

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 5988  
OFFERED BY MR. SMITH OF MISSOURI**

Strike all after the enacting clause and insert the following:

1 **TITLE I—UNITED STATES-TAI-**  
2 **WAN EXPEDITED DOUBLE-**  
3 **TAX RELIEF ACT**

4 **SEC. 101. SHORT TITLE.**

5 This title may be cited as the “United States-Taiwan  
6 Expedited Double-Tax Relief Act”.

7 **SEC. 102. SPECIAL RULES FOR TAXATION OF CERTAIN**  
8 **RESIDENTS OF TAIWAN.**

9 (a) IN GENERAL.—Subpart D of part II of sub-  
10 chapter N of chapter 1 of the Internal Revenue Code of  
11 1986 is amended by inserting after section 894 the fol-  
12 lowing new section:

13 **“SEC. 894A. SPECIAL RULES FOR QUALIFIED RESIDENTS OF**  
14 **TAIWAN.**

15 **“(a) CERTAIN INCOME FROM UNITED STATES**  
16 **SOURCES.—**

17 **“(1) INTEREST, DIVIDENDS, AND ROYALTIES,**  
18 **ETC.—**

1           “(A) IN GENERAL.—In the case of interest  
2 (other than original issue discount), dividends,  
3 royalties, amounts described in section  
4 871(a)(1)(C), and gains described in section  
5 871(a)(1)(D) received by or paid to a qualified  
6 resident of Taiwan—

7           “(i) sections 871(a), 881(a), 1441(a),  
8 1441(c)(5), and 1442(a) shall each be ap-  
9 plied by substituting ‘the applicable per-  
10 centage (as defined in section  
11 894A(a)(1)(C))’ for ‘30 percent’ each place  
12 it appears, and

13           “(ii) sections 871(a), 881(a), and  
14 1441(c)(1) shall each be applied by sub-  
15 stituting ‘a United States permanent es-  
16 tablishment of a qualified resident of Tai-  
17 wan’ for ‘a trade or business within the  
18 United States’ each place it appears.

19           “(B) EXCEPTIONS.—

20           “(i) IN GENERAL.—Subparagraph (A)  
21 shall not apply to—

22           “(I) any dividend received from  
23 or paid by a real estate investment  
24 trust which is not a qualified REIT  
25 dividend,

1 “(II) any amount subject to sec-  
2 tion 897,

3 “(III) any amount received from  
4 or paid by an expatriated entity (as  
5 defined in section 7874(a)(2)) to a  
6 foreign related person (as defined in  
7 section 7874(d)(3)), and

8 “(IV) any amount which is in-  
9 cluded in income under section 860C  
10 to the extent that such amount does  
11 not exceed an excess inclusion with re-  
12 spect to a REMIC.

13 “(ii) QUALIFIED REIT DIVIDEND.—  
14 For purposes of clause (i)(I), the term  
15 ‘qualified REIT dividend’ means any divi-  
16 dend received from or paid by a real estate  
17 investment trust if such dividend is paid  
18 with respect to a class of shares that is  
19 publicly traded and the recipient of the  
20 dividend is a person who holds an interest  
21 in any class of shares of the real estate in-  
22 vestment trust of not more than 5 percent.

23 “(C) APPLICABLE PERCENTAGE.—For  
24 purposes of applying subparagraph (A)(i)—

1           “(i) IN GENERAL.—Except as pro-  
2           vided in clause (ii), the term ‘applicable  
3           percentage’ means 10 percent.

4           “(ii) SPECIAL RULES FOR DIVI-  
5           DENDS.— In the case of any dividend in  
6           respect of stock received by or paid to a  
7           qualified resident of Taiwan, the applicable  
8           percentage shall be 15 percent (10 percent  
9           in the case of a dividend which meets the  
10          requirements of subparagraph (D) and is  
11          received by or paid to an entity taxed as  
12          a corporation in Taiwan).

13          “(D) REQUIREMENTS FOR LOWER DIVI-  
14          DEND RATE.—

15                 “(i) IN GENERAL.—The requirements  
16                 of this subparagraph are met with respect  
17                 to any dividend in respect of stock in a  
18                 corporation if, at all times during the 12-  
19                 month period ending on the date such  
20                 stock becomes ex-dividend with respect to  
21                 such dividend—

22                         “(I) the dividend is derived by a  
23                         qualified resident of Taiwan, and

24                                 “(II) such qualified resident of  
25                                 Taiwan has held directly at least 10

1                   percent (by vote and value) of the  
2                   total outstanding shares of stock in  
3                   such corporation.

4                   For purposes of subclause (II), a person  
5                   shall be treated as directly holding a share  
6                   of stock during any period described in the  
7                   preceding sentence if the share was held by  
8                   a corporation from which such person later  
9                   acquired that share and such corporation  
10                  was, at the time the share was acquired,  
11                  both a connected person to such person  
12                  and a qualified resident of Taiwan.

13                  “(ii) EXCEPTION FOR RICS AND  
14                  REITS.—Notwithstanding clause (i), the re-  
15                  quirements of this subparagraph shall not  
16                  be treated as met with respect to any divi-  
17                  dend paid by a regulated investment com-  
18                  pany or a real estate investment trust.

