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Digital Service Tax, dual strategy against the US pressure

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Trump wasted no time. Just over a month after the 20 January Memoranda, the President issued a new Memorandum on 21 February, this time setting his sights squarely on the digital sector. Presented as a measure to defend American companies and innovators against what is called “*overseas extortion*”, the Memorandum paves the way for the imposition of tariffs and protective measures in response to “*one-sided, anti-competitive policies and practices of foreign governments*”.

Once again, behind the rhetoric of defending national interests lies a strategy that risks exacerbating trade tensions and further undermining the already strained international tax landscape. The memorandum reaffirms Trump’s protectionist agenda, giving his administration broad power to oppose *Digital Service Taxes* (DSTs), in addition to other policies deemed discriminatory and disproportionate against American Big Tech (read: the Digital Markets Act and the Digital Services Act).

During the first Trump presidency, the United States had already launched investigations under Section 301 of the Trade Act of 1974 against countries that had introduced a DST. It considered the DST of Austria, India, Italy, Spain, Turkey and the United Kingdom to be discriminatory against American digital companies and inconsistent with international tax principles, imposing additional tariffs of up to 25% on approximately \$1.2 billion worth of United States imports from these six countries. However, on October 2021, tensions were tempered with a political agreement reached under the Biden Administration, which led to the closure of the investigation without the United States applying countermeasures (at least, “*until OECD Pillar 1 takes effect*”).

With the 21 February Memorandum, the Office of the United States Trade Representative (USTR) is directed to consider not only whether to renew Section 301 investigations on the DSTs of the six countries mentioned above, but also whether to conduct new investigations under Section 302(b) against other countries, particularly Canada, which recently introduced its own DST.

Finally, the Memorandum invests the Secretary of the Treasury and the Secretary of Commerce with new responsibilities, requiring them, along with the USTR, to:

- identify trade and regulatory practices that – in the digital economy and beyond – “*discriminate against, disproportionately affect, or otherwise undermine the global competitiveness or intended operation*” of American companies;
- investigate policies in the European Union or the United Kingdom that has “*the effect of*

requiring or incentivizing the use or development of United States companies' products or services in ways that undermine freedom of speech and political engagement or otherwise moderate content";

- assess whether foreign countries impose, “*including, without limitation, in the digital economy*”, discriminatory or extraterritorial taxes against American taxpayers, or any other tax measures that “*otherwise undermines the global competitiveness of United States companies, is inconsistent with any tax treaty of the United States, or is otherwise actionable under section 891 of title 26, United States Code, or other tax-related legal authority*”.

Trump’s strategy against DSTs is clear, and countries that that have implemented them face a choice: give in to Washington’s pressure or respond to the American administration’s rhetoric.

In this scenario, coordination at the European level and/or among the countries that apply similar DSTs would be useful to put on the table shared arguments that can demonstrate that these taxes are neither discriminatory nor extraterritorial. In this regard, the 2021 data on the Italian DST witness that. Indeed, the number of taxpayers subject to the DST included 59 residents in Italy, 40 in the United States, 16 in Ireland, 15 in Germany, 13 in the United Kingdom, 9 in France, 9 in the Netherlands, 9 in Singapore, and 6 in Australia. Numbers that contradict the narrative that DST applies only to American businesses.

If, despite the discussions, Washington remains deaf to the arguments made, it would be appropriate to consider countermeasures, but that are neither irrational nor unjustified, as some of the positions expressed by the American administration in recent weeks for example in relation to VAT. They would instead be grounded on a solid policy rationale. In this context, it is worth recalling that the DST *ratio* is to tax the extraction of value that occurs through the storage, processing, and exploitation of data that users make available online in exchange for otherwise free digital services.

Therefore, one could consider (1) introducing a progressive tax rate mechanism: the higher the group’s revenue (an indicator of greater monetization of user contributions), the higher the tax rate; (2) extending the scope of the DST to other form of monetization of users’ contributions, beyond targeted advertising, intermediation, or data sales. Changes that would then have a solid rationale and be able to hit where it is most appropriate to do so.

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