US President Trump signals day one changes in global tax and trade policy

22 January 2025

In brief

What happened?

On day one of his Administration, President Trump signed two Executive Orders (presidential directives to the executive branch, having the force of law) signaling a clear change in direction from the Biden Administration on global tax and trade policy. The first takes aim at the OECD's two pillar project, referred to as the 'global tax deal,' and essentially nullifies the US's agreement to the project. The second is a series of directions to implement 'America First Trade Policy.' It includes reference to a retaliatory provision of US tax law, never before used, that, if triggered, could double the tax rate imposed on the US income of companies and individuals of foreign countries whose laws are found to discriminate against US citizens or companies.

Why is it relevant?

Day one Executive Orders addressing tax issues are highly unusual and illustrate the significance the Trump Administration attaches to controlling the United States' ability to set the tax policy it deems best, as well as its unwillingness to support what it believes are the imposition of extraterritorial taxes or taxes discriminating against US companies. The trade focus is consistent with President Trump's first-term emphasis but suggests a broader consideration of other countries' trade practices as well as options for a US response to practices it deems unfair or harmful to national security.

Actions to consider

While awaiting the results of the investigations and reports called for by the Executive Orders, companies (and their US-based foreign executives) should evaluate their operations for the impact of potential actions by the United States and monitor other countries' responses to President Trump's Executive Orders.

In detail

Global tax deal Executive Order

The global tax deal Executive Order directs the Treasury Secretary and US Permanent Representative to the OECD to notify the OECD that any Biden Administration commitments on the global tax deal have no force or effect in the United States, barring Congressional action to adopt its provisions. It also directs the Treasury Secretary and the US Trade Representative to investigate foreign countries' compliance with tax treaties and whether they have tax rules, enacted or in process, that are extraterritorial or disproportionately affect US companies, and to prepare within 60 days a list of options for protective measures the United States should adopt in response.

America First Trade Policy Executive Order

The America First Trade Policy Executive Order includes broad instructions to members of the President's Cabinet, including the Treasury Secretary, to review other governments' trade practices, relations with China, and a number of other economic security matters. It includes a direction to study the creation of an 'External Revenue Service' to collect tariffs, duties, and other foreign trade-related revenues. Together with the Commerce Secretary and the US Trade Representative, the Treasury Secretary is charged with investigating foreign governments' extraterritorial or discriminatory taxes under Section 891. That provision allows for doubling the rate of tax on foreign companies and individuals' US income. The Treasury Secretary is directed to deliver a report by 1 April 2025, that addresses the creation of the External Revenue Service, the results of the investigation of discriminatory taxes, and several other matters.

***Observations**: It has been clear for some time that, despite the Biden Administration's role in advancing the OECD two-pillar project, the United States was unlikely to change its laws to meet the specifications of Pillar Two. The Executive Orders go a step beyond US nonconformity, in that they align with the views of the House Republican majority which, during the last Congress, proposed retaliatory measures against countries implementing the parts of Pillar Two with, they argued, extraterritorial effect, such as the UTPR. The Executive Orders call for actions that President Trump might take, or ask Congress to take, in response to laws of other countries that have extraterritorial or discriminatory effect. The scope appears to cover digital services taxes that had largely been put on hold pending the outcome of the Pillar One negotiations, as well as a number of aspects of the UTPR under Pillar Two. How other countries will respond to President Trump's Executive Orders is unknown, but, at least in the near term, President Trump is making clear that tax policy in the United States will be driven by US interests and that he will not allow that to be infringed by extraterritorial or discriminatory taxation of US income by other countries.*

Next steps

As noted above, businesses and other stakeholders should monitor this closely for potential impacts. Among questions they might ask:

- As a foreign business (or foreign citizen executive of such a business) what would be the effects on that business of applying Sec. 891 to double US tax?
- How might the application of Sec. 891, or any subsequent measures recommended to be imposed, interact with US Double Taxation Treaties?
- Exactly what is the effect of notifying the OECD of the nullification of former commitments to the 'two pillar' project?

- What protective measures might the Treasury recommend? (Note that Rep. Jason Smith, Chair of the House Ways & Means Committee, reintroduced on 22 January 2025, the Defending American Jobs and Investment Act - retaliatory legislation first proposed in 2023, with some modifications).
- What might be the interaction of these actions with other potential actions on, for example, tariffs?
- What does this mean for future US relations with the OECD, and indeed other International Organizations?

Let's talk

For a deeper discussion of how these Executive Orders might affect your business, please contact:

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