



REGULATION NO. 2000/18
ON A TAXATION SYSTEM FOR EAST TIMOR

The Special Representative of the Secretary-General (hereinafter: Transitional Administrator),

Pursuant to the authority given to him under United Nations Security Council resolution 1272 (1999) of 25 October 1999,

Taking into account United Nations Transitional Administration in East Timor (UNTAET) Regulation 1999/1 of 27 November 1999 on the Authority of the Transitional Administration in East Timor,

After consultation in the National Consultative Council,

For the purpose of establishing a taxation regime for East Timor,

Promulgates the following:

- Chapter I Interpretation
- Chapter II East Timor Revenue Service
- Chapter III Services Tax
- Chapter IV *Reserved for Wage Income Tax*
- Chapter V *Reserved for Non-wage Income Tax*
- Chapter VI Taxes and Tax Provisions in Other Regulations
- Chapter VII Taxation Procedure
- Chapter VIII Additional Tax, Offences and Penalties
- Chapter IX Board of Tax and Customs Appeals
- Chapter X Anti-avoidance

I. Interpretation

Section 1
Purposive interpretation

Where Sections in the Regulation are capable of alternative interpretations, the interpretation that best achieves the intended purpose of the legislation shall be adopted and any interpretation that frustrates the intended purpose of the legislation shall be rejected.

Section 2
Definitions extend to other forms of words

2.1 Definitions in this Regulation in the singular form shall be read as applying to the plural form and definitions in the plural form shall be read as applying to the singular form as appropriate.

2.2 Definitions in this Regulation in the masculine form shall be read as applying to the feminine form and definitions in this section in the feminine form shall be read as applying to the masculine form.

Section 3
Definitions

In this Regulation:

“associate” in relation to a *person* means any other *person* who acts or is likely to act in accordance with the wishes of the *person* as a result of a connection between the *persons*;

“Board” means the Board of Tax and Customs Appeals established under this Regulation;

“Commissioner” means the Commissioner of the East Timor Revenue Service;

“designated service” means a service that is designated under Section 12;

“designation notice” is a notice described in Section 41;

“enterprise” means:

- (a) any *person* liable to pay tax under the present Regulation, other than an *employee*;
- (b) any *person* who carries on a business with a turnover of more than \$200 per month;
- (c) any *person* liable to withhold tax under the present Regulation;
- (d) a religious institution or organization as designated by the *Commissioner* in a *designation notice* with a turnover of more than \$200 per month;

(e) a charitable or non-profit institution or organization as designated by the *Commissioner* in a *designation notice* with a turnover of more than \$200 per month; or

(f) the Transitional Administrator;

“ETRS” means the East Timor Revenue Service;

“fiscal year” means the 12 month period from 1 July to 30 June;

“hotel services” means the provision of sleeping accommodation and related services, including the provision of meals, beverages, laundry and *telecommunications services*, to *persons* who occupy such accommodation as transient guests;

“monthly turnover” has the meaning given in Section 10;

“person” means:

(a) a natural person, including a sole trader;

(b) a company, wherever incorporated, or other juridical person;

(c) a partnership, wherever formed;

(d) a trust, wherever established; or

(e) any other unincorporated association or body of persons;

“restaurant and bar services” means the provision of food or beverages by an establishment that provides facilities for immediate consumption at that establishment, or catering services of prepared food, but not including the provision of food or beverages that is considered part of hotel services;

“services tax” means the tax imposed by Section 9;

“tax form” means a *services tax* form;

“telecommunications services” means the provision of telephonic services by a telecommunications service provider, including digital or analogue telephone, facsimile or data transfer communications.

II. East Timor Revenue Service

Section 4

Creation of the East Timor Revenue Service

4.1 There shall be established as a separate office within the Central Fiscal Authority an East Timor Revenue Service (hereafter referred to as “*ETRS*”).

4.2 The *ETRS* shall be headed by a *Commissioner* who shall be appointed by the Transitional Administrator, after consultation with the National Consultative Council, and on advice of the Head of the Central Fiscal Authority, for a period of one year.

4.3 Pending appointment of a *Commissioner* for the period set out in Section 4.2, the Transitional Administrator may appoint an Interim Commissioner for a shorter period.

4.4 The *Commissioner* or Interim Commissioner may be dismissed prior to expiry of the term of appointment only by the Transitional Administrator after consultation with the National Consultative Council.

4.5 The *Commissioner* shall be assisted by Deputy Commissioners who shall be appointed by the Transitional Administrator.

4.6 No *person* shall seek to interfere in any aspect of the operation of the revenue collection process or influence the *Commissioner* or an officer of the *ETRS* in carrying out responsibilities under the present Regulation, and the *Commissioner* shall report such cases directly to the Transitional Administrator.

Section 5 Powers of the Commissioner

In addition to those specifically granted elsewhere in the present Regulation, or any other UNTAET regulation, the *Commissioner* shall have:

(a) the duty to enforce provisions of the present Regulation and to collect all taxes, duties and fees levied:

(i) by the present Regulation;

(ii) by Regulation 2000/12; and

(iii) under the authority of Regulation 1999/1.

