Means, a requirement by law for a person making taxable supplies to register for VAT.</td>
</tr>
<tr>
<td>Registration threshold</td>
<td>Means, a limit above which persons are required to register as taxable persons (suppliers).</td>
</tr>
<tr>
<td>Revenue administration</td>
<td>Means, the Revenue Authority or Revenue Service or Customs or Tax administration of a country (including the officials of the administration).</td>
</tr>
<tr>
<td>SADC</td>
<td>Means, the Southern African Development Community.</td>
</tr>
<tr>
<td>*Sales tax</td>
<td>Means, a tax imposed as a percentage of the price of goods or services and which is ordinarily 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.</td>
</tr>
<tr>
<td>Special schemes</td>
<td>For the purposes of these Guidelines means, methods of accounting for VAT by taxable persons that are outside the normal VAT accounting requirements.</td>
</tr>
<tr>
<td>Standard rate</td>
<td>For the purposes of these Guidelines means, the percentage rate of VAT applied to goods or services that are not specifically designated by law as being taxable at different rate or exempted from the tax.</td>
</tr>
<tr>
<td>Supply</td>
<td>Means, selling or otherwise disposing of goods or services.</td>
</tr>
<tr>
<td>*Tax</td>
<td>Means, a compulsory unrequired financial contribution imposed by a government or jurisdiction.</td>
</tr>
<tr>
<td>Taxable</td>
<td>For the purposes of these Guidelines means, that VAT is chargeable on goods or services at either a positive rate or at the zero-rate.</td>
</tr>
<tr>
<td>Tax base</td>
<td>For the purposes of these Guidelines means, the number of persons required or permitted to be registered for VAT.</td>
</tr>
<tr>
<td>Taxable person (supplier)</td>
<td>Means, a person who is or should be registered for VAT. (In the SADC region taxable persons are also referred to as ‘VAT suppliers’, ‘taxable suppliers’, ‘registered suppliers’, ‘registered traders’ or ‘VAT vendors’).</td>
</tr>
<tr>
<td>Taxable supply</td>
<td>Means, supplies by a taxable person of goods or services upon which VAT is to be levied by law, excluding exempt supplies or supplies that are outside the scope of VAT law.</td>
</tr>
<tr>
<td>*Tax agreement</td>
<td>Means, any bilateral or multilateral agreement concluded by State Parties between or amongst themselves or with countries outside the Community, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital or for mutual assistance with regard to indirect taxes.</td>
</tr>
<tr>
<td>Tax credit method (invoice credit method)</td>
<td>Means, a method of accounting for VAT that ensures that the tax is not borne by businesses making taxable supplies but on consumers whereby VAT levied on a supply of goods or services is shown on a tax invoice and may be credited by the recipient of the goods or services as input tax.</td>
</tr>
<tr>
<td>Taxpayer/supplier/trader</td>
<td>Means, a taxable person as defined by the law of the jurisdiction in which the tax is levied.</td>
</tr>
<tr>
<td>Unintended non-taxation</td>
<td>For the purposes of these Guidelines means applying zero-rating.</td>
</tr>
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</table>
or exemption to the same supply of goods or services in any jurisdiction including both a country of export or of import of goods or services.

<table>
<thead>
<tr>
<th><strong>VAT</strong></th>
<th>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 of such goods or services, but, where the liability for rendering payment of such tax to the authorities is placed upon the supplier of the goods or services.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Voluntary registration</strong></td>
<td>Means, registration for VAT of a person making taxable supplies who is not required by law to do so.</td>
</tr>
<tr>
<td><strong>Zero-rated</strong></td>
<td>For the purposes of these Guidelines means, VAT applied at a rate of zero percent on supplies of goods or services.</td>
</tr>
</tbody>
</table>
CONTACT

For more information about SADC please visit the SADC Website: http://www.sadc.int/

To obtain a full copy of the Protocol on Finance and Investment (FIP) visit: http://www.sadc.int/documents-publications/show/1009

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COMMENTARY ON THE GUIDELINES FOR CO-OPERATION IN VALUE ADDED TAXES IN THE SADC REGION

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COMMENTARY ON THE PREAMBLE

1. In Paragraph 1 (a) to (d) of the Preamble, Member States recognise the broad objectives of SADC with regard to regional tax co-operation, including: the long term objective of establishing a common market in the SADC Region; the desirability of facilitating legitimate business; and the need for Member States to sustain and enhance their domestic tax revenues on an equitable and efficient basis.

2. At Paragraph 1 (e) Member States specifically focus on Value Added Taxes (VATs) by recognising that they are broad-based taxes on consumption that are economically efficient. Economic efficiency includes that VATs are neutral on businesses.

3. Member States recall at Paragraph 2 that the instrument under which they are required to co-operate on taxation and related matters is the SADC Protocol on Finance and Investment (FIP) Annex 3 and in particular Article 6 “Indirect Taxes” that includes VATs. For ease of reference Annex 3 of the FIP is reproduced at Appendix 1 of this Commentary.

4. Paragraph 2 goes on to list the specific provisions of Article 6 of Annex 3 of the FIP that are most relevant to VATs. It should be noted that the FIP uses the term “State Parties” in describing the commitments of Member States as signatories to the Protocol. These commitments provide the mandate for the SADC VAT Guidelines and they are reflected in the detail of the Guidelines that follow. The provisions of Article 6 are summarised as follows:

(a) each State Party shall gradually substitute taxes on internationally traded goods and services with broad-based indirect taxes on consumption (see Article 6, Paragraph 2);

(b) each State Party shall, 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 rates or sales tax rates (see Article 6, Paragraph 4);

(c) State Parties shall 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 (see Article 6, Paragraph 6);

(d) State Parties shall in an effort to combat cross-border smuggling activities, identify areas of co-operation and agreement for: (i) the protection of their respective tax bases; and (ii) addressing the problem of tax leakage and gaps in tax compliance (see Article 6, Paragraph 7);

(e) State Parties shall give consideration to entering into bilateral agreements with each other for the exchange of information on VAT and sales tax and to make provision for mutual assistance (see Article 6, Paragraph 8);
(f) State Parties shall identify and explore areas of possible co-ordination and co-operation in the formulation of policy and the administration of VAT and sales tax (see Article 6, Paragraph 9); and

(g) State Parties shall take such steps as are necessary to harmonise their VAT regimes and shall set minimum standard VAT rates and harmonise over time, the application of zero-rating and VAT exemption of goods and services (see Article 6, Paragraph 10).

5. Paragraph 2 (a) refers to the commitment to substitute taxes on internationally traded goods and services with broad-based indirect taxes on consumption in line with World Trade Organisation agreements. This applies to indirect taxes generally but particularly to a VAT, that is a very broad-based consumption tax. The reason that this commitment is included in the FIP is in recognition of the fact that taxes on internationally traded goods, often referred to as “customs duties” (or sometimes “tariffs”), are reducing globally, as trade agreements such as customs unions proliferate. For countries that rely on customs duties as major sources of domestic revenue, alternative sources of domestic revenue need to be found to provide them with “fiscal space” to reduce their customs duties and enable them to benefit from such trade agreements. Enhanced revenue mobilisation from indirect taxes, including VATs are recognised as possible revenue alternatives to declining customs duties. This is considered amongst other things in Guideline 1.

6. Paragraph 2 (b) recalls that Member States shall 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 rates. In this context the use of excise taxation to tax luxury goods and services is preferred to the imposition of a rate of VAT that is higher than the standard (i.e. the most broadly applied) VAT rate, i.e. a luxury VAT rate. This Paragraph does not contemplate VAT rates that are lower than the standard rate. The application of multiple VAT rates that are both higher or lower than the standard rate are considered in Guideline 3.

7. Paragraphs 2 (c) to (f) recall the broad commitments of co-operation with regard to VAT, including identifying areas for co-ordination and engaging in exchange of information and mutually assisting each other, that are reflected in the Guidlines that follow.

8. Paragraph 2 (g) refers specifically to Member States agreeing to minimum standard VAT rates and harmonising the application of zero-rating and VAT exemption of goods and services. These are the subject of Guidelines 2 and 4, respectively.

9. Member States acknowledge at Paragraph 3 that the Guidelines seek to create a framework for co-operation which, if followed by Member States will, over time, achieve the ambitions of the FIP by co-ordinating VAT regimes; harmonising VAT administration, and helping to counter VAT evasion; thereby making a positive contribution to the domestic revenues of Member States.

10. At Paragraph 4 Member States appreciate that they are at differing stages of economic development and that the VAT regimes in Member States vary widely.
reflecting economic diversity. This will inevitably impact the ability and pace at which Member States can apply the Guidelines in practice.

11. In stating that they are mindful, at Paragraph 5, that the Guidelines are not binding and do not require Member States to take or refrain from any actions, Member States are seeking to allay concerns regarding fiscal sovereignty. This also reflects the SADC mandate that co-operation and co-ordination will need to progress incrementally through consensus, when the timing is right for each Member State, cognisant of its circumstances.

12. Notwithstanding the reservation above, Member States affirm at Paragraph 6 that they are determined to co-operate with regard to indirect taxes and at Paragraph 7 that they do agree with the Guidelines and to endeavour to implement them.
CHAPTER 1: COMMON VAT DESIGN

COMMENTARY ON GUIDELINE 1 - PRINCIPLES APPLICABLE TO VAT IN THE SADC REGION

1. This Guideline seeks to establish VAT as the primary broad-based tax applied in all Member States. Member States recognise at Paragraph 1 that they need to enhance their domestic revenues on a fair and equitable basis and at Paragraph 2, recall that the FIP requires them to substitute taxes on trade (primarily customs duties) with broad-based taxes on consumption. A broad-based VAT meets both of these criteria.

2. Member States further recall at paragraph 2 that the VAT regimes in the Region should be harmonised, meaning that not only is it desirable that all Member States implement a broad-based VAT, but that the VAT regimes should be harmonised, citing Paragraph 10 of article 6 of Annex 3 of the FIP that refers, particularly to setting minimum standard VAT rates and harmonising the application of VAT zero-rating and exemptions. These aims are specifically considered in Guidelines 2 and 4.

3. Paragraph 3 (a) provides that Member States agree that each Member State shall implement a VAT as its primary broad-based indirect tax on consumption. This is not a specific requirement in the FIP, but it is included in the Guidelines in support of the objectives of the FIP, namely: to apply broad-based indirect consumption taxes as an alternative to taxes on trade; and that Member States should take steps to harmonise their VAT regimes.

4. With regard to the extent of implementation of VAT in Member States envisaged at Paragraph 3 (a), as at March 2014 all Member States except for Angola had introduced a VAT as their primary indirect consumption tax.

5. At Paragraph 3 (b) Member States further agree that the VAT implemented in each Member State should seek to achieve the following:

   (a) a broad tax base: the VAT in each Member State, should be a tax on consumption that applies as widely as possible;

   (b) revenue generation: the VAT in each Member State should be a substantial source of domestic revenue in support of the aim of reducing the reliance of Member States on taxes on trade (including customs duties/tariffs);

   (c) economic neutrality: that the tax does not impact business transactions;

   (d) administrative efficiency: that the costs that fall on both taxpayers and on the revenue administrations should be minimised;

   (e) similarity: that the VAT regimes in each Member State are broadly similar, to facilitate inter-jurisdictional transactions and businesses operating in more than one Member State with the aim of benefiting business and improving the regional investment climate;
(f) equity: fair treatment of businesses and of the consumers who ultimately pay the tax; and

(g) certainty and simplicity: keeping the way the tax works and its coverage reasonably constant and making the tax as simple to operate as is possible, to benefit revenue administrations, businesses and consumers.

6. The above aims are viewed as best practice and common to most VAT regimes in the world. Affirming them as part of the SADC VAT Guidelines is intended to ensure that the VAT regimes in Member States are in line with international best practice and that they are as standardised as possible, in support of the aims of Article 6 of Annex 3 of the FIP and especially Paragraph 1 that “State Parties shall effectively co-operate in the harmonisation of the administration of indirect taxes” and Paragraph 10 that “State Parties shall take such steps as are necessary to harmonise their VAT regimes …”

7. At Paragraph 3 (c) the Guideline seeks to ensure that a consistent fundamental design is adopted for the VATs in the Region as a foundation for harmonisation based on best practice, expanded as follows:

(a) Firstly, at Sub Paragraphs (i) and (ii) it is agreed that each VAT in the Region should be a multi-stage transaction tax applied to all stages of the “supply chain” of the production and distribution of goods and on services consumed in Member States, this:

(i) ensures that the tax has a broad-base and avoids the VAT being applied at selected stages in the supply chain such as once on production (like excise taxes), or once at the retail stage (like sales taxes), that would make the tax narrow-based.