19                  “(2) QUALIFIED WAGES.—

20                  “(A) IN GENERAL.—No tax shall be im-  
21                  posed under this chapter (and no amount shall  
22                  be withheld under section 1441(a) or chapter  
23                  24) with respect to qualified wages paid to a  
24                  qualified resident of Taiwan who—

1 “(i) is not a resident of the United  
2 States (determined without regard to sub-  
3 section (c)(3)(E)), or

4 “(ii) is employed as a member of the  
5 regular component of a ship or aircraft op-  
6 erated in international traffic.

7 “(B) QUALIFIED WAGES.—

8 “(i) IN GENERAL.—The term ‘quali-  
9 fied wages’ means wages, salaries, or simi-  
10 lar remunerations with respect to employ-  
11 ment involving the performance of personal  
12 services within the United States which—

13 “(I) are paid by (or on behalf of)  
14 any employer other than a United  
15 States person, and

16 “(II) are not borne by a United  
17 States permanent establishment of  
18 any person other than a United States  
19 person.

20 “(ii) EXCEPTIONS.—Such term shall  
21 not include directors’ fees, income derived  
22 as an entertainer or athlete, income de-  
23 rived as a student or trainee, pensions,  
24 amounts paid with respect to employment  
25 with the United States, any State (or polit-

1           ical subdivision thereof), or any possession  
2           of the United States (or any political sub-  
3           division thereof), or other amounts speci-  
4           fied in regulations or guidance under sub-  
5           section (f)(1)(F).

6           “(3) INCOME DERIVED FROM ENTERTAINMENT  
7           OR ATHLETIC ACTIVITIES.—

8           “(A) IN GENERAL.—No tax shall be im-  
9           posed under this chapter (and no amount shall  
10          be withheld under section 1441(a) or chapter  
11          24) with respect to income derived by an enter-  
12          tainer or athlete who is a qualified resident of  
13          Taiwan from personal activities as such per-  
14          formed in the United States if the aggregate  
15          amount of gross receipts from such activities  
16          for the taxable year do not exceed \$30,000.

17          “(B) EXCEPTION.—Subparagraph (A)  
18          shall not apply with respect to—

19                 “(i) income which is qualified wages  
20                 (as defined in paragraph (2)(B), deter-  
21                 mined without regard to clause (ii) there-  
22                 of), or

23                 “(ii) income which is effectively con-  
24                 nected with a United States permanent es-  
25                 tablishment.

1           “(b) INCOME CONNECTED WITH A UNITED STATES  
2 PERMANENT ESTABLISHMENT OF A QUALIFIED RESI-  
3 DENT OF TAIWAN.—

4           “(1) IN GENERAL.—

5                   “(A) IN GENERAL.—In lieu of applying  
6 sections 871(b) and 882, a qualified resident of  
7 Taiwan that carries on a trade or business  
8 within the United States through a United  
9 States permanent establishment shall be taxable  
10 as provided in section 1, 11, 55, or 59A, on its  
11 taxable income which is effectively connected  
12 with such permanent establishment.

13                   “(B) DETERMINATION OF TAXABLE IN-  
14 COME.—In determining taxable income for pur-  
15 poses of paragraph (1), gross income includes  
16 only gross income which is effectively connected  
17 with the permanent establishment.

18           “(2) TREATMENT OF DISPOSITIONS OF UNITED  
19 STATES REAL PROPERTY.—In the case of a qualified  
20 resident of Taiwan, section 897(a) shall be applied—

21                   “(A) by substituting ‘carried on a trade or  
22 business within the United States through a  
23 United States permanent establishment’ for  
24 ‘were engaged in a trade or business within the  
25 United States’, and



1           “(B) by substituting ‘such United States  
2           permanent establishment’ for ‘such trade or  
3           business’.

4           “(3) TREATMENT OF BRANCH PROFITS  
5           TAXES.—In the case of any corporation which is a  
6           qualified resident of Taiwan, section 884 shall be ap-  
7           plied—

8           “(A) by substituting ‘10 percent’ for ‘30  
9           percent ’ in subsection (a) thereof, and

10           “(B) by substituting ‘a United States per-  
11           manent establishment of a qualified resident of  
12           Taiwan’ for ‘the conduct of a trade or business  
13           within the United States’ in subsection (d)(1)  
14           thereof.

15           “(4) SPECIAL RULE WITH RESPECT TO INCOME  
16           DERIVED FROM CERTAIN ENTERTAINMENT OR ATH-  
17           LETIC ACTIVITIES.—

18           “(A) IN GENERAL.—Paragraph (1) shall  
19           not apply to the extent that the income is de-  
20           rived—

21           “(i) in respect of entertainment or  
22           athletic activities performed in the United  
23           States, and

1                   “(ii) by a qualified resident of Taiwan  
2                   who is not the entertainer or athlete per-  
3                   forming such activities.

4                   “(B) EXCEPTION.—Subparagraph (A)  
5                   shall not apply if the person described in sub-  
6                   paragraph (A)(ii) is contractually authorized to  
7                   designate the individual who is to perform such  
8                   activities.

9                   “(5) SPECIAL RULE WITH RESPECT TO CER-  
10                  TAIN AMOUNTS.—Paragraph (1) shall not apply to  
11                  any income which is wages, salaries, or similar re-  
12                  muneration with respect to employment or with re-  
13                  spect to any amount which is described in subsection  
14                  (a)(2)(B)(ii).

