



American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

March 1, 2017

The Honorable Bob Corker
Chairman
Senate Committee on Foreign Relations
425 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Ben Cardin
Ranking Member
Senate Committee on Foreign Relations
509 Hart Senate Office Building
Washington, DC 20510

RE: United States Senate Approval of Pending Income Tax Treaties and Protocols

Dear Chairman Corker and Ranking Member Cardin:

The American Institute of CPAs (AICPA) is writing to urge the United States Senate (“Senate”) to approve the bilateral income tax treaties and protocols currently pending before them. This letter was developed by the AICPA International Tax Technical Resource Panel, and approved by the Tax Executive Committee.

Background

The AICPA applauds the Senate Committee on Foreign Relations (“Committee”) for approving new income tax treaties with Chile, Hungary, and Poland, protocols to the income tax treaties with Japan, Luxembourg, Spain and Switzerland, as well as a protocol to the multilateral tax treaty on assistance in administrative matters during the 114th Congress. We encourage the Committee to approve these still pending treaties and protocols at an early date during the new 115th Congress. Further, we encourage the committee to also approve the recently signed income tax treaty with Vietnam when received from the Department of the Treasury (“Treasury”).

The full Senate has not approved any income tax treaty or protocol since 2010. The AICPA believes income tax treaties are vital to United States (U.S.) economic growth as well as U.S. trade and tax policy. Tax treaties assist in harmonizing the tax systems of treaty nations and in providing certainty on key issues faced by businesses of all sizes that operate internationally. Tax treaties are also important tools used to promote a competitive environment to attract foreign investment into the U.S.

Tax treaties apply to both companies and individuals who are engaged in cross-border transactions. As cross-border trade and investment activities expand, tax treaties remain pivotal in preventing the imposition of excessive or inappropriate taxes on foreign trade and investment.

In order to serve their intended purpose, tax treaties require updating to stay current with developments in the global economy. The addition of new treaties also helps foster and expand the international trade network with which the U.S. does business, and leads directly to economic growth and job creation in the U.S. The lack of action by the full Senate to ratify these treaties

and protocols impedes the ability of Treasury to keep U.S. tax treaties in line with changes in policy and bilateral relationships. Outdated tax treaties increase the potential for double taxation as well as hinder the ability of the Internal Revenue Service (IRS) and foreign tax authorities to cooperate in the fair and efficient enforcement of tax laws.

Analysis

Several income tax treaties and protocols have been awaiting approval by the full Senate since 2010. The AICPA believes it is important that the United States' treaty partners have confidence in the ability of the U.S. to expeditiously ratify negotiated income tax treaties and protocols. Treaty partners' confidence is potentially eroded when treaty ratification is delayed or indefinitely suspended, which in turn impedes the implementation of effective tax policy. Also, if the U.S. is deemed unreliable in terms of its ability to ratify tax treaties in a timely manner, a negative impact on current and future tax treaty negotiations might occur. The lack of tax treaty ratification could make it more difficult for the U.S. to reach favorable agreements with major trading partners as well as hamper the ability of tax treaty negotiators to secure benefits for U.S. taxpayers and facilitate investment into the U.S.

Tax treaties also play an important role in preventing tax evasion through facilitation of exchange of information between tax authorities. Treaty partners can generally request certain information from each other that is foreseeably relevant for the proper administration of the tax law. In order to ensure the effective administration of the U.S. tax law, the ratification of tax treaties is vital. These types of provisions are in the government's best interest and enlist the support of the United States' treaty partners in facilitating the exchange of information to prevent tax evasion, thus protecting innocent taxpayers from excess taxation caused by those who choose to illegally opt out of the U.S. worldwide tax system.

Tax treaties benefit the U.S. economy by making U.S. enterprises more competitive when conducting their businesses abroad, by making the U.S. more attractive for investment by foreign enterprises, and by providing nonresident companies and individuals greater certainty on issues involving cross-border transactions.

Income tax treaties play an important role in promoting U.S. bilateral trade and investment, and are important tools used to protect U.S. businesses from double taxation on the income earned from doing business in foreign markets. Tax treaties mitigate double taxation in several ways: reducing withholding taxes, crediting foreign taxes and allowing access to a process of principled intergovernmental negotiation to minimize the potential for double taxation or taxation otherwise inconsistent with the treaties. In order to prevent abuse, modern tax treaties limit benefits to qualified residents of the treaty countries. For instance, the treaties with Hungary and Poland include a modern limitation on benefits article that will close a longstanding treaty shopping loophole.

The U.S. network of approximately sixty bilateral income tax treaties plays a significant role in advancing the economic interests of the U.S. in the global economy.

Benefits Related to Protocols and Tax Treaties Awaiting Approval by the Full Senate

The following are limited, non-exclusive examples illustrating some of the significant benefits that several of the protocols and income tax treaties awaiting Senate approval would provide.

