DESCRIPTION OF THE CHAIRMAN'S MARK OF THE "UNITED STATES-TAIWAN EXPEDITED DOUBLE-TAX RELIEF ACT"

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INTRODUCTION

The Senate Committee on Finance has scheduled a committee markup on September 14, 2023 of the "United States-Taiwan Expedited Double-Tax Relief Act." This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the Chairman's mark.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's Mark of the "United States-Taiwan Expedited Double-Tax Relief Act,"* September 12, 2023, (JCX-37-23). This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

DESCRIPTION OF THE CHAIRMAN'S MARK OF THE UNITED STATES-TAIWAN EXPEDITED DOUBLE-TAX RELIEF ACT

Present Law

The following discussion summarizes U.S. taxation of income from cross-border business activity, with emphasis on how the rules determine whether the income is subject to tax by the United States or another jurisdiction in either the Internal Revenue Code[2] or in bilateral agreements in which the United States agrees to relieve double taxation when its jurisdiction to tax overlaps or is in conflict with that of another jurisdiction.

International law generally recognizes the right of each sovereign nation to prescribe rules to regulate conduct and persons (whether natural or juridical) with a sufficient nexus to the sovereign nation. The nexus may be based on nationality (*i.e*., a nexus based on a connection between the relevant person and the sovereign nation) or may be territorial (*i.e.*, a nexus based on a connection between the relevant conduct and the sovereign nation). These concepts have been refined and adapted to form the principles for determining whether sufficient nexus with a jurisdiction exists to conclude that the jurisdiction may enforce its right to tax.

1. U.S. Tax Principles Common to Inbound and Outbound Taxation

Taxes based on where activities occur, or where property is located, are source-based taxes. The United States generally taxes the U.S. trades or businesses of foreign persons and sales or other dispositions of interests in U.S. real property by foreign persons. In addition, the United States generally taxes items of income that are paid by U.S. persons to foreign persons. Most jurisdictions, including the United States, have rules for determining the source of items of income and expense in a broad range of categories, such as compensation for services, dividends, interest, royalties, and gains.

Income taxes based on a person's citizenship, nationality, or residence are residence-based taxes. The United States generally imposes residence-based taxation on U.S. persons in the year in which income is earned. For individuals and domestic entities, this results in taxing them on their worldwide income, whether derived in the United States or abroad, with limited opportunity for deferral of taxation of income earned by foreign corporations owned by U.S. shareholders. As explained below, income earned by a resident of the United States from foreign activities conducted through a foreign entity generally is subject to U.S. tax in the year earned or not at all. The United States generally taxes foreign persons on only U.S.-source income.

The United States imposes source-based taxation on U.S.-source income of nonresident alien individuals and other foreign persons. Under this system, the application of the Code differs depending on whether income arises from outbound investment (*i.e.*, foreign investments by U.S. persons) or inbound investment (*i.e.*, U.S. investment by foreign persons). While the United States taxes inbound and outbound investments differently, certain rules are common to

[2] Unless otherwise stated, section references are to the Internal Revenue Code of 1986, as amended (the "Code").

the taxation of both, including rules relating to residency, entity classification, source determination, and transfer pricing.

Residence

The Code defines a U.S. person to include all U.S. citizens and residents as well as domestic entities such as partnerships, corporations, trusts and estates.[3] Partnerships and corporations are domestic if organized or created under the laws of the United States, any State, or the District of Columbia, unless, in the case of a partnership, the Secretary prescribes otherwise by regulation.[4] All other partnerships and corporations (*i.e.*, those organized under the laws of foreign countries) are foreign.[5] Other jurisdictions may use factors such as situs or management and control to determine residence. As a result, legal entities may have more than one tax residence, or, in some cases, no residence. In such cases, bilateral treaties may resolve conflicting claims of residence.

Exception for corporate inversions

In certain cases, a foreign corporation that acquires a domestic corporation or partnership may be treated as a domestic corporation for Federal tax purposes.[6] This result generally applies following a transaction in which, pursuant to a plan or a series of related transactions:

1. A domestic corporation becomes a subsidiary of a foreign-incorporated entity or otherwise transfers substantially all of its properties to such an entity;

2. The former shareholders of the domestic corporation hold (by reason of the stock they had held in the domestic corporation) at least 80 percent (by vote or value) of the stock of the foreign-incorporated entity after the transaction (often referred to as "stock held by reason of"); and

3. The foreign-incorporated entity, considered together with all companies connected to it by a chain of greater than 50-percent ownership (the "expanded affiliated group"), does not have substantial business activities in the entity's country of organization, compared to the total worldwide business activities of the expanded affiliated group.

If the "stock held by reason of" the acquisition is less than 80 percent, but at least 60 percent of the stock of the foreign corporation, and the other requirements above are satisfied, then the foreign corporation is not treated as a domestic corporation. Instead, the foreign corporation is considered a surrogate foreign corporation for the acquired domestic company,

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[3] Sec. 7701(a)(30).

[4] Sec. 7701(a)(4) and (10).

[5] Sec. 7701(a)(5) and (9). Entities organized in a possession or territory of the United States are not considered to have been organized under the laws of the United States.

[6] Sec. 7874. The Treasury Department and the IRS have promulgated detailed guidance, through both regulations and several notices, addressing these requirements under section 7874 since its enactment in 2004, and have sought to expand the reach of the section or reduce the tax benefits of inversion transactions.

which is an expatriated entity that must recognize certain "inversion gain" post-acquisition restructuring[7] and may be subject to other consequences under the provisions enacted in 2017.[8]

Source of income rules

Various factors determine the source of income for U.S. tax purposes, including the status or nationality of the payor or recipient and the location of the activities or assets that generate the income. Extensive rules determine whether income is considered to be from U.S. sources or foreign sources.[9] Special rules are provided for certain industries, (*e.g.*, transportation, shipping, and certain space and ocean activities) as well as for income partly from within and partly from without the United States.[10]

Gains, profits, and income from the sale or exchange of inventory property that is either (1) produced (in whole or in part) inside the United States and then sold or exchanged outside the United States or (2) produced (in whole or part) outside the United States and then sold or exchanged inside the United States is allocated and apportioned solely on the basis of the location of the production activities.[11] For example, income derived from the sale of inventory produced entirely in the United States is wholly from U.S. sources, even if title passage occurs elsewhere. Likewise, income derived from the sale of inventory produced entirely in another country is wholly from foreign sources, even if title passage occurs in the United States. If inventory is produced only partly in the United States, the income derived from its sale is sourced partly in the United States regardless of where title to the property passes**.**

2. U.S. Tax Rules Applicable to Foreign Activities of U.S. Persons

In general, income earned directly by a U.S. person from the conduct of a foreign trade or business is taxed currently,[12] while income earned indirectly through certain related foreign

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[7] An excise tax may be imposed on certain stock compensation of executives of companies that undertake inversion transactions. Sec. 4985. In addition, dividends from certain surrogate foreign corporations are excluded from qualified dividend income within the meaning of section 1(h)(11)(B) and are ineligible to be taxed as net capital gains. Sec. 1(h)(11)(C)(iii). As a result, individual shareholders in such corporations cannot claim the reduced rate on dividends otherwise available under section 1(h)(11).

