**Terms of Reference**

**for**

**Consulting services for a comprehensive analysis of the tax framework in relation to capital market development**

**Background**

The International Bank for Reconstruction and Development (hereinafter: the IBRD) has granted to the Republic of Serbia (hereinafter: RoS) a EUR 40.1 million results-based loan to finance the State-Owned Financial Institutions Strengthening Project (hereinafter: the Project) with its implementation period lasting four years. According to the Loan Agreement, the disbursement of about EUR 34.57 million of the loan amount will be through several installments based on achieving respective Disbursement Linked Results (hereinafter: the DLRs). Within the Project IBRD also provides a technical assistance component of EUR 5.43 million to help with the achievement of the DLRs. The technical assistance component also includes consulting services which should help develop capacity of the Ministry of Finance (hereinafter: the MoF) as one of the competent bodies for creating financial stability in the RoS through stabilization of the banking sector, especially with respect to state-owned institutions.

The Ministry of Finance of the RoS (hereinafter: the MoF) is the implementing entity responsible for all technical aspects of implementation of the Project. The Project provides financing for technical assistance (hereinafter: the TA) for strengthening institutional capacity through Component 2, in support of the achievement of the agreed DLRs Component 2, among other things, includes funding of individual consultants which will be engaged to help the MoF unit of Financial Sector (hereinafter: the MoFFS) to meet respective DLRs, as the unit in charge for overseeing the RoS financial sector. The Project provides that MoFFS shall be the unit within the MoF responsible for collecting data required for monitoring and evaluation and coordination of the Project`s activities related to fulfilment of the DLRs.

The Project implementation by the MoFFS with its current resources (existing lack of qualified staff being a serious issue) could impact Project realization, so recruitment of additional consultants under the TA component of the Project represents necessity. In accordance with the organization structure of the MoFFS, its constituent Group for securities and capital markets in particular, is primarily competent for carrying out activities related to the normative tasks related to the comprehensive tax analysis, analysis of laws and other regulations governing the issuance and trading of securities and other financial instruments, business and legal position of stock exchanges, investment funds, voluntary pension funds and other participants in the financial market, takeover of joint stock companies, and harmonization of regulations in the field of securities and capital markets with the standards of international organizations, agreements and conventions; tasks related to the work of the body formed for the supervision of participants in the securities market, as well as professional organizations in this field, as well as other tasks. Having in mind that the abovementioned Group is currently understaffed with capital market and tax analysis and development expertise, the engagement of consultant is very important for the Project realization in good manner with focus on strengthening the MoFFS’s capacity to properly improve Serbian capital markets and State owned Financial Institutions (hereinafter: the SOFIs).

**Objectives of the Project**

The main objective of the Project is to improve the performance of Banka Postanska Stedionica AD Beograd (hereinafter: BPS) and promote the reform of Development Finance Institutions. Within that broader objective, further development of the financial sector and the capital markets are important. The consensus amongst all major players is that capital markets in Serbia are shallow and relatively underdeveloped. Despite showing some promise in the early 2000’s, capital markets never truly recovered from the financial crisis of 2007-2008. A recent study of capital markets in Serbia, conducted by the World Bank in cooperation with all relevant local institutions (Ministry of Finance, National Bank of Serbia, Securities Commission, Central Securities Depository and Clearing House, Treasury, Belgrade Stock Exchange, etc.), concluded that the core challenges lie within the following areas:

Precondition for the development of capital markets are not fully in place, as both demand and supply sides remain shallow:

* On the demand side, the institutional investor base is thin; the aggregate size of mutual funds and voluntary pension funds is less than 1.5 percent of GDP, and improvements must be made to allow for and stimulate its growth;
* On the supply side, apart from the government bond market which is performing reasonably well, there is a complete absence of affordable financial instruments that could provide an alternative to the domestic banking sector;
* Investing in financial education so as to mobilize savings for long term finance;
* Improvements to administrative procedures and cross-institutional pricing necessary to improve attractiveness of existing and planned financial instruments.

Given the aforementioned, the Ministry of Finance spearheaded the capital markets development efforts by establishing a Working Group tasked with creating a strategy for capital markets development. The Working Group has a broad institutional support, with representatives of the Ministry of Economy, National Bank of Serbia, Securities Commission, Central Securities Depository and Clearing House, Treasury, Belgrade Stock Exchange and Serbian Development Agency actively involved.

