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President Trump’s day one executive orders portend significant tax changes

January 23, 2025 | Client Update | 4-minute read

On Monday, President Trump issued a flurry of executive orders on a wide variety of topics, many of which implement changes previewed during his presidential campaign. Three of the executive orders were related to tax policy or have potentially significant consequences for tax policy and administration.

Repudiation of the “OECD Global Tax Deal”

In direct response to the OECD BEPS framework (Pillar 1 and Pillar 2), which the executive order refers to as the “Global Tax Deal,” this executive order provides that “any commitments made by the prior administration on behalf of the United States with respect to the Global Tax Deal have no force or effect within the United States” absent Congressional action. Moreover, the executive order directs Treasury to investigate whether any foreign countries either (i) are not in compliance with any U.S. tax treaty or (ii) have implemented or are likely to implement tax rules that are extraterritorial or disproportionately affect American companies. Treasury is further directed to develop, within 60 days, a list of options for “protective measures” or other actions that the United States should adopt or take in response to such noncompliance or tax rules.

The executive order is squarely aimed at trying to end the implementation of the Global Tax Deal, which has been agreed to by over 140 countries. Many of the tax rules being adopted by foreign countries pursuant to the Global Tax Deal do not comply with U.S. tax treaties or, in the absence of U.S. adoption of the 15% minimum corporate tax called for under the Global Tax Deal, would result in U.S. companies and/or their subsidiaries being subject to additional taxes in foreign countries.

The list of options for “protective measures” that Treasury will develop will presumably include the use of Section 891 of the Internal Revenue Code, which permits the President, upon finding that U.S. citizens or corporations are being subject to discriminatory or extraterritorial taxes by any foreign country, to double the rates of tax applicable to citizens and corporations of such foreign country. (It is worth noting that another executive order, relating to the “American First Trade Policy,” explicitly directs Treasury to investigate whether any foreign country subjects U.S. citizens or corporations to discriminatory or extraterritorial taxes pursuant to Section 891 of the Code.) Similar options could include rules like those contained in the “Defending American Jobs and Investment Act” reintroduced by House Ways and Means Chairman Jason Smith this week, which would, after a finding that a foreign country has adopted discriminatory or extraterritorial taxes, increase the rate of taxes on the U.S. income of wealthy investors and corporations in that foreign country by 5 percentage points per year for four years, after which the tax rates would remain elevated by 20 percentage points while such discriminatory or extraterritorial taxes remain in effect.

Regulatory freeze

Consistent with executive orders issued by recent prior administrations, President Trump signed an executive order freezing the proposal or issuance of any new rules until a department or agency head appointed or designated by President Trump reviews and approves the rule. The executive order also directs executive departments and agencies to consider (i) postponing, for at least 60 days, the effective date of any rules that have been published in the Federal Register or rules that have been issued but have not taken effect, and (ii) opening a comment period for those postponed rules to allow interested parties to provide comments about fact, law and policy issues raised by the rules.

The regulatory freeze could impact the finalization of previously proposed regulations recently issued by the IRS, including the proposed regulations on the corporate alternative minimum tax, partnership “basis shifting” transactions, and spin-off transactions, as well as the issuance of new proposed regulations, including regulations that would implement recently issued administrative guidance on clean energy, all of which are expected to be closely scrutinized by incoming appointed officials in accordance with the policy goals of the new administration.

Hiring freeze

President Trump also signed an executive order imposing a 90-day hiring freeze throughout the executive branch (other than military personnel or positions related to immigration enforcement or social security), which is set to expire upon the issuance of plan to reduce the size of the federal workforce.

Notably, the hiring freeze for the IRS is indefinite, and will remain in effect until Treasury, in consultation with the Office of Management and Budget and the Administrator of the United States DOGE Service, determines that “it is in the national interest to lift the freeze.” Over time, a hiring freeze at the IRS could result in a “brain drain,” as experienced personnel leave the IRS and are not replaced, either with experienced people from outside of government or more junior personnel who would have gained experience working in the IRS, which could impede IRS functions, including both the auditing function and the promulgation of taxpayer guidance.

With the issuance of these executive orders, attention will quickly shift back to Capitol Hill, where Republicans in Congress are considering broad-ranging changes to the tax system in response to the pending expiration of many TCJA tax provisions as well as proposals made by President Trump during the campaign. We will continue to actively monitor these developments in the weeks and months to come.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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