[8] See secs. 59A(d)(4) (providing that payments made to expatriated entities that reduce gross receipts are base erosion payments) and 965(l) (disallowing the partial participation exemption deduction for computing the transition tax and assessing the additional transition tax in the year of inversion if an entity inverts within the 10-year period beginning on December 22, 2017)).

[9] Sections 861 through 865, generally.

[10] Sec. 863.

[11] Sec. 863(b). Prior to Public Law 115-97, enacted on December 22, 2017, the source of income from sale of inventory was determined by passage of title.

[12] Such income is called foreign branch income.

entities (*i.e.*, controlled foreign corporations ("CFCs"))[13] is taxed in the year earned or not at all. Earnings and profits of CFCs are generally taxable in one of two ways. First, the earnings may constitute income to U.S. shareholders under the traditional anti-deferral regime of subpart F, which applies to certain passive income and income that is readily movable from one jurisdiction to another.[14] Subpart F was designed as an anti-abuse regime to prevent U.S. taxpayers from shifting passive and mobile income to low-tax jurisdictions.[15] Second, the earnings may be subject to section 951A, which applies to some foreign-source income of a CFC that is not subpart F income (referred to as global intangible low-taxed income ("GILTI")). GILTI was enacted as a base protection measure to counter the participation exemption system, established by the dividends-received-deduction, under which the income could potentially be distributed back to the U.S. corporation with no U.S. tax imposed.[16] Subpart F income is taxed at full rates with related foreign taxes generally eligible for the foreign tax credit; GILTI is taxed at reduced rates with additional limitations on the use of related foreign tax credits. Both subpart F income and GILTI are included by the U.S. shareholder without regard to whether the earnings are distributed by the CFC.

In addition to the taxation of GILTI at reduced rates, U.S. corporations generally are taxed at reduced rates on their foreign-derived intangible income ("FDII").[17] Foreign earnings not subject to tax as subpart F income or GILTI generally are exempt from U.S. tax. To exempt those earnings, dividends received by corporate U.S. shareholders from specified 10-percent owned foreign corporations (including CFCs) generally are eligible for a 100-percent dividends-received deduction ("DRD").[18] Special rules apply in situations in which a U.S. person transfers property to a foreign corporation or certain partnerships in certain nonrecognition transactions.[19]

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[13] A CFC generally is defined as any foreign corporation in which U.S. persons own (directly, indirectly, or constructively) more than 50 percent of the corporation's stock (measured by vote or value), taking into account only "U.S. shareholders," that is, U.S. persons that own at least 10 percent of the stock (measured by vote or value). See secs. 951(b), 957, and 958. Special rules apply with respect to U.S. persons that are shareholders (regardless of their percentage ownership) in any foreign corporation that is not a CFC but is a passive foreign investment company ("PFIC"). See secs. 1291 through 1298. The PFIC rules generally seek to prevent the deferral of passive income through the use of foreign corporations.

[14] Subpart F comprises sections 951 through 965.

[15] See JCS-5-61, "Tax Effects of Conducting Foreign Business through Foreign Corporations" (July 21, 1961), Part V. See also Rev. Act. of 1962, Pub. L. No. 87-834.

[16] See Reconciliation Recommendations Pursuant to H. Con. Res. 71 (December 2017).

[17] Sec. 250(a)(1)(A).

[18] Sec. 245A. The DRD is not limited to dividends from CFCs, but rather may be available with respect to any dividend received from a specified 10-percent owned foreign corporation by a domestic corporation which is a U.S. shareholder with respect to such foreign corporation.

[19] Secs. 367 and 721(c); Treas. Reg. sec. 1.721(c)-1.

3. U.S. Tax Rules Applicable to Foreign Persons

Nonresident aliens and foreign corporations generally are subject to U.S. tax only on their U.S.-source income. There are two broad types of taxation of U.S.-source income of foreign taxpayers: (1) gross-basis tax on income that is "fixed or determinable annual or periodical gains, profits, and income" (*i.e.*, FDAP income), and (2) net-basis tax on income that is "effectively connected with the conduct of a trade or business within the United States" (*i.e.*, ECI). FDAP income, although nominally subject to a statutory 30-percent gross-basis tax withheld at its source, in many cases is subject to a reduced rate of, or entirely exempt from, U.S. tax under the Code or a bilateral income tax treaty. ECI generally is subject to the same U.S. tax rules and rates that apply to business income earned by U.S. persons.

Finally, certain corporations are subject to a base erosion and anti-abuse tax ("BEAT") that is in the nature of a minimum tax and payable in addition to all other tax liabilities.[20]

Gross-basis taxation of U.S.-source income

FDAP income received by foreign persons from U.S. sources is subject to a 30-percent gross-basis tax (*i.e.*, a tax on gross income without reduction for related expenses), which is collected by withholding at the source of the payment. FDAP income includes interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, and emoluments.[21] The items enumerated in defining FDAP income are illustrative, and the words "annual or periodical" are "merely generally descriptive" of the payments within the purview of the statute.[22] The categories of income subject to the 30-percent tax and the categories for which withholding is required generally are coextensive.[23]

Exclusions from FDAP income

FDAP income encompasses a broad range of gross income but has important exceptions. Capital gains of nonresident aliens generally are foreign source; however, capital gains of nonresident aliens present in the United States for 183 days or more[24] during the year are income from U.S. sources subject to gross-basis taxation.[25] In addition, U.S-source gains from the sale

[20] Sec. 59A.

[21] Secs. 871(a) and 881. FDAP income that is ECI is taxed as ECI.

