UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

v. **Case Number 3:15-CR-196-01(FLW)**

BOBBY BOYE a/k/a
"Bobby Ajiboye" a/k/a
"Bobby Aji-Boye"

Defendant.

CERTIFICATION OF DEFENDANT BOBBY BOYE IN REPLY TO GOVERNMENT'S OPPOSITION AND IN FURTHER SUPPORT OF DEFENDANT'S PETITION UNDER 28 U.S.C. § 2255

BOBBY BOYE, of full age, hereby certifies as follows:

I am the defendant in this action. I make this Certification in reply to the Government's Opposition and in further support of my petition for relief under 28 U.S.C. § 2255.

1. Legal Standard -- Response to Paragraph 23. Petitioner has not only met but exceeded the standard set in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) by showing in his Certifications (and the Certifications remain uncontroverted) that Mr. Thomas was indeed not functioning as defense counsel from the beginning of this case to the end. The standard of performance of Mr. Thomas as articulated in the Certifications and the record of this Court from the plea negotiation and counseling of the Petitioner to sign a plea

deal that does not make legal sense, to his lack of understanding of the applicable U.S.S.G. relating to "loss" and "credit for loss" and the case law governing the calculation of restitution for AMVP purposes all the way to his rambling submission at sentencing are by any indicia of measurement substantially below objective standard of reasonableness and such quintessential constitutionally defective performance substantially prejudiced Boye.

2. Response to Paragraph 24. Considering the numerous factual issues contained in the uncontroverted Certifications provided by the Petitioner and the record of this Court at sentencing, it is inconceivable and shocking that the government would argue that the performance of Mr. Thomas was remotely "within the range of competence demanded of attorneys in criminal cases," as required in McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 25 L. Ed. 2d 763 (1970), and Tollett v. Henderson, 411 U.S. 258, 267, 93 S. Ct. 1602, 36 L. Ed. 2d 235 (1973).

First of all, the government failed to disclose Mr. Thomas' strategy that may have informed the monumental errors he committed at all stages of the case let alone an "informed" one. Clearly Mr. Thomas could not have had any discernible strategy for his utter failure to investigate both the facts and the applicable laws and the Sentencing Guidelines as memorialized in the Certifications. "The failure to conduct pre-trial investigation generally constitutes a clear instance of

ineffectiveness of counsel." United States v. Travillion, 759 F.3d 281, 293 n. 23 (3d Cir. 2014); see also United States v. Gray, 878 F.2d 702, 711 (3d Cir. 1989) (noting that a complete absence of investigation usually amounts to ineffective assistance of counsel because counsel cannot be said to have made an informed strategic decision not to investigate); United States v. Baynes, 622 F.2d 66, 69 (3d Cir. 1980).

Based on the uncontroverted factual issues in the Certifications and case law, neither the government nor Mr. Thomas can show that "counsel actually pursued an informed strategy (one decided upon after a thorough investigation of the relevant law and facts)." Lewis v. Horn, 581 F.3d n.13 (3rd Cir. 2009). Mr. Thomas never investigated this case nor the relevant laws governing restitution and he had no understanding whatsoever of the relevant United States Sentencing Guidelines and applicable notes thereunder. The failure to investigate this case in spite of the several documents provided to Mr. Thomas is simply indefensible.

The "sound strategy" requirement under Strickland and the plethora of cases citing Strickland is conspicuously lacking in this case. The comedy of errors exhibited by Mr. Thomas and his lack of diligence in investigating the case to his lack of understanding of relevant laws and sentencing guidelines (with the applicable interpretive Notes) could never be considered part of a sound strategy. Alternatively, the "imagined" strategy manufactured by the government in defense

of the indefensible constitutionally defective performance of Mr. Thomas (even if sound) was not a motivating factor for the said comedy of errors and the absolute lack of diligence on his part. Thomas v. Varner, 428 F.3d 491, 499–500 (3d Cir. 2005).

In the peculiar circumstances of this case, the presumption that counsel's actions might be "sound trial strategy" as required under Strickland and the cases cited by the government (Alexander v. Shannon, 163 F. App'x 167, 175 (3d Cir. 2006, Buchi v. Vaughn 1666 F.3d 163, 169 (3rd Cir. 1999)), is not even tenable for a number of reasons. The government failed to disclose Mr. Thomas' "sound trial strategy" and is leaving this Court to speculate. The government failed to show how an alternative strategy involving a thorough investigation of the case and defending the case effectively could have led Boye to a worse position than he is now. As demonstrated in the uncontroverted Certifications of Boye, none of the conduct of Mr. Thomas from the plea bargain to sentencing could be interpreted as a "strategy," let alone a "sound strategy." Mr. Thomas simply had no discernible strategy and if there is any such strategy, in the circumstances of this case, was a fatal one that subjected Boye to prejudice and substantial derogation of his rights under the 6th Amendment.

Which of Mr. Thomas' actions are within the range of competence demanded of attorneys in criminal cases? Could it be his utter failure and or

neglect to investigate any of the plethora of issues that have direct implications -- for example, the persons that performed the contracts or issues that are false in the PSR and which had direct bearing with the length of sentence imposed in the matter? Or is it his professional advice counseling Boye to sign a plea deal that runs contrary to the Sentencing Guidelines and case law on several issues, including but not limited to the issue of "loss" and "credit for services performed" and "abuse of trust position" under the Sentencing Guidelines? Could it be his counsel that Boye should agree to forfeiture and restitution provisions that defied common sense and unproven as required by law? Could it be Mr. Thomas' lack of understanding of the relevant Sentencing Guidelines and the case law with direct bearing on the outcome of this case? Maybe it was the rambling, lethargic and incoherent address to the Court at sentencing. Mr. Thomas as a criminal defense attorney is obligated to know the Sentencing Guidelines and the relevant Circuit precedent, but he plainly did not. He simply surrendered to the stipulations in the plea deal without any due diligence. United States v. Smack, 347 F.3d 533, 538 (3d Cir. 2003); United States v. Headley, 923 F.2d 1079, 1083–84 (3d Cir. 1991).

"An attorney's ignorance of a point of law that is fundamental to his case combined with the failure to perform basic research on that point is a quintessential example of unreasonable performance under Strickland." Hinton v. Alabama, 134 S. Ct. 1081, 1089, 188 L. Ed. 2d 1 (2014). By failing to develop the record and or

challenge the government on the issue of "loss" and "credit for services performed, allegation of the "abuse of trust" position, and on issue of restitution, Mr. Thomas' performance fell below Strickland's standard of "reasonableness under the prevailing professional norms." Smarck, supra.

Mr. Thomas' lack of familiarity with case law precedent and his forbearance to make good faith arguments about the Sections 2B1. app. n.3(E)(i) and 3B1.3 during the plea bargain (particularly his advice that Boye stipulate to the highest base level offense and $3.5 m restitution) and through the PSR review and at sentencing are quintessential examples of ineffective assistance of counsel and fell below Strickland's standard of "reasonableness under prevailing professional norms."

