


TD 97/6 - 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')?

 This cover sheet is provided for information only. It does not form part of *TD 97/6 - 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')?*

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: 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 VI 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'. Sections 13 and 15 of the Zone of Cooperation Act give the force of law to provisions in the Treaty and the Taxation Code (Annex D) that affect Australian tax and effectively provide for those provisions to have precedence over any inconsistency in a number of tax Acts including the *Income Tax Assessment Act 1936*. As a result, income, profits and gains derived by both residents and non-residents from activities within Area A of the Zone of Cooperation should be treated as derived from activities carried on in Australia and as having an Australian source for Australian tax purposes, and at the same time having 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 Taxation19 February 1997

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[Related Determinations:](#) TD 97/4[Related Rulings:](#)[Subject Ref:](#) double taxation; petroleum mining; source; Timor Gap Treaty[Legislative Ref:](#) Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990[Case Ref:](#)[ATO Ref:](#) NAT 90/3518-4; NAT 9612219-5; NAT 97/892-2

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