15                  “(c) QUALIFIED RESIDENT OF TAIWAN.—For pur-  
16                  poses of this section—

17                  “(1) IN GENERAL.—The term ‘qualified resi-  
18                  dent of Taiwan’ means any person who—

19                         “(A) is liable to tax under the laws of Tai-  
20                         wan by reason of such person’s domicile, resi-  
21                         dence, place of management, place of incorpora-  
22                         tion, or any similar criterion,

23                         “(B) is not a United States person (deter-  
24                         mined without regard to paragraph (3)(E)),  
25                         and

1           “(C) in the case of an entity taxed as a  
2           corporation in Taiwan, meets the requirements  
3           of paragraph (2).

4           “(2) LIMITATION ON BENEFITS FOR COR-  
5           PORATE ENTITIES OF TAIWAN.—

6           “(A) IN GENERAL.—Subject to subpara-  
7           graphs (E) and (F), an entity meets the re-  
8           quirements of this paragraph only if it—

9                   “(i) meets the ownership and income  
10                  requirements of subparagraph (B),

11                   “(ii) meets the publicly traded re-  
12                  quirements of subparagraph (C), or

13                   “(iii) meets the qualified subsidiary  
14                  requirements of subparagraph (D).

15           “(B) OWNERSHIP AND INCOME REQUIRE-  
16           MENTS.—The requirements of this subpara-  
17           graph are met for an entity if—

18                   “(i) at least 50 percent (by vote and  
19                  value) of the total outstanding shares of  
20                  stock in such entity are owned directly or  
21                  indirectly by qualified residents of Taiwan,  
22                  and

23                   “(ii) less than 50 percent of such enti-  
24                  ty’s gross income (and in the case of an  
25                  entity that is a member of a tested group,

1 less than 50 percent of the tested group’s  
2 gross income) is paid or accrued, directly  
3 or indirectly, in the form of payments that  
4 are deductible for purposes of the income  
5 taxes imposed by Taiwan, to persons who  
6 are not—

7 “(I) qualified residents of Tai-  
8 wan, or

9 “(II) United States persons who  
10 meet such requirements with respect  
11 to the United States as determined by  
12 the Secretary to be equivalent to the  
13 requirements of this subsection (deter-  
14 mined without regard to paragraph  
15 (1)(B)) with respect to residents of  
16 Taiwan.

17 “(C) PUBLICLY TRADED REQUIRE-  
18 MENTS.—An entity meets the requirements of  
19 this subparagraph if—

20 “(i) the principal class of its shares  
21 (and any disproportionate class of shares)  
22 of such entity are primarily and regularly  
23 traded on an established securities market  
24 in Taiwan, or

1           “(ii) the primary place of manage-  
2           ment and control of the entity is in Taiwan  
3           and all classes of its outstanding shares  
4           described in clause (i) are regularly traded  
5           on an established securities market in Tai-  
6           wan.

7           “(D) QUALIFIED SUBSIDIARY REQUIRE-  
8           MENTS.—An entity meets the requirement of  
9           this subparagraph if—

10           “(i) at least 50 percent (by vote and  
11           value) of the total outstanding shares of  
12           the stock of such entity are owned directly  
13           or indirectly by 5 or fewer entities—

14           “(I) which meet the requirements  
15           of subparagraph (C), or

16           “(II) which are United States  
17           persons the principal class of the  
18           shares (and any disproportionate class  
19           of shares) of which are primarily and  
20           regularly traded on an established se-  
21           curities market in the United States,  
22           and

23           “(ii) the entity meets the require-  
24           ments of clause (ii) of subparagraph (B).

1           “(E) ONLY INDIRECT OWNERSHIP  
2 THROUGH QUALIFYING INTERMEDIARIES  
3 COUNTED.—

4           “(i) IN GENERAL.—Stock in an entity  
5 owned by a person indirectly through 1 or  
6 more other persons shall not be treated as  
7 owned by such person in determining  
8 whether the person meets the requirements  
9 of subparagraph (B)(i) or (D)(i) unless all  
10 such other persons are qualifying inter-  
11 mediate owners.

12           “(ii) QUALIFYING INTERMEDIATE  
13 OWNERS.—The term ‘qualifying inter-  
14 mediate owner’ means a person that is—

15           “(I) a qualified resident of Tai-  
16 wan, or

17           “(II) a resident of any other for-  
18 eign country (other than a foreign  
19 country that is a foreign country of  
20 concern) that has in effect a com-  
21 prehensive convention with the United  
22 States for the avoidance of double tax-  
23 ation.

24           “(iii) SPECIAL RULE FOR QUALIFIED  
25 SUBSIDIARIES.—For purposes of applying

1           subparagraph (D)(i), the term ‘qualifying  
2           intermediate owner’ shall include any per-  
3           son who is a United States person who  
4           meets such requirements with respect to  
5           the United States as determined by the  
6           Secretary to be equivalent to the require-  
7           ments of this subsection (determined with-  
8           out regard to paragraph (1)(B)) with re-  
9           spect to residents of Taiwan.

10           “(F) CERTAIN PAYMENTS NOT IN-  
11           CLUDED.—In determining whether the require-  
12           ments of subparagraph (B)(ii) or (D)(ii) are  
13           met with respect to an entity, the following pay-  
14           ments shall not be taken into account:

15                   “(i) Arm’s-length payments by the en-  
16                   tity in the ordinary course of business for  
17                   services or tangible property.