The constitutionally deficient performance of Mr. Thomas in this case is a "poster child" of ineffective assistance of counsel under the first prong of Strickland.

3. Response to Paragraphs 25 & 26. The burden to show prejudice in the context of the primary allegations raised in the Boye's 2255 Petition has been sufficiently discharged. But for the defective performance of Mr. Thomas, Boye has demonstrated the likelihood that the outcome would have been different and better for him whether through a negotiated plea deal or at trial, and where

sentencing is predicated on the correct application of the Sentencing Guidelines, and more specifically on enhancements relating to "loss" and "abuse of trust position," as well as on the issue of the amount (if any) that should have been assessed as restitution in this matter.

The uncontested Certifications and the Exhibits attached thereon provided by Boye clearly demonstrate that the deficiency of Mr. Thomas resulted in demonstrable enhancements in sentencing and which enhancements would not have occurred but for the comedy of errors exhibited by counsel from the beginning to the end of this case. But for the series of incompetent advice that Boye received from Mr. Thomas he would not have pled guilty (and accept the terms of the plea bargain) and insisted on going to trial. United States v. Otero, 502 F.3d 331 (3d Cir. 2007), quoting United States v. Franks, 230 F.3d 811, 815 (5th Cir. 2000).

The legal standard for prejudice under Strickland is for Boye to show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Boye need not show that counsel's deficient performance "more likely than not altered the outcome in this case." Rather, he must show only a "probability sufficient to undermine confidence in the outcome." Jacobs v. Horn, 395 F.3d 92, 105 (3d Cir. 2005) (citing Strickland, 466 U.S. at 693–94).

Furthermore, the reasonable probability of any decrease in Boye's sentence including the term of 72 months and the amount of restitution (if any) which are indicative from the uncontested Certifications and the attached exhibits clearly support a valid claim for prejudice. If the Sentencing Guidelines had been calculated correctly in this case, the Total Offense level would be 4 instead of 24 that was incorrectly calculated by the government and the Probation Office. If the Sentencing Guidelines had been correctly applied to Boye, there is a reasonable likelihood that he would have received a substantially less time than the 72 months imposed on him and any restitution thereunder would have been zero or at least, significantly less than $3.5 million used by the government and the Probation Office. Glover v. United States, 531 U.S. 198, 121 S. Ct. 696, 148 L. Ed. 2d 604 (2001); Molina-Martinez v. United States, 136 S. Ct. 1338, 194 L. Ed. 2d 444 (2016); United States v. Smack, 347 F.3d 533 (3d Cir. 2003); United States v. Sabillon-Umana, 772 F.3d 1328, 1333 (10th Cir. 2014) (application of an erroneous Guidelines range "runs the risk of affecting the ultimate sentence regardless of whether the court ultimately imposes a within or outside" that range); United States v. Vargem, 747 F.3d 724, 738–729 (9th Cir. 2014); United States v. Story, 503 F.3d 436, 440 (6th Cir. 2007); Glover, 531 U.S. 198.

4. Response to Paragraph 27. The comprehension and the interpretation of the government relating to the correct interpretation and the interplay of U.S.S.G. 2B1.1 app. note 3(E)(1) and U.S.S.G. Note 3(F)(V)(1) are at odds with case law and most certainly with the U.S. Sentencing Guidelines Manual app. C, vol. 11, amend. 617, at page 183-84, reported in 88 FR 30512. The said Guidelines Manual app. C, vol. 11 provides (183-84):

> The definition of "loss" also provides special rules for certain schemes. One rule includes loss (and excludes from crediting) the benefits received by victims that has allowed crediting (or exclusion from loss) in cases in which services were provide by persons posing as attorneys and medical personnel. *See U.S. v. Maurello, 78 F. 3d 1304 (3rd Cir. 1996).* The Commission determined that the seriousness of these offense and the culpability of these offenders is best reflected by a loss determination that does not credit for the unlicensed benefits provided.

For a number of reasons, U.S.S.G. 2B1.1 and U.S.S.G and note 3(F)(v)(1) cannot possibly be applied to Boye in a manner that would deprive him from receiving credit for the legitimate services that he and other licensed professionals (Messrs. Chen & Kapadia) provided to Timor-Leste.

First and foremost is the interpretation, scope and intent of the Sentencing Commission as embodied in the U.S.S.G. Manual referenced above. The incontrovertible fact (and which fact the government did not dispute) presented to this Court to date clearly indicate that the services under the three (3) contracts were provided by licensed professionals and consequently the benefits conferred

on Timor-Leste were not "unlicensed benefits" as required under the U.S.S.G Manual. The government has failed to provide a single evidence and apparently it has none, to the effect that Boye, Chen and Kapadia are not licensed professionals and that the benefits they provided were "unlicensed benefits." The operative words in the said manual are "unlicensed benefits provided." If in fact "services are provided" by licensed professionals, U.S.S.G. 2B1.1 app. n. 3(F)(v)(1) becomes inapplicable.

Furthermore, the Commission's commentary noted in the Manual clearly states that the rule is limited to cases where persons who are posing as attorneys and medical personnel. Both Messrs. Boye and Chen are licensed attorneys when the services in question were provided to Timor-Leste and the government has not shown any evidence to the contrary. In fact the government conceded that Boye and Chen are both attorneys. The question becomes whether they stop being attorneys on the ground that certain misrepresentations were embodied in a bid document. Can their indisputable work products stop being that of professionally licensed persons because Opus & Best LLC made certain misrepresentation about non-existent persons purportedly employed by Opus & Best? The answer is a resounding NO.

Commentary which functions to "interpret a guideline or explain how it is to be applied, Section 1B1.7, controls, and if failure to follow, or a misreading of,

such commentary results in a sentence "select(ed)--- from the wrong guideline range." Stinson v. United States, 508 U.S. 36, 46, 113 S. Ct. 1913, 123 L. Ed. 2d 598 (1993), citing Williams v. United States, 503 U.S. 193, 203, 112 S. Ct. 1112, 117 L. Ed. 2d 341 (1992) (sentence would constitute "an incorrect application of the ... guidelines should be set aside under 18 U.S.C.A. § 3742(f)(1) (West) unless the error was harmless.")

"Guideline Section 1BI.7 makes the proposition clear, and this Court's holding in Williams, 503 U.S. 193, that the Sentencing Commission's policy statement bind federal courts applies with equal force to the commentary at issue". Stinson, 508 U.S. 36.

The standard that governs whether particular interpretive or explanatory commentary is binding is the one that applies to an agency's interpretation of its own legislative rule: Provided it does not violate the Constitution or a federal statute, such an interpretation must be given controlling weight unless it is plainly erroneous or inconsistent with the regulation it interprets. Stinson, 508 U.S. 36, citing Bowles v. Seminole Rock & Sand Co., 325 U.S. 410, 414, 65 S. Ct. 1215, 89 L. Ed. 1700 (1945).

