SUBMISSION 44

From BP Australia Proprietary Limited

Timor Sea Treaty between the Government of Australia and the Government of
East Timor

BP Australia is a supplier of petroleum products to entities conducting
operations in the JPDA and to entities making flights into that area

Having perused the draft Treaty and in particular
Annex G under Article 13 (b) of this Treaty -Taxation Code for the
Avoidance of Double Taxation and the Prevention of Fiscal Evasion in
Respect of Activities Connected with the Joint Petroleum Development Area
, Article 18,

we are unclear as to the intended application of taxes and the place of
this treaty with regard to existing tax laws.

Customs duties are specifically excluded, several taxes are specifically
INCLUDED; as excise is like Customs duty and also is NOTincluded we
believe that it is not intended to be applicable. We suggest that it would
be useful to make an affirmative statement.

It appears that one interpretation could result in a single transaction
bearing :-
90% of the "Sales taxes" that would apply were it a domestic East Timor
transaction
PLUS
10% of the "Sales taxes" that would apply were it a domestic Australian
transaction
In our view such a regime would be totally unworkable from a supplier's

viewpoint.
If the Nations wish to apply such a tax burden; then we suggest that they
do it through a "reverse charge" mechanism under which the JPDA
operator(s) would buy items tax free and calculate and remit the taxes to
the Nations.

As a supplier of fuel to aircraft (and potentially Marine craft) that
travel from East Timor and/or Australia to a destination in the JPDA we
seek certainty as to the tax status of that supply. These supplies do not
seem to be addressed by the treaty. It therefore seems reasonable to treat
them a being international flights/voyages - but we need confirmation that
that is the intent and interpretation of the Governments.

As a supplier of bulk fuel for use in the JPDA we see the following
potential scenarios

- Oil sent from Darwin to the JPDA
- Oil sent from Dili / East Timor to the JPDA
- Oil sent from Singapore to the JPDA

Our understanding is that as the JPDA is not a part of Australia that GST
does not apply, accordingly Article 18 Indirect taxes could have no
effect unless and until Australia amended the GST Act to make it
potentially taxable. We seek clarity (by way of an explanation of the
relevant legal basis) on this.

We wonder how Australian Taxes may be deemed to be applicable to an
"import" from Singapore to the JPDA. We seek clarity (by way of an
explanation of the relevant legal basis) on this

Article 18 Indirect taxes

Goods introduced into the JPDA, whether or not from a Contracting State, and services provided to a person in the JPDA, may, at or following introduction, be taxed in both Contracting States in accordance with applicable Australian goods and services tax law or the East Timor value added tax or sales tax law as the case may be, but the taxable amount in relation to such goods and services shall be an amount equivalent to the framework percentage of the amount that would be the taxable amount but for this paragraph.

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