In line with that the Capital Market Development Strategy for the period 2021-2026 has been adopted by the Government on its session held on October 21, 2021. Mentioned strategy will lay foundation for the development of regulatory, institutional and support frameworks aimed at strengthening the Serbian capital market in service of increased economic activity and growth in the coming decade.

Bearing in mind all above mentioned, it is necessary to secure TA to the MoFFS in order to create conditions for engagement of consultants, who will be in charge for further upgrade of performance and capacity of the MoFFS for preparation of a comprehensive analysis of the tax framework in relation to capital market development.

**Scope of Work and Deliverables**

The Tax Consultant shall:

1. Draft and submit a comprehensive analysis of the impact of the current tax regime on the capital markets, including aspects that represent challenges or opportunities for the development of the capital markets and find and propose solutions for increasing the attractiveness for investing and capital-raising on the Serbian capital market, through the enhancement of the respective tax framework, based on its own expertise, comparative solutions, etc.

In accordance with the Project Plan, the Tax Consultant shall in particular analyze, as well as, provide recommendations on the following:

1.1 Corporate Bond and Corporate Income Taxation;

i) current status of such taxation laws,

ii) impediments to capital market development,

iii) recommendations for improvement.

1.2 Municipal Bond Taxation;

i) current status of such taxation laws,

ii) impediments to capital market development,

iii) recommendations for improvement.

1.3 Tax Impact on:

1. Issuers
2. Investors
3. Intermediaries (including tax implications of repurchase and lending operations and financial derivatives)

1.4 Tax administration process

i) current status of such taxation process,

ii) impediments to capital market development,

iii) recommendations for improvement.

1.5 Capital Gain Tax

i) current status of such taxation laws,

ii) impediments to capital market development,

iii) recommendations for improvement.

1.6 Potential tax considerations in the introduction of new financial instruments

1. recommendations on tax aspects to be taken into account during the devise and introduction of new financial instruments.

1.7 Potential tax incentives and subsidies

i) current status of tax incentives and subsidies,

ii) impediments to capital market development,

iii) recommendations for improvement.

Document includes Appendix that provides specific questions to be analyzed by the tax consultant

1. Propose legislative amendments in the relevant tax laws based on the findings of the Comprehensive analysis mentioned under 1. above.
2. Propose draft tax bylaws which would be necessary for successful implementation of legislative amendments mentioned under 2. above.

**Reporting**

The Consultant shall report and be accountable to the Acting Assistant minister in charge in the MoFFS.

The Consultant shall produce the following deliverables:

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| --- | --- | --- | --- | --- |
| No. | Deliverable | Delivery schedule upon contract signing | No. of copies (in each language) | Language |
| 1 | Draft Comprehensive analysis and recommendations as explained under 1. in Section *Scope of Work and Deliverables* | Week 6 | 2 – electronic | English and Serbian |
| 2 | Final Comprehensive analysis and recommendations as explained under 1. in Section *Scope of Work and Deliverables* | Week 8 | 2 – electronic | English and Serbian |
| 3 | Draft proposed legislative amendments as explained under 2. in Section *Scope of Work and Deliverables* | Week 12 | 2 – electronic | Serbian |
| 4 | Final proposed legislative amendments as explained under 2. in Section *Scope of Work and Deliverables* | Week 16 | 2 – electronic | Serbian |
| 5 | Draft proposed tax bylaws as explained under 3. in Section *Scope of Work and Deliverables* | Week 20 | 2 – electronic | Serbian |
| 6 | Final proposed tax bylaws as explained under 3. in Section *Scope of Work and Deliverables* | Week 24 | 2 – hard copy & electronic | Serbian |

**Period of Performance**

The period of performance of the assignment envisaged by these Terms of Reference shall be December 31, 2022.

**Language**

The working languages of the Consultant shall be English and Serbian.

**Place of Performance**

The Consultant shall deliver the services in Belgrade, Serbia.