The commentary embodied in the U.S. Sentencing Guidelines Manual app. C. vol. II, amend. 617, at 183-84, is therefore a binding interpretation of the scope

and limit of U.S.S.G. 2B1.1 app. n. 3(F)9v)(1), because the commentary does not run afoul of the Constitution or a federal statute, and it is not plainly erroneous or inconsistent with U.S.S.G. 2B1.1. 3(F)(v)(1).

The interpretation of the government relating to the ambit of U.S.S.G. 2B1.1. 3(F)(v)(1) is contrary to case law. The requirement that the services in question and upon which credit for value is denied MUST be a service that is LEGALLY REQUIRED BY LAW (emphasis supplied) to be performed by a licensed professional. "But where, as here, the issue is the absence of a legally required LICENSE FOR WORK PERFORMED, and distinction between intended and actual loss has no pertinence." Compare United States v. Allen, 529 F.3d 390, 397 (7th Cir. 2008) (declining to rely on U.S.S.G. 2B1.1. App. Note 3(F)(v)(1) where the defendant represented himself as an expert but "the profession in which he was scheming was not a licensed one"), with United States v. Hunter, 618 F.3d 1062 (9th Cir. 2010) (declining to allow a deduction for the value of work that Hunter performed when she was falsely acting as a nurse).

In United v. Allen, supra, the 7th Circuit held that where a profession in which a defendant was scheming was not a licensed one, U.S.S. G. Application Note 3(F(v)(1) would not apply to prevent the defendant from obtaining a credit for the value of the services provided.

The government has failed to provide anything other than an inherently defective logic that Boye should not obtain credit for the value of services he and other licensed professionals provided to Timor-Leste. To prevail, the government would have to show: (1) the U.S.S.G. Manual App. C. vol. II, amend 617 is afoul of the US Constitution or a federal law, and that is plainly erroneous or inconsistent with U.S.S.G. 2B1.1. app. Note 3(F)(v)(1); OR (2) provide the law or regulation requiring the possession of a certain professional license for writing of tax regulations, Interpretive Guidance and Transfer Pricing Report; AND (3) that Messrs. Boye, Chen and Kapadia did not possess the required professional license.

5. Response to Paragraph 28. The government alleged that Mr. Thomas' performance was not deficient because "he vigorously argued at sentencing that the Petitioner should receive some credit for the value of the work product that he delivered to Country A -- not because the credit exclusion under the Application Note 3(F)(v)(1) did not apply, but as mitigation under the application of the Section 3553(a) factors."

Considering the Transcript of what Mr. Thomas said at sentencing and which is contained on pages 16-17 of the government's answer, it is completely absurd to characterize Mr. Thomas' rambling and incoherent performance as "vigorous." He was clearly unprepared and there is no better example of a deficient counsel's performance than what Mr. Thomas exhibited at sentencing.

United States v. Travillion, 759 F.3d 281, 293 n. 23 (3d Cir. 2014), United States v. Baynes, 622 F.2d 66, 69 (3rd Cir 1980).

First and foremost, the government's summary of Mr. Thomas submission at sentencing is misleading. Mr. Thomas never even mentioned any of the words "credit for value" in his address to the Court. In fact what Mr. Thomas expressed in his own words is contrary to the government's summation, when he said: "It's absolutely no excuse for committing the fraud to begin with. You can't get the benefit of that, and I am not saying he should."

Mr. Thomas never mentioned Section 3553 in his submission nor the word "mitigation."

As a further example of Mr. Thomas' disastrous and ineffective performance at sentencing, he said at follows: "At one point when I first got involved in this case, I looked at the country's 2012 annual report and there is nothing in there that talks about the fraudulent nature of what- the product, the end product, the work product that he did. Nothing in there talks about that. The attorneys did not mention that the country is in irreparable harm because the product he submitted was lousy and insufficient." The 2012 annual report that Mr. Thomas claimed he "looked at" was provided to him by Boye. See Exhibit G of the Certification dated September 15th, 2016. The work products that Mr. Thomas referenced were

provided by Boye. See Exhibit J of the Certification dated September 15th, 2016. Those documents were provided as part of larger documents (referenced in all of Boye's Certifications) to Mr. Thomas between November and December of 2015. Those documents were never provided to the Court nor the Probation Office and here was Mr. Thomas attempting to use materials that were not part of the record as the basis of his muddled request to the Court. If Mr. Thomas believed what he saw when he "looked at" the 2012 annual report that there was no mention of fraud coupled with the copies of the work product provided to him, why was he not placed on notice to conduct a further investigation? Why did he subsequently counsel Boye to sign a plea bargain that is inconsistent with what he "looked at" in the 2012 annual report? What was the basis for seeking a 63-month sentence for Boye, if in fact there was no fraud mentioned in the report? Why is it that Mr. Thomas never provided this Court or the Probation Office during or before sentencing with any of the documents referenced in the Certifications and which are contrary to the government's theory relating to "loss," "credit for value of services performed" in fulfillment of the contracts?

Contrary to the government's explanation, "credit for value" of services performed is not part of Section 3553(a) factors that a competent attorney would raise.

Throughout his submission at sentencing, Mr. Thomas failed to mention or even make a good faith argument (despite his admission of "looking at" the 2012 annual report as well as his possession of the work products) about Section 3553(c)(4) and (c)(5) relating to the correct calculation of sentencing range under the U.S.S.G. and Sentencing Commission's policy respectively, and which are distinct and separate from 3553(a) factors for sentencing purposes. Mr. Thomas failed to raise the plausible defense against the Application Note 3(D)(v)(1) to Boye, he failed to cite the relevant case law dealing with the correct application of U.S.S.G. 2B1.1, and also failed to direct the attention of the Court to the U.S.S G. Manual App. C. vol. 11, amend. 617 on a crucial issue of credit against loss, and which issue is approximately 85% of the Total Offense Level in this case.

Mr. Thomas knew the scope and the limit of Boye's responsibilities and authority during his employment at Timor-Leste and yet he failed to make a good faith argument of the inapplicability of U.S.S.G. 3B1.3. and the applicable case law. United States v. Pardo, 25 F.3d 1187 (3d Cir. 1994).

Typical of his lack of understanding of the facts and the applicable laws governing the government's case against Boye, including the correct calculation of sentence under the U.S.S.G. Mr. Thomas mischaracterized the case as "somewhat of an unjust enrichment," a misapprehension indicative of his lack of diligence.

At sentencing, Mr. Thomas failed to address crucial false and misleading information in the PSR relating to Boye's employment and the scope of his responsibilities during the time of his employment in Timor-Leste, and which misleading information negatively impacted the sentence imposed on Boye.

Another example of the misleading information was in respect of the sentence that Boye served in California State prison and which the Probation Office incorrectly reported as having been served in a different place and which this court commented on adversely at sentencing. "Due process may require resentencing when the information on which sentencing court may have relied on a (PSR) is mistaken or unreliable." United States v. Katzin, 824 F.2d 234, 240 (3d Cir. 1987), citing Moore v. United States, 571 F.2d 179, 183–84 (3d Cir. 1978) Note 7 (3rd Cir. 1978).

