

US TAX REFORM

Questionnaire for EU companies

BACKGROUND

The US tax reform of 2017 has introduced two provisions that are of potential concern from the perspective of discrimination and by extension WTO compatibility. The EU and Member States made representations to the US authorities regarding both sections during the legislative process.

1. The Base Erosion and Anti-abuse Tax (BEAT) is a tax applied to all payments made by US and foreign-headquartered multinational companies to a related foreign company, apart from those associated with cost of goods sold, over a threshold of \$500 million average (over 3 years) annual gross receipts. This tax would not apply to comparable related party payments between two affiliates of a multinational company in the US.

This could give rise to discrimination and incompatibility with WTO rules because this tax would in certain cases be imposed on purchases from abroad while it would not be imposed on purchases made domestically. It would not allow for the credit of foreign taxes paid and we understand that it is not exclusively targeted at abusive situations, i.e. when the objective is to avoid paying taxes. Therefore, it could impact genuine commercial arrangements. Moreover, it could lead to double taxation of the same payments.

2. The global intangible low-tax income scheme (GILTI) foresees that US companies have to declare, as a deemed dividend, the income that their related companies abroad derive from intangible income (there is a tax credit for taxes paid in the jurisdiction of the foreign related company). However, the measure also provides for a deduction for Foreign Derived Intangible Income (FDII) equal to 37.5% of U.S. corporation's intangible income multiplied by the ratio of the U.S. corporation's exports of goods and services divided by its gross income (minus some exceptions).

The deduction for foreign derived intangible income would appear to apply the preferential tax treatment to a broader range of intellectual property than other internationally accepted regimes. It appears that the preferential tax treatment would also be given to intellectual property that was initially created outside the US. This measure would seem to result in an export subsidy since income from exports of intellectual property rights and goods would be taxed less than income generated by domestic sales. The fact that the deduction would be contingent upon export performance and only available for exports, appear to make this a subsidy prohibited by the WTO Agreement on Subsidies and Countervailing Measures.

Irrespective of the implications of these provisions for the US international obligations, it is important for the EU to be able to appreciate their potential commercial and regulatory implications.

We therefore ask you to answer the following questions:

On the US Tax Reform in general.

- 1. What is the expected overall impact of the US Tax reform on your business?**

On the Base Erosion and Anti-abuse Tax

(only for groups with related companies in the US):

- 2. Have you assessed whether the BEAT will have an impact on your business operations in the US? (Y/N)**

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3. **Could you describe the type of transactions and business operations which will be impacted by the BEAT?**
4. **Are there any constraints, regulatory or otherwise, that require your business operations in the US to be structured in a way that would be negatively impacted by the BEAT?**
5. **Could you quantify the potential impact of the BEAT on your current transactions/business operations assuming you do not intend to modify them? Notably, is your group going to face higher taxation in the US when purchasing services, intangibles or goods from associated companies not located in the US compared to purchasing the services, intangibles or goods from companies located in the US?**
6. **How do you expect that your business will respond to the potential impact of the BEAT? If by reorienting purchases so far made abroad towards domestic purchases, then what disadvantages will this create for the associated companies located in the EU which will no longer sell to the US affiliates.**
7. **Could you quantify the potential impact of the BEAT on your transactions/business operations anticipating changes in business operations/structuration due to the new US tax rules?**
8. **Does the new regime have any other implications for your operations? Please describe and if possible quantify.**

On the Foreign Derived Intangible Income

9. **Will your current business plans/strategy in the US qualify for the FDII? Do you plan to change your business plans/strategy to make use of the FDII?**
10. **(for EU groups with affiliates in the US): Have you plans to change or do you consider changing your business plans/strategy aiming for increased exports from the US to the EU or third countries?**
11. **(for EU companies without affiliates in the US): Have you recently experienced increased price competition from goods and services originating in the US, be in on the EU market or on third-country destination markets (other than the US)?**

Company's name:

Sector:

The content of this form is confidential and intended for the European Commission only. It is strictly forbidden to share any part of it with any third party, without a written consent of the sender. Overall data, elaborated on the basis of all answered

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received under condition of anonymity, will be used for general trade policy purposes.

Attachment: Data protection statement

PROTECTION OF YOUR PERSONAL DATA

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1. Introduction

This privacy statement explains the reason for the processing, the way we collect, handle and ensure protection of all personal data provided, how that information is used and what rights you may exercise in relation to your data (the right to access, rectify, block etc.).

The European institutions are committed to protecting and respecting your privacy. As this service/application collects and further processes personal data, Regulation (EC) N°45/2001¹, of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, is applicable.

This statement concerns a survey on the impact of US tax reform on EU companies undertaken by DG Trade.

2. Why do we process your data?

Purpose of the processing operation: DG Trade Unit E1 (referred to hereafter as Data Controller) collects and uses your personal information to assess the impact of US tax reform on EU companies. Trade policy options will be defined according to the overall information gathered.

3. Which data do we collect and process?

The personal data collected and further processed are:

- Name of the company;

¹ [Regulation \(EC\) N° 45/2001](#) (OJ L8 of 12/01/2001).

- Business sector;
- Business operations impacted by new US tax provisions;
- Quantitative impact of these provisions

4. How long do we keep your data?

DG Trade Unit E1 only keeps the data for the time necessary to fulfil the purpose of collection and of obtaining overall quantitative results. All personal data will be deleted from databases 1 year after the last action in relation to the Consultation.

5. How do we protect your data?

All data in electronic format (e-mails, documents, uploaded batches of data etc.) are stored on the servers of the European Commission; the operations of which abide by the European Commission's security decision of 16 August 2006 [C(2006) 3602] concerning the security of information systems used by the European Commission;

The Commission's contractors are bound by a specific contractual clause for any processing operations of your data on behalf of the Commission, and by the confidentiality obligations deriving from the transposition of Directive 95/46/CE

6. Who has access to your data and to whom is it disclosed?

Access to your data is provided to authorised staff according to the "need to know" principle. Such staff abide by statutory, and when required, additional confidentiality agreements.

The European Commission is the sole recipients of the data.

The information we collect will not be given to any third party. The overall quantitative results may be used for trade policy purposes in the context of bilateral relation with the USA and WTO dispute settlement.

7. What are your rights and how can you exercise them?

According to Regulation (EC) n°45/2001, you are entitled to access only your personal data and rectify and/or block it in case the data is inaccurate or incomplete. You can exercise your rights by contacting the data controller, or in case of conflict the Data Protection Officer and if necessary the European Data Protection Supervisor using the contact information given at point 8 below.

8. Contact information

If you have comments or questions, any concerns or a complaint regarding the collection and use of your personal data, please feel free to contact the Data Controller using the following contact information:

The Data Controller:

- **Houben Hiddo**
- Head of Unit E1, DG TRADE
- +32 229-56293

- trade-e1-request-box@ec.europa.eu

The Data Protection Officer (DPO) of the Commission: DATA-PROTECTION-OFFICER@ec.europa.eu

The European Data Protection Supervisor (EDPS): edps@edps.europa.eu.

9. Where to find more detailed information?

The Commission Data Protection Officer publishes the register of all operations processing personal data. You can access the register on the following link : <http://ec.europa.eu/dpo-register>

This specific processing has been notified to the DPO with the following reference: 3466.6