**Qualifications Criteria**

Consultant (company) qualifications

This Contract is open to companies that meet the following criteria:

1. At least 10 (ten) years of general experience in the field of financial advisory, capital markets, taxation and/or access to finance to business or government clients in Serbia or the region.
2. Having successfully completed at least 5 (five) contracts as the lead contractor and/or consortium member in the past 10 (ten) years, where a) the assignment of the Consultant was or included advisory in access to finance projects, capital markets, investment funds, SME financing, public finances; Experience with the projects funded by international financing organizations or development agencies in Serbia or in the region, will be considered as an advantage.

To substantiate the above qualifications, the Consultant must prepare a table containing the following information: project title or relevant assignment; description of the work performed; year of project implementation; country/region; client’s contact (first and last name, e-mail address); and contract value (contract as proof of performance may be required).

Key team members must possess the following qualifications:

## Team Leader

The Consultant must have a designated Team Leader / Project Manager, who shall be fully responsible for the development and performance of all activities envisaged under these Terms of Reference in terms of the timeliness and quality of the services delivered, in compliance with best-operating practices and highest public-sector standards. The Team Leader shall be the primary point of contact for coordinating the team's actions and ensuring quality.

The Team Leader must:

1. Hold a university degree in Law (LL.M or PhD will be considered as an advantage);
2. Have a minimum of 15 years of tax advisory experience;
3. Have a minimum of 10 years of demonstrated experience in legislative amendments processes in public or private sector as a lawyer/legal practitioner;
4. Have broad professional experience on projects with tax administration or public financial management;
5. Have broad academic or professional experience on matters involving analysis of foreign tax jurisdictions or bilateral tax agreements;
6. Have worked previously on projects that funded by international financing organizations or development agencies in Serbia shall be considered as an advantage;
7. Be proficient in the use of Microsoft Office software (Word, Excel, PowerPoint);
8. Have excellent English language speaking and writing skills, as well as presentation skills;
9. Have excellent Serbian language speaking and writing skills, as well as presentation skills;
10. Have excellent communication and team management skills.

## Senior Legal Expert

The Consultant must have a designated Senior Legal Expert with long-standing experience in tax advisory.

The Senior Legal Expert must:

1. Hold a university degree in Law (LL.M or PhD will be considered as an advantage);
2. Have a minimum of 10 years of tax advisory experience;
3. Have a minimum of 5 years of demonstrated experience in legislative amendments processes in public or private sector as a lawyer/legal practitioner;
4. Have broad professional experience on projects with tax administration or public financial management;
5. Have broad academic or professional experience on matters involving analysis of foreign tax jurisdictions or bilateral tax agreements
6. Have worked previously on projects that funded by international financing organizations or development agencies in Serbia shall be considered as an advantage;
7. Be proficient in the use of Microsoft Office software (Word, Excel, PowerPoint);
8. Have excellent English language speaking and writing skills, as well as presentation skills;
9. Have excellent Serbian language speaking and writing skills, as well as presentation skills;
10. Have excellent communication and team management skills.

## Senior Finance Expert

The Consultant must have a designated Senior Finance Expert, with long-standing experience in public finance.

The Senior Finance Expert must:

1. Hold a university degree in Economics or Business (master’s degree or PhD in Public Finance will be considered as an advantage);
2. Have a minimum of 15 years of experience in financial and business advisory field;
3. Have a minimum of 10 years of demonstrated experience in advisory projects related to Serbian or regional financial markets, managing access to finance and related financial analysis;
4. Have broad professional experience on projects involving public finance, tax and regulatory matters in capital markets;
5. Have worked previously on projects that funded by international financing organizations or development agencies in Serbia shall be considered as an advantage;
6. Be proficient in the use of Microsoft Office software (Word, Excel, PowerPoint);
7. Have excellent English language speaking and writing skills, as well as presentation skills;
8. Have excellent Serbian language speaking and writing skills, as well as presentation skills;
9. Have excellent communication and team management skills.

