

# TAX CASES IN DILI COURT: Errors Made by Courts

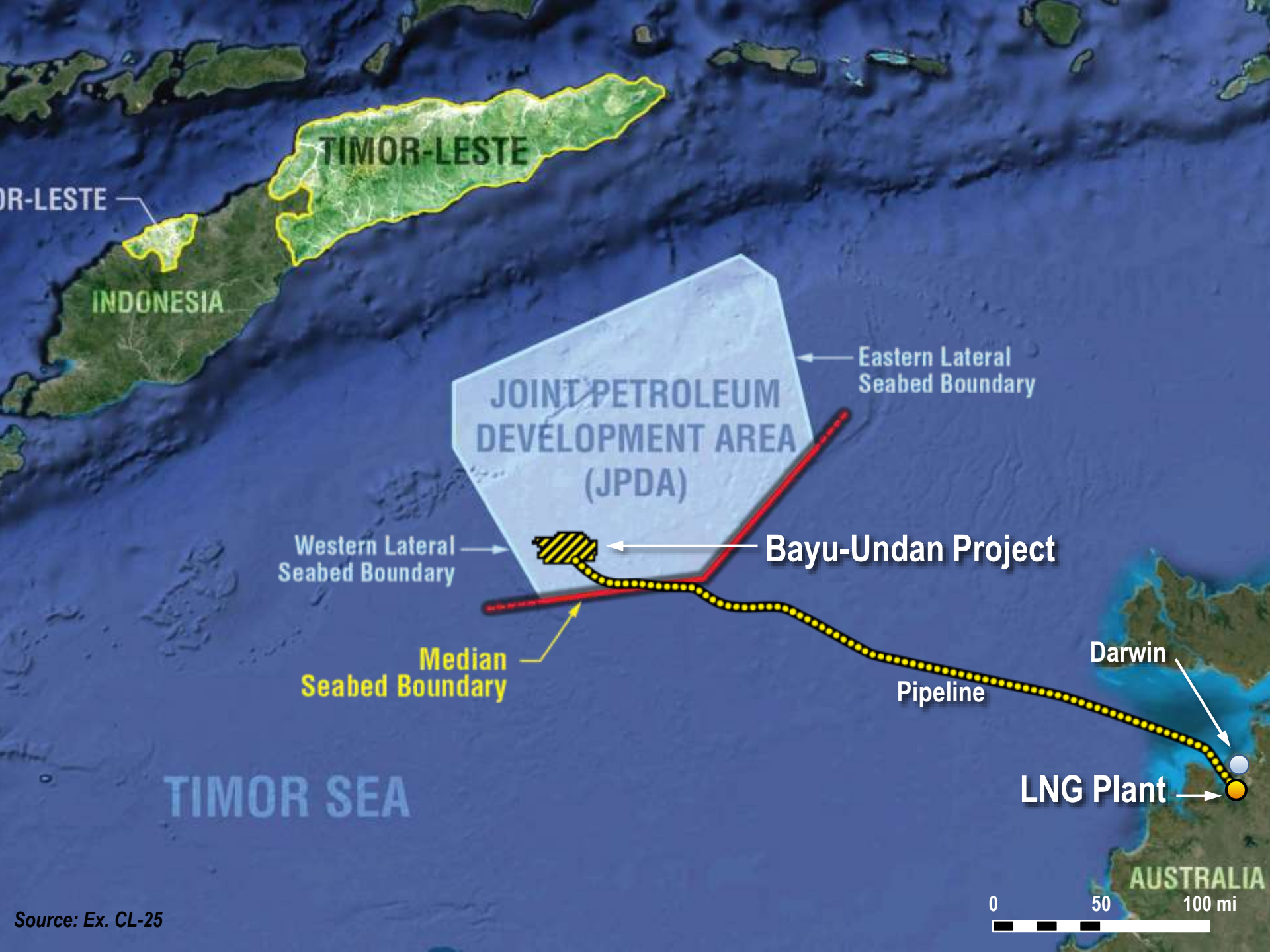


# Court Errors

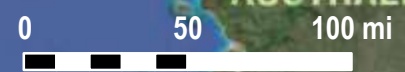
- The errors in the cases have been made not only by the PP, but also by the court.
- The court has shown a lack of understanding of the tax regime applicable to the contractors in the Bayu-Undan.
- The court has also showed a clear lack of understanding of the difference between the National Petroleum Authority (ANP) in its representation of the Joint Commission (acting as the Designated Authority (DA)) and the tax authority's representation of the State.
- Finally, the court has also showed a lack of understanding of the difference between the ANP's obligation to comply with and enforce the PSC, which was agreed to with the Contractors when collecting the petroleum revenue and the Tax Authority's obligation to comply and enforce the Tax law when collecting the tax revenue.

# Joint Petroleum Development Area - Management

- The Joint Petroleum Development Area (JPDA) of the Timor Sea is jointly managed by Timor-Leste and Australia pursuant to the Timor Sea Treaty (TST).
- The mechanism established in the TST to govern and manage the exploration and exploitation of petroleum in the JPDA consists of three entities:
  - A ministerial council made up of one Timorese representative and one Australian representative to consider matters relating to the operation of the TST.
  - A Joint Commission made up of two Timorese Commissioners and one Australian Commissioner which establishes policies and regulations relating to petroleum activities in the JPDA and oversees the work of the Designated Authority.
  - And the Timor Sea Designated Authority (DA), which manages day-to-day activity in the JPDA and reports to the Joint Commissioner. The DA's function is carried out by the Timor-Leste National Petroleum Authority (ANP).



