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Digital Economy Taxation Measures: 'Very Concerning' to U.S.

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Very concerning. Not appropriate. Not workable.

Those phrases figure prominently among the descriptions current and former U.S. government officials have attached to the growing number of measures individual countries, the OECD and EU are developing to tax the digital economy.

"The United States continues to be of the view that it is not appropriate to single out such a digital economy for a special regime or treatment," U.S. Treasury Department Deputy Assistant Secretary of Tax Policy told attendees of the annual international tax conference put on by the George Washington University Law School, the Internal Revenue Service and Treasury late last year, according to a recent Bloomberg BNA article.

Many countries in Europe and Asia have either implemented new rules to tax digital activities or are considering doing so. These measures typically levy new taxes on the sales digital companies – most notably, U.S.-based giants – generate in specific countries.

The OECD's Task Force on the Digital Economy began addressing e-commerce taxes three years ago as part of its multi-pronged Base Erosion and Profit Shifting (BEPS) action plan. A 2015 OECD report examined several potential solutions to digital economy taxation, including the use of digital permanent establishment. At the international tax conference mentioned above, Kevin Nichols, senior counsel to the International Tax Counsel at the U.S. Treasury Department, described digital permanent establishment as "very concerning for the U.S.," in part because it "depends on this notion of ring-fencing the digital economy or finding a way to delineate what the digital economy is versus what everything else is." Since today's economy is digital, yet current definitions separate a digital economy versus the rest of the economy, this is problematic, to say the least.

Last year, the OECD requested comments on potential approaches to new international tax rules for digital companies. The OECD is using those comments – published in two parts (read part 1 and part 2) – to develop an interim report on digital economy taxation that will be presented at an April 2018 meeting of the G20 Finance Ministers.

Discussions among finance ministers and other stakeholders at the meeting could be contentious, thanks in part to the still unfolding international impacts of the U.S. Tax Cut and Jobs Act of 2017. Former U.S. Treasury official Robert Stack – who now serves as a managing director in Deloitte Tax LLP's Washington National Tax and International Tax group – used another choice phrase when assessing how tax executives might respond to the ways that international tax rules may or may not change during the next 24 months or so: "Buckle up…"

One thing is for sure: 2018 will not be quiet on any domestic or international tax front, including the taxation of the digital economy. Buckle up, indeed.

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