Mr. Thomas completely abandoned the miscalculation of the Guidelines calculation by the Probation Office and which miscalculation mirrors the same errors in the plea deal specifically on matters relating to "loss" and credit for value of the services performed as well as the amount of restitution due under the Section 3553(a) factors including his financial ability to meet the restitution burden. He failed to demand for proof of the sum of $3.5 million restitution imposed pursuant to Mandatory Victims Restitution Act as required by law and failed to distinguished that from the punitive penalty imposed pursuant to Section

3553(a)(7). Allen, 529 F.3d 390; United States v. Brierton, 165 F.3d 1133 (7th Cir. 1999).

At sentencing, Mr. Thomas lacked vigor, was totally ineffective, unprepared and exhibited complete lack of understanding of relevant laws and the applicable U.S. sentencing guidelines and caused Boye substantial prejudice and derogation of his rights to effective counsel under the 6th Amendment to the U.S. constitution.

6. Response to Paragraph 29. The rationale provided by the government for the failure of Mr. Thomas to contest the application of the credit exclusion is flawed and illogical. First of all, Mr. Thomas clearly abdicated his responsibility as an effective counsel by failing to argue in good faith a point that is so crucial that approximately 85% of Boye's Total Offense level was dependent upon. This is more so if one considers the case law and the authoritative pronouncement of the Sentencing Commission's interpretation of the scope and limit of the credit exclusion as embodied in the U.S. Sentencing Guideline Manual app. C, vol. II, amend. 617, at 13-184. The credit exclusion covers only those who practice a particular profession or trade requiring BY LAW the possession of a license.

The government's suggestion that this Court should abandon the plain and unambiguous meaning and scope of U.S.S.G. 2B1.1 Note (E)(1) and the authoritative interpretation contained in the U.S. Sentencing Guidelines Manual

app. C, vol. II, amend. 617 is absurd and unpersuasive. It is contrary to the rudimentary principle of interpretation: where the words are plain and unambiguous, there is absolutely no need to start enquiring about the "spirit and intent" of the credit exclusionary rule as the government suggested.

Furthermore, what the government is asking the Court to do with the "spirit and intent" is IN FACT contrary to the spirit and intent so manifestly and unambiguously stated by the U.S. Sentencing Commission itself in its Manual, app. C, vol. II, amend 617, at 183-184.

The government's defense of the spectacular failure of Mr. Thomas regarding his failure to argue a valid crucial point of law decidedly in favor of Boye and in good faith is clearly untenable and indefensible. It is clearly beneath Strickland's standard of reasonableness and that deficient performance prejudiced Boye and eroded his substantial rights.

Mr. Thomas had no business inquiring about the "spirit and intent" of the credit exclusion rule when the words granting such exclusion pursuant to U.S.S.G. 2B1.1 Note (E)(1), the U.S. Sentencing Manual as well as case law on the same issue are crystal clear and could not have led a reasonable, diligent and effective defense attorney to make such a monumental error of professional judgment that placed Boye in serious jeopardy of a 72-months sentence.

Furthermore, the rationale proposed by the government ("spirit and intent") in defense of Mr. Thomas' defective representation simply does not make sense. Mr. Thomas had numerous documents in his possession (See the Certifications) showing conclusively that the services were provided by Messrs. Boye, Chen and Kapadia -- all of whom are licensed professionals. The primary obligation of Mr. Thomas was to defend Boye and he failed.

Mr. Thomas had no independent information that the services were provided by persons lacking professional license. He had access to the case law on the issue of credit exclusion but he failed to conduct a diligent research. Mr. Thomas had no evidence whatsoever showing that any of the services in question was required by any law, whether in New Jersey or in Timor-Leste, to be performed ONLY by persons possessing a particular license. To date, the government has failed to cite any law or regulation requiring a person writing tax regulations, interpretative guidelines and transfer pricing studies to possess a particular license as a pre-condition for practicing the trade.

7. Response to Paragraph 30. Both the government and Mr. Thomas knew that there are no real "persons" matching the name and qualifications on page 19-20 of the government's response and in the bid document for the TDA/TBUCA Regulations submitted by Opus & Best LLC and therefore could not have been impersonated. The government admitted on page 3 of its answer that there are "no

record of individuals of those names being admitted to practice law in New York or New Jersey." The one exception according to the government (page 3 of the answer) is a person described as a "staff attorney" and which the government disclosed at page 20 as "Paul Davis -- Staff Attorney." The "Paul Davis" that the government said it identified in Tokyo is not the same as the one described by Opus & Best in its bid because his educational background is different from those listed by Opus & Best in its bid document against him.

The government's charge of "impersonation" of professionals that are in fact non-existent is one that defies logic and common sense.

8. Response to Paragraph 32. Even if the government of Timor-Leste was induced by the biographies of the non-existent persons to award the TDA/TBUCA Regulations contract, the work product delivered to Timor-Leste in respect of the TDA/TBUCA Regulations (being the only contract connected to the bid) was world-class and exceptional as acknowledged by the Timor-Leste government itself as well as its external Attorneys (Arent Fox LLP). See Exhibits E and P of Certification dated September 15th, 2016. Peter Chen, a New York and New Jersey registered attorney & CPA, was acknowledged as a "good choice" by the same Arent Fox. See E of the Certification dated September 15th, 2016.

The same Peter Chen was also responsible for the performance of approximately 90% of the audit contract separately awarded to a company called Charles River and Associates (CRA) -- a US company that is not by the way an accounting nor a law firm, but hired Peter Chen as an independent contractor the same way Boye hired him. See Exhibits K & L of the Certification dated September 15th, 2016.

The work product was excellent, high level and well-received by the Timor-Leste government and the publics to the extent that it became a basis to award two (2) separate NO-BID contracts approximately 5 months after the completion of the TDA/TBUCA that was the subject of the bid. See Exhibit E of the Certification dated September 15th, 2016. Both the TDA and TBUCA Regulations were subsequently signed into law by the then Minister of Finance, Emilia Pires.

Upon the completion of the project, the Timor-Leste government posted TDA & TBUCA separately on its website for public comments for 30 days. It was applauded by the publics and not a single negative comment was made and there were no subsequent amendments to the drafts.

The Timor-Leste government was well-served with the combined high level experience of Boye, Chen and Kapadia in delivering world-class work products

and Timor-Leste has never made any claim that it was harmed financially as a result of any of the work products.

The cases cited by the government are totally inapposite and completely distinguishable from the case of Boye.

In Hunter, 618 F.3d 1062, the issue is whether the defendant was whether the defendant who was practicing nursing with forged nursing qualifications was entitled to credit against loss for the value of services provided when she was not a qualified nurse. That is not the case with Boye. He and others including Chen were licensed attorneys and CPA, and provided services that are not by law required to be provided by attorneys and or CPAs.