18                   “(ii) In the case of a tested group,  
19                   intra-group transactions.

20           “(3) DUAL RESIDENTS.—

21                   “(A) RULES FOR DETERMINATION OF STA-  
22                   TUS.—

23                   “(i) IN GENERAL.—An individual who  
24                   is an applicable dual resident and who is  
25                   described in subparagraph (B), (C), or (D)

1 shall be treated as a qualified resident of  
2 Taiwan.

3 “(ii) APPLICABLE DUAL RESIDENT.—  
4 For purposes of this paragraph, the term  
5 ‘applicable dual resident’ means an indi-  
6 vidual who—

7 “(I) is not a United States cit-  
8 izen,

9 “(II) is a resident of the United  
10 States (determined without regard to  
11 subparagraph (E)), and

12 “(III) would be a qualified resi-  
13 dent of Taiwan but for paragraph  
14 (1)(B).

15 “(B) PERMANENT HOME.—An individual  
16 is described in this subparagraph if such indi-  
17 vidual—

18 “(i) has a permanent home available  
19 to such individual in Taiwan, and

20 “(ii) does not have a permanent home  
21 available to such individual in the United  
22 States.

23 “(C) CENTER OF VITAL INTERESTS.—An  
24 individual is described in this subparagraph if—



1 “(i) such individual has a permanent  
2 home available to such individual in both  
3 Taiwan and the United States, and

4 “(ii) such individual’s personal and  
5 economic relations (center of vital inter-  
6 ests) are closer to Taiwan than to the  
7 United States.

8 “(D) HABITUAL ABODE.—An individual is  
9 described in this subparagraph if—

10 “(i) such individual—

11 “(I) does not have a permanent  
12 home available to such individual in  
13 either Taiwan or the United States, or

14 “(II) has a permanent home  
15 available to such individual in both  
16 Taiwan and the United States but  
17 such individual’s center of vital inter-  
18 ests under subparagraph (C)(ii) can-  
19 not be determined, and

20 “(ii) such individual has a habitual  
21 abode in Taiwan and not the United  
22 States.

23 “(E) UNITED STATES TAX TREATMENT OF  
24 QUALIFIED RESIDENT OF TAIWAN.—Notwith-  
25 standing section 7701, an individual who is

1 treated as a qualified resident of Taiwan by  
2 reason of this paragraph for all or any portion  
3 of a taxable year shall not be treated as a resi-  
4 dent of the United States for purposes of com-  
5 puting such individual's United States income  
6 tax liability for such taxable year or portion  
7 thereof.

8 “(4) RULES OF SPECIAL APPLICATION.—

9 “(A) DIVIDENDS.—For purposes of apply-  
10 ing this section to any dividend, paragraph  
11 (2)(D) shall be applied without regard to clause  
12 (ii) thereof.

13 “(B) ITEMS OF INCOME EMANATING FROM  
14 AN ACTIVE TRADE OR BUSINESS IN TAIWAN.—  
15 For purposes of this section—

16 “(i) IN GENERAL.—Notwithstanding  
17 the preceding paragraphs of this sub-  
18 section, if an entity taxed as a corporation  
19 in Taiwan is not a qualified resident of  
20 Taiwan but meets the requirements of sub-  
21 paragraphs (A) and (B) of paragraph (1),  
22 any qualified item of income such entity  
23 derived from the United States shall be  
24 treated as income of a qualified resident of  
25 Taiwan.

1 “(ii) QUALIFIED ITEMS OF INCOME.—

2 “(I) IN GENERAL.—The term  
3 ‘qualified item of income’ means any  
4 item of income which emanates from,  
5 or is incidental to, the conduct of an  
6 active trade or business in Taiwan  
7 (other than operating as a holding  
8 company, providing overall supervision  
9 or administration of a group of com-  
10 panies, providing group financing, or  
11 making or managing investments (un-  
12 less such making or managing invest-  
13 ments is carried on by a bank, insur-  
14 ance company, or registered securities  
15 dealer in the ordinary course of its  
16 business as such)).

17 “(II) SUBSTANTIAL ACTIVITY RE-  
18 QUIREMENT.—An item of income  
19 which is derived from a trade or busi-  
20 ness conducted in the United States  
21 or from a connected person shall be a  
22 qualified item of income only if the  
23 trade or business activity conducted in  
24 Taiwan to which the item is related is  
25 substantial in relation to the same or

1 a complementary trade or business ac-  
2 tivity carried on in the United States.  
3 For purposes of applying this sub-  
4 clause, activities conducted by persons  
5 that are connected to the entity de-  
6 scribed in clause (i) shall be deemed  
7 to be conducted by such entity.

8 “(iii) EXCEPTION.—This subpara-  
9 graph shall not apply to any item of in-  
10 come derived by an entity if at least 50  
11 percent (by vote or value) of such entity is  
12 owned (directly or indirectly) or controlled  
13 by residents of a foreign country of con-  
14 cern.

15 “(d) OTHER DEFINITIONS AND SPECIAL RULES.—  
16 For purposes of this section—

17 “(1) UNITED STATES PERMANENT ESTABLISH-  
18 MENT.—

19 “(A) IN GENERAL.—The term ‘United  
20 States permanent establishment’ means, with  
21 respect to a qualified resident of Taiwan, a per-  
22 manent establishment of such resident which is  
23 within the United States.

