

# NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

## SUMMARY PAGE

### Agreement between Australia and Timor-Leste on Taxation Information Exchange

(Canberra, 28 November 2019; Dili, 20 March 2020)

[2020] ATNIA 12

[2020] ATNIF 15

#### Nature and timing of proposed treaty action

1. The proposed treaty action is the entry into force of the *Agreement between Australia and Timor-Leste on Taxation Information Exchange* (the Agreement). The Agreement was signed by Australia on 28 November 2019 and Timor-Leste on 20 March 2020.
2. The Agreement will enter into force on the date that Australia and Timor-Leste (hereinafter referred to as ‘the Parties’) have notified each other by an exchange of notes that they have completed their respective domestic processes to bring the Agreement into force, or on a date otherwise mutually determined.

#### Overview and national interest summary

3. The Agreement facilitates the exchange of information between the Parties for the purpose of tax administration, including for ensuring the avoidance of double taxation and the prevention of fiscal evasion in relation to petroleum activities affected by, or brought into existence as a consequence of, Annex D of the *Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea* (the Maritime Boundaries Treaty).
4. The Maritime Boundaries Treaty entered into force on 30 August 2019, establishing new maritime boundaries between the Parties and revoking the *Timor Sea Treaty between the Government of East Timor and the Government of Australia* (the Timor Sea Treaty, Dili, 20 May 2002, [2003] ATS 13)). Under the Maritime Boundaries Treaty, certain oil and gas fields in the Timor Sea have transitioned from joint Australian and Timor-Leste jurisdiction or exclusive Australian jurisdiction to Timor-Leste’s exclusive jurisdiction. Annex D of the Maritime Boundaries Treaty outlines transitional arrangements for affected petroleum activities undertaken under the Timor Sea Treaty.
5. The Agreement allows the competent authorities of the Parties (in the case of Australia, the Commissioner of Taxation and in the case of Timor-Leste, the Minister of Finance, including their authorised representatives) to cooperate and exchange information as necessary for carrying out the provisions of Annex D of the Maritime Boundaries Treaty or of the domestic law of each country.
6. The Agreement also provides stability and certainty for affected companies operating in the Timor Sea, by ensuring that the exchange of taxation information between the Parties in relation to transitioned petroleum activities will continue in accordance with the arrangements that were in place prior to the entry into force of the Maritime Boundaries

Treaty. Companies with interests in the Bayu Undan, Kitan, 11-106 and Buffalo petroleum fields will all benefit from the stability and certainty provided by the Agreement.

7. The Agreement also constitutes an important element of the Parties meeting their obligation under Article 1 of Annex D of the Maritime Boundaries Treaty to ensure that petroleum activities that were entered into pursuant to the terms of the revoked Timor Sea Treaty shall continue following the entry into force of the Maritime Boundaries Treaty under conditions equivalent to those in place prior to the entry into force of the Maritime Boundaries Treaty.
8. By assisting with the administration and implementation of the Maritime Boundaries Treaty, the Agreement will help to ensure that Timor-Leste is able to realise the full benefits of the resources now falling within its jurisdiction from the perspective of tax revenue. It will also further strengthen Australia's bilateral relationship with Timor-Leste.

### **Reasons for Australia to take the proposed treaty action**

9. The Agreement was negotiated and agreed to in the course of negotiations between the Parties and the affected companies in preparation for the entry into force of the Maritime Boundaries Treaty. The Agreement is necessary to implement the Parties' obligations under the Maritime Boundaries Treaty to provide affected companies with conditions equivalent to those in place under the Timor Sea Treaty. The Agreement reflects the Parties' interest in ensuring that transitioned petroleum operations continue with minimal uncertainty, including in relation to taxation administration.
10. The Agreement provides for the exchange of taxation information by the competent authorities on similar terms to the Timor Sea Treaty to give certainty and stability for the affected companies.

### **Obligations**

11. Pursuant to Article 1 of the Agreement, Parties shall exchange such information as is necessary for carrying out the provisions of Annex D of the Maritime Boundaries Treaty or of the domestic law of the Parties as in force from time to time concerning the administration of taxes affected by, or brought into existence as a consequence of Annex D of the Maritime Boundaries Treaty – in particular for the prevention of avoidance or evasion of such taxes..
12. This obligation to exchange information for the purpose of tax administration is limited so as to not impose on the competent authority of a Party an obligation to carry out administrative measures or to obtain and supply information that would be contrary with their domestic laws, administrative practice or public policy of that Party (Article 2).
13. Article 1 of the Agreement also requires each country to treat any taxation information received as secret, in the same manner as information obtained under its domestic laws, and information obtained may only be disclosed where permitted by the Agreement.

14. Pursuant to Article 4 of the Agreement, Australia's obligations are limited to taxation information relating to the Joint Petroleum Development Area activities 03-12, 03-13, 06-105 and 11-106, as well as WA-523-P.

### **Implementation**

15. Australian taxation law permits the Commissioner of Taxation (or an authorised representative of the Commissioner) to collect and disclose information on taxation matters with a foreign country under an international agreement. Therefore, no new legislation is required to give effect to the Agreement.

### **Costs**

16. Australia will incur no financial costs under this Agreement.

17. The Office of Best Practice Regulation has been consulted in relation to this Agreement. There are no regulatory costs associated with this Agreement.

### **Future treaty action**

18. The Agreement does not provide for the negotiation of future legally binding instruments, nor does it contain specific amendment procedures. Under Article 39 of the Vienna Convention on the Law of Treaties, the Agreement may be amended from time to time by mutual consent of both Parties. Any such amendments would be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by the Joint Standing Committee on Treaties.

### **Termination**

19. The Agreement terminates on the commercial depletion (as defined in Article 1(e) of the Maritime Boundaries Treaty) of the oil and gas fields to which the Agreement applies or by agreement between the Parties.

### **Contact details**

Corporate and International Tax Division  
Treasury

## **ATTACHMENT ON CONSULTATION**

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#### **CONSULTATION**

20. In July 2019, Australian Treasury consulted with the seven affected companies holding production sharing contracts in the Joint Petroleum Development Area and offshore petroleum titles in Australia to provide them with information on the proposal to exchange taxation information with Timor-Leste on similar terms to the Timor Sea Treaty. The companies were invited to provide views on a confidential basis.
21. No particular concerns were raised in relation to the proposed approach to share taxation information with Timor-Leste on similar terms to the Timor Sea Treaty.
22. Consultation on the final text of the Agreement was not undertaken with the affected companies on the basis that the text is on similar terms to the provisions on exchange of information under the Timor Sea Treaty. The state and territory governments were not affected by the Agreement and therefore were not consulted in the process.