In the case of United States v. Bennett, 453 F. App'x 395, 397 (4th Cir. 2011), the drug tests required to be performed under the contract with the U.S. Department of Transportation was covered by DOT Regulation 49 C.F.R. § 40.1-413 (2010). Those regulations required that workers submit to drug screening reviewed by a "licensed physician trained in substance abuse and designated as Medical Review Officer." Bennett, the defendant performed those services when he is not a "licensed physician" as required by the enabling regulation. That is not the case with Boye.

First, the services performed by Boye and other licensed professionals (Chen & Kapadia) are not required to be performed by law or regulation with certain designated licensed professionals unlike in Bennett's case.

Secondly, unlike Bennett, even if there was a legal requirement that those services be provided by licensed professionals, Boye, Chen and Kapadia eminently met that test.

United States v. Kieffer, 621 F.3d 825, 834 (8th Cir. 2010) is fundamentally different from Boye's case. The two are not even comparable. Kieffer, the defendant, paraded himself as a licensed attorney and performed legal services to members of the public when in fact he never went to college nor attended a law school or passed a bar exam. Kieffer was practicing a trade required by law to be practiced only by licensed attorneys. Both Chen and Boye are not only licensed attorneys, they possessed post-graduate degrees in law and accounting, and have been engaged in tax law and accounting practice with a cumulative high level experience of over 45 years between them.

9. Response to Paragraph 33. See Response to Government's Paragraph 29 above.

10. Response to Paragraph 34. As argued above, the credit exclusion rule of Note 3 to U.S.S.G. 2B1.1 does not apply in this case, and that Mr. Thomas was

clearly deficient not to raise that in defense of Boye. There is no issue of "impersonation" here. Both Boye and Chen are indisputably licensed attorneys and could not have impersonated licensed professionals.

The charge against Boye was fraud and not impersonation. The cases cited by the government are inapposite and irrelevant. Hunter, 618 F.3d 1062 is inapposite for reasons discussed above. In United States v. Curran, 626 F. 3d 74, 84 (1st Cir. 2008), the defendant falsely held himself out as a doctor, a profession requiring, by law, the possession of a medical license. The defendant performed services and billed his clients while holding himself out as a doctor when he was in fact not so licensed. That is not the case with the Boye in respect of the services performed for the Timor-Leste government. United States v. Allen is also against the argument of the government to the effect that the credit exclusionary does not apply to deny a defendant value for services rendered where the profession allegedly scheming was not a licensed one.

11. Response to Paragraph 35. The government cannot rely on U.S.S.G. 5E1.1(b) to defend Mr. Thomas for the abdication of his professional obligation to request for the proof of the amount alleged as restitution and which is by law required to be proven. U.S.S.G. 5E1.1(b) applies only to punitive restitution pursuant to 18 U.S.C.A. § 3663A(a) (West) for sentencing purposes only. It has no bearing with the MVRA restitution obligations. Restitution under the Mandatory

Victim Restitution Act (MVRA) must be based on the amount of loss actually caused by the defendant's offense, and it is available to the extent that it would have been available if the victim had pursued a civil case. Allen, F. 3d 74 (7th Cir. 2008); United States v. Rhodes, 330 F.3d 949, 953 (7th Cir. 2003).

"The government bears the burden of demonstrating the losses suffered, and as part of its burden to prove a restitution amount, the government must deduct any value that a defendant's fraudulent scheme imparted to the victims." United States v. Swanson, 493 F. 3d 509, 515 (7th Cir. 2007).

Furthermore, the government's reliance on Section 5E1.1. of the U.S.S.G. is misplaced and without merit to the extent that it failed to show what is factually complex in Boye's case and how the calculation would delay and overly burden the sentencing process. There is absolutely nothing complex about this case even if you believe the narrative of the government. Services were rendered at prices agreed upon by the parties. The services were accepted as satisfactory by Timor-Leste. Timor-Leste later lodged a criminal complaint regarding certain representations made in a bid concerning one of the three service contracts and also alleged that Boye was in its employment at the time the contracts were awarded to a company (Opus & Best LLC) controlled by Boye, without disclosing his interest. There is no allegation that the contracts were not done or that they were done defectively. What is complex about that narrative?

The government cites the case of United States v. Michelson, No. 09-748-01 (FLW), 2012 U.S. Dist. LEXIS 44884. The Court declined to award restitution for certain losses under the MVRA on the ground that it would require the review of Petitioner's numerous submissions and the need to resolve multiple complex factual issues.

The case at bar (Boye's) is a "walk in the park" compared with the multiplicity of issues raised in the Michelson case. The case involved several petitioners with specific requests for restitution and which were connected to unresolved pending civil cases, probate action involving the disposition of certain life insurance proceeds belonging to Eunice Michelson, counter claims in the probate action, etc. There was also a suit between Provident Bank and the petitioners as guarantors of a Provident Bank loan.

In any case, the relevant issue here is that Mr. Thomas failed to request a hearing on the crucial issue of restitution under the MVRA, and that failure amounts to an ineffective assistance of counsel and from which Boye suffered prejudice as a result of which an unproven restitution amount was invalidly imposed on him in contravention of the applicable law.

The government's explanation as to why Mr. Thomas abdicated his obligation as an effective counsel on the specific issue of restitution is frivolous and untenable.

12. Response to Paragraph 36. That agreement referenced by the government to pay full restitution was an unintelligent choice and which choice was predicated on a defective professional advice from Mr. Thomas. Boye would not have agreed to the terms of the restitution if he had received a competent attorney. A defendant's right to an effective counsel under the 6th Amendment also included the right to be competently advised during the plea negotiation stage. Padilla v. Kentucky, 559 U.S. 356, 130, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010); Hill, 474 U.S. at 57; McMann, 397 U.S. at 770–771.

The ignorance of Mr. Thomas on the issue of restitution and which is fundamental to Boye's case added with his failure to perform basic research on that point is a classic example of unreasonable performance under Strickland. Hinton, 134 S. Ct. 1081.

The agreement on restitution should be completely discountenanced as a product of unintelligent option advised by an incompetent and ineffective counsel, and which is therefore unenforceable against Boye. If Mr. Thomas had

competently advised Boye, he would have rejected the plea bargain altogether and that decision would have been rational under the circumstances.

13. Response to Paragraph 37. From the negotiation of the plea deal to sentencing, Mr. Thomas' performance was demonstrably fumbling on all counts and fell outside the wide range of competent representation.

14. Response to Paragraph 38. The case of United States v. Gregorio, No. 12-297, 2016 U.S. District LEXIS 29179, relied upon by the government to justify Mr. Thomas' incompetent performance is misplaced. The case is significantly different from Boye's case. The application of the enhancements in issue at Gregorio was not in dispute. The failure alleged by the petitioner was that the attorney failed to make an argument for deviation. That is not the case here.

