2019

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

As passed by both Houses

Treasury Laws Amendment (Timor Sea Maritime Boundaries Treaty) Bill 2019

No. , 2019

A Bill for an Act to amend the law relating to taxation and to implement the Timor Sea Maritime Boundaries Treaty, and for related purposes

Contents

A Bill for an Act to amend the law relating to taxation and to implement the Timor Sea Maritime Boundaries Treaty, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (Timor Sea Maritime Boundaries Treaty) Act 2019*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1 and 2	The day the Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea done at New York on 6 March 2018 enters into force for Australia.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Main amendments

Income Tax Assessment Act 1997

1 After Division 415

Insert:

Division 417—Timor Sea petroleum

Table of Subdivisions

Guide to Division 417

417-1 What this Division is about

> This Division alters the operation of this Act on several topics (outlined in the table of Subdivisions above) to address how the Timor Sea Maritime Boundaries Treaty could affect the tax treatment, under Australian income tax law, of entities that undertake petroleum activities in the affected area.

Subdivision 417-A—Introduction

Table of sections

417-5 Object

The object of this Division is to give effect to Australia's obligations under the *Timor Sea Maritime Boundaries Treaty to provide, in relation to *transitioned petroleum activities, equivalent tax treatment to the tax treatment previously applying in relation to those activities.

417-10 Meaning of *transitioned petroleum activities*

(1) ***Transitioned petroleum activities*** are petroleum activities (within the meaning of the *Timor Sea Maritime Boundaries Treaty) that are undertaken:

(a) pursuant to the terms of any of the following *production sharing contracts:

(i) Production Sharing Contract JPDA 03-12;

(ii) Production Sharing Contract JPDA 03-13;

(iii) Production Sharing Contract JPDA 06-105;

(iv) Production Sharing Contract JPDA 11-106; or

(b) pursuant to the terms of a production sharing contract that:

(i) comes into force after, or when, that treaty entered into force; and

(ii) has the effect of replacing, and relates to the same area as, a production sharing contract mentioned in paragraph (a); or

(c) in a part of the *Petroleum Exploration Permit WA-523-P permit area that, as a result of that treaty entering into force, ceased to be within the continental shelf of Australia.

Note: This part of the Petroleum Exploration Permit WA-523-P permit area includes the Buffalo Oil Field.

(2) The ***Petroleum Exploration Permit WA-523-P permit area*** is the area that, just before the *Timor Sea Maritime Boundaries Treaty entered into force, was the subject of Petroleum Exploration Permit WA-523-P, granted under Part 2.2 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* on 27 May 2016.

Subdivision 417-B—Capital allowances

Table of sections

417-25 Deducting amounts for depreciating assets

(1) If:

(a) you use a *depreciating asset, or you have it *installed ready for use, for a purpose of undertaking *transitioned petroleum activities; and

(b) before the *Timor Sea Maritime Boundaries Treaty entered into force, you or another entity used the asset, or you or another entity had it installed ready for use, for a purpose of undertaking transitioned petroleum activities;

to the extent that you use the asset, or you have it installed ready for use, for that purpose, you are taken to use the asset, or to have it installed ready for use, entirely for a *taxable purpose.

(2) For the purposes of subsection 40-25(2), if:

(a) you can deduct an amount for a decline in value of the asset; and

(b) apart from subsection (1), you would not be able to deduct an amount, or would only be able to deduct a lesser amount, for that decline in value; and

(c) the *transitioned petroleum activities are wholly or partly undertaken, or to be undertaken, in relation to the *JPDA;

to the extent that the activities are so undertaken, or so to be undertaken, the part of the asset's decline in value that is attributable to your use of the asset, or your having it *installed ready for use, for a *taxable purpose is reduced to 10% of what it would be apart from this subsection.

(3) For the purposes of Subdivision 40-C, if:

(a) you can deduct an amount for a decline in value of the asset; and

(b) apart from subsection (1), you would not be able to deduct an amount, or would only be able to deduct a lesser amount, for that decline in value;

in working out the second element of the *cost of the asset, disregard any amount that you pay, and any expenditure that you incur, on or after the day on which the *Timor Sea Maritime Boundaries Treaty entered into force.