[22] *Commissioner v. Wodehouse*, 337 U.S. 369, 393 (1949).

[23] See secs. 1441 and 1442.

[24] For purposes of this rule, whether a person is considered a resident in the United States is determined by application of the rules under section 7701(b).

[25] Sec. 871(a)(2). In addition, certain capital gains from sales of U.S. real property interests are subject to tax as ECI under the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"). See sec. 897(a)(1).

or exchange of intangibles are subject to tax and withholding if they are contingent on the productivity, use, or disposition of the property sold.[26]

Interest on bank deposits may qualify for exemption from treatment as FDAP income on two grounds. First, interest on deposits with domestic banks and savings and loan associations, and certain amounts held by insurance companies, is U.S.-source income but is exempt from the 30-percent tax when paid to a foreign person.[27] Second, interest on deposits with foreign branches of domestic banks and domestic savings and loan associations is not U.S.-source income and, thus, is not subject to U.S. tax.[28] Interest and original issue discount on certain short-term obligations also is exempt from U.S. tax when paid to a foreign person.[29] In addition, an exception to information reporting requirements may apply with respect to payments of such exempt amounts.[30]

Although FDAP income includes U.S.-source portfolio interest, such interest is specifically exempt from the 30-percent gross-basis tax. Portfolio interest is any interest (including original issue discount) that is paid on an obligation that is in registered form and for which the beneficial owner has provided to the U.S. withholding agent a statement certifying that the beneficial owner is not a U.S. person.[31] Portfolio interest, however, does not include interest received by a 10-percent shareholder,[32] certain contingent interest,[33] interest received by a CFC from a related person,[34] or interest received by a bank on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business.[35]

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[26] Secs. 871(a)(1)(D) and 881(a)(4).

[27] Secs. 871(i)(2)(A) and 881(d); Treas. Reg. sec. 1.1441-1(b)(4)(ii).

[28] Sec. 861(a)(1); Treas. Reg. sec. 1.1441-1(b)(4)(iii).

[29] Secs. 871(g)(1)(B) and 881(a)(3); Treas. Reg. sec. 1.1441-1(b)(4)(iv).

[30] Treas. Reg. sec. 1.1461-1(c)(2)(ii)(A) and (B). A bank must report interest if the recipient is a nonresident alien who resides in a country with which the United States has a satisfactory exchange of information program under a bilateral agreement and the deposit is maintained at an office in the United States. Treas. Reg. secs. 1.6049-4(b)(5) and -8. The IRS publishes lists of the countries whose residents are subject to the reporting requirements, and those countries with respect to which the reported information is automatically exchanged. See Rev. Proc. 2022-35, 2022-40 I.R.B. 270.

[31] Sec. 871(h)(2).

[32] Sec. 871(h)(3). The exemption does not apply to interest payments made to a foreign lender that owns 10 percent or more of the voting power (but not value) of the stock of the borrower.

[33] Sec. 871(h)(4).

[34] Sec. 881(c)(3)(C).

[35] Sec. 881(c)(3)(A).

Withholding of 30-percent gross-basis tax

The 30-percent tax on FDAP income is generally collected by means of withholding.[36] Withholding on FDAP payments to foreign payees is required unless the withholding agent (*i.e.*, the person making the payment to the foreign person) can establish that the beneficial owner of the amount is eligible for an exemption from withholding or a reduced rate of withholding under an income tax treaty.[37]

Often, the income subject to withholding is the only income of the foreign person subject to any U.S. tax. If the foreign person has no ECI and the withholding is sufficient to satisfy the tax liability with respect to FDAP income, the foreign person generally is not required to file a U.S. Federal income tax return. Accordingly, the withholding of the 30-percent gross-basis tax generally represents the collection of the foreign person's final U.S. tax liability.

To the extent that a withholding agent withholds an amount, the withheld tax is credited to the foreign recipient of the income.[38] If the agent withholds more than is required, and that results in an overpayment of tax, the foreign recipient may file a claim for refund.

Net-basis taxation of income from conduct of a trade or business within the United States

Income that is effectively connected with the conduct of a trade or business within the United States ("ECI") generally is subject to tax on a net basis under the same U.S. tax rules and rates that apply to business income earned by U.S. persons.[39]

U.S. trade or business

A foreign person is subject to U.S. tax on a net basis if the person is engaged in a U.S. trade or business. Partners in a partnership and beneficiaries of an estate or trust are treated as engaged in a U.S. trade or business if the partnership, estate, or trust is so engaged.[40]

Whether a foreign person is engaged in a U.S. trade or business is a factual question that has generated a significant amount of case law. Basic issues include whether the activity rises to the level of a trade or business, whether a trade or business has sufficient connections to the United States, and whether the relationship between the foreign person and persons performing

[36] Secs. 1441 and 1442.

[37] A withholding agent includes any U.S. or foreign person that has the control, receipt, custody, disposal, or payment of an item of income of a foreign person subject to withholding. Treas. Reg. sec. 1.1441-7(a). See also Treas. Reg. sec. 1.1441-6 (providing, in part, the requirements (including documentary evidence) that must be satisfied for purposes of claiming the benefits of an exemption from or reduced rate of withholding under a treaty).

[38] Sec. 1462.

[39] Secs. 871(b) and 882.

[40] Sec. 875.

activities in the United States for the foreign person is sufficient to attribute those activities to the foreign person.

The trade or business rules differ from one activity to another. The term "trade or business within the United States" expressly includes the performance of personal services within the United States.[41] Detailed rules govern whether trading in stock or securities, or in commodities, constitutes the conduct of a U.S. trade or business.[42] A foreign person who trades in stock or securities, or in commodities, in the United States through an independent agent generally is not treated as engaged in a U.S. trade or business if the foreign person does not have an office or other fixed place of business in the United States through which trades are carried out. A foreign person who trades stock or securities, or commodities, for the person's own account also generally is not considered to be engaged in a U.S. trade or business so long as the foreign person is not a dealer in stock or securities, or in commodities. This may be the case even in the presence of an office or fixed place of business in the United States through which trades for the person's own account are carried out.

For eligible foreign persons, U.S. bilateral income tax treaties restrict the application of net-basis U.S. taxation. Under each treaty, the United States is permitted to tax business profits only to the extent those profits are attributable to a U.S. permanent establishment of the foreign person. The threshold level of activities that constitute a permanent establishment is generally higher than the threshold level of activities that constitute a U.S. trade or business. For example, a permanent establishment typically requires the maintenance of a fixed place of business over a significant period of time.