The charge of ineffective assistance against Mr. Thomas is not that of a failure to argue for a departure from the applicable sentencing guideline. It is his failure to argue the inapplicability of U.S.S.G. 2B1.1. app n.3(F)(v(1) and failure to make a good faith argument in respect of the application of Section (E)(i) to the Notes and the affirmative U.S. Sentencing Commission's interpretation embodied Manual app C, vol. II, amend 617, at 183-84 (2003).

15. Response to Paragraph 39. Mr. Thomas simply demonstrated from the plea bargain stage to sentencing his lack of understanding of the applicable

sentencing guidelines and the relevant case law in this case and that ignorance should not and cannot be allowed as a bliss.

16. Response to Paragraphs 40-43. United States v. Sanders cited by the government in paragraph 41 is also inapposite. The petitioner's only complaint about ineffective of counsel was based solely on a claim that the counsel failed to argue the dismissal of counts I & III and which counts were based on the meaning and ambit of 18 U.S.C.A. § 922(j) (West) of 18, and which the trial court already found to be applicable to the defendant. U.S. v. Gregorio cited by the government in paragraph 43 is also distinguishable from the case at bar. It was a *pro se* 2255 motion that did not even make sense based on the reliefs sought and the court's record on the performance of his attorney of record.

On paragraph 44, there are enough facts in the uncontroverted Certifications to the effect that the decision of Boye to sign the plea deal and its terms relating to the issues of "loss and abuse of trust" enhancements and restitution was unintelligent, and which decision was predicated absolutely on the incompetent advice that he received from Mr. Thomas. But for the advice of Mr. Thomas, there is just no way that Boye could have agreed to the terms of the deal. He would have opted for trial, if the government insisted on the same terms as offered.

Certainly, Boye could not have been in worse position than he is today if he had opted for trial and arguably, he would be in a better position in the sense that he would have been able to present all the facts/documents to the Court. Specifically, on the issue of credit for the services that were performed, abuse of trust enhancement and also on the issue of restitution. Mr. Thomas knew the facts and had all the relevant documents that contradict the theory of the government's case against Boye but he elected to do nothing or alternatively, he did not know what to do with them and for deficient performance Boye got 72 months in jail!

How could someone competently guided especially on the issues of "loss," "abuse of trust" and "restitution" implicated in this case make a decision to sign the plea deal that Mr. Thomas counseled Boye to sign? That is a legitimate question. Boye's case is simply that his decision to plead guilty with the terms therein, and for which process he is entitled under the 6th Amendment to an effective assistance of counsel, Mr. Thomas was deficient and caused him substantial harm. McMann, 397 U.S. 759.

Furthermore, the government appears to be confused in its reasoning. Boye's complaint against Mr. Thomas as formulated by the government IS NOT that he (Mr. Thomas) failed to secure an agreement that "carved out the application of the credit exclusionary rule" as incorrectly stated by the government. Mr. Thomas is not duty-bound to secure any particular deal for Boye but he is

obligated as a defense counsel to perform "within the range of competence demanded of attorneys in criminal cases." McMann, 397 U.S. 759. Mr. Thomas by all accounts failed that constitutional test.

The allegation here is that throughout this case, Mr. Thomas was deficient and it is fair to say that he was not functioning as a "counsel" guaranteed to Boye under the 6th Amendment. But for the catalogue of errors exhibited by Mr. Thomas throughout this case, Boye would never have pled guilty, the government may have refused in the circumstances to reach a plea agreement and Boye would have proceeded to trial instead.

17. Response to Paragraphs 45-52. 28 U.S.C.A. § 2255 provides that "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto." 28 U.S.C.A. § 2255(b). A petition warrants a hearing where it sets forth specific facts supported by competent evidence, raising detailed and controverted issues of fact that, if proved at a hearing, would entitle the petitioner to relief. Machibroda v. United States, 368 U.S. 487, 494, 82 S. Ct. 510, 7 L. Ed. 2d 473 (1962). The district court shall grant a hearing to determine the issues and make findings of fact and conclusions of law. 28 U.S.C.A. § 2255(b); United States v. McCoy, 410 F.3d

124, 131–32 (3d Cir. 2005); United States v. Costanzo, 625 F.2d 465, 470 (3d Cir. 1980).

Indeed, in asking for continuances in this matter, the Government essentially conceded that there are substantial disputed issues of facts raised in the Certifications presented to this Court. How can the Court resolve the issues merely on the response of government without any word from Mr. Thomas himself? An evidentiary hearing is thus warranted.

18. Further comment on the 2-point enhancement under U.S.S.G. 3B1.3 (abuse of trust, raised in my Certification of February 23, 2017). The Government has not responded at all to this issue. Based on my limited scope of responsibilities as a tax adviser while I was engaged in Timor-Leste and the way the Department of Petroleum Tax where I worked as an adviser was structured, including reporting line, I believe that if Mr. Thomas had made a case for me, there is a likelihood that I would not have met the test set in Pardo, 25 F.3d 1187. Whether or not a person has abused a position of trust is based on three factors set by the Court of Appeals in Prado, namely: "(1) whether the position allows the defendant to commit a difficult-to-detect wrong, (2) the degree of authority which the position vests in the defendant vis-a-vis the object of the wrongful act, and (3) whether there has been a reliance on the integrity of the person occupying the position." Pardo, 25 F.3d 1187.

First of all, my position as a tax adviser cannot be said by any stretch of imagination to make the detection of the wrong alleged here difficult to detect. There are layers of supervisory chain of command over every advisor in Timor-Leste including myself, and any wrong that I may have committed is not even remotely difficult to detect. There is nothing relating to the position of a tax advisor that I occupied in Timor-Leste that could have made it difficult for anybody to find out anything about Opus & Best because every information about it was in the public domain. From the finance department that processes payment for goods and services to the Minister of Finance that awarded the contract, the Director General of the Revenue Services that reviews work products before approving payment, and the internal and auditors quarterly reviewing income and expenses of the government, there is nothing that I could have done to make the detection of the wrong difficult to detect. There was a massive level of supervisory control over my responsibilities exercised by (1) The Lead Tax Adviser, (2) The Senior Management Adviser, (3) The Director of the Petroleum Tax Office, and (4) The Tax Commissioner.

Secondly and most important of all, as a tax adviser I had zero authority. My job was limited to offering tax advice and which the Petroleum Tax Office and the Tax Commissioner were not obligated to accept. The object of this wrong is the contract. I had no authority whatsoever on who to award any contract to as

falsely alleged by the government. That was not part of my responsibility as falsely alleged in the PSR and repeated by the government. The position had zero discretion.

Again, Mr. Thomas failed to argue this both at the time of "negotiating" the plea bargain and at sentencing and therefore rendered ineffective assistance of counsel. He knew the circumstances of my employment and he also had a copy of my employment contract (a copy is attached hereto and marked as Ex. SC 1).

