



**DESCRIPTION OF THE CHAIRMAN’S AMENDMENT
IN THE NATURE OF A SUBSTITUTE TO H.R. 5988**

Description of amendment

The House Committee on Ways and Means has scheduled a committee markup on November 30, 2023 of H.R. 5988, the “United States-Taiwan Expedited Double-Tax Relief Act.” The Chairman’s amendment in the nature of a substitute amends H.R. 5988, the United States-Taiwan Expedited Double-Tax Relief Act (“USTEDRA”), by redesignating the text as Title I and adding new Title II, the United States-Taiwan Tax Agreement Authorization Act (the “Authorization Act”). The Authorization Act authorizes the President to negotiate and enter into one or more non-self-executing tax agreements (in each case, the “Agreement”) to provide for bilateral tax relief with Taiwan beyond that provided for in section 894A (as added by USTEDRA) and prescribes the process for approving and implementing such an agreement, as described below.¹

Authorization to negotiate and enter into Agreement

After a determination by the Secretary of the Treasury that Taiwan has provided benefits to U.S. persons that are reciprocal to the benefits provided to qualified residents of Taiwan under section 894A, the President is authorized to negotiate and enter into the Agreement. Any provisions in the Agreement must conform with provisions customarily contained in U.S. bilateral income tax conventions, as exemplified by the 2016 U.S. Model Income Tax Convention, and the Agreement may not include elements outside the scope of the 2016 U.S. Model Income Tax Convention.

Notwithstanding such conformity, the Agreement may incorporate and restate provisions of any agreement, as well as existing U.S. law, addressing double taxation for residents of the United States and Taiwan. The Agreement shall include the following statement: “The Agreement is entered into pursuant to the United States-Taiwan Tax Agreement Authorization Act.” The Agreement is required to include a provision conditioning entry into force upon enactment of approval legislation and implementing legislation (as described below) and

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman’s Amendment in the Nature of a Substitute to H.R. 5988.* (JCX-55-23), November 29, 2023. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references in the document are to the Internal Revenue Code of 1986, as amended (the “Code”), unless otherwise stated.

confirmation by the Secretary of the Treasury that the relevant authority in Taiwan has approved and taken appropriate steps required to implement the Agreement.

Consultations with Congress

The Chairman's amendment requires the President to provide written notification to certain appropriate congressional committees of the commencement of negotiations with Taiwan at least 15 calendar days prior to commencing negotiations. In addition, no later than 90 days after commencing negotiations and every 180 days thereafter until the President enters into the Agreement, the President is required to provide a briefing to the appropriate congressional committees on the status of the negotiations, including a description of elements under negotiation.

The appropriate congressional committees include the Committee on Foreign Relations and the Committee on Finance of the Senate, as well as the Committee on Ways and Means of the House of Representatives.

During the course of negotiations with respect to the Agreement, the Secretary of the Treasury, in coordination with the Secretary of State, upon request, is required to meet with the chairman or ranking member of any of the appropriate congressional committees regarding negotiating objectives and the status of negotiations in progress. In addition, the Secretaries must closely and timely consult with the appropriate congressional committees, as well as keep such committees fully apprised of the negotiations. Such consultations are required to include the nature of the contemplated Agreement, how and to what extent the contemplated Agreement is consistent with the scope of the 2016 U.S. Model Income Tax Convention, and the implementation of the contemplated Agreement, including (i) the general effect of the contemplated Agreement on existing laws, (ii) proposed changes to any existing laws to implement the contemplated Agreement, and (iii) proposed administrative actions to implement the contemplated Agreement.

Approval and implementation of Agreement

The Agreement may not enter into force unless:

- the President publishes the text of the contemplated Agreement on a publicly available website of the Department of the Treasury at least 60 days before the day on which the President enters into the Agreement, and
- there is enacted into law, with respect to the Agreement, approval legislation and implementing legislation.

The President may provide for the Agreement to enter into force upon enactment of approval legislation and implementing legislation and confirmation by the Secretary of the Treasury that the relevant authority in Taiwan has approved and taken appropriate steps required to implement the Agreement. Approval legislation means legislation that approves the Agreement and implementing legislation means legislation that makes any changes to the Code necessary to implement the Agreement.

Submission of Agreement

The Chairman's amendment requires that no later than 270 days after the President enters into the Agreement, the President or the President's designee shall submit to Congress the final text of the Agreement and a technical explanation of the Agreement. In addition, no later than 270 days after the President enters into the Agreement, the Secretary of the Treasury shall submit to Congress a description of those changes to existing laws that the President considers would be required in order to ensure that the United States acts in a manner consistent with the Agreement, and a statement of anticipated administrative action proposed to implement the Agreement.

Consideration of approval legislation and implementing legislation

The Chairman's amendment requires that the approval legislation relating to the Agreement include the following text, "Congress approves the Agreement submitted to Congress pursuant to section 206 of the United States-Taiwan Tax Agreement Authorization Act on ____" with the blank space being filled with the appropriate date. The approval legislation is required to be referred to the Committee on Foreign Relations in the Senate and to the Committee on Ways and Means in the House of Representatives.

The implementing legislation is required to be referred to the Committee on Finance in the Senate and the Committee on Ways and Means in the House of Representatives.

Relationship of Agreement to Internal Revenue Code of 1986

The Chairman's amendment provides that the provisions of the Agreement or approval legislation, or the application of any such provision, that are inconsistent with the Code do not have effect. Nothing in the Authorization Act is intended to be construed to amend or modify any law of the United States or to limit any authority conferred under any law of the United States, unless specifically provided for in the Authorization Act.

Authorization of subsequent tax agreements relative to Taiwan

After enactment of approval legislation and implementing legislation, the tax agreement that is authorized by this Authorization Act is required to be treated as including any tax agreement relative to Taiwan which supplements or supersedes the Agreement to which such approval legislation and implementing legislation relates. The term "Agreement" shall be treated as including such tax agreement. The provisions of this Authorization Act are required to be applied separately with respect to each such tax agreement.

Congressional findings and statement of policy

The Chairman's amendment makes the following findings: the United States addresses issues with respect to double taxation with foreign countries by entering into bilateral income tax conventions (known as tax treaties) with such countries negotiated by the President pursuant to Article II of the Constitution, and subject to the advice and consent of the Senate; the United States has entered into more than sixty such tax treaties, which facilitate economic activity, strengthen bilateral cooperation, and benefit U.S. workers, businesses, and other U.S. taxpayers; and because of Taiwan's unique status, the United States is unable to enter into an Article II tax

treaty with Taiwan, necessitating an alternative means to address issues with respect to double taxation.

The Chairman's amendment states that it is the policy of the United States to provide for additional bilateral tax relief with respect to Taiwan, beyond that provided for in section 894A (as added by the USTEDRA), only after entry into force of an Agreement and only in a manner consistent with such Agreement. It further states that it is the policy of the United States to continue to provide for relief from double taxation and other related matters through entering into bilateral income tax conventions, negotiated by the President pursuant to Article II of the Constitution, and subject to the advice and consent of the Senate.

Effective date

The Authorization Act is effective upon enactment.

Estimated revenue effects

Consistent with estimating conventions regarding contingent legislation, the staff of the Joint Committee on Taxation estimates that the Authorization Act, which is contingent on approval and implementing legislation, as well as Taiwan's approval and implementation of the Agreement, has no effect on Federal fiscal year budget receipts for the period 2024 through 2033.