24 “(B) SPECIAL RULE.—The determination  
25 of whether there is a permanent establishment

1 of a qualified resident of Taiwan within the  
2 United States shall be made without regard to  
3 whether an entity which is taxed as a corpora-  
4 tion in Taiwan and which is a qualified resident  
5 of Taiwan controls or is controlled by—

6 “(i) a domestic corporation, or

7 “(ii) any other person that carries on  
8 business in the United States (whether  
9 through a permanent establishment or oth-  
10 erwise).

11 “(2) PERMANENT ESTABLISHMENT.—

12 “(A) IN GENERAL.—The term ‘permanent  
13 establishment’ means a fixed place of business  
14 through which a trade or business is wholly or  
15 partly carried on. Such term shall include—

16 “(i) a place of management,

17 “(ii) a branch,

18 “(iii) an office,

19 “(iv) a factory,

20 “(v) a workshop, and

21 “(vi) a mine, an oil or gas well, a  
22 quarry, or any other place of extraction of  
23 natural resources.

24 “(B) SPECIAL RULES FOR CERTAIN TEM-  
25 PORARY PROJECTS.—

1           “(i) IN GENERAL.—A building site or  
2           construction or installation project, or an  
3           installation or drilling rig or ship used for  
4           the exploration or exploitation of the sea  
5           bed and its subsoil and their natural re-  
6           sources, constitutes a permanent establish-  
7           ment only if it lasts, or the activities of the  
8           rig or ship lasts, for more than 12 months.

9           “(ii) DETERMINATION OF 12-MONTH  
10          PERIOD.—For purposes of clause (i), the  
11          period over which a building site or con-  
12          struction or installation project of a person  
13          lasts shall include any period of more than  
14          30 days during which such person does not  
15          carry on activities at such building site or  
16          construction or installation project but  
17          connected activities are carried on at such  
18          building site or construction or installation  
19          project by one or more connected persons.

20          “(C) HABITUAL EXERCISE OF CONTRACT  
21          AUTHORITY TREATED AS PERMANENT ESTAB-  
22          LISHMENT.—Notwithstanding subparagraphs  
23          (A) and (B), where a person (other than an  
24          agent of an independent status to whom sub-  
25          paragraph (D)(ii) applies) is acting on behalf of

1 a trade or business of a qualified resident of  
2 Taiwan and has and habitually exercises an au-  
3 thority to conclude contracts that are binding  
4 on the trade or business, that trade or business  
5 shall be deemed to have a permanent establish-  
6 ment in the country in which such authority is  
7 exercised in respect of any activities that the  
8 person undertakes for the trade or business, un-  
9 less the activities of such person are limited to  
10 those described in subparagraph (D)(i) that, if  
11 exercised through a fixed place of business,  
12 would not make this fixed place of business a  
13 permanent establishment under the provisions  
14 of that subparagraph.

15 “(D) EXCLUSIONS.—

16 “(i) IN GENERAL.—Notwithstanding  
17 subparagraphs (A) and (B), the term ‘per-  
18 manent establishment’ shall not include—

19 “(I) the use of facilities solely for  
20 the purpose of storage, display, or de-  
21 livery of goods or merchandise belong-  
22 ing to the trade or business,

23 “(II) the maintenance of a stock  
24 of goods or merchandise belonging to  
25 the trade or business solely for the

1 purpose of storage, display, or deliv-  
2 ery,

3 “(III) the maintenance of a stock  
4 of goods or merchandise belonging to  
5 the trade or business solely for the  
6 purpose of processing by another  
7 trade or business,

8 “(IV) the maintenance of a fixed  
9 place of business solely for the pur-  
10 pose of purchasing goods or merchan-  
11 dise, or of collecting information, for  
12 the trade or business,

13 “(V) the maintenance of a fixed  
14 place of business solely for the pur-  
15 pose of carrying on, for the trade or  
16 business, any other activity of a pre-  
17 paratory or auxiliary character, or

18 “(VI) the maintenance of a fixed  
19 place of business solely for any com-  
20 bination of the activities mentioned in  
21 subclauses (I) through (V), provided  
22 that the overall activity of the fixed  
23 place of business resulting from this  
24 combination is of a preparatory or  
25 auxiliary character.



1                   “(ii) BROKERS AND OTHER INDE-  
2                   PENDENT AGENTS.—A trade or business  
3                   shall not be considered to have a perma-  
4                   nent establishment in a country merely be-  
5                   cause it carries on business in such coun-  
6                   try through a broker, general commission  
7                   agent, or any other agent of an inde-  
8                   pendent status, provided that such persons  
9                   are acting in the ordinary course of their  
10                  business as independent agents.

11                 “(3) TESTED GROUP.—The term ‘tested group’  
12                 includes, with respect to any entity taxed as a cor-  
13                 poration in Taiwan, such entity and any other entity  
14                 taxed as a corporation in Taiwan that—

15                         “(A) participates as a member with such  
16                         entity in a tax consolidation, fiscal unity, or  
17                         similar regime that requires members of the  
18                         group to share profits or losses, or

19                         “(B) shares losses with such entity pursu-  
20                         ant to a group relief or other loss sharing re-  
21                         gime.

