

Summary of the United States-Taiwan Expedited Double-Tax Relief Act

The bill creates a new section 894A of the Internal Revenue Code (“IRC”), providing substantial benefits to Taiwan residents (“qualified residents of Taiwan”), similar to those that are provided in the 2016 United States Model Income Tax Convention (“U.S. Model Tax Treaty”). The provisions fall into four primary categories:

- 1) Reduction of withholding taxes
- 2) Application of permanent establishment rules
- 3) Treatment of income from employment
- 4) Determination of qualified residents of Taiwan, including rules for dual residents.

Since the legislation requires full reciprocal benefits, it does not come into full effect until Taiwan provides the same set of benefits to U.S. persons with income subject to tax in Taiwan, similar to the reciprocal operation of a tax treaty.

Reduction of withholding taxes

A reduced rate on withholding taxes would apply to certain income from U.S. sources received by qualified residents of Taiwan, such as interest, dividends, royalties, and certain other comparable payments, such as dividend equivalent amounts.

Instead of the 30 percent withholding tax presently imposed on U.S. source income received by nonresident aliens and foreign corporations, interest and royalties would be subject to a 10 percent withholding tax rate. Generally, dividends would be subject to a 15 percent withholding tax rate. Dividends would be subject to a lower 10 percent rate if paid to a recipient that owns at least ten percent of the shares of stock in the corporation, subject to limitations.

Lower withholding tax rates would not apply to certain amounts, such as those subject to FIRPTA, received from REITs, received from inverted companies, and others.

The provisions generally track articles 10, 11, and 12 of the U.S. Model Tax Treaty.

Application of permanent establishment rules

The threshold of whether a qualified resident of Taiwan’s income from a U.S. trade or business is subject to U.S. income tax will be raised to the permanent establishment standard in treaties, rather than the U.S. trade or business standard applied in the IRC. The bill provides that the income which is subject to U.S. income tax is only taxable income effectively connected to a United States permanent establishment of a qualified resident of Taiwan.

The provisions generally track article 5 and certain provisions of article 7 of the U.S. Model Tax Treaty.

Treatment of income from employment

No U.S. tax may be imposed on certain wages of qualified residents of Taiwan in connection with personal services performed in the U.S. Such wages cannot be paid by a U.S. person or borne by a U.S. permanent establishment of a foreign person. This does not apply to certain types of wages, such as directors' fees, pensions, and other wages that are generally taxable under the U.S. Model Tax Treaty.

This provision generally tracks article 14 of the U.S. Model Tax Treaty.

Determination of qualified residents of Taiwan, including rules for dual residents

A "qualified resident of Taiwan" generally is any person who is liable for tax to Taiwan because of such person's domicile, residence, place of management, place of incorporation, or any similar criterion, and is not a U.S. person. For corporations, a qualified resident of Taiwan must also meet the limitation on benefits requirements to be a beneficiary of the provision.

The provision contains rules to determine whether certain dual resident individuals (technically subject to residence-based tax by both Taiwan and the U.S.) are to be treated as qualified residents of Taiwan. The tie-breaker rules look to factors such as where a permanent home exists, where personal and economic relations are closer, and other factors.

This provision generally tracks articles 4(1) and 4(3) and article 22 of the U.S. Model Tax Treaty.

Effective date, applicability, and regulatory authority

These provisions are effective as of the date of enactment of this bill. They only apply once the Treasury Secretary, in consultation with the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States, has determined that Taiwan has granted benefits to U.S. persons for such period that are reciprocal to the benefits provided to a qualified resident of Taiwan. Any regulations or other guidance issued under this section should be consistent with the provisions of the U.S. Model Tax Treaty.