# Senate taxwriters approve US-Taiwan double-taxation relief agreement

The Senate Finance Committee this week unanimously approved legislation that would provide relief from double taxation for workers and businesses engaged in US-Taiwan cross-border investment with Taiwan, and it appears that the ongoing jurisdictional tussle between the taxwriting panel and the Senate Foreign Relations Committee will result in two bills moving through the Senate to create a tax treaty-like agreement.

According to a description prepared by the Joint Committee on Taxation staff, the United States-Taiwan Expedited Double-Tax Relief Act provides that income from US sources earned or received by qualified residents of Taiwan would be entitled to certain benefits, including (1) reduced tax rates for income otherwise subject to the 30 percent gross basis tax; (2) relief from tax on income effectively connected with a US trade or business (tax would be limited to income effectively connected with a US permanent establishment); and (3) preferential treatment of wages and related income earned by such qualified residents. The proposed new rules are analogous to provisions typical in bilateral treaties to which the United States is a party and are based on relevant language found in the Model Treaty. The legislation also would require general anti-abuse standards similar to those in section 894(c) to deny benefits when payments are made through hybrid entities.
**URL:** https://www.jct.gov/publications/2023/jcx-37-23/

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

## Working out turf issues

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, therefore maintaining formal relations with the PRC and only unofficial relations with Taiwan. Finance Committee ranking Republican Mike Crapo of Idaho noted at the September 14 mark-up of the bill that absent these "very unique circumstances," tax agreements should be in the jurisdiction of the Foreign Relations Committee; however, in this situation, he argued that Finance members' expertise is needed because of the direct changes needed to the tax code.

"The process we are considering today should not be viewed as a new template to shortcut or end-run around tax treaties," Crapo said.

Sen. Robert Menendez, D-N.J., who serves as a senior member of the Finance Committee and also chairs the Foreign Relations Committee, supported the tax panel's bill but emphasized that he does not believe it is sufficient for the US-Taiwan agreement that members and the administration hope to enact. The Foreign Relations Committee approved its own measure this summer to address double taxation with Taiwan.

"We can find a compromise to move both bills forward jointly, but it will require the chairman and ranking member to demonstrate some flexibility," he said ahead of the Finance panel's 27-0 vote.

Sen. Ron Wyden, D-Ore., who helms the Finance Committee, responded that Menendez had his commitment of cooperation, "chairman to chairman." With bipartisan and bicameral support for a tax agreement, members noted that they hope legislation can be approved quickly this year. Following on 2022's CHIPS and Science Act, Wyden indicated that the US hopes to attract 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.

"Our unique relationship with Taiwan requires a unique approach to double-tax relief as well," Wyden said at this week's mark-up. "It is novel, but more importantly, it is fast. If Congress can get this done, Americans will see more shovels in the ground, more semiconductors coming off the factory line, and more good paying jobs."

Michael Plowgian, Treasury deputy assistant secretary for international tax, told committee members that he couldn't predict exactly how long development of a tax information sharing agreement might take, as the negotiations will be conducted through the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office (TECRO), rather than directly between the two governments.

**Ways and Means mark-up ahead?**

Across the Capitol, House taxwriters could do their own mark-up of double-taxation relief legislation, which was jointly released as a discussion draft in July by Wyden, Crapo, Ways and Means Chairman Jason Smith, R-Mo., and Ways and Means ranking member Richard Neal, D-Mass. (For prior coverage, see *Tax News & Views*, Vol. 24, No. 26, July 14, 2023.)
**URL:** https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/TNV/230714_6.html

Taxwriting committee members have noted that the US-Taiwan legislation, which has rare universal support on both panels, could be added to a year-end tax bill, if one comes together—or could be a vehicle that carries other tax provisions.

— Storme Sixeas
Tax Policy Group
Deloitte Tax LLP