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Experts referred to host administrations are not subject to any selection, vetting or accreditation process undertaken by the TIWB or OECD. The host administration engaging the expert is responsible for ensuring any necessary background or reference checks are completed to its satisfaction.

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Introduction

The Tax Inspectors Without Borders (TIWB) Toolkit is a practical guide to establishing audit assistance programmes in developing country tax administrations. The TIWB Toolkit covers issues that are relevant for all the parties involved in a TIWB audit assistance programme (TIWB programme): the scope of audit assistance under TIWB, preliminary questions to consider before engaging with TIWB, the roles and responsibilities of all parties, and solutions to practical and technical issues that can arise. The Toolkit is a ‘living document’, meaning that the content will be updated and adjusted periodically, based on and taking into account experiences and suggestions from practice.

TIWB is a niche area of capacity building for tax administrations, facilitating expert assistance on current tax audit issues in real cases and in real time with the aim of sharing knowledge and expertise. The Toolkit will help parties understand and address some of the practical and legal issues such as confidentiality and conflict of interest that are unique to this type of tax audit assistance.

This Toolkit is divided into four Parts.

Part I outlines the scope of TIWB, the areas and forms of assistance available, and the roles and responsibilities of the TIWB Secretariat and all parties involved in the programme. It also describes a typical TIWB audit assistance cycle.

Part II sets out a series of preliminary questions, to assess each party’s ability to fully participate in a TIWB programme. The questions are designed to ensure that parties consider all requirements, before embarking on the TIWB process. The parties should review all the questions before requesting or offering assistance.

Part III presents a guiding checklist of issues that can arise in practice in establishing a TIWB programme. It then explores these issues in detail and outlines potential solutions for managing them that can be adapted to the particular context. Aspects, relating for example to confidentiality of tax information, liability of the expert and how to deal with possible conflict of interest are covered. Also outlined are some potential indicators of audit assistance impact and outcomes that can be selected according to the objectives of each assistance programme. Overall emphasis is placed on practical measures to address the questions that can arise.

Part IV outlines the important terms of reference for establishing a TIWB programme. As most terms of reference will ultimately take the form of an agreement or contract between the parties, this Part also offers some examples of provisions that parties can adapt and apply.
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PART 1
About Tax Inspectors Without Borders
1. TIWB objective

The objective of the TIWB initiative is to enable the sharing of tax audit knowledge and skills with tax administrations in developing countries through a targeted, real time “learning by doing” approach. Selected experts will work with local tax officials directly on current audits and audit-related issues concerning international tax matters and general audit practices relevant for specific cases. This is a niche area of tax audit assistance, given its focus on providing assistance on real, current cases.

For each TIWB audit assistance programme, the goal will be to enhance capacity in the tax audit practice of the developing country tax administration (host administration). Through TIWB programmes, the host administration will benefit by improving the quality and consistency of its audits, which in turn brings greater certainty and potentially more revenues for the administration. Over the longer term, the overall investment climate is likely to improve and a culture of taxpayer compliance can be built through more effective enforcement. More broadly, the state-society relationship can also be enhanced through greater engagement and confidence by taxpayers in the taxation process. This may lead ultimately to more effective and accountable governance. TIWB programmes can complement existing tax-focused assistance programmes, to bring a practical approach to applying new knowledge.

2. Areas and forms of assistance

TIWB is focused on promoting hands-on assistance to build audit and audit-related skills pertaining to specific international tax matters and the development of general audit skills. Experts will work together with tax auditors from the host administration on actual audit cases.

TIWB facilitates expert audit assistance in areas such as transfer pricing; thin capitalisation; advance pricing agreements; anti-avoidance rules; consumption taxes (e.g. VAT, GST); high net worth individuals; pre-audit risk assessment and case selection; audit investigatory techniques; and industry-specific or sector-specific issues. TIWB does not cover assistance relating to customs matters nor is concerned with providing policy support, advice on legislative changes, issues related to (re)negotiations or other aspects of international tax treaties, or litigation, as existing organisations and programmes already offer support to developing country tax administrations on these matters.

The form and duration of audit assistance can vary, depending on the needs of the host administration as well as the types of tax matters involved, the availability of appropriate experts, and funding. For example it may require full-time in-country assistance for four weeks, or alternatively eight weeks of assistance over three visits in the course of a six-month period. These different modes of assistance are discussed in more detail in Part III.

3. The role of the TIWB Secretariat

The role of the TIWB Secretariat is to facilitate the involvement of all parties in the realisation of targeted audit assistance programmes. The Secretariat will act as a clearing house and interface for requests to participate in the TIWB programme by proposing experts to host administrations (who are responsible for selecting the expert).

Potential experts will be drawn from TIWB’s database of recently retired officials, and from its network of contacts in partner administrations for secondments of currently serving officials. The database will only contain registration information provided by recently retired officials themselves. Tax administrations will not provide the names of former tax officials directly to the TIWB Secretariat for inclusion in the database.
The Secretariat provides information to all parties about TIWB audit assistance, and through the TIWB Toolkit, offers guidance on practical steps for establishing a framework for audit assistance. For example, the Toolkit covers the important preliminary questions that should be considered to assess whether parties can participate in a TIWB programme. It also discusses the conditions relevant to establishing effective audit assistance and the elements that are important to include in the programme’s terms of reference. The Toolkit will be updated on an on-going basis, to reflect the feedback and experience gained through TIWB programmes.

The TIWB Secretariat is also able to help host administrations link up with possible donor partners who may be able to fund or partially fund expert assistance. The Secretariat also has a role in evaluating the TIWB-programme with a view to improving the TIWB process, as well as invite feedback on the results and outcome of individual audit assistance programmes.

The TIWB Secretariat itself does not provide technical assistance; it is neither responsible for nor in charge of the management of the funding of any audit assistance programme. The costs of the facilitating role performed by the TIWB Secretariat are met by voluntary contributions to the OECD’s Tax and Development Programme, and will not be charged to any of the parties to a TIWB programme.

4. Parties in a TIWB programme and their roles

The parties involved in a TIWB programme are:

- developing countries seeking expert assistance (host administrations);
- experienced tax audit experts (currently serving or recently retired tax audit officials) who may be able to provide that assistance (experts);
- tax administrations that second currently serving officials for a TIWB programme (partner administrations) or the tax administration for which an expert previously worked (former administration); and
- donor partners who assist with funding support for audit assistance programmes (donor partners).

Although the role of each party to a TIWB programme will vary according to its particular context, the general responsibilities of each party are outlined here.

HOST ADMINISTRATIONS

The host administration is the developing country tax administration that will receive and manage the expert assistance. It is the lead partner in a TIWB programme. In that capacity it is responsible for ensuring an appropriate domestic framework for TIWB programmes (see Part II) and for the selection of an appropriate expert. In particular, before entering into a TIWB programme, the host administration should ensure that the request for TIWB assistance fits within the administration’s broader objectives, and is adapted to the existing capabilities of its officials and the tax administration as a whole.

The host administration is also responsible for addressing the requirements for a TIWB programme—for example funding, visas, work permits and measures to ensure confidentiality of tax information—as well as the practical arrangements such as travel and accommodation (see Parts III and IV).
Participation in a TIWB programme, which involves a foreign national working within the host administration, would normally be approved at the highest levels of the host administration. In addition, a contact point in the administration (for example the head of the international tax division or large taxpayers unit) will be responsible for the day-to-day management of the TIWB expert during the course of the audit assistance programme.

**EXPERTS**

Experts participating in TIWB audit assistance programmes have at least five years of experience in an audit or audit-related role in a national tax administration, and may be either currently serving or recently retired (within the past five years) officials. In the TIWB Expert Registration Form – available online – the expert is required to provide details of the areas of tax audit in which he/she has experience (for example in the area of risk review/assessment, case selection, VAT, transfer pricing, thin-capitalisation, computer forensic audits, auditing on Multi-National Enterprises/large businesses, etc.).

Selected experts will work alongside local tax officials under the management of the host administration. They provide “hands on” assistance on current audits and audit-related issues concerning international tax matters, and share skills and knowledge on general audit practices. The experts will have no managerial responsibilities within the host administration.

There are two categories of TIWB experts:

- Currently serving officials who must be proposed for participation in a TIWB audit assistance programme by their administration, as the partner administration. Alternatively, they may take leave without pay with approval from their administration in order to participate in a TIWB audit assistance programme. In such cases the officials will often be considered to be employees of their home administration and therefore bound by all obligations associated with this status.

- Recently retired officials may register in the TIWB expert database, providing a short employment résumé that includes contact details of at least one reference from their previous tax audit role in a tax administration. Recently retired officials will often participate in TIWB on a voluntary basis, with their costs of participating (e.g. travel and daily expenses) covered by the host administration or by a third party sponsor such as a donor agency.

Experts will be directly involved in the daily audit activities of the host administration, which in most cases will require them to have access to confidential tax information relating to individual taxpayers. This position of responsibility raises issues of confidentiality, conflict of interest and liability of the expert, which are discussed in this Toolkit (see Part III). In advance of the TIWB programme, experts need to work with the host administration to ensure that an appropriate framework for the programme is put in place.

**PARTNER ADMINISTRATIONS**

A partner administration will become involved in TIWB if it agrees to second a currently serving official in response to a request for TIWB assistance. A partner administration can be any tax administration (OECD or non-OECD member) that is able to second an official with expertise in a particular area, related to tax audit.

The TIWB Secretariat will notify the TIWB points of contact in potential partner administrations when requests for assistance are received. In these cases, the partner administration will propose the appropriate expert and will work with the developing country host administration, assisted by the TIWB Secretariat, to determine the terms of reference for the audit assistance programme.
When a currently serving official is seconded to the host administration, the partner administration will continue to pay the expert’s usual salary. The partner administration may also agree to pay the travel and daily expenses of the expert’s participation in the programme, although a number of funding options exist (see further the section on funding in Part III). Also, the partner administration may request feedback on the expert’s participation in the TIWB programme from the host administration.

In some cases, a partner administration may not second a currently serving official but may agree to allow a currently serving official to take a period of leave without pay in order to participate in a TIWB programme. In these instances, the expert’s participation is a hybrid between audit assistance programmes involving currently serving and recently retired officials. This raises issues pertinent to both categories, for example in respect to funding, conflict of interest and confidentiality. In these cases, the experts should nonetheless continue to liaise with their administration to ensure that the latter remain fully informed of the scope of the expert’s involvement.

**DONOR PARTNERS**

Donor partners provide funding support for audit assistance programmes. In general, they are government development agencies who provide funding directly to the host administration for the purposes of engaging the expert. In some other cases, funding is provided by a development agency to the tax administration of its own country to allow it to second a currently serving official as an expert to the host administration.

The donor support may be provided specifically to establish a TIWB audit assistance programme, or it may form part of a broader package of assistance to the host administration or the developing country’s Ministry of Finance.

**5. Audit assistance framework**

All of the parties must be aware of the relevant considerations for a robust audit assistance framework and therefore also for a robust TIWB programme framework.

The TIWB Toolkit addresses the elements of an effective audit assistance programme as follows:

- **Preliminary questions (Part II):** highlighting important practical and legal issues necessary for full participation in a TIWB audit assistance programme which should be considered by all interested parties prior to engaging with TIWB.

- **Key elements of effective audit assistance (Part III):** examining in depth elements of an international tax audit assistance programme ranging from the duration and mode of the programme to issues that can arise when foreign experts work in a tax administration, such as confidentiality of tax information, conflict of interest and liability of the expert.

- **Terms of reference for an effective audit assistance programme (Part IV):** outlining possible provisions for a framework agreement to guide the audit assistance programme and to formalise the arrangement between the parties. These provisions will need to be adapted to the context and requirements of the particular programme.
6. TIWB process

The TIWB process is structured on the basis of a high-degree of active host administration involvement. The goal is to promote project ownership while using TIWB tools to create an effective and productive arrangement tailored to the host administration’s objectives. The host administration therefore leads the TIWB audit assistance process from the moment it makes the request for expert assistance.

