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GMS Flash Alert

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United States – Proposed Protocols Sent to Senate Floor

On June 25 the United States Senate Foreign Relations Committee (the Committee) considered and approved Protocols amending the U.S. tax treaties with Japan, Luxembourg, Spain, and Switzerland. The Committee has reported the Protocols to the full U.S. Senate, where a two-thirds vote is required for approval.

WHY THIS MATTERS

The Committee's approval may indicate a breaking of the logjam that has prevented new treaties and protocols from coming into effect since 2009. Although the Committee has considered and reported these proposed Protocols to the full U.S. Senate on several previous occasions, the Senate has never voted on the proposed Protocols. There is new optimism that the Protocols will this time be given floor time and a vote scheduled later in the summer.

In addition to the four Protocols, there are also three new U.S. tax treaties with Chile, Hungary, and Poland awaiting Senate approval. None were considered by the Committee on the 25th.

Proposed Protocol with Japan

The proposed Japan Protocol[1] makes several modifications to the existing U.S.-Japan treaty that may affect individual taxpayers. The proposed Japan Protocol replaces the Interest article in the existing U.S.-Japan treaty with an article that generally grants a taxpayer's country of residence the exclusive right to tax interest. The proposed Japan Protocol removes the article exempting teacher compensation from host country taxation, and modifies the resourcing provision under the Relief from Double Taxation article, reducing the potential of double taxation for Japanese residents. The proposed Japan Protocol replaces the Exchange of Information article in the existing treaty with a new article that follows the approach of the U.S. Model Income Tax Treaty and that of the Organization for Economic Cooperation and Development (OECD).

Proposed Protocol with Luxembourg

The proposed Luxembourg Protocol[2] replaces the Exchange of Information article in the existing U.S.-Luxembourg treaty with a new article that follows the approach of the U.S. Model Income Tax Treaty and that of the OECD.

Proposed Protocol with Spain

The proposed Spain Protocol[3] includes several changes to the existing U.S.-Spain treaty to bring the treaty in conformity with current U.S. and Spain tax policies. Of particular significance to international assignees, the proposed Spain Protocol addresses pension plan participation, and defines the term "pension funds." The proposed Spain Protocol modifies the Interest article, providing a taxpayer's country of residence the exclusive right to tax interest income. It also modifies the Dividends article to provide an exemption from source country withholding tax on dividends paid to individual retirement accounts set up in and owned by a resident of the other country.

Proposed Protocol with Switzerland

The proposed Switzerland Protocol[4] replaces the Exchange of Information article in the existing U.S.-Switzerland treaty with a new article that follows the approach of the U.S. Model Income Tax Treaty and that of the OECD. The proposed Switzerland Protocol also provides an exemption from source country withholding tax on dividends paid to individual retirement accounts set up in and owned by a resident of the other country, and amends the mutual agreement procedures to require mandatory binding arbitration when the competent authorities cannot resolve an issue after negotiation.

FOOTNOTES:

1 The 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).

2 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 on May 20, 2009, at Luxembourg (the "proposed Protocol") and a related agreement effected by the exchange of notes also signed on May 20, 2009 (Treaty Doc. 111-8).

3 Protocol Amending the Convention between the United States of America and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and its Protocol, signed at Madrid on February 22, 1990 (Treaty Doc. 113-4).

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 on September 23, 2009, at Washington, as corrected by an exchange of notes effected November 16, 2010 and a related agreement effected by an exchange of notes on September 23, 2009 (Treaty Doc. 112-1).

The above information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230 as the content of this document is issued for general informational purposes only.

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