(ii) ensures that the VATs in the SADC region are consumption taxes that are only chargeable on goods and services consumed in each Member State and that the tax is not charged on goods or services that are exported. The “destination principle” ensures that the tax is levied in the jurisdiction to which the supplies are destined.

(iii) provides a degree of security for domestic revenue mobilisation, in that it minimises the potential loss of revenue if there is a failure to account at a stage in the supply chain, for example, if there is a failure to remit the tax at any stage in the supply chain, the tax would have been collected on the previous transaction and only tax on the subsequent value added is lost. This is important for jurisdictions with large informal sectors, where it is difficult to maintain an audit trail throughout the supply chain such as where there are multiple small transactions that are impractical to collect such as street-side vending.

(b) Secondly, at Paragraph (c) (iii) it is agreed that the VATs in the Region should be calculated by the tax credit method, this ensures that the tax is:

(i) neutral on business, as it eliminates cascading or cumulative effects by granting businesses accounting for VAT at each stage of production or supply, a full and immediate tax credit or deduction for
the tax paid in respect of “inputs” (purchases), against their “outputs” (sales); and

(ii) ultimately born by the final consumer and explains why VAT is termed a consumption tax.

8. The intention of Paragraph 3 (c) is to ensure that all of the VATs in the SADC region are of the same type. As at March 2014 all the VATs in SADC were of this type. However, the specific application of these VATs, including with regard to the extent of tax exemptions and the taxation of small businesses, varies widely and these more detailed aspects are covered elsewhere in the Guidelines.

9. The standardisation envisaged in Guideline 1 will facilitate the broader aims of cooperation and harmonisation in taxation as provided for by Annex 3 of the FIP. This also seeks to avoid circumstances where a VAT could be introduced or developed in a Member State that is fundamentally at odds with the other VATs in the Region and to ensure that whatever variations there are in the Region, that these key overarching best practice principles are applied.

10. Guideline 1 is intended to apply to any new Members of the Community to provide guidance and ensure that harmonisation is maintained.

COMMENTARY ON GUIDELINE 2 - MINIMUM STANDARD VAT RATES

1. This Guideline intends to give effect to Paragraph 10 of Article 6 of Annex 3 of the FIP, that requires VAT regime harmonisation and, inter alia, that Member States set minimum standard VAT rates.

2. The phrase “standard rate” is used in VAT parlance to describe the positive tax rate that is applied most widely across the supply chain. This needs to be differentiated from higher or lower positive rates that are applied to specific supplies or to the zero-rate of VAT that normally applied to exports in line with the destination principle, plus a limited number of selected supplies for political/social reasons.

3. It should be noted that in this regard the FIP only refers to Member States setting “minimum standard VAT rates” and does not specifically preclude the use of selectively applied rates that are lower or higher than the standard rates (multiple positive rates). The use of multiple positive VAT rates in addition to the standard rate is covered in Guideline 3.

4. The concept of having a standard VAT rate of tax that is applied as a percentage of the value of goods and services at all stages of the supply chain, is a universal feature of VAT design. This has practical benefits in terms of certainty and simplicity for businesses and consumers as well as for the legislation implementing the tax, for example applying a standard VAT rate:

(a) avoids a situation where every supply liable to the tax would need to be listed in law, which would entail a very large and constantly changing list of goods and services. In VAT law there is normally a presupposition that all supplies
of goods and services, are liable to VAT at the standard rate, unless specifically stated otherwise in legislation.

(b) means that variations in the standard rate require only minor changes in law to affect all the goods and services they are applicable to, which means rates changes can be effected quickly and efficiently.

5. In agreeing to set a minimum standard VAT rate Member States recognise that:

(a) the primary purpose of VAT is to mobilise revenue and low standard rates would undermine that goal; and

(b) a voluntarily applied minimum standard VAT rate will assist in avoiding rate differences between Member States that might otherwise lead to cross-border shopping and smuggling as might be the case if one Member State set a standard rate of 3% whilst its neighbour set a rate of 15%.

6. In most VAT regimes the standard rate is set at between 10% and 25%. In SADC the standard VAT rates vary from 12% to 20%, with eight Member States having rates between 14% and 16% (March 2014).

7. Differences of standard rates between Member States are influenced by their specific economic and political factors; including the extent of exemptions from the tax in each Member State. Recognising this, the FIP in this makes no provision for standard VAT rates to be harmonised in the Region.

8. In agreeing to set a standard rate of not less than 10% Member States are adopting a baseline lower than any current example in the Region (March 2016 Botswana at 12%). This will minimise the potential rate difference between the highest and lowest standard rates in the Region and will avoid any current or new Member State applying a low standard rate that would sufficiently affect prices to constitute harmful tax competition or undermine the revenue aims of the tax.

9. It also needs to be stressed for clarity that there is no intention or suggestion in this Guideline that any Member State should apply a VAT standard rate of 10%. It is rather an agreement that if a Member State decides for whatever reason to set a low standard rate, that it should not be less than 10%.

10. This Guideline is also intended to apply to any new Members of the Community to ensure that harmonisation is maintained.

**COMMENTARY ON GUIDELINE 3 - MULTIPLE POSITIVE VAT RATES**

1. This Guideline discourages the use of multiple positive VAT rates in line with the principles of Guideline 1, that VATs should be revenue efficient, administratively efficient and as simple to operate as is possible.
2. It should be noted that this Guideline refers to multiple positive rates only, as the application of a zero-rate, at least for exports, is an integral part of a VAT regime design.

3. The Guideline recognises that multiple positive VAT rates complicate the VAT regime for everyone concerned, for example multiple rates:

   (a) complicate administration and compliance, for instance, by requiring additional boxes to be completed on tax returns and different calculations to be made for various supplies at various rates;

   (b) open up avenues for errors and mis-description such as an entity making supplies that are subject to multiple rates, for instance, a supermarket dealing with commodities with higher rate, standard rate, lower rate and zero-rate items, may make errors within their accounting system so that items are charged at an incorrect rate; and

   (c) create additional challenges such as:

      (i) for administrators in determining the tax liability; and

      (ii) for taxable persons (mainly businesses) in applying the rates to supplies such as where similar products are taxed differently (“grey areas”), for instance, if chocolate were taxed at luxury VAT rate different to other foodstuffs, liability issues would arise around the rate to be applied to chocolate chip cookies, chocolate cake, biscuits, etc. leading to uncertainty and requiring rulings and legislation to clarify interpretations and set the tax liability.

4. Multiple rates of the types outlined above, add to compliance and administrative complexity as well as uncertainty which results in increased costs to both the revenue administration and businesses.

5. Multiple positive rates can either be higher or lower than the standard rate and these are differentiated in the following notes.

6. **Notes on positive rates that are higher than the standard rate:**

   (a) Rates that are set higher than the standard rate commonly seek to tax goods that are perceived as luxuries, typically at rates of anything from 25% to 50% with the intention of addressing the perceived regressive nature of a VAT that applies the same tax, whatever the relative wealth of the consumer.

   (b) It is widely accepted that the application of VAT to luxury goods through a luxury rate VAT is ineffective. In addition to the challenges around deciding the liability of goods to which to apply the rate and the correct application of the rate by businesses, non-compliance and fraud are fuelled, leading to additional administrative interventions. Overall the revenue benefits are often disappointing and some jurisdictions that have introduced luxury VAT rates have removed them relatively quickly.
(c) In light of the above, the use of luxury VAT rates in addition to the standard rate is discouraged by Paragraph 4 of Article 6 of Annex 3 of the FIP that recommends the use of an *ad valorem* excise tax on luxury goods as an alternative to multiple VAT rates. Although taxation of luxury goods through *ad valorem* excise taxation also has challenges (such as value-determination and the constantly changing nature of what are perceived as luxuries), benefits of excise taxation include that the tax is applied once, early in the supply chain (normally manufacture) and is embedded in the value through to consumption.

7. **Notes on positive rates that are lower than the standard rate:** -
   
   (a) Rates that are set lower than the standard rate, typically between 5% and 7%, are commonly (but not always) applied to provide a relief or partial tax subsidy to a sector or specific product or service, as an alternative to zero-rating or exemption.

   (b) Such lower rates are often applied to supplies made by state owned enterprises/utilities providing essential services such as water, electricity, etc. and may be designed to reach a situation where the output tax charged approximately balances input tax entitlement, thereby assisting the cash flow of the supplier and avoiding the need to make VAT refunds (that would otherwise be necessary as a consequence of zero-rating), whilst maintaining the integrity of the VAT system.

8. This Guideline affirms that the best practice for the SADC region is for Member States to avoid the use of multiple positive VAT rates either to tax luxury items or to provide partial subsidies from the tax for selected sectors or supplies.

**COMMENTARY ON GUIDELINE 4 - ZERO-RATING AND EXEMPTION**

1. This Guideline gives effect to Paragraph 10 of Article 6 of Annex 3 of the FIP that requires VAT regime harmonisation and *inter alia* the standardised application of zero-rating and VAT exemptions in the Region.

2. Paragraph 3 (a) of the Guideline establishes a core principle, whereby Member States agree, in line with the aims of Guideline 1 of revenue efficiency and neutrality, that the application of zero-rating and exemptions should be minimised in the SADC Region.

3. It must be noted however, that Paragraph 3 (a) of the Guideline applies only to supplies that are zero-rated for reasons other than exports in line with the destination principle.

4. At Paragraph 3 (b) of the Guideline Member States agree to develop as a benchmark for the Region, a standardised minimised (‘maximum’) list of zero-ratings and exemptions for adoption by Member States. The intention of a standardised list is to encourage and monitor the co-ordination of the use of zero-rating and exemptions and once the list is agreed by Member States it is intended that the list be appended to the Guidelines or this Commentary.
5. This Guideline effectively provides a two-pronged approach, i.e. the use of zero-ratings and exemptions in the SADC region should be both minimised and harmonised. These parallel aims are explained in detail below.

6. Notes on Paragraph 3 (a) minimised zero-rating and exemptions

(a) Most jurisdictions that have a VAT as their primary consumption tax provide relief from the tax to selected goods or services in the form of lower positive rates, zero-rating or exemptions. The application of lower positive rates to provide VAT relief is discouraged and is covered in Guideline 3 above.

(b) Zero-rating and exemptions are most commonly provided for political/social reasons such as to:
   (i) reduce the perceived disproportionate tax burden on the less well off (regressivity); or
   (ii) subsidise, for whatever reason, an industry or sector.

(c) It is widely accepted best practice that the above are not suitable reasons to apply a zero-rating or exemption from the tax. There are more effective ways to address regressivity and to provide subsidies or support to industry than through the VAT system. In agreeing to minimise the use of zero-rating and exemption Member States are endorsing that the approach taken should be to charge tax at the standard rate as far as possible throughout the supply chain and to provide social support, subsidies and incentives by other more targeted and specific means.

(d) Zero-rating and exemptions are additionally discouraged for the following reasons:
   (i) Zero-rating and exemptions narrow the tax base by removing selected goods or services from the base. Neutrality is enhanced when all goods and services in the supply chain are treated the same way (ideally as taxable at a single positive VAT rate of more than 10%). Zero-rating and exemptions therefore introduce a distortion and reduce the efficiency of the tax.
   (ii) Zero-rating and exemptions also remove the simplicity of VAT accounting and increase compliance and administrative costs in that they complicate the tax for taxpayers and heighten the need for tax administrations to verify declarations through audit.

7. Notes on the difference between zero-rating and exemption

(a) Although both zero-rating and exemption provide relief from the tax (and in general both are discouraged), there are important differences between them, as follows:
   (i) ‘Zero’ is a rate of tax, insofar as supplies of zero-rated goods and services are viewed as taxable supplies and they create an entitlement to input tax in relation to the input costs of making those supplies.
(ii) Exempt supplies are not *taxable supplies* and as such they create no entitlement to input tax in relation to the supply of goods and services that are exempt.

(b) The following table illustrates these main differences between zero-rated and exempt supplies:

<table>
<thead>
<tr>
<th>Question</th>
<th>Zero-rate</th>
<th>Exempt</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is any VAT payable on supplies of these goods and services?</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Is this a rate of tax?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Do supplies of these goods and services count towards taxable turnover for registration for VAT (as “taxable supplies”)?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Can input tax be claimed in relation to supplies of these goods and services?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Can a business dealing only in supplies of these goods and services register for VAT?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Can a business dealing in these supplies issue tax invoices?</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

8. **Notes on minimising zero-rate supplies**

(a) As outlined above, zero-rating is (other than for exports) often applied to provide relief from the tax for social or other political reasons.