(b) the duty to prepare advertisements, notices, and other communications to ensure all *persons* understand their obligations and rights under the present Regulation;

(c) the power to appoint such *persons* as may be required to carry out the provisions of the present Regulation in conformity with the Public Service Commission rules and regulations; and

(d) the power to establish an organizational structure within the *ETRS* appropriate for its functions.

Section 6 Delegation power

6.1 The *Commissioner* may:

(a) delegate to any officer of the *ETRS* any power or duty conferred or imposed on the *Commissioner* by the present Regulation other than this power of delegation;

(b) direct that any information, form, or document required to be given to the *Commissioner* shall be given to another *person* nominated by the *Commissioner*; and

(c) delegate to the Border Service Controller all duties and rights appropriate for the collection of:

- (i) customs duty;
- (ii) excise equivalent duty;
- (iii) sales tax on imported goods; and
- (iv) presumptive income tax.

6.2 The *Commissioner* may revoke any of the powers delegated under Section 6.1 at any time.

Section 7 Rules governing Revenue Service

7.1 The *Commissioner* shall select and promote officers through the Public Service Commission and according to its rules.

7.2 All officers of the *ETRS* shall wear an official *ETRS* identification card while conducting business.

Section 8 Reporting

8.1 The *Commissioner* shall produce an annual report of the operations of the *ETRS* and deliver the report to the Head of the Central Fiscal Authority as soon as practicable after the end of each *fiscal year*.

8.2 The *Commissioner's* annual report shall be provided to the Transitional Administrator and made available to the public.

8.3 The *Commissioner's* annual report shall include:

- (a) details of the budget of the *ETRS*;
- (b) details of the number and level of staff of the *ETRS*;
- (c) details of the revenues collected by the *ETRS* showing details of the amount of revenue from each type of tax and each district and such other details that may be requested by the Head of the Central Fiscal Authority;
- (d) estimates of the cost of collection for each type of tax revenue collected;
- (e) details of all tax liabilities cancelled under section 34, including the names of the *persons* whose liability has been cancelled and the amount cancelled;
- (f) details of all prosecutions for offences described under Chapter VIII, including the names of the *persons* who were convicted and the amounts of tax involved; and

(g) information on the use of the powers authorized by Section 36, including the number and nature of any complaints about the use of those powers, but not including the names of the *persons* involved.

8.4 The Head of the Central Fiscal Authority shall present to the Transitional Administrator a copy of the annual report within one month of receiving the report.

III. Services Tax

Section 9 Imposition of tax

9.1 Subject to Section 9.2, a *services tax* is imposed on *persons* who provide a *designated service* in East Timor.

9.2 The *services tax* applies to a *person* providing one or more *designated services* in respect of any calendar month in which the *person's monthly turnover* from the provision of *designated services* in that month exceeds the *services tax* threshold.

Section 10 Service tax threshold

10.1 A *person's monthly turnover* from the provision of *designated services* includes the *monthly turnover* of any *associate* of the *person* in respect of the same *designated services*.

10.2 Subject to Section 10.3, the *monthly turnover services tax* threshold from all *designated services* is \$500.

10.3 The *monthly turnover services tax* threshold for those *persons* whose only *designated service* is the provision of *restaurant and bar services* shall be \$1,000 in respect of the period from 1 July 2000 to 31 December 2000.

Section 11 Rate of tax

11.1 The rate of *services tax* shall be ten percent (10%) of the gross consideration received by a *person* for the provision of *designated services* in East Timor.

11.2 The gross consideration received by a *person* for the provision of *designated services* includes:

(a) all amounts received by that *person* in respect of the provision of *designated services*;

(b) all amounts received by that *person* in respect of any other service or good where the cost to the user of a *designated service* of that *designated service* is reduced or eliminated by the amount paid in respect of the other service or good.

Section 12
Designated services

Each of the following is a *designated service*:

- (a) *hotel services*;
- (b) *restaurant and bar services*;
- (c) *telecommunications services*; and
- (d) rental services of:
 - (i) cars, trucks, omnibuses, motorcycles and similar motorized land vehicles;
 - (ii) helicopters and airplanes; and
 - (iii) seagoing vessels.

Section 13
When telecommunications services are provided in East Timor

13.1 A telecommunications service is provided in East Timor if the telecommunication originates in East Timor.

13.2 A *person* providing a telecommunications service in East Timor is the *person* who operates and maintains the system for transmitting the telephonic signal received from a handset.

Section 14
When rental services are provided in East Timor

A rental service is provided in East Timor if the vehicle, aircraft or vessel is made available for use in East Timor.

Section 15
Payment of tax and services tax form

15.1 Any *person* providing *designated services* in East Timor who is liable to pay *services tax* shall deliver to the Central Payments Office or its nominated agent by the fifteenth day after the end of a calendar month:

- (a) a completed *services tax form* as prescribed by the *Commissioner*; and
- (b) any *services tax* payable on gross consideration received by the *person* for the provision of *designated services* in that month.