High-level support and engagement by the host administration have been factors in the success of capacity building projects in tax administrations:

Some of the country case studies show that as soon as these agencies begin to enforce these new capabilities, a significant opposition begins to mount by groups adversely affected by that enforcement … Tax administration agencies will begin to document tax evasion and tax arrears by individuals and corporations. Because the groups adversely affected by these actions are often highly concentrated and politically well connected, these agencies can quickly come under attack as they move into the enforcement area. Thus achieving the ultimate objective of technical assistance will depend critically on the support being received from the highest authorities. That support will become increasingly important as their technical capability increases.1

Therefore, as part of a recipient-led process, successful TIWB audit assistance programmes will require engagement with the right people at the right level in the host administration and related government authorities. Administrations interested in engaging a TIWB expert should have the clear support of the head of the audit unit where the expert is to work, the Commissioner and/or Commissioner-General of the administration, and if necessary the Finance Minister. This support should extend beyond the initial request for assistance through the life of the audit assistance programme.
**TIWB programme cycle**

1. Host administration identifies tax administration capacity and audit assistance needs and reviews preliminary questions in TIWB Toolkit.
   Host administration completes and submits Assistance Request Form (two parts) to TIWB Secretariat.

2. TIWB Secretariat registers and reviews requests, including with regards to: scope of assistance, country-specific considerations and ensuring avoidance of duplication with existing assistance.
   As needed, TIWB Secretariat liaises with host administration to refine request.

3. TIWB Secretariat makes a summary of the request available online and reviews the database of recently retired experts.
   TIWB Secretariat distributes the summary of request to its network of partner administrations to check availability of currently serving officials for secondments.

4. TIWB Secretariat contacts recently retired experts who are registered in the TIWB database to confirm availability for proposed TIWB programme.
   TIWB Secretariat confirms that experts have reviewed the preliminary questions (Part II) of the TIWB Toolkit.

5. TIWB Secretariat sends details of available experts to the host administration.

6. Host administration selects expert, first undertaking any reference checks to determine if expert is appropriate to host administration's needs.

7. Host administration, facilitated by TIWB Secretariat and guided by Parts III and IV of the Toolkit, works with expert and any partner administration or donor partner to establish the terms of reference for the TIWB programme, taking into account specific circumstances and conditions.

8. Following the TIWB programme, host administration assesses impact.
   Host administration and the expert provide feedback to TIWB Secretariat on the programme and the TIWB process.
   TIWB Secretariat refines the TIWB process where appropriate.
Notes

The following series of decision trees should be considered before seeking to participate in a TIWB audit assistance programme (TIWB programme).

Although some of the questions are targeted specifically at host administrations, partner administrations or experts, all parties interested in a TIWB programme are encouraged to review all of the questions and consider how they might impact their involvement.
For host administrations

PRELIMINARY QUESTION 1

In your country, are foreign nationals permitted to work in the public service and - in particular - the tax administration?

If yes, are there any pre-conditions that must be met before a foreign national can work in your country?

For example in some cases foreign nationals may be permitted to work in the tax administration only if:
- they are engaged as a consultant, not an employee; or
- no national with the required skills or experience is available for the role.

If yes, when completing the TIWB Assistance Request Form, please provide information about these pre-conditions.

If no, can a TIWB expert who is a foreign national work in the tax administration of your country pursuant to a technical co-operation agreement with another country?

If yes, when completing the TIWB Assistance Request Form, please provide information (if available) about such technical co-operation agreements with other countries.

If no, it may not be possible for your administration to participate in a TIWB programme at this stage. However, please contact the TIWB Secretariat to discuss further.

If no, it may not be possible for your administration to participate in a TIWB programme at this stage. However, please contact the TIWB Secretariat to discuss further.

If no, please ensure you have closely reviewed all of the preliminary questions before submitting your TIWB Assistance Request Form.
**For host administrations**

**PRELIMINARY QUESTION 2**

**Are there any restrictions on the type of work foreign nationals can carry out within your tax administration?**

*For example, there may be restrictions on their participation in taxpayer interviews or visits to taxpayer’s business premises.*

**If yes,**

If **yes,** can a foreign national make a valuable contribution to audit activities in the area of assistance you require while working within those restrictions?

**If no,** please ensure you have closely reviewed all of the preliminary questions before submitting your TIWB Assistance Request Form.

**If yes,** it may not be possible for your administration to participate in a TIWB programme at this stage. However, please contact the TIWB Secretariat to discuss further.

**If yes,** please provide full details of these restrictions when completing the TIWB Assistance Request Form.

**NO**

**YES**
**For host administrations**

**PRELIMINARY QUESTION 3**

Are there any legal requirements that must be met before a foreign national may work in the tax administration of your country?  
*For example, are visas or work permits required?*

- **YES**
  - If yes, is your tax administration able to assist a TIWB expert who is a foreign national, to fulfil these requirements by for example providing the necessary documentation or assistance to obtain appropriate visa?
  - **YES**
    - If yes, please provide details of the legal requirements and relevant conditions (e.g., a work permit for extended stays) when completing the TIWB Assistance Request Form.
  - **NO**
    - If no, it may not be possible for your administration to participate in a TIWB programme at this stage. However, please contact the TIWB Secretariat to discuss further.

- **NO**
  - If no, please ensure you have closely reviewed all of the preliminary questions before submitting your TIWB Assistance Request Form.
For host administrations | PRELIMINARY QUESTION 4

Will your administration assume legal liability for any act or omission of the expert during the course of his/her work for your administration?

For example if your laws protect tax officials (or all public officials) from liability when undertaking their professional duties, would this protection extend to TIWB experts, engaged by your tax administration as an employee, a consultant or otherwise?

Alternatively, will your tax administration agree to indemnify the expert (or the partner administration if necessary) in such circumstances by, for example, including a provision to this effect in the programme’s terms of reference?

If no, it may not be possible for your administration to participate in a TIWB programme at this stage. However, please contact the TIWB Secretariat to discuss this issue further.

If yes, please explain how your administration will address the question of the expert’s legal liability in detail when completing the TIWB Assistance Request form.
For host administrations

**PRELIMINARY QUESTION 5**

In the event of alleged fraud or other deliberate wrongdoing (through act or omission) by the expert, will your administration assume responsibility for all reasonable costs incurred by the expert in defending those allegations?

For example, your domestic legislation may include provisions to protect tax officials (or all public officials) from liability when undertaking their professional duties. Under your current domestic law, would this protection extend to TIWB experts, regardless of whether they are engaged by your tax administration as an employee, a consultant or otherwise?

Alternatively, will your tax administration agree to indemnify the expert (or the partner administration if necessary) in such circumstances, for example by including a provision to this effect in the programme’s terms of reference?

See further Liability of the expert in Part III of the Toolkit.

If **no**, it may not be possible for your administration to participate in a TIWB programme at this stage. However, please contact the TIWB Secretariat to discuss further.

If **yes**, consider how legal liability in these circumstances will be addressed by your administration.

For example, it may mean that a clause on liability for acts or omissions of the expert is included when drafting the TIWB programme terms of reference. Details on protections for expert liability should be included in your response to the TIWB Assistance Request Form.
For host administrations

PRELIMINARY QUESTION 6

Will your administration assume responsibility for the safety of the expert?

YES

If yes, please specify when completing the TIWB Assistance Request Form if you will extend the occupational health, safety and welfare protections in your laws to the expert or will indemnify the expert through a provision in the programme terms of reference.

NO

If no, it may not be possible for your administration to participate in a TIWB programme at this stage. However, please contact the TIWB Secretariat to discuss further.
Do your audit planning processes allow you to identify the entities which you intend to audit with the assistance of the TIWB expert at least two months in advance of the proposed programme start date (in order to manage potential conflict of interest)?

If yes, please note that the expert or, if relevant, the partner administration may ask you to identify such before the start of the TIWB programme.

If no, can the expert deliver effective assistance on the proposed audit activities, on the basis of anonymised information?

If yes, when completing the TIWB Assistance Request Form, please note your ability to identify the relevant entities in advance of a TIWB programme.

If no, it may not be possible for your administration to participate in a TIWB programme at this stage. However, please contact the TIWB Secretariat to discuss further.
For host administrations | PRELIMINARY QUESTION 8

Do the proposed audit activities to be undertaken with expert assistance include joint audit activities or bilateral or multilateral discussions or negotiations with another country or countries?

This question concerns the management of potential conflict of interest.

See further the section on Conflict of Interests in Part III of the Toolkit.

If no, please ensure you have closely reviewed all of the preliminary questions before submitting your TIWB Assistance Request Form.

If yes, please identify that country or countries in the TIWB Assistance Request Form.
**For partner administrations**  
**PRELIMINARY QUESTION 1**

Are there any (legal or other) restrictions that may limit or affect the possibilities for your tax officials (TIWB-experts) to participate in a TIWB programme? *(e.g. limitation of territorial competence)*

- **NO**
  - If no, please continue to review the remaining Preliminary Questions.

- **YES**
  - If yes, please provide full details of these restrictions on the expert’s activities to the TIWB Secretariat.
For experts

PRELIMINARY QUESTION 1

Have you worked in the last five years, or are you currently working in an audit or audit-related role for a national tax administration and do you have at least five years of experience in that role?

If yes, please contact your TIWB point of contact in your tax administration or, if unknown, contact the TIWB Secretariat.

If no, it will not be possible for you to participate in a TIWB programme.

If no, are you currently providing tax advice in a consulting or other capacity (paid or pro-bono) on a full-time or part-time basis?

If yes, your ability to fully engage as a TIWB expert may be limited due to potential conflict of interest issues.

Please review the section on conflict of interest in Part III and include details of your current role in providing tax advice in the TIWB Expert Registration Form.

If no, please ensure you have closely reviewed all of the preliminary questions before submitting your TIWB Expert Registration Form.
If you are a retired expert, would participation in a TIWB programme (which involves working for a foreign tax administration) impact your retirement agreement from your home administration or the terms of any pension or other payment you receive?

If yes, do those restrictions persist if you receive no payment for your participation, apart from expenses such as travel and accommodation as part of the TIWB programme?

If yes, please consider the basis on which you would be interested in participating in a TIWB programme, taking into account these considerations. These should be described on the Expert Registration Form.

If no, please ensure you have closely reviewed all of the preliminary questions before submitting your TIWB Expert Registration Form.

If no, when completing the Expert Registration Form, please provide details of any restrictions on your participation in a TIWB programme.
This part of the Toolkit explores in detail the elements for providing effective audit assistance, including those specific to the tax administration environment.

Part III begins with an overall checklist of the key ingredients for a TIWB audit assistance programme. Each item in the checklist links to more detailed information on that issue, with tips on how it can be addressed by all involved parties. The elements that are mentioned in this checklist should be addressed in the terms of reference developed for each TIWB programme. The terms of reference are discussed further in Part IV.
## Overall checklist of the key ingredients for a TIWB audit assistance programme

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Defining the scope of the required TIWB audit assistance

**KEY QUESTIONS**

- What type of audit or audit-related assistance is required by the host administration?
- How does a TIWB Audit assistance programme fit with other forms of (technical) assistance being received by the host administration?

**Defining the scope of the audit assistance** required by the host administration is the important first step to establish an effective TIWB programme. This enables the host administration to identify the essential elements of the assistance it requires, and the results it wants to achieve. In particular, the host administration should ensure that the request for TIWB assistance fits within the administration’s broader objectives, and is adapted to its current capacities.

The host administration needs to define the scope of assistance required as clearly as possible. The more specific the issues are, the easier it will be to help determine the appropriate experts, the timing of the programme and the most appropriate programme duration.

For example, the host administration should outline clearly the focus of the activities to be carried out during the programme, and whether the activities will be audit-related, such as risk assessment and case selection, or will focus on applying new or different audit techniques in an audit team’s daily practice or will cover specific fiscal subjects, such as transfer pricing, thin capitalisation etc.

The host administration uses the TIWB Assistance Request Form – available online - to notify the TIWB Secretariat of its request. The form consists of two parts and is meant to communicate detailed information about the scope of the TIWB programme and the subjects that should be covered in it.

The host administration has to consider and determine if they are already involved in ongoing programmes of technical assistance that may cover similar areas as the proposed TIWB programme. The host administration should ensure that there will be no duplication of the types of assistance that are requested or provided and should inform the TIWB Secretariat of all other requests for assistance they have made, or other programmes already in place.

In case there are existing development assistance programmes in the host country (in particular, involving the tax administration or the Ministry of Finance), the host administration should also inform the respective donor partners about the proposed TIWB programmes. Involvement of the existing donor partners could also provide opportunities to improve the impact and sustainability of the TIWB programmes.