(b) However, the relief from VAT provided by zero-rating is difficult to disaggregate by a consumer, as once provided on any particular item, all consumers benefit. Therefore, items to be zero-rated must be carefully selected as it is difficult to target a particular consumer group. For example, a Member State may wish to provide relief to the poor by zero-rating a staple food (such as maize meal). Whilst the zero-rating is targeted at the poor, other consumers will also benefit. In view of this, if the zero-rating is provided for relief, it should be limited to a very specific list of goods and services consumed predominantly by the poor, because:

(i) using zero-ratings to provide social support is not appropriate or efficient; and

(ii) zero-rating leads to additional refunds of VAT with an associated increase in risks of fraud and criminality and consequently increased administrative resource utilisation.

9. **Notes on minimising exemptions**

(a) As outlined above, either zero-rating or exemption may be applied to reduce the perceived disproportionate tax burden on the less well off or to subsidise, an industry or sector. As with the zero-rate, using exemptions to provide social support and/or subsidies, is not efficient and using exemptions to this end is discouraged.

(b) Importantly, unlike zero-rates (that are applied almost universally as social subsidies), exemptions are commonly applied to selected supplies for additional reasons as follows:
(i) where due to the nature and design of the tax, particular supplies are "difficult to tax"; or
(ii) as an alternative to zero–rating, for administrative purposes including collecting some tax revenue (through denied input tax credit) and/or reducing the number of VAT registered suppliers or refund payments to be processed by the revenue administration.

(c) These are explored in more detail below.

10. Notes on exemption of “difficult to tax” supplies

(a) In many VAT regimes exemptions are provided in circumstances where, due to the nature of its design, the VAT is difficult to apply or to administer with regard to particular supplies. These are often referred to as "difficult to tax" supplies.

(b) This phenomenon is restricted to exemptions, because zero-rating (as a "rate" of tax) is administratively no more difficult to apply than any positive VAT rate.

(c) Whilst agreeing that the use of exemptions should be minimised wherever possible, Member States recognise that it is often necessary to apply exemptions to specific supplies because the supplies are difficult to tax.

(d) The reasons for a supply being considered as difficult to tax can be technical or practical and such supplies commonly include: financial services; insurance services; gambling; gifts; and supplies by Government. These areas are explored in detail below under “Harmonisation of Exemptions”.

11. Notes on exemption as an alternative to zero-rating

(a) Faced with a choice between applying a zero-rate or an exemption to a particular product or service, some revenue administrations opt for exemption for one of two main reasons: revenue gain through denial of input tax and administrative benefits through a reduction of refunds. These are expanded as follows:

(i) Businesses making exempt supplies are not entitled to claim input tax incurred in making those supplies and such businesses are a final consumer as far as VAT is concerned. As a result, most exempt supplies contain, in their value, an element of VAT in the form of input tax that cannot be offset or refunded. Therefore, exempt supplies provide only partial relief from the tax and this explains why in some jurisdictions exempt supplies are described as “input taxed”. Consequently, if the supply of a product or service is exempted rather than zero-rated some additional revenue will be collected in the form of un-claimable input tax.

(ii) Applying a zero–rate to a supply means that businesses pay no tax on their sales but are entitled to reclaim input tax in relation to making those supplies, which results in an increase in refunds that need to be
processed by the revenue administration. Refunds however pose a high risk for revenue administrations as they are open to abuse including criminal fraud and refunds therefore require additional administrative resource utilisation to manage the risk.

(iii) The above illustrates why a revenue administration might prefer to apply an exemption rather than a zero-rate. However, exemptions have wider disadvantages when compared to zero-rates including the following:

- Unlike zero-rating, exemption distort the integrity of the VAT regime. This is because VAT system relies on utilising normal business records and accounting documents in establishing an audit trail for the tax through the supply chain. Key amongst these is the tax invoice that declares what VAT has been charged on a supply and which also provides evidence of tax paid for claiming input tax by the recipient of the supplies. Businesses making zero-rate supplies may register for VAT and issue tax invoices for supplies they make and so maintain the VAT audit trail of the supply chain. Businesses making exempt supplies however cannot register for VAT and cannot issue tax invoices. Exemption therefore effectively breaks the VAT audit trail.

- As illustrated above, exemptions place an indirect tax burden on businesses in so far as they effectively deny the business the opportunity to obtain credit for input tax. These denied credits are normally passed on to the end consumer as they are a cost factor built into the price of the goods/services.

- For businesses making both taxable and exempt supplies there is an additional compliance burden as a result of the necessary differentiation of input VAT attributable to taxable supplies (that is creditable) and input VAT attributable to exempt supplies (that must be denied to provide parity with fully exempt businesses) including an apportionment of input VAT that cannot be directly attributed to taxable/exempt supplies.

(iv) Taking account of the above, Member States accept that the best practice is not to apply exemptions as an alternative to zero-rating.

12. **Notes on Paragraph 3 (b) harmonised approach to zero-rating and exemption**

(a) At Paragraph 3 (b) with regard to the harmonisation of the zero-rating and exemptions in the Region, Member States agree that:

(i) for zero-rated supplies, harmonisation should be based on a limited and very specific list of goods and services consumed predominantly by the poor;

(ii) for exempt supplies harmonisation should be based on:

- a limited very specific list, predominantly of services of a social nature (rarely for goods); and
• a list of supplies (mostly services) that are by their nature difficult to tax; and
• Member States will produce a standardised list of the above as a benchmark for the Region.

(b) There is a further factor to be taken into consideration with regard to harmonising exemptions. In some jurisdictions in the Region they have supplies that are viewed as “outside-the-scope” of the tax, that are similar in effect to an exemption, but legislatively different. This concept is expanded below.

13. Notes on “outside-the-scope” supplies

(a) Supplies that are excluded from the tax are referred to in some VAT regimes as “outside-the-scope” or “out of scope” or “non-taxable” supplies. Outside-the-scope supplies are neither taxable nor exempt as they don’t meet the rules required to make them liable to the tax. Such supplies however are not consciously “untaxed” for the purposes of providing relief from the tax, as would be the case in zero-rating or exemption, but rather they reflect the design and legislative environment of the tax, as applied in each jurisdiction.

(b) Although common in many VAT regimes and especially in the European Union, the concept of outside-the-scope or non-taxable supplies is not universally applied and regimes vary widely in their interpretation of what would constitute such supplies. What some jurisdictions may view as exempt supplies, other jurisdictions may view as outside-the-scope. A common thread in outside-the-scope supplies is where money, or some other form of consideration, is received, but cannot be readily linked to a supply of goods or services. Examples of supplies that may be viewed as outside-the-scope of the tax in some jurisdictions but that may be viewed as exempt in others include:

(i) supplies that would normally be taxable but that are made by a person not required to register for the tax including trading below compulsory registration limits;

(ii) investment activities such as share or bond dealing;

(iii) involuntary supplies such as compulsory purchase;

(iv) payments in relation to an agreement to cease to do something or for undertaking some social responsibility;

(v) supplies that are not part of normal business such as income from leisure activities or hobbies;

(vi) donations to charity freely given where the giver does not receive anything in return; and

(vii) statutory fees and services, charges, tolls, welfare services.

(c) In SADC there is no common approach to what would and what would not be viewed as outside-the-scope supplies, for instance, an insurance premium
pay-out following a loss may be viewed as taxable, exempt or outside-the-
scope in different tax regimes in the Region. Therefore, in harmonising zero-
rating and exemptions, cognisance will need to be given to outside-the-scope
supplies as well.

(d) The FIP is silent on the application of outside-the-scope supplies. It may be
necessary however, for clarity that as part of taking a common approach to
zero-rating and exemption, that Member States also develop a similar list of
outside-the-scope supplies.

14. **Notes on harmonisation of exemptions of supplies that are difficult to tax**

(a) As outlined above some supplies of goods and services and especially
services are not readily taxed through a VAT regime and these are
commonly referred to as “difficult to tax”. The reasons for a supply being
difficult to tax can be technical, for example, the supply does not have a clear
audit trail or it is not clear what value is added or when consumption has
taken place, such as in gambling or short-term insurance services; or the
difficulty can be practical, such as it might lead to tax avoidance or evasion;
or that the application of the tax to government related supplies where
government would be charging and paying tax to itself.

(b) It is recognised that due to variations such as administrative capacity, that
supplies that are difficult to tax in one Member State may be more easily
taxed in another. Also, that over time the constraints that led to an exemption
being applied may be diminished or removed, for instance, as technology
improves. In these circumstances, Member States will be expected in the
spirit of minimisation and harmonisation, to endeavour to move to tax such
supplies at the standard rate.

(c) Member States have agreed to harmonise exemptions including taking a
common approach to the taxation of difficult to tax supplies. These include,
but are not limited to: financial services; insurance services; gambling; gifts;
and supplies by Government. These areas are each covered in more detail
below.

15. **Notes on financial services**

(a) For the purposes of these Guidelines “financial services” includes the
following:

(i) granting, negotiating and dealing with loans, credit, credit guarantees,
and any security for money, including management of loans, credit, or
credit guarantees by the grantor;

(ii) transactions concerning deposit and current accounts, payments,
transfers, debts, cheques and negotiable instruments, other than debt
collection and factoring; and

(iii) transactions relating to shares, stocks bonds, and other securities,
other than custodial services; or management of investment funds.
(b) Member States recognise that:

(i) financial services are generally difficult to tax under a VAT due to complexity in determining the supply including value added;

(ii) the administrative costs of taxing financial services under VAT are high including how to apportion the amount of input VAT that can be credited;

(iii) there is inconsistency in the definitions and taxation of financial services in Member States;

(iv) there is inconsistency in the treatment of intermediary services; which are taxed by some Member States (e.g. where added value can be easily determined); and

(v) as a result of the above, best practice for the Region is for:

- core financial services to remain exempt because of the complexity and relative inefficiency in taxing them; and
- the taxation of intermediary services to be optional for those Member States that wish to tax them.

16. Notes on insurance services

(a) In considering the treatment of insurance services under a VAT, jurisdictions often apply the following:

(i) insurance, such as endowments or pension funds, are viewed as a form of investment, including for the purpose of encouraging the uptake of insurance and pensions; and hence are not taxed under a VAT; and

(ii) insurance against specified risks (usually under a short-term policy) are not viewed as a form of investment but rather as a service related to risk minimisation and hence are considered as a taxable supply which is subject to VAT.

(b) As insurance is a specialised industry/sector where it is challenging to apply VAT due to the complexity in determining the nature of the supply including value added, in taking a regional approach it is accepted that:

(i) it should be optional for Member States to apply VAT for short-term risk insurance; and

(ii) where short-term insurance is not taxed, it could also be exempted but with an alternative of applying an excise tax or a tax on premiums.

(c) It is considered best practice that the provision of brokerage services should be treated as a taxable supply whether or not the service relates to short or long- term insurance.
17. Notes on gambling services

(a) A common approach is desirable to the application of VAT to gambling, but this is a specialised and complicated industry/sector where there are complexities in determining the supply including value added and where it is impractical in many instances to document transactions. In taking a regional approach:

(i) it is accepted that it should be optional for Member States to apply VAT on gambling; and

(ii) where gambling is not taxed it should be exempted and that the alternative of applying an excise duty or specific tax, for instance, on gross profit should be considered.

(b) Also recognising the risk to the revenue of cross-border gambling such as on-line or internet gambling; Member States will seek to develop a common approach to the treatment of such gambling.

(c) This common approach will need to take account of the challenges of taxing such on-line services (especially if they are transacted across borders) as well as any other bespoke taxes specifically applied to gambling in Member States.

18. Notes on gifts

(a) A common approach is desirable for the VAT treatment of gifts. In many instances there is no clear supply of goods or services relating to a consideration in the form of a gift. With regard to the self-supply of goods or services, it is similarly challenging to differentiate business use from personal beneficial use.

(b) For supplies of goods purporting to be gifts, Member States may consider setting a maximum value above which (output) VAT has to be accounted for as a deemed supply of goods.

(c) For the self-supply of goods, a common definition is needed for what constitutes bona fide (genuine) business use.

(d) A similar approach is needed to the free (or reduced price) provision of services including to customers and to directors, employees, etc.; and particularly hospitality.

19. Notes on supplies made by Government

(a) In establishing a regional approach to the supplies made by government, the following are not considered as payments in respect of taxable supplies and hence should not be taxable under VAT:

(i) transfers (grants, etc.) by central government to departments of government or local authorities, etc.; and
(ii) rates, levies, user fees or user charges raised by tiers of government.