15.2 A *person* who has had a liability to pay *services tax* under this Regulation in respect of any month shall deliver to the Central Payments Office or its nominated agent a completed *services tax form* for subsequent months whether or not *services tax* is payable in subsequent months.

15.3 The *Commissioner* may waive the requirement set out in Section 12.2 upon written application by a *person* required to deliver a *services tax form* under that Section if the *Commissioner* is satisfied the *person* will not have a liability to pay *services tax* in the relevant months.

Section 16

Timor Gap

This Chapter is not applicable to matters covered by the Memorandum of Understanding dated 10 February 2000 between UNTAET, acting on behalf of East Timor, and the Government of Australia on arrangements relating to the Timor Gap.

Section 17

Commencement

17.1 *Services tax* shall be imposed on the gross consideration received by a *person* for *designated services* provided by him on or after 1 July 2000.

17.2 A *person* who provides *designated services* after 1 July 2000 shall be treated as receiving on 1 July 2000 any consideration received prior to that date for services to be provided on or after that day.

IV. Wage Income Tax

(Reserved for future use)

V. Non-wage Income Tax

(Reserved for future use)

VI. Taxes and Tax Provisions in Other Regulations

Section 18

Modification of taxation laws to which Regulation 1999/1 applies

18.1 In all taxation laws to which Section 3.1 of Regulation 1999/1 applies, references to government authorities formerly responsible for the application or enforcement of those laws shall be read as references to appropriate East Timor authorities.

18.2 Section 18.1 has effect from 25 October 1999.

Section 19

No double taxation as a result of the application of Regulation 1999/1

Where any tax imposed under this Regulation applies to the same or substantially the same amount as a tax imposed under a taxation law to which Section 3.1 of Regulation 1999/1 applies, the tax payable under the taxation law to which Regulation 1999/1 applies shall be reduced by the tax imposed under this Regulation.

Section 20
Conflict of laws

Where the provisions of any Regulation conflict with the provisions of this Regulation, the provisions of this Regulation shall prevail.

VII. Taxation Procedure

Part A Tax identification numbers

Section 21
Who must obtain a tax identification number

- 21.1 All *enterprises* are required to obtain a tax identification number.
- 21.2 Any *person* not required to obtain a tax identification number under Section 21.1 may request the *Commissioner* to provide that *person* with a tax identification number.

Section 22
Issuance of tax identification numbers

- 22.1 The *Commissioner* shall prepare a register of all *persons* who request a tax identification number under the present Regulation and assign a tax identification number to each *person* on the register with required proof of identity.
- 22.2 The *Commissioner* may designate by way of a *designation notice* what documentation or other proof is required to obtain a tax identification number.
- 22.3 The *Commissioner* shall notify every *person* on the register in writing of the tax identification number assigned to that *person*.
- 22.4 The *Commissioner* may require a *person* to include the tax identification number issued by the *Commissioner* to that *person* in any form, notice, or other document used for the purposes of the present Regulation.
- 22.5 The *Commissioner* shall designate by way of a *designation notice* procedures to be followed for application for a tax identification number.

Section 23
Requirement for a tax identification number

The *Commissioner* may designate by way of a *designation notice* documents or registrations including but not limited to a licence, permit, passport, registration certificate as documents or registrations requiring presentation of a tax identification number prior to its issuance.

Part B Assessments

Section 24

Commissioner's assessments of tax due

24.1 Where a *person* has delivered a *tax form* required under the present Regulation, the tax due if any according to the *tax form* shall be treated as an assessment of tax payable under the present Regulation.

24.2 Where the *Commissioner* believes that the information provided on a *tax form* does not correctly disclose the tax due, the *Commissioner* may determine the amount of the tax due and issue to the *person* liable for payment of the tax an assessment notice for the amount due.

24.3 Where a *person* has not delivered a *tax form* required under the present Regulation, the *Commissioner* may determine the amount of the tax due and issue to the *person* liable for payment of the tax an assessment notice for the amount due.

24.4 Tax specified in an assessment notice issued under Section 24.3 is treated as due and payable on the date a *tax form* correctly disclosing the tax due was to be delivered to the Central Payments Office.

24.5 The *Commissioner* may amend an assessment notice issued under this Section.

24.6 Where a *person* has delivered a *tax form* required under the present Regulation, or has received an assessment notice under this Section, and that *person* believes that the *tax form* or assessment is now incorrect, they can either deliver an amended *tax form*, or request the *Commissioner* to amend the assessment.

24.7 Where as a result of the *Commissioner* agreeing to amend an assessment or where an overpayment of tax has arisen, the *Commissioner* shall to the extent there has been an overpayment:

- (a) apply that overpayment against any other taxes then due; and
- (b) refund the remainder to the *person* who paid it.

24.8 Where tax that has been overpaid by a *person* is dealt with under Section 24.7, the *Commissioner* shall pay to the *person* interest at the rate prescribed by the Head of the Central Fiscal Authority from the day of payment by the *person* to the day of refund.