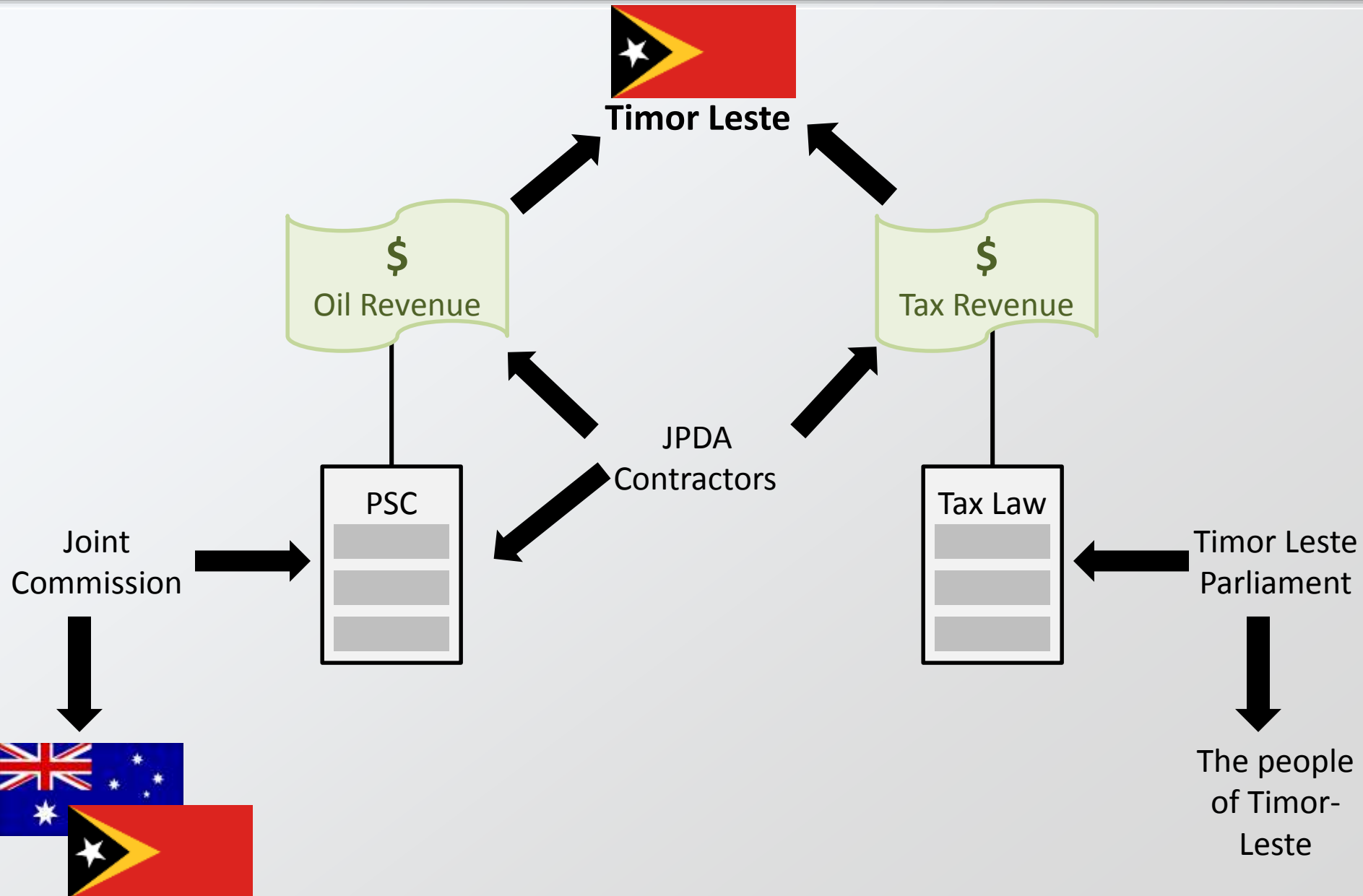
Source: Ex. CL-25



# Joint Petroleum Development Area - Revenue

- Timor-Leste earns revenue from oil and gas production in the JPDA from two sources:
  1. Royalties from sales of oil and gas. These are determined based on agreements between the DA and the oil and gas contractors called Production Sharing Contracts (PSCs). The DA is responsible for collecting this revenue.
  2. Taxes collected from the JPDA Contractors. The taxes are based on Timor-Leste tax law that is passed by Parliament pursuant to Article 144 of the Timor-Leste Constitution. Tax collection and enforcement is conducted by the Timor-Leste Revenue Service.

# Joint Petroleum Development Area - Revenue



# DA and TLRs – Reporting and Responsibility

- Thus, the ANP, when acting as the DA, reports to the Joint Commission and has a responsibility to comply with and enforce the PSC agreed upon with the Contractors.
- The Timor-Leste Revenue Service (TLRS), however, reports to the people of Timor-Leste and has a duty to comply with and enforce the tax laws of Timor-Leste as passed by Parliament.

# Bayu-Undan Contractors – Tax Law Regime

- The majority of the Plaintiffs in the tax cases are Contractors in the Bayu-Undan field of the JPDA, so its tax treatment by Timor-Leste is subject to a Tax Stability Agreement between the Government of Timor-Leste and the Bayu-Undan Contractors.
- Under the Tax Stability Agreement, the Bayu-Undan contractors, including Plaintiffs, are subject to different tax laws from other petroleum contractors in Timor-Leste.



# Bayu-Undan Contractors – Tax Law Regime

- The laws applicable to the Bayu-Undan contractors are the Taxation of Bayu-Undan Contractors Act (Law 3/2003, hereafter known as TBUCA), the Indonesian Law on Income Tax (Law 10/1994), and the tax procedures and penalties found in UNTAET Reg. No. 2000/18. Plaintiffs and the State agree that this is the correct tax regime.
- Their disagreements in these tax cases relate only to the proper application of these tax laws.
- Despite both the Plaintiffs and the State agreeing that these are the correct tax laws to apply to the Bayu-Undan Contractors, the court has on several occasions applied the incorrect tax laws.



# Court Errors – Incorrect Legal Regime (Head Office Expenses Cases) [2]

- As a result, rather than correctly analyze whether the deductions were allowed under the Indonesian Income Tax Law as argued by the parties, the court incorrectly relied upon two different inapplicable laws as the basis for allowing Plaintiffs' deductions:
  - Law No. 8/2005 (the Petroleum Taxation Act), which does not apply to Plaintiffs because it specifically does not apply to the Bayu-Undan contractors;
  - Article 15 of TBUCA, which discusses deductions applicable to the Additional Profits Tax. It is not applicable to income tax, which is the type of tax at issue here.



# Court Errors – Incorrect Legal Regime (Decommissioning Cases) [1]

- The court similarly indicated its lack of understanding of the tax regime applicable to the Bayu-Undan contractors in the Decommissioning cases.
- The Plaintiffs in the Decommissioning cases are also Bayu-Undan contractors. The assessments in these cases applied administrative penalties pursuant to UNTAET Regulation No. 2000/18.
- The court incorrectly stated that these administrative penalties had been revoked by the 2008 Taxes and Duties Law (Law 8/2008) (“2008 TDA) and therefore should not have been applied in this assessment.



Finalmente e em terceiro lugar as normas do regulamento 18/2000 (incluindo portanto o seu art. 71 e 73) foram expressamente revogadas pelo art. 93º, nº1 e 3, da lei tributária desde 10.6.2008 (data da publicação da lei nº 8/2008). Ou seja curiosamente a ré e os seus mandatários parecem ter usado normas já revogadas nas liquidações adicionais.

apreciável é a garantia de  
 gestão idónea e  
 responsável  
 Mas esta apenar  
 (...) "a relação material  
 de causa e efeito (...)".

apresentado pelo autor e por via deste declarado provido a decisão constante  
 do documento nº 18, determinando a restituição de todas as quantias por si liquidadas  
 +  
 Sem custos por o Estado passar de despesas adjectivas  
 +  
 Regime e Horário  
 +  
 110, 80 - 21. 2014  
 [Redacted]

portanto o seu art. 71 e 73) foram expressamente revogadas pelo art. 93º, nº1 e 3, da lei tributária desde 10.6.2008 (data da publicação da lei nº 8/2008). Ou seja curiosamente a ré e os seus mandatários parecem ter usado normas já revogadas nas liquidações adicionais.

