

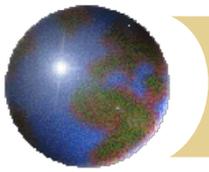
# The Consequences of the TCJA's International Provisions: Lessons from Existing Research

National Tax Association Spring Symposium

May 18, 2018

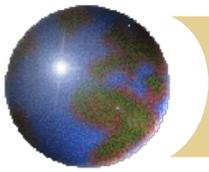
Dhammika Dharmapala

University of Chicago Law School



## “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)**

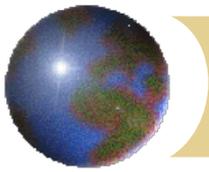


# Dividend Exemption

↑ 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

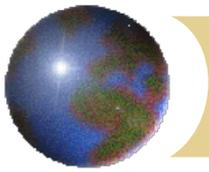
- $GILTI = Y_F - (0.1) * A_F$

- GILTI tax:

$$T_{GILTI} = 0.105 \left( (1 - \tau_F)Y_F - 0.1A_F + \overbrace{\frac{(1 - \tau_F)Y_F - 0.1A_F}{(1 - \tau_F)} \tau_F}^{\text{\$ 78 gross-up}} \right) - 0.8 \overbrace{\left( \frac{(1 - \tau_F)Y_F - 0.1A_F}{(1 - \tau_F)} \tau_F \right)}^{\text{FTC}}$$

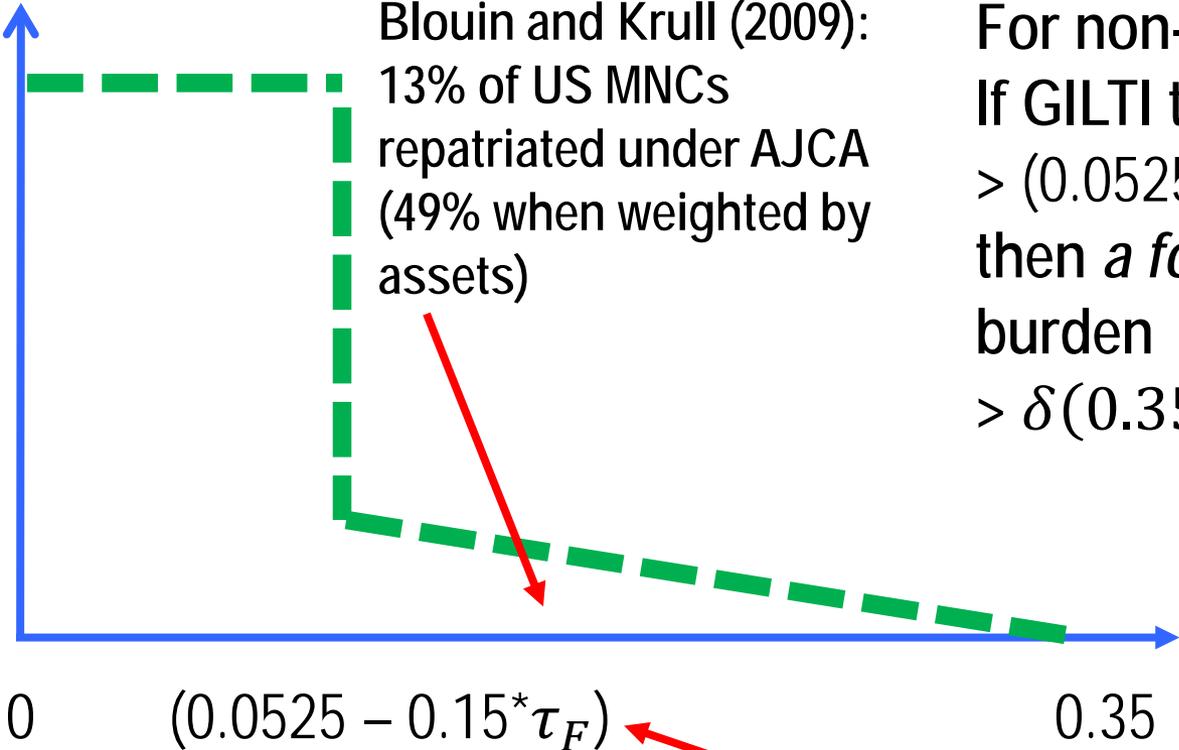
for  $\tau_F \leq 0.13125$  (otherwise,  $T_{GILTI} = 0$ )

**Does the GILTI tax  $\uparrow$  or  $\downarrow$  tax burden on US residence?**



# Tax Burden on US Residence

Number of Firms



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

Repatriation tax burden

0       $(0.0525 - 0.15 * \tau_F)$       0.35

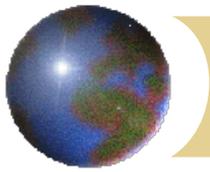


Temporary tax rate under AJCA in 2005

Low burden of repatriation tax

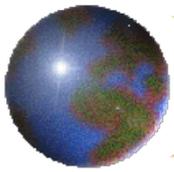
$$(0.0525 - 0.15 * \tau_F)Y_F > \delta(0.35 - \tau_F)Y_F + C_P$$

Burden of repatriation tax (absent AJCA)

