



Project funded by the European Union
Projekat finansira Evropska unija



Pravna podrška pregovorima - Policy & Legal Advice Centre

Terms of Reference (ToR) for a Short-Term assignment

Technical assistance requested:	One (1) Senior Non-Key Expert in the area of Ch 16 Taxation; Direct taxation, Merger Directive
Project Title:	Policy and Legal Advice Centre (PLAC III), Serbia
Ref:	EuropeAid/139295/DH/SER/RS
Service Contract No.:	(CRIS) 2018/404-529
Main beneficiary:	The Ministry of European Integration of the Republic of Serbia and the Negotiating Team
Target Beneficiaries:	Negotiating group 16; The Ministry of Finance (MoF)
Budget Line / Expert Category:	Senior Non-Key Expert (SNKE)
Duration of the assignment:	15 WD for SNKE, from January 2020 – December 2020

1. Relevant background information

Background information in relation to PLAC III project:

The scope of PLAC III project is to provide support to relevant national institutions in charge of alignment of national legal acts with Union *acquis* and to contribute to further building of capacities of relevant national structures for successful carrying out of accession negotiations.

The PLAC III project should achieve two results:

RESULT 1- Enhanced compatibility of national legislation with EU legislation and its effective implementation

RESULT 2 - Enhanced capacities of the relevant national structures for successful carrying out of accession negotiations

In general, the project aims at fostering the process of accession negotiations of the Republic of Serbia by supporting the effective alignment of national legislation with the Union *acquis* and its implementation and by further building the capacities of involved carriers of the EU integration process in the Republic of Serbia. After completion of screening process in 2015, Serbian public administration has entered into much more demanding and obliging exercise of accession negotiations, whereby each step and every decision should result in approaching actual membership in the EU. For this scenario to happen in accordance with planned dynamics, preparedness, adequate institutional capacity of public administration with highly competent staff is of crucial importance. In the core period of the negotiations, PLAC III Project shall support domestic line institutions and the negotiating structures both in performance of quality operational work in relation to harmonisation process and in the effective coordination during various stages and phases in the process for different negotiation chapters.

Project implemented by



in consortium with



2. Background information in relation to Chapter 16 - Taxation

EU rules on taxation cover value-added tax and excise duties as well as aspects of corporate taxation. They also deal with cooperation between tax administrations, including the exchange of information to prevent tax evasion. In terms of reorganizations and transfers, specific regulations are applied on a national level and these operations are neutral in terms of corporate income tax. On the EU level, where a common market with free movement of persons and capital exists, the unified taxation of reorganisations and transfers has also been introduced by the Council Directive 2009/133/EC on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (hereinafter “Merger Directive”). The adopted Directive created a system whereby two objectives are being sought: firstly, to postpone the taxation of capital gains in cases of reorganisations and transfers; secondly, to protect financial interests of the Member States.

The EC Country report of 2019 for Serbia states that Serbia is moderately prepared in the area of taxation. Some progress was made on legislative alignment, while the reform of the tax administration has slowly moved forward. Last year’s recommendations were not implemented and remain valid.

Screening report from July 2016 stated that Serbia will need to ensure alignment upon EU accession with the Merger Directive (Council Directive 2009/133/EC) on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States as well as to the transfer of the registered office, of a *Societas Europaea* (SE) or European Cooperative Society (SCE), between Member States.

For this purpose, Serbia have to:

- Extend the deferral tax regime to transfer of assets where the shares issued in consideration by the receiving company are acquired by the transferring company
- Cover the case of exchange of shares, since the deferral of taxation is also linked with other rules concerning the valuation of shares exchanged
- Cover triangular cases, where the merger, division or transfer of assets include a permanent establishment situated in a Member State different from that of the transferring company
- Establish rules on the transfer of seat of a SE or and SCE if the company leaves Serbia or moves to the country. Even without taxation in these cases, the rules concerning the valuation of the assets are relevant for future taxation
- Provide for the exemption of capital gains deriving from the cancellation of the holding that the receiving company may have in the transferring company that is dissolved in case of a merger or a division

The assistance of PLAC III project is needed in order to provide assistance to the Republic of Serbia in the process of harmonization with EU regulations in particularly to comply with Council Directive 2009/133/EC, the Merger Directive, through improvement of the capacities of the existing staff.

At present, there is no on-going or planned assistance projects for the activities covered by this ToR.

