The Consequences of the TCJA’s International Provisions: Lessons from Existing Research

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“Tax Cut and Jobs Act” (TCJA)

- Dividend exemption for repatriations
- One-time tax on foreign cash holdings
- “Global Intangible Low-Taxed Income” (GILTI) tax
  - US tax on above-normal foreign income, imposed immediately (i.e. without deferral)
    - Does not cause “lockout,” but burdens US residence
- “Foreign-Derived Intangible Income” (FDII) tax preference
- “Base Erosion Anti-Abuse Tax” (BEAT)
Dividend Exemption

↑ in repatriations → consequences?

Evidence from the AJCA:

- Increases in shareholder payout
  - Blouin and Krull (2009); Dharmapala, Foley and Forbes (2011)
    - Limited efficiency gains, as shareholders are not cash-constrained

- No evidence for increases in US investment, employment or wages
  - Caveats: cash-constrained firms may increase investment
GILTI Tax

$Y_F$: Foreign income (aggregated across affiliates)

$A_F$: Foreign tangible assets

$\tau_F$: Foreign tax rate

Assume no net interest expense

- **GILTI** = $Y_F - (0.1)*A_F$
- **GILTI tax**:

\[
T_{GILTI} = 0.105 \left( (1 - \tau_F)Y_F - 0.1A_F + \frac{(1 - \tau_F)Y_F - 0.1A_F}{(1 - \tau_F)} \tau_F \right) - 0.8 \left( \frac{(1 - \tau_F)Y_F - 0.1A_F}{(1 - \tau_F)} \tau_F \right)
\]

for $\tau_F \leq 0.13125$ (otherwise, $T_{GILTI} = 0$)

Does the GILTI tax ↑ or ↓ tax burden on US residence?
Blouin and Krull (2009): 13% of US MNCs repatriated under AJCA (49% when weighted by assets).

For non-repatriators: If GILTI tax burden > $(0.0525 - 0.15\tau_F)$ then a fortiori GILTI tax burden > $\delta(0.35 - \tau_F)Y_F + C_P$

Low burden of repatriation tax $(0.0525 - 0.15\tau_F)Y_F > \delta(0.35 - \tau_F)Y_F + C_P$
Tax Burden on US Residence

- For AJCA non-repatriators:
  - When does $T_{GILTI} > (0.0525 - 0.15*\tau_F)$?
  - Suppose $(Y_F/A_F) \approx 0.65$ (mean value in BEA data):
    - GILTI tax burden > burden of the old repatriation tax for $\tau_F \leq 6.8$
      - Blouin and Krull (2009): mean $\tau_F$ for non-repatriators = 8.1% (median = 0%)
      - Sufficient, not necessary, condition; repatriators may also be worse off

- TCJA may increase the tax burden of US residence for many, and perhaps most, US MNCs
  - Assuming GILTI tax cannot be easily avoided
GILTI Tax: Ownership Distortions

GILTI = 200 – 0.1*(1000) = $100
GILTI tax = 0.105*(100) = $10.50

F Sub
$1000 tangible assets
Income = $0
25% tax rate

H Sub
No tangible assets
Income = $200
0% tax rate
GILTI Tax: Ownership Distortions

Suppose US MNC buys another $1000 of tangible assets in country F; generates $66.67 (net of depreciation deductions)

\[
\text{GILTI} = 267.67 - 0.1 \times (2000) = 66.67
\]

Foreign tax = 0.25 \times (66.67) = 16.67

\[\text{§ 78 gross-up} = 4.17; \text{ FTC} = 0.8 \times (4.17) = 3.30\]

GILTI tax = 0.105 \times (66.67 + 4.17) - 3.30 = 4.11

i.e. GILTI tax liability ↓ from $10.50 to $4.11

\[
\text{US MNC} \rightarrow \text{F Sub} \rightarrow \text{H Sub}
\]

$2000 tangible assets
Income = $66.67
25% tax rate

No tangible assets
Income = $200
0% tax rate
GILTI Tax: Ownership Distortions

- Foreign tangible assets earning routine returns provide a tax shield against the GILTI tax

- **Inefficiency**: US MNCs are tax-favored buyers of routine foreign tangible assets
  - Ownership neutrality is violated; negative synergies
  - Sale-leaseback transactions?
    - § 951A(d)(4): “The Secretary shall issue such regulations or other guidance as the Secretary determines appropriate to prevent the avoidance of the purposes of this subsection, including regulations or other guidance which provide for the treatment of property if
      1. (A) such property is transferred, or held, temporarily, or
      2. (B) the avoidance of the purposes of this paragraph is a factor in the transfer or holding of such property.”
A Tentative Assessment

- Longstanding debate between advocates of
  - Participation exemption
  - Worldwide taxation without deferral

- TCJA: worst of both worlds?
  - Substantial tax burden on US residence
  - Extensive tax planning opportunities

- “Legislate in haste; repent at leisure”? 

- Groucho Marx on politics: “The art of looking for trouble, finding it everywhere, diagnosing it incorrectly and applying the wrong remedies”