



Americans For Tax Reform Foundation

Analysis of Administration Proposals to “Reform the U.S. International Tax System”

Prevent the Avoidance of Dividend Withholding Taxes

Current Law

Foreign investors who hold stock in U.S. domestic corporations are generally subject to 30% withholding tax on dividends. Equity swaps, where a set of future cash flows are agreed to be exchanged between two parties at a future date, are generally treated as foreign-source payments that are not subject to U.S. withholding tax.

Furthermore, under IRS Notice 97-66, the problem of ‘cascading withholding tax’ is limited.

Proposed Change

Any income earned by foreign persons with respect to equity swaps referencing U.S. equities would be treated as U.S. source to the extent the income is attributable to dividends paid by a domestic corporation. Furthermore, the Treasury plans to revoke Notice 97-66, and replace it with “guidance”

ATRF Analysis

This proposal will allow the IRS to withhold tax, not just for actual income, but also on theoretical future non-realized income. It is a basic principle of sound tax policy that income should only be taxed when it is accumulated. If enacted, this will tax you for income you only *might* earn.

What’s next – taxing you for the job you might get?

10-year Revenue Estimate:

U.S. Department of Treasury: \$1.4 billion
Joint Committee on Taxation: \$1.2 billion