

CR 2006/94 - Income tax: taxation of Joint Petroleum Development Area (JPDA) employment income: foreign tax credits - employees of ConocoPhillips Australia Pty Ltd and ConocoPhillips (03-12) Pty Ltd

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⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2004*



Class Ruling

Income tax: taxation of Joint Petroleum Development Area (JPDA) employment income: foreign tax credits – employees of ConocoPhillips Australia Pty Ltd and ConocoPhillips (03-12) Pty Ltd

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📌 This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- Division 18 of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 160AF of the ITAA 1936;
- Article 13 of the Taxation Code at Annexure G of the *Petroleum (Timor Sea Treaty) Act 2003* (the Taxation Code);
- section 4-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- Article 1.2 of the Taxation Code; and

- subsection 14(2) of the *Petroleum (Timor Sea Treaty) Act 2003*.

Class of entities

3. The class of entities to which this Ruling applies is Australian resident individuals who are:

- employed by ConocoPhillips Australia Pty Ltd ('ConocoPhillips Australia') and ConocoPhillips (03-12) Pty Ltd ('ConocoPhillips');
- performing services within the Joint Petroleum Development Area ('JPDA'); and
- who have their employment income governed by Article 13 of the Taxation Code.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in the Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme is carried out in accordance with the scheme described in paragraphs 12 to 15 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from 1 July 2004 and subsequent years. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

9. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

10. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

11. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

12. The scheme that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- the application for the Class Ruling from ConocoPhillips dated 6 December 2004. This document includes the standard contract of employment used by ConocoPhillips, East Timor Tax Ruling ETRS/SRTL 2001/5 and UNTAET Regulation 2001/18; and
- additional submissions in support of the Class Ruling application provided by ConocoPhillips dated 10 March 2005.

13. ConocoPhillips is an integrated petroleum company and is the operator of the Bayu-Undan project in the JPDA.

14. ConocoPhillips employees are entitled to a number of employment benefits which are taxed as 'taxable wages' in East Timor but are not included in the individual employee's assessable income in Australia. These include, but are not limited to the following in accordance with their contracts of employment:

- employer superannuation contributions;
- motor vehicle benefits; and
- private medical benefits.

15. The Applicant seeks confirmation that the calculation of foreign tax credits claimed in Australia by employees from the above arrangement are not limited by the operation of section 160AF of the ITAA 1936 but are entitled to a foreign tax credit calculated by reference to 100% of the East Timor tax paid on the JPDA employment income.

Ruling

16. Employees of ConocoPhillips Australia and ConocoPhillips who are individual residents of Australia for tax purposes are entitled to claim foreign tax credits in accordance with Article 13.2 of the Taxation Code and Division 18 of the ITAA 1936 on the foreign income tax paid in East Timor on their JPDA employment income.

17. The term 'tax offset' in the context of Article 13.2 of the Taxation Code takes its meaning from section 4-10 of the ITAA 1997 but without the express limitation imposed on the calculation of a foreign tax credit by Section 160AF of the ITAA 1936.

18. Accordingly, for Australian residents deriving employment income from the JPDA, they are entitled to a credit for all East Timorese tax paid on their remuneration, including the employment benefits referred to in paragraph 15 of this Ruling, up to the Australian tax payable on such remuneration.

19. In situations where the East Timorese tax paid on the remuneration is greater than the Australian tax payable on such remuneration, the excess foreign tax credit may be carried forward in accordance with section 160AFE of the ITAA 1936.

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

20. Pursuant to Article 13.2 of the Taxation Code, Australia is permitted to tax 100% of an Australian resident individual's salaries, wages and other similar remuneration from employment in the JPDA.

21. However, because East Timor is permitted to tax 90% of such remuneration under Article 13.1, Article 13.2 seeks to relieve double taxation by requiring that Australia provide a tax offset against the tax payable on such remuneration in Australia for tax paid in East Timor.

22. It is accepted that the term 'salaries, wages and other similar remuneration' in Article 13 includes benefits in kind (that is, non-cash benefits) received in respect of employment.

23. In this case it is accepted that the non-cash employment benefits referred to in paragraph 15 of this Ruling have been taxed by East Timor in accordance with Article 13.1 and, as such, Australia is obliged to provide relief from double taxation in accordance with Article 13.2.

24. Article 13.2 requires a 'tax offset' to be provided for all East Timorese tax paid on the remuneration derived by the individual resident from the JPDA, whether such remuneration (in whole or in part) is taxable in Australia or not. However, the tax offset is limited to the Australian tax payable on such remuneration by that resident individual.

25. Although paragraph 70 of the Explanatory Memorandum to Petroleum (Timor Sea Treaty) Bill 2003 ('Explanatory Memorandum') states that the term 'tax offset' means a foreign tax credit, there is no express reference in the Taxation Code to such credit being calculated exclusively according to the rules contained in section 160AF of the ITAA 1936.

26. On the contrary, as the term 'tax offset' is not a defined term in the Taxation Code, its meaning is governed by Article 1.2 which states that any undefined terms take on their meaning under the domestic tax laws of the respective States. Under Australian tax law, the term 'tax offset' is defined in section 4-10 of the ITAA 1997 as essentially 'an amount that reduces tax payable'. Consequently, while the term 'tax offset' can refer to a foreign tax credit, its meaning, in the context of Article 13.2, derives from section 4-10 of the ITAA 1997 and not the rules contained in section 160AF of the ITAA 1936.

27. Accordingly, for Australian residents deriving employment income from the JPDA, they are entitled to a credit for all East Timorese tax paid on their remuneration, including the employment benefits referred to in paragraph 15 of this Ruling, up to the Australian tax payable on such remuneration.

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28. In situations where the East Timorese tax on the remuneration is greater than the Australian tax payable on such remuneration, the excess tax offset may be carried forward in accordance with section 160AFE of the ITAA 1936.

29. To the extent that the credit allowable under Article 13.2 of the Taxation Code provides for a different credit result compared to section 160AF of the ITAA 1936, the latter is modified to the extent of the inconsistency in accordance with subsection 14(2) of the *Petroleum (Timor Sea Treaty) Act 2003*.

Appendix 2 – Detailed contents list

30. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Subject references:

- foreign source income
- foreign tax credits

Legislative references:

- ITAA 1936 Div 18
- ITAA 1936 160AF
- ITAA 1936 160AFE
- ITAA 1997 4-10
- Petroleum (Timor Sea Treaty) Act 2003 14(2)
- Petroleum (Timor Sea Treaty) Act 2003 Annexure G Article 1.2

- Petroleum (Timor Sea Treaty) Act 2003 Annexure G Article 13
- Petroleum (Timor Sea Treaty) Act 2003 Annexure G Article 13.1
- Petroleum (Timor Sea Treaty) Act 2003 Annexure G Article 13.2
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

Other references:

- Explanatory Memorandum to Petroleum (Timor Sea Treaty) Bill 2003

ATO references

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