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US International Tax Alert

President Trump considers imposing tariffs or other retaliatory measures in response to foreign Digital Services Taxes

On February 21, 2025, President Trump issued a memorandum – Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties – that ordered the US Trade Representative (USTR), the Secretary of the Treasury, and the Secretary of Commerce to begin taking steps that could lay the groundwork for imposing tariffs or other retaliatory measures in response to foreign digital services taxes (DSTs), EU and UK content moderation rules governing the products or services of US companies, or other measures that may disproportionately harm US companies, especially those in the technology and digital services sector.

The memorandum directs USTR to consider renewing investigations of DSTs imposed by, among others, Austria, France, Italy, Spain, Turkey, and the United Kingdom. The USTR is also instructed to determine whether it is appropriate to pursue a United States-Mexico-Canada-Agreement (USMCA) panel in response to Canada's imposition of a DST and whether Canada's DST may violate the USMCA.

The memorandum, which was published in the Federal Register on February 26 at 90 Fed. Reg. 10685 (Feb. 26, 2025), also calls for additional analyses and findings to be included in the reports that the president has already requested in the "America First Trade Policy" memorandum, 90 Fed. Reg. 8471 (Jan. 30, 2025) and the "OECD Global Tax Deal" memorandum, 90 Fed. Reg. 8483 (Jan. 30, 2025), including:

- The Treasury Secretary, in consultation with the Commerce Secretary and the USTR, shall determine whether any foreign country subjects US citizens or companies, "including, without limitation, in the digital economy," to discriminatory or extraterritorial taxes, or has any tax measure in place that otherwise undermines the global competitiveness of US companies, is inconsistent with any US tax treaty or is otherwise "actionable under" section 891 of the Internal Revenue Code;
- All three cabinet members shall identify "trade and other regulatory practices" by foreign countries that harm against US companies "in the digital economy and more generally;" and
- USTR shall identify tools to secure "a permanent moratorium on customs duties on electronic transmissions."

USTR, in consultation with the Secretary of Commerce and the senior counselor to the president for trade and manufacturing, shall establish a process for companies to report foreign tax or regulatory practices that disproportionately harm US companies.

While nothing in the February 21 memorandum imposes immediate action against a foreign country, it takes clear aim at DSTs on American businesses and should serve as a warning to any country that the imposition of retaliatory measures by the United States is possible, if not likely.

While this new executive memo is primarily focused on technology companies, its objectives seem consistent with other executive memos cited above, including its references to section 891 as a potential retaliatory tool. Consistent with the proposed definition of "discriminatory taxes" in H.R. 591—which would likely encompass DSTs—this memo seems to reinforce the suggestion, first raised in the America First Trade Policy memorandum, that the administration believes it is authorized by section 891 to double the US tax rates on investors from foreign countries that impose DSTs on US companies, even absent further legislation.

Note that section 891 predates every US income tax treaty now in force, and possibly every US income tax treaty that ever was in force, and does not appear to give the president any instruction on existing or future treaties or treaty overrides or otherwise address the interaction between the rate increases and subsequently negotiated tax treaties, nor does it seem to derogate from the president's inherent power to terminate a tax treaty.

For more details on H.R. 591 and section 891, see Deloitte Tax LLP's February 13, 2025 US International Tax alert.

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