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VIA [\\_internationalTax@finance.senate.gov](mailto:_internationalTax@finance.senate.gov)

The Honorable Ron Wyden  
Chairman  
Committee on Finance  
United States Senate  
Washington, DC 20510

The Honorable Mike Crapo  
Ranking Member  
Committee on Finance  
United States Senate  
Washington, DC 20510

The Honorable Jason Smith  
Chairman  
Committee on Ways and Means  
United States House of Representatives  
Washington, DC 20515

The Honorable Richard Neal  
Ranking Member  
Committee on Ways and Means  
United States House of Representatives  
Washington, DC 20515

**Re: Comments on the draft bill providing relief for U.S. and Taiwanese Workers and Businesses from Double Taxation**

Chairmen Wyden and Smith and Ranking Members Crapo and Neal:

Nareit appreciates this opportunity to comment on the discussion draft to statutorily provide certain tax treaty-like benefits to residents of the Republic of China (Taiwan) by the Chairmen and Ranking Members of the Committee on Ways and Means Chairmen and Senate Finance Committee (collectively, the authors).

Nareit serves as the worldwide representative voice for real estate investment trust (REITs) and non-REIT public companies that own, operate, and finance income-producing real estate, as well as those firms and individuals who advise, study, and service those businesses.<sup>1</sup>

Absent a tax treaty, individuals and businesses that have connections to more than one country are often subject to double taxation. The United States and Taiwan do not have a tax treaty. According to the summary of the proposal issued by the authors, the “bill creates a new section 894A of the Internal Revenue Code (IRC), providing substantial benefits to Taiwan residents (qualified residents of Taiwan),

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<sup>1</sup> Through the properties they own, finance and operate, REITs help provide the essential real estate we need to live, work, and play. U.S. REITs own approximately \$3.5 trillion in gross assets, with public U.S. REITs accounting for nearly \$2.5 trillion in gross assets. Stock-exchange listed REITs had an equity market capitalization of over \$1.2 trillion as of June 30, 2023. In addition, approximately 145 million Americans live in households that benefit from ownership of REIT stocks through their individual shareholdings, their 401(k) retirement plans and other investment funds.

similar to those that are provided in the 2016 United States Model Income Tax Convention (U.S. Model Tax Treaty).”<sup>2</sup>

One of the important benefits generally provided by United States tax treaties is the elimination or reduction of withholding taxes on dividends paid by a United States company to a foreign person. Absent a treaty provision, the statutory rate of withholding taxes is 30% of the gross amount of the dividend. Such a high rate of withholding tax discourages investment in the United States as the foreign person is also generally subject to tax by the foreign country. It is thus very important that the Discussion Draft would reduce the withholding taxes on dividends paid by U.S. companies to residents of Taiwan from the normal statutory rate of 30% to 15%.

Unfortunately, the Discussion Draft excludes dividends paid by REITs from the lower withholding rate. This exclusion would pose a comparative disadvantage to investment in REITs in the United States by residents of Taiwan compared to other investments they might make in the United States. This exclusion is inconsistent with U.S. treaty policy that has generally treated REIT dividends as eligible for the reduced withholding tax rate applicable to other types of dividends if certain conditions are met. This U.S. treaty policy is reflected in the 2016 U.S. Model Tax Treaty, to which the Discussion Draft is intended to be similar according to the summary issued by the authors.

We respectfully request that the Discussion Draft be modified to reflect U.S. treaty policy with respect to dividends paid by REITs and include REITs as eligible for the lower rate of withholding. More specifically, we request that the Discussion Draft be modified to mirror the corresponding dividend withholding provisions of the 2016 U.S. Model Tax Treaty. The inclusion of REITs would be subject to the same conditions as applicable under current U.S. tax treaty policy as reflected in the 2016 U.S. Model Tax Treaty.

## **REIT eligibility for reduced withholding tax rates on dividends under U.S. treaty policy**

Historically, U.S. tax treaty policy treated REIT dividends similarly to other dividends with respect to withholding tax rates. In 1988, starting with the U.S.- Germany Tax Treaty, U.S. tax treaty policy was changed to only allow REIT dividends to be eligible for reduced withholding rates if the dividends were beneficially owned by individuals holding less than a 10% interest in the REIT.

Subsequently, the Treasury and Congress generally recognized that the policy inappropriately discouraged investments in REITs by foreign investors. United States tax treaty policy was modified to

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<sup>2</sup> Summary of the United States-Taiwan Expedited Double-Tax Relief Act. <https://waysandmeans.house.gov/wp-content/uploads/2023/07/Taiwan-Tax-one-pager-7.12.23-For-Release.pdf>

generally make REIT dividends eligible for lower withholding tax rates on dividends under our treaties, subject to certain conditions.

The Senate Foreign Relations Committee held a hearing on tax treaties and protocols with eight countries on Oct. 7, 1997. At the hearing, Kenneth J. Kies, the Chief of Staff of the Joint Committee on Taxation testified:<sup>3</sup>

The REIT industry has expressed concern that the exclusion of REIT dividends from the reduced withholding tax rates applicable to other dividends may inappropriately discourage some foreign investment in REITs. The Treasury Department has worked extensively with your Committee staff, the Joint Committee staff, and representatives of the REIT industry in order to address this concern while maintaining a treaty policy that properly preserves the U.S. taxing jurisdiction over foreign direct investment in U.S. real property. As a result of significant cooperation among all parties to balance these competing considerations, the U.S. treaty policy with respect to the treatment of REIT dividends has been modified.