**PRACTICAL TIP!**

*Defining the scope of the required TIWB audit assistance*

If you are the host administration, be as specific as possible in the TIWB Request Assistance Form in describing the relevant considerations for an audit assistance programme in order to fully define the programme scope.
Duration, mode and timing of TIWB audit assistance

**KEY QUESTIONS**

- For how long is an expert required?
- Is the expert required full-time or periodically?
- When should the TIWB programme commence, taking into account audit cycles of the host administration and the nature of assistance required?

The duration and mode of expert audit assistance programmes will vary, depending on the specific audit-related needs of the host administration, the availability of experts and funding. Some issues may only require expert assistance on a specific technical issue (for example, the computer forensics element of an audit). In other cases, administrations may require assistance developing a general audit approach that would encompass number of topics such as risk review and case selection for audits.

**DURATION OF ASSISTANCE**

There is no minimum or maximum period for audit assistance programmes; each programme is likely to be at least one week long while audit assistance programmes designed on a periodic basis may, for example provide 8 to 12 weeks of assistance over a period of 6 to 12 months. Before making a request for assistance, host administrations should consider precisely how and when an expert would engage with their audit cycle and with the audit plans for particular taxpayers.

**MODE OF ASSISTANCE**

The mode of audit assistance programmes will vary according to need and availability, and may be structured as:

- Periodic programmes, where the expert provides intermittent on-site assistance, such as six weeks of assistance provided over a six-month period in the course of three in-country visits. In some cases, this periodic assistance will be coupled with remote desk-based assistance when the expert is not in country. For example, the on-site assistance portion could be timed with peak audit periods, with remote assistance being provided on an ongoing basis.

- Full-time programmes, where the expert joins an existing audit team and, for example, works on a two-week full-time basis in country on a targeted issue arising in a taxpayer audit.

In some limited cases, it may be appropriate for an expert to provide only remote, desk-based assistance. However, due to the difficulties of working with a foreign tax administration in a different cultural context, this will generally only be appropriate where the expert has an existing relationship with the host administration, and therefore has some knowledge of its audit process and context.
TIMING OF ASSISTANCE

A practical matter to consider is the timing of the expert assistance. The expert should be present on site in the host administration in order to have maximum effect. This will mean taking into account audit planning, tax return cycles, the time normally taken to complete particular types of audits as well as peak work periods in the audit process. For periodic deployments, this may require the expert and host administration to plan and also have some flexibility to ensure the expert’s presence on site when it will be most useful.

PRACTICAL TIPS!

**Duration, mode and timing of TIWB audit assistance**

- If you are a host administration, identify the preferred duration, mode of assistance and timing of the TIWB programme in the TIWB Assistance Request Form.
- If you are an expert, consider how long you are able and willing to participate in a TIWB programme. Host administrations may be flexible, so consider completing a TIWB registration form even if you may not be available for the entire proposed period.

3

The expert

**KEY QUESTIONS**

- What is the role of the expert?
- What is the expert’s position with regards to the host administration?
- How is the expert selected?

**ROLE OF THE EXPERT**

The role of the expert is to provide hands-on assistance in the daily audit and audit-related activities of the host administration, working on actual audit cases. As such, the experts work at the local tax office of the host administration with the local tax officials, with the host administration managing their day-to-day role. However, the expert shall not take the place of local tax audit staff or carry out audit work that would not otherwise involve local audit personnel. The expert will not have formal management responsibilities within the administration.

At the same time the experts bring to the host administration their experience and specific expertise, and as such their role necessarily has a knowledge-sharing component. The expert must strike a balance between working alongside local officials to complete the audit activities, on the one hand, and on the other, building skills and sharing knowledge with the goal of developing the host administration’s longer-term audit capacity.
The experts should bear in mind the importance of managing expectations of the expert’s role, including recognising the limits to the scope of the targeted assistance. To achieve the greatest ripple effects from their targeted audit assistance, they should also engage as broadly as possible with local tax audit officials.

The expert will need strong interpersonal skills to strike this balance between facilitating knowledge sharing and also working within the management and operational structure of the host administration.

**POSITION OF THE EXPERT**

Although the expert will in most cases be considered to have the same position as an employee of the host administration when performing his/her tasks, it is likely – e.g. because of the advisory component in their tasks – that the position of the expert may differ on some points compared to the position of regular employees of this administration. This may have legal as well as practical consequences. All parties involved in the audit assistance programme must take this into account in practice as well as in determining the terms of reference for the audit assistance.

There must also be a clear chain of responsibility for management of the expert. It may vary depending on whether the expert is a recently retired official or a currently serving official. In the latter case, for instance, the management chain will need to take into account the partner administration. Careful consideration must be given to the differences in the roles of an expert who is a currently serving official and one who is a recently retired official.

In both cases, however, experts should ensure they are fully informed about their duties and rights including an awareness of the applicable management and reporting structure, their obligations of confidentiality, potential conflict of interest and liability (and sanctions applicable for any breach).

Agreed processes should also be in place to manage any difficulties which may arise during the TIWB programme, between the host administration and the expert, for example, concerning the approach or technique of the expert. In cases where the expert is a currently serving tax official, the partner administration will be informed about the nature of the difficulties. In advance of the audit assistance programme, the experts will need to work with the host administration to ensure that an appropriate framework for the specific programme is put in place. In the case of currently serving experts this will be done in conjunction with their administration, that is, the partner administration. Whether the expert is a currently serving official or a recently retired expert will change some aspects of the programme framework, for example by shifting a number of responsibilities of the involved parties.

**Position of currently serving tax official**

During the audit assistance programme, the expert who is a currently serving official (either on secondment or on leave without pay) will at the same time act as an official of the host administration, being directly involved in actual audit activities. The expert will therefore generally have duties and responsibilities towards both administrations. Specific attention should be given to management responsibility, liability and the reporting requirements of the expert. The position of the expert with respect to both administrations as well as any specific arrangements must be clearly outlined in the terms of reference. Part IV presents proposals for addressing these issues.
While unlikely there may be cases where experts may face problems in carrying out their official duties for the host administration (e.g. relating to tax confidentiality or managing conflict of interest, or in the scope of their responsibilities for the host administration). The terms of reference, then, should make clear how these will be managed and through which management channels, and which administration (host or partner administration) will have primary responsibility for that process.

Position of recently retired tax official

The position of recently retired tax officials, acting as experts in a TIWB programme, may be more closely characterised as similar to that of local officials of the host administration. In some countries legislation stipulates that retired tax officials may still have specific obligations toward the organisation that previously employed them, e.g. regarding matters related to fiscal confidentiality. These obligations have to be taken into account when setting the terms of reference.

However, the specific purpose of the TIWB audit assistance programme must still be taken into account, meaning that experts are deployed to share their knowledge and experience while working as peers of the local tax audit officials. The expert and management officials in the host administration must be sensitive to this consideration and ensure that the expert is in a position to be able to share that knowledge and experience with the local audit officials.

Another consideration is that a recently retired official is likely to have fewer constraints than a currently serving official, relating for example to potential conflict of interest. This relative freedom from constraints also means they have less support from their former administration. A clear avenue of recourse during the audit assistance programme should be established in the event the expert faces problems when working on the practical level day to day for the host administration (e.g. in regard to dealing with tax confidentiality or managing conflict of interest).

The terms of reference, therefore, must clearly state the position of the expert in the host administration (including the responsibilities of each party) and the protections and reporting structure which apply (for example in the event of allegations of improper conduct, conflict of interest, etc.).

SELECTION OF THE EXPERT

The host administration is responsible for selection of the expert.

Potential experts will be drawn from TIWB’s database of recently retired officials, and from its network of contacts in partner administrations for secondments of currently serving officials. When a request for assistance is made, the TIWB Secretariat makes a summary of the request available online for interested recently retired experts and also reviews its existing database of recently retired experts. At the same time, the TIWB Secretariat will notify points of contact in potential partner administrations, in order to determine their capacity to respond to the request.

Once available and relevant experts for a particular request are identified, the TIWB Secretariat will provide their details to the host administration. In order to ensure that the expert has the appropriate experience, skills and background, the host administration may require further information. The host administration is responsible for undertaking any reference checks deemed necessary to ensure that a potential expert meets the administration’s needs.
For currently serving officials, the host administration will be able to directly address the TIWB contact point in the partner administration. The TIWB Secretariat will provide the appropriate contact details.

For recently retired experts, the information provided by the TIWB Secretariat will include the expert’s CV and reference contact details. This will include contact details of a supervisor from the experts’ former audit role in their home administration. Any contact with the expert’s home administration will go through the TIWB contact point of that administration, with details provided to the host administration by the TIWB Secretariat.

Once the host administration has selected the expert, the expert (and the partner administration where relevant) and the TIWB Secretariat should be informed. The TIWB Secretariat will also advise partner administrations if their offer to provide a currently serving expert is not required. The parties can then move quickly to put in place appropriate terms of reference for the TIWB programme.

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**PRACTICAL TIPS!**

**The expert**

- *If you are the host administration*, be as detailed as possible about the anticipated role and position of the expert in your administration when completing the TIWB Assistance Request Form that is available online.

- *The TIWB Secretariat* will provide the host administration with the details of experts who meet the key criteria outlined in the TIWB Assistance Request Form.

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**KEY QUESTIONS**

- **What are the categories of costs in the TIWB programme?**

- **How should the parties deal with situations requiring an examination of remuneration of experts?**

The costs of each audit assistance programme will vary widely. These variations relate to whether the expert is a currently serving or a recently retired official; the location and costs of living in the relevant city where the expert will be deployed; and the duration and mode of the programme (e.g. short- or long-term, full-time or periodic). These costs should be viewed in light of the objectives and anticipated impact of the audit assistance programme. Remuneration (salary) is discussed separately below.

The following list outlines the categories of costs which may be incurred and which should be considered when assessing the budget requirements for a TIWB programme. Costs should be discussed with the host administration, the expert, and any partner administration or donor partner in advance, and should form part of the terms of reference (see also Part IV).
CATEGORIES OF COSTS

The costs of an expert participating in a TIWB programme will generally include:

- Travel (transport to and from the programme, and for longer-term programmes, relocation costs. The permitted class of travel must be specified. Also note that for periodic deployments travel costs will be higher).

- Daily expenses (per diem) covering items such as:
  - Accommodation
  - Food allowance
  - Miscellaneous (e.g. phone calls).

- Ancillary duty costs such as, for example, any travel required to be undertaken as part of the expert’s role in the host administration and the costs of obtaining visas and work permits.

There are no internationally agreed standard rates for per diem expenses. However several agencies and organisations have set standards that determine fixed amounts to be reimbursed to their officials when working at foreign destinations. These standards could be a guideline for the parties when negotiating the terms of reference. Alternatively, host administrations may have their own guidelines on agreed per diem levels for national officials that could be relevant in this context.

In addition to these costs, the host administration will need to provide appropriate workplace facilities for the expert in line with those available to local officials in equivalent roles. These may include, for example, a desktop or laptop computer, workspace, mobile phone, and a vehicle if appropriate or required.

REMUNERATION

In addition to meeting the programme costs, in some cases remuneration for an expert’s participation may be offered.

REMUNERATION – CURRENTLY SERVING EXPERTS

Currently serving officials who are seconded from the partner administration to the host administration will in most cases continue under the usual remuneration arrangements with the partner administration. For longer-term audit assistance programmes, the host and partner administrations may reach an agreement for remuneration expenses of the expert to be shared, or to be met fully by the host administration.

Where currently serving officials participate in a TIWB programme by taking leave without pay from their administration, they will not of course receive remuneration for that period from their administration. In this regard, the remuneration circumstances are more similar to those for recently retired experts as described below.
REMUNERATION - RECENTLY RETIRED EXPERTS

Recently retired officials may participate in TIWB audit assistance programmes without receiving a salary or other form of remuneration although their costs of participating, for example travel and daily expenses as described above, will be covered.

In some cases, some funding may be available to offer a level of remuneration to recently retired experts. This will be at the determination of the host administration, and will be clearly indicated in the TIWB programme summary that is made available to potential experts from the TIWB Secretariat. The terms and conditions under which the remuneration will be granted should be stated clearly in the TIWB programme terms of reference.

