



TD 97/4 - Income tax: how are business profits or losses calculated under Article 4 of Annex D ('the Taxation Code') to 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')?

 This cover sheet is provided for information only. It does not form part of *TD 97/4 - Income tax: how are business profits or losses calculated under Article 4 of Annex D ('the Taxation Code') to 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')?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *29 January 1997*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: how are business profits or losses calculated under Article 4 of Annex D ('the Taxation Code') to 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 (which is reproduced as a Schedule to the *Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990*) is unique among Australia's international agreements in that it provides for Australia and Indonesia to share equally in the benefits flowing from the exploration and exploitation of petroleum resources within Area A of the Zone of Cooperation.
2. Article 4.1 of the Taxation Code to the Timor Gap Treaty, in effect, allows both countries to tax simultaneously 50 per cent of the business profits or losses of companies operating within Area A. However, as there is no uniform definition contained within the Timor Gap Treaty of the term 'business profits' or 'business losses', questions have been raised as to the appropriate method of calculating business profits or losses for the purposes of Australian and Indonesian domestic tax laws.
3. Article 3.2 of Part II of that Schedule imposes a requirement on the Joint Authority (the body established by the Timor Gap Treaty to administer Area A) that it deal only with enterprises wishing to explore for petroleum resources within Area A who are limited liability corporations established for the sole purpose of carrying out the production sharing contracts. Accordingly, the correct method of calculating the business profits or losses of a 'special purpose' company under Article 4.1 is to calculate the business profits or losses of the company under the tax systems of both Australia and Indonesia and then reduce those taxable amounts (or losses for tax purposes) in each country by 50 per cent.

4. In the case of an Australian company operating within Area A, this will mean that all the usual provisions (including Division 10AA) of the *Income Tax Assessment Act 1936* are available to be used in calculating the company's business profits or losses for Australian income tax purposes. Once this has been done then the resulting amount is to be reduced by 50 per cent and the remainder subject to the normal company rate of tax applying for that year of income. Indonesian tax would be calculated along similar lines having regard to the relevant provisions of Indonesia's domestic tax law.

Commissioner of Taxation29 January 1997

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[Related Determinations:](#) TD 93/D144[Related Rulings:](#)[Subject Ref:](#) business losses; business profits; double taxation; petroleum mining; Timor Gap Treaty[Legislative Ref:](#) ITAA Div 10AA; Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990[Case Ref:](#)[ATO Ref:](#) NO 90/3518-4; NAT 96/12123-7

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