417-30 Balancing adjustments

(1) If:

(a) before the *Timor Sea Maritime Boundaries Treaty entered into force, you *held a *depreciating asset that you used, or had *installed ready for use, for a purpose of undertaking *transitioned petroleum activities; and

(b) you stopped holding the asset when that treaty entered into force, because the asset ceased to exist at that time; and

(c) the cessation occurred in connection with the entry into force of that treaty;

the cessation is taken, for the purposes of this Act, not to be a *balancing adjustment event.

(2) Section 40-285 does not apply in relation to a *depreciating asset you *held if:

(a) before the *Timor Sea Maritime Boundaries Treaty entered into force, you or another entity used the asset, or you or another entity had it *installed ready for use, for a purpose of undertaking *transitioned petroleum activities; and

(b) on or after the day on which that treaty entered into force, a *balancing adjustment event occurs for the asset.

Note: The effect of this subsection is to prevent an amount being included in your assessable income, or a deduction arising, because of a balancing adjustment event. The balancing adjustment event still occurs, so the operation of a section such as section 118-24 is unaffected.

(3) It does not matter, for the purposes of paragraph (2)(a), whether the asset is also used, or *installed ready for use, for a purpose other than the purpose of undertaking *transitioned petroleum activities.

(4) If, as a result of the *balancing adjustment event mentioned in paragraph (2)(b), another entity *holds the asset, the *cost of the asset to the other entity is taken to be the asset's *adjustable value to you just before the balancing adjustment event occurs.

417-35 Allocating assets to a project pool

(1) You may choose to allocate to a project pool all the *depreciating assets (the ***pooled assets***) that:

(a) you *held when the *Timor Sea Maritime Boundaries Treaty entered into force; and

(b) before that treaty entered into force, you used, or had *installed ready for use, for a purpose of undertaking *transitioned petroleum activities.

(2) You must choose by the day you lodge your *income tax return for the income year (the ***initial income year***) in which that treaty entered into force.

(3) The choice is irrevocable.

(4) If you make the choice, for the purposes of Division 40 and section 417-30:

(a) the pooled assets are taken to be a single *depreciating asset that you *hold; and

(b) the single asset is taken to be used, or *installed ready for use, for the same purpose as the purpose for which the pooled assets were used, or installed ready for use, when the *Timor Sea Maritime Boundaries Treaty entered into force; and

(c) the *cost of the single asset is taken to be an amount equal to the sum of the *adjustable values of all of the pooled assets when that treaty entered into force; and

(d) the decline in value of the single asset is taken to be:

(i) for the initial income year—40% of its cost; and

(ii) for the next income year—40% of its cost; and

(iii) for the income year after that next income year—20% of its cost; and

(e) a *balancing adjustment event cannot occur for the single asset; and

(f) a *CGT event cannot occur for the single asset; and

(g) amounts are not deductible, by you or any other entity, for declines in value of any of the assets allocated to the pool for:

(i) the part of the initial income year occurring on or after the entry into force of that treaty; or

(ii) any subsequent income year.

(5) The transfer of a pooled asset to another entity does not affect the operation of subsection (4) in relation to the single asset.

417-40 Deduction for expenditure on mining site rehabilitation

(1) You can deduct, for an income year, 10% of expenditure on *mining site rehabilitation that you incur in that year if the rehabilitation relates to the undertaking (by you or another entity) of *transitioned petroleum activities in relation to the *JPDA.

(2) However, expenditure on these things is not deductible under this section:

(a) acquiring land or an interest in land or a right, power or privilege to do with land;

(b) a bond or security, however described, for performing *mining site rehabilitation;

(c) *housing and welfare.