3. Description of the assignment:

3.1 Specific objectives

The specific objective of this assignment is to provide assistance to the Republic of Serbia in the process of alignment with Union *acquis* in the field of Direct Taxation, through improvement of the capacities of the staff.

3.2 Requested services

The Senior NKE in the area of Ch 16 Taxation; Merger Directive is expected to provide the following services:

- a) To assess the state of compliance of the existing Serbian legislative system - Law on Profit Tax (Official Gazette of RS no. 25/01, 80/02 – other law, 80/02, 43/03, 84/04, 18/10, 101/11, 119/12, 47/13, 108/13, 68/14 – other law, 142/14, 91/15 - authentic interpretation, 112/15, 113/17, 95/18) with the requirements of the Union acquis in this field by performing a legal gap analysis and developing Tables of Concordance (ToC)
- b) To hold a two-day Workshop on requirements and implementation of Directive 2009/133/EC on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States.

3.3 Outputs

The Senior NKE is expected to deliver the following outputs:

- A Legal gap analysis of the existing Serbian legislative system and ToCs drafted
- A two-day Workshop on Council Directive 2009/133/EC on the common system of taxation held

3.4 Reporting

The SNKE shall provide the following reports by using the templates of the Project:

- **Final Mission Report**, no later than 1 week after completion of tasks under this assignment. This report will include description of all activities and outputs provided by the SNKE in the context of this assignment.
- A brief interim report - only upon a request of the PLAC III team: TL and/or KE 2

Submission of reports:

- Draft mission report shall be submitted to the Team Leader of the Project for review and comments at the end of the mission.
- Final version of the mission report reports prepared in the agreed quality shall be submitted to the Team Leader of the Project for a review, comments and the final approval.
- The reports shall be signed by the SNKE and the Team Leader, responsible for endorsing the reports.
- The reports and all prepared documents shall be submitted in a hard copy and electronic version to the Team Leader of the project.

3.5 Specifics

SNKEs shall work under the guidance and follow the instructions of the Team Leader. The SNKEs shall collaborate with the project team, other experts involved and representatives of the relevant beneficiary institutions.

Each of the short-term missions, the timing and duration shall be agreed with the Beneficiary and the PLAC team prior to each planned mission.

3.6 Expert input

3.6.1 Total working days

15 working days (WDs) in total have been planned for Senior Non-Key Expert.

3.6.2 Period of the assignment and Starting day

It is expected that the work will be performed during several missions in the period from January 2020 – December 2020 at latest. However, the exact starting date will be agreed at a later stage.

3.6.3 Location/Place of assignment

The SNKE has to deliver 100% of the input in Belgrade, Serbia.

3.6.4 Working language

English

4. Experts's Profile - Senior NKE (15 WD)

4.1 Qualifications and skills (25 points)

- A level of education, which corresponds to completed university studies of at least 3 years attested by a diploma such as law, economy or similar, relevant to the assignment
- Computer literacy
- Be proficient in report drafting
- Excellent communication and analytical skills
- Proficiency in English language
- Be independent and free from conflicts of interest in the responsibilities they take on

4.2 General professional experience (25 points)

- At least 8 (eight) years of general postgraduate professional experience, related to the harmonisation of legislation in relation to Union Ch. 16 acquis, gained in an EU member state, candidate or potential candidate country;

4.3 Specific professional experience (50 points)

- Postgraduate professional experience in transposition and/or implementation of Council Directive 2009/133/EC, Merger Directive
- Postgraduate professional experience in performing legal gap analysis and drafting ToC
- Postgraduate professional experience in holding workshops and trainings will be an advantage
- Knowledge of Serbian legal system will be an advantage

5. Applications

Applications (EU format CV and application letter, both in English) need to be submitted by e-mail to mbayard@dmiassociates.com and ehoward@dmiassociates.com no later than December 27 2019, 17:00 hrs, titled: **“Application for the position Senior NKE in the area of Ch. 16 Taxation, Merger Directive.”**

References must be available on request. Only short-listed candidates will be contacted.

The Project is an equal opportunity employer. All applications will be considered strictly confidential.

Advertised posts are not available to civil servants or other officials of the public administration in the beneficiary country, Serbia.

Please note that all pre-selected experts are requested to sign a Statement of Availability (SoA) in which they acknowledge and confirm the availability to accomplish this assignment within the indicated period, at the indicated starting date (if any) and within the number of working days requested

For more information, please contact Project Manager at DMI Associates Marion Bayard: mail to mbayard@dmiasociates.com or Elizabeth Howard ehoward@dmiasociates.com