Effectively connected income

A foreign person that is engaged in the conduct of a trade or business within the United States is subject to U.S. net-basis taxation on ECI from that trade or business. Specific statutory rules govern whether income is ECI.[43]

In general, for a foreign person engaged in the conduct of a U.S. trade or business, all income, gain, or loss from sources within the United States is treated as ECI.[44]

In the case of U.S.-source capital gain and U.S.-source income of a type that would be subject to gross-basis U.S. taxation, the factors taken into account in determining whether the income is ECI include whether the income is derived from assets used in or held for use in the conduct of the U.S. trade or business, and whether the activities of the U.S. trade or business were a material factor in the realization of the amount (the "asset use" and "business activities"

[41] Sec. 864(b).

[42] Sec. 864(b)(2) and Treas. Reg. sec. 1.864-2(c) and (d).

[43] Sec. 864(c).

[44] Sec. 864(c)(3).

tests).[45] Under the asset use and business activities tests, due regard is given to whether such asset or such income, gain, deduction, or loss was accounted for through the trade or business.

A foreign person that is engaged in a U.S. trade or business may have limited categories of foreign-source income that are considered to be ECI.[46] A foreign tax credit may be allowed with respect to foreign income tax imposed on such income.[47] Foreign-source income not included in one of those categories generally is exempt from U.S. tax.

In determining whether a foreign person has a U.S. office or other fixed place of business, the office or other fixed place of business of an independent agent generally is disregarded. The place of business of an agent other than an independent agent acting in the ordinary course of business is not disregarded, however, if the agent either has the authority (regularly exercised) to negotiate and conclude contracts in the name of the foreign person or has a stock of merchandise from which the agent regularly fills orders on behalf of the foreign person.[48] If a foreign person has a U.S. office or fixed place of business, income, gain, deduction, or loss is not considered attributable to the office unless the office is a material factor in the production of the income, gain, deduction, or loss and the office regularly carries on activities of the type from which the income, gain, deduction, or loss is derived.[49]

Certain sales and other dispositions

Income, gain, deduction, or loss for a particular year generally is not treated as ECI if the foreign person is not engaged in a U.S. trade or business in that year.[50] If, however, income or gain taken into account for a taxable year is attributable to activity in a prior taxable year (i.e., such as the sale or exchange of property, the performance of services, or any other transaction),

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[45] Sec. 864(c)(2).

[46] A foreign person's income from foreign sources generally is considered to be ECI only if the person has an office or other fixed place of business within the United States to which the income is attributable and the income is in one of the following categories: (1) rents or royalties for the use of patents, copyrights, secret processes or formulas, goodwill, trademarks, trade brands, franchises, or other like intangible properties derived in the active conduct of the trade or business; (2) interest or dividends derived in the active conduct of a banking, financing, or similar business within the United States or received by a corporation the principal business of which is trading in stocks or securities for its own account; or (3) income derived from the sale or exchange (outside the United States), through the U.S. office or fixed place of business, of inventory or property held by the foreign person primarily for sale to customers in the ordinary course of the trade or business, unless the sale or exchange is for use, consumption, or disposition outside the United States and an office or other fixed place of business of the foreign person in a foreign country participated materially in the sale or exchange. Foreign-source dividends, interest, and royalties are not treated as ECI if the items are paid by a foreign corporation more than 50 percent (by vote) of which is owned directly, indirectly, or constructively by the recipient of the income. Sec. 864(c)(4)(B) and (D)(i).

[47] See sec. 906.

[48] Sec. 864(c)(5)(A).

[49] Sec. 864(c)(5)(B).

[50] Sec. 864(c)(1)(B).

the income or gain is ECI if the income or gain would have been ECI in the prior year.[51] If any property ceases to be used or held for use in connection with the conduct of a U.S. trade or business and the property is disposed of within 10 years after the cessation, the income or gain attributable to the disposition of the property is ECI if the income or gain would have been ECI had the disposition occurred immediately before the property ceased to be used or held for use in connection with the conduct of a U.S. trade or business.[52]

Allowance of deductions

Taxable ECI is computed by taking into account deductions associated with gross ECI. Regulations address the allocation and apportionment of deductions between ECI and other income. Certain deductions may be allocated and apportioned on the basis of units sold, gross sales or receipts, costs of goods sold, profits contributed, expenses incurred, assets used, salaries paid, space used, time spent, or gross income received. Specific rules provide for the allocation and apportionment of research and experimental expenditures, legal and accounting fees, income taxes, losses on dispositions of property, and net operating losses. In general, interest is allocated and apportioned based on assets rather than income.

Sales of partnership interests

Gain or loss from the sale or exchange of a partnership interest is treated as effectively connected with a U.S. trade or business to the extent that the transferor would have had effectively connected gain or loss had the partnership sold all of its assets at fair market value as of the date of the sale or exchange.[53] Any gain or loss from such hypothetical asset sale by the partnership must be allocated to interests in the partnership in the same manner as non-separately stated income and loss.

The transferee of a partnership interest must withhold 10 percent of the amount realized on the sale or exchange of a partnership interest unless the transferor certifies that the sale qualifies for an exception from withholding, *e.g.*, that the transferor is not a nonresident alien individual or foreign corporation or that there is no realized gain from the sale.[54] If the transferee fails to withhold the correct amount, the partnership is required to deduct and withhold from distributions to the transferee partner an amount equal to the amount the transferee failed to withhold.[55]

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[51] Sec. 864(c)(6).

[52] Sec. 864(c)(7).

[53] Sec. 864(c)(8)(B).

[54] Sec. 1446(f)(1).

[55] Sec. 1446(f)(4); Treas. Reg. sec. 1.1446(f)-2(b).

Foreign Investment in Real Property Act ("FIRPTA")

A foreign person's gain or loss from the disposition of a U.S. real property interest ("USRPI") is treated as ECI.[56] Thus, a foreign person subject to tax on such a disposition is required to file a U.S. tax return. In the case of a foreign corporation, the gain from the disposition of a USRPI may also be subject to the branch profits tax at a 30-percent rate (or lower treaty rate). Certain sales of USRPI are exempt from this tax. For example, qualified foreign pension funds ("QFPF") are not treated as a nonresident alien individual or foreign corporation subject to tax under FIRPTA,[57] foreign governments are exempt from FIRPTA tax on gain from certain sales of stock of U.S. real property holding corporations,[58] and equity interests in "domestically controlled" REITs are not USRPIs.[59]

The payor of income that FIRPTA treats as ECI is generally required to withhold U.S. tax from the payment.[60] The foreign person can request a refund with its U.S. tax return, if appropriate, based on that person's overall tax liability for the taxable year.