417-45 Capital expenditure

(1) For the purposes of section 40-835, if:

(a) a *project amount was allocated to a project pool before the *Timor Sea Maritime Boundaries Treaty entered into force; and

(b) the project amount was expenditure for a purpose of undertaking *transitioned petroleum activities in relation to the *JPDA;

to the extent that the operation of the project in an income year relates to that expenditure, 10% of the project is taken to operate, in the year, for a *taxable purpose.

(2) For the purposes of section 40-835, if:

(a) a *project amount was allocated to a project pool before the *Timor Sea Maritime Boundaries Treaty entered into force; and

(b) the project amount was expenditure for a purpose of undertaking *transitioned petroleum activities otherwise than in relation to the *JPDA;

to the extent that the operation of the project in an income year relates to that expenditure, the project is taken to operate, in the year, for a *taxable purpose.

(3) If subsection (1) or (2) applies to one or more *project amounts allocated to a project pool, for the income year (the ***initial income year***) in which the *Timor Sea Maritime Boundaries Treaty entered into force or a later income year, calculate your deduction under section 40-830 or 40-832 for the project pool as follows:

(a) calculate the amount of the deduction as if none of those project amounts had been allocated to the project pool;

(b) add to that amount the following:

(i) for the initial income year—40% of the sum of those project amounts;

(ii) for the next income year—40% of that sum;

(iii) for the income year after that next income year—20% of that sum.

417-50 Transferring entitlement to deductions relating to a project pool

(1) You may choose to transfer, to a *corporate tax entity, either or both of the following:

(a) all or part of your entitlement to deductions under Division 40 in relation to the declines in value of the single asset mentioned in subsection 417-35(4) (including future declines in value but not including declines in value that have already been deducted under that Division);

(b) all or part of so much of your entitlement to deductions under section 40-830 or 40-832 as arises because of the operation of section 417-45.

(2) The choice:

(a) must be in the *approved form; and

(b) must be made no later than the day you lodge your *income tax return for the first income year for which all or part of your entitlement is to be transferred.

(3) The choice cannot be revoked.

(4) Only one choice can be made under this section in relation to the same part of the entitlement.

(5) If you choose under this section to transfer to another entity all or part of your entitlement:

(a) the other entity can make deductions arising from that entitlement or part; and

(b) at the time of the choice, a *franking credit arises in the *franking account of the other entity; and

(c) you can no longer make deductions arising from that entitlement or part.

(6) The amount of the *franking credit under paragraph (5)(b) is an amount equal to the amount of the deduction transferred multiplied by the standard corporate tax rate (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*).

Subdivision 417-C—Capital gains tax

Table of sections

417-65 CGT events not created by Timor Sea Maritime Boundaries Treaty entering into force

If:

(a) before the *Timor Sea Maritime Boundaries Treaty entered into force, you owned an intangible *CGT asset connected with undertaking *transitioned petroleum activities; and

(b) your ownership of the asset ended when that treaty entered into force; and

(c) the ending of your ownership occurred in connection with the entry into force of that treaty;

the ending of your ownership is not a *CGT event.

417-70 Tax treatment of consideration for transferred entitlement to deductions or tax loss

(1) If:

(a) you choose to transfer to another entity:

(i) under section 417-50, an entitlement to deductions; or

(ii) under Subdivision 417-D, an amount of a *tax loss for an income year; and

(b) you receive any consideration from the other entity for the entitlement to deductions or for the amount of the tax loss;

then:

(c) so much of the consideration as is given for the entitlement to deductions or for the amount of the tax loss is not included in your assessable income or your exempt income; and

(d) a *capital gain does not accrue to you because of the receipt of the consideration.

(2) If:

(a) you choose to transfer to another entity:

(i) under section 417-50, an entitlement to deductions; or

(ii) under Subdivision 417-D, an amount of a *tax loss for an income year; and

(b) the other entity gives you any consideration for the entitlement to deductions or for the amount of the tax loss;

then:

(c) the other entity cannot deduct the amount or value of the consideration; and

(d) the other entity does not incur a *capital loss because of the giving of the consideration.