22                 “(4) CONNECTED PERSON.—Two persons shall  
23                 be ‘connected persons’ if one owns, directly or indi-  
24                 rectly, at least 50 percent of the interests in the  
25                 other (or, in the case of a corporation, at least 50

1       percent of the aggregate vote and value of the cor-  
2       poration’s shares) or another person owns, directly  
3       or indirectly, at least 50 percent of the interests (or,  
4       in the case of a corporation, at least 50 percent of  
5       the aggregate vote and value of the corporation’s  
6       shares) in each person. In any case, a person shall  
7       be connected to another if, based on all the relevant  
8       facts and circumstances, one has control of the other  
9       or both are under the control of the same person or  
10      persons.

11           “(5) FOREIGN COUNTRY OF CONCERN.—The  
12      term ‘foreign country of concern’ has the meaning  
13      given such term under paragraph (7) of section  
14      9901 of the William M. (Mac) Thornberry National  
15      Defense Authorization Act for Fiscal Year 2021 (15  
16      U.S.C. 4651(7)), as added by section 103(a)(4) of  
17      the CHIPS Act of 2022).

18           “(6) PARTNERSHIPS; BENEFICIARIES OF ES-  
19      TATES AND TRUSTS.—For purposes of this section—

20           “(A) a qualified resident of Taiwan which  
21      is a partner of a partnership which carries on  
22      a trade or business within the United States  
23      through a United States permanent establish-  
24      ment shall be treated as carrying on such trade

1 or business through such permanent establish-  
2 ment, and

3 “(B) a qualified resident of Taiwan which  
4 is a beneficiary of an estate or trust which car-  
5 ries on a trade or business within the United  
6 States through a United States permanent es-  
7 tablishment shall be treated as carrying on such  
8 trade or business through such permanent es-  
9 tablishment.

10 “(7) DENIAL OF BENEFITS FOR CERTAIN PAY-  
11 MENTS THROUGH HYBRID ENTITIES.—For purposes  
12 of this section, rules similar to the rules of section  
13 894(c) shall apply.

14 “(e) APPLICATION.—

15 “(1) IN GENERAL.—This section shall not apply  
16 to any period unless the Secretary has determined  
17 that Taiwan has provided benefits to United States  
18 persons for such period that are reciprocal to the  
19 benefits provided to qualified residents of Taiwan  
20 under this section.

21 “(2) PROVISION OF RECIPROCITY.—The Presi-  
22 dent or his designee is authorized to exchange let-  
23 ters, enter into an agreement, or take other nec-  
24 essary and appropriate steps relative to Taiwan for

1 the reciprocal provision of the benefits described in  
2 this section.

3 “(f) REGULATIONS OR OTHER GUIDANCE.—

4 “(1) IN GENERAL.—The Secretary shall issue  
5 such regulations or other guidance as may be nec-  
6 essary or appropriate to carry out the provisions of  
7 this section, including such regulations or guidance  
8 for—

9 “(A) determining—

10 “(i) what constitutes a United States  
11 permanent establishment of a qualified  
12 resident of Taiwan, and

13 “(ii) income that is effectively con-  
14 nected with such a permanent establish-  
15 ment,

16 “(B) preventing the abuse of the provisions  
17 of this section by persons who are not (or who  
18 should not be treated as) qualified residents of  
19 Taiwan,

20 “(C) requirements for record keeping and  
21 reporting,

22 “(D) rules to assist withholding agents or  
23 employers in determining whether a foreign per-  
24 son is a qualified resident of Taiwan for pur-  
25 poses of determining whether withholding or re-

1           porting is required for a payment (and, if with-  
2           holding is required, whether it should be applied  
3           at a reduced rate),

4           “(E) the application of subsection  
5           (a)(1)(D)(i) to stock held by predecessor own-  
6           ers,

7           “(F) determining what amounts are to be  
8           treated as qualified wages for purposes of sub-  
9           section (a)(2),

10          “(G) determining the amounts to which  
11          subsection (a)(3) applies,

12          “(H) defining established securities market  
13          for purposes of subsection (c),

14          “(I) the application of the rules of sub-  
15          section (c)(4)(B),

16          “(J) the application of subsection (d)(6)  
17          and section 1446,

18          “(K) determining ownership interests held  
19          by residents of a foreign country of concern,  
20          and

21          “(L) determining the starting and ending  
22          dates for periods with respect to the application  
23          of this section under subsection (e), which may  
24          be separate dates for taxes withheld at the  
25          source and other taxes.



1 **TITLE II—UNITED STATES-TAI-**  
2 **WAN TAX AGREEMENT AU-**  
3 **THORIZATION ACT**

4 **SEC. 201. SHORT TITLE.**

5 This title may be cited as the “United States-Taiwan  
6 Tax Agreement Authorization Act”.

7 **SEC. 202. DEFINITIONS.**

8 In this title:

9 (1) **AGREEMENT.**—The term “Agreement”  
10 means the tax agreement authorized by section  
11 203(a).

12 (2) **APPROPRIATE CONGRESSIONAL COMMIT-**  
13 **TEES.**—The term “appropriate congressional com-  
14 mittees” means—

15 (A) the Committee on Foreign Relations  
16 and the Committee on Finance of the Senate;  
17 and

18 (B) the Committee on Ways and Means of  
19 the House of Representatives.