Section 25

Time limits for assessments

25.1 Subject to Section 25.2, the *Commissioner* shall issue an assessment notice or amend an assessment notice only within five years of the date on which the *tax form* to which the notice relates was due.

25.2 The *Commissioner* may make or amend an assessment at any time where:

- (a) a *person* with the intent of evading tax has failed to deliver a *tax form*;

(a) a *person* with the intent of evading tax has delivered a *tax form* which the *Commissioner* considers to be incorrect; or

(c) fraud has been committed by or on behalf of a *person* in relation to tax due.

Section 26

Jeopardy assessments

Where the *Commissioner* believes that the collection of tax that will become due is in jeopardy because a *person* is about to depart from East Timor, to cease business, or to transfer property, or is in jeopardy for other reasons, the *Commissioner* may at any time issue an assessment notice for any tax period in the current or preceding *fiscal year*.

Part C Tax collection

Section 27

Tax that is due and payable

27.1 Tax that is due and payable is a debt owed to the Transitional Administration.

27.2 Officers of the *ETRS* are prohibited from receiving amounts under Section 27.1 unless designated to do so by the *Commissioner*.

27.3 Tax that has not been paid when it is due and payable, may be sued for and recovered in a court of competent jurisdiction by the *Commissioner* in his official name on behalf of the Transitional Administrator.

27.4 In any suit under this section, production of a certificate signed by the *Commissioner* giving the name and address of the defendant and the amount of tax, and additional tax, if any, due shall be sufficient evidence of the amount of tax, and additional tax for the court to give judgement for that amount.

Section 28

Tax lien

28.1 If a *person* liable to pay tax fails to pay tax by the due date, the amount owing and interest creates a lien in favour of the *Commissioner* on all property belonging to the *person*, and has priority as against all other rights, except as otherwise provided in this Section and in any other UNTAET Regulation.

28.2 The lien described in Section 28.1 arises at 5 p.m. on the due date and continues until the liability is satisfied or becomes unenforceable by reason of lapse of time.

28.3 The lien imposed by this Section is not valid against the interest of:

(a) a *person* who is a purchaser from the *person* who has failed to pay tax;

(b) the holder of a security interest granted by the *person* who has failed to pay tax; or

(c) other lien holder specified in a Directive;

where the interest:

(d) arose in an arm's length transaction between the *person* who has failed to pay tax and the other *person* referred to in this subsection;

(e) arose before such other *person* had actual knowledge of the lien; and

(f) arose before notice of the lien has been filed in the manner specified in a Directive.

28.4 The *Commissioner* may designate by way of a *designation notice* circumstances in which the lien created by this Section is not valid as against certain *persons* even though notice of the lien has been filed.

28.5 The *Commissioner* may file a civil action in a court of competent jurisdiction to enforce the lien imposed by this Section.

Section 29

Recovery from agent of non-resident

29.1 The *Commissioner* may, by notice in writing, require any *person* who is in possession or control of assets belonging to a non-resident *person* to pay tax or additional tax on behalf of the non-resident, up to the amount of tax due.

29.2 The master of any ship or the captain of any aircraft or the manager of any property owned, chartered or leased by a non-resident *person* shall be treated as the *person* in possession of the property for the purposes of this Section.

29.3 A *person* making a payment of tax or additional tax under this Section shall be treated as having made the payment on behalf of the *person* liable to pay the tax and the *person* liable to pay the tax may not seek to recover that amount from the *person* making payment.

Section 30

Partnerships, associations and other organizations

30.1 The *Commissioner* may recover from any of the partners of a partnership any tax or additional tax due from the partnership.

30.2 The *Commissioner* may recover from any member, manager or director of an unincorporated association or organization any tax or additional tax due from the association or organization.

30.3 A member of an unincorporated association or organisation shall be liable to pay tax due under Section 30.2 only to the extent the member knew or reasonably should have known of the tax liability of the association or organization.

30.4 Where the director or manager of a company or juridical *person* has caused the company or juridical *person* to be unable to pay any tax or additional tax due from the company under the present Regulation, the *Commissioner* may recover these amounts from the director or manager.

Section 31

Recovery of tax from a person owing money to the person owing tax

31.1 Where tax or additional tax due under the present Regulation has not been paid by the due date, the *Commissioner* may by notice in writing require a *person*:

(a) owing money to the *person* liable to pay tax or additional tax;

(b) holding money for the *person* liable to pay tax or additional tax; or

(c) having authority from some other *person* to pay money to the *person* liable to pay tax or additional tax;

to pay the money to the Central Payments Office or its nominated agent on the dates set out in the notice, up to the amount of tax or additional tax due.

31.2 A copy of a notice issued under Section 31.1 shall be forwarded to the *person* liable to pay tax or additional tax.

31.3 A *person* making a payment under a notice under Section 31.1 shall be treated as having made the payment on behalf of the *person* liable to pay the tax or additional tax and the *person* liable to pay the tax or additional tax shall not bring an action against the *person* making payment for recovery of that amount.

31.4 The *Commissioner* shall reduce the amount of tax or additional tax owing by the *person* liable to pay them, by the amount of any payment made on that *person's* behalf under Section 31.3.

