



Comment for USTR's Consultation on Initiation of Section 301 Investigations of Digital Services Taxes Docket No. USTR-2020-0022

We thank the Office of the United States Trade Representative for the opportunity to comment on its investigations into digital services taxes.

Oxfam America is a humanitarian organization dedicated to ending the injustice of poverty. We advocate for tax justice as a means to fund economic and social development. The Financial Accountability and Corporate Transparency (FACT) Coalition is a non-partisan alliance of more than 100 state, national, and international organizations working toward a fair tax system that addresses the challenges of a global economy and promoting policies to combat the harmful impacts of corrupt financial practices.

We urge USTR to not take action against jurisdictions that adopt digital services taxes.

To the contrary, the US federal government should itself consider taxing digital services to raise revenues to fight the coronavirus pandemic.

The digital services taxes adopted or under consideration by foreign countries are neither discriminatory nor unreasonable, and hence are not grounds for retaliatory action.

They are not discriminatory as they apply to digital services providers of any tax jurisdiction.

They are not unreasonable as they apply to activities that are currently under-taxed. In 2012 the Organization for Economic Cooperation and Development (OECD) initiated multilateral negotiations to reduce aggressive tax planning (the Base Erosion and Profit Shifting project or BEPS). The ability of digital services firms to avoid taxation was on the agenda from the start. But the 2014 agreement on Action 1 (Tax Challenges Arising from Digitalization) largely punted the issue. A second round of negotiations is now under way. Countries that have adopted or are considering digital services taxes have vowed to eliminate them once a multilateral agreement is reached. Oxfam calls for a multilateral solution. In the absence of that, however, all countries, including the United States, should seek to redress the low effective tax rates paid by digital companies.

We note that the United States itself took unilateral measures to combat aggressive tax planning by adopting the Global Intangible Low-Taxed Income (GILTI) tax, Base-Erosion and Anti-Abuse Tax (BEAT), and Foreign-Derived Intangible Income (FDII) tax in 2017. These taxes have had important spill over effects on other nations, which did not retaliate with import tariffs. Other countries contest the FDII, but they do so in the framework of a multilateral process (the OECD's Harmful Tax Practices peer reviews), not through unilateral retaliation.

Raising more revenue has become more important in the context of the coronavirus pandemic. The pandemic, while hurting most businesses, has generated windfall revenue and income for digital firms. Taxing such unexpected revenue is unlikely to distort their decisions and harm the economy. It is not "penalizing companies for their success"; it is asking lucky companies to participate in the collective recovery effort.

While taxing revenues instead of profits is uncommon, it is not unheard of and it does not violate tax treaties.

The “extra-territoriality” of digital services taxes is an innovation that anticipates the multilateral agreement under negotiation. The concept of permanent establishment is not suited to digital services. For digital services taxes, territoriality is based on the location of consumers, and the taxes apply only when a country’s share of the corporation’s global sales of digital services is above a certain threshold.

We welcome the initiative of the legislature of the State of Maryland, which passed a bill to tax digital services similar to the taxes under investigations.¹

In closing, some of the countries that adopted or are considering adopting digital services taxes have vowed to retaliate against any retaliatory measures that the United States might take. A trade war is the last thing that the United States and the world needs in the middle of the deepest economic crisis in a generation. We urge the Administration to focus its energy on negotiating a final outcome in the BEPS process without demanding safe harbor and grandfathering rules.

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¹ <https://bit.ly/2Zlw2Wb>