Por isso não se vislumbra o fundamento para aplicação de quaisquer penalidades. Note-se aliás que esse diploma estabeleceu uma prestação suplementar de imposto sobre o petróleo (art. 90º), cujo incumprimento pode gerar a sanção de 50% e sempre 10% (art. 90º, nº5), e uma sanção idêntica no art. 82º, nº 8.

Concluimos, por isso, que todas as quantias constantes dos actos administrativos devem ser devolvidas à A.

6. Julga-se prejudicada a apreciação dos demais vícios deduzidos pela A.

# Court Errors – Incorrect Legal Regime (Decommissioning Cases) [2]

- Again, as in the Head Office Expenses cases, the Plaintiffs never raised this argument – but the court reached this conclusion on its own initiative.
- But the 2008 TDA does not revoke the administrative penalties in UNTAET 2000/18 as to Bayu-Undan Contractors because Section 94.1 of the 2008 TDA preserves them for the Bayu-Undan Contractors in compliance with the Tax Stability Agreement.

# Court Errors – Failure to Apply Tax Law and Distinguish DA from TLRs (Decommissioning Cases) [1]

- Even more egregious is that in the Decommissioning Cases, the court did not apply the tax law at all to its decision regarding the validity of the tax assessment (in fact, did not even mention the tax law), but incorrectly concluded that the tax deduction at issue was allowed under the PSC.



# Court Errors – Incorrect Legal Regime – Independent Expert Opinion

- The State retained independent petroleum gas tax experts renowned in their field, Professors José Casalta Nabais and Suzana Tavares da Silva to provide an opinion on the court's decision in these cases and they disagreed with the court's analysis and ultimate decision.
- In particular, as to the court's conclusion that Indonesian Income Tax Law does not apply and that provisions of UNTAET Reg. No. 2000/18 as amended had been revoked, the Professors stated “o regime tributário aplicável aos Contratantes de Bayu-Undan da Área Conjunta de Desenvolvimento Petrolífero inclui: i) a Lei n.º 3/2003, o Regulamento 2000/18 UNTAET e a Directiva 2001/2 UNTAET e a legislação Indonésia sobre a tributação do rendimento, que estava em vigor nesta data.”

# Court Errors – Incorrect Legal Regime – Independent Expert Opinion

- “Apesar de estes diplomas [Regulamento 2000/18 UNTAET e a Directiva 2001/2 UNTAET e a legislação Indonésia sobre a tributação do rendimento] terem sido revogados em 2008, com a publicação da Lei Tributária (Lei n.º 8/2008, de 30 de Junho), o artigo 94.º da lei salvaguardou, de forma expressa, a aplicação aos Contratantes na parcela de Bayu-Undan da Área Conjunta de Desenvolvimento Petrolífero da lei tributária de Timor-Leste em vigor no momento anterior a esta revogação.”

# Court Errors – Incorrect Legal Regime – Independent Expert Opinion

The Professors continued “Trata-se, em bom rigor, de uma norma típica no contexto da lex petrolea, que tem o efeito de estabilizador do quadro normativo vigente no momento da celebração do contrato, “impedindo” a aplicação ao mesmo das sucessivas modificações que a lei fiscal venha a sofrer. Tanto assim foi, que a mesma Lei n.º 3/2003 estipula, no artigo 2.º, que “Lei do Imposto sobre o Rendimento” é a Lei do Imposto sobre o Rendimento aplicável em Timor-Leste, nos termos do Regulamento n.º 1999/1 da UNTAET, ou seja, a lei que estava em vigor naquele país na data da independência, isto é, a lei indonésia do imposto sobre o rendimento - a Lei n.º 10/1994.

Isto significa, portanto, que a liquidação do imposto sobre o rendimento aplicável à TTSR se rege ainda (e assim será até ao fim do contrato, a não ser que surjam questões novas sobre a lei aplicável ao contrato, as quais serão sempre solucionadas mediante recurso à arbitragem) pelo disposto nas normas legais acabadas de referir e, bem assim, pela legislação indonésia em vigor no momento da independência.

# Decommissioning Cases – Assessment [2]

- Plaintiffs in the Decommissioning cases are Bayu-Undan contractors.
- At the completion of the commercial production of petroleum from the Bayu-Undan well, the PSC requires the Bayu-Undan contractors to “decommission” or take down and clean up the well site.
- The costs of decommissioning the well site are quite high.

# Decommissioning Cases – Assessment [3]

- Under the PSC, costs of exploring and exploiting petroleum are recovered from the petroleum that is obtained from the well. These costs are recovered prior to the remaining petroleum being distributed between Timor-Leste, Australia, and the Contractors.
- Because the decommissioning costs occur at the end of the process, however, there is no more petroleum revenue that can be used at that time from which to recover those costs.

# Decommissioning Cases – Assessment [3]

- To allow the Contractors to recover these costs, the PSC allows the Contractors to develop a plan for decommissioning many years prior to completion with an estimate of the cost of carrying out the decommissioning. Once this decommissioning plan and the estimate of costs is approved by the DA, the Contractors may divide these estimated costs by the number of estimated remaining years of production and begin recovering these costs from the petroleum production as with the other Operating Costs.
- For example, if the Contractor estimates that it will cost \$100 million to decommission the well site, and there are ten years remaining until the petroleum production completes, the Contractor is allowed to recover \$10 million each year from the petroleum production to cover the eventual costs of the decommissioning. This is called the decommissioning cost reserve (DCR).

