DST Section 301 Investigations: Additional Findings and Updates for Austria, Spain, the United Kingdom, Brazil, the Czech Republic, the European Union, and Indonesia

January 14, 2021

Following our reporting earlier this week on the Section 301 determinations regarding digital services tax (DST) measures in India, Italy, and Turkey, the Office of the U.S. Trade Representative (USTR) has today issued additional findings regarding DSTs in Austria, Spain, and the United Kingdom. USTR issued reports regarding each country and notices of affirmative conclusions under Section 301 of the Trade Act of 1974 that "each of the DSTs discriminates against U.S. companies, is inconsistent with prevailing principles of international taxation, and burden or restricts U.S. commerce."

These investigations were launched in June 2020 along with investigations into DST proposals or policies in a number of other countries. As with the affirmative Section 301 findings issued with respect to India, Italy, and Turkey last week, USTR has stated that it is not taking any specific action with respect to Austria, Spain, and the UK, but will "continue to evaluate all available options." The delay in immediate action gives some room for a multilateral solution currently being pursued at the OECD, which generally has bilateral support in Congress and would correspond to President-Elect Biden's interest in a multilateral approach to resolving trade disputes.

USTR also provided a status update as to its investigations of DSTs proposed, but not yet implemented, in Brazil, the Czech Republic, the European Union, and Indonesia. The report on these DST proposals raises concerns, but does not reach any conclusion, noting that the analyses are ongoing. The report further states that the United States is encouraging "engagement on these matters through bilateral discussions and on related taxation issues through multilateral forums."