**Consultant will be selected using the Consultant Qualification Selection (CQS) method. Expressions of interest will be evaluated by applying the following criteria with allocated points:**

General experience of the firm– 10 points

Specific experience of the firm relevant to the assignment – 40 points

Qualifications of key experts – 50

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| **Key Experts** | **Allocation of points** |
| Team Leader | 20 points |
| Senior Legal Expert | 15 points |
| Senior Financial Expert | 15 points |

Key experts will be evaluated based on the following criteria and points:

1. General Qualifications – 20
2. Adequacy for the assignment – 60
3. Experience in the region - 20

**Terms of Payment**

The Contract will be a Standard World Bank Lump Sum Contract. Payments for services will be based on the deliverables/reports approved by the Acting Assistant minister in charge in the MoFFS, as follows:

1. Draft Comprehensive analysis and recommendations as explained under 1. in Section *Scope of Work and Deliverables –* 20% of thetotal lump sum;
2. Final Comprehensive analysis and recommendations as explained under 1. in Section *Scope of Work and Deliverables –* 10% of thetotal lump sum;
3. Draft proposed legislative amendments as explained under 2. in Section *Scope of Work and Deliverables –* 30% of thetotal lump sum;
4. Final proposed legislative amendments as explained under 2. in Section *Scope of Work and Deliverables –* 10% of thetotal lump sum;
5. Draft proposed tax bylaws as explained under 3. in Section *Scope of Work and Deliverables –* 20% of thetotal lump sum;
6. Final proposed tax bylaws as explained under 3.in Section *Scope of Work and Deliverables –* 10% of thetotal lump sum.

The amount of the Contract will include remuneration and reimbursable costs related to the assignment.

Appendix – list of minimum questions that should be analyzed by tax consultant

1. *Investigate why the issuance of bonds of the autonomous province or local self-government as a means of financing is not represented despite the tax relief and whether they can be additionally (tax) stimulated.*
2. *Consider introducing into legislation an institute represented in comparative law, the so-called Carry Back Losses, since currently in the Republic of Serbia capital losses can be offset by capital gains only if first a loss and then a gain is being realized, and vice versa is not possible.*
3. *Consider finding a solution for non-residents to be able also to undertake offset its capital gains with realized capital losses.*
4. *Consider the possibility of excluding from taxation or otherwise easing the taxation of interest income generated by debt securities-bonds that are not issued by Republic, Autonomous Province, local self-government unit or the National Bank.*
5. *Consider the possibility of amending the Corporate Income Tax Law and introducing new regulations where 95% of the income from dividends would be tax exempted.*
6. *Consider determining tax liability without the participation of the taxpayer, in which case, administrative obligations will be shifted to the active participation of the market organizer, banks and broker-dealer companies.*
7. *Analyze the possibility to exempt from the withholding tax interest from the debt or equity securities issuance (bonds or stocks) or, to exempt interest from the bonds from capital gain tax.*
8. *Consider possibilities to overcome administrative burdens of the non-resident legal entities for obtaining the tax decision of the Tax Administration pertaining to the capital gains from sale or other transfer of securities.*
9. *Consider the option for tax settlement to be made directly from the foreign currency account abroad to the dedicated account of the tax administration in Serbia, which would be opened for that occasion.*
10. *Consider possibilities to simplify the submitting of additional certificates needed to be attached to the tax return by the non-residents.*
11. *Consider the release of non-residents while transferring earned funds abroad from obligation to obtain appropriate evidence i.e. certificate from the competent authorities that they have previously settled its tax liabilities in the Republic of Serbia.*
12. *Analyze the tax treatment of income that is being generated from bonds, and consider introducing solution likewise existing incentive in case of securities trade by a natural person with the exemption from taxation relating to the transfer of debt securities-bonds issued by the Republic, Autonomous Province, local self-government unit or the National Bank of Serbia, also when it comes to the trade with corporate bonds.*
13. *Consider finding a simplified administrative solution for members of “umbrella funds” and sub-funds to enjoy benefits from relevant double taxation treaties.*
14. *Consider introducing new incentives for legal entities for investing in Undertakings for the Collective Investment in Transferable Securities funds (hereinafter: the UCITS funds), similar to the one provided for taxpayers – individuals and conduct an analysis of comparative legal solutions in the region.*
15. *Consider the option of extending existing tax incentives for legal entities - possible investors in UCITS funds in order to achieve more complete tax neutrality and further motivate future capital investments.*
16. *Consider and propose future solutions that will comprehensively regulate taxation of financial derivatives since these financial instruments are not regulated by any tax law.*
17. *Analyze tax impacts on issuers, investors and intermediates including tax implications of repurchase and lending operations and financial derivatives*