Special measures to address potential tax avoidance

Base erosion and anti-abuse tax

The base erosion and anti-abuse tax (the "BEAT") is an additional tax imposed on certain multinational corporations with respect to payments to foreign affiliates.[61]

The BEAT applies only to corporate taxpayers with average annual gross receipts for the three-taxable-year period ending with the preceding taxable year in excess of $500 million, and is determined, in part, by the extent to which a taxpayer has made payments to foreign related parties.[62] The BEAT generally does not apply to taxpayers for which reductions to taxable income ("base erosion tax benefits") arising from payments to foreign related parties ("base erosion payments") are less than three percent of total deductions (*i.e.*, a "base erosion percentage" of less than three percent).[63]

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[56] Sec. 897(a).

[57] Sec. 897(l)(1).

[58] Treas. Reg. sec. 1.892-3T(a).

[59] Sec. 897(h)(2).

[60] Sec. 1445 and regulations thereunder.

[61] Sec. 59A.

[62] For this purpose, a related party is, with respect to the taxpayer, any 25-percent owner of the taxpayer; any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer or any 25-percent owner of the taxpayer; and any other person who is related (within the meaning of section 482) to the taxpayer. Sec. 59A(g). The 25-percent ownership threshold is determined by vote or value.

[63] Sec. 59A.

For a taxpayer subject to the BEAT (an "applicable taxpayer"), the additional tax (the "base erosion minimum tax amount" or "BEAT liability") for the year generally equals the excess, if any, of 10 percent of its modified taxable income over an amount equal to its regular tax liability reduced (but not below zero) by the sum of a certain tax credits.[64]

Branch profits taxes

The branch profits tax generally seeks to equalize the tax treatment of a dividend to a foreign person paid from a domestic branch with that paid from a domestic corporation. A domestic corporation is subject to U.S. income tax on its net income. The earnings of the domestic corporation may be subject to a second tax, this time at the shareholder level, when dividends are paid. When the shareholders are foreign, the second-level tax may be collected by withholding. Unless the portfolio interest exemption or another exemption applies, interest payments made by a domestic corporation to foreign creditors are likewise subject to withholding tax. To approximate those second-level withholding taxes imposed on payments made by domestic subsidiaries to their foreign shareholders, the United States taxes a foreign corporation that is engaged in a U.S. trade or business through a U.S. branch on amounts of U.S. earnings and profits that are shifted (to the head office) out of, or amounts of interest that are deducted by, the U.S. branch of the foreign corporation.[65] Those branch taxes may be reduced or eliminated under an applicable income tax treaty.[66]

Hybrid arrangements

Hybrid arrangements exploit differences in the tax treatment of a transaction or entity under the laws of two or more tax jurisdictions to achieve tax benefits, including double nontaxation and deferral. Special rules seek to combat the use of such arrangements. These

[64] Sec. 59A(e). For taxable years beginning after December 31, 2025, the 10-percent rate on modified taxable income is increased to 12.5 percent, and regular tax liability is reduced (and the base erosion minimum tax amount is therefore increased) by the sum of all the taxpayer's income tax credits for the taxable year. Sec. 59A(b)(2). In addition, special rules with respect to banks and securities dealers provide that for purposes of determining whether they are subject to the BEAT, banks and securities dealers are subject to a base erosion percentage threshold of two percent (rather than three percent), and if that threshold is met, such persons are subject to a tax rate on its modified taxable income that is one-percentage point higher than the generally applicable tax rate. Secs. 59A(b)(3) and 59A(e)(1)(C).

[65] Under the branch profits tax, the United States imposes a tax of 30 percent on a foreign corporation's "dividend equivalent amount." Sec. 884(a). The dividend equivalent amount generally is the earnings and profits of a U.S. branch of a foreign corporation attributable to its ECI. Sec. 884(b).

Interest paid by a U.S. trade or business of a foreign corporation generally is treated as if paid by a domestic corporation and therefore generally is subject to 30-percent withholding tax if paid to a foreign person. Sec. 884(f)(1)(A). Certain "excess interest" of a U.S. trade or business of a foreign corporation is treated as if paid by a U.S. corporation to a foreign parent and, therefore, also may be subject to 30-percent withholding tax. Sec. 884(f)(1)(B). For this purpose, excess interest is the excess of the interest expense of the foreign corporation apportioned to the U.S. trade or business over the amount of interest paid by the trade or business.

[66] See Treas. Reg. secs. 1.884-1(g) and -4(b)(8).

rules include denying deductions relating to certain interest and royalty payments.[67] Specifically, no deduction is allowed for any "disqualified related party amount"[68] that is paid or accrued pursuant to a hybrid transaction[69] or that is paid or accrued by, or to, a hybrid entity.[70]

4. Resolving Overlapping or Conflicting Jurisdiction to Tax

Multinational enterprises operating in multiple countries may find that the same item of income is subject to tax under the rules of two or more jurisdictions. Such double taxation may be mitigated by domestic laws permitting credit or deduction for income taxes paid to another jurisdiction or by bilateral tax treaties. Another related objective of such treaties is the removal of barriers to trade, capital flows, and commercial travel that may be caused by overlapping tax jurisdictions and by the burdens of complying with the tax laws of a jurisdiction when a person's contacts with, and income derived from, that jurisdiction are minimal.

Relief from double taxation by statute

Subject to certain limitations, U.S. citizens, resident individuals, and domestic corporations are allowed a credit for foreign income taxes they pay. In addition, a domestic corporation is allowed a credit for foreign income taxes paid by a CFC with respect to income included by the corporation as subpart F income and GILTI; such taxes are deemed to have been paid by the domestic corporation for purposes of calculating the foreign tax credit.

The foreign tax credit generally is limited to a taxpayer's U.S. tax liability on its foreign-source taxable income. The limit is intended to ensure that the credit mitigates double taxation of foreign-source income without offsetting U.S. tax on U.S.-source income. The limit is computed by multiplying a taxpayer's total pre-credit U.S. tax liability for the year by the ratio of the taxpayer's foreign-source taxable income for the year to the taxpayer's total taxable income for the year. If the total amount of foreign income taxes paid and deemed paid for the year

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[67] Sec. 267A; see also sec. 245A(e) (addressing hybrid dividends).