Two additional issues arise where remuneration is paid, particularly in the case of a recently retired expert: taxation and pensions or social security contributions.

TAXATION

It is crucial to ensure appropriate taxation of any remuneration or other benefits paid to the expert during a TIWB programme. In many cases, complying with the host country’s tax laws is contained in the code of conduct and/or terms and conditions of employment for tax officials or public service officials more broadly.

Experts assisted by the host administration and where applicable a partner administration, will need to ensure they are in full compliance with the laws of the host country as well as in their country of tax residence in terms of any remuneration or programme costs (such as reimbursement of travel or accommodation expenses).

PENSION OR SOCIAL SECURITY CONTRIBUTIONS

In connection with remuneration, pension or social security contributions can raise specific issues in the case of retired experts and experts who have taken leave without pay from their tax administration to participate in a TIWB programme. These categories of experts will need to consider and determine if participating in the TIWB programme will have an effect on any remuneration or pension they receive. They should also address whether, as a result of the programme, there will be any obligation to pay to them social security contributions in the country of the host administration. Where relevant, this issue should be clearly addressed in the terms of reference.

PRACTICAL TIPS!

Costs

- Make sure the terms of reference clearly set out the categories of costs that will be covered under the TIWB programme and who will be responsible for paying these costs.
- If you are the expert, consider the impact of participating in the TIWB programme on your personal tax obligations and on any pension or social security contributions or payments you may be entitled to receive or required to make.
Funding

KEY QUESTION

■ What are the possible options to fund a TIWB audit assistance programme?

Responsibility for ensuring that funding is in place to meet the costs of the audit assistance programme rests with the host administration. These costs should be viewed in light of the anticipated impact of the audit assistance programme. By drawing on its network of donor partners, the TIWB Secretariat is able to assist host administrations connect with potential donor partners who may be able to fund or partially fund the costs of the programme.

It is anticipated that in all cases, host administrations will contribute to funding the costs of the audit assistance programme, which can also be viewed as a means of engaging ongoing and high-level commitment in the host administration to the programme’s objectives.2

There are different possibilities for funding audit assistance programmes, which include:

■ Self-funding: all the costs of audit assistance programme are met by the host administration.

■ Partnership funding: the host administration provides part of the funding for the audit assistance programme, for instance the expert’s costs for travel or daily expenses. This base funding is complemented by additional “top-up” funding to meet the remaining costs. A donor partner can provide the top-up funding. Often, the donor partner will already be involved in a broader programme of development assistance to the host administration or the Ministry of Finance.

■ Sponsored secondments: where the expert is a currently serving official, the costs of the audit assistance programme may be partly or fully funded by a partner administration who seconds the official for the audit assistance programme. For example, the partner administration may continue to pay the salary costs of the official, and may also cover the expert’s travel and daily expenses. Alternatively, the host administration or a donor partner could meet the expert’s travel and daily expenses.

Under the TIWB programme self-funding and partnership funding will be applied in the case of a programme where the expert is a retired tax official or a currently serving official who has taken leave without pay from his or her position.

Occasionally for sponsored secondments, the government’s development agency rather than the partner administration will bear all or part of the costs. This approach is frequently used where the TIWB programme forms part of a broader development support plan between the two countries. Further, this approach may over time permit the partner administration to increase the overall cadre of trained and experienced international tax experts in its own administration as it is not bearing the full cost of the secondment.
The host administration therefore should determine whether other government agencies (e.g., Ministry of Finance) or donor partners with whom the host administration is already working, may be able to fund or partially fund the proposed TIWB programme. Clearly identifying the need for assistance using the TIWB Assistance Request Form will be useful in this regard.

**CONFIDENITALITY OF TAX INFORMATION**

**KEY QUESTIONS**

- What are the rules of the host administration that create obligation(s) of confidentiality of tax information?
- What will happen if there is an alleged breach of tax confidentiality?

Confidentiality of taxpayer information has always been a cornerstone of tax systems. In order to have confidence in their tax system and comply with their obligations under the law, taxpayers need to also be confident that the often sensitive financial information is not disclosed inappropriately, whether intentionally or by accident.

The confidentiality of information obtained in the course of a tax official’s duties is a crucial issue in tax administration. This is particularly true when engaging a foreign expert who will also have access to tax information. Failure to properly manage the duties of confidentiality can challenge the integrity of the host administration, whose audit capacity the expert is working to build, and it also may impact the expert’s professional standing. It may also give rise to litigation by taxpayers for (alleged) breach of the obligation.

It is therefore crucial that the parties consider and address confidentiality in the terms of reference. First, an understanding is needed of the source(s) and scope of the confidentiality duties imposed on tax officials in the host administration. The second aspect is to ensure that the expert, to the extent possible, will be subject to the same or equivalent obligations as the local officials. At a practical level, experts must understand the nature and scope of their obligations of confidentiality and the possible consequences and appropriate management process in case of a breach.

The host administration needs to determine how the same or equivalent confidentiality obligations that apply to local tax officials will apply to the expert. For example, they may apply directly because under the relevant legislation the expert falls within the definition of persons subject to those obligations. Alternatively, the terms of reference may ensure that equivalent obligations are imposed on the expert. This may also involve the expert making the same oath or affirmation of secrecy that local tax officials take.

**PRACTICAL TIPS!**

- **Funding**
  - Confirm the extent of funds available from the budget of the host administration to fund the proposed TIWB programme.
  - Contact the TIWB Secretariat to assist with identifying potential donor partners.
It is the responsibility of the host administration to bring the obligations of confidentiality to the attention of the expert. The host administration should also provide guidance on the proper handling of tax information (for example, clean desk policy) to ensure that its personal obligation of tax confidentiality is upheld.

The parties should have a clear understanding of how an alleged breach of tax confidentiality will be addressed. Any such issue involving an expert who is a currently serving official is likely to require some involvement of the partner administration, and this procedure should be determined in advance. It is important to ensure that investigations are appropriately carried out before a determination is made on whether a breach has in fact occurred and the circumstances of that breach. During that investigation process, appropriate support for the expert should be provided from the host administration and any partner administration if the expert is a currently serving official.

The obligation of confidentiality of tax information is perpetual, extending beyond the end of the audit assistance programme. This obligation prevents the expert from revealing any tax information acquired during the programme, even once the programme has concluded. In this regard, partner administrations must also note that upon returning, experts cannot share any confidential tax information which they obtained in the course of their duties as an expert in the host administration.

Experts must also appreciate that the obligations of confidentiality to which they were or are subject as an official of the partner administration or their former administration, will continue to apply during the TIWB programme.

Managing the obligations of confidentiality raise similar issues to managing actual or perceived conflict of interest, discussed in Section 7 below. There is also a direct link between issues of confidentiality and the potential liability of the expert if an issue of a breach of confidentiality arises (see Section 8).

**LEGAL PROVISIONS AND OTHER RULES ESTABLISHING TAX INFORMATION CONFIDENTIALITY**

Specific provisions in a country’s tax legislation commonly protect confidentiality of taxpayer information. In general these provisions make it a criminal offence for tax officials to disclose information relating to a taxpayer that was obtained in the course of the performance of their duties. There is no universal definition of what constitutes tax information; however in general it will cover all information obtained in the course of a person’s duties as a tax official. The obligation to maintain confidentiality applies even after the official has ceased to work for the tax administration.

In addition to a tax law requirement, an obligation of confidentiality may arise from broader laws or regulations that apply to all civil servants. These may be obligations contained in the country’s constitution or obligations arising from international agreements such as double taxation agreements.

Obligations of confidentiality, as well as other aspects of a tax official’s conduct and duties, may also be founded in codes of conduct issued to tax officials or to all civil servants. This may include an oath or affirmation of secrecy that tax officials make before assuming their duties, or it may form part of the employment contract offered by the tax administration. An expert may be required to take an equivalent oath of conduct before participating in the audit assistance programme.
In addition to the tax administration, other state institutions may be charged with monitoring how tax confidentiality is dealt with in practice. This could include supervision by Courts of accounts, internal audits, and investigations by anti-corruption agencies or tax police, and may include the capacity to apply sanctions in cases of breach of tax confidentiality.

**PRACTICAL TIPS!**

**Confidentiality of tax information**

- The obligations of confidentiality may be found set out in laws, codes of conduct, internal regulations, constitutions or international agreements. Different agencies may be responsible for monitoring tax confidentiality issues, sanctions in the case of a breach and the process for enforcing sanctions. All parties must be aware of these in advance.

- If you are the expert, make sure that any work you undertake at a later date (for example, for another tax administration or a private entity) would not involve the disclosure, or the perceived risk of disclosure, of confidential tax information obtained in the course of the TIWB programme.

- Address as specifically and in as much detail as possible all aspects related to fiscal confidentiality in the TIWB programme terms of reference.

### Managing (potential) conflict of interest

**KEY QUESTIONS**

- What rules apply to officials in the host administration regarding potential conflict of interest?

- What will happen if there is a potential conflict of interest in the work proposed to be undertaken by the expert?

Conflict of interest can be defined as a situation that involves tension between the public duties and private interests of a public official. These situations involve public officials who in their private capacity have interests that could improperly influence the performance of their official duties and responsibilities.

Fostering public trust in government institutions is a crucial element of good governance and builds a stronger relationship and trust between the taxpayer and the state. As an expert working in a foreign country for the government, TIWB experts have an important role to play in maintaining that trust, including by preventing and managing conflict of interest. Further information can be found in *Managing Conflict of Interest in the Public Sector: OECD Guidelines and Country Experiences.*

All parties must have a clear understanding of the applicable rules in the host administration that deal with conflict of interest, whether these are contained in formal legislation, regulations, codes of conduct or elsewhere. This includes an awareness of the agencies responsible for monitoring conflict of interest issues (if any other than the tax administration itself), the process for managing any conflict that arises, and any sanctions that may apply in a conflict of interest situation.
The host administration must determine how the duty to appropriately manage conflict of interest will apply legally to the expert. For example, the duty may apply directly because under the relevant rules, the expert falls within the definition of persons subject to those obligations. Alternatively, the terms of reference may need to impose equivalent obligations on the expert.

Experts must consider not only actual conflict of interest, but also apparent and/or potential conflict of interest. Apparent conflict of interest arises where appearances suggest to third parties that an official’s private interests could improperly influence the performance of the official’s duties. Potential conflict of interest may arise where an official has private interests that could have future improper impact on the official’s professional performance.

In this Toolkit, “conflict of interest” is used to include apparent and potential conflict of interest.

Where there is an allegation of conflict of interest, it is important to ensure that investigations are appropriately carried out and appropriately managed before a determination is made on whether any conflict exists. During that investigation process, appropriate support for the expert should be provided from the host administration and any partner administration if the expert is a currently serving official.

Some examples on the type of provisions which can be included in the terms of reference to address issues of conflict of interest are outlined in Part IV.

In the context of TIWB audit assistance, the consequences of conflict of interest could impact not only the expert but also tax administrations in two jurisdictions. This might occur in a situation where the public duties of an expert working for one tax administration (either currently or in the past) could improperly influence the performance of that expert’s official duties when working for another tax administration, i.e. the host administration. In the case of currently serving officials working as TIWB experts, there is also the possibility of a conflict arising where a transaction under audit in the host administration involves a related-party which is tax resident in the country of the expert’s home administration.

**EXAMPLES OF CONFLICT OF INTEREST IN PRACTICE**

**Three examples of conflict of interest that could arise in practice:**

i. The expert is asked to participate in an audit of a subsidiary of a parent company. The expert, while working in a former administration, was previously involved in an audit of that parent company. Depending on the tax periods and transactions under consideration, this situation may lead to conflict of interest of varying degree.

ii. The expert is asked to work on a bilateral APA or MAP case, where the taxpayer’s related entity is a tax resident in the country of the expert’s former jurisdiction.

iii. Where the expert or members of the expert’s immediate family hold controlling shares or senior positions in the taxpayer entity or one of its subsidiaries under audit.
INFORMATION ON HOW TO DEAL WITH MATTERS RELATED TO CONFLICT OF INTEREST

Information on how to deal with matters related to conflict of interest are likely to be found in laws relating to public service officials; internal guidelines or codes of conduct for public service officials; or in laws, guidelines or codes of conduct specific to the tax administration. The expert has to be familiar with and adhere to all the host administration’s relevant rules regarding conflict of interest.