(b) Whilst government (including councils, etc.) is generally not making supplies of goods and services in the course or furtherance of a business, if those supplies are in direct competition with the private commercial sector, for equity and efficiency, governments should not be exempted from charging VAT on those supplies.

(c) Government should not be exempted from paying VAT on the goods or services it purchases, as to do so would open up opportunities for evasion and break the VAT audit trail. The best practice in this regard is that funding provided by Government for its expenditure should be on a VAT inclusive basis.

**COMMENTARY ON GUIDELINE 5 - RELIEFS**

1. This Guideline refers to Member States providing relief from VAT in specific circumstances and recognises that a standardised approach will benefit the Region.

2. The relief referred to in this Guideline should be differentiated from the relief from VAT provided by zero-rating and exemption outlined in Guideline 4 in that:

   (a) the relief provided in Guideline 4 relates to zero-rating of or exemption from the taxation of specific supplies. For instance, if the supply of a product is zero-rated, the zero-rate will apply to all of the supplies of that product in the supply chain;

   (b) the reliefs referred to in this Guideline are provided to the recipient of supplies that are chargeable with the tax. For example, an organisation that receives supplies that are normally taxable, but is allowed to either reclaim or not pay the tax on a specific basis.

3. Member States agree in Paragraph 2 of Guideline 5 that in principle it is best practice to provide such relief and to take a regional approach to the application of such reliefs.

4. Member States agree in Paragraph 2 (a) and (b) of the Guideline to limit the granting of VAT relief to:

   (a) persons and institutions identified under a Member State’s diplomatic immunities and privileges legislation; or

   (b) persons or institutions identified under international agreements, conventions or treaties.

5. At Paragraph 2 (c) Member States agree to make provision for VAT relief to public benefit or similar charitable organisations to the extent they conduct philanthropic or benevolent or charitable activities.
6. As such organisations and their activities and their treatment varies widely in the Region, the following supplementary information is provided:

   (a) Such reliefs can apply to both purchases of goods or services (including imports) and to the donations that it receives. If such an organisation supplies such goods (or services) without charge, then they should not usually be treated as a taxable supply (i.e. they should be exempted). Care is needed with granting and controlling such reliefs in order to avoid tax leakage (particularly where vehicles are concerned).

   (b) In providing such reliefs Member States must be cognisant of the SADC Guidelines on Tax Incentives that seek to avoid harmful tax competition between Member States. This is mentioned since, if VAT relief is provided to a particular business or sector outside of the normal VAT rules, it could encourage businesses to re-locate from Member States where there is no VAT relief. Such a situation would constitute harmful tax competition contrary to Article 4 of Annex 3 of the FIP (Tax Incentives).

**COMMENTARY ON GUIDELINE 6 - THE SUPPLY OF GOODS AND SERVICES**

1. Guideline 6 indicates that Member States agree that it is in the interests of the Region to achieve a common approach to the supply of goods and services for VAT based on international best practice and in particular with respect to:

   (a) the time of supply (tax point), i.e. the time when tax becomes payable; and

   (b) the place of taxation.

2. **Notes on the supply of goods**

   (a) The time of supply (or the tax point) of goods is the time at which a transaction takes place for VAT purposes and should be the earliest of:

   (b) the time when goods are made available to the person to whom they are supplied;

      (i) the time when a payment is received; or

      (ii) the time when a tax invoice is issued.

   (c) It is best practice for the place of taxation for goods to be based on the destination principle, established by reference to the place to which goods are supplied or at importation. This is particularly important to transactions across the borders of Member States in order to avoid double taxation or unintended non-taxation.

   (d) Member States recognise the benefits of taking a common approach to establishing which country should tax transactions of goods (tangible or corporeal) made across international borders. For supplies involving movable goods, Member States agree that it is best practice for the place of taxation for such goods to be based on the destination principle, established by
reference to the place to which goods are supplied or imported. To that end, Member States agree to include provisions in their domestic law to ensure that the place of taxation for:

(i) goods are where the goods are located;
(ii) imported goods is the place to which they are imported;
(iii) supplies of goods that are exported is the place to which they are exported and to the extent that is possible, such supplies should be relieved of input tax;
(iv) foreign supplies of goods are the place to which the goods are delivered and to the extent that is possible, such supplies should be relieved of input tax; and
(v) supplies involving the use of goods is the place where the goods are used.

(e) to prevent potential anomalies, Member States agree:

(i) that supplies made through lease, licence or similar arrangements, will normally be regarded as the supply of goods;
(ii) that the place of taxation for real/immovable property should be based on the destination principle, established by reference to the place where the property is located;
(iii) If a progressive or periodic supply of goods take place, it should be treated as a series of separate supplies, with the place where each such supply takes place determined separately; and
(iv) a supply of services incidental to the supply of goods is part of the supply of goods.

(f) When a business is transferred as a going concern and both the supplier and purchaser are registered for VAT, it is best practice that VAT will not be charged on the transfer. This is important as the seller will have no assets left after the sale and hence recovery of the VAT charged may prove problematic.

3. Notes on the supply of Services

(a) Member States agree that it is best practice to achieve a common understanding and approach to the supply of services for VAT, in particular with respect to:

(i) the time of supply, i.e. the time when tax becomes payable; and
(ii) the place of taxation.

(b) The time of supply (or tax point) for services should be the earliest of:

(i) the time when a payment is received;
(ii) the time when a tax invoice is issued; or
(iii) the time when they are actually rendered or performed.

(c) Detailed common arrangements will be needed for the treatment of the time of supply, for deposits; services used for personal or other non-business use; continuous supplies of services; services supplied in units at frequent intervals, such as metered supplies of gas or electricity, heat, refrigeration or ventilation; and staged payments and part payment.

(d) It is agreed best practice for Member States to have a common approach to include provisions in their domestic law to ensure that the place of taxation is based on the destination principle, established by a common approach to the place where the services will be used and/or enjoyed or consumed. This common approach is to avoid double taxation or unintended non-taxation.

(e) to achieve this, Member States agree that the place of use or consumption shall be:

(i) for services directly related to immovable property, the place where the immovable property is located;

(ii) for services directly related to or physically performed on movable goods:
   • the place where the goods are located when the services are performed; or
   • if the goods are temporarily located at that place and will be exported after the services are performed, the place to which the goods are then delivered or where the goods belong;

(iii) for radio or television broadcasting services, the place of supply is where the services are received or delivered;

(iv) for telecommunication services, the place where the services are initiated or aligned with accepted international telecommunication regulations (as at 2016 this would be the Dubai International Telecommunications Regulation).

(v) for electronic services, the place where the customer is a resident;

(vi) for supplies by a non-resident person of water, gas, oil, electricity, or thermal energy through a pipeline, cable or other continuous distribution network to a person located in another Member State, the supply is made in the receiving Member State. The tax on these goods or services can be levied at the stage of importation into Member State;

(vii) for other services that can be expected to be consumed at the time and place where the services are performed:
   • the place where the supplier is located at that time; or
   • if that place cannot be known, the place where the supplier is resident;

(viii) for all other services, the place is where the supplier is resident.
(f) For telecommunications services the person who initiates a supply of telecommunications services is:

(i) the person identifiable by the supplier of the services as being:

- the person who controls the commencement of the supply;
- the person who pays for the services; or
- the person who contracts for the supply; and
- if more than one person satisfies Paragraph (i) above, the person who appears highest on that list; and

(ii) if the supplier cannot identify any of the persons listed because it is impractical to determine the physical location of a person due to the type of service, or to the class of persons to which the person belongs, then in respect of all supplies of telecommunications services made for that type of service or that class of customer, the supplier shall treat the supply as being made where the physical residential or business address for the person receiving invoices from the supplier is located.

(g) If a progressive or periodic supply of services takes place, it should be treated as a series of separate supplies, with the place where each such supply takes place determined separately.

4. Member States agree that in circumstances where services are supplied by a non-resident person to a person who does not use or consume those services wholly or partly for a taxable activity, it is best practice to use the reverse charge mechanism to collect VAT from the customer (consumer). This approach brings the benefits of streamlining administration and minimising the costs of compliance for businesses while at the same time protecting revenue.

COMMENTARY ON GUIDELINE 7 - ENTITLEMENT TO INPUT TAX

1. At Paragraph 2 of the Guideline Member States agree best practice with regard to the entitlement of input tax discussed as follows.

2. Member States recognise that the entitlement to input tax is important in ensuring that the tax is neutral on business in line with the aims of a VAT outlined in Guideline 1. to this end Paragraph 2 (a) makes it clear that Member States agree that, in order not to make VAT a tax on business, a credit of input VAT should in principle be given to registered persons provided that the credit relates to making taxable supplies.

3. A credit of input tax should not be allowed for inputs that are for non-business use or are not related to making taxable supplies.

4. In agreeing to the principle of entitlement to input tax in relation to making taxable supplies and recognising the additional revenue risks inherent in allowing input credits or making refunds, Member States agree that input tax should also be
subject to reasonable requirements with regard to administration and compliance. This may include:

(a) making input tax claims subject to time limits and where evasion or avoidance is suspected, requiring proof of tax payment in addition to the possession of valid tax invoice;

(b) limiting or denying the credit of input tax where the usage of acquisitions with regard to making taxable supplies is difficult to determine, such as:
   (i) entertainment and hospitality expenses;
   (ii) input tax incurred on motor cars;
   (iii) input tax on telephone expenses (e.g. 50% of cell phone costs might be disallowed as deemed non-business use); and
   (iv) recreational club subscriptions.

5. Member States agree that it is best practice for a credit of input tax to include tax incurred before VAT registration, including on:

(a) acquisitions made prior to making taxable supplies as long as there remains a genuine intention to make taxable supplies; and

(b) assets held at the time of registration, subject to reasonable requirements, for instance, with regard to valuation.

6. This Guideline makes it clear that an entitlement to input tax only relates to the making of taxable supplies. As outlined in the Commentary to Guideline 4, exempt supplies are not taxable supplies. It is common practice that:

(a) where a business makes only exempt supplies, the business cannot register for VAT and hence cannot obtain any input tax credits;

(b) where a business makes both exempt and taxable supplies, then:
   (i) VAT incurred on expenses acquired wholly for purposes of making taxable supplies, will be claimable in full;
   (ii) VAT incurred on expenses acquired wholly for purposes of making exempt supplies, will not be claimable at all; and
   (iii) VAT incurred on expenses acquired partly for purposes of making taxable supplies and partly for purposes of making exempt supplies, may only be claimable to the extent of the taxable supplies.

7. Tax administrators generally introduce rules, guidelines or methods to enable taxpayers to calculate the extent of the input tax that may be credited. These are typically referred to as “partial exemption” rules or requirements.

8. Commonly, “de minimis” rules are also introduced so that taxable persons making minimal exempt supplies do not have to attribute their input tax, i.e. full input tax credit will be allowed.
9. At Paragraph 3 of the Guideline Member States agree that it is in the interest of the Region that a common approach is taken with regard to the treatment of partially exempt businesses and partial exemption rules for the attribution of deductible input tax.

COMMENTARY ON GUIDELINE 8 - SPECIAL SCHEMES

1. The Guideline states that Member States agree that it is desirable to co-ordinate the administrative approach to VAT special schemes.

2. Special schemes are important tools in facilitating both tax administration and compliance and as such are applicable where the normal application of the law could be burdensome for both the administration and businesses.

3. It is recognised that whilst a common regional approach is beneficial, special schemes need to be designed to be country-specific to match domestic circumstances.

4. In considering special schemes Member States should consider the following:
   
   (a) special schemes may be introduced in circumstances where the normal application of the law could be burdensome for both the administration and the taxpayer and as such, are important tools in facilitating compliance;

   (b) there are persons that are registered for VAT in more than one Member State;

   (c) special schemes, whatever their purpose, may break or vary the normal principles of VAT and thereby pose risks;

   (d) special schemes should be subject to reasonable administrative requirements including:
      
      (i) that the conditions of participation are clearly defined and jurisdiction specific;

      (ii) providing for mandatory notification of changes in circumstances;

      (iii) specifying the lifespan and/or the number of applicants to the scheme;

      (iv) schemes should not be made to apply retrospectively;

      (v) a VAT registered business should only be allowed to join a scheme at the start of a VAT period;

      (vi) conditions to either join or to leave the scheme should be clearly set out in order to ensure certainty;

      (vii) as far as possible consideration should be given to ensuring that the conditions to join any specific scheme are standardised; and

      (viii) legislation should provide for a mechanism whereby any decision taken by the administration regarding refusal to join the scheme or termination of the authorisation to use the scheme, is appealable.
5. Harmonisation of the special schemes available across Member States is desirable. Examples of the schemes that might be agreed to be harmonised include:

(a) Schemes to help retailers calculate their output tax.