20 (3) **APPROVAL LEGISLATION.**—The term “ap-  
21 proval legislation” means legislation that approves  
22 the Agreement.

23 (4) **IMPLEMENTING LEGISLATION.**—The term  
24 “implementing legislation” means legislation that

1 makes any changes to the Internal Revenue Code of  
2 1986 necessary to implement the Agreement.

3 **SEC. 203. AUTHORIZATION TO NEGOTIATE AND ENTER**  
4 **INTO AGREEMENT.**

5 (a) IN GENERAL.—Subsequent to a determination  
6 under section 894A(e)(1) of the Internal Revenue Code  
7 of 1986 (as added by the United States-Taiwan Expedited  
8 Double-Tax Relief Act), the President is authorized to ne-  
9 gotiate and enter into a tax agreement relative to Taiwan.

10 (b) ELEMENTS OF AGREEMENT.—

11 (1) CONFORMITY WITH BILATERAL INCOME TAX  
12 CONVENTIONS.—The President shall ensure that—

13 (A) any provisions included in the Agree-  
14 ment conform with provisions customarily con-  
15 tained in United States bilateral income tax  
16 conventions, as exemplified by the 2016 United  
17 States Model Income Tax Convention; and

18 (B) the Agreement does not include ele-  
19 ments outside the scope of the 2016 United  
20 States Model Income Tax Convention.

21 (2) INCORPORATION OF TAX AGREEMENTS AND  
22 LAWS.—Notwithstanding paragraph (1), the Agree-  
23 ment may incorporate and restate provisions of any  
24 agreement, or existing United States law, addressing



1 double taxation for residents of the United States  
2 and Taiwan.

3 (3) AUTHORITY.—The Agreement shall include  
4 the following statement: “The Agreement is entered  
5 into pursuant to the United States-Taiwan Tax  
6 Agreement Authorization Act.”

7 (4) ENTRY INTO FORCE.—The Agreement shall  
8 include a provision conditioning entry into force  
9 upon—

10 (A) enactment of approval legislation and  
11 implementing legislation pursuant to section  
12 207; and

13 (B) confirmation by the Secretary of the  
14 Treasury that the relevant authority in Taiwan  
15 has approved and taken appropriate steps re-  
16 quired to implement the Agreement.

17 **SEC. 204. CONSULTATIONS WITH CONGRESS.**

18 (a) NOTIFICATION UPON COMMENCEMENT OF NEGO-  
19 TIATIONS.—The President shall provide written notifica-  
20 tion to the appropriate congressional committees of the  
21 commencement of negotiations between the United States  
22 and Taiwan on the Agreement at least 15 calendar days  
23 before commencing such negotiations.

24 (b) CONSULTATIONS DURING NEGOTIATIONS.—

1           (1) BRIEFINGS.—Not later than 90 days after  
2           commencement of negotiations with respect to the  
3           Agreement, and every 180 days thereafter until the  
4           President enters into the Agreement, the President  
5           shall provide a briefing to the appropriate congress-  
6           sional committees on the status of the negotiations,  
7           including a description of elements under negotia-  
8           tion.

9           (2) MEETINGS AND OTHER CONSULTATIONS.—

10           (A) IN GENERAL.—In the course of nego-  
11           tiations with respect to the Agreement, the Sec-  
12           retary of the Treasury, in coordination with the  
13           Secretary of State, shall—

14           (i) meet, upon request, with the chair-  
15           man or ranking member of any of the ap-  
16           propriate congressional committees regard-  
17           ing negotiating objectives and the status of  
18           negotiations in progress; and

19           (ii) consult closely and on a timely  
20           basis with, and keep fully apprised of the  
21           negotiations, the appropriate congressional  
22           committees.

23           (B) ELEMENTS OF CONSULTATIONS.—The  
24           consultations described in subparagraph (A)  
25           shall include consultations with respect to—

1 (i) the nature of the contemplated  
2 Agreement;

3 (ii) how and to what extent the con-  
4 templated Agreement is consistent with the  
5 elements set forth in section 203(b); and

6 (iii) the implementation of the con-  
7 templated Agreement, including—

8 (I) the general effect of the con-  
9 templated Agreement on existing laws;

10 (II) proposed changes to any ex-  
11 isting laws to implement the con-  
12 templated Agreement; and

13 (III) proposed administrative ac-  
14 tions to implement the contemplated  
15 Agreement.

16 **SEC. 205. APPROVAL AND IMPLEMENTATION OF AGREE-**  
17 **MENT.**

18 (a) IN GENERAL.—The Agreement may not enter  
19 into force unless—

20 (1) the President, at least 60 days before the  
21 day on which the President enters into the Agree-  
22 ment, publishes the text of the contemplated Agree-  
23 ment on a publicly available website of the Depart-  
24 ment of the Treasury; and

1           (2) there is enacted into law, with respect to  
2           the Agreement, approval legislation and imple-  
3           menting legislation pursuant to section 207.

4           (b) ENTRY INTO FORCE.—The President may pro-  
5           vide for the Agreement to enter into force upon—

6           (1) enactment of approval legislation and imple-  
7           menting legislation pursuant to section 207; and

8           (2) confirmation by the Secretary of the Treas-  
9           ury that the relevant authority in Taiwan has ap-  
10          proved and taken appropriate steps required to im-  
11          plement the Agreement.

