

THE TRUMP EFFECT: US FOREIGN TAX POLICY

CLIENT BRIEFING

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President Trump did not impose additional tariffs immediately after his inauguration. But among the executive orders that he signed on inauguration day is a firm rebuff of the OECD/G20 Inclusive Framework's Two-Pillar Solution and the starting point for an "America First Trade Policy" that will likely put extensive tariffs on the table as a policy option.

The imposition of an incremental 10% tariff on Chinese goods, and new 25% tariffs on Canadian and Mexican goods, as envisaged in two Truth Social posts by President Trump in November 2024 ([here](#) and [here](#)), was not included among the executive orders signed by Trump on 20 January 2025, the day of his inauguration. But this cannot be taken as a shift in Trump's policy preferences.

Trump's [inaugural address](#) set out an intention to "tariff and tax foreign countries to enrich our citizens", and his "[America First Priorities](#)" include an "America First Trade Policy" and asserting US tax sovereignty.

International tax reform: drawing a line in the sand

Starting with the assertion of US tax sovereignty, Trump signed an [executive order](#) essentially rejecting the OECD's "Global Tax Deal" which I would interpret to mean the entirety of the Two-Pillar Solution (rather than, for instance, only the GloBE Rules under Pillar Two).

Section 1 instructs US officials to inform the OECD that, without approval by the US Congress, the US is not bound by any commitments made by the previous administration in relation to the Global Tax Deal. In a sense, this states the obvious. The very premise of the GloBE Rules is that they need to be enacted through domestic legislation (and no legislation was passed in the US), the US has not amended any bilateral treaties or signed the Multilateral Convention to Facilitate the Implementation of the Pillar Two Subject to Tax Rule (STTR), and the Multilateral Convention to Implement Amount A of Pillar One (MLC) is not even open for signature yet. In December 2024, the Internal Revenue Service had [notified](#) an intention to

implement Amount B of Pillar One but this is unlikely to be a priority now, and new regulations [will have to be approved by a Trump-appointee](#).

The order can also be read as a statement of intent: the US is not bound by the Two-Pillar Solution and will not be bound (at least not during Trump's second term). The previous administration may have given soft commitments to negotiating partners, but these are now obsolete. This will also be true of the [joint statement on digital services taxes \(DSTs\)](#) by the US, the UK and certain EU Member States under which the US had committed to terminate DST-related trade sanctions (more on those below) and the other countries could continue to collect DSTs pending agreement on Amount A of Pillar One. The statement (which had already been extended once) lapsed at the end of June 2024. What may now happen instead of another extension is indicated by Section 2 of the executive order.

Section 2 requires the US Treasury Secretary to investigate and report whether:

- "any foreign countries are not in compliance with any tax treaty with the United States". It is possible that this could foreshadow the US taking the position that the Undertaxed Profits Rule (UTPR) is incompatible with double tax treaties; and
- "any foreign countries...have any tax rules in place, or are likely to put tax rules in place, that are extraterritorial or disproportionately affect American companies" which would likely encompass DSTs and similar measures.

The report must include "a list of options for protective measures or other actions" that could be taken in response to any identified non-compliance or extra-territorial measure. It must be delivered within 60 days (which would take us to around 20 March 2025).

It is difficult to predict what these response options could look like. In relation to DSTs, the US Trade Representative had previously taken action under section 301 of the US Trade Act of 1974 and proposed additional duties on goods imported from the relevant countries (see [list of actions here](#)). But this may be less effective in the context of a tariff-based trade policy. So, what else could the Trump Administration look at?

The **executive order** on an “America First Trade Policy” envisages a separate (but potentially overlapping) investigation into “whether any foreign country subjects United States citizens or corporations to discriminatory or extraterritorial taxes pursuant to section 891 of title 26, United States Code” (Section 2(j)). Section 891 doubles applicable rates of US tax on US income earned by persons in the relevant jurisdictions.

Yet another option could be a targeted legislative response. Some models for this already exist. For instance, Republican lawmakers proposed legislation in **May** and **July 2023** that provided for adverse tax consequences in respect of entities resident in jurisdictions that have implemented the UTPR.

What does this mean for the Two-Pillar Solution?

The Trump Administration’s stance is unlikely to have a significant effect on the STTR which is mostly a matter for bilateral treaty negotiation (so far, the relevant Multilateral Convention has only nine signatories) or Amount B in its current optional form. Any further work to make Amount B mandatory under the MLC is likely to take a back seat because the announcements are almost certainly a death knell for Amount A. It seems clear that the Trump Administration will not sign up to the MLC and, without US support, it is unlikely that the threshold required for the MLC to take effect can be reached because a significant proportion of the businesses it would cover are in the US.

The stability of the GloBE Rules is called into question. In the short-term, implementing countries’ reactions will almost certainly be to “Keep Calm and Carry On”. In the UK, for instance, it is likely that the implementation of the UTPR will (at least for the time being) proceed as planned. What happens once the various US investigations have concluded is harder to predict.

The GloBE Rules have significant sunk costs from governments (and businesses) around the world, the project was driven by governments’ desires to protect tax revenues, prevent tax avoidance and limit tax competition which persist, and there is no clear alternative. Even if there was the political will to renegotiate the issues in the context of the proposed UN Framework Convention on International Tax Cooperation, this process is years behind the GloBE Rules (and the Two-Pillar Solution in general). It is also unlikely to result in better US engagement as the Trump Administration would likely see it as another attempt to make America “beholden to foreign organizations for our national tax policy”.

Overall, it seems unlikely that the GloBE Rules would unravel any time soon. The main sticking point from a US perspective is the UTPR and this could (assuming current US tax laws) be resolved by making permanent the transitional UTPR safe harbour based on the level of taxation in the ultimate parent entity jurisdiction. But this solution may not be available if Trump drastically reduces US corporate tax in favour of tariffs.

Trade and tariffs: the calm before the storm?

Trump did not impose any additional tariffs immediately following his inauguration, but he has set the stage for a significant shift in trade policy. The “America First Trade Policy” order requires several investigations which will feed into four reports, due on 30 March and 1 April 2025.

In addition to the above-mentioned investigation of “discriminatory or extraterritorial taxes pursuant to section 891”, the US Treasury Secretary’s duties include scoping the establishment of an “External Revenue Service (ERS) to collect tariffs, duties, and other foreign trade-related revenues”.

The US Commerce Secretary is charged with investigating (amongst others) the causes of the US trade deficit and possible countervailing measures “such as a global supplemental tariff or other policies, to remedy such deficits”. Also required is an assessment of “unlawful migration and fentanyl flows from Canada, Mexico, the PRC”, points which Trump’s Truth Social posts of November 2024 had cited as reasons for the potential tariffs on Canadian, Mexican and Chinese goods mentioned at the start of this article. Unlike the Truth Social posts, the executive order also refers to “any other relevant jurisdictions”, so the resulting report could propose trade sanctions for additional countries.

Overall, it seems clear that Trump favours tariffs as a potential revenue raiser and geopolitical tool. But in case you need any further evidence: part of the justification for **reinstating** “Mount McKinley” as the name of an Alaskan mountain (which had been **given** its local Athabascan name “Denali” under President Obama in 2015) was that “President McKinley championed tariffs to protect U.S. manufacturing, boost domestic production, and drive U.S. industrialization and global reach to new heights”. Whether tariffs would nowadays have the same effect is open to debate - after all, the world looks rather different now than during McKinley’s tenure as the 25th US President from 1897 to 1901.

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