Section 32

Jeopardy orders

Where the *Commissioner* believes payment of tax that will become due is at risk because a *person* is about to depart from East Timor, to cease business, or to transfer property, or is in jeopardy for other reasons, the *Commissioner* may notify any *person*:

(a) owing money to the *person* who will be liable to pay tax;

(b) holding money for the *person* who will be liable to pay tax; or

(c) having authority from some other *person* to pay money to the *person* who will be liable to pay tax;

to set aside the money until such time as the *Commissioner* issues a notice under Section 31 or withdraws the notice issued under this Section.

Section 33

Departure prohibitions

33.1 If the *Commissioner* informs the Border Service Controller by letter that a *person* liable for tax due under the present Regulation has failed to pay the tax, the Border Service Controller shall prevent that *person* from leaving East Timor for a period of 72 hours from issuance of the letter, unless the *person*:

(a) makes payment in full; or

(b) makes an arrangement satisfactory to the *Commissioner* for the payment of the tax.

33.2 Upon application by the *Commissioner*, a court of competent jurisdiction may extend the 72-hour period referred to in Section 33.1.

Section 34

Cancellation of tax that cannot be collected

34.1 Where the *Commissioner* believes that it will be impossible to collect tax due under this Regulation and that the liability of the *person* owing the tax should be cancelled, he may recommend to the Head of the Central Fiscal Authority that the tax liability be cancelled.

34.2 If the Head of the Central Fiscal Authority accepts in writing a recommendation of the *Commissioner* made under Section 34.1, the *Commissioner* shall treat the tax liability as cancelled and the tax shall no longer be due or payable.

34.3 The *Commissioner* may reinstate a tax liability cancelled under Section 34.2 where the *Commissioner* believes it is possible to collect the tax.

Part D Records and investigation powers

Section 35

Creating and retaining records

35.1 *Persons* liable to pay or withhold tax under the present Regulation shall create records of account suitable to determine their liability to pay or withhold tax.

35.2 Unless otherwise authorized by the *Commissioner*, a *person* required to create records under the present Regulation shall maintain those records in an official language of East Timor for a period of at least five years after the *fiscal year* in which the tax liability to which they relate arose.

Section 36

Access to books, records, and computers

36.1 Subject to Section 36.2 and Section 36.3, in order to enforce the provisions of the present Regulation, the *Commissioner*, or any officer authorized by the *Commissioner* in writing for this purpose:

(a) shall have at all times and without any prior notice full and free access to any premises, place, book, record, or computer where there are reasonable grounds for concluding that access may provide the *Commissioner* with materials relevant to an understatement of tax due;

(b) may make an extract or copy from any book, record, or computer-stored information to which access is obtained under paragraph (a);

(c) may seize any book or record that, in the opinion of the *Commissioner* or authorized officer, affords evidence which may be material in determining the liability of any *person* to tax, additional tax, or to a penalty under the present Regulation;

(d) may retain any such book or record for as long as it may be required for determining a *person's* liability or for any proceeding under the present Regulation; and

(e) may, where a hard copy or computer disk of information stored on a computer is not provided, seize and retain the computer for as long as is necessary to copy the information required.

36.2 The powers authorized by Section 36.1 shall be exercised only during ordinary business hours, unless the *Commissioner* determines that the collection of tax is in jeopardy and that their exercise outside ordinary business hours is necessary to protect the collection of the tax.

36.3 An officer who attempts to exercise a power under Section 36.1 shall not be entitled to enter or remain on any premises or place if, upon being requested by the occupier of the premises or place, the officer does not produce an authorization in writing from the *Commissioner* showing that the officer is authorized to exercise that power under this Section.

36.4 The owner, manager, or any other *person* on the premises or place entered or proposed to be entered under this section shall provide all reasonable facilities and assistance for the effective exercise of power under this Section.

36.5 A *person* whose books, records, or computer have been removed and retained under Section 36.1 may examine them and make copies or extracts from them during regular office hours under such supervision as the *Commissioner* may determine.

36.6 The *Commissioner* shall designate by way of a *designation notice* procedures to be followed in exercising the powers authorized by Section 36.1.

36.7 Where the *Commissioner* has obtained access under Section 36.1 and there were no reasonable grounds for concluding that access could provide the *Commissioner* with materials relevant to an understatement of tax due, the owner of any materials collected may seek an order in a court of competent jurisdiction for return of the original and all copies of those materials.

Section 37

Commissioner may obtain information or evidence

37.1 Where necessary for the collection of information for the purpose of determining the liability of any specific *person* for a tax or the collection of information required for the collection of tax from a specific *person*, the *Commissioner* may, by notice in writing, require a *person*, whether that *person* is liable to pay tax or not,

(a) to provide to the *Commissioner* such information as may be required by the notice;
or

(b) to attend at the time and place designated in the notice for the purpose of being examined on oath before the *Commissioner* or any officer authorized by the *Commissioner* for this purpose, concerning the tax liability of that *person* or any other *person*, and for that

purpose require such *person* to produce any book, record, or computer-stored information in the control of that *person*.