Situations that give rise to conflict of interest can often also raise issues of liability of the expert in the event of a conflict or perceived conflict of interest. These are discussed in Section 8 below.

State institutions other than the tax administration may have the responsibility for controlling and monitoring how conflict of interest is dealt with in practice. This could include internal audits and investigations by anti-corruption agencies or tax police, as well as a separate capacity to apply sanctions in cases of breaches of the obligation to appropriately manage conflict of interest.

It is not possible to identify all possible forms of conflict of interest in advance of a TIWB programme. However, it is possible to manage the risk. Situations that could give rise to conflict of interest are described below, along with proposals for practical measures to manage the risk.

RESPONDING TO POTENTIAL CONFLICT OF INTEREST

The host administration and the expert together determine whether there is a potential conflict of interest. Determining an appropriate response depends on the stage of the programme, the degree of conflict and the degree of risk involved. Responses could include the following:

- The host administration could reallocate the audits in which the expert is or will be involved;
- The audit tasks participated in by the expert could be limited to those to which do not engage the areas of potential conflict;
- The host administration could discuss the issue with the taxpayer concerned.
  In some cases the taxpayer may agree to the involvement of a tax auditor with knowledge of the background facts, on the belief that the expert will help reach an assessment that properly reflects the true position of the entity;
- The expert could provide assistance on the audit on any anonymised basis (see above on the anonymised audit approach); or
- The host administration could select another TIWB expert.

Experts may also make the personal decision to take steps to excuse themselves from the particular audit or even – as the final option – end their participation in the TIWB programme, depending on the gravity of the conflict of interest.

Where the expert is a currently serving tax official, the host administration should contact the partner administration prior to changing the terms of, or terminating, the TIWB programme due to potential conflict of interest. This will allow the partner administration the opportunity to discuss the proposed changes to, or termination of, the TIWB programme with the host administration and the expert before a final decision is made.
It is also advisable for the host administration to inform the taxpayer that a TIWB expert will participate in the audit, under the host administration’s management and responsibility. This will include that the expert is subject to the same tax confidentiality obligations as local tax officials.

**ANONYMISED AUDIT ASSISTANCE: AN ALTERNATIVE APPROACH TO AVOIDING CONFLICT OF INTEREST**

Where conflict of interest is likely to arise, providing expert assistance on the bases of anonymised tax files can be an effective approach to overcome the potential of conflict while also retaining the benefits of working on current audit issues. This can also be a useful approach where, due to legal or policy restrictions on a non-national’s full involvement in audit activities, the review of audit files by the foreign expert may be restricted.

In practice, though, it will not always be simple to effectively adopt the anonymised audit approach. In most cases it will require more than the removal of the taxpayer’s name and tax identification number from the file. The host administration will also have to remove other identifying information (for example, that the taxpayer is the largest mining company operating in the host administration country or that it has a parent company in country X) that would allow the identity of the taxpayer to be determined, while at the same time not taking out too much background for a full appraisal to be given.

Advice on an anonymised case can of course be given unclouded by any conflict, but if it becomes apparent in a later stage that the expert has given input on audit related issues regarding the case, this could cause questions and disputes.

Therefore, host administrations adopting this approach must ensure they meet a high standard to protect tax information confidentiality and prevent conflict of interest by ensuring that the audit file information provided to the expert is properly anonymised.

Further, sometimes an appropriate level of anonymity will also mean that too much information must be removed for the expert to be able to make a full appraisal of the audit. Notwithstanding these difficulties, the anonymised audit approach has proven very successful in a number of audit assistance programmes to date where it was not possible for the expert to have open access to the tax audit file.
PRACTICAL TIPS!

Managing (potential) conflict of interest

If you are the host administration, assist the experts in understanding relevant obligations relating to conflict of interest, and provide guidance on the practical steps (for example, declaration of interests) they must take to fulfil their duty to appropriately manage a conflict or potential conflict once it arises.

If you are an expert or a host administration, remain continuously vigilant to monitor the expert’s activities so that potential conflicts can be identified and managed early. Some conflicts can be identified clearly in advance of a TIWB programme. Others (including potential conflicts) may only become apparent later.

If you are the expert, you are best placed to identify potential conflicts because you know your previous responsibilities and interests. You therefore bear a great responsibility to identify issues that could give rise to a (possible) conflict of interest during the TIWB programme.

All parties should address management of potential conflict of interest in the TIWB terms of reference. Where a partner administration is involved, any potential conflicts which are identified should be discussed with them, as well as between the expert and host administration.

Audits undertaken on an anonymised basis must be treated with the same level of attention as non-anonymised audits, to ensure appropriate handling of confidential tax information.

PRIOR TO THE TIWB PROGRAMME

If you are the expert, notify the host administration clearly about:
- The key industry sectors in which you have worked
- Any entities with a presence or activity in the jurisdiction that could give rise to a conflict of interest if you were to be involved in an audit of that entity, either as a result of your professional activities or private interests.

If you are the host administration, discuss with the expert the specific audits in which the expert will participate or, at a minimum, the relevant industry sectors.

DURING THE TIWB PROGRAMME

If you are the expert, discuss any (possible) conflict of interest with the management in the host administration at the right level as soon as they arise.

If you are the expert or the management of the host administration, ensure you know the internal procedures for how the management will be informed and involved to address a (possible) conflict of interest.

It is recommended that the host administration informs the taxpayer that a TIWB expert will participate in the audit, under the host administration’s management and responsibility.

AFTER THE TIWB PROGRAMME

If you are the expert, take all measures needed to avoid conflict of interest that could arise in other work after the TIWB programme (e.g. in providing tax advice to the private sector or working within another tax administration). Exemplary conduct fosters public trust in the tax administration.
Liability of the expert

KEY QUESTIONS

- What are the professional liability risks of the expert?
- What are the workplace health and safety risks of the expert?
- How will liability for those risks be shared between the parties to a TIWB programme?

During a TIWB programme, the issue of professional liability (related to the professional activities of the expert) and liability for the workplace health and safety of the expert may arise.

Host administrations, experts (serving officials as well as recently retired officials), and partner administrations should ensure that issues of liability are considered and addressed adequately in advance of the audit assistance programme.

PROFESSIONAL LIABILITY

Issues of professional liability may arise where there is any wrongdoing, irregularity or incompetence by foreign tax experts in the course of their official duties. Officials of the host administration are often protected through legislation from being held personally liable in such cases (although of course where fraud or other criminal acts are involved, domestic legislation does not provide protection for the acts or omissions of local tax officials). It is important to ensure that those protections are understood so that equivalent protections are afforded to the expert.

As the expert may not be familiar with the legal framework and customs of the host administration, there is a greater risk of misunderstandings or errors that could give rise to professional liability. It is incumbent on the host administration to ensure that the expert will be adequately informed about the legal framework and customs.

LIABILITY FOR WORKPLACE HEALTH AND SAFETY

It is equally important to ensure that protections are in place for the workplace health and safety of the expert. Provisions in this area could regard access to the office buildings of the host administration, availability of appropriate office equipment, a safe working environment etc. In some countries the protections provided by workplace safety laws for local tax officials will also extend to the tax official’s journey to and from their place of work.

The expert should have at least equivalent protections in place, for both issues of professional liability and workplace health and safety. In most cases, this will require the inclusion of appropriate provisions in the terms of reference if the expert does not fall within the coverage of the existing domestic legislation in the country of the host administration. Some examples of such provisions for the terms of reference are provided in Part IV.

Additional issues arise in the case of a currently serving expert. Due to the terms of the legislation in the expert’s home country or the expert’s employment contract, the partner administration may remain liable – for professional as well as workplace health and safety - for the expert as its employee during the course of the TIWB programme, even though the expert may also become be considered
an employee of the host administration. The partner administration may seek to transfer this liability to the host administration, to the extent possible. Proposals to address this approach in the terms of reference are outlined in Part IV.

In most cases, this will result in a clause in the terms of reference that addresses the issue of liability and indemnity.

The host administration and expert should ensure that the boundaries of protection for liability and workplace safety requirements are clearly understood in advance of the TIWB programme.

**PRACTICAL TIPS!**

**Liability of the expert**

- The terms of reference should address the issue of liability of the expert (professional as well as health and workplace safety)
- Experts should ensure that they understand the practical meaning of the scope and limits of the protection provided under these arrangements for professional liability and workplace health and safety.

**Programme impact**

**KEY QUESTIONS**

- What are the objectives of the TIWB programme?
- Who is responsible before, during and after the programme for monitoring and reporting on impact?
- Which indicators are set for measuring the impact of the TIWB programme (short-, medium- and long-term)?

A TIWB programme – like any other programme – has goals and objectives. These goals and objectives have to be set and defined, meaning that the effectiveness and efficiency of the work undertaken in the project can be valued and measured.

Measuring the impact of TIWB audit assistance through the use of indicators is useful for attribution and accountability purposes. Looking beyond revenue-linked targets, considerations such as sustainable knowledge transfer, improved consistency and fairness in audit processes, reduced taxpayer challenges to audit outcomes, and increases in taxpayer confidence towards the host administration can be important longer-term goals of effective, targeted audit assistance.

As noted in the 2013 OECD/ITC/BMZ report, *Tax and Development Aid Modalities for Strengthening Tax Systems*,

“Some superficially attractive indicators can be double-edged swords. The tax ratio (tax revenue to GDP) is a prominent case in point in that overambitious targets can lead to abusive collection practices at the expense of tax legitimacy.”
The host administration will lead the process of establishing objectives for the audit assistance and selecting indicators to measure its impact. This objective-setting process, including the selection of indicators, should be finalised in consultation with the expert as well as any donor partner or partner administration. All of the parties to a TIWB programme should have a clear understanding in advance of the objectives and how they will be measured.

The expert will work alongside auditors of the host administration on actual audit cases, providing advice and transferring practical knowledge on audit skills. At the end of the cycle of a TIWB programme the expert is requested to submit a programme report to the head of the host administration, as well as providing a copy to the TIWB Secretariat. This report will raise the aspects relevant to the strategic decision makers in the host administration when considering environmental and/or organisational changes.

To support the host administration, this section of the Toolkit describes a selection of potential impact indicators that can be used or adapted to each audit assistance programme. Further, as impact should be assessed progressively, indicators should be tailored to consider objectives over the short, medium and longer term. It may also be appropriate to establish post-programme objectives to ensure that measures implemented during the programme are continued beyond the duration of the audit assistance programme. Clearly, indicators need to be adapted to take into account the scope of the particular programme and the context of the host administration.5

There must also be recognition that the outcome and success of a TIWB programme are influenced by elements and factors that are both within and outside the control of the expert. As indicated in Part I of the Toolkit, ensuring an appropriate level of support for the audit assistance programme within the host administration – in respect of resources, personnel and support for any changes that may be required – is crucial to success.

Like the selection of objectives and impact indicators, measuring impact is the responsibility of the host administration but will necessarily involve the experts themselves.

**WHICH INDICATORS?**

Care must be taken when selecting impact metrics, as a narrow focus on more easily quantifiable indicators – such as increases in revenue – needs to be balanced with more nuanced considerations. Capacity building for better quality administration and sustainability, through practical knowledge and skills transfer, remains the over-arching objective of the TIWB programme.

Therefore qualitative indicators are equally if not more relevant than quantitative indicators; they will bring valuable input for future development as well as for specific measures to improve the current systems and working methods. The outcome after applying qualitative indicators will also prove to be more sustainable and more useful for future development.

Annex 4 sets out a list of examples of indicators that can be used to assess the impact of individual audit assistance programmes. Indicators obviously should align with the stated objective(s) of the programme. Depending on the situation, scope and goals of the programme, the host administration can add or leave out indicators.
Some indicators target specific internal organisational measures that could be taken or developed by the recipient administration in order to reach the goals that were set for the participation in the TIWB programme. The short-term indicators are quite specific and relate more to the practical day-to-day situations and issues to be dealt with by the host administration. The mid-term and long-term indicators are targeted at monitoring the broader effects, progress and development of the programme activities.

An assessment of impact must aim to take into account these nuances while measuring the programme’s effectiveness in a concrete and meaningful way. This will often mean designing a balanced approach of quantitative and qualitative measures.

