

UPDATES & OTHER TIDBITS

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TAXPAYER PREVAILS IN F.B.A.R. CASE

*Aroeste v. United States*¹ is a court case that previously drew attention because the court, based on a plain reading of statutory language, overturned I.R.S. policy that residency under tax treaty does not affect F.B.A.R. filing obligations. The taxpayers were U.S. permanent residents, which would subject them to the F.B.A.R., but qualified as Mexican residents under the tiebreaker provision in the Mexico-U.S. tax treaty. The I.R.S.'s long-standing position is that treaty tiebreakers do not create an exemption from F.B.A.R. filing. Earlier in the case, the I.R.S. attempted to block discovery of evidence related to the treaty, arguing that it was irrelevant to F.B.A.R. considerations.² The court overruled the I.R.S. and pointed out that the F.B.A.R. regulations directly cross-reference the residency provisions in the Internal Revenue Code, which in turn take treaty tiebreakers into account. The case has now moved onto summary judgment. Reflecting the court's previous analysis, the court granted summary judgment to the taxpayers and nullified \$22,000 of the taxpayers' F.B.A.R.-related penalties, although they still owe \$2,000 in penalties due to late filing regarding the treaty position. The next step is whether the government will appeal the decision.

TAIWAN TAX-TREATY BILL

Earlier this year, two Senate committees (Foreign Relations and Finance) unveiled bills to effectively create a tax treaty with Taiwan.³ While Taiwan is a *de facto* independent country, its unique status prevents it from signing a conventional tax treaty with the U.S. Instead, the legislation would add a new Code §894A to domestic law that imitates the effects of a treaty. The adoption of the pseudo-treaty would depend on Taiwan adopting corresponding rules in its domestic tax law. Now, new legislation that takes parts of both Senate committee bills has been introduced in the House Ways and Means Committee. The bill enjoys rare bipartisan support, and its introduction for full floor votes and its passage may be sooner rather than later.

¹ No. 3:22-cv-00682 (S.D. Cal. 2023).

² No. 22-cv-682-AJB-KSC. This case was previously covered on [Insights Vol. 10 No. 2](#).

³ Previously covered on [Insights Vol. 10 No. 5](#).

C.T.A.: NEW COMPANIES GIVEN EXTENSION TO FILE

One major change in reporting requirements for 2024 is the Corporate Transparency Act (C.T.A.), which will require companies to report their ultimate beneficial owners to FinCEN. While preexisting companies have a year to file reports, companies formed in 2024 would have had 30 days after formation to file. Final regulations issued by FinCEN now give newly formed companies 90 days to file.⁴ The extension was granted after complaints that 30 days was insufficient, although some commenters believe even more time should have been granted. This extension is only effective for 2024, and companies formed in 2025 and later will still only have 30 days to report.

⁴ RIN 1506-AB62.

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