


TD 93/D144 - Income tax: what is the source of income, profits or gains derived by taxpayers from petroleum activities within Area A of the Zone of Cooperation established under the Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia (the "Timor Gap Treaty")?

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This document has been finalised by [TD 97/6](#).

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: what is the source of income, profits or gains derived by taxpayers from petroleum activities within Area A of the Zone of Cooperation established under the Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia (the "Timor Gap Treaty")?

1. The Timor Gap Treaty entered into force on 18 February 1991. The Treaty is incorporated as a Schedule to the *Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990*.
2. The Treaty has a long history. Negotiations with Indonesia over sea-bed boundaries in 1971-72 left unsettled the delimitation of the sea-bed boundary in the East Timor ('Timor Gap') Area. After several attempts to reconcile the two countries' competing sea-bed boundary claims, the concept of a Zone of Cooperation was developed, whereby both countries would jointly invite contractors to explore for, and exploit, petroleum resources under production sharing contracts in the disputed area.
3. The Zone of Cooperation consists of three areas. Area A is the area of joint development where the control of petroleum operations is exercised by a Ministerial Council and a Joint Authority on behalf of Australia and the Republic of Indonesia. Area B is the area of sole Australian jurisdiction and Area C is the area of sole Indonesian jurisdiction.
4. Article 29(1) of Part I of the Treaty provides that Area A "shall be deemed to be, and be treated by, each Contracting State as part of that Contracting State". In addition, section 15 of the Zone of Cooperation Act incorporates the Treaty into Australian tax law and provides that the provisions of the Treaty have precedence over any inconsistency in a number of tax Acts including the Income Tax Assessment Act. As a result, income, profits and gains derived by both residents and non-residents from activities within Area A of the Zone of Cooperation have an Australian source for Australian tax purposes, and at the same time have an Indonesian source for Indonesian tax purposes. Accordingly, any taxpayer carrying out activities within Area A will be subject to tax in both Australia and Indonesia to the extent permitted under the relevant Articles of the Treaty.

Commissioner of Taxation

6/3/93

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