12   **SEC. 206. SUBMISSION TO CONGRESS OF AGREEMENT AND**  
13                           **IMPLEMENTATION POLICY.**

14          (a) SUBMISSION OF AGREEMENT.—Not later than  
15          270 days after the President enters into the Agreement,  
16          the President or the President’s designee shall submit to  
17          Congress—

18                 (1) the final text of the Agreement; and

19                 (2) a technical explanation of the Agreement.

20          (b) SUBMISSION OF IMPLEMENTATION POLICY.—Not  
21          later than 270 days after the President enters into the  
22          Agreement, the Secretary of the Treasury shall submit to  
23          Congress—

24                 (1) a description of those changes to existing  
25          laws that the President considers would be required

1 in order to ensure that the United States acts in a  
2 manner consistent with the Agreement; and

3 (2) a statement of anticipated administrative  
4 action proposed to implement the Agreement.

5 **SEC. 207. CONSIDERATION OF APPROVAL LEGISLATION**  
6 **AND IMPLEMENTING LEGISLATION.**

7 (a) IN GENERAL.—The approval legislation with re-  
8 spect to the Agreement shall include the following: “Con-  
9 gress approves the Agreement submitted to Congress pur-  
10 suant to section 206 of the United States-Taiwan Tax  
11 Agreement Authorization Act on \_\_\_\_\_.”, with the  
12 blank space being filled with the appropriate date.

13 (b) APPROVAL LEGISLATION COMMITTEE REFER-  
14 RAL.—The approval legislation shall—

15 (1) in the Senate, be referred to the Committee  
16 on Foreign Relations; and

17 (2) in the House of Representaives, be referred  
18 to the Committee on Ways and Means.

19 (c) IMPLEMENTING LEGISLATION COMMITTEE RE-  
20 FERRAL.—The implementing legislation shall—

21 (1) in the Senate, be referred to the Committee  
22 on Finance; and

23 (2) in the House of Representatives, be referred  
24 to the Committee on Ways and Means.

1 **SEC. 208. RELATIONSHIP OF AGREEMENT TO INTERNAL**  
2 **REVENUE CODE OF 1986.**

3 (a) INTERNAL REVENUE CODE OF 1986 TO CON-  
4 TROL.—No provision of the Agreement or approval legisla-  
5 tion, nor the application of any such provision to any per-  
6 son or circumstance, which is inconsistent with any provi-  
7 sion of the Internal Revenue Code of 1986, shall have ef-  
8 fect.

9 (b) CONSTRUCTION.—Nothing in this title shall be  
10 construed—

11 (1) to amend or modify any law of the United  
12 States; or

13 (2) to limit any authority conferred under any  
14 law of the United States,  
15 unless specifically provided for in this title.

16 **SEC. 209. AUTHORIZATION OF SUBSEQUENT TAX AGREE-**  
17 **MENTS RELATIVE TO TAIWAN.**

18 (a) IN GENERAL.—Subsequent to the enactment of  
19 approval legislation and implementing legislation pursuant  
20 to section 207—

21 (1) the term “tax agreement” in section 203(a)  
22 shall be treated as including any tax agreement rel-  
23 ative to Taiwan which supplements or supersedes  
24 the Agreement to which such approval legislation  
25 and implementing legislation relates, and

1           (2) the term “Agreement” shall be treated as  
2 including such tax agreement.

3           (b) REQUIREMENTS, ETC., TO APPLY SEPA-  
4 RATELY.—The provisions of this title (including section  
5 204) shall be applied separately with respect to each tax  
6 agreement referred to in subsection (a).

7 **SEC. 210. UNITED STATES TREATMENT OF DOUBLE TAX-**  
8 **ATION MATTERS WITH RESPECT TO TAIWAN.**

9           (a) FINDINGS.—Congress makes the following find-  
10 ings:

11           (1) The United States addresses issues with re-  
12 spect to double taxation with foreign countries by  
13 entering into bilateral income tax conventions  
14 (known as tax treaties) with such countries, subject  
15 to the advice and consent of the Senate to ratifica-  
16 tion pursuant to article II of the Constitution.

17           (2) The United States has entered into more  
18 than sixty such tax treaties, which facilitate eco-  
19 nomic activity, strengthen bilateral cooperation, and  
20 benefit United States workers, businesses, and other  
21 United States taxpayers.

22           (3) Due to Taiwan’s unique status, the United  
23 States is unable to enter into an article II tax treaty  
24 with Taiwan, necessitating an agreement to address  
25 issues with respect to double taxation.

1 (b) STATEMENT OF POLICY.—It is the policy of the  
2 United States to—

3 (1) provide for additional bilateral tax relief  
4 with respect to Taiwan, beyond that provided for in  
5 section 894A of the Internal Revenue Code of 1986  
6 (as added by the United States-Taiwan Expedited  
7 Double-Tax Relief Act), only after entry into force  
8 of an Agreement, as provided for in section 205, and  
9 only in a manner consistent with such Agreement;  
10 and

11 (2) continue to provide for bilateral tax relief  
12 with sovereign states to address double taxation and  
13 other related matters through entering into bilateral  
14 income tax conventions, subject to the Senate's ad-  
15 vice and consent to ratification pursuant to article II  
16 of the Constitution.

