

TECHNICAL EXPLANATION OF 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.

The legislation would not apply until Taiwan provides reciprocal 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 amounts from U.S. sources paid to qualified residents of Taiwan, such as interest, dividends, royalties, and certain other comparable payments, such as dividend equivalent amounts.

For amounts other than dividends, the reduced withholding rate is 10 percent. For dividends (including any dividend paid by a regulated investment company), the reduced withholding rate is 15 percent; however, such rate is reduced to 10 percent if, at all times during the twelve-month period ending on the date on which the stock in a corporation becomes ex-dividend with respect to such dividend, the dividend recipient:

- 1) was a qualified resident of Taiwan; and
- 2) directly owns at least 10 percent of the aggregate vote and value of the outstanding shares of stock in such corporation.

The reduced rates do not apply to any of the following income items: (1) any dividend received from or paid by a real estate investment trust; (2) amounts subject to FIRPTA; (3) any amount received from or paid by an expatriated entity to a foreign related person; and (4) any amount which is included in income under IRC section 860C to the extent that such amount does not exceed an excess inclusion with respect to a REMIC.

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

Application of permanent establishment rules

In lieu of applying IRC sections 871(b) and 882, a qualified resident of Taiwan that carries on a trade or business within the U.S. through a U.S. permanent establishment is subject to income tax as provided in IRC section 1, 11, 55, or 59A on its taxable income which is effectively connected with such U.S. permanent establishment. The term “permanent establishment” means a fixed place of business

through which a trade or business is wholly or partly carried on, consistent with terms utilized in the U.S. Model Tax Treaty.

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 tax is imposed on qualified wages paid to a qualified resident of Taiwan who either (i) is not a U.S. resident or (ii) is employed as a member of the regular component of a ship or aircraft operated in international traffic. The term “qualified wages” means wages, salaries, or similar remunerations with respect to employment involving the performance of personal services within the United States which are paid by, or on behalf of, any person other than a U.S. person and are not borne by a U.S. permanent establishment of any person other than a U.S. person.

Qualified wages do not include directors’ fees, income derived as an entertainer or sportsman, income derived as a student or trainee, pensions, or amounts paid with respect to employment with the U.S., any State, or any U.S. possession.

The provisions generally track 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” means:

1. any person who is liable for tax to Taiwan by reason of such person’s domicile, residence, place of management, place of incorporation, or any similar criterion, and is not a U.S. person, or
2. in the case of a corporation, meets the requirements in (1) and
 - i. meets a publicly traded requirement, either by a corporation (i) that is primarily and regularly traded on an established securities market in Taiwan or (ii) at least 50 percent of whose stock is owned directly or indirectly by five or fewer corporations organized and publicly traded in Taiwan; or
 - ii. meets an ownership requirement, in which at least 50 percent of the stock is owned directly or indirectly by qualified residents of Taiwan.

For any such corporation to be a “qualified resident of Taiwan”, such corporation must meet a base-erosion test consistent with terms utilized in the U.S. Model Tax Treaty. Specifically, the test requires that less than 50 percent of such corporation’s gross income is paid or accrued, directly or indirectly, in the form of deductible payments to (i) persons who are not qualified residents of Taiwan; (ii) persons who are connected persons with respect to the corporation and that benefit from a special tax regime with respect to the deductible payment; or (iii) with respect to a payment of interest, persons who are connected persons with respect to the corporation and that benefit from notional deductions with respect to amounts treated as equity.

With respect to stock owned indirectly by a corporation, each indirect owner must either be (i) a qualified resident of Taiwan; or (ii) a resident of any other foreign country (other than a foreign country of concern, as defined in the CHIPS Act of 2022) that has in effect a comprehensive convention for the avoidance of double taxation with the United States and which includes provisions addressing special tax regimes and notional deductions.

An individual who is a “dual resident” (i.e., an individual who is not a U.S. citizen, is a U.S. resident, and would be a qualified resident of Taiwan if such individual was not a U.S. person) is a qualified resident of Taiwan if such individual:

1. has a permanent home available in Taiwan and does not have a permanent U.S. home;
2. has a permanent home available in both Taiwan and the U.S., but the individual’s personal and economic relations (center of vital interests) are closer to Taiwan than to the U.S.;
3. has a permanent home available in both Taiwan and the U.S., and such individual’s center of vital interests cannot be determined, but has a habitual abode in Taiwan and not the U.S.; or
4. does not have a permanent home available in either Taiwan or the U.S. but has a habitual abode in Taiwan and not the U.S.

The provisions generally track articles 4(1) and 4(3) and article 22 of the U.S. Model Tax Treaty.

Regulatory authority

The bill authorizes the Secretary to issue regulations or other guidance as may be necessary or appropriate to carry out these provisions and enumerates a number of specific regulatory grants of authority. Any such regulations or other guidance issued should, to the extent practical, be consistent with the provisions of the U.S. Model Tax Treaty.

Effective date and applicability

These provisions are effective as of the date of the enactment of this bill for amounts paid during periods to which section 894A applies. They 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.