Tax Policy Alert

Trump's Executive Orders on non-reciprocal trade and discriminatory or extraterritorial measures

12 March 2025

In brief

What happened?

President Trump has issued several Executive Orders (EOs) targeting digital services taxes (DSTs) and other measures seen as unfair to US businesses. The EOs call for a review of countries' tax and trade practices and suggest possible actions like withdrawing from a 1984 tax treaty with China and reviewing US involvement in international organizations. They build on Trump's initial focus on the OECD's 'Global Tax Deal' and the 'America First Trade Policy' (see prior PwC Tax Policy Alert). Reports on the reviews are expected in April 2025.

Why is it relevant?

The policies outlined in the EOs carry significant implications for companies engaged in US cross-border trade and investment. They aim to make the United States a more attractive place to invest, remove other countries' perceived advantages, and support key US industries like technology. They would introduce restrictions on foreign investments and measures intended to counter overseas taxes and regulations on American businesses. The measures may increase uncertainty and instability in the global economy and may escalate intergovernmental conflicts. The changing trade environment is making tax a crucial factor for business competitiveness.

Actions to consider

While awaiting reports from the EOs' reviews, companies and their US-based foreign executives should assess the potential impact of US actions and monitor other countries' responses.

In detail

The Executive Orders are described below in further detail:

- OECD Global Tax Deal (20 January 2025): Directs the Treasury Secretary to inform the OECD that any commitments by the Biden Administration regarding the Global Tax Deal (Pillars One and Two) are not binding in the United States without Congressional approval. It also instructs the Treasury Secretary, with the US Trade Representative (USTR), to investigate if foreign countries violate tax treaties with the United States or have tax rules that unfairly affect American companies, and to propose options for protective measures.

- America First Trade Policy (20 January 2025): Directs the Administration, including the Treasury Secretary, to review other governments' trade practices, relations with China, and various other economic security matters. It includes a study of the creation of an 'External Revenue Service' to collect tariffs and duties and calls for investigating if foreign countries impose discriminatory or extraterritorial taxes on US citizens or corporations under US tax code Section 891 - which allows for the doubling of tax rates on citizens and corporations of foreign countries with discriminatory or extraterritorial taxes.

- Withdrawing the United States from and Ending Funding to Certain United Nations Organizations and Reviewing United States Support to All International Organizations (4 February 2025): Orders a review of US funding and participation in international organizations, especially UN agencies (but could also include the OECD). The Secretary of State and US Representative to the UN have 180 days to evaluate all international organizations and US treaties to determine their alignment with US interests and potential for reform.

- Reciprocal Trade and Tariffs (13 February 2025): Directs a review of non-reciprocal trade arrangements and allows the USTR and Secretary of Commerce to propose new levies on a country-by-country basis to counter what the Administration considers unfair trade practices. The EO includes value-added taxes (VATs) in the list of discriminatory or extraterritorial taxes imposed by US trading partners.

- America First Investment Policy (21 February 2025): This policy aims to restrict investment from "certain foreign adversaries," including China, imposing new limits on foreign access to critical technology, infrastructure, and personal data. It directs review of whether to suspend or terminate the 1984 US-China tax treaty to further reduce incentives for US persons to invest in foreign adversaries (defined as China, Hong Kong, Macau, Cuba, Iran, North Korea, Russia, and the Maduro regime in Venezuela).

- Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties (21 February 2025): Outlines possible actions against DSTs and other measures disproportionately affecting US tech companies. It includes renewing Section 301 investigations into foreign DSTs and addressing regulations limiting US operations or free speech. Like the America First Trade Policy EO (discussed below), it references US tax code Section 891. It also instructs the USTR to seek a moratorium on customs duties on electronic transmissions and to create a reporting mechanism for American businesses on harmful foreign tax or regulatory practices.

The reports required by these EOs are generally due by 1 April 2025. The OECD Global Tax Deal report is expected by 21 March 2025, sixty days after the order's issuance. A review of reciprocal measures will follow, identifying country-specific measures and options for protective measures or other responses to non-compliance and rules deemed to be discriminatory or extraterritorial.

Potential US protective measures

Retaliatory tariffs under Section 301 of the Trade Act are among the primary tools expected to be identified in the reports requested by the Administration as a response to DSTs, the OECD's Pillar Two undertaxed profits rule (UTPR), and fines, practices, and policies that foreign governments levy on US companies that are deemed discriminatory or extraterritorial.

On 21 January 2025, the US House of Representatives Ways and Means Committee Chairman Jason Smith (R-MO), along with every Ways and Means Committee Republican, introduced H.R. 591, the 'Defending American Jobs and Investment Act,' which would add Section 899 to the US tax code. If enacted, Section 899 would increase taxes on the US income of foreign individuals and entities from a jurisdiction with an extraterritorial or discriminatory tax, such as a UTPR or DST, in increments of 5% each year for four years. After four years, the cumulative 20% additional tax would apply each year the targeted tax remains in effect.

Observation: Proposed Section 899 includes treaty override language, which means individuals and entities located in a foreign jurisdiction imposing extraterritorial or discriminatory taxes would also be denied the benefit of reduced withholding taxes under any treaty with the United States. In a statement upon introduction of the bill, Chairman Smith indicated it was intended to reinforce the 'OECD Global Tax Deal' EO, ensuring that "President Trump has every tool at his disposal to pushback against any foreign country that seeks to undermine America's economic vitality or unfairly target our workers and businesses." House Republicans are expected to seek to include H.R. 591 in the larger tax package that will be considered under the 'reconciliation' procedure later this year.

Observation: These actions address the impact of foreign taxes and other non-tax barriers to trade on US companies and aim to promote stronger US trade policies. The implementation and potential tariffs affect operations for many multinational businesses, but the EOs indicate a targeted approach instead of blanket tariffs. Key areas identified include discriminatory or extraterritorial tax and non-tax measures, specific countries, and international organizations. This is likely to provoke responses from other countries, leading to increased unpredictability and instability in the global economy.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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