# Decommissioning Cases – Assessment [4]

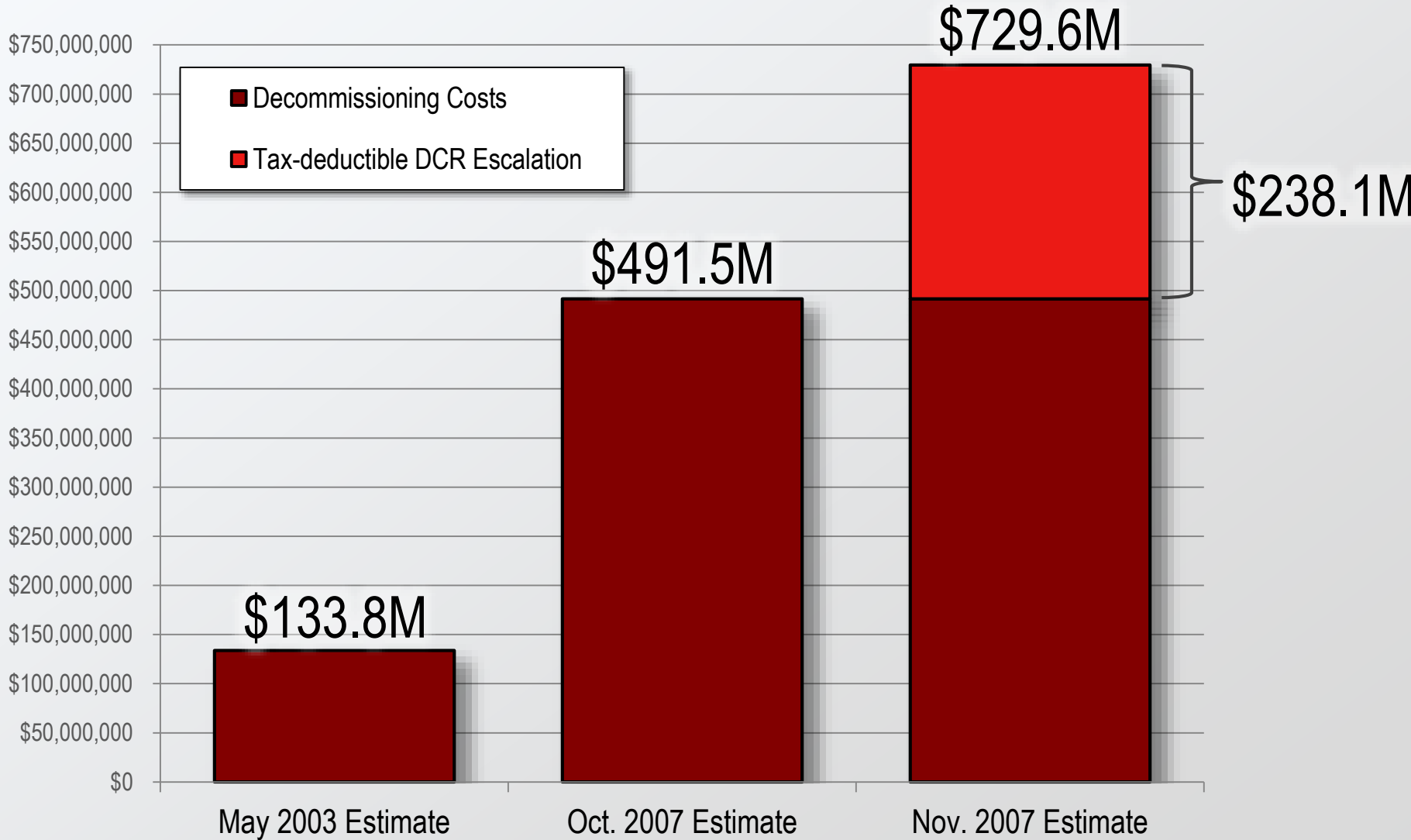
- Similarly, under TBUCA and the Indonesian law on income tax, the tax law applicable to the Bayu-Undan contractors, the Contractors are allowed to deduct their Operating Costs from their revenue from petroleum production in the Bayu-Undan to determine their taxable revenue. Thus, the higher the Operating costs, the lower the taxable revenue and the lower the taxes paid to the people of Timor-Leste.
- Similar to the PSC, because the decommissioning costs are not incurred until the end of petroleum production, there is no income from which to deduct the decommissioning costs.
- Thus, Article 4 of TBUCA, provides that the Bayu-Undan contractors may deduct the DCR after their decommissioning plan and the estimated amount is approved by the DA.

# Decommissioning Cases – Assessment [5]

- Under the PSC and TBUCA, the Bayu-Undan Contractors were required to submit a decommissioning plan in late 2007 and, if it was approved, they were allowed to start taking the DCR deduction in 2008 and 2009.
- The Bayu-Undan Contractors submitted the decommissioning plan in late 2007, but because the amount they estimated in 2007 was so much higher than an estimate the Contractors had given in 2003 with their Development Plan, the DA had many questions regarding the plan and estimate. Moreover, the Contractors submitted an additional revised plan in 2010 that increased the number even higher. Due to these questions and ongoing discussions, the decommissioning plan was not approved in 2008 or 2009.



# Decommissioning Cases – Assessment [6]



# Decommissioning Cases – Assessment [7]

- Nonetheless, the Plaintiffs in these decommissioning cases, took the DCR deduction from the 2007 decommissioning plan on their 2008 and 2009 tax forms.
- TLRs denied these tax deductions because there was no approval of the decommissioning plan and estimated DCR in 2008 or 2009 as required by Article 4 of TBUCA and issued assessments to the Plaintiffs.
- The Plaintiffs thus filed 12 cases in Dili District Court challenging the assessments in mid-2011.

# Decommissioning Cases – Conditional Approval Letter [8]

- In December 2011, the DA issued a conditional approval of the decommissioning plan and estimate based on a review of the plan and estimate by an independent company to be completed by 2014.
- The Plaintiffs thus filed this letter in the court cases arguing that the letter was an approval of the plan as required by Article 4 of TBUCA and that, therefore, the assessments denying the 2008 and 2009 DCR deductions were no longer correct.
- In 9 of 12 of the decommissioning cases relating to the 2008 and 2009 DCR deductions, the court concluded that the assessments were invalid based on the conditional approval letter.

# Court Errors – Failure to Apply Tax Law and Distinguish DA from TLRs (Decommissioning Cases) [9]

- The State disagrees with the court's decision for many reasons, but the court made certain errors that reflect the court's lack of understanding of
  - a) the difference between the ANP acting as the Designated Authority, which reports to the Joint Commission and TLRs which reports to the Government of Timor-Leste and ultimately its people; and
  - b) the difference between the ANP's obligation to comply with and enforce the PSC, which was agreed to with the Contractors when collecting the petroleum revenue and the Tax Authority's obligation to comply and enforce the Tax law when collecting the tax revenue.

# Court Errors – Failure to Apply Tax Law and Distinguish DA from TLRs (Decommissioning Cases) [10]

- First, as noted earlier, the court never references Article 4 of TBUCA, which was the legal basis for the decommissioning deduction.
- Instead, the court incorrectly says that the tax deduction is allowed under the PSC.
- As noted, the PSC allows only the recovery of the costs from the petroleum production, which reduces the petroleum paid to Australia and Timor-Leste.
- The tax deduction is allowed only by virtue of the tax law passed by Parliament (see Article 144 of the Timor-Leste Constitution).

# Court Errors – Failure to Apply Tax Law and Distinguish DA from TLRs (Decommissioning Cases) [11]

TRIBUNAL DISTRIAL DE DILI  
Processo 81/2011

**Pedido de apresentação processual**  
Na sua constituição pretende o MP que a presente acção seja apenas a contra asções que foram intertidas neste tribunal com o mesmo objecto.