**PRACTICAL TIPS!**

**Programme impact**

- **If you are the host administration**, decide the objectives of the TIWB programme in advance.
- **Select indicators** that provide a balanced (i.e. quantitative and qualitative) assessment of the objective(s). Annex 4 provides a detailed selection of indicators that could be useful in this regard.
- **If you are the expert**, be sure you know the objectives and indicators before the TIWB programme commences.

**Non-technical skills**

**KEY QUESTION**

- What non-technical skills should an expert have to make a TIWB programme successful?

An effective TIWB programme requires more than finding the expert with appropriate knowledge, experience and skills in tax audit matters. Experts must also be aware of and sensitive to the different cultural and social context (including language) in which they will be working. Getting these elements right will be at least as important as technical skills to ensuring effective knowledge sharing on audit matters.

For example, the hierarchy in the host administration may be different. The ways colleagues approach each other may be unfamiliar. The way discussions take place, the ways ideas and suggestions are brought forward – these, too, may differ from what the expert is used to. If experts are not able to recognise, and adapt their behaviour to, such differences, there is a risk of misunderstandings that could negatively influence the parties’ ability to achieve the programme objectives.

Therefore it is essential that the expert be culturally aware and flexible enough to understand and adjust to the practices and customs that are considered appropriate in the recipient organisation. This means the expert should be open to perceiving the differences in culture and able to use a range of techniques to adapt to the situation accordingly.
Non-technical considerations that may need to be taken into account or considered include:

- Language skills which are sufficient to communicate (oral/written) effectively, including on technical tax issues, in (one of) the official language(s) of the host country;
- The unique work processes and environment (cultural, social and political) of the host administration in general and of the particular division in which the expert works;
- The role and position of the expert with regard to the management structure in which the expert is working in the host administration;
- The need to take time initially to observe current practices, habits and customs in the host administration and in the host country society, and to consider how and why those practices exist;
- Adoption of a team-based approach to ensure expertise is shared among the greatest number of officials;
- The need to be sensitive to codes of conduct and internal staff management policies; and developing trust-based relationships with colleagues and management.

Some of these elements could be addressed in the terms of reference. For example, in terms of language skills, where the host administration and the expert do not share the same native language, the common working language should be agreed in advance, including the expert having proficiency in reading and writing in this language.

Further, in case it is necessary to involve interpreters during the TIWB programme, the terms of reference should make clear who is responsible for organising the interpreters and who will bear the associated costs.

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**PRACTICAL TIPS!**

**Non-technical skills**

- **If you are the host administration**, address issues of cultural awareness and other non-technical skills required by the expert in the terms of reference.

- **Agree a common working language** with the expert, where native languages for the host administration and the expert differ.
Practical arrangements

KEY QUESTIONS

- What practical issues (e.g. visas, vaccinations, etc.) need to be addressed before a TIWB programme?
- Who is responsible for making sure they are addressed?

There are a number of practical issues such as vaccinations, insurance, tax obligations, etc. that the expert must address as part of travelling to and working in a foreign country and preparing for participation in the TIWB programme. In some instances, the host administration may be able to assist with certain of these arrangements, and in cases where the expert is a currently serving official on secondment the partner administration may take responsibility for some of the arrangements. The expert should nonetheless assume responsibility for ensuring these issues are considered and resolved in advance of the TIWB programme.

In general, including provisions in the terms of reference outlining responsibilities for managing the practical arrangements associated with the TIWB programme will provide clarity to all parties.

In particular, in terms of practical arrangements the expert will need to ensure the following aspects of the TIWB programme are addressed in advance, and where necessary included in the programme terms of reference:

- insurance (regarding health and travel);
- in-country registration (for example registration with the local embassy of the expert’s home country);
- visas (these requirements will generally be addressed and taken care of by the host administration, however this should be confirmed by the expert in advance);
- health requirements, e.g. vaccinations;
- taxation obligations (consideration of whether participation in the TIWB programme gives rise to any specific tax obligations for the expert in his/her country of tax residence or the host administration); and
- impacts on pension entitlements and/or social security payment obligations.

PRACTICAL TIPS!

Practical arrangements

- The terms of reference or an accompanying letter should address practical issues the expert may face when engaging in a TIWB audit assistance programme.
- Particularly where the expert is a recently retired official, rather than a currently serving expert, the host administration and the expert themselves must be pro-active in ensuring the expert is adequately prepared for the deployment.
Notes


2  It has been noted that a co-contribution requirement in capacity building programmes can be a useful device to measure and ensure commitment to the objectives of the programme by local officials, and serve as a rationing tool for allocating the scarce resource of expertise in a high-demand environment (such as tax audit assistance). See for instance Evaluation of the Technical Assistance Provided by the International Monetary Fund, p. 107, 31 January 2005.


5  The indicator set TADAT (Tax Administration Diagnostic Assessment Tool), developed by the IMF (www.tadat.org) as well as RA-FIT (Revenue Administration Fiscal Information Tool) may also be useful when establishing indicators for TIWB programmes. Many countries also have their own programme impact indicator tools or guidelines.
The terms of reference are the framework for an effective audit assistance programme. They will generally be concluded in the form of a binding, signed agreement between the host administration and the partners in the TIWB audit assistance programme.
In the case of a recently retired tax official, fulfilling the role of the TIWB expert, he/she will be the contracting party. In the case of a secondment of a currently serving tax official, the partner administration as well as the expert will be contracting parties.

If a donor partner is involved in the TIWB audit assistance programme, a separate agreement may be required that addresses the funding allocation and the terms of that funding.

A number of host administrations, and partner administrations where relevant, will already have a template agreement for engaging experts or seconding tax officials. Those templates can be employed with appropriate adjustments for TIWB audit assistance programmes, namely to address the access to real audit cases which forms part of the programme. Such template agreements should be reviewed in light of the provisions proposed here, to ensure that all important issues appropriate to the audit assistance programmes are addressed.

As the framework document for the TIWB programme it is important that the process of drafting the terms of reference is guided by the legal and/or HR division of the host administration (and of the partner administration or expert as appropriate).

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**PRACTICAL TIPS!**

**Concluding the Terms of Reference**

- It is recommended that the host administration works with its legal and/or HR division to draft the terms of references to ensure a comprehensive document is created.
- Perform an assessment on the capacity of the tax administration of the host country before setting the terms of reference.

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The TIWB Secretariat will ask the host administration to provide them with a copy of the terms of reference. This will allow the Secretariat to continue to improve the Toolkit for use in future TIWB programmes.
Terms of Reference: examples of provisions

As the terms of reference for each audit assistance programme will need to take into account specific factors such as the role and objectives of the parties, differences in legal systems, and scope of the assistance to be provided, a comprehensive template agreement cannot be provided.

In this section an outline of suggested provisions is provided, giving guidance to address the important issues for a TIWB audit assistance programme. The outline is not an exhaustive or exclusive list of provisions, but a starting point for establishing the terms of reference regarding the programme. In addition, the precise terms and language used by the contracting parties may vary according to the context of the agreement, for example whether the expert will be engaged as a secondee of the partner administration or as an employee of the host administration.

Note: Depending on the funding arrangements for the audit assistance programme, it may be necessary for an agreement regarding funding to be reached with the donor partner. This would generally be an agreement between the donor partner and the host administration, although in some cases may be directly with the expert or the partner administration. The agreement on funding arrangements may be concluded as a separate agreement or it could form part of the terms of reference.

DEFINITIONS

| TIWB audit assistance programme (TIWB programme) | The provision of targeted audit or audit-related assistance to be provided by the expert to the host administration in accordance with these terms of reference. |
| Terms of Reference (ToR) | The agreement outlining the terms and conditions of the TIWB programme, to be concluded by the host administration with the expert and/or the partner administration and donor partner as necessary. In most cases it will be concluded and signed by the parties. |
| Expert | [name] |
| Host administration | [name] |
| Partner administration | [name] |
| Donor partner (where a party to the agreement) | [name of agency, department or organisation that provides funding support for the audit assistance programme either directly to the host administration, to the partner administration or to the expert]. |
| Commencement date | Date the TIWB programme will begin. |

PURPOSE OF THE AGREEMENT

The host administration agrees to engage [or in case of secondment to host] the expert, who will be appointed to the position of <…role, title…> within the <…name of division/department…>.

DURATION OF TIWB PROGRAMME

[Describe the assistance to be provided. For example, the expert will provide two weeks of assistance full time/six weeks of assistance over the course of four months, relating to audits of taxpayers in the mining sector. The precise audit files and issues on which the auditor will work are to be determined between the host administration and the expert in advance of the commencement date].
COMMENCEMENT DATE
The audit assistance programme will commence on [date].

STATUS OF THE EXPERT
During the course of the TIWB programme (except where specifically provided in this agreement) the expert shall be deemed to be an employee of (or consultant to) the host administration.

[In case of secondment of a currently serving official, the expert shall at all times remain an employee of the partner administration and nothing in the agreement shall be effective to constitute the host administration as the employer of the expert. The partner administration shall retain all the normal duties and other legal responsibilities of an employer for the expert. Alternatively, the host and partner administrations as well as the expert may agree that the expert shall at all times remain an employee of the partner administration, and shall also be deemed to be an employee of the host administration. The partner administration shall retain all the normal duties and other legal responsibilities of an employer for the expert (except where specifically provided otherwise in the agreement).]

TERMS AND CONDITIONS OF THE TIWB PROGRAMME
The expert will be based at <office address in host administration> or at such other location that the host administration might deem necessary, from time to time.

The expert shall report to <name and position of manager in host administration> at the address shown above on the commencement date. The manager shall be responsible for all aspects of the control and direction of the expert’s work during the period of the TIWB programme.

The expert will comply with the leave entitlement and public holidays of the host administration; for long-term programmes, the expert may take accrued annual leave at times approved in advance by his/her manager in the host administration.

The expert will carry out the duties assigned by the host administration during the period of the audit assistance programme and shall follow the host administration’s policies and directives, at all times conduct himself/herself in a manner consistent with being an official of the host administration.

The expert will carry out his/her duties during the normal working hours of the host administration and at such other times as may reasonably be required, having regard to the responsibilities of the duties and functions of the expert’s role.

The applicable disciplinary rules, complaint procedures, etc., shall be those of the host administration. For secondments the applicable disciplinary rules shall be those of the partner administration. However, when provided in the agreement, the host administration may ask the partner administration to institute disciplinary proceedings.

TIWB AUDIT ASSISTANCE PROGRAMME OBJECTIVES
The TIWB programme objectives will be determined by the host administration, in consultation with the expert (and in case of secondment, the partner administration).

The parties shall bear in mind the overall objective of the TIWB programme, to provide practical assistance on real audit and audit-related issues, and in so doing for the expert to share knowledge and skills with the host administration. The emphasis in a TIWB programme is capacity building through “learning by doing”, with the expert adopting a ‘hands-on’ approach to transfer knowledge and skills.
For secondments the host administration shall supply the partner administration with all such information as the partner administration may reasonably require in respect of the performance by the expert of the agreed duties during the period of the TIWB programme.

The host administration shall maintain and make available on request to the partner administration an attendance record in respect of the expert, recording absence due to annual leave, sick or special leave, and overtime.

The host administration shall provide to the partner administration on request any information relating to any alleged conduct or disciplinary offences by the expert.

**COSTS OF THE TIWB PROGRAMME**

Costs relating to the TIWB programme will be paid as described herein, with any additional costs not otherwise specified which are relevant and necessary for carrying out the TIWB programme to be borne by the host administration.

**Travel expenses**

The host administration will reimburse the expert for all travel (and for long-term programmes relocation costs) and other expenses properly and reasonably incurred in the performance of his/her duties for the host administration and properly claimed and vouched for to the host administration at the same rate the host administration reimburses the expenses of its employees.

[It may be appropriate to be more specific, particularly where the expert, rather than the host or partner administration, will book travel. For example: “Air travel by the expert will be reimbursed in the amount of the lowest available economy class fare. Long haul flights of more than 12 hours’ flying time will be reimbursed at the lowest available business class fare.”]

**Daily expenses**

The host administration will pay an amount of daily expenses (per diem) to the expert in the amount of [specify currency] to cover accommodation, food, in-country travel expenses and all other miscellaneous expenses incurred by the expert related to the TIWB programme.

