

數位服務稅之戰爭與和平

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摘要

當美中兩大經濟體的貿易大戰於 2018 年開打，並持續進行之際，另一場貿易大戰也於 2019 年揭開序幕。主要對手卻是過去通常站在同一陣營的歐盟與美國，起因乃是歐洲某些國家決定開徵所謂的「數位服務稅」，美國也因此啟動其 1974 年貿易法之 301 條款調查。這場貿易大戰雖因系爭國家合意利用經濟合作暨發展組織之國際稅改談判加以解決，而未如美中貿易大戰一般大規模開打，殃及全球經貿。然而仍有必要探討爭議之「數位服務稅」是否違反世界貿易組織規範，並理解對於國際稅改支柱 1 解決方案：亦即重新分配課稅權之方案，美國之立場為何由反對轉為接受，以便掌握這場戰爭與和平之演變過程，做為未來之借鏡。目前國際稅改之雙柱解決方案雖已在國際間獲得共識，且實施細節亦正密集討論中，但仍有少數國家罔顧支柱 1 方案廢止「數位服務稅」的共識，繼續尋求「數位服務稅」之立法，無論其盤算為何，顯然雙柱解決方案若不及時實施，和平恐有變調之虞。

關鍵字：數位服務稅、301 條款調查、經濟合作暨發展組織、稅基侵蝕與利潤移轉包容性架構、支柱 1 解決方案、課稅權重新分配、支柱 2 解決方案、全球反稅基侵蝕規定

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Abstract

While the United States and China have been waging a trade war since 2018, another trade war was also initiated in 2019. However, this time the countries involved are the ones that were usually in the same camp before, *i.e.*, the United States and European Union. The cause for the battle was that some European countries decided to collect the so-called digital services tax (DST), and in response, the United States launched a section 301 investigation pursuant to its Trade Act of 1974. Unlike the 2018 trade war between the U.S. and China, which has been affecting the global trade seriously, there has been no intense or large-scale fighting in this battle because the countries involved agreed to resort their difference through the international tax reform negotiation under the auspice of OECD. Nevertheless, to learn a lesson from the DST war and peace evolution, it is necessary to explore whether the disputed DST violates the WTO rules, and to understand why the U.S. has changed its position and accepted Pillar One solution, which reallocates the taxing rights among countries. Despite that the implementation details have been under intensive discussion since the global consensus was secured for the two-pillars solution, currently there are still few countries pursuing DST legislation irrespective of the consensus under the Pillar One solution to abandon DST. It seems essential to get the two-pillars solution implemented as soon as possible if we would like to ensure peace and avoid another unnecessary trade conflict.

Key words: digital services tax, section 301 investigation, OECD, BEPS Inclusive Framework, Pillar One solution, reallocation of taxing rights, Pillar Two solution, Global anti-base erosion (GloBE) rules