**Decisão**  
Foi a seguinte:

1. Se forem propostas acções processuais, será ordenado:

In casu a autora celebrou um contrato administrativo que previa a sua obrigação de apresentar um plano de desactivação. Nesse acordo que assumiu a forma de lei ficou estabelecido que o plano seria aprovado pela, actual, ANP e que os respectivos custos seriam objecto de dedução fiscal. Por isso é evidente que a mesma tem uma confiança

TRIBUNAL DISTRIAL DE DILI  
Processo 81/2011

*incidentes sobre os seus direitos, posições ou relações jurídicas alterçadas em normas jurídicas vigentes e válidas por esses actos jurídicos deixado pelas autoridades com base nessas normas se ligam as acções jurídicas previstas e prescritas no ordenamento jurídico ...” (in: “Direito Constitucional e Teoria da Constituição”, 7.ª edição, p. 257).*

... a obrigação de ...  
... de lei ficou ...  
... espectros custos ...  
... uma confiança ...  
... ctivos, mais do ...  
... rugais (Ac nº ...  
... a afectação de ...  
... ma mutação da ...

Mas esta apensa ...  
f. “a relação material ...  
ou contra outra (...)”.

Registo e Notificação  
11/10/2014

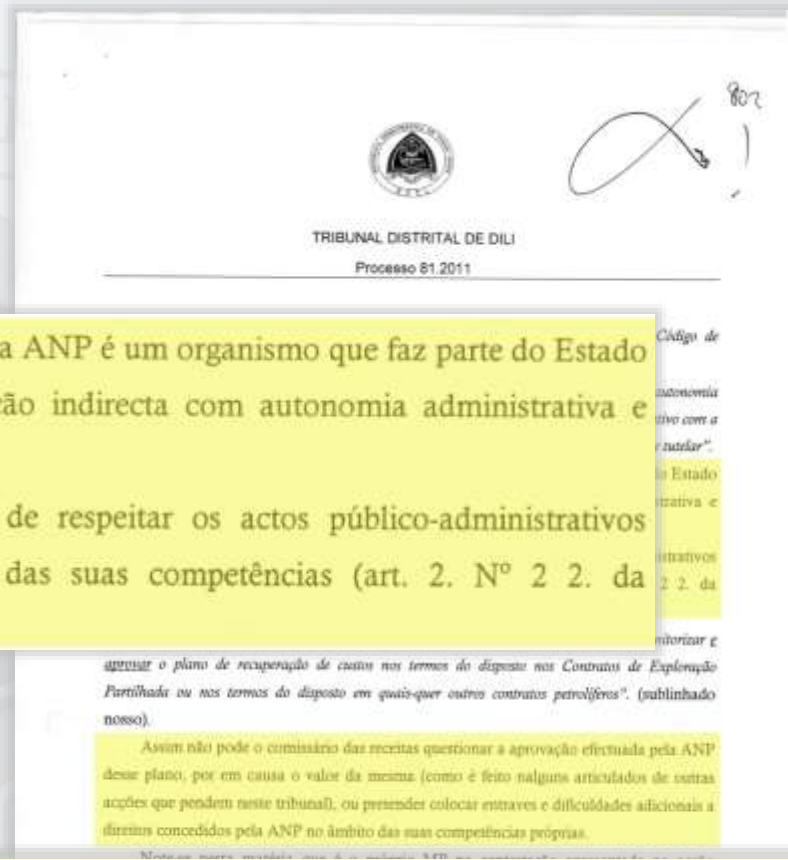
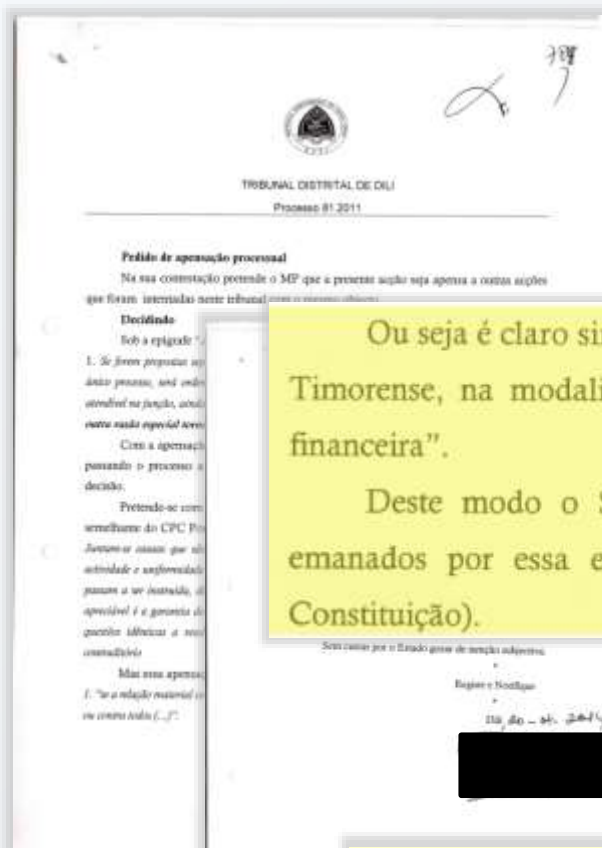
2. Da existência de aprovação pela ANP  
No início da acção era evidente que a autora não possuía qualquer autorização expressa, alegando apenas que tácitamente a mesma lhe tinha sido concedida através da aprovação das contas anuais e auditorias. Caso assim fosse, no mínimo a presente acção teria de prosseguir para se determinar essa factualidade.

30

# Court Errors – Failure to Apply Tax Law and Distinguish DA from TLRs (Decommissioning Cases) [12]

- The court also stated that because both ANP and TLRs were state agencies that TLRs was bound by the actions of ANP so because the State entered the PSC with the Contractors, if the ANP allowed the Contractors to recover the costs under the PSC even though it had put a condition on the approval, TLRs had to do the same.
- The court did not note that the ANP was acting as the DA and did not report directly to the government of Timor-Leste, but, rather to the Timor Sea Joint Commission.
- Nor did the court note that the ANP was administering its responsibilities under the PSC and that the tax authority was administering its responsibilities under the tax law, which might have different outcomes.

# Court Errors – Failure to Apply Tax Law and Distinguish DA from TLRs (Decommissioning Cases) [13]



Ou seja é claro simples e evidente que a ANP é um organismo que faz parte do Estado Timorense, na modalidade de administração indirecta com autonomia administrativa e financeira".

Deste modo o Sr. Comissário terá de respeitar os actos público-administrativos emanados por essa entidade no âmbito das suas competências (art. 2. N° 2 2. da Constituição).

Sem custos por o Estado goza de isenção aduaneira.

Região e Horário

11/08/2014



apresentar o plano de recuperação de custos nos termos do disposto nos Contratos de Exploração Partilhada ou nos termos do disposto em quaisquer outros contratos petrolíferos". (sublinhado nosso).

Assim não pode o comissário das receitas questionar a aprovação efectuada pela ANP desse plano, por em causa o valor da mesma (como é feito nalguns articulados de outras acções que pendem neste tribunal), ou pretender colocar entraves e dificuldades adicionais a direitos concedidos pela ANP no âmbito das suas competências próprias.