[68] A disqualified related party amount is any interest or royalty paid or accrued to a related party to the extent that: (1) there is no corresponding inclusion to the related party under the tax law of the country of which such related party is a resident for tax purposes or in which such related party is subject to tax, or (2) such related party is allowed a deduction with respect to such amount under the tax law of such country. Sec. 267A(b)(1). A disqualified related party amount does not include any payment to the extent such payment is included in the gross income of a U.S. shareholder under subpart F. In general, a related party is any person that controls, or is controlled by, the taxpayer, with control being direct or indirect ownership of more than 50 percent of the vote, value, or beneficial interests of the relevant person. Sec. 267A(b)(2).

[69] A hybrid transaction is any transaction, series of transactions, agreement, or instrument one or more payments with respect to which are treated as interest or royalties for Federal income tax purposes and which are not so treated for purposes of the tax law of the foreign country of which the recipient of such payment is resident for tax purposes or in which the recipient is subject to tax. Sec. 267A(c).

[70] A hybrid entity is any entity which is either: (1) treated as fiscally transparent for Federal income tax purposes but not so treated for purposes of the tax law of the foreign country of which the entity is resident for tax purposes or in which the entity is subject to tax or (2) treated as fiscally transparent for purposes of the tax law of the foreign country of which the entity is resident for tax purposes or in which the entity is subject to tax but not so treated for Federal income tax purposes. Sec. 267A(d).

exceeds the taxpayer's foreign tax credit limitation for the year, the taxpayer may (in certain cases) carry back the excess foreign taxes to the previous year and then carry forward any remaining excess to one of the 10 succeeding taxable years. No carryback or carryover of excess foreign tax credits are allowed in the GILTI foreign tax credit limitation category.

Bilateral treaties to relieve double taxation

The United States is a partner in numerous bilateral treaties that aim to avoid international double taxation and to prevent tax avoidance and evasion. The United States Model Income Tax Convention of 2016 ("Model Treaty") was published in 2016 and reflects the most recent comprehensive statement of U.S. policy with respect to tax treaties.[71] As explained in the Preamble published contemporaneously with the Model Treaty, the provisions therein included both refinements of provisions that have been included in U.S. tax treaties, as well as new provisions, not yet incorporated in a bilateral treaty, that deny treaty benefits on deductible payments of highly mobile income that are made to related persons that enjoy low or no taxation with respect to that income under a special tax regime.[72] To a large extent, the treaty provisions designed to carry out these objectives supplement U.S. tax law provisions having the same objectives; treaty provisions may modify the generally applicable statutory rules with provisions that take into account the particular tax system of the treaty partner.

The objective of limiting double taxation generally is accomplished in treaties through the agreement of each country to allocate taxing authority by limiting, in specified situations, its right to tax income earned within its territory by residents of the other country. For the most part, the various rate reductions and exemptions agreed to by the country in which income is derived (the "source country") in treaties are premised on the assumption that the country of residence of the taxpayer deriving the income (the "residence country") may tax the income at levels comparable to those imposed by the source country on its residents. Treaties also provide for the elimination of double taxation by requiring the residence country to allow a credit for taxes that the source country retains the right to impose under the treaty. In addition, in the case of certain types of income, treaties may provide for exemption by the residence country of income taxed by the source country.

Treaties define the term "resident" so that an individual or corporation generally will not be subject to tax as a resident by both countries. A "limitation on benefits" provision in treaties further determines whether a treaty resident is a qualified person permitted to receive treaty benefits. This provision limits the ability of third country residents to engage in treaty shopping by establishing conduit legal entities in either the United States or the treaty partner jurisdiction.

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[71] The Model Treaty has been updated periodically. The Model Treaty and its Preamble, as well as text of earlier Model Treaties, are available at https://home.treasury.gov/policy-issues/tax-policy/treaties.

[72] For example, the Model Treaty denies treaty benefits when U.S. source payments are made to a beneficial owner that benefits from a special tax regime, as defined in Article 3 (General Definitions), subparagraph (l) of paragraph 1; the benefits that may be denied include the reduced withholding rates on dividends, interest and royalties that are paid to persons that fail to satisfy the limitation on benefits requirements in Article 22 (Limitation on Benefits).

The provision sets forth objective tests that commonly include a publicly traded company test, an ownership and base erosion test, and an active trade or business test.

Treaties generally provide that neither country may tax business income derived by residents of the other country unless the business activities in the taxing jurisdiction are substantial enough to constitute a permanent establishment or fixed base in that jurisdiction, and the business income is attributable to that permanent establishment. As explained above, U.S. bilateral income tax treaties restrict the application of net-basis U.S. taxation by requiring a threshold for permanent establishment status that is higher than that required to constitute a U.S. trade or business under the Code. As a result, a foreign corporation engaged in a U.S. trade or business but not through a permanent establishment generally would not be taxable in the United States under an applicable treaty. The term "attributable to" is generally analogous to the "effectively connected" concept in section 864(c). Treaties also contain commercial visitation exemptions under which individual residents of one country performing personal services in the other are not required to pay tax in that other country unless their contacts exceed certain specified minimums (for example, presence for a set number of days or earnings in excess of a specified amount).

Treaties address the taxation of passive income such as dividends, interest, and royalties from sources within one country derived by residents of the other country either by providing that the income is taxed only in the recipient's country of residence or by reducing the rate of the source country's withholding tax imposed on the income. In this regard, the United States agrees in its tax treaties to reduce its 30-percent withholding tax (or, in the case of some income, to eliminate it entirely)[73] in return for reciprocal treatment by its treaty partner. In particular, under the Model Treaty and many U.S. tax treaties, source-country taxation of most payments of interest and royalties is eliminated, and some recent U.S. treaties forbid the source country from imposing withholding tax on dividends paid by an 80-percent owned subsidiary to a parent corporation organized in the other treaty country.

In its treaties, the United States, as a matter of policy, generally retains the right to tax its citizens and residents on their worldwide income as if the treaty had not come into effect. The United States also provides in its treaties that it allows a credit against U.S. tax for income taxes paid to the treaty partners, subject to the various limitations of U.S. law.

