

Taxwriting leaders unveil draft proposal to relieve double taxation for US and Taiwanese workers, businesses

The chairs and ranking members of the two congressional taxwriting committees on July 12 jointly announced a bipartisan discussion draft of a proposal that is intended to provide relief from double-taxation for workers and businesses engaged in US-Taiwan cross-border investment.

URL: <https://www.finance.senate.gov/ranking-members-news/crapo-wyden-smith-neal-release-discussion-draft-of-bill-providing-relief-for-us-and-taiwanese-workers-and-businesses-from-double-taxation>

URL: <http://waysandmeans.house.gov/wp-content/uploads/2023/07/Taiwan-Tax-discussion-draft-7.12.23-For-Release-MCG23414.pdf>

In conjunction with that release, House Ways and Means Committee Chairman Jason Smith, R-Mo., Senate Finance Committee Chairman Ron Wyden, D-Ore., Ways and Means ranking member Richard Neal, D-Mass., and Finance Committee ranking member Mike Crapo, R-Idaho, also invited the public to submit comments on the proposal. (Comments are requested by July 24 and should be sent to internationaltax@finance.senate.gov.)

Treaty-like benefits, but not a treaty

According to a summary provided by the four taxwriting leaders, the discussion draft would create a new section 894A providing substantial benefits to “qualified residents of Taiwan,” similar to those that are available under the 2016 United States Model Income Tax Convention. The benefit provisions fall into four primary categories: reduction of withholding taxes, application of permanent establishment rules, treatment of income from employment, and determination of qualified residents of Taiwan, including rules for dual residents.

URL: <http://waysandmeans.house.gov/wp-content/uploads/2023/07/Taiwan-Tax-one-pager-7.12.23-For-Release.pdf>

The legislation would require full reciprocal benefits, so it would not come into full effect until Taiwan provides the same set of benefits to US persons with income subject to tax in Taiwan, similar to the reciprocal operation of a tax treaty, the summary states. (A technical explanation of the discussion draft is also available.)

URL: <http://waysandmeans.house.gov/wp-content/uploads/2023/07/Taiwan-Tax-technical-explanation-7.12.23-For-Release.pdf>

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. However, legislators on both sides of the aisle—as well as the Biden administration—have signaled support this year for an agreement that would provide treaty-like benefits, an outcome Taiwan has long desired.

As part of a focus on securing supply chains and through the CHIPS and Science Act (P.L. 117-167), which became law in 2022, the government hopes to attract more advanced semiconductor manufacturing to the US—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.

URL: <https://www.congress.gov/117/plaws/publ167/PLAW-117publ167.pdf>

In a July 12 news release, Smith, Wyden, Neal, and Crapo called the discussion draft “an important step toward providing relief for American and Taiwanese workers and businesses that face burdens when operating across our borders. Given Taiwan’s very unique status precluding it from remedying double taxation through an income tax treaty, we remain committed to solutions that will unlock investment, create more jobs, and lead to greater shared prosperity.”

Navigating congressional turf issues

In the Senate, where all treaties, including tax treaties, are under the jurisdiction of the Foreign Relations Committee, there is something of a turf battle playing out over US relations with Taiwan, with the Finance Committee seeking to play a more formal role in the development of what will be an “agreement” rather than a “treaty.” The Foreign Relations Committee on July 13 passed its own Taiwan Tax Agreement Act (S. 1457), co-sponsored by Sens. Robert Menendez, D-N.J., and Jim Risch, R-Idaho, the committee’s chair and ranking member, respectively, and Sens. Chris Van Hollen, D-Md., and Mitt Romney, R-Utah, chair and ranking member, respectively, of the Subcommittee on East Asia, the Pacific, and International Cybersecurity Policy. The bill would authorize the administration to negotiate and conclude an agreement through the American Institute in Taiwan (AIT), which would then be subject to approval by both congressional chambers.

URL: <https://www.foreign.senate.gov/imo/media/doc/dav23816.pdf>

“As Beijing’s predatory economic practices escalate and President Xi seeks to find allies like President Putin to join in their malign actions, it is important we continue to work with partners such as Taiwan to promote a transparent, secure, and open global economy for all,” Menendez said in statement following the committee’s mark-up. “The economic ties forged by the Taiwan Tax Agreement Act would support our supply chain resiliency and America’s future economic security, as well as that of our partners and allies. I look forward to working with my colleagues to ensure swift passage in both the House and Senate.”

Menendez is uniquely positioned as the process of developing a pact between the US and Taiwan plays out in the Senate, given his dual roles as chairman of the Foreign Relations Committee and a member of the Finance Committee. This jurisdictional tug of war between the two panels must be resolved before any legislation can clear Congress.

Across the Capitol, the House last month passed bipartisan legislation (H.R. 4004) supporting an “initial agreement” on trade negotiated by the Biden administration and Taiwan while also asserting the role of Congress in implementing any agreement between the two jurisdictions. The provisions in this bill and in the Senate Foreign Relations Committee legislation that would give the House a role in implementation add another layer of complexity to the process with Taiwan, as treaties typically go through the Senate only.

URL: <https://www.congress.gov/bill/118th-congress/house-bill/4004/text>

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