The third requirement of Prado is also lacking. Timor-Leste could not have relied on my integrity because my integrity is not a factor in deciding who in Timor-Leste wins a contract award. I do not meet any of tests under Prado and therefore cannot be characterized as having abused a trust position and subject to sentence enhancement under U.S.S.G. 3B1.3.

Mr. Thomas failed to argue this issue in good faith both at the time of "negotiating" the plea bargain and at sentencing and therefore rendered an ineffective assistance of counsel and caused me harm. His negligence occasioned a 2-point enhancement against me under U.S.S.G. 3B1.3.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATE: May 8th, 2017

BOBBY BOYE

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Page 1 of 10

SC-1

DET KONGELIGE
FINANSDEPARTEMENT

Royal Ministry of Finance

Mr. Bobby W. Boye
120 Arthur Street
Ridgefield Park
NJ 07660
USA

Your ref	Our ref	Date
	10/192 HLB	26.03.2010

Letter of employment for position as Tax Adviser, Timor-Leste

With reference to your application dated December 1, 2009, the Norwegian Ministry of Finance is pleased to offer you the position as Petroleum Taxation Adviser, servicing the Oil for Development (OfD) programme at Timor-Leste.

The employment is a temporary position for 12 months, however, an extended period of maximum 6 months may be considered. The employment period will start in May 2010 (details on exact starting date will be agreed upon in the final employment contract).

The position will have as a counterpart a member of the Petroleum Revenue Service and be coordinated through the advisor network consisting of the Senior Management Advisor and Lead Petroleum Advisor. See endorsement letter from the Timorese authorities attached.

Your salary will be, according to salary rate 89 in the rate system for the Norwegian Civil Service, NOK 904 800 pr year. I addition you will receive remuneration in accordance with the *Special agreement on allowances, benefits and remuneration for employees in the foreign service (2008-2010)*, see copy attached. In accordance with this agreement, you will receive the following allowances:

§1	Post allowance	NOK 270 000 p.y. (category 13, min.counc.)
§4	Hardship allowance	NOK 42 500 p.y.
§5	Family separation allowance	NOK 80 000 p.y.
§6	Home travel allowance	NOK 13 000 p.y.

Postal address
P.O Box 8008 Dep
NO-0030 Oslo, Norway

Office address
Akersg. 40
postmottak@fin.dep.no

Telephone
+47 22 24 90 90
Org. no
972 417 007

Department of Administrative Affairs
Telephone +47 22 24 41 13
Telefax +47 22 24 95 07

If your spouse accompanies you, you will receive an additional post allowance and home travel allowance estimated on the basis of her arrival date to Timor-Leste. The additional amount is approximately NOK 92 000 p.y.(post allowance) and NOK 13 000 p.y. (home travel allowance).

According to §14 in the Special agreement, you are entitled to reimbursement of housing expenses at the place of service. You will have to arrange rental on your own, but the OfD programme coordinater Mr. Stakkestad will assist you if needed. Rental costs should be reasonable, please consult the OfD programme coordinator on this matter.

Expenses due to the use of telephone and internet will be covered, confined to NOK 6 000 p.y. Refund will be made consecutively when invoice is sent to the Ministry of Finance. You may purchase a portable computer and expenses will be covered, confined to NOK 6 000.

When you enter upon the position, your travel expenses to Dili will be covered in accordance with the Norwegian Civil Service travel scale. The OfD programme coordinator will assist in setting up travel invoice for such matter. Also, when resigning from the position, travel expenses back to the US will be covered. Travel expenses for your spouse will be covered by the same two occasions. Other travel expenses will have to be covered by the amount set forth by §6 in the Special agreement.

The Ministry of Finance will arrange and cover a travel insurance for you. This, however, needs to be addressed at a later stage.

We will prepare a final employment contract and send it to you as soon as possible.

Please let us know if you have any questions or need for clarifications.

Yours sincerely,

Håkon Tandstad
Deputy Director General

Hilde Louise Bjørnstad
Hilde Louise Bjørnstad
Senior Adviser

Enclosures

DET KONGELIGE
FINANSDEPARTEMENT
Royal Ministry of Finance

Mr. Bobby Boye
120 Arthur Street
Ridgefield Park
NJ 07660
USA

Your ref	Our ref	Date
	10/192 HLB	.04.2010

Contract of employment and clarification of terms, Tax Adviser Timor-Leste

With reference to our letter of March 26, 2010, regarding the position as tax adviser at Timor-Leste, please find enclosed a drafted employment contract. Also enclosed, you will find relevant agreements and acts to which the employment contract refers. If you accept the drafted contract, please sign and send one copy back to the Ministry.

The Ministry of Finance would like to clarify some of the terms regarding remuneration, with reference to our e-mail of April 5, 2010. The special agreement for employees in the foreign service has been altered, hence, you will be remunerated in accordance with the revised agreement, the *Special agreement on allowances, benefits and remuneration for employees in the foreign service (2010-2012)*. As from April 1, 2010, the following allowances will be relevant for you:

§1	Post allowance	NOK 252 000 p.y.
§4	Hardship allowance	NOK 47 000 p.y.
§ 5	Family separation allowance	NOK 85 000 p.y.
§6	Home travel allowance	NOK 13 000 p.y.

With exception of these amendments, the original terms stated in our letter of employment of March 26, 2010, are retained.

In addition, the Ministry of Finance will purchase a travel insurance for you and your wife taking effect from the date of departure from the US. For this purpose, the Ministry would like you to inform us on your spouse's name and birth date, as well as the date of departure for both of you from the US.

Postal address
P.O Box 8008 Dep
NO-0030 Oslo, Norway

Office address
Akersg. 40
postmottak@fin.dep.no

Telephone
+47 22 24 90 90
Org. no
972 417 807

Department of Administrative Affairs
Telephone +47 22 24 41 13
Telefax +47 22 24 95 07

You will be granted an assignment advance in the sum of NOK 60 000, enabling you to settle certain expenses relating to your relocation to Dili.

We are pleased that you intend to join the project in Timor-Leste. We are confident that you will be a valuable asset and we wish you good luck.

Yours sincerely,

Håkon Tandstad
Deputy Director General

Hilde Louise Bjørnstad
Hilde Louise Bjørnstad
Senior Adviser

Enclosures

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Fw: Employment contract

bobby boye <taxexpert8@yahoo.com>

Fri 4/9/2010 9:04 AM

To:w_bboye@hotmail.com <w_bboye@hotmail.com>;

7 attachments (3 MB)

Letter of employment2_09042010.pdf; Employment contract_signed MoF_09042010.pdf; Working Environment Act.pdf; Collcetive_agreement_2006_-_2009[1].doc; Annual Holidays Act.pdf; 281750-etiske_retningslinjer_engelsk_revidert.pdf; ToR_Pet Tax Advisor_Final_Nov09.doc;

----- Forwarded Message ----
From: "Bjørnstad, Hilde Louise" <Hilde.Louise.Bjornstad@fin.dep.no>
To: bobby boye <taxexpert8@yahoo.com>
Cc: "Tandstad, Håkon" <Hakon.Tandstad@fin.dep.no>
Sent: Fri, April 9, 2010 8:50:34 AM
Subject: Employment contract

Dear Mr. Boye,

Enclosed you will find a drafted employment contract. If you agree to the terms set in the contract, as well as the attached letter of employment, please sign and send one copy in return. We will also send the contract and employment contract to you by regular post.