[73] The rates agreed upon in U.S. bilateral tax treaties for income other than personal services income is found in "Table 1. Tax Rates on Income Other Than Personal Service Income Under Chapter 3, Internal Revenue Code, and Income Tax Treaties (Rev. May 2023)" at https://www.irs.gov/individuals/international-taxpayers/tax-treaty-tables.

Description of Proposal

Under the proposal, income from U.S. sources earned or received by qualified residents of Taiwan is entitled to certain benefits. These benefits include reduced tax rates for income otherwise subject to the 30-percent gross-basis tax; with respect to income effectively connected with a U.S. trade or business, taxation of only that income effectively connected with a U.S. permanent establishment; and preferential treatment of wages and related income earned by such qualified residents. The 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 proposal requires general anti-abuse standards similar to those in section 894(c) to deny benefits when payments are made through hybrid entities. The proposed rules are applicable only if reciprocal provisions apply to U.S. persons with respect to income sourced in Taiwan.

Treatment of certain income from U.S. sources

Income generally subject to taxation on a gross basis

Interest, royalties and gains

Tax on U.S.-source interest (other than original issue discount interest), royalties, amounts described in section 871(a)(1)(C), and gains described in section 871(a)(1)(D) that are paid to or received by a qualified resident of Taiwan is reduced to 10 percent. The treatment of these types of income is consistent with that provided under Model Treaty Articles 11 (Interest), 12 (Royalties), and 13 (Gains).

Dividends

Tax on U.S.-source dividends that are paid to or received by a qualified resident of Taiwan is reduced to 15 percent. The reduction in rate follows the treaty benefits provided under Model Treaty Article 10 (Dividends).

The reduced rate does not apply to amounts subject to FIRPTA; payments between an expatriated entity and a related party; any amount which is included in income under section 860C to the extent that such amount does not exceed an excess inclusion with respect to a REMIC; and dividends paid by a REIT other than qualified REIT dividends. A dividend paid by a REIT is a qualified REIT dividend if the dividend is paid with respect to a class of shares that is publicly traded and the owner of the dividend holds not more than five percent of any class of shares in the REIT.

Certain qualified residents of Taiwan that are taxable as corporations in Taiwan may be eligible for a further reduction in the tax rate with respect to dividends, provided that certain holding period and ownership thresholds are met. To qualify for the 10-percent tax rate on dividends, at all times during the 12-month period ending on the date on which the stock in a corporation becomes ex-dividend with respect to such dividend, the dividend recipient must be a qualified resident of Taiwan and directly own at least 10 percent of the vote and value of the total outstanding shares of stock in such corporation. For purposes of the 12-month period, a dividend recipient shall be permitted to tack the holding period of an entity taxed as a corporation in Taiwan from whom the dividend recipient acquired such stock, if that entity was a qualified

resident of Taiwan and a connected person to the dividend recipient at the time the share was acquired. Persons are "connected persons" if one person owns, directly or indirectly, at least 50 percent of the beneficial interest in the other (or, if a corporation, at least 50 percent of the vote and value of its shares); a third person owns, directly or indirectly, at least 50 percent of the beneficial interest in each person (or, if a corporation, at least 50 percent of the vote and value of its shares). In addition, a person may be a connected person if, based on all the relevant facts and circumstances, one has control of the other, or both are under the control of the same persons. In no event is a dividend paid by a RIC or a REIT eligible for this further reduction in tax rate.

Income from employment

Qualified wages for personal services within the United States generally are not subject to U.S. income tax if paid by an employer to a qualified resident of Taiwan who is either not a U.S. resident or is employed as a member of the regular component of a ship or aircraft operated in international traffic. The definition of qualified wages follows the definition in Model Treaty Article 14 (Income from Employment) to include amounts paid by or on behalf of a non-U.S. person (and not borne by a U.S. permanent establishment) in the form of wages, salaries, or similar remunerations with respect to personal services performed in the United States. 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 United States, any State, or any U.S. possession, or other amounts specified in regulations or guidance are not included within the scope of qualified wages.

Income effectively connected with a U.S. permanent establishment

Income of a qualified resident of Taiwan that is effectively connected with a U.S. permanent establishment is subject to tax on a net basis (under section 1 for noncorporate persons and section 11 for corporations). In addition, such ECI continues to be subject to the alternative minimum tax and BEAT, if applicable. In determining taxable income for these purposes, gross income includes only gross income which is effectively connected with the permanent establishment.

Various rules of special application are provided for determining whether rules regarding ECI are modified. First, under FIRPTA, to ensure that the ultimate substantive tax treatment of FIRPTA income is unchanged, references to "trade or business within the United States" are changed to refer to carrying on a trade or business through a U.S. permanent establishment. The branch profits tax applicable to ECI (including the branch profits tax on interest) is reduced to 10 percent, thus matching the reduced rate for dividends and interest that would otherwise apply. Finally, the proposal adopts the anti-abuse standards of section 894(c) to deny benefits when payments are made through hybrid entities.

Definition of U.S. permanent establishment

A U.S. permanent establishment is a fixed place of business through which a qualified resident of Taiwan conducts an active trade or business within the United States. A U.S. permanent establishment need not be subject to corporate tax in Taiwan to qualify. The fixed place may include a place from which a trade or business is managed, as well as an office,

factory, workshop, branch, site in which minerals are extracted, or other sites. Such a fixed place generally does not include sites maintained for a limited purpose such as storage, display, or auxiliary or preparatory work; further, such a fixed place generally does not include a fixed place of business of an independent agent even if such agent habitually contracts on behalf of the foreign entity. Following Model Treaty Article 5 (Permanent Establishment), special rules on the extent to which a temporary project may constitute a fixed place of business are provided.

Qualified resident of Taiwan

Following Model Treaty Article 4 (Resident), the proposal defines residence for both individuals and entities. In general, a "qualified resident of Taiwan" is entitled to the benefits of the new provision. The term generally includes any person that is not a U.S. person who is liable for tax in Taiwan and establishes domicile, residence, management or control, or place of incorporation in Taiwan. Rules specific to individuals, as well as specific limitations on eligibility of corporations, are provided.

Individuals

In general, the Code provides that the residence of an individual other than a U.S. citizen be determined by application of section 7701(b). If such a person also has met the foregoing criteria for status as a qualified resident of Taiwan, such individual may be a dual resident, whose residence must be resolved after further inquiry.