(b) Schemes for used goods.

(c) Cash accounting schemes.

(d) Special schemes for particular sectors (e.g. retailers, tour operators, small farmers, etc.);

(e) Relief for VAT on bad debts whereby a person is allowed to take as a credit the portion of the tax on the supply which is attributable to a debt that becomes irrecoverable including the following considerations:

(i) any credit should be aimed solely at compensating persons for tax paid on amounts not recovered from their customers, for instance, on instalment credit agreements, an input tax deduction is given on the cash value of the goods repossessed and not on the full debt written off;

(ii) where a debt previously written-off is later recovered, the tax due on the amount recovered shall be paid to the revenue administration in the tax period in which the recovery has been made; and

(iii) the scheme should be subject to revenue safeguards including:

   • where a taxable person has issued a tax invoice and has paid the appropriate tax for a supply; and

   • the purchaser becomes insolvent; or

   • the purchaser fails to pay all or part of the taxable amount of the supply in addition to the tax imposed and the debt is proved to be a bad debt to the satisfaction of the revenue administration.

(f) Schemes for small businesses including simplified tax regimes taking account of the following considerations:

(i) The taxable turnover registration threshold of VAT can create a disincentive for small businesses to grow and discourage entrepreneurship. It can also be counter to the desire to establish an equitable regime where as many businesses as possible operate in the formal economy. In addition, registration for VAT can result in additional compliance costs for businesses, for instance, the record keeping and return requirements;

(ii) In order to address the challenges resulting from the turnover threshold Member States may consider introducing a simplified tax regime for small businesses, e.g. in the form of a presumptive tax or a turnover tax that may include liabilities for other taxes, including
income taxes, as well as VAT. Like turnover taxes, a presumptive tax is usually calculated by reference to a percentage of the turnover of the business (but a proxy for turnover may be used instead);

(iii) The use of such a presumptive regime for businesses with a turnover in a band below the VAT registration threshold, makes it easier for smaller businesses to comply but, in addition, reduces the burden on the revenue administration (as they will not have to handle the normal business accounts, separate VAT and income tax returns, etc.); and

(iv) Introducing a simplified regime as in (ii) above is best practice that such provisions should not be used as an alternative to the VAT regime but rather as a progressive step (carrying lower compliance costs) towards it.

(g) Deferment schemes that delay the payment of VAT on imports by taxable persons in order to reduce cash flow burdens on businesses. Best practice with regard to deferment schemes includes:

(i) deferment should be applied as widely as possible and especially for large and compliant businesses, for both stock for resale and capital items, subject to reasonable administrative controls to protect the revenue;

(ii) the deferment should be for a set period and should ideally coincide with the VAT return due date so that the deferred amounts can be declared on the VAT return, as both tax due and a tax credit; and

(iii) safeguards need to be in place to avoid abuse such as persons not registered for VAT making ‘tax free’ imports using the VAT registration number of a third party.
CHAPTER 2: ADMINISTRATION OF VAT

COMMENTARY ON GUIDELINE 9 - HARMONISED APPROACH TO VAT ADMINISTRATION

1. Paragraph 1 of the Guidelines refers to the FIP commitment for Member States to co-operate in the harmonisation of the administration of indirect taxes. It is against this backdrop that Guidelines 9 to 14 have been drawn up. These objectives taken together aim to maximise domestic revenue yield.

2. Under Paragraph 3 of the Guideline Member States agree to take a co-ordinated approach to the administration of VAT.

3. Paragraph 3 (a) specifies a common approach to the management of VAT administration. This should include the following considerations:

   (a) clear management strategies including:
      (i) clear managerial responsibilities and accountabilities;
      (ii) effective enforcement interventions; and
      (iii) strong internal controls and systems.

   (b) to achieve the above there are advantages in having a national VAT senior manager, with appropriate support, to:
       (i) set and monitor compliance standards;
       (ii) design and implement enforcement actions;
       (iii) ensure appropriate resources are devoted to VAT compliance; and
       (iv) co-ordinate operations with other revenue administration enforcement colleagues.

   (c) Management control programmes should be implemented as practical methodologies to reinforce the responsibilities of managers as part of a comprehensive approach to ensure the integrity of the revenue administration, including eliminating corruption.

4. At Paragraph 3 (b) the Guideline 'indexes' the following five Guidelines that each cover specific aspects of VAT administration, namely:

   (a) registration and de-registration (Guideline 10);
   (b) record keeping, return requirements and payments (Guideline 11);
   (c) refunds (Guideline 12);
   (d) powers of revenue administration officials (Guideline 13); and
   (e) compliance (Guideline 14).
COMMENTARY ON GUIDELINE 10 - REGISTRATION AND DE-REGISTRATION

1. This Guideline recognises that in order to have broadly based and harmonised VAT regimes that are consistent with the principles set out in Guideline 1 that Member States take a common approach to registration and de-registration.

2. At Paragraph 2 Member States are reminded of the importance of VAT registration and de-registration with regard to its potential impact on businesses.

3. At Paragraph 3 (a) and (b) Member States agree to take a common approach to this area on the basis of best practice including that:

   (a) a threshold for compulsory registration is put in place whereby a person conducting a taxable activity (above set turnover amounts) will be required to register for VAT, whilst taking account of:

      (i) the capacity of the revenue administration;

      (ii) the compliance costs to persons compulsorily registered; and

      (iii) revenue efficiency;

      (iv) specific registration requirements are put in place for selected activities such as professionals in addition to the compulsory registration threshold;

      (v) voluntary registrations should be permitted, subject to defined conditions; and

      (vi) non-resident persons making supplies in a Member State may be required to register for VAT.

4. In addition to the above, at Sub Paragraph 3 (b) the Guideline commits Member States to apply common principles to the compulsory VAT registration threshold and to de-registration. These are important factors significantly impacting all VAT regimes and are discussed in more detail below.

5. Notes on the VAT registration threshold

   (a) Member States agree that a common approach should be taken to setting the VAT registration threshold for compulsory registrations. This threshold is normally the turnover of taxable supplies in any 12-month period above which persons will be registered. In setting the compulsory VAT registration threshold, Member States agree that the threshold should seek to include as many suppliers as can be effectively administered by each Member State.

   (b) Notwithstanding the compulsory registration threshold, Member States agree that it is also best practice to make provision for the voluntary registration of persons engaged in taxable activities in Member States. This should be subject to reasonable requirements with regard to administration including compliance and business requirements that may include a minimum registration threshold.
(c) Best practice should also recognise that certain business activities will only result in taxable supplies being made after a period of time and that provision should be made to register the business from commencement even though taxable supplies will not be made until sometime after the date of commencement of the business. Such registration should be conditional upon there remaining a genuine intention to make taxable supplies, but subject to reasonable requirements with regard to administration including compliance and establishing a continued intention to make taxable supplies.

(d) Regarding all registrations for VAT, the application should be supported by proof of the taxable person (business registration and identification documentation for individuals, sole proprietors, partners, directors, etc.) and proof of the (physical) location of the business. These are necessary as registration confers the right to issue tax invoices (in respect of which others can reclaim the VAT). In the case of businesses that have not yet commenced, reasonable proof should be requested to demonstrate a serious intention to make taxable supplies (premises lease, business plan, etc.). For businesses that have already commenced the focus should be on ascertaining when the VAT registration threshold was exceeded.

(e) Separate registration should also be allowed, on request, for businesses with self-accounting branches or divisions. Similarly, requests for group registrations from businesses under common ownership should also be permitted subject to reasonable administrative requirements.

6. Notes on de-registration

(a) Member States should adopt a common approach to de-registration to ensure that the register is kept up to date and accurate so that failed businesses do not remain on the register.

(b) It is important to de-register/or suspend the registration of taxable persons that:

(i) cease to carry on taxable activities;

(ii) cannot be located;

(iii) are continually rendering ‘nil’ returns (indicating that no taxable supplies are being made);

(iv) are making taxable supplies but at a level below the registration threshold and hence no longer liable to be registered and request de-registration; or

(v) are in breach of the conditions of voluntarily registration (for example have failed to submit returns, or where the taxable turnover has gone below the minimum threshold).

(c) on de-registration it is best practice to require a final return on which VAT due on closing stocks and assets is declared and paid.
(d) Member States may also wish to make provision to apply retrospective registration, should it be established later that de-registration was not applicable.

**COMMENTARY ON GUIDELINE 11 - RECORD KEEPING, RETURN REQUIREMENTS AND PAYMENTS**

1. The Guideline sets out the best practice for Member States in respect of VAT returns, periods, records and payments including uniformity of key documents. This includes:

   (a) requiring uniform VAT return periods;

   (b) having a model VAT return;

   (c) standardised periods of grace for the submission of returns and payments;

   (d) common arrangements for the payment (including deferment of payment) of VAT at importation;

   (e) model for VAT invoices;

   (f) common rules for the records required to be maintained by businesses and the periods of retention; and

   (g) a common requirement for taxpayers to produce records to revenue officials, as and when required.

2. **Notes on VAT returns**

   (a) A VAT return is required for each VAT return period (tax period). A common approach to the length of tax periods is desirable to create a balance between the cash flow needs of the fiscus and the business. For the revenue administration, the duration of tax periods is primarily about the cost of processing larger numbers of returns (and following up errors or non-submission) than about the money flows to the fiscus. For business, the key considerations concern cash flow and particularly if the business is required to submit returns before customers have paid for supplies made. Thus, for a business that invoices at a month end and gives 30 days’ credit, the average delay in receiving payment is about 45 days. If a VAT return is required monthly with payment by the 20th of the following month that gives an average credit period of 35 days; whereas a bi-monthly return would give an average credit period of 50 days.

   (b) It is important to adopt a standard approach that balances the respective interests and which avoids requiring businesses to pay tax that they have not yet received (as to do so will only increase debt management work levels).

   (c) In order to manage these competing demands best practice is to differentiate by size of business. Size can be determined by reference to taxable turnover.
or by reference to a percentage of the VAT register such as the top 5% are ‘large,’ etc. such as the following:

(i) large businesses – monthly tax periods;
(ii) medium sized businesses – bi-monthly or quarterly tax periods; and
(iii) small businesses (including voluntary registrations) – either quarterly tax periods or longer (6 -12 monthly) tax periods in some cases.

(d) Each return should be required to be submitted within a minimum of 20 days (and a maximum of a month) at the end of the tax period.

(e) Differential tax periods can be considered for trade sectors, as some will have shorter cash flow periods (e.g. retail) and some will have longer (e.g. construction). In addition, for non-compliant taxpayers, tax periods can be shortened in order to reduce revenue risks.

(f) As far as is possible, all VAT returns and/or payments should be required to be submitted electronically. It is however, recognised that retaining the manual method of submission may always be necessary for a minority of smaller businesses.

(g) to reduce the costs to business, the data required on the VAT return should be reduced to the minimum needed to enable the revenue administration to check the ‘credibility’ of the declared information. It should include:

(i) the sales made (‘outputs’) and the VAT on them (with zero-rated, exempt and standard rated supplies being separately identified);
(ii) the purchases made (‘inputs’) and the VAT on them (with zero-rated, exempt and standard rated being separately identified).
(iii) details of imports (and VAT deferred) and exports; and
(iv) the tax due and payable or the tax repayable.

(h) Standardised return data will assist businesses that operate in more than one Member State. It will also help in co-ordinating administrative requirements and facilitating information exchange and mutual assistance between Member States.

3. **Notes on VAT (tax) invoices**

(a) Paragraph 2 (e) of Guideline 11 promotes the best practice of having a model for VAT/tax invoices. This will assist businesses by placing common requirements across the Region.

(b) A model VAT invoice should have the following features:

(i) the words “tax invoice” (or “VAT invoice”);
(ii) the serial number of the invoice;
(iii) a VAT registration number and/or the taxpayer identification number of the supplier pre-printed;
(iv) date of the invoice;
(v) name and address of the supplier;
(vi) name and address of the purchaser;
(vii) sufficient description and quantity of goods/services supplied; and
(viii) the value of the goods/services, including tax, and either:
(ix) the amount of tax charged; or
(x) the rate of tax, together with a statement that the tax is included in the charge for the supply.
(xi) ‘Electronic’ tax invoices (i.e. those sent or received electronically via email) may need to meet special requirements and be standardised.
(xii) A less detailed invoice (e.g. a till slip) should be acceptable for transactions less than an amount determined by each Member State. For such invoices, the name and address of the purchaser and the detailed description of goods may be omitted.

