United States – Presidential Memorandum Reiterates Trump's Willingness to Use Retaliatory Taxes

On February 21, 2025, President Trump issued a presidential memorandum (the "Memo"), *Defending American Companies and Innovators from Overseas Extortion and Unfair Fines and Penalties*,[1] which, in part, directs the Secretary of the Treasury to identify any foreign country that imposes on U.S. citizens or corporations discriminatory or extraterritorial taxes, such as digital services taxes, that are inconsistent with any tax treaty of the United States or are actionable under section 891 of the Internal Revenue Code (I.R.C.). The Secretary of the Treasury is also directed to include the results of this determination as part of a report required under an earlier presidential memorandum.

WHY THIS MATTERS

The Memo indicates that the Trump Administration is open to using retaliatory measures against any country imposing a digital services tax, including invoking I.R.C. section 891 (see coverage in GMS Flash Alert 2025-041), which allows President Trump to double the tax rates of foreign citizens and foreign corporations of countries determined to impose discriminatory or extraterritorial taxes.

Several countries, including Austria, Canada, France, Italy, Spain, Turkey, and the United Kingdom, presently impose digital services taxes, which generally tax corporate revenue on the basis of activities (e.g., advertising, the sale of data, the operation of platform) rather than physical presence.[2] The United States has long viewed these digital services taxes as "inconsistent with principles of international taxation" that discriminate against U.S. digital companies.[3]

If section 891 were invoked, it would significantly increase the U.S. tax costs, and by extension overall global mobility program costs, for assignees who are citizens of any country identified by the president as imposing discriminatory or extraterritorial taxes.

KPMG INSIGHTS

Many of the countries that have digital services taxes also have income tax treaties with the United States that took effect or were amended after section 891 was signed into law. These treaties would override section 891, due to the "later in time rule" (when a treaty and law are in conflict, the instrument enacted later governs). However, the president has the authority to suspend or terminate income tax treaties without congressional approval.

Additionally, as discussed in GMS Flash Alert 2025-041, certain members of Congress have expressed support for a proposal in the House that would impose an additional tax on foreign citizens and corporations of countries the Treasury has identified as imposing discriminatory or extraterritorial taxes.

FOOTNOTES:

1 *Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties* Memorandum, https://www.whitehouse.gov/presidential-actions/2025/02/defending-american-companies-and-innovators-from-overseas-extortion-and-unfair-fines-and-penalties/ , (February 21, 2025).

2 For more information on digital taxation, see Digital Taxation - KPMG Responsible Tax.

3 *See e.g.*, Office of the United States Trade Respresentative, "USTR Announces Next Steps of Section 301 Digital Services Taxes Investigations."

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Contact us

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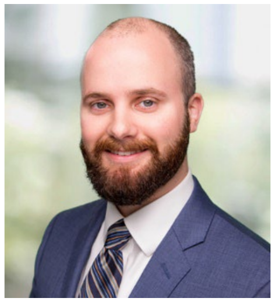

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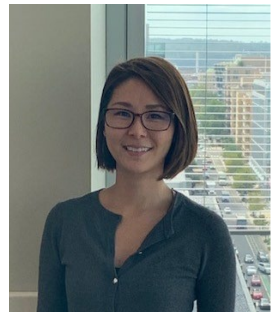

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