Resolving residence of a dual resident

The residence of a dual resident is resolved by applying a hierarchy of three tests based on the individual's permanent home, center of vital interests, or habitual abode. The first inquiry is where the individual has a permanent home. If the individual has a permanent home in Taiwan but not the United States, the permanent home is determinative of residence. If a person has permanent homes in both jurisdictions, the second inquiry is whether the individual has a center of vital interests in Taiwan. If the person has a permanent home in both jurisdictions and the center of vital interests cannot be determined, or has no permanent home in either jurisdiction, then the individual's residence is based on the individual's habitual abode. If an individual's residence cannot be determined by habitual abode, that person is not a qualified resident of Taiwan for purposes of claiming benefits under this proposal.

Rules for determining residence of an entity

Entities taxed as corporations in Taiwan are treated as qualified residents of Taiwan if they meet an ownership and income test, a publicly traded in Taiwan test, or a qualified subsidiary test. In addition, qualified items of income are treated as income of a qualified resident of Taiwan.

Ownership and income thresholds for non-publicly traded entities

The ownership and income tests require that at least 50 percent by vote and value of the entity is owned (directly or indirectly) by qualified residents of Taiwan and that less than 50 percent of gross income of the entity (and, in the case of an entity that is a member of a tested

group, less than 50% of the tested group's gross income) is in the form of payments deductible for purposes of income taxes imposed by Taiwan to persons who are neither qualified residents of Taiwan nor certain U.S. persons whose connection to the United States meets comparable tests, as determined by the Secretary. Indirect ownership for purposes of the ownership threshold requires that all intermediate owners are qualifying intermediate owners; that is, a qualified resident of Taiwan or resident of a foreign country with which the United States has a comprehensive tax treaty for the relief of double taxation, provided that the foreign country is not a country of concern within the meaning of that term as included in the CHIPS Act of 2022.[74]

Certain deductible payments are not included in gross income for purposes of the income test. Such deductible payments do not include arm's length payments by an entity in the ordinary course of an active trade or business for services or tangible property and do not include certain intragroup transactions within a tested group. A tested group is defined as a group of two or more corporations that participate in a group for tax consolidation, fiscal unity or other plan that requires the corporations to share profits and losses, or that share losses through group relief or other loss sharing regimes.

Publicly traded test

Alternatively, an entity may establish itself as a qualified resident of Taiwan as a publicly traded test. An entity is considered to be publicly traded in Taiwan if its principal class of shares (and any disproportionate class of shares) is primarily and regularly traded on an established securities market in Taiwan. If such shares of an entity are not primarily traded in Taiwan but the entity has its primary place of management and control in Taiwan and its principal class of shares (and any disproportionate class of shares) is regularly traded there on an established securities market, the entity meets the publicly traded test.

Qualified subsidiary test

An entity that does not meet the above ownership and income test or publicly traded test may nonetheless be eligible for the benefits described herein if that entity meets the qualified subsidiary test. Entities that meet the income requirements of the ownership and income tests may qualify if they are owned at least 50 percent by five or fewer corporations that themselves satisfy the publicly traded test or are U.S. persons, the shares of which are primarily and regularly traded in the United States on an established securities market. For this purpose, the indirect ownership of the qualified subsidiary is met only if all intermediate owners are themselves qualifying intermediate owners, which, for purposes of the qualified subsidiary test only, may include U.S. persons that satisfy tests comparable to the test for a qualified resident of Taiwan, as determined by the Secretary. In addition, qualifying intermediate owners also include a qualified resident of Taiwan or a resident of a foreign country with which the United States has a comprehensive tax treaty for the relief of double taxation and is not a country of concern.

[74] Section 103(a)(4) of the CHIPS Act of 2022.

Active trade or business test

Even if an entity is not otherwise a qualified resident of Taiwan, a qualified item of income from the United States that is derived by a person subject to income tax under Taiwan law (and that is not a U.S. person) shall be treated as income of a qualified resident of Taiwan. A qualified item of income includes any item of income which emanates from, or is incidental to, the conduct of an active trade or business in Taiwan and, if such person derives an item of income from a trade or business activity conducted in the United States, or derives an item of income arising in the United States from a connected person, the trade or business activity in Taiwan to which the item relates is required to be substantial in relation to the same or complementary trade or business activity in the United States. The trade or business activity in the United States may be carried on by such person or any connected person. The active trade or business test is not available for any item of income derived by an entity if at least 50 percent (by vote or value) of such entity is owned (directly or indirectly) or controlled by residents of a foreign country of concern.

Reciprocity requirements

Before any of the foregoing rules are applicable in any taxable period, the Secretary must determine that certain reciprocity requirements are met, ensuring that U.S. persons subject to income tax in Taiwan are afforded reciprocal benefits. Reciprocity may be determined in any appropriate manner.

Regulations

The proposal grants the Secretary authority to promulgate regulations on a variety of enumerated issues. These issues include regulations or guidance for determining what constitutes a U.S. permanent establishment of a qualified resident of Taiwan and income that is effectively connected to such a permanent establishment; preventing the abuse of the provisions of this section by persons who are not (or who should not be treated as) qualified residents of Taiwan; requirements for record keeping and reporting; rules to assist withholding agents or employers in determining whether a foreign person is a qualified resident of Taiwan or whether reporting is required for a payment; the application of the provision to ownership thresholds attributable to stock held by predecessor owners; determining what amounts are to be treated as qualified wages; defining established securities markets for the limitation on benefits provisions; the application of the legislation to qualified residents of Taiwan that are partners of a partnership or beneficiaries of an estate or trust; determining ownership interests held by foreign countries of concern; determining what items are to be treated as qualified items of income under the active trade or business provisions of the limitation of benefits to prevent abuse of the purposes of this section; and determining the starting and ending dates for periods with respect to the reciprocity requirements. To the extent practical, the regulations shall be consistent with the relevant Model Treaty provisions.

Effective Date

The proposal is effective on date of enactment, subject to satisfaction of the contingent reciprocity standards being met.

ESTIMATED REVENUE EFFECT OF "UNITED STATES-TAIWAN EXPEDITED DOUBLE-TAX RELIEF ACT"

Consistent with estimating conventions, the staff of the Joint Committee on Taxation estimates that the "United States-Taiwan Expedited Double-Tax Relief Act" to have no effect on Federal fiscal year budget receipts for the period 2023 through 2033.