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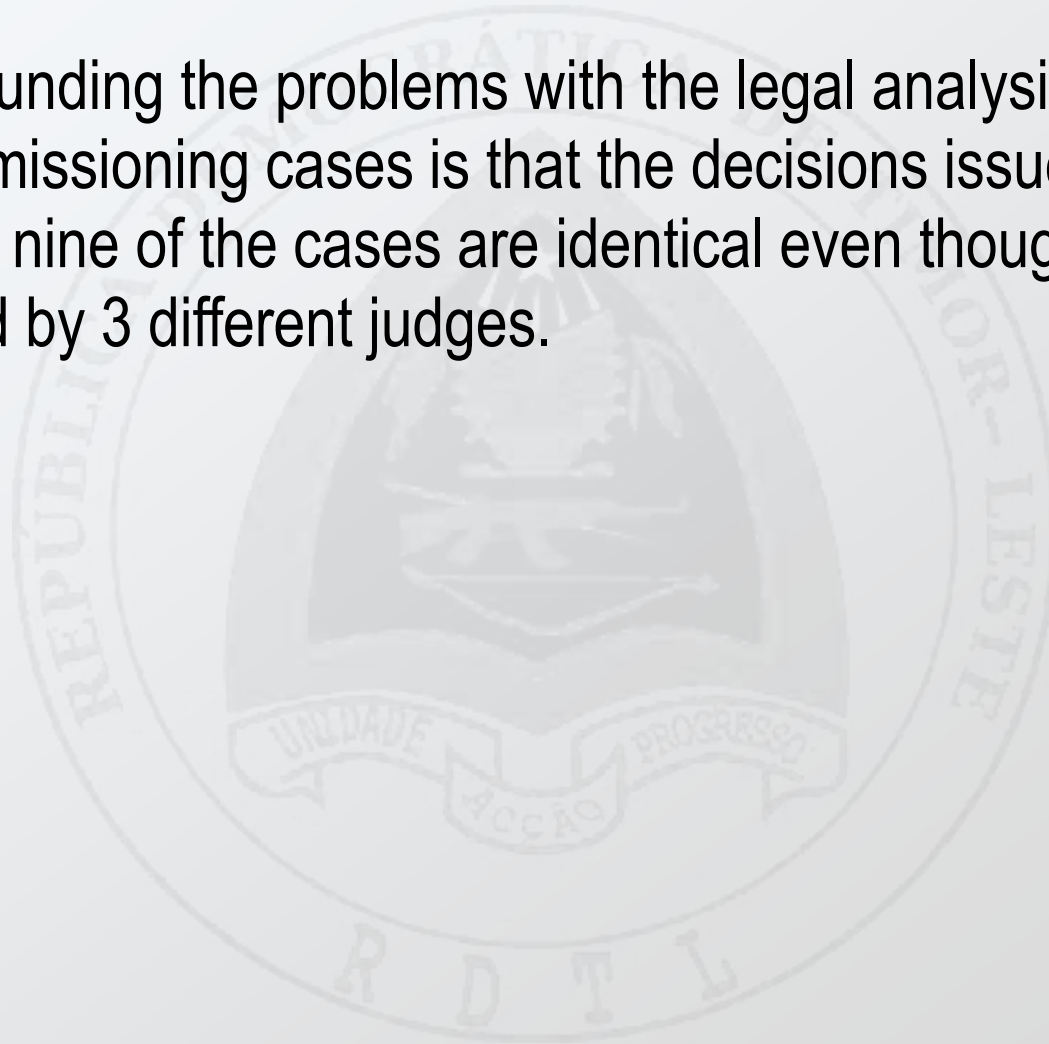
# Court Errors – Failure to Apply Tax Law and Distinguish DA from TLRs (Decommissioning Cases) – Independent Expert Opinion

Professors Nabais and da Silva also opined regarding the court's failure to distinguish between the acts of the ANP acting as the Designated Authority in applying the PSC and the acts of the tax authority in applying the tax law. In particular, the Professors stated that the court erred

*“quando considera que a Direcção Geral de Receitas e Alfândegas deveria acatar a decisão da Autoridade Nomeada, ignorando que estamos perante entidades de pessoas colectivas públicas distintas (a ANP para este efeito actua como Autoridade Nomeada da JPDA e não como entidade administrativa do Estado de Timor-Leste), entre as quais existe também uma autonomia funcional, e que a Direcção Geral de Receitas e Alfândegas se subordina, exclusivamente, ao direito timorense e ao princípio da legalidade fiscal.”*

# Court Errors – Different Judges Issuing Identical Decisions (Decommissioning Cases) [1]

- Compounding the problems with the legal analysis in the decommissioning cases is that the decisions issued by the court in nine of the cases are identical even though they are decided by 3 different judges.





# Court Errors – Lack of Thoroughness (Decommissioning Cases) [1]

- The court has also indicated in several decisions a lack of thoroughness and a failure to review all the pleadings and documents in its file
- For example, in the decommissioning cases, the court incorrectly stated in its final decision that the State never filed a response to the Plaintiffs' filing of the conditional approval letter.
- The State filed a response to the letter, however, arguing among other things that the letter was a conditional approval and therefore not sufficient under the tax law to allow the deduction.

# Court Errors – Failure to Apply Tax Law and Distinguish DA from TLRs (Decommissioning Cases) [10]



Nesta acção o Estado não põe em causa a efectividade dessa aprovação. Mas tendo em conta a posição expressa nas restantes acções e a segura interposição de um recurso, cumpre, desde já abordar essa matéria.

...  
Mas esta apenas...  
...  
...

Pelo exposto o tribunal de integral provimento ao mesmo contencioso apresentado pelo autor e por via da decisão revogada a decisão constante do documento nº 18, determina a restituição de todas as quantias por si liquidadas.

Sem custos por o Estado passar de marcha regressiva.

Região e Houtique

110 do - 2014

[Redacted]

**3. Da natureza dessa aprovação, da sua retroactividade e da efectividade dessa aprovação**


Nesta acção o Estado não põe em causa a efectividade dessa aprovação. Mas tendo em conta a posição expressa nas restantes acções e a segura interposição de um recurso, cumpre, desde já abordar essa matéria.

Defende o Estado que a aprovação foi condicional e como tal não poderia produzir efeitos.

É evidente que ficou estabelecido que a aprovação ficaria condicionada "à garantia de um estado a realizar por uma terceira entidade (...) até 2014" (factos provados).