4. Notes on records

(a) As a VAT is a self-assessed tax applied to a wide range of suppliers across the economy, it is best practice to utilise as far as possible existing business records that may be supplemented or adapted to meet the specific requirements of the tax. Imposing standardised accounting records such as officially produced VAT invoices, or accounts books is unnecessary and potentially costly to both revenue administrations and businesses.

(b) Under a VAT, it is best practice that suppliers are required to maintain accounting records that:

(i) record the nature, quantity and value of both supplies made and supplies received, e.g. purchase and sales day books;
(ii) distinguish between taxable and exempt supplies;
(iii) record payments for both supplies made and supplies received, e.g. a cash book;
(iv) include a summary of the output tax, input tax and the net VAT payable or reclaimed, i.e. a VAT Account;
(v) contain adequate proof that goods have been exported, e.g. copies of export documents;
(vi) contain adequate proof that goods have been imported, in addition to a commercial invoice or tax invoice issued by the supplier; and
(vii) contain adequate evidence for any zero-rating or exemption given.

(c) All records and accounts, including tax invoices, debit and credit notes (whether held in hard copy or electronic form) must be kept for a minimum period of not less than 5 years and made available for inspection to the revenue administration when required.
COMMENTARY ON GUIDELINE 12 - REFUNDS

1. This Guideline covers refunds of VAT due to taxable persons when the input tax credited on VAT returns exceeds the output tax due. Member States recognise that delaying a refund has a cash flow impact on businesses and in that regard would be contrary to the aim as outlined in Guideline 1, that VAT is neutral on businesses. Member States therefore agree at Paragraph 3, subject to reasonable requirements with regard to administration and revenue security that best practice is to:

   (a) make refunds/credits on valid claims as soon as is practicable;
   (b) expedite refunds to low risk registered persons; and
   (c) consider entering into cross border arrangements with other Member States to avoid the need for importers to have to reclaim VAT from the export Member State and to pay the same amount to the Member State of import.

2. Notes on refunds

   (a) Delaying the refund or credit of input tax incurred could have a potentially significant impact on the cash flow of a business and is thereby, de facto, a hidden or covert cost on the business. Whilst it is desirable to make refunds as soon as is practicable, and ideally within 30 days of receipt of a claim (to allow for initial checks to be carried out) the revenue administration also has a responsibility to ensure that the claim is valid before it is paid. Best practice is to require the application of risk-based checks to return information that should include the following questions:

      (i) is the claim from a new business about which nothing is known;
      (ii) is the claim from a business that is expected to be in a refund position (and if so is the claim of a size that is expected in relation to previous verified claims); or
      (iii) is the claim from a business from whom we expect to receive a payment?

   (b) Many businesses will legitimately be in a regular refund position (e.g. exporters or producers of zero-rated goods) and for these it is important to have processes in place to expedite the refund.

   (c) VAT refunds are, internationally, a target for organised crime and fraud and care should be taken to have sufficient checks in place to detect false claims. This does not mean 100% checking of claims but rather once the credibility of the claim has been questioned action must be taken quickly to verify it. There are a number of ways that any doubts can be addressed, including:

      (i) conducting a desk scrutiny of the claim in the context of the taxpayer’s recent returns and revenue performance;
      (ii) contacting the taxpayer to establish the reason for the claim (e.g. a copy of any large purchase invoices);
(iii) conducting an inspection visit to verify the specific claim; and
(iv) carrying out a full VAT audit of the business to verify the accuracy of all returns, etc.

3. **Notes on cross-border arrangements**

(a) The cross border arrangements envisaged between Member States seek to minimise the revenue risks associated with the zero-rating of exports (leading to refunds for exporters) and possible under-declaration of imports. Such an arrangement would entail that the VAT refund due to an exporter on one side of a border being offset against or used to pay the VAT due on importation on the other side of the border\(^1\). This helps to prevent cheating and smuggling but also facilitates business and trade by improving their cash flows and reducing administrative burdens, especially for transporters crossing borders.

(b) Such arrangements should ideally be reciprocal and work best where adjoining Member States have the same rate of VAT and a similar coverage of zero-ratings and exemptions.

**COMMENTARY ON GUIDELINE 13 - POWERS OF REVENUE ADMINISTRATIONS**

1. This Guideline recognises that gaps in compliance pose a risk to the revenue efficiency (and equity) of the tax contrary to the aims in Guideline 1.

2. At Paragraph 2 (a) Member States agree, subject to reasonable oversight and control (to ensure that powers are exercised properly), it is best practice for revenue administrations, to have legal powers that are sufficient to enable the efficient and effective administration of VAT.

3. The powers listed in the Guideline include both powers for the routine administration of VAT such as registration, audit etc. as well as powers to deal with non-compliance with legal requirements. These are considered as follows.

4. **Notes on powers of VAT administration**

(a) A broad range of powers is required to enable revenue administrations administer the tax including oversight of businesses charged with collecting the tax. These should include powers to:

   (i) Determine registration and de-registration for VAT including to:

\[^1\] Such an arrangement exists between South Africa and Lesotho
• register a person either on application or compulsorily;
• de-register a person either on application or compulsorily;
• administratively suspend registration or de-registration; and
• enter any business premises to ascertain if a person should be registered at any time, announced or unannounced.

(ii) Require the production and inspection of all business records (announced or unannounced) including financial accounts, bank records, production, purchasing, sales orders, sales records, audit reports and letters, etc.

(iii) Require the production of and inspect the business records (announced or unannounced) of third parties including suppliers, customers and contractors.

(iv) Inspect (announced or unannounced):
• all business premises; and
• any stocks and assets and to take stock as required.

5. **Notes on powers and sanctions to address non-compliance**

(a) Non-compliance includes failing to pay (or claim) the correct tax at the correct time and also includes failing to adhere to administrative requirements such as issuing correct tax invoices (that may not result in an underpayment). Non-compliant behaviour can include errors, recklessness, negligence and criminal behaviour, for example, false invoices or bogus registrations set up to obtain refunds that are in effect theft from the state.

(b) Sanctions for non-compliance need to be effective as a deterrent and punishment and need to be designed to reflect the seriousness of the non-compliance (including behaviour). There also needs to be flexibility in imposing or reviewing sanctions such as mitigation for voluntary disclosure, reasonable excuse, or *force majeure*. Sanctions also need to be available for addressing aggravated circumstances such as repeat offending, corrupt relationships with officials or the use of violence, etc.

(c) The exact nature of the powers for dealing with the most serious non-compliance, including search, seizure, forced entry, securing evidence and arrest, must be in accordance with each Member State’s legislation but sufficient powers are needed to ensure that where criminal behaviour occurs it can be addressed.

(d) The range of powers for dealing with non-compliance may include the following:

(i) raise legally enforceable assessments for tax due including after an inspection or audit has found irregularities or when a return has not been submitted;

(ii) issue administrative penalties or prosecute for failure to pay declared tax due;
(iii) counter tax avoidance, including tax avoidance schemes, contrived VAT refunds or manipulation of the provisions that prevent the reclaiming of input tax in respect of exempt supplies;

(iv) demand security (from seriously non-compliant business), before permitting the business to trade or close down such businesses, including powers to lock and seal premises, suspend VAT registration and to disallow the making of supplies;

(v) quantify, curtail and recover tax debt and interest (including assessments of tax);

(vi) protect revenue through ‘freezing’ bank accounts and placing a lien on assets or funds due from third parties;

(vii) impose administrative penalties for non-compliance or repeated (aggravated) non-compliance;

(viii) investigate criminal behaviour including enter/inspect/search premises, arrest, seize/take records, goods, equipment, etc. as evidence;

(ix) prosecute criminal behaviour (either criminally or civilly), e.g. directly by the revenue administration or through the Attorney General or National Prosecuting Authority or Police; and

(x) compound criminal proceedings by issuance of penalties in lieu of criminal prosecution;

6. Paragraph 2 (b) and (c) of the Guideline reminds revenue administrations that, as VAT relies on voluntary compliance to be effective, it is necessary to demonstrate good governance. This includes ensuring that:

(a) administration officials comply with legislation and safeguards and sanctions in place against improper actions by officials; the revenue administration having a code of ethics that officials have to adhere to;

(b) there is zero-tolerance for corruption including prosecutions of officials if corruption is proven;

(c) provision is made for requests for reconsideration, appeals and complaints; and

(d) all legal powers, including discretions, penalties and sanctions; and the procedures governing requests for reconsideration and appeals, are clear, transparent and published.

7. Notes on requests for reconsideration, appeals and complaints

(a) **Request for reconsideration**: is the first point of action for a taxpayer who wishes for a decision of the revenue administration to be reviewed. This could be on the basis that the decision is thought to be incorrect, unlawful, unreasonable or unfair, etc. This is an important first step as it provides both sides an opportunity to reconsider a situation before further action is taken.
and effective reconsideration may avoid lengthy and costly appeals. Requests for reconsideration may initially be informal and normally requests for reconsideration should be addressed to the person making the decision or their direct superiors. A clear and reasonable process is needed to ensure that due consideration of the request for reconsideration is given by the revenue administration and that decisions are notified in a clear and timely manner.

(b) **Appeals:** should be allowed with regard to the application of any legal power or the imposition of any sanction or penalty or any decision by the revenue administration. Appeals need to be supported by a more formal procedure than request for reconsideration. Appeals normally have time limits enshrined in legislation and as such procedures for receiving and considering appeals need to be carefully constructed and managed. Appeals may also have multiple stages; a first appeal may be to the administrator who made the decision and if the appellant is not satisfied, subsequent appeals on the same issue could be made to an internal review panel or tribunals, tax courts and even civil courts where provided for. Appeal decisions may award costs against the revenue administration and provide precedents that could impact important aspects of revenue administration, therefore, appeals handling needs careful attention. Appeals in respect of VAT are often considered by independent bodies such as VAT or tax tribunals, boards of adjudication, tax courts, etc. Typical characteristics of such bodies include:

(i) they are commonly made up of a panel of credible independent persons including both judicial and tax/accounting expertise that have powers to uphold or mitigate the appeal;

(ii) that appellants are able to represent themselves unconstrained by the normal criminal or civil standards of rules of evidence;

(iii) a presumption that the revenue administration is correct (a reversal of the normal presumption of innocence);

(iv) a lesser burden of proof is often required as compared to the normal “beyond reasonable doubt” (criminal standard) or “balance of probabilities” (civil standard), such as whether or not the decision or imposition was “fair and reasonable” (reasonableness);

(v) powers to waive pre-payment of amounts subject to appeal and to award costs and compensate appellants; and

(vi) the authority to differentiate between *bona fide* appeals, from appeals that are malicious or vexatious, e.g. seeking to delay payment.

(c) **Complaints:** are notably different from appeals and reconsiderations as complaints normally relate to behaviour and actions of revenue administration officials rather than decisions made or imposed. Complaints are however no less important in terms of effective revenue administration and ensuring taxpayer rights are respected. Complaints are also important in providing feedback to the revenue administration with regard to the actions of officials, including countering corruption and other improper actions and in
this regard complaints should be viewed positively. Revenue administrations should ensure that procedures are in place for taxpayers and other stakeholders to make complaints without fear of retribution. Key principles that should be adopted include that:

(i) complaints are made to persons other than the person who is the subject of the complaint;

(ii) due and unbiased consideration is given by the revenue administration to all complaints; and

(iii) decisions in respect of complaints are notified in a clear and timely manner.

(d) **Transparency:** It is best practice that all appeals, requests for reconsideration and complaint procedures should be transparent and should be published. This means providing publicly available information including on websites, etc.

**COMMENTARY ON GUIDELINE 14 - COMPLIANCE**

1. This Guideline highlights the agreement of Member States to promote voluntary compliance and to take a common approach in dealing with non-compliance. VAT is a tax that is self-assessed by taxable persons and voluntary compliance brings benefits, including revenue efficiency, reductions in costs of compliance to taxable persons; and reductions in the costs of administration.

2. To achieve this, Member States agree that it is best practice that revenue administrations have in place a VAT compliance strategy that includes a commitment to the promotion of voluntary compliance and sets out how the revenue administration will enforce compliance (and address non-compliance).

3. The Guideline further confirms that best practice is to provide quality services to taxpayers including:

   (a) evaluating, taking into account and as far as possible minimising the cost of compliance to taxable persons when designing or revising VAT legislation, regulations, rules and other requirements;

   (b) providing electronic channels of communication covering:

      (i) registration;

      (ii) updating of taxpayer information (e.g. addresses or telephone numbers);

      (iii) return submission; and

      (iv) payments.

