July 15, 2020

Submitted via the Federal eRulemaking Portal: http://www.regulations.gov

Mr. Patrick Childress
Assistant General Counsel
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Subject: Docket Number USTR-2020-0022 Initiation of Section 301 Investigations of Digital Services Taxes.

Dear Mr. Childress:

The Computing Technology Industry Association (CompTIA),[1] the leading association for the global information technology (IT) industry, respectfully submits these comments to the Office of the United States Trade Representative (USTR) in response to the above-captioned request for comment.[2]

CompTIA is highly concerned with the discriminatory nature of the digital services taxes (DSTs) under investigation with respect to those adopted or under consideration by Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom. These DSTs are unjustified, unreasonable, and discriminatory due to their narrow focus on only certain portions of the digital economy. Further, a set of global tax principles are needed to create consistency across nations and provide a balanced, fair, and workable framework to digital taxation as more commerce is facilitated in online markets.

Concerns with DSTs

Unreasonable & Discriminatory

CompTIA and its members strongly oppose the imposition of digital services taxes in the countries under investigation. DSTs are, at their core, discriminatory in nature. Many of the DSTs under investigation are designed to harm successful U.S. tech firms. In fact, some DSTs exempt their own national companies from the tax such as those found in Austria, France and

[1] CompTIA supports policies that enable the information technology industry to thrive in the global marketplace. We work on behalf of our 120-plus member companies to promote investment and innovation, market access, robust cybersecurity solutions, commonsense privacy policies, streamlined procurement, and a skilled IT workforce. Visit www.comptia.org to learn more.

[2] European Commission. COM (2020) 65 final. "White Paper: On Artificial Intelligence – A European approach to excellence and trust." https://ec.europa.eu/info/sites/info/files/commission-white-paper-artificial-intelligence-feb2020_en.pdf

India. Tax laws should be consistent and fair across all companies and industries. These laws must not be designed to prop up domestic firms, while harming foreign competitors.

Adoption of DSTs

CompTIA's members are also concerned with the adoption of many of the DSTs under investigation. For example, India's Equalization Levy was quickly pushed through Parliament without any consultation from stakeholders. Additionally, several of the DSTs in question, including from the European Union, were created to regain the revenue lost during the COVID-19 pandemic. While CompTIA understands that the coronavirus pandemic significantly affected the reserves of many countries, a global pandemic is an unjustified reason to tax digital services, particularly when it is those services that have kept the global economy from further collapse. Therefore, it is illogical to adopt a tax on the very feature that has sustained commerce of any kind during the pandemic.

Burdensome & Restricts U.S. Commerce

CompTIA's members are concerned by the burdensome nature of DSTs and restrictions these taxes place on U.S. commerce. As each country enforces their own set of rules, U.S. companies face an added compliance cost as there is no consistency in taxation rates and criteria. In addition, DSTs cause companies to be taxed twice, hindering innovation and economic growth. Also falling under this umbrella is the fact that the DST proposals tax revenue instead of profits, which leaves open the possibility that the tax would negatively affect companies who are in a deficit or whose profit margins are narrowing. Small- and medium-sized businesses are engines for economic growth, and in those countries where a DST would apply, this would cause them considerable harm, thereby further suppressing competition and economic growth.[3]

Inconsistent with WTO Obligations

The DSTs under investigation are inconsistent with the WTO's General Agreement on Trade in Services (GATS) in that it violates the "national treatment principle." The national treatment principle stipulates that WTO members cannot discriminate against other foreign service providers and favor service suppliers from their own country. WTO members must treat any businesses and service suppliers operating in their countries with treatment that is favorable as the treatment given to their own countries' businesses. The high-revenue requirements of the DSTs in question and the stringent criteria all indicate that these DSTs violate the national treatment principle as these laws only target large U.S. global tech firms.

[3] "Tax Alert: French Digital Services Tax (DST)," Jessica Gaston. https://www.jdsupra.com/legalnews/tax-alert-french-digital-services-tax-24392/

Concerns with DSTs Under Investigation

Austria

The October 2019 Austrian DST imposes a 5% tax on online advertising revenue for companies with an annual global revenue of over $849 million and advertising revenues of over $28 million in Austria. Furthermore, the law contains language that exempts Austria's state broadcaster, ORF, from receiving the tax, thereby protecting domestic organizations from this punitive tax.[4] In addition, the taxes collected by the Austrian DST directly subsidizes domestic businesses. This financially restricts U.S. tech firms by forcing them fund Austrian businesses instead of utilizing their revenue for their own research and development. Austria's DST has already passed through their governing body and has been implemented since January 1, 2020.