[Provision for payment of the daily expenses should be made. For example: “The expert will be paid as a lump sum 70% of the total daily expenses amount for the TIWB programme on the expert no later than one week in advance of the deployment. The remainder of the total daily expenses shall be paid to the expert within two weeks of the end of the TIWB programme.” For longer-term TIWB programmes, it may be appropriate for staggered payments of daily expenses to be paid.]
Visas and work permits
The host administration will take responsibility for arranging all necessary work permits or visas required for the expert for the period of the audit assistance programme, and shall meet all the associated costs of obtaining those approvals. It will also cover all office-related costs such as access to computers, telephone, and office space.

Insurance
The expert is responsible for maintaining appropriate travel and health insurance coverage for the period of the audit assistance programme. Neither the host administration [nor the partner administration] shall assume any responsibility for ensuring appropriate insurance coverage for the expert. The expert may be required to provide proof of appropriate coverage to the host administration [and/or the partner administration] prior to the start of the audit assistance programme.

Remuneration
[For currently serving officials on secondment: For the duration of the TIWB programme the expert will continue to receive his/her salary and benefits from the partner administration].

[For longer-term TIWB programmes: The host and partner administrations may agree to share the salary costs of the expert, and that arrangement should be described herein].

[For recently retired experts: The work undertaken by the expert will generally be done without receiving a salary or other form of remuneration from the host administration or other parties, except for the costs as described in these terms of reference].

DUTIES OF THE EXPERT

Confidentiality
The expert will sign the host administration’s [oath of secrecy/declaration/affirmation] prior to commencing work for the host administration, and shall also be subject to the secrecy provisions contained in [specify the host administration’s relevant law on tax information confidentiality, as well as any public service laws]. This obligation of confidentiality is perpetual, enduring beyond the programme period.

The expert will not use any taxpayer or commercial information acquired in the course of his/her duties for the host administration for any other purpose.

[For currently serving experts: The expert will also continue to be subject to the declaration of secrecy/confidentiality under (name the relevant laws or rules of the partner administration)].

Conflict of interest
The expert must avoid situations that may lead to conflict of interest. It is the responsibility of the expert (and where applicable the partner administration), insofar as reasonably practicable, to inform the host administration of any conflict of interest or potential conflict of interest that (may) arise as a result of the work undertaken for the host administration.
Liability

The host administration shall be liable for any act or omission of the expert during the course of his/her work for the host administration which gives rise to legal liability. The host administration assumes no responsibility for any act or omission of the expert undertaken during the programme period other than in the course of his/her official duties.

(For currently serving experts: During the period of the secondment, the host administration shall be responsible in relation to the expert’s health, safety and welfare at work in the same manner and degree as imposed upon an employer by relevant statutory provisions, and as if the host administration was the employer of the expert. The host administration shall indemnify the partner administration against any liability which the partner administration incurs due to any injury or disease sustained by the expert during the period of the audit assistance programme and arising out of and in the course of the expert’s activities under this agreement as a direct result of the acts or negligence of the host administration, its servants and agents).

AMENDING THE TERMS OF REFERENCE

The terms of reference for the TIWB programme may only be amended in writing with consent and authorisation of all contracting parties.

(For currently serving experts: No offer of employment will be made by the host administration to the expert without prior consultation with the partner administration).

TERMINATION OF THE AUDIT ASSISTANCE PROGRAMME

The audit assistance programme may be terminated by the expert or the host administration (or by the partner administration) by either party giving to the other at least a reasonable period (standard would be one calendar month) notice in writing, stating the reasons why the audit assistance programme will be terminated. For secondments this notice should be given by the host administration to the expert as well as to the partner administration, depending the terms and conditions mentioned in the terms of reference.

The host administration may terminate this agreement with immediate effect, subject to notifying the expert (and the partner administration) in writing of the alleged misconduct and the decision to terminate the secondment, where the expert:

i. commits any act of dishonesty, or any other serious breach or non-observance of his/her obligations under the terms of reference;
ii. is alleged to be guilty of gross or serious misconduct;
iii. is unable to perform the duties and functions of his/her position with the host administration for a period of <##> consecutive weeks during the period of the programme; or
iv. fails in any material respect to perform the duties and functions of the expert role.

GOVERNING LAW

This agreement shall be governed by and interpreted in accordance with the laws of [name of country of the host administration] and the parties submit to the jurisdiction of <name of appropriate court in the country of the host administration>.
Annexes
Process for establishing a TIWB audit assistance programme

STEP BY STEP GUIDE FOR HOST ADMINISTRATIONS

The person in the host administration responsible for the day-to-day management of the expert should ensure that each of the steps in the programme cycle is carefully followed.

1) Review the preliminary questions in Part II of the Toolkit. Ensure that you are able to accurately respond to the questions raised, as they are important for ensuring that you have a domestic framework capable of hosting a successful and effective TIWB programme.

2) Complete the TIWB Assistance Request Form and submit the completed form to the TIWB Secretariat. The Assistance Request Form must be signed by the Commissioner of the Tax Administration (or equivalent) or by an official designated by the Commissioner to exercise authority to engage staff in the Tax Administration.

3) The TIWB Secretariat will contact you to confirm receipt of the Assistance Request Form and to clarify or seek further information that may be required.
   (a) If your administration requires funding support to meet the costs of the programme and has not already identified a donor partner able to provide that funding, this should be discussed with the TIWB Secretariat. The TIWB Secretariat is able to draw on its network of donor agencies to assist you to find funding support. Ultimate responsibility for meeting the costs of the programme (i.e. travel and daily expenses, as well as any salary costs which you may agree with the expert) lies with the host administration.

4) The TIWB Secretariat will provide you details of potential experts who meet the essential criteria you have specified. These may include experts who are currently serving officials and/or recently retired officials.

5) You should then contact the potential expert(s) directly. You will be responsible for undertaking any reference checks you deem appropriate in order to ensure that a potential expert meets your administration’s needs. Once you have selected the expert, you should inform the expert and the TIWB Secretariat.

6) Assisted by the TIWB Secretariat, you then must agree the terms of reference for the audit assistance programme with the expert (and the partner administration in the event the expert is a currently serving official). In most cases, the terms of reference will be a signed agreement between the parties. Guidance on the important elements of the terms of reference can be found in Parts III and IV of this Toolkit.

7) You should determine clear objectives and indicators for measuring the impact of the programme. These may be developed in consultation with the expert, and in all cases should be clearly conveyed to the expert in advance of the audit assistance programme. Guidance on the use of indicators can be found in Part III of this Toolkit.

8) The audit assistance programme then commences. Any issues that arise during the course of the programme should be addressed directly with the expert. In the case of an expert who is a currently serving official, it will be appropriate to also liaise with the partner administration. Guidance on solutions to issues that may arise can also be found in Part III of this Toolkit.

9) Once the audit assistance concludes, the host administration should undertake an assessment of the impact of the programme that takes into account the original objectives. The TIWB Secretariat will seek feedback from the host administration on the impact of the programme, as well as on the TIWB process more generally with the aim of improving the TIWB model.
Case studies on the impact of tax-focused capacity building assistance

TIWB-style audit assistance programmes are relatively recent, limiting the available quantitative data to evaluate their success. However some cases exist and demonstrate the impact of these targeted audit assistance programmes, including:

- In Country A, a programme of capacity building focused on transfer pricing and provision of assistance on anonymised cases at a cost of approximately USD 15,000. This programme led to an increase in assessed tax revenues to USD 5.83 million in 2012 from USD 3.3 million in 2011 – a 76% increase. This is a rate of return of approximately USD 170 of revenue per USD 1 spent. Country A says the increase was possible only due to the practical assistance provided. This programme of assistance also saw Country A pass revised transfer pricing legislation in line with the international standard, based on the significant advice provided by the expert.

- In Country B, a medium-term programme of assistance has focused on increasing capacity to enforce rules on transfer pricing. A recent audit of a large MNE resulted in increased tax collected of USD 3.9 million.

- In Country C, a programme of assistance to improve the transfer pricing audit skills of the revenue administration’s auditors has led to increased revenues collected. Specifically, in one audit the revenue administration successfully negotiated a transfer pricing adjustment based on the advice provided through the programme. This resulted in additional tax revenue collected of USD 12.9 million.

There has also been evidence of impact from programmes providing tax-focused capacity building assistance, but not necessarily practical audit assistance. Still this evidence demonstrates broadly that significant returns can be achieved on donor investment in the development of more effective tax systems:

- In Ethiopia, the UK Department for International Development (DFID), along with other donors, supports the Public Sector Capacity Building Programme, which includes capacity building support to the tax system. An objective is to increase tax revenue by 87% – to 81.1 billion birr in 2013 from 43.3 billion birr in 2010. Every GBP 1 of DFID support to tax system reform is estimated to produce additional revenue of about GBP 20 per annum.

- USAID support to improve tax collection in El Salvador, worth USD 5.3 million in 2004-10, led to increased revenue of USD 350 million per year.

- In Burundi, DFID support helped to establish an independent Revenue Authority in July 2010, at a time when the country’s tax and customs services (then under the Ministry of Finance) topped the list of East Africa’s most corrupt organisations in Transparency International’s East African Bribery Index. The programme set out to transform the culture of tax collection. From January to June 2011, revenue collection was 37.4% above the level for the same period the previous year. From July to September 2011, the outturn revenue exceeded the forecast by 14% or GBP 7 million.
DFID support to the Rwanda Revenue Authority helped to develop the laws and regulations under which the Authority was established and develop its offices and management systems. The 10-year period of support saw a six fold increase in the taxes collected. In 2010, the Authority’s management procedures were awarded ISO 9001 2008 accreditation, making it the first Rwandan institution to attain this standard. The Authority reached a point where it was collecting the full GPB 24 million value of the DFID support programme every three weeks. Its effectiveness has been a major factor in Rwanda’s impressive development performance in recent years.

The above examples relate to tax-focused capacity building assistance, but not necessarily assistance providing practical audit assistance.
Some examples of domestic tax law obligations to maintain confidentiality of tax information are presented below. Each of these obligations to maintain confidentiality of tax information is coupled with a penalty provision to support the enforcement of the obligation.

UNITED STATES

Section 6103 of the Internal Revenue Code of the United States provides

(a) General rule

Returns and return information shall be confidential, and except as authorized by this title—

(1) no officer or employee of the United States,

(2) no officer or employee of any State, any local law enforcement agency receiving information under subsection (i)(7)(A), any local child support enforcement agency, or any local agency administering a programme listed in subsection (l)(7)(D) who has or had access to returns or return information under this section or section 6104 (c), and

(3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e)(1)(D)(iii), subsection (k)(10), paragraph (6), (10), (12), (16), (19), (20), or (21) of subsection (l), paragraph (2) or (4)(8) of subsection (m), or subsection (n), shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term “officer or employee” includes a former officer or employee.

Under the Internal Revenue Code, wilful unauthorised disclosure of returns or return information is a felony punishable by a fine of up to USD 5 000 or imprisonment of up to five years, or both (I.R.C. § 7213). These penalties apply not only against the government employee who committed the unauthorised disclosure but also against a person who receives the information and knowingly publishes it. In addition, wilful unauthorised access to or inspection of returns or return information is a misdemeanour punishable by a fine of up to USD 1 000 or imprisonment of up to one year, or both (I.R.C. § 7213A). A federal employee convicted of any of these crimes is discharged from employment. The taxpayer may bring a civil action for damages under I.R.C. Section 7431 for any wilful or negligent unauthorised disclosure of a return or return information. Damages payable in such civil actions are the greater of USD 1 000 for each act of disclosure or actual damages sustained (increased by punitive damages in cases of wilful or gross negligence). The plaintiff may also collect court costs.

POLAND

Under the Tax Ordinance Act, Poland makes all information received by the tax authorities subject to tax secrecy. Tax officials must affirm in writing that they will maintain tax secrecy, and undue disclosure of tax secrets is a criminal offence punishable by up to five years imprisonment under Article 306 of the Tax Ordinance Act.
NEW ZEALAND

Tax Administration Act 1984, s81

For the purposes of subsection (1), before an Inland Revenue officer performs their first official duty as an officer, they must make a declaration of secrecy and fidelity in the form prescribed by the Commissioner.