1. Tax Convention with Chile

The proposed income tax treaty and related protocol between the U.S. and Chile,¹ signed in 2010, would represent a significant inroad into the South American region. If ratified, the treaty would become the first with Chile, and the second U.S. income tax treaty in South America. One of the principal purposes of the proposed tax treaty is to prevent avoidance or evasion of taxes of both countries. It is also intended to promote closer economic cooperation between the two countries and eliminate possible barriers to trade and investment by including proposed reduced and zero rate withholding tax in some cases on interest and dividends.

2. Tax Convention with Hungary

The existing income tax treaty with Hungary was signed by the U.S. in 1979. The proposed income tax treaty with Hungary,² signed in 2010, would bring the existing treaty up-to-date by closing an important loophole. This loophole currently allows non-residents of the two treaty partners to obtain U.S. tax benefits by inserting into their structures, Hungarian companies with no economic substance with the principal purpose of providing access to the treaty for those non-residents.

3. Tax Convention with Poland

The proposed tax treaty with Poland³ would modernize the current treaty, concluded in 1974. Largely based on the policies of the 2006 U.S. Model Treaty, the proposed treaty contains an updated Limitation on Benefits article designed to reduce instances of treaty shopping. In addition to maintaining or lowering withholding tax rates applicable to dividends, interest and royalties, the treaty would also bring certain aspects of the permanent establishment rules into accord with approaches used in other modern treaties.

¹ Convention between the Government of the United States of America and the Government of the Republic of Chile for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, with Protocol, signed at Washington February 4, 2010, as corrected by exchanges of notes effected February 25, 2011 and February 10 and 21, 2012, with related agreement, effected by exchange of notes on February 4, 2010 (Treaty Doc.: 112-8).

² Convention between the Government of the United States of America and the Government of the Republic of Hungary for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Budapest February 4, 2010, with related exchange of notes (Treaty Doc.: 111-7).

³ Convention between the United States of America and the Republic of Poland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed on February 13, 2013, at Warsaw (Treaty Doc.: 113-5).

4. Protocol Amending the Tax Convention with Luxembourg

The U.S. has an existing treaty with Luxembourg⁴ which was signed in 1996. The protocol currently pending, which was signed in 2009, if ratified, would amend the existing tax treaty by updating the U.S. information exchange provisions with that country.

5. Protocol Amending the Tax Convention with the Swiss Confederation

The U.S. has negotiated a Swiss Protocol⁵ that, if ratified, would specifically protect Americans against indiscriminate searches of information by either country by limiting the administrative assistance to individual cases. It would also bring the Exchange of Information article up-to-date to aid the U.S. in combatting tax evasion by U.S. persons. The Swiss Protocol was ratified by Switzerland in 2012.

6. Protocol Amending the Tax Convention with Japan

The U.S. has negotiated a Japan Protocol⁶ that, if ratified, would further extend reduced withholding tax rates to additional categories of dividend and interest payments. It would also provide for mandatory arbitration of certain cases that the competent authorities are unable to resolve after a reasonable period of time. The protocol also includes modernized tax information exchange consistent with the U.S. Model Treaty and international standards.

Conclusion

The AICPA believes that income tax treaties promote efficient tax administration and reduce barriers to trade that can help the U.S. job market flourish by paving the way for economic growth. Furthermore, treaties promote closer economic cooperation between the U.S. and its tax treaty partners, promote fairer global competition, and eliminate possible barriers to trade and investment caused by overlapping taxing jurisdictions.

Until 2010, income tax treaties and protocols were timely acted on by the Senate. We respectfully request prompt consideration and approval of these pending tax treaties and protocols.

⁴ Protocol Amending the Convention between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Luxembourg May 20, 2009, with related exchange of notes (Treaty Doc.: 111-8).

⁵ Protocol Amending the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, signed at Washington on October 2, 1996, signed at Washington September 23, 2009, with related exchanges of notes (Treaty Doc.: 112-1).

⁶ Protocol Amending the Convention between the Government of the United States of America and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and a related agreement entered into by an exchange of notes (together the "proposed Protocol"), both signed on January 24, 2013, at Washington, together with correcting notes exchanged March 9 and March 29, 2013 (Treaty Doc.: 114-1).

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We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. Please feel free to contact me at (408) 924-3508 or Annette.Nellen@sjsu.edu; Philip Pasmanik, Chair, AICPA International Taxation Technical Resource Panel, at (212) 686-7160, ext. 122 or Philip.Pasmanik@hertzherson.com; or Jonathan Horn, Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9204 or Jonathan.Horn@aicpa-cima.com.

Respectfully submitted,



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Chair, AICPA Tax Executive Committee

cc: Members of the Senate Committee on Foreign Relations