Brazil

Brazil's proposed "Contribution for Intervention in Economic Domain" or CIDE, would apply to gross revenue derived from digital services provided by large technology companies.[5] The DST is progressive and starts taxing companies at 1% for those with revenue of $26.6 million, 3% tax on $52.5 million, and a 5% for that over $52.5 million. This proposed tax affects companies using digital advertising, platforms selling goods and services, and companies transmitting user data. Brazil's proposed CIDE would effectively tax companies whos' global annual revenue is $525 million with revenue derived in Brazil at $17.5 million. Brazil's proposed CIDE has been introduced in the House of Representatives and has yet to be passed into law.

The Czech Republic

The Czech Republic's proposed DST also includes a high global revenue as one of the criteria of the tax. This draft measure would impose a 5% DST on revenues from digital advertising and digital interface services for companies generating over €750 million in annual global revenue and €1.9 million in Czech Republic.[6] The Czech Republic's proposed DST was put forward by their Finance Ministry and awaits for further ruling.

The European Union

The European Commission proposed a DST as part of financing the economic recovery for the COVID-19 pandemic. This proposed DST was based off a 2018 DST proposal which was later rejected as the European Commission originally voiced support of the ongoing international

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[4] Office of the U.S. Trade Representative. 2020 National Trade Estimate Report on Foreign Trade Barriers. P. 212. https://ustr.gov/sites/default/files/2020_National_Trade_Estimate_Report.pdf

[5] Federal Register Notice. Docket Number 2020-0022. Initiation of Section 301 Investigations of Digital Services Taxes. https://ustr.gov/sites/default/files/enforcement/301Investigations/DST_Initiation_Notice_June_2020.pdf

[6] NTE at 212.

tax dialogues happening at the OECD. [7] The proposed COVD-19 DST would effectively apply a 3% tax on revenues derived from digital advertising, digital interface services, and the transmission of user data for companies with a global annual revenue of €750 million with at least €50 million from digital services within the European Union. The EU's proposed DST is still in discussion at the Commission and they announced their intent to reopen the tax debate once the OECD reaches a conclusion in the fall of 2020.

India

The Indian Equalization Levy was enacted in March 2020 and imposes a 6% tax on digital advertising and a 2% tax on all other digital activity. This DST is directed at non-resident companies which provide online sales of goods and services to persons in India with a global annual revenue of $267,000. This tax became enacted on April 1, 2020; however, the next steps have been stalled due to government closures as a result of the COVID-19 pandemic.

Indonesia

Indonesia recently adopted an electronic transaction tax (ETT) that targets cross-border digital transactions. The scope of this tax is very broad and undefined and essentially, will include a taxation on any goods or services sold digitally. While the taxation rate is still undetermined, the final implementing measures will be reached once the government reopens after being closed due to COVID-19.

Italy

Italy recently adopted a 3% tax on revenues from digital advertising, digital interface services, and the trade of user data. This tax targets companies generating at least €750 million in global revenues for all services and €5.5 million in revenues for digital services within Italy. Italy has been contemplating this tax for several years but proceeded with action after the France issued their DST.

Spain

Spain issued a revised draft of its digital services tax bill which would impose a 3% tax on revenues from digital advertising, digital interface services, and user data trade in January 2020. This tax targets companies with an annual global revenue of €750 million and €3 million revenue in Spain for covered services.[8] The text is currently being reviewed by Parliament and there is an expected vote on this bill in September 2020. The first tax payment will be due in the end of 2020.

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[7] NTE at 212.
[8] NTE at 213.

Turkey

Turkey implemented their 7.5% digital services tax in March 2020 on digital advertising, sales of digital content, digital services to create and share content, and intermediation services. This tax is directed at digital companies with an annual global revenue of €750 million and an in-country revenue of €3 million. The language in the tax is extremely broad in scope and includes provisions allowing the Turkish President to unilaterally raise the tax rate as high as 15%.

The United Kingdom

The United Kingdom announced in October 2018 that they would introduce a digital services tax that would impose a 2% tax on revenues from digital services including social medial platforms, search engines, and online marketplaces. The draft bill would apply to businesses with an annual global revenue of £500 million from covered services and exempts the first £25 million in in-country revenues from the tax. The UK proposal also created a "safe harbor" which will adjust the tax for businesses with low profit margins.[9] The draft legislation was included in the March 2020 budget with an April 2020 effective date. The first tax collection will be in 2021.

Recommended Actions

We appreciate the Administration's continued efforts in investigating the unfair and discriminatory practices of a growing number of unilateral digital services taxes and we look forward to continued engagement with the government on the outcome of the investigation. Further, CompTIA believes finding a global solution to address taxation of the digital economy is imperative and we encourage the Administration to continue to seek a multilateral agreement to appropriately tax the global digital economy. Thank you for this opportunity to provide comments.

Sincerely,

Maggie Henkin
Manager, Global Trade & Market Access
Computing Technology Industry Association (CompTIA)

[9] NTE at 213.