37.2 Where the notice requires the production of documents or other records, it is sufficient if such documents or other records are described with reasonable certainty.

Part E Tax forms and other documentation

Section 38

Tax forms

The *Commissioner* shall develop *tax forms* and other documentation along with clear instructions on how the forms should be completed.

Part F Rulings and designation notices

Section 39

Public rulings

39.1 To achieve consistency in the administration of the present Regulation and to provide guidance to *persons* required to pay tax or to withhold tax and to officers of the *ETRS*, the *Commissioner* may issue public rulings that explain how the *ETRS* shall interpret and apply the provisions of the present Regulation.

39.2 Public rulings shall be made available to the public and brought to the attention of *persons* affected by the rulings.

39.3 A public ruling issued under this Section is binding on the *Commissioner* in respect of any tax liability arising in respect of the period prior to withdrawal of the ruling.

39.4 A public ruling is not binding on a *person* liable to pay tax under the present Regulation.

Section 40

Private rulings

40.1 The *Commissioner* may issue a private ruling to a particular *person* explaining how the *ETRS* shall interpret and apply the provisions of the present Regulation as it applies to a particular transaction or arrangement planned by the *person* seeking the ruling.

40.2 A private ruling issued under this Section is binding on the *Commissioner* in respect of any tax liability arising in respect of the period prior to withdrawal of the ruling, but only if the *person* seeking the ruling has provided full and true disclosure of all aspects of the planned transaction or arrangement relevant to the tax ruling.

Section 41

Designation notice

The *Commissioner* may issue a *designation notice* explaining any matter that the *Commissioner* has a power to designate under this Regulation.

Part G Appeals

Section 42 Appeals to the ETRS

42.1 The *Commissioner* shall establish within the *ETRS* an Appeals Office responsible for considering appeals by *persons* who dispute a tax or additional tax liability set out in an assessment or amended assessment or who consider that a decision or assessment by the *Commissioner* is incorrect.

42.2 Any *person* who wishes to make an appeal to the Appeals Office shall do so within 60 days from the date of receiving notice of the assessment, amended assessment or decision from the *Commissioner* which they wish to appeal.

42.3 The *Commissioner* may establish procedures and forms for appeals to the Appeals Office and may designate by way of a *designation notice* the circumstances under which the 60 day period in section 42.2 may be extended.

42.4 Decisions of the Appeals Office shall be delivered in writing to the *person* making an appeal.

42.5 A decision of the Appeals Office shall be the final decision of the *Commissioner* and shall be binding on the *Commissioner*.

42.6 A *person* may appeal a decision of the Appeals Office to the *Board* of Tax and Customs Appeals within 60 days of receiving notification of the decision.

42.7 Where the Appeals Office has not delivered a decision within 42 days of the day on which an appeal was duly lodged with the Appeals Office, the *person* lodging the appeal may appeal the *Commissioner's* decision directly to the *Board* of Tax and Customs Appeals.

Section 43 Payment of tax on appeal

43.1 Whether or not a *person* has lodged an appeal to the Appeals Office or to the *Board* of Tax and Customs Appeals, tax due under the present Regulation shall remain due and payable, and may be recovered notwithstanding that appeal.

43.2 Where a *person* becomes entitled to a refund of tax following an appeal to the appeals office or *Board* of Tax and Customs Appeals, the *Commissioner* shall refund the tax and interest calculated at the rate prescribed by the Head of the Central Fiscal Authority from the day of payment by the *person* to the day of refund.

VIII. Additional Tax, Offences and Penalties

PART A Additional tax

Section 44 Additional tax

44.1 Additional tax imposed under this Chapter shall be a debt due to the Transitional

Administrator.

44.2 The *Commissioner* shall give notice to a *person* liable to pay additional tax under this Part, of the amount to be paid.

44.3 All sections in the present Regulation that apply to the collection of tax due shall also apply to additional tax imposed on a *person*.

44.4 The *Commissioner* may exercise discretion to forgive some or all additional tax imposed under this Chapter where an additional tax liability is imposed on a *person* and that *person* shows good reason for the *person's* failure to comply with a section of this Regulation to which the additional tax liability relates.

Section 45

Failure to deliver tax form

45.1 Subject to Sections 45.2 and 45.3, where a *person* who is required under the present Regulation to deliver a *tax form* fails to do so by the due date, that *person* shall be liable to additional tax of \$100.

45.2 Where the due date that any *tax form* required to be delivered by under this Regulation does not fall on a business day, the due date shall be the next business day following the due date.

45.3 In order for any *tax form* that is required to be delivered under this Regulation to the Central Payments Office, its nominated agent, or the *ETRS* to be treated as having been delivered by the due date, the Central Payments Office, its nominated agent, or the *ETRS* must have received that *tax form* by that due date.

