



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

March 30, 2001

Number: **200118015**
Release Date: 5/4/2001
CC:INTL:BR1/MTA-N-115962-00
UILC: 9114.03-18

INTERNAL REVENUE SERVICE NATIONAL OFFICE REQUEST FOR TECHNICAL
ASSISTANCE

MEMORANDUM FOR LOWELL G. HANCOCK
Technical Advisor, Office of Pre-Filing Services

FROM: Elizabeth U. Karzon, Chief, Branch No. 1
Associate Chief Counsel (INTL)

SUBJECT: East Timor and the United States-Indonesia Income Tax Treaty

This Technical Assistance responds to your request for assistance by e-mail that we received on August 16, 2000. Technical Assistance is not binding on Examination or Appeals and is not a final case determination. This document is not to be used as precedent.

ISSUE:

Whether residents of East Timor qualify for benefits under the Convention Between the Government of the United States and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (United States-Indonesia Income Tax Treaty)^{1/}.

CONCLUSION:

Residents of East Timor do not qualify for benefits under the United States-Indonesia Income Tax Treaty, because the United States has never recognized that East Timor is part of the Republic of Indonesia.

FACTS:

Timor is an island in the Lesser Sunda group at the southern end of the Malay Archipelago. The island for many years was divided between the Dutch and the Portuguese sections.

^{1/} TIAS 11593, signed July 11, 1988, effective December 30, 1990.

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Portuguese Timor came under Macao's jurisdiction in 1864 and became a separate colony in 1926. East Timor became an overseas province of Portugal in 1951. In August 1975, fighting broke out in Portuguese Timor between the Revolutionary Front for an Independent East Timor (Fretilin) and two rival pro-Indonesian groups, the Timorese Democratic Union and the Peoples Democratic Association of Timor. The Fretilin movement proclaimed a People's Republic of East Timor, independent of Portugal, on November 28, 1975. Nine days later the new country was invaded by Indonesian forces, and it was incorporated into the Republic of Indonesia as the country's twenty-seventh province in 1976. The legality of Indonesia's administration of East Timor, however, is disputed by the United Nations. General Assembly Resolution 3485 (XXX) (1975); General Assembly Resolution 31/53 (1976); General Assembly Resolution 32/34 (1976); General Assembly Resolution 33/39 (1978); General Assembly Resolution 34/40 (1979); General Assembly Resolution 35/27 (1980); General Assembly Resolution 36/50 (1981); General Assembly Resolution 37/30 (1982); Security Council Resolution 384 (1975); and Security Council Resolution 389 (1976).

In January 1999, the Indonesian government agreed to a United Nations sponsored vote which allowed the people of East Timor to choose between continued control by Indonesia or independence. On August 30, 1999, the East Timor people voted overwhelmingly for independence. The People's Consultative Assembly of Indonesia accepted the results of the August 30, 1999 referendum. After the vote, the United Nations established a multinational force called the International Force East Timor (INTERFET) pursuant to United Nations Security Council Resolution 1264. INTERFET was given a mandate to restore peace and security in East Timor; protect and support the United Nations Mission there, and facilitate humanitarian assistance operations. The INTERFET was formally replaced in East Timor on February 23, 2000, by the United Nations Transitional Administration in East Timor (UNTAET). The UNTAET, which was established by Security Council Resolution 1272, has a mandate that includes providing security and maintaining law and order throughout East Timor, establishing an effective administration, ensuring the coordination and delivery of humanitarian assistance, and supporting the development of self-government. Under a self-imposed deadline, UNTAET must hold elections and transfer authority to the new government by the end of 2001. On January 1, 2001, East Timor adopted its own income tax system.

The United States has never acknowledged the incorporation of East Timor into Indonesia. The United States voted in favor of the Security Council Resolutions on East Timor that called upon the Government of Indonesia to withdraw without delay from East Timor.

No competent authority claims have been filed with the Tax Treaty Division by East Timor residents seeking the benefits of the United States-Indonesia Income Tax Treaty. We have not been able to determine the extent to which Indonesian taxes were

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imposed on East Timor during the period from 1975 and 1999, including whether residents of East Timor were subject to Indonesian income taxes.

ANALYSIS:

Article 1 (Personal Scope) of the United States-Indonesia Income Tax Treaty provides that “[t]his Convention is applicable to persons who are residents of one or both of the Contracting States.”

Article 4 (Fiscal Residence) provides in part in paragraph (1) that

[i]n this Convention, the term “resident of a Contracting State” means any person who under the laws of that State is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature.

Article 3 (General Definitions) defines the term “Indonesia” in paragraph (1)(a) as

the territory of the Republic of Indonesia and the adjacent seas [over] which the Republic of Indonesia has sovereignty, sovereign rights or jurisdictions in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea.

Thus, the question is whether an East Timor resident is a “resident of a Contracting State”. Neither the Treasury Department’s Technical Explanation nor the Report of the Senate Foreign Relations Committee addresses the issue of whether East Timor residents are covered by the treaty. The United States income tax treaty with Indonesia was negotiated from 1971 to 1988. However, most issues had been resolved in 1972, three years prior to Indonesia’s invasion and annexation of East Timor. With respect to the term “Indonesia”, a draft of the treaty dated April 2, 1974, contains a definition essentially the same as the definition in the treaty signed in 1988. There is no evidence that the definition of “Indonesia” was revisited after Indonesia occupied East Timor in 1975. In our view, this supports the position that the negotiators did not intend Indonesia to include East Timor for purposes of the tax convention.

The United States has never acknowledged the incorporation of East Timor into Indonesia. Thus, a resident of East Timor is not, in our view, a resident of Indonesia for purposes of the income tax treaty.