417-75 Membership interests affected by transfer of entitlement to deductions or tax loss

If:

(a) an entity chooses to transfer:

(i) under section 417-50, an entitlement to deductions; or

(ii) under Subdivision 417-D, an amount of a *tax loss for an income year; and

(b) another entity *holds, either directly or indirectly, a *membership interest in that entity:

disregard a *capital loss from a *CGT event that arises in relation to the membership interest after the transfer takes effect, except to the extent that the entity can demonstrate that the loss is attributable to a matter other than the transfer.

Subdivision 417-D—Transferring or applying tax losses

Table of sections

417-90 Tax losses from transitioned petroleum activities

Transferring tax losses attributable to activities undertaken before the Timor Sea Maritime Boundaries Treaty entered into force

(1) If:

(a) you have a *tax loss for the income year in which the *Timor Sea Maritime Boundaries Treaty entered into force, or for an earlier income year; and

(b) some or all of the tax loss is attributable to you undertaking *transitioned petroleum activities before that treaty entered into force;

you may, for that income year or a later income year, choose to transfer all or any part of the amount of the tax loss that is so attributable to a *corporate tax entity (the ***transferee***) that is your *associate and either is an Australian resident or has a *permanent establishment in Australia.

Transferring or applying other tax losses

(2) If:

(a) you have a *tax loss for an income year (the ***loss year***); and

(b) some or all of the tax loss is attributable to you undertaking *transitioned petroleum activities; and

(c) paragraph (1)(b) does not apply to those activities;

you may, for that income year or a later income year:

(d) choose to transfer all or any part of the amount of the tax loss that is so attributable to a *corporate tax entity (the ***transferee***) that either is an Australian resident or has a *permanent establishment in Australia; or

(e) choose to apply all or any part of the amount of the tax loss that is so attributable as a deduction from your assessable income for any of the 4 income years preceding the income year for which you make the choice.

(3) However:

(a) the total amount chosen to be transferred or applied under subsection (2) for an income year must not exceed 10% of the total amount:

(i) on which your liability for *foreign income tax under the law of Timor-Leste is required to be worked out; and

(ii) that relates to undertaking those *transitioned petroleum activities during that year; and

(b) you cannot make a choice under paragraph (2)(e) for an income year if you do not have a *franking surplus at the end of that year; and

(c) the total amount chosen to be applied under paragraph (2)(e) for an income year must not exceed the sum of:

(i) the amount of your franking surplus at the end of that year; and

(ii) the product of the amount of that surplus and the *corporate tax gross-up rate.

(4) In working out for the purposes of paragraph (3)(a) the total amount chosen to be transferred or applied under subsection (2) for an income year, disregard:

(a) any part of the *tax loss attributable to deductions for assets allocated to a project pool under section 417-35; and

(b) any part of the *tax loss attributable to deductions for assets allocated to a project pool under Subdivision 40-I, to the extent that the deductions relate to *project amounts to which subsection 417-45(1) or (2) applies.

(5) In working out for the purposes of paragraph (3)(a) the total amount on which your liability for *foreign income tax under the law of Timor-Leste is required to be worked out, disregard the amounts of any deductions for tax paid under the law of Timor-Leste.

(6) Paragraphs (3)(b) and (c) do not apply if you were a foreign resident (other than a *NZ franking company) for more than half of the income year for which the choice was made.

417-95 How choices are made

(1) A choice under section 417-90:

(a) must be in the *approved form; and

(b) must be made no later than:

(i) the day you lodge your *income tax return for the income year for which the choice is made; or

(ii) a later time allowed by the Commissioner; and

(c) must be given to the Commissioner within 30 days after you make the choice.

(2) The choice cannot be revoked.

(3) Only one choice can be made under this Subdivision in relation to the same part of a *tax loss.