Section 46

Failure to deliver tax payment

46.1 Subject to Sections 46.2 and 46.3, where a *person* who is required to deliver tax under the present Regulation fails to deliver all or part of such tax by the due date, that *person* shall be liable to additional tax of fifteen percent (15%) of the amount of the tax that remains unpaid per annum, calculated on a daily basis, for the period from the due date until the date on which payment is made and:

(a) if failure was due to gross carelessness on the part of the *person*, further additional tax of twenty-five percent (25%) of the tax that remains unpaid; or

(b) if failure was due to a deliberate attempt to avoid payment of tax, further additional tax of one hundred percent (100%) of the tax that remains unpaid.

46.2 Where the due date that any tax required to be delivered by under this Regulation does not fall on a business day, the due date shall be the next business day following the due date.

46.3 In order for any tax that is required to be delivered under this Regulation to the Central Payments Office or its nominated agent to be treated as having been delivered by the due date, the Central Payments Office or its nominated agent must have received that tax by that due date.

Section 47
Understatement of tax

Where a *person* who is required to complete a *tax form* under this Regulation has understated the amount of tax required to be shown on that *tax form*, that *person* shall be liable to additional tax of fifteen percent (15%) of the understatement and:

(a) if the understatement was due to gross carelessness on the part of the *person*, further additional tax of twenty-five percent (25%) of the tax understated; or

(b) if the understatement was due to a deliberate attempt to avoid payment of tax, further additional tax of one hundred percent (100%) of the tax understated.

Section 48
Failure to create and retain records

A *person* who is required to create or retain records under the present Regulation and who fails to do so shall be liable to additional tax of \$100.

Part B Offences and Penalties

Section 49
Penalties

A *person* who commits an offence described in this Chapter may be prosecuted in respect of that offence and if found guilty shall be liable for any penalty imposed for the offence.

Section 50
Reduction of penalties for voluntary disclosure

Where a *person* who could be liable to penalties in respect of offences described in this Chapter voluntarily informs the *Commissioner* of their having committed such offences before their discovery by the *Commissioner*, the maximum financial penalty imposed in respect of an offence shall be 50% of the penalty that would otherwise apply.

Section 51
Failure to create and retain records

A *person* who is required to create or retain records under the present Regulation and who fails to do so is guilty of an offence and shall be liable on conviction to a penalty of:

(a) if failure to do so was due to gross carelessness on the part of the *person*, twenty-five percent (25%) of the tax assessed to which the records relate; or

(b) if failure to do so was due to a deliberate attempt to avoid payment of tax, one hundred percent (100%) of the tax assessed to which the records relate.

Section 52
Obstructing or hindering access

A *person* who unlawfully obstructs or hinders the *Commissioner* or an authorized officer from access to any place or information shall be liable on conviction to:

- (a) a penalty of up to \$1,000; and
- (b) imprisonment for a period up to three years.

Section 53
Failure to provide information or provision of false information

A *person* who:

(a) fails to deliver a *tax form* or any other information required to be delivered under this Regulation;

(b) fails to provide such information in the manner required by this Regulation; or

(c) provides false information;

shall be liable on conviction to:

- (d) a penalty of up to \$1,000; and
- (e) imprisonment for a period up to three years.

Section 54
Evasion of tax

A *person* who has wilfully, in any manner, evaded or defeated, or attempted to evade or defeat, tax imposed by the present Regulation, or the payment or collection of such tax, shall be liable on conviction to:

(a) penalty of up to the higher of \$1,000 and two hundred percent (200%) of the tax evaded; and

(b) imprisonment for a period up to five years.

Part C Officers and former officers of the ETRS

Section 55
Abuse of position

Any *person* who is or has been an officer of the *ETRS* who:

(a) demands from any *person* an amount in excess of the authorized assessment of the tax;

(b) withholds for his own use or otherwise any portion of the amount of tax collected;

(c) renders a false accounting, whether verbal or in writing, of the amounts of tax collected or received by him;

(d) defrauds any *person*, embezzles any money, or otherwise uses his position so as to deal wrongfully either with the *Commissioner* or any other individual;

(e) not being authorized under the present Regulation to do so, collects or attempts to collect tax under the present Regulation; or

(f) not being authorized under the present Regulation to do so, reveals information obtained by them from their employment with the ETRS;

shall be liable on conviction to:

(g) disciplinary action or dismissal;

(h) a penalty of up to \$2,000; and

(i) imprisonment for a period up to three years.

Section 56
Assisting the avoidance of tax

Any *person* who is or has been an officer of the *ETRS* who assists any other *person* to avoid tax under the present Regulation, whether or not the officer or former officer personally benefits as a result of the assistance, shall be liable on conviction to:

(a) disciplinary action or dismissal;

(b) a penalty of up to \$2,000; and

(c) imprisonment for a period up to two years.

Part D Confidentiality of tax information

Section 57
Unauthorized release of tax information

57.1 Any *person*, whether or not they are or have been employed by the *ETRS*, who participates in any capacity in a tax proceeding and who reveals any information acquired in the course of the proceeding to any other *person*, other than where:

(a) the information is needed in a tax or enforcement proceeding;

(b) the information is to be incorporated in official statistical reports; or

(c) the *person* or *persons* to whom it relates, have waived their right to the confidentiality of that information;

shall be liable on conviction to:

(d) in the case of officers of the *ETRS*, disciplinary action or dismissal;

(e) a penalty of up to \$2,000; and

(f) imprisonment for a period up to three years.

