Taxwriting committee leaders introduce bipartisan, bicameral US-Taiwan tax agreement

Taking another step forward in a process that many businesses and lawmakers hope will be successfully completed this year, the Democratic and Republican leaders of the two congressional taxwriting committees this week formally introduced legislation to create a US-Taiwan tax agreement—a unique bilateral pact intended to alleviate double taxation, conferring benefits similar to those available under a tax treaty without violating the "One China" policy to which the US adheres.
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2023/10/2023_1018-SMITMO_031_xml.pdf

The provisions of the US-Taiwan Expedited Double Tax Relief Act focus on four key areas: (1) a reduction in withholding on certain US-source income received by qualified residents of Taiwan; (2) application of the permanent establishment standard; (3) treatment of income of qualified residents of Taiwan in connection with personal services performed in the US; and (4) the definition of "qualified resident."

"American and Taiwanese workers and businesses need relief from the double-tax burdens they face when operating across our borders," House Ways and Means Committee Chairman Jason Smith, R-Mo., said in an October 19 release announcing the new proposal. "This legislation will encourage greater investment in our communities and create jobs while promoting prosperity for America and a key economic partner. By providing greater certainty for businesses small and large investing overseas, we can strengthen the foundation of our economic partnership in a key region of the world."

Joining Smith in sponsoring the legislation are Ways and Means Committee ranking member Richard Neal, D-Mass.; Senate Finance Committee Chair Ron Wyden, D-Ore.; and Finance Committee ranking Mike Crapo, R-Idaho.

If it quacks like a treaty . . .

Taiwan is the US's largest trade partner with whom it lacks a tax treaty, and the US is Taiwan's second-largest trade partner, trailing only China. The US cannot sign a bilateral tax treaty with Taiwan because of the "One China" policy, under which the US recognizes the People's Republic of China (PRC) as the sole legal government of China, and therefore maintains formal relations with the PRC and only unofficial relations with Taiwan. The legislation moving through Congress would authorize negotiations on a tax agreement to be conducted through the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office (TECRO), rather than directly between the US and Taiwan.

The Senate Finance Committee unanimously approved the US-Taiwan Expedited Double Tax Relief Act on September 14 in a rare show of bipartisan consensus. (For prior coverage, see *Tax News & Views*, Vol. 24, No. 30, Sep. 15, 2023.) As introduced this week, the bill would add new section 894A to the US tax code which generally mirrors terms from the US's 2016 model tax treaty, providing tax benefits to qualified residents of Taiwan.
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/230915_1.html

The proposed rules would apply only if reciprocal provisions are put in place for US persons with respect to income sourced in Taiwan.

Jurisdictional issues

Separately, the Senate Foreign Relations Committee, which under normal circumstances has jurisdiction over tax treaties, passed the Taiwan Tax Agreement Act of 2023 (S. 1457) on July 25, authorizing the administration to negotiate an agreement on cross-border tax issues between the US and Taiwan. This approach would obviate the need for changes to the US tax code, but Finance Committee leaders have argued that their subject-matter expertise is important for this unique situation and that changes to the US tax code can be done more quickly. Sen. Robert Menendez, D-N.J., then-chair of the Foreign Relations Committee and a member of the Finance Committee, supported the Finance Committee's bill last month but argued at the mark-up that the tax legislation is not fully sufficient and that the two panels need to work together.

Since the Finance Committee mark-up, Menendez has stepped down as chair of Foreign Relations and has been replaced in that role by Sen. Ben Cardin, D-Md., who also serves on Finance. The two committees continue to negotiate behind the scenes about how to move an agreement through the Senate. It now seems likely there eventually will be a consolidated piece of legislation, given the overlap of the two current bills, but that outcome is not yet certain.

An agreement by year-end?

Many businesses—especially those in the semiconductor industry—hope the legislation will become law before the end of this year. Following on 2022's CHIPS and Science Act, lawmakers anticipate attracting more advanced semiconductor manufacturing—especially from Taiwan, where 60 percent of all chips are produced—but industry officials and legislators argue that the costs are prohibitive in part due to the lack of an agreement to prevent double taxation. Without a tax agreement, Taiwan's corporations face a 30 percent withholding tax on dividends, interest, and royalties in the US, compared with rates as low as 5 percent for some companies from countries that have tax treaties with the US.

"Today is another important step forward toward relieving double-taxation on activity between the US and Taiwan, and supercharging chip manufacturing in America," Finance Committee Chairman Wyden declared in the statement introducing the bill language.

House taxwriters have not scheduled a mark-up of the tax bill on their side of the Capitol but have indicated they are likely to do so at some point.

— Storme Sixeas
Tax Policy Group
Deloitte Tax LLP