Mas como qualquer jurista deveria saber a condição (dependência de um acontecimento futuro e incerto), pode assumir várias modalidades (suspensiva, resolutive,

# Court Errors – Lack of Thoroughness (Decommissioning Cases) [2]

  
**Ministério Público**  
Procuradoria da República Distrital de Díli

58c  
ID. 241-2012  
REGISTRO DO TRIBUNAL DE DILI  
10/03

**Secção do Contencioso do Estado**

Meritíssimo Juiz de Direito  
do Tribunal Distrital de Díli

**Proc. n.º 81/Cível/2011/TD.DIL**

Notificado do pedido de junção do articulado superveniente da Autora nos autos à margem referenciados vem o réu, Estado de Timor-Leste apresentar a sua


**QUESTÃO PRÉVIA: DA TEMPESTIVIDADE DA RESPOSTA**

1. No dia 27/03/2012o Ministério público foi notificado para, no prazo de 10 dias, responder aos articulados supervenientes apresentados pelo A.
2. Nos termos do estabelecido no art. 109º do CPC, o prazo terminava no dia 06/04/2012 que, por se tratar de um dia feriado (Sexta Feira Santa), se transferiu para o primeiro dia útil seguinte, concretamente, para o dia 09/04/2012, dia em que também foi concedida tolerância de ponto.
3. Nos termos das disposições legais supra referidas, conjugadas com o disposto nos arts. 1º, 2º e 5º da Lei Nº 10/2005, de 19 de Julho, o término do prazo é no dia 10/04/2012.

**DA RESPOSTA**

Nos termos e com os seguintes fundamentos, diz o Ministério Público o seguinte:

4. Em primeiro lugar o réu estranha que a Autora - doravante A. - só tivesse conhecimento do facto superveniente constituído pela aprovação do Plano de Reserva de Custos de Desactivação e Abandono de Bayu-Undan - doravante designado apenas por Custos de Desactivação - a 15 de Dezembro.

1. 

# Court Errors – Incorrect Decision/Lack of Thoroughness (Share Sale Case) [1]

- More egregious is the court's decision in one of the share sale cases. In [...], some shares of the company were sold to another company. The tax authority issued an assessment for taxes on the basis that the Plaintiffs had received taxable income from the sale.
- One of the Plaintiffs' arguments in the PI is that the assessment was signed by an advisor and not the Commissioner and so was not valid.
- The court accepted Plaintiffs' allegation and incorrectly decided against the State on this basis.





# Court Errors – Incorrect Decision/Lack of Thoroughness (Share Sale Case) [3]

- The Assessment was signed by Brigida da Silva, however, the Director of Customs under a legally allowed delegation of powers per Article 6 of UNTAET Reg. No. 2000/18.

**REPUBLICA DEMOCRÁTICA DE TIMOR-LESTE**  
MINISTÉRIO DAS FINANÇAS  
DIRECÇÃO GERAL DE RECEITAS E ALFÂNDEGAS  
"Aduna Castita, Bemvinda Desenvolvimento"

Amended Tax Assessment  
Notice of Income Tax and Additional Tax Assessment under Section 51.2  
Income Tax Year Ending 31 December 2009

Name of Taxpayer: [REDACTED]  
Tax Identification Number: [REDACTED]

1. Taxable Income 2009 (90% TLI)	1,700
2. Income Tax Payable on Taxable Income	
3. Additional Taxes: i. Section 73.1 ii. Section 74	
4. Total Tax and Additional Tax Payable	
5. Total Tax paid	
6. Net tax payable for tax year 2009	

The above mentioned Income 5938,975,38 is payable calculated

Conselho de Administração  
Custosidade, TLR&S & Direcção  
Direcção Geral das Receitas  
Data: 24 June 2011

**REPUBLICA DEMOCRÁTICA DE TIMOR-LESTE**  
MINISTÉRIO DAS FINANÇAS  
Cancio de Jesus Oliveira

**MINISTÉRIO DAS FINANÇAS**  
Direcção Geral de Receitas e Alfândegas  
Ordem de Director  
"Aduna Castita, Bemvinda Desenvolvimento"

No. 027/DGRA/VI/11 06, 17 de Junho 2011

A Sua Excelência Senhor Rui Manuel Henriques SEM, PMS  
Ministro das Finanças em Exercício

Em referência ao assunto em epígrafe, tenho a honra de informar Vossa Excelência de que irei participar a Secção 117/118 do Conselho de Cooperação dos Directores Gerais da Organização Mundial das Alfândegas em Bruxelas na Bélgica a partir do dia 23 até dia 25 de Junho de 2011.

Proponho a Dra. Brigida da Silva, Directora Nacional das Alfândegas, para minha substituta legal, durante a minha ausência

Esta delegação de funções entrará em vigor no dia 20 e terminará no dia 28 de Junho de 2011.

Vossa Excelência, no entanto, no seu sábio critério, melhor decidirá.

O Director Geral  
C. J. Oliveira  
Câncio de Oliveira

# Court Errors – Incorrect Decision/Lack of Thoroughness (Share Sale Case) [4]

- In reaching its conclusion, the court ignored that:
  - the State objected to Plaintiff's allegation of this fact in its Contestação;
  - the State filed the delegation of powers on 30 April 2013.
- Thus, at the very least there was a question of fact as to who signed the assessment that should have been brought to trial.



125.º

O Estado contesta ainda os argumentos formais invocados pela Autora nos artigos 20.º e 33.º da p.i., ao referir que as liquidações de impostos de 02/03/2011 e de 24/06/2011 não foram assinadas pelo Comissário do Serviço de Receitas mas apenas por uma Assessor.

# Court Errors – Incorrect Decision/Lack of Thoroughness (Share Sale Case) [4]

- In regards the court's decision in the Share Sale case, Professors Nabais and da Silva stated that

*“A sentença é nula, pois o Tribunal considera provado um facto alegado pela autora, em total dissonância com os elementos de prova juntos aos autos pelo réu e violando as regras e os mais elementares princípios processuais em matéria de apreciação da prova documental.*

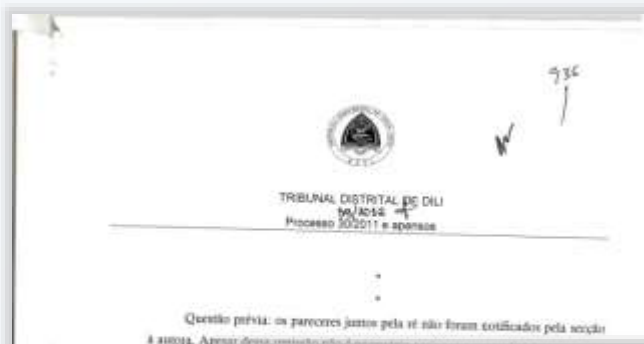
*Em primeiro lugar, o tribunal deu como provado um facto controvertido, pois o réu impugnou o facto alegado pelo autor de que a liquidação adicional teria sido assinada por um assessor do comissário e isso era em si suficiente para que esta fosse uma questão controvertida e não um facto provado.*

*Para além disso, o tribunal não respeitou as regras básicas em matéria de ónus da prova relativamente a documentos oficiais, que fazem fé em juízo, sempre que fundamentados em critérios objectivos.”*

# Court Errors – Inappropriate and Irrelevant Evidence (Head Office Expenses Cases) [1]

- In addition to these other problems, the court has indicated a bias against the State when in the Head Office Expenses cases it inappropriately discussed the salaries of the State's advisors as support for its conclusion that even sophisticated taxpayers would be entitled to be made explicitly aware that TLRs would be applying the disputed regulation.