Relevant acts and agreements to which the contract refers, are also attached this e-mail. These enclosures will be sent by mail only (not postal). Please notice that section 8 in the employment contract refers to the Civil Service Act, which we have not been able to find in English version. If necessary, we will get the relevant paragraph translated for you.

Best regards,
Hilde Bjørnstad

Hilde Louise Bjørnstad
Seniorrådgiver
Finansdepartementet - ADA/PERS
Tlf. 22 24 41 28

EMPLOYMENT CONTRACT

The contract is elaborated with reference to the Working Environment Act, January 1, 2006.

Employer

The Norwegian Ministry of Finance
Akersgt. 40
0030 Oslo
Norway

Employee

Mr. Bobby Boye
120 Arthur Street
Ridgefield Park
NJ 07660
USA

This contract is between the Norwegian Ministry of Finance and Mr. Bobby W. Boye, born July 27, 1964. The contract is valid when signed by the contract parties. The contract shall be governed by Norwegian Law.

1 Place of work

The Norwegian Ministry of Finance, place of service being Timor-Leste, Ministry of Planning and Finance, Dili.

2 Commencement and duration

Commencement date is set to be May 1, 2010.

Duration is set to be 12 months from commencement date. The employment relationship will be terminated without prior notice of dismissal.

An extended period of maximum 6 months may be considered. In such a case, a new employment contract will need to be elaborated and signed.

3 Notice of termination

In case of termination before the time set forth in paragraph 2 Notice of termination shall be given in accordance with the provisions of the Working Environment Act §15-3..

4 Work description

The position 's title is Petroleum Taxation Adviser, job category 1060.
The work description is specified in the >Terms of Reference (ToR) for the position.

5 Holidays

The right to holiday and holiday pay shall be granted in accordance with the provisions of the Holiday Act, April 23, 1988.

6 Salary

Salary is granted at rate 89 (at present, NOK 904 800 p.y.) + allowances in accordance with the *Special agreement on allowances, benefits and remuneration for employees in the foreign service (2008-2010)*. The salary is disbursed monthly on day 12.

7 Working hours

Normal working hours are subject to the regulations of the General Collective Agreement.

8 Probationary period

In accordance with the Civil Service Act §8, the employee has a probationary period of six months.

9 Working conditions

The working conditions are regulated in accordance with the provisions of the General Collective Agreement, Basic Agreement for the Civil Service and other central special agreements for the central government administration, and also local agreements made by the Ministry of Finance, with reference to the Working Environment Act and the Civil Servants Act.

For this particular position, working conditions are also regulated by the Special agreement on allowances, benefits and remuneration for employees in the foreign service (2008-2010).

10 Restrictions

The employee can not take on other paid work, tasks or assignments while employed by the Ministry of Finance, unless the Ministry grants permission.

11 Ethical guidelines

The employee has an obligation to familiarise with and adhere to the ethical guidelines for civil servants.

This employment contract is issued in 2 – two – copies, one for each party.

Employer	Signature	Oslo, April 9. 2010 Place and date
Employeee	Signature	Place and date

Appendix 1	ToR (Terms of Reference) for the position as Petroleum Taxation Adviser
Appendix 2	Working Environment Act
Appendix 3	Annual Holidays Act
Appendix 4	Collective agreement
Appendix 5	Ethical guidelines for Civil Servants

Terms of Reference, Petroleum Taxation Adviser, National Directorate Petroleum Revenue Ministry of Finance, Timor-Leste

Preamble

Timor-Leste (East Timor) gained its independence in 2002. The country has substantial petroleum resources. Measures have been taken to secure these resources for the benefit of the people of Timor-Leste, and the Government wishes to learn from Norway's experience in establishing a petroleum sector administration.

A project was established in 2003 where the Norwegian Petroleum Directorate and other Norwegian agencies work closely with the Government of Timor-Leste. The project is coordinated by the Oil for Development initiative in NORAD and executed by three Norwegian ministries; the Ministry of Finance, the Ministry of Petroleum and Energy and the Ministry of the Environment. The cooperation is financed through grants from Norway, administered by the Norwegian Embassy in Jakarta.

The project's main goal is to enable Timor-Leste to be self-supported in terms of petroleum administration competence.

An adviser in the position as Petroleum Tax Adviser will be engaged for a period of 9 months in 2010, however, an extended term may be considered. The adviser will report to a reference group in the Norwegian Ministry of Finance.

Objective

The objective of the assignment is to assist in developing the National Directorate of Petroleum Revenue as a professional petroleum tax authority able to audit and collect the petroleum tax revenue of Timor-Leste.

The work will include

- Assist the National Director of Petroleum Revenue, as required, in administering the revenue laws of Timor-Leste for the petroleum industry
- Assist, train and develop experience and expertise among Timor-Leste counterparts
- Assist in analyzing tax returns and petroleum tax related information to identify potential tax issues
- Assist conducting tax enquiries and audits as required
- Assist in the establishment of systems, procedures and manuals for undertaking petroleum tax compliance activities
- Assist the National Director in the efficient organisation of staff

- Assist in developing activity plans based on tax risk assessment and analyze tax effects and potential tax policy issues related to the revenue laws of Timor-Leste for the petroleum industry
- Assist in conducting information activities towards the petroleum industry and government bodies.
- Assist in monitoring petroleum tax revenue and prepare input to forecasts of tax revenue
- Liaise with other advisers in the petroleum sector of Timor-Leste

Qualifications required

- Relevant educational background is a degree in business administration, chartered accountant or taxation at Master Degree level (or equivalent) or higher
- Detailed knowledge of international tax issues, including transfer pricing
- Knowledge of the petroleum sector industrial activities and petroleum industry accounting information systems
- Knowledge of and experience in tax law interpretation
- Proficiency in oral and written English. Knowledge of Portuguese, Bahasa-Indonesia or Tetum language will be an advantage, but not a requirement for the position.

Personal skills required

- Flexibility and well developed interpersonal skills, including ability to relate to local staff at all competence levels
- Personal initiative and ability to live and work in a developing country under tropical conditions.

Work Site

- National Directorate of Petroleum Revenue, Ministry of Finance, Palacio do Governo, Dili, Timor-Leste

Contact information

Director General Tax Law Department, Ministry of Finance Norway,
Mr. Stig Sollund +47 22 24 44 74

Petroleum Tax Adviser, Timor-Leste
Mr. Håvard Holterud +47 902 68 132
+670 730 72 62

Application

Applications should be submitted to the Norwegian Ministry of Finance, PB 8008 Dep, N-0030 Oslo or postmottak@fin.dep.no by 10 December 2009.