417-100 The effect of choosing to transfer losses

(1) If you choose under this Subdivision to transfer an amount of a *tax loss for an income year (the ***loss year***):

(a) the amount is taken to be a tax loss incurred by the transferee in the loss year; and

(b) the transferee can deduct the amount in accordance with section 36-17 (which is about how to deduct a tax loss); and

(c) at the time of the choice, a *franking credit arises in the *franking account of the transferee; and

(d) you can no longer *utilise the amount, and you are taken not to have incurred the tax loss to the extent of the amount.

(2) Despite paragraph (1)(a), if the loss year is the same as the income year of the transfer, the transferee is taken to have incurred the *tax loss in the income year before the loss year.

Note: This rule is needed because Division 36 allows a tax loss to be deducted only if it was incurred in an earlier income year.

(3) The amount of the *franking credit under paragraph (1)(c) is an amount equal to the amount of the *tax loss transferred multiplied by the standard corporate tax rate (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*).

(4) Paragraph (1)(c) does not apply if you are not, and have never been, a *corporate tax entity.

417-105 The effect of choosing to apply losses to earlier income years

If you choose under this Subdivision to apply an amount of a *tax loss for an income year as a deduction from your assessable income for an earlier income year:

(a) you can deduct the amount from your assessable income for the earlier income year; and

(b) you can no longer *utilise the amount, and you are taken not to have incurred the tax loss to the extent of the amount.

417-110 Continuity of ownership and business continuity tests

Section 165-10 does not apply to a *tax loss that meets the requirements of:

(a) paragraphs 417-90(1)(a) and (b); or

(b) paragraphs 417-90(2)(a) and (b).

Subdivision 417-E—Foreign income tax offset

Table of sections

417-125 Foreign income tax offset

(1) If:

(a) you are entitled to a *tax offset under Subdivision 770-A for an income year for *foreign income tax; and

(b) the foreign income tax is payable on income you earned as an employee in relation to *transitioned petroleum activities undertaken, or to be undertaken, in relation to the *JPDA;

the amount of the offset is to be worked out in accordance with the Taxation Code in Annex G under Article 13(b) of the Treaty (within the meaning of that Act), as if that Taxation Code applied in relation to the income.

(2) Subdivision 770-B does not apply in relation to the amount of the offset.

Subdivision 417-F—Transfer pricing

Table of sections

417-140 Transfer pricing benefits relating to transitioned petroleum activities

Acquisitions of Timor Sea petroleum

(1) An entity is taken, for the purposes of Division 815, not to get a *transfer pricing benefit from conditions that operate between the entity and another entity in connection with their commercial or financial relations just because the entity acquires petroleum (within the meaning of the *Timor Sea Maritime Boundaries Treaty) from the other entity if:

(a) the petroleum was produced by undertaking *transitioned petroleum activities in the Bayu-Undan Gas Field (within the meaning of that treaty); and

(b) the price for the acquisition is the price that is used by, or agreed with, a *foreign government agency of Timor-Leste in relation to the acquisition for the purposes of administering the law of Timor-Leste relating to taxation.

Supplies of goods and services

(2) An entity is taken, for the purposes of Division 815, not to get a *transfer pricing benefit from conditions that operate between the entity and another entity in connection with their commercial or financial relations just because the entity supplies goods or services to the other entity if:

(a) the supply occurred pursuant to the terms of an *arrangement, connected with undertaking *transitioned petroleum activities, that:

(i) was in force just before the *Timor Sea Maritime Boundaries Treaty was made; or

(ii) is substantially similar to an arrangement that was in force just before that time; and

(b) the price for the supply is the price that is used by, or agreed with, a *foreign government agency of Timor-Leste in relation to the supply for the purposes of administering the law of Timor-Leste relating to taxation.

Schedule 2—Other amendments

A New Tax System (Goods and Services Tax) Act 1999

1 Section 195-1 (paragraph (c) of the definition of *indirect tax zone*)

Repeal the paragraph.

2 Section 195-1 (definition of *indirect tax zone*)

Omit "or the Joint Petroleum Development Area".

Fringe Benefits Tax Assessment Act 1986

3 Subsection 67(12)

Omit "or in the *Petroleum (Timor Sea Treaty) Act 2003*".