Similarly, Joseph H. Guttentag, Deputy Assistant Secretary, International Tax Affairs, of the Department of Treasury testified at that hearing:<sup>4</sup>

Economic changes since these policies were established ten years ago require that we review our position in order to insure that our treaty policies reflect the best interests of the United States. These interests include not discouraging, through our tax rules, desirable foreign investment. To that end we have consulted with representatives of the REIT industry and we are now satisfied that our current treaty policy should be modified. While the treaties before you represent policies with which we all have agreed, we now believe that it is appropriate to revise our treatment of REIT dividends under our treaties.

Our new policy takes into account that portfolio investments in a REIT whether by individuals or institutional investors may be indistinguishable in intent and results from similar investments in other corporate securities and should be afforded similar tax

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<sup>3</sup> JCX-53-97. <https://www.jct.gov/getattachment/4b64617f-e1d2-4ea6-95ab-dee6fa3d2404/x-53-97-2164.pdf>

<sup>4</sup> Senate Foreign Relations Committee hearing: Bilateral Treaties and Protocol, October 7, 1997. <https://www.govinfo.gov/content/pkg/CHRG-105shrg44110/html/CHRG-105shrg44110.htm>

consequences in appropriate circumstances.

More specifically, United States treaty policy was modified to make REIT dividends eligible for reduced treaty dividend withholding rates in two additional circumstances.

As Kenneth J. Kies of the Joint Committee on Taxation testified:

Under this policy, REIT dividends paid to a resident of a treaty country will be eligible for the reduced rate of withholding tax applicable to portfolio dividends (typically, 15 percent) in two cases. First, the reduced withholding tax rate will apply to REIT dividends if the treaty country resident beneficially holds an interest of 5 percent or less in each class of the REIT's stock and such dividends are paid with respect to a class of the REIT's stock that is publicly traded. Second, the reduced withholding tax rate will apply to REIT dividends if the treaty country resident beneficially holds an interest of 10 percent or less in the REIT and the REIT is diversified, regardless of whether the REIT's stock is publicly traded. In addition, the treaty policy with respect to the application of the reduced withholding tax rate to REIT dividends paid to individuals holding less than a specified interest in the REIT will remain unchanged.

Similarly, Joseph H. Guttentag of the Treasury Department testified that:

Our new policy retains the current treatment of individuals with 10% or smaller holdings of the REIT and, in addition, provides for a 15% withholding tax on dividends paid by i) a publicly traded REIT to any shareholder who holds a 5% or smaller interest in the REIT, and ii) a publicly traded or non-publicly traded REIT, the holdings of which are substantially diversified, to a shareholder who holds a 10% or smaller interest in the REIT.

Treasury testified that the new treaty policy "will be reflected in our model treaty and in future treaty negotiations." Indeed, since that time, Treasury included that policy in the 2006<sup>5</sup> and 2016<sup>6</sup> Model U.S. Tax Treaties and has followed a pattern of including the policy in our tax treaties and protocols.

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<sup>5</sup> <https://www.irs.gov/pub/irs-trty/model006.pdf>

<sup>6</sup> [https://home.treasury.gov/system/files/131/Treaty-US-Model-2016\\_1.pdf](https://home.treasury.gov/system/files/131/Treaty-US-Model-2016_1.pdf)

Thus, Nareit respectfully requests that the Discussion Draft be modified to make REIT dividends eligible for the reduced rate of withholding similar to other dividends consistent with U.S. treaty policy as reflected in the 2016 United States Model Tax Treaty.

On page 2, lines 11-13, proposed new section 894A(a)(1)(B)(i) should be modified by adding at the end “except as provided in subparagraph (E).

On page 4, line 16: add a new subparagraph (E) to section 894A(a)(1):  
“Subparagraph (A) shall apply to dividends paid by a REIT if

- the beneficial owner of the dividends is an individual or pension fund, in either case holding an interest of not more than 10 percent in the REIT;
- the dividends are paid with respect to a class of shares that is publicly traded, and the beneficial owner of the dividends is a person holding an interest of not more than 5 percent of any class of the REIT’s shares; or
- iii) the beneficial owner of the dividends is a person holding an interest of not more than 10 percent in the REIT and the REIT is diversified. b) For purposes of this paragraph, a REIT shall be “diversified” if the value of no single interest in real property (immovable property) exceeds 10 percent of its total interests in real property (immovable property).

For the purposes of this section, foreclosure property shall not be considered an interest in real property (immovable property). Where a REIT holds an interest in a partnership, it shall be treated as owning directly a proportion of the partnership’s interests in real property (immovable property) corresponding to its interest in the partnership.”

Please contact me at tedwards@nareit.com or (202) 739-9408; Nareit’s Executive Vice President & General Counsel, Catherine Barré at cbarre@nareit.com or (202) 739-9422; or Nareit’s Senior Vice President & Tax Counsel, Dara Bernstein at dbernstein@nareit.com or (202) 739-9446 if you would like to discuss this matter in greater detail.

Respectfully submitted,



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