   (c) publishing a charter setting out the rights and obligations of taxable persons including access to reconsideration, complaints and appeal procedures;
(d) publishing VAT service standards such as the time taken to respond to enquiries, including targets, current service levels and progress made towards meeting the standards. This includes information on:
   (i) providing information such as leaflets, including (but not limited to) VAT legal requirements;
   (ii) the VAT treatment of goods or services;
   (iii) visits and audits; and
   (iv) complaints and appeals procedures.

(e) providing accessible facilities to taxpayers and consumers, such as:
   (i) when taxpayers request help either by personal visits, telephone or by email;
   (ii) developing and maintaining an up-to-date website for tax administration and policy containing information of public interest, including its VAT legislation, VAT guidance; and details on how to appeal or make complaints; and
   (iii) providing public rulings, such as on the VAT treatment of goods or services.

4. Paragraph 2 (c) recognises that in promoting compliance, revenue administrations need to maintain the professional standards of their officials by providing and supporting capacity building.

5. Paragraph 2 (d) describes best practice with regard to the treatment of non-compliance. Non-compliance in VAT can range from:
   (a) late or non-submission of returns or late or non-payments;
   (b) errors and omissions;
   (c) avoidance and evasion; or
   (d) fraud and criminal behaviour (such as corruption or bogus refunds).

6. As the possible areas of non-compliance are vast, the Guideline seeks to establish principles as to how revenue administrations should approach non-compliance. The overarching theme is that non-compliance needs to be addressed and where appropriate discouraged by sanctions and penalties, but where sanctions and penalties are imposed these should be proportionate and reflect behaviour.

7. **Notes on addressing debt**
   (a) At Paragraph (d) (i) the Guideline recommends that procedures be adopted to minimise the occurrence and level of VAT debt. The backdrop to the debt recovery processes is that VAT is paid by the customer to a taxable person for onward transmission to the revenue administration. If that tax is not
passed on it is a serious offence, especially if the customer is also VAT registered (and will claim input tax credit for the tax paid). In devising debt recovery processes administrations should seek to differentiate between:

(i) debts that have arisen because the customer has not paid the supplier; and debts where the supplier has been paid (but has not remitted the VAT to the revenue authority); and

(ii) the ability of the taxpayer to pay the amount due.

(b) to achieve this, it is best practice to:

(i) minimise the occurrence and level of debt that can be achieved by:

- education;
- rapid and effective following up on missing returns or payments; and
- avoiding creating estimated (computer generated) debts rather than establishing and pursuing the true liability;

(ii) pursue debts in structured ways, including by:

- attaching assets or bank accounts;
- garnishee orders on third parties;
- providing ‘time to pay agreements’ where there is a reasonable prospect of the business cash flow being able to repay the debt in a reasonable period of time;
- seeking to enforce de-registration from VAT and business closure (winding up and insolvency proceedings) only as a last resort; and
- provide for write-off of uncollectable debt.

(c) At Paragraph 2 (d) (ii) and (iii) the Guideline refers to best practice with regard to penalties. In considering what will be effective responses to non-compliance the following should be considered:

(i) As VAT is a self-assessed tax, non-compliance such as underpayment can be expected to occur. However, the response by the revenue administration should consider the underlying behaviour, for instance:

- where the behaviour is clear and deliberate non-compliance such as the repeated non-submission of returns, an appropriate sanction or penalty should be invoked;
- where the taxpayer has made a genuine mistake and tried to do the right thing but has got it wrong, e.g. a tax point, or the VAT liability of a product, then education instead of a penalty is more appropriate; and
- in some cases, prosecution in the courts will be desirable rather than the imposition of administrative penalties, e.g. for repeat offences or criminal attempts to obtain bogus refunds or
aggravated behaviour such as a corrupt relationship with an official, etc.

(ii) Best practice is to provide relief from penalties on persons who make genuine unprompted voluntary disclosures of their tax liabilities. However, interest chargeable on such liabilities should remain payable (as commercial restitution).

(iii) VAT is, by the nature of the input tax credit and refund system, at risk of fraudulent refunds and that any such cases should be prosecuted in the criminal courts. This is because anyone producing or using falsified invoices is committing a fraudulent act and that if a false claim (or input tax credit) had been accepted the end result would have been akin to theft (of State revenues).
CHAPTER 3: EXCHANGE OF INFORMATION AND MUTUAL ASSISTANCE

COMMENTARY ON GUIDELINE 15 - EXCHANGE OF INFORMATION AND MUTUAL ASSISTANCE

1. The background to this Guideline is Paragraphs 6, 7 and 8 of Article 6 of Annex 3 of the FIP. The Guideline sets out the desired arrangements for the practical and close co-operation between Member States’ revenue administrations to combat VAT fraud and cross border smuggling. Best practice is to:

(a) agree to share with all other Member States, information and intelligence about cross border trade; and

(b) use mutual assistance channels and/or enter into bilateral or multilateral agreements or Memorandum of Understanding (MoU) for purposes of sharing information and to mutually assist each other with regard to VAT.

2. Notes on agreements

(a) It is important to ensure that any tax agreements, e.g. bilateral Double Taxation Avoidance Agreements (DTAAs) and or MoUs etc. are allowable under the laws of the Member State/revenue administration. Also, so that that these kind of agreements are as useful as possible, Member States should try to ensure that any information shared using them is admissible in court as evidence.

(b) Many Member States have bilateral DTAAs and MoUs with each other. Member States should examine these to ascertain if they can be used to exchange VAT related information and if they can, they should be utilised fully. If agreements exist but do not make specific provision for exchange of information on VAT, Member States should first seek to amend them rather than seek new agreements.

(c) In addition to bilateral DTAAs and MoUs between Member States, there are two broader agreements under which information may be able to be passed:

(i) The International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences (known as the ‘Nairobi Convention’ - 1977) covers breaches of Customs Law in respect of any Customs duties and all other duties, taxes, fees or other charges which are collected on or in connection with the importation or exportation of goods and the mutual assistance (including exchange of information) between signatories. Currently: Malawi; Mauritius; Seychelles; South Africa; Swaziland; Zambia and Zimbabwe are signatories to the convention.

(ii) The SADC Agreement on Assistance in Tax Matters (AATM) was signed by the SADC Heads of State and Government in August 2012 and is currently undergoing ratification. The AATM covers the exchange of information in tax matters (all taxes, except customs duty). Once ratified it will apply to all Member States, opening the way
for rapid exchange of tax information and mutual assistance between Member States on a solid legal basis without the need for a network of bilateral agreements.
## DEFINITIONS AND GLOSSARY

The definitions in these Guidelines that are as in Annex 3 of the FIP are marked *

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ad valorem</strong></td>
<td>Means, according to value, where the tax chargeable is expressed as a percentage of the value of goods or services or of a transaction.</td>
</tr>
<tr>
<td>Appeal</td>
<td>For the purposes of this Commentary means, a request by a person that a decision of the tax authorities should be reconsidered.</td>
</tr>
<tr>
<td>Compounding</td>
<td>Means a financial settlement as an alternative to prosecution.</td>
</tr>
<tr>
<td>Credit of input tax</td>
<td>Means, VAT on the acquisition (purchase) of any goods or services by a taxable person in relation to the making of taxable supplies that is offset against any VAT payable on supplies (sales) of goods or services and that may result in a net credit balance in favour of a taxable person.</td>
</tr>
<tr>
<td>* Customs duty</td>
<td>Means, a tax normally applied to imported goods.</td>
</tr>
<tr>
<td>Deductible input tax</td>
<td>Means, VAT incurred on the acquisition of any goods or services by a person including on imported goods that is attributable to making taxable supplies (outputs/sales).</td>
</tr>
<tr>
<td>Deferment</td>
<td>For the purposes of this Commentary means, officially sanctioned temporary postponement of the payment of VAT, normally in relation to VAT due on imports.</td>
</tr>
<tr>
<td>Destination principle</td>
<td>Means, a principle by which VAT is levied only in the jurisdiction of final consumption.</td>
</tr>
<tr>
<td>Double non-taxation (unintended non-taxation)</td>
<td>Means, applying zero rating or exemption to the same supply of goods or services in any jurisdiction including both a country of export or of import of goods or services.</td>
</tr>
<tr>
<td>Double taxation (Note - this differs from the definition in the FIP)</td>
<td>For the purposes of this Commentary means, taxation at a positive VAT rate of the same supply of goods or services in any jurisdiction including both a country of export or of import of goods or services.</td>
</tr>
<tr>
<td>E- Filing</td>
<td>Means, making a tax declaration by electronic means.</td>
</tr>
<tr>
<td>Environmental taxes</td>
<td>Means, taxation of supplies of goods or services that are held to be harmful to the environment and that are designed to change behaviour or to compensate negative consequences of the supply.</td>
</tr>
<tr>
<td>* Excise duty (or excise tax)</td>
<td>Means, a tax or 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.</td>
</tr>
<tr>
<td>Exemption</td>
<td>For the purposes of this Commentary means, exclusion from taxation for VAT by legislation of specified supplies of goods or services.</td>
</tr>
<tr>
<td>Exempt supplies</td>
<td>For the purposes of this Commentary means, supplies of goods or services by a person that are excluded from the tax by law.</td>
</tr>
<tr>
<td>FIP</td>
<td>Means, the SADC Protocol on Finance and Investment.</td>
</tr>
<tr>
<td>Fiscal neutrality</td>
<td>For the purposes of this Commentary means, a situation where VAT levied on supplies of goods or services is borne entirely by</td>
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<tr>
<td>Term</td>
<td>Definition</td>
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<tr>
<td>Higher VAT rate</td>
<td>Means, a positive rate of VAT that is higher than the standard rate of VAT.</td>
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<tr>
<td>*Indirect tax</td>
<td>Means, any tax (other than a direct tax) imposed on consumption or transactions (includes VAT, sales taxes, excise duties, stamp duties, services taxes, registration duties and financial transaction taxes).</td>
</tr>
<tr>
<td>Input tax</td>
<td>Means, the VAT incurred on the acquisition of any goods or services by a person, including on imported goods.</td>
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<tr>
<td>*Levy</td>
<td>Means, a tax in respect of specific items, transactions, or events, and which tax is levied at a fixed or flat rate.</td>
</tr>
<tr>
<td>*Luxury goods and services</td>
<td>Means, goods and services with an income elasticity of greater than one.</td>
</tr>
<tr>
<td>*Mutual assistance</td>
<td>Means, such arrangements as are made between two countries or jurisdictions in order to improve the efficiency of their respective taxation systems.</td>
</tr>
<tr>
<td>Output tax</td>
<td>For the purposes of this Commentary means, VAT that is added to the value of supplies of goods or services.</td>
</tr>
<tr>
<td>Person</td>
<td>For the purposes of this Commentary includes individual persons (sole proprietors or traders); partnerships; limited, public and other companies; parastatals; joint ventures; clubs and associations; and trusts.</td>
</tr>
<tr>
<td>Place of taxation (supply)</td>
<td>Means, the jurisdiction in which a supply of goods or services is made or deemed to be made by law.</td>
</tr>
<tr>
<td>Refund</td>
<td>Means, a payment of VAT made by a revenue administration to a person in respect of input tax claimed or output tax overpaid.</td>
</tr>
<tr>
<td>Registration/compulsory registration</td>
<td>Means, a requirement by law for a person making taxable supplies to register for VAT.</td>
</tr>
<tr>
<td>Registration threshold</td>
<td>Means, a limit above which persons are required to register as taxable persons (suppliers).</td>
</tr>
<tr>
<td>Regressive taxation</td>
<td>Means, taxation that takes a larger percentage of a lower-income and a smaller percentage of a higher income. Tax that does not take account of ability to pay.</td>
</tr>
<tr>
<td>Reverse charge mechanism</td>
<td>Means, circumstances where the recipient of goods or services is deemed to be both recipient and supplier of the goods or services and is required by law to account for output tax in the same amount as the input tax on the supply.</td>
</tr>
<tr>
<td>Revenue administration</td>
<td>Means, the Revenue Authority/Revenue Service or Customs or Tax administration of a country (including the officials of the administration).</td>
</tr>
<tr>
<td>SADC</td>
<td>Means, the Southern African Development Community.</td>
</tr>
<tr>
<td>*SADC Tax Database</td>
<td>Means, the tax database into which the SADC Member States shall deposit information on their tax regimes, as contemplated in Article 2 of Annex 3 of the FIP.</td>
</tr>
<tr>
<td>*Sales tax</td>
<td>Means, a tax imposed as a percentage of the price of goods or services and which is ordinarily 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.</td>
</tr>
<tr>
<td>Single registration number</td>
<td>Means, a Tax Identification Number (TIN) that should ideally be the final consumer and not by persons making such supplies.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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<tr>
<td>used for all tax types, including VAT with the registration information being sought from taxpayers only once (and used for the requirements of all taxes).</td>
<td></td>
</tr>
<tr>
<td>Special schemes</td>
<td>For the purposes of this Commentary means, methods of accounting for VAT by taxable persons that are outside the normal VAT accounting requirements.</td>
</tr>
<tr>
<td>Standard rate</td>
<td>For the purposes of this Commentary means, the percentage rate of VAT applied to goods or services that are not specifically designated by law as being taxable at different rate or exempted from the tax.</td>
</tr>
<tr>
<td>Supply</td>
<td>Means, selling or otherwise disposing of goods or services.</td>
</tr>
<tr>
<td>*Tax</td>
<td>Means a compulsory unrequited financial contribution imposed by a government or jurisdiction.</td>
</tr>
<tr>
<td>Taxable</td>
<td>For the purposes of this Commentary means, that VAT is chargeable on goods or services at either a positive rate or at the zero-rate.</td>
</tr>
<tr>
<td>Taxable activity</td>
<td>Means, that a person is supplying taxable goods or services in the course of carrying on a business.</td>
</tr>
<tr>
<td>Tax base</td>
<td>For the purposes of this Commentary means, the number of persons required or permitted to be registered for VAT or the extent to which positive rates of VAT are applied to economic activity in a jurisdiction.</td>
</tr>
<tr>
<td>Taxable person (supplier)</td>
<td>Means, a person who is or should be registered for VAT. Taxable persons are also frequently referred to under VAT as ‘VAT or taxable suppliers’, ‘registered suppliers’ or ‘VAT vendors’.</td>
</tr>
<tr>
<td>Taxable supply</td>
<td>Means, supplies by a taxable person of goods or services upon which VAT is to be levied by law, excluding exempt supplies or supplies that are outside the scope of VAT law.</td>
</tr>
<tr>
<td>*Tax agreement</td>
<td>Means, any bilateral or multilateral agreement concluded by State Parties between or amongst themselves or with countries outside the Community, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital or for mutual assistance with regard to indirect taxes.</td>
</tr>
<tr>
<td>Tax credit method (invoice credit method)</td>
<td>Means, a method of accounting for VAT that ensures that the tax is not borne by businesses making taxable supplies but on consumers whereby VAT levied on a supply of goods or services is shown on a tax invoice and may be credited by the recipient of the goods or services as input tax.</td>
</tr>
<tr>
<td>Taxpayer/supplier/trader</td>
<td>Means, a taxable person as defined by the law of the jurisdiction in which the tax is levied.</td>
</tr>
<tr>
<td>*Tax incentive</td>
<td>Means, fiscal measures that are used to attract local or foreign investment.</td>
</tr>
<tr>
<td>Tax Point</td>
<td>Means, the date on which VAT becomes chargeable on a transaction.</td>
</tr>
<tr>
<td>Unintended non-taxation</td>
<td>For the purposes of this Commentary means, applying zero rating or exemption to the same supply of goods or services in any jurisdiction including both a country of export or of import of goods or services.</td>
</tr>
</tbody>
</table>
| *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 of such goods or services, but, where the liability for rendering payment of such tax to the authorities is placed upon the supplier of the goods or services.