Income Tax Assessment Act 1936

4 Subsection 6(1) (definition of *Timor Sea Treaty*)

Repeal the definition.

5 At the end of paragraphs 23AG(2)(a) and (b)

Add "within the meaning of Part X".

6 Subsection 23AG(7) (definition of *double tax agreement*)

Repeal the definition.

7 Paragraph 177B(1)(b)

Omit "*1953*;", substitute "*1953*.".

8 Paragraph 177B(1)(c)

Repeal the paragraph.

Income Tax Assessment Act 1997

9 Section 11-55 (table item headed "tax loss transfers")

After:

consideration received by loss company from income company, net capital loss .... 170-125(1)

insert:

consideration received for transfer of tax losses relating to transitioned petroleum activities 417-70

10 Section 11-55 (after table item headed "trading stock")

Insert:

transfer of entitlements to deductions

consideration received for transfer of entitlements to deductions relating to transitioned petroleum activities 417-70

11 Paragraph 40-865(1)(b)

Omit ", the Joint Petroleum Development Area".

12 Subsection 205-15(1) (after table item 6)

Insert:

6A	a *franking credit arises under paragraph 417-50(5)(b) in relation to a deduction transferred to a *corporate tax entity	the amount of the *franking credit specified in subsection 417-50(6)	at the time provided by paragraph 417-50(5)(b)
6B	a *franking credit arises under paragraph 417-100(1)(c) in relation to *tax loss transferred to a *corporate tax entity	the amount of the *franking credit specified in subsection 417-100(3)	at the time provided by paragraph 417-100(1)(c)

13 Subsection 705-25(4B)

After "paragraph (d)", insert "or (e)".

14 Paragraph 705-25(5)(d)

Omit "asset).", substitute "asset); or".

15 After paragraph 705-25(5)(d)

Insert:

(e) a *depreciating asset that the joining entity *holds as a result of a *balancing adjustment event mentioned in paragraph 417-30(2)(b).

16 Subsection 960-505(2) (including the notes)

Repeal the subsection, substitute:

Offshore areas

(2) ***Australia***, when used in a geographical sense, includes an offshore area for the purposes of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

Note 1: The offshore area includes all things located in that area, including all installations and structures such as oil and gas rigs. The area also extends to the airspace over, and the sea-bed and subsoil beneath, that area.

Note 2: The offshore area includes the exclusive economic zone and the continental shelf of Australia.

17 Subsection 995-1(1) (at the end of the definition of *balancing adjustment event*)

Add:

Note: Subsection 417-30(1) provides that certain events (connected with Timor Sea petroleum) are taken not to be balancing adjustment events.

18 Subsection 995-1(1)

Insert:

JPDA (short for Joint Petroleum Development Area) has the same meaning as it has in the *Petroleum (Timor Sea Treaty) Act 2003*.

Petroleum Exploration Permit WA-523-P permit area has the meaning given by subsection 417-10(2).

production sharing contract has the meaning given by the *Timor Sea Maritime Boundaries Treaty.

19 Subsection 995-1(1) (at the end of the definition of *taxable purpose*)

Add:

Note: Subsection 417-30(1) provides that certain uses etc. of assets (connected with Timor Sea petroleum) are taken to be for a taxable purpose.

20 Subsection 995-1(1)

Insert:

Timor Sea Maritime Boundaries Treaty means the Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea done at New York on 6 March 2018, as in force from time to time.

Note: The Treaty could in 2019 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

transitioned petroleum activities has the meaning given by section 417-10.

Petroleum (Timor Sea Treaty) Act 2003

21 Part 3

Repeal the Part.

Taxation (Interest on Overpayments and Early Payments) Act 1983

22 After subsection 9(1B)

Insert:

(1C) Subsection (1) does not apply to an overpayment to the extent that the overpayment results from paragraph 417-105(a) of the *Income Tax Assessment Act 1997* allowing an amount to be deducted from assessable income (within the meaning of that Act) for an earlier year of income.

(143/19)