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House Republican taxwriters renew call for retaliatory trade response to Canadian DST

In response to Canada's recent enactment of a new digital services tax (DST), Republicans on the House Ways and Means Committee this week once again urged the Biden administration to use trade measures against what they consider discriminatory taxes on US-based companies.

In a July 11 letter to US Trade Representative (USTR) Katherine Tai, Ways and Means Committee Chairman Jason Smith, R-Mo., and Trade Subcommittee Chairman Adrian Smith, R-Neb., called on the administration to "utilize authorities under Section 301 of the Trade Act to send a strong response given the threat the DST poses to American workers and businesses."
URL: https://waysandmeans.house.gov/wp-content/uploads/2024/07/7.11.24-Canada-DST-Letter-to-Ambassador-Tai.pdf

We're 'done examining options'

The letter, which was signed by all 25 Republican members of the panel, states that "[g]iven Canada's decision to enact its DST on June 19, despite significant US concerns expressed by Congress, USTR, and the Treasury Department, the time has come to make clear to Canada's political leadership that the United States is done examining options and will act decisively to protect American workers, small businesses, and innovators."

The GOP taxwriters affirm that they "support continued engagement with the Government of Canada regarding DST implementation" but note that "talks have been ineffective and Canada has not changed course at all."

"We strongly urge you to make clear that unilateral and discriminatory DSTs are unacceptable and immediately initiate an investigation under Section 301. A weak response from the Biden administration will harm American interests, lead to a proliferation of similar measures, and allow Chinese companies to gain a foothold in the markets of our closest trading partners," they said.

The letter amplifies a statement Smith released last month shortly after Canada enacted its DST, in which he called the tax "a step in the wrong direction [that] deserves a swift response."

On again, off again movement on DSTs

Canada's legislation (C-59), which passed its final parliamentary hurdle June 19 and came into force on June 28, includes a 3 percent tax on the Canadian digital services revenue of large technology companies with more than 750 million euros ($803 million) in annual revenues. The tax is retroactive to January 1, 2022, reflecting the year it was originally proposed. The planned DST was put on pause during negotiations at the OECD over the proposed reallocation of global taxing rights based on customer location—a plan known as Pillar One. A multilateral agreement around Pillar One was intended to replace the raft of DSTs proposed and enacted by numerous jurisdictions in 2019 and 2020, but those OECD talks have dragged out longer than originally

planned, leading Canada last year to say it would move forward with its tax. (For prior coverage, see *Tax News & Views*, Vol. 24, No. 35, Oct. 20, 2023.)
URL: https://www.parl.ca/DocumentViewer/en/44-1/bill/C-59/third-reading
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231020_2.html

At that time, taxwriting committee leaders in both chambers joined in bipartisan agreement to insist that the USTR respond to Canada using all available trade tools, saying that the administration had their “full support” in adopting retaliatory measures.

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 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. Because the majority of the companies that would be hit by DSTs are based in the US, members of Congress and administration officials have called them discriminatory towards US-headquartered corporations.

Austria, France, Italy, Spain, and the UK all had DSTs in place before reaching an agreement at the OECD in 2021 to continue collecting the taxes but credit any excess amount collected under the DSTs—versus what would be collected under Pillar One—against the portion of the corporate income tax liability associated with what is known as “Amount A” as computed under Pillar One in these respective countries. (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.) That truce on DSTs was extended last year to June 30, 2024, but with that deadline now past and the multilateral tax agreement still unsigned after multiple delays, it is not clear how these countries will respond. (For prior coverage, see *Tax News & Views*, Vol. 27, No. 7, Feb. 16, 2024.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240216_3.html

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