US extends 'truce' with countries imposing digital services taxes

The office of the US Trade Representative (USTR) announced this week the extension of a trade deal with five countries that have imposed digital services taxes (DSTs), as part of broader negotiations towards implementing a global tax agreement known as Pillar One. This is an extension of a deal originally brokered in 2021 in which Austria, France, Italy, Spain, and the UK, which already had DSTs in effect at the time, agreed to remove them upon implementation of a global agreement, and the US committed not to impose trade sanctions related to these taxes. That original agreement expired the earlier of Pillar One implementation or December 31, 2023, and so fell out of force at the end of last year. The imposition of DSTs by a number of nations has been a bone of contention since 2019, and, with the support of Congress, both the Trump and Biden administrations have imposed—and immediately suspended—retaliatory tariffs in a bid to keep the taxes at bay for US-based multinational companies, primarily in the tech sector.

The truce's extension, announced February 15, allows Austria, France, Italy, Spain, and the UK to continue collecting their DSTs and maintains the agreement that any excess amount collected under their DSTs, versus what would be collected under Pillar One, will be creditable against the portion of the corporate income tax liability associated with what is known as "Amount A" as computed under Pillar One in these countries, respectively. In return, the US agrees not to impose trade sanctions related to these countries' DSTs. (Amount A would establish a taxing right for market jurisdictions with respect to a defined portion of the residual profits of the largest and most profitable multinational businesses—in short, increasing taxing rights for jurisdictions in which the companies have users and customers.)

The agreement's new end date is June 30, 2024, in line with the OECD's revised target date for a signing ceremony of a multilateral tax treaty to implement Amount A of Pillar One. The parties also left open the possibility for further extension, mentioning in a footnote that "[a]t a later time, the [p]articipants may discuss commitments with respect to Unilateral Measures imposed on taxpayers after June 30, 2024."

All of these negotiations stem from US objections to DSTs and 2019 and 2020 "Section 301" investigations by USTR that concluded the taxes proposed by Austria, France, India, Italy, Spain, Turkey, and the UK were discriminatory and aimed largely at US tech giants.

Is this extension even meaningful?

While the extension aligns with the negotiating countries' revised goals, though, many in the tax community doubt that Pillar One will become reality in the near future, as it would require broad global consensus, and in the US it will need sufficient support in the Senate to implement the proposed treaty—support that currently does not seem to exist. Senate Finance Committee ranking member Mike Crapo, R-Idaho, and other Republicans on the taxwriting panel, for example, have been particularly concerned about the revenue impact of Pillar One on US companies—and the US fisc generally—and have criticized the Treasury Department for not providing Congress with a detailed estimate.

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There are other hurdles around the globe, too: some of the large developing countries at the table, including Brazil, Colombia, and India, are at odds with corporations over the treatment of withholding taxes and the marketing and distribution safe harbor as currently drafted. While OECD officials say that countries are actively trying to resolve their differences on technical issue, these challenges all loom over the fate of Pillar One.

What about DSTs from the rest of the world?

The new agreement announced by USTR notably does not impact the expiration of a separate commitment made in 2021 by other countries participating in the global tax project—which in total involves more than 140 countries—to a moratorium on new DSTs (that is, DSTs that were not in effect before January 1, 2022). In July of last year, with the work on Pillar One running behind schedule, 138 of the 143 negotiating countries released a statement agreeing to extend that moratorium on DSTs and other similar relevant taxes through 2024, but that was on the condition that at least 30 jurisdictions accounting for at least 60 percent of the ultimate parent entities of in-scope businesses must sign the treaty before the end of 2023. This condition would require the US to be one of the signers, given that more than 40 percent of in-scope companies reportedly are headquartered in the US.

However, after the OECD's October release of a draft multilateral tax treaty for implementing "Amount A" of Pillar One Treasury, Secretary Janet Yellen said the US would not be ready to sign on before the end of 2023. She said there were matters that still needed to be resolved, and she released the draft for stakeholder comments, saying, "It's critically important for a treaty of this level of importance and complexity to show it to the American public, to Congress, to the business community."

Recognizing that the treaty would not be ready for signature by the year-end deadline, the OECD announced in December of last year that the negotiating countries had agreed to yet another new timeline, targeting finalizing the text of the treaty by March of this year and holding a signing ceremony by the end of June. This announcement did not address the status of the DST moratorium, though. As a result, countries are no longer obligated to refrain from imposing new DSTs.

Canada remains an outlier

Even before the condition failed to be met for an extension through 2024, however, Canada last summer declined to sign on to the longer moratorium on new DSTs, saying it would move ahead with its plans to impose a DST beginning January 1, 2024—and retroactive to January 1, 2022—because there was no "firm and binding multilateral timeline to implement Pillar One." Congressional taxwriters in both the Senate and House and from both sides of the aisle responded by offering their "full support" of retaliatory trade measures and urging USTR to make clear to Canada that the US would "immediately respond using available trade tools."
(For prior coverage, see *Tax News & Views*, Vol. 24, No. 35, Oct. 20, 2023.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231020_2.html

Canada's DST is a 3 percent tax on the revenue large businesses earn from online marketplaces, social media platforms, the sale and licensing of user data, and online ads.

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While there has been no public statement from Canada backing down from its implementation plans, the government removed the January 1 implementation deadline in its Fall Economic Statement. Instead the DST was included on a long list of measures for which the government confirmed its "intention to proceed . . . as modified to take into account consultations and deliberations since their release." To date, Canada has not begun collecting the DST from companies.

A new negotiator at Treasury

Michael Plowgian, deputy assistant secretary for international tax affairs at the US Treasury Department, who was been the lead tax negotiator at the OECD and with Canadian officials, left Treasury at the end of 2023. Scott Levine joined Treasury and took on that portfolio in January.

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