57.2 Tax proceeding in this Section means any procedure under the present Regulation that involves the collection of information by the *ETRS*.

IX. Board of Tax and Customs Appeals

Section 58

Establishment of the Board

58.1 There shall be established a *Board of Tax and Customs Appeals* to hear all proceedings arising under the present Regulation and Regulation 2000/12.

58.2 Members of the *Board* shall be appointed by the Transitional Administrator, after consultation with the National Consultative Council, and on advice of the Head of the Central Fiscal Authority, for a term of 2 years.

58.3 The Head of the Central Fiscal Authority shall provide the *Board* with an operating budget.

58.4 The *Board* is authorized to hire competent staff, acquire equipment necessary to carry out its functions, and establish premises from which it will operate.

58.5 The *Board* shall consist of a Chief Member and no more than 2 deputy members, all of whom are independent of the *ETRS* and the Border Service for East Timor.

58.6 The Head of the Central Fiscal Authority shall establish appropriate compensation levels for members of the *Board*.

58.7 The Transitional Administrator may remove one or more members of the *Board* if he determines that the member is unfit to execute his functions or has sat on an appeal panel in a position of conflict of interest contrary to Section 60.6.

Section 59

Role of the Board

59.1 The *Board* shall have jurisdiction to receive appeals against a decision of:

(a) the Appeals Office established under Section 42.1;

(b) the *Commissioner* in respect of any tax administered by the *ETRS* where that decision has been appealed to the Appeals Office and the Appeals Office has not delivered a decision within 42 days under Section 42.7;

(c) the Border Service Controller under Section 19.1 of Regulation 2000/9 in respect of a decision made under Regulation 2000/12; and

(d) an officer of the Border Service where an adverse decision by that officer in relation to Regulation 2000/12 has not been reviewed by the Border Service Controller and the applicant notified within 7 days of their application for review under Section 19.1 of Regulation 2000/9.

59.2 The *person* appealing to the *Board* shall have the burden of proving that a decision against which he is appealing is incorrect.

59.3 In reviewing decisions under Section 59.1, the *Board* shall review the relevant testimony, documents and other evidence presented by the *person* appealing to the *Board* and by the *ETRS* or Border Service and make its own findings of fact and conclusions of law.

59.4 The decision by the *Board* shall be binding on both the *person* appealing to the *Board* and the *Commissioner* or Border Service Controller, as the case may be.

Section 60 Procedures of the Board

60.1 The *Board* shall prescribe rules of procedure appropriate for its operations.

60.2 The Head of the Central Fiscal Authority may establish a user fee for *persons* bringing appeals before the *Board*.

60.3 The Chief Member shall nominate an appeal panel of up to three members to hear an appeal brought before it.

60.4 The times and places of the hearings of the *Board* shall be specified by the Chief Member with a view to securing a reasonable opportunity for *persons* to appear before the *Board* with as little inconvenience and expense as is practicable.

60.5 An appeal panel shall hear evidence under Section 59.3, discuss the case as a panel, and issue a written opinion, including the findings of fact or opinion of the *Board*, within 15 days of the conclusion of the hearing.

60.6 No member shall sit on an appeal panel where there is any likelihood of a conflict of interest by virtue of family relationships, business relationships or any other factors.

Section 61 Confidentiality

The *Board* and its members shall maintain the confidentiality of all information and data obtained while performing its official functions.

Section 62 Appeals

Decisions of the *Board* may be appealed to a court of competent jurisdiction.

Section 63
Dictionary and interpretation

References to the *Commissioner* and the Border Service Controller in this Chapter shall include *persons* to whom those *persons* have delegated authority under a delegation power contained in a Regulation.

X. Anti-avoidance

Section 64
Transactions between associates

The *Commissioner* may adjust any amount in respect of a transaction between *associates* to the amount that could be expected to be used had the *persons* not been *associates*.

Section 65
Diverted receipts

A *person* shall be treated as having received any amount that is:

- (a) reinvested or accumulated for the *person's* benefit; or
- (b) dealt with on the *person's* behalf or as the *person* directs.

Section 66
Commissioner may recharacterize arrangements

For the purposes of determining liability to tax under this Regulation, the *Commissioner* may:

- (a) recharacterize an element of a transaction that was entered into as part of scheme to avoid a liability to taxation;
- (b) disregard a transaction that does not have substantial economic effect; or
- (c) recharacterize a transaction where the form of the transaction does not reflect its economic substance.

Section 67
Territorial scope of the Regulation

The present Regulation applies to transactions and arrangements in East Timor and its territorial waters, the economic zone off the coast of East Timor recognized under the law of the sea and, to the extent allowed by treaty, in the zone of cooperation.

XI. Entry into Force

Section 68
Entry into force

The present Regulation shall enter into force on 1 July 2000.

Sergio Vieria de Mello
Transitional Administrator