<table>
<thead>
<tr>
<th>Voluntary registration</th>
<th>Means, registration for VAT of a person making taxable supplies who is not required by law to do so.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zero-rated</td>
<td>For the purposes of this Commentary means, VAT applied at a rate of zero percent on supplies of goods or services.</td>
</tr>
</tbody>
</table>
APPENDIX 1

ANNEX 3 OF THE FIP - CO-OPERATION IN TAXATION AND RELATED MATTERS

PREAMBLE

The High Contracting Parties:

RECALLING the provisions of Chapter Four of the Protocol which require co-operation on taxation and related matters;

RECOGNISING the need to take such steps as are necessary to maximise the co-operation of State Parties in taxation matters and to co-ordinate the tax regimes of the State Parties; and

DETERMINED to take such steps as are necessary to maximise the co-operation of the State Parties in taxation matters;

HEREBY AGREE as follows:

ARTICLE 1

DEFINITIONS

1. In this Annex, terms and expressions defined in Article 1 of the Protocol shall bear the same meaning unless the context otherwise requires.

2. In this Annex, unless the context otherwise requires:

   “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 juristic persons), in respect of income, capital gains, net worth, property, donations and gifts and includes estate 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-Customs Clearance” or “e-commerce, e-billing,” means the conduct of financial transactions, or customs clearance, by electronic means

   “exceptional cases” means, in relation to tax incentives, those exceptions to the guidelines envisaged in Article 4 agreed to by State Parties

   “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 which originate elsewhere, facilitating the avoidance of taxes in such other jurisdictions.

“indirect tax” means any tax (other than a direct tax) that a country imposes on consumption or transactions under domestic law, and includes VAT, sales taxes, excise duties, stamp duties, services taxes, registration duties and financial transaction taxes.

“levy” means a tax in respect of specific items, transactions, or events, and which tax is levied at a fixed or flat rate.

“luxury goods and services” means goods and services with an income elasticity of greater than one.

“mutual agreement” means the procedure envisaged in Article 25 of the Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development.

“mutual assistance” means such arrangements as are made between two countries or jurisdictions in order to improve the efficiency of their respective taxation systems.

“SADC Tax Database” means the tax database into which State Parties shall deposit information on tax on a continuous basis, as contemplated in Article 2.

“SADC Model Tax Agreement” means templates, as adopted by the Committee of Ministers for Finance and Investment, for bilateral agreements for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, or agreements for mutual assistance with regard to indirect taxes, to be used by State Parties between or amongst themselves or with countries outside the Community as contemplated in Article 5 (4).

“sales tax” means a tax imposed as a percentage of the price of goods or services and which is ordinarily 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, in relation to a State Party, fiscal measures that are used to attract local or foreign investment capital to certain economic activities or particular areas in a country and, without limiting the generality of the foregoing, includes those measures contemplated in Article 5 (2)

“Tax Sparing Arrangement” means an arrangement in terms of which the government of residence of an international investor recognises tax incentives granted by a host country for purposes of attracting investments and providing relief from income tax under the domestic laws of that government, as if normal tax had been imposed in respect of that investor in the host country

“Tax Agreement” means any bilateral agreement concluded by State Parties between or amongst themselves or with countries outside the Community, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital or for mutual assistance with regard to indirect taxes

“VAT” means a value added 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 of such goods or services, but, where the liability for rendering payment of such tax to the authorities is placed upon the supplier of the goods or services

ARTICLE 2

SADC TAX DATABASE

1. In the interests of SADC, State Parties shall put in place a comprehensive SADC Tax Database which is publicly accessible within the Region.

2. State Parties shall, collectively, take such steps as are necessary to further develop the SADC Tax Database and to provide the Secretariat with such information as is required to maintain the SADC Tax Database.

3. The developed SADC Tax Database shall, in relation to each State Party, include details in respect of that State Party of:

   (a) all direct taxes, 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 Agreements and their respective implementation dates; and
(d) appropriate statistics on revenue collection and the revenue importance of various instruments 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. Each State Party shall provide at least on an annual basis and when significant changes occur, information in regard to that State Party as is required by the Secretariat to update the SADC Tax Database.

**ARTICLE 3**

**CAPACITY BUILDING**

1. State Parties shall, in the interests of SADC, develop the professionalism and expertise of tax officials throughout the Region, and develop an effective enabling environment that:

   (a) is supportive of life-long training, development of skills and learning for the State Parties' personnel in respect of tax design, policy development and revenue administration;

   (b) will effectively equip such personnel to utilise their expertise to protect the respective individual tax bases of State Parties against the practices of tax avoidance or evasion by domestic and international taxpayers operating within their respective jurisdictions; and

   (c) will enable such personnel to introduce, develop, maintain and engender taxation best practices in their respective State Parties.

2. In order to fully implement the wide-ranging steps envisaged in this Annex, each State Party shall:

   (a) actively support initiatives aimed at developing skills and taxation best practices across the Region, including the exchange of personnel and information, and the provision of mutual assistance, training workshops, seminars, and training events; and

   (b) (make provision (from the internal budget of that State Party and/or appropriate co-operating partner support) for resources to defray the costs of ongoing training development and the interaction of the tax officials of that State Party across all capacities or disciplines.

3. State Parties shall meet the information technology and digital challenges faced by State Parties, and 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 that e-commerce, e-billing, or e-customs clearance may have on tax revenue collection and on the flow of goods and services.
ARTICLE 4

APPLICATION AD TREATMENT OF TAX INCENTIVES

1. State Parties shall endeavour to achieve a common approach to the treatment and application of tax incentives and shall, 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 relevant 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. State Parties shall, 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 of that State Party;
       (v) promotion of tax incentives as a vehicle for tax minimisation; or
       (vi) the absence of substantial activity in the jurisdiction of that State Party to qualify for a tax incentive; and
   (b) introducing tax legislation that prejudices another State Party’s economic policies or activities of, or the regional mobility of goods, services, capital or labour.

4. State Parties shall, collectively, through the (Committee of) Ministers responsible for Finance and Investment, develop and adopt guidelines for tax incentives in the Region, including provision for exceptional cases.
5. In order to advance a competition policy within the Region, State Parties shall collectively develop a fiscal framework for tax incentives that will, among 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 each of the State Parties as a result of the application of proposed tax incentives;

(c) the extent to which the absence of Tax Sparring Arrangements in Tax Agreements between State Parties reduce the effectiveness of tax incentives, particularly those aimed at attracting foreign direct investments;

(d) the impact that proposed tax incentives will have on the collective costs of, or collective burden on, tax administration in the Region; and

(e) the effects that tax incentives have on the overall distribution of the tax burden within each State Party.

**ARTICLE 5**

**TAX AGREEMENTS**

1. State Parties shall, collectively, develop a common policy for the negotiation of Tax Agreements between or amongst themselves or with countries outside the Region.

2. Each State Party shall, in accordance with its constitutional procedures, strive to ensure the speedy negotiation, conclusion, ratification and effective implementation of Tax Agreements.

3. 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.

4. State Parties shall, in pursuit of a common policy for dealing with Tax Agreements, develop a Model Tax Agreement for SADC that, among other things, takes account of the particular socio-economic development needs of each State Party.

5. State Parties shall, on completion of the Model Tax Agreement referred to in paragraph 4, draw up guidelines for the effective exchange of information, the implementation of Mutual Agreement procedures.
ARTICLE 6

INDIRECT TAXES

1. State Parties shall effectively co-operate in the harmonisation of the administration of indirect taxes.

2. Each State Party shall, in line with the World Trade Organisation agreements, gradually substitute taxes on internationally traded goods and services with broad-based indirect taxes on consumption.

3. State Parties shall, collectively, 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 services; and
   (f) any other excisable goods and services.

4. Each State Party shall, 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 rates or sales tax rates; provided that it is accepted that the classification of goods and services as being luxury goods and services may, due to shifts in economic and social conditions, change from time to time.

5. State Parties shall, in an effort to minimise incidents of smuggling, take such steps as are necessary to harmonise the application of excise duty rates, with particular regard to tobacco products, alcoholic beverages and fuel products.

6. State Parties shall 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, in order to prevent unlawful activities and, in particular, the smuggling of goods and the importation of counterfeit items.

7. State Parties shall in an effort to combat cross-border smuggling activities, identify areas of co-operation and agreement for: (i) the protection of their respective tax bases; and (ii) addressing the problem of tax leakage and gaps in tax compliance.

8. State Parties shall give consideration to entering into bilateral agreements with each other, based on a SADC model tax agreement in order to deal with, among other things, the exchange of information on VAT and sales tax and to make provision for mutual assistance on matters such as effective revenue collection.
9. State Parties shall 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. State Parties shall take such steps as are necessary to harmonise their VAT regimes and shall:

   (a) set minimum standard VAT rates; and

   (b) harmonise, over time, the application of zero-rating and VAT exemption of goods and services.

**ARTICLE 7**

**SETTLEMENT OF DISPUTES**

1. State Parties shall develop mechanisms and procedures for the settlement of tax disputes between State Parties, including the establishment of a SADC body for the settlement of such tax disputes.

2. Until such time as the mechanisms and procedures for the settlement of tax disputes between State Parties are developed, and the SADC body for the settlement of such tax disputes is established, as envisaged in paragraph 1, State Parties shall settle any dispute or difference arising from the interpretation, application or implementation of this Annex 3 in accordance with Article 24 of the Protocol.
CONTACT

For more information about SADC please visit the SADC Website:
http://www.sadc.int/

To obtain a full copy of the Protocol on Finance and Investment (FIP) visit:
http://www.sadc.int/documents-publications/show/1009

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