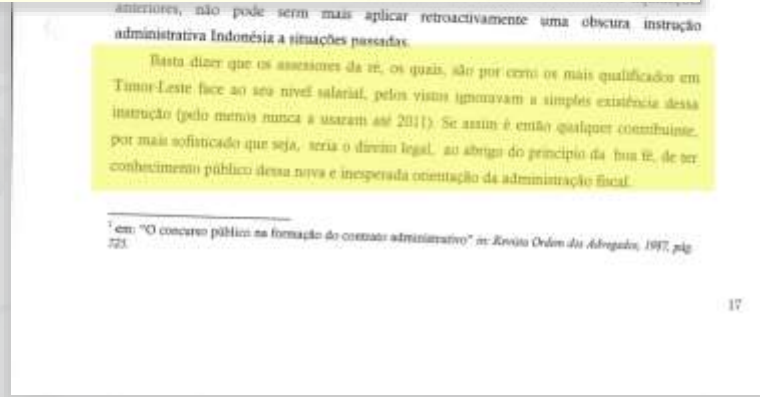
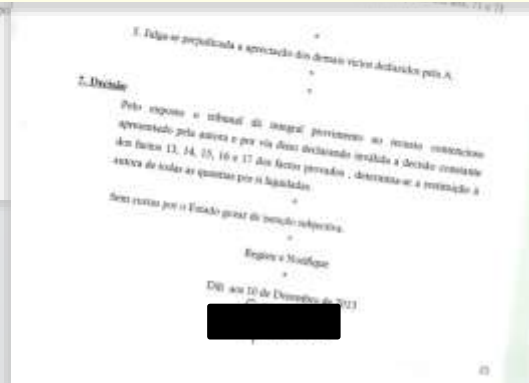
# Court Errors – Inappropriate and Irrelevant Evidence (Head Office Expenses Cases) [2]



Questão prévia: os pareceres justos pela ré não foram cotificados pela seção à autua. Apesar dessa constatação não é necessário...

Tokyo  
declarativa de  
isenção, como  
de Recostas.  
Para os  
Mar de Timor  
suportando os  
Apresenta  
Todavia  
dessa decisão  
que liquidou.  
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Essa é a única sede e po

Basta dizer que os assessores da ré, os quais, são por certo os mais qualificados em Timor-Leste face ao seu nível salarial, pelos vistos ignoravam a simples existência dessa instrução (pelo menos nunca a usaram até 2011). Se assim é então qualquer contribuinte, por mais sofisticado que seja, teria o direito legal, ao abrigo do princípio da boa fé, de ter conhecimento público dessa nova e inesperada orientação da administração fiscal.



# Court Errors – Inappropriate and Irrelevant Evidence (Head Office Expenses Cases) [3]

- The court's statement is inappropriate, inadmissible, and irrelevant as evidence or legal argument.
- There was no evidence of the salaries of the advisors to support the court's statement. And even if there was, the fact is irrelevant.
- Taxpayers are responsible for knowing the law and complying with it.

# Court Errors – Lack of thoroughness (Head Office Expenses Cases) [1]

- Moreover, the court's statement ignores a letter filed in the case in which the Plaintiffs stated to the Timor-Leste Revenue Service that it had applied that same regulation when determining the appropriate tax deduction for 2007.
- Thus indicating that Plaintiffs as sophisticated taxpayers was well aware of the Regulation at issue and considered it to be applicable law.
- Here again, the court's failure to acknowledge this document indicates a lack of thoroughness on the part of the court.

# Court Problems – Bias Against State

- There are other problems as well indicating a bias against the State. For example, Judge D... requested removal from case 16/2013 on 16 June 2014 and the Plaintiffs learned of it that night since they raised it in the arbitration hearing the next day. The State was not served with the request until 3 July 2014.
- Similarly, there has been a huge delay in serving the State with the decisions in the cases. For example, the court signed the decisions in the decommissioning and head office cases in early December 2013, but they were not served on the State until late January 2014 and some as late as March 2014.
- And although the State requested to appeal all of these decisions within a couple days of being served with them, it has taken months for the court to grant the requests and the State is still waiting for its request to be granted in 3 of the cases.
- Moreover, others are learning of decisions being issued by the court before the State has even been served with them.
- Finally, the court has granted the PP the ability to appeal decisions which is not allowed by Article 5 (2) of Law 14/2005 as amended by Law 11/2011 when the State is represented by private counsel.



# Court Lacks Understanding of Tax And Accounting

- These are just some specific examples of errors indicating the court's lack of understanding of tax law, the role of the ANP acting as the Designated Authority and the role of TLRs, and the lack of thoroughness of the court in reaching its decisions.
- It has also been observed that the court has a lack of understanding of the following in relation to tax and accounting:
  - the difference between tax and financial accounting (and similarly what is the difference between accounting for the PSC revenue return purposes and for tax returns);
  - how tax audits are conducted by tax authorities versus how financial accounting audits are conducted by public accountants versus how audits are conducted for PSC purposes; and
  - the difference between what a company reports on its tax returns in Australia and its tax returns in Timor-Leste.

# Other Procedural and Capacity Problems of the Court [1]

Finally, certain capacity and procedural problems have been identified through these cases as well:

- The interpretation and translation capacity of the court needs strengthening. During the [...] head office expenses trial, the interpreter from Tetum to Portuguese made significant errors when translating for the State's witness causing the audience to gasp and, ultimately, the Timorese judges to interpret for the Portuguese judge and attorneys. We have encountered similar problems with the court translators when rendering an opinion regarding translations of documents from English to Portuguese.

# Other Procedural and Capacity Problems of the Court [2]

- The court has not been serving filings on all of the parties. Most notably, of 28 cases in which the Counsel for the State filed the State of Defense on behalf of the State, it has been served with only three replies filed by the Plaintiffs although the deadline for the replies is long past in all of the 28 cases. Thus, the State was not given a chance to object at the appropriate procedural time, if needed, to the replies.
- The court frequently takes several weeks or months to notify the State of decisions issued by the court or briefs filed by the Plaintiffs.
- On a regular basis the court's orders or decisions lack clarity.

# Other Procedural and Capacity Problems of the Court [3]

- The Despachos Saneadores issued by the court indicate a lack of understanding between factual and legal questions. Most notably, the Despacho Saneador issued by the court in case 65/2012 contained primarily legal rather than factual questions resulting in the court ultimately revoking it entirely based on the objections of both parties (we have not yet been served with a new Despacho Saneador). This distinction between legal and factual issues has been a minor problem in other served Despachos Saneadores, but nothing rising to the level of case 65/2012

# Court Errors - Conclusions

- In each case, these mistakes and failures demonstrate a fundamental lack of understanding and knowledge of the law and facts surrounding T-L's most valuable commercial resource, and result in judgments that are not based on the actual law and facts.

