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

February 3, 2015

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

The Honorable Robert Menendez
Ranking Member
Senate Committee on Foreign Relations
444 Dirksen Senate Office Building
Washington, DC 20510

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

Dear Chairman Corker and Ranking Member Menendez:

The American Institute of Certified Public Accountants (AICPA) is writing to urge the 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.

The AICPA is the world's largest member association representing the accounting profession, with more than 400,000 members in 128 countries and a history of serving the public interest since 1877. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

Background

The AICPA applauds the Senate Foreign Relations Committee for approving, on April 1, 2014, new income tax treaties with Chile and Hungary, protocols to the income tax treaties with Luxembourg and Switzerland, as well as a protocol to the multilateral tax treaty on assistance in administrative matters. We also applaud the Senate Foreign Relations Committee for approving, on July 16, 2014, the protocol to the income tax treaty with Spain as well as the income tax treaty with Poland. However, 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 permanent establishment rules, a mechanism to relieve double taxation, and other 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 must be kept up to date 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 the U.S. Department of the 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 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. However, their confidence is 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, current as well as future tax treaty negotiations could be negatively impacted. 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 benefit the U.S. economy by permitting U.S. enterprises to be more competitive when conducting their businesses abroad, by making the U.S. more attractive to investment by foreign enterprises, and by providing nonresident companies and individuals greater certainty on issues involving cross-border transactions.

Income tax treaties play a very 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.

In addition, tax treaties contain administrative procedures for U.S. taxpayers, treaty-partner residents, and U.S. and foreign taxing authorities to resolve conflicts and to assist in the enforcement of the two countries' tax laws. For example, the article in tax treaties providing for the exchange of information between the U.S. and other treaty nations is indicative of benefits the U.S. can obtain by expanding its tax treaty network. 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.

In these and other ways, 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 but not exclusive examples to illustrate some of the significant benefits that several of the protocols and income tax treaties awaiting full 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 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

---

[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**).

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 principle purpose of providing access to the treaty for those non-residents.

3. Protocol Amending the Tax Convention with Luxembourg

The U.S. has an existing protocol with Luxembourg[3] which was signed in 1996. The current treaty, which was signed in 2009, if ratified, would amend the existing tax treaty by updating the U.S. information exchange provisions with that country.

4. Protocol Amending the Tax Convention with Swiss Confederation

The U.S. has negotiated a Swiss Protocol[4] 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.

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.

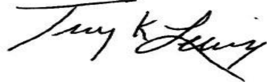
[3] Protocol Amending the Convention between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Luxembourg May 20, 2009, with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

[4] 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**).

* * * * *

If you have any questions, please contact Blake Vickers, Chair, International Tax Technical Resource Panel, at (713) 753-5493 or blake.vickers@kbr.com; or Kristin Esposito, AICPA Senior Technical Tax Manager, at (202) 434-9241 or kesposito@aicpa.org.

Sincerely,



Troy K. Lewis, CPA
Chair, Tax Executive Committee