SOUTH AFRICA

Tax Administration Act 2011, s67(2)

An oath or solemn declaration undertaking to comply with the requirements of this Chapter in the prescribed form, must be taken before a magistrate, justice of the peace or commissioner of oaths by

(a) a SARS official and the Tax Ombudsman, before commencing duties or exercising any powers under a tax Act; and

(b) a person referred to in section 70 who performs any function referred to in that section, before the disclosure described in that section may be made.

FRANCE

Tax Procedures Code, Article L103 (see translation below)

L’obligation du secret professionnel, telle qu’elle est définie aux articles 226-13 et 226-14 du code pénal, s’applique à toutes les personnes appelées à l’occasion de leurs fonctions ou attributions à intervenir dans l’assiette, le contrôle, le recouvrement ou le contentieux des impôts, droits, taxes et redevances prévus au code général des impôts.

Le secret s’étend à toutes les informations recueillies à l’occasion de ces opérations. Pour les informations recueillies à l’occasion d’un examen contradictoire de la situation taxe personnelle, l’obligation du secret professionnel nécessaire au respect de la vie privée s’impose au vérificateur à l’égard de toutes personnes autres que celles ayant, par leurs fonctions, à connaître du dossier.

The professional secrecy obligation, as it is defined in articles 226-13 and 226-14 of the penal code, applies to all persons who, as a result of their functions or responsibilities, participate in the determination, assessment, recovery of or litigation relating to taxes, customs duty, tax charges, and royalties as provided for in the general tax code.

The obligation of secrecy extends to all information received as a result of carrying out these operations. Where information is received in the course of carrying out an independent audit of a taxpayer’s personal tax situation, the professional secrecy obligation necessary to ensure the right to privacy is imposed on the tax auditor with regard to all other persons who, due to their official functions, may have knowledge of the tax file.
## Potential impact indicators for TIWB Programmes

### SHORT TERM INDICATORS

<table>
<thead>
<tr>
<th>Description</th>
<th>Relevant parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Attention to understanding the concept, ideas and principles of Compliance Risk Management in practice (general principles, practical &quot;tools&quot; to be used in practice, and how to select and use those &quot;tools&quot; and behavioural aspects)</td>
<td>Management and employees</td>
</tr>
<tr>
<td>2. Audit approach developed regarding the actions to be undertaken in the TIWB programme (strategic document)</td>
<td>Management</td>
</tr>
<tr>
<td>3. Description of audit approach available (more general outline of goals to be reached and how to get there; practical document)</td>
<td>Management</td>
</tr>
<tr>
<td>4. Description of audit techniques to be used during the audit assistance programme are available (specific description, also for practical use)</td>
<td>Management and employees</td>
</tr>
<tr>
<td>5. Charts of work flow procedures available (essential for developing IT support regarding the audit processes in the future)</td>
<td>Management and employees</td>
</tr>
<tr>
<td>6. Specific risk analysis and risk selection methods and criteria for the branches/industries to be audited are identified.</td>
<td>Management as well as strategic departments at national level, dealing with audit practice and RA/RS</td>
</tr>
<tr>
<td>7. Risk selection and risk analysis methodology developed and implemented (supported by IT)</td>
<td>Management as well as strategic departments at national level, dealing with audit practice and RA/RS</td>
</tr>
<tr>
<td>8. Internal guidelines for selection of audit cases set up and available (based on principles of Compliance Risk Management and picking the right &quot;tools&quot;)</td>
<td>Management as well as strategic departments at national level, dealing with audit practice and RA/RS</td>
</tr>
<tr>
<td>9. Information available on “understanding” of branch and businesses to be audited (branch information, “knowing the business”)</td>
<td>Management and employees</td>
</tr>
<tr>
<td>10. Audit planning mechanism in place (including monitoring aspects)</td>
<td>Management and employees</td>
</tr>
<tr>
<td>11. Specified, targeted and clearly stated standardised audit assignments available and used (necessary for consistent audit practice with clear objectives)</td>
<td>Management and employees</td>
</tr>
<tr>
<td>12. Standardised layout of audit reports available and used (necessary for consistent audit practice)</td>
<td>Management and employees</td>
</tr>
<tr>
<td>13. Training/education programme developed for involved employees regarding audit approach and audit techniques to be used (to be documented).</td>
<td>Management as well as strategic departments at national level and employees</td>
</tr>
</tbody>
</table>
### MID-TERM INDICATORS

<table>
<thead>
<tr>
<th>Description</th>
<th>Relevant parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>17 Information on audits, conducted and finalised under TIWB programme:</td>
<td>Management</td>
</tr>
<tr>
<td>a. number of audits;</td>
<td></td>
</tr>
<tr>
<td>b. improved consistency in audit outcomes*;</td>
<td></td>
</tr>
<tr>
<td>c. effects on capacity building*;</td>
<td></td>
</tr>
<tr>
<td>* specific criteria to be determined</td>
<td></td>
</tr>
<tr>
<td>18 Tax revenues increased from the performed audits (divided into assessments, penalties, interest)</td>
<td>Management</td>
</tr>
<tr>
<td>19 Staff knows how to apply the newly obtained knowledge and skills on audit approach and audit techniques in practice (e.g. effects to be measured by quality and content of audit files and audit reports)</td>
<td>Management and employees</td>
</tr>
<tr>
<td>20 Staff knows how to apply principles of Compliance Risk Management in practice (reflected in behaviour of staff, e.g. being accessible and available for companies, staff and approaches the companies on the basis of “trust”)</td>
<td>Management and employees</td>
</tr>
<tr>
<td>21 Audits have been performed and finalised within the time frames, set out in internal procedures (monitoring system in place)</td>
<td>Management</td>
</tr>
<tr>
<td>22 Quality and content of audit reports meet standards, set in internal manuals and regulations</td>
<td>Management</td>
</tr>
<tr>
<td>23 Improved accessibility to taxpayers that were audited regarding tax matters (contacts with CEOs, CFOs, etc.; practical use and understanding of Compliance Risk Management principles)</td>
<td>Management and employees</td>
</tr>
<tr>
<td>24 Measures in place to monitor (increases in) level of compliance of taxpayers that were audited (e.g. filing obligations, giving easier access to company data and information, timely payments of taxes)</td>
<td>Management</td>
</tr>
<tr>
<td>25 Further development (and implementation) of specific audit approach and client treatment for various types of companies</td>
<td>Management</td>
</tr>
</tbody>
</table>
### Potential Impact Indicators for TIWB Programmes

#### Short Term Indicators

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Relevant Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>26 Increase in international requests for exchange of tax information to other tax administrations (quantitative and qualitative; information available as to tax administrations that are approached more frequently and on which topics)</td>
<td>Management and employees</td>
</tr>
<tr>
<td>27 Availability of and accessibility to foreign experts involved in TIWB programme (on site or through other channels, like e-mail, etc.)</td>
<td>Management and employees</td>
</tr>
<tr>
<td>28 Demonstrate added value from quality of work and efforts of foreign experts involved in TIWB programme</td>
<td>Management and employees</td>
</tr>
<tr>
<td>29 Increase in-depth audit activity, based on outcome of performed audits (third-party investigations, requests for exchange of information, etc.)</td>
<td>Management</td>
</tr>
<tr>
<td>30 Synergy effects of TIWB programme and other international/bilateral TA programmes.</td>
<td>Management</td>
</tr>
<tr>
<td>31 Mid-term evaluation of effects of TIWB programme (covering various and multiple aspects)</td>
<td>Management</td>
</tr>
</tbody>
</table>

#### Long Term Indicators

<table>
<thead>
<tr>
<th>Compliance effects</th>
<th>Relevant parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>32 Changes in fulfilling tax obligations by companies that were audited, e.g. filing obligations, timely payments etc.; demonstrable effects of applying principles of Compliance Risk Management in practice.</td>
<td>Management</td>
</tr>
<tr>
<td>33 Improved access to the tax administration for CEOs, CFOs and other key players of the company taxpayers</td>
<td>Management and employees</td>
</tr>
<tr>
<td>34 Increased willingness to provide data and information to tax administration (“voluntary disclosure of data and information”)</td>
<td>Management and employees</td>
</tr>
<tr>
<td>35 Company taxpayers behave as an “equal business partners” in relations with tax administration</td>
<td>Management and employees</td>
</tr>
<tr>
<td>36 Company taxpayers are open to discussions with tax administration regarding preliminary agreements</td>
<td>Management and employees</td>
</tr>
<tr>
<td>37 Staff of tax administration acts and works according to principles and ideas of Compliance Risk Management</td>
<td>Management</td>
</tr>
<tr>
<td>38 Decrease in number of litigations, objections and appeals made by taxpayer companies</td>
<td>Management</td>
</tr>
<tr>
<td>39 Increase in number of preliminary agreements on various tax matters made with taxpayer companies, along with improved quality of these agreements</td>
<td>Management and employees</td>
</tr>
<tr>
<td>40 Reduction in length of time for tax dispute resolution.</td>
<td>Management</td>
</tr>
<tr>
<td>41 Increase in service usage by taxpayer companies with tax administration</td>
<td>Management</td>
</tr>
<tr>
<td>42 Taxpayer risks identified by sector and branch, and percentage of those risks quantified and modelled</td>
<td>Management</td>
</tr>
</tbody>
</table>
## Potential Impact Indicators for TIWB Programmes

### Relations between revenue authority and private sector

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Description</th>
<th>Relevant parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>43</td>
<td>Greater positive perception and acceptance by taxpayer companies of applied audit approach and revenue authority attitude</td>
<td>Management and employees</td>
</tr>
<tr>
<td>44</td>
<td>Increased acceptance of applied audit approach and attitude of tax administration by accountants and (external) tax consultants of the taxpayer companies</td>
<td>Management</td>
</tr>
<tr>
<td>45</td>
<td>Increased mutual understanding and greater mutual confidence between tax administration and taxpayer companies</td>
<td>Management</td>
</tr>
</tbody>
</table>

### Effects on revenue

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Description</th>
<th>Relevant parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>46</td>
<td>Increase in yield compared to previous periods, but to be considered cautiously as external (economic) factors may influence the yield</td>
<td>Management</td>
</tr>
<tr>
<td>47</td>
<td>Decrease of number of penalties applied compared to previous periods</td>
<td>Management</td>
</tr>
<tr>
<td>48</td>
<td>Decrease of number and amounts of arrears compared to previous periods</td>
<td>Management</td>
</tr>
</tbody>
</table>

### Investment climate

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Description</th>
<th>Relevant parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>49</td>
<td>Contacts with tax administration regarding future investment decisions of companies and outcome of those contacts, such as preliminary agreements.</td>
<td>Management</td>
</tr>
<tr>
<td>50</td>
<td>Contacts between tax administration and (large) international companies willing or planning to invest in the country (tentative meetings, relevant for investment climate)</td>
<td>Management</td>
</tr>
</tbody>
</table>

### International dialogue

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Description</th>
<th>Relevant parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>51</td>
<td>Intensified international co-operation between tax administrations</td>
<td>Management</td>
</tr>
<tr>
<td>52</td>
<td>Improved mutual understanding of interests and development of solutions at international level</td>
<td>Management</td>
</tr>
</tbody>
</table>

### Miscellaneous

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Description</th>
<th>Relevant parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>53</td>
<td>Increase in ratio of revenue to GDP or revenue to an appropriate tax base, controlled for external factors</td>
<td>Management</td>
</tr>
<tr>
<td>54</td>
<td>Improved mutual understanding of interests and foreseen solutions at international level</td>
<td>Management</td>
</tr>
<tr>
<td>55</td>
<td>Reduction in taxpayer-instigated litigation and increase in cases resolved by alternative dispute resolution methods (e.g. negotiation, mediation)</td>
<td>Management</td>
</tr>
</tbody>
</table>
Notes

1 The indicator set TADAT (Tax Administration Diagnostic Assessment Tool), developed by the IMF (www.tadat.org) as well as RA-FIT (Revenue Administration Fiscal Information Tool) may also be useful when establishing indicators for TIWB programmes. Many countries also have their own programme impact indicator tools or guidelines.
Tax Inspectors Without Borders (TIWB) is a project of the Tax and Development Programme of the OECD.

Background information about TIWB is available on the OECD website:
www.oecd.org/tax/taxinspectors.htm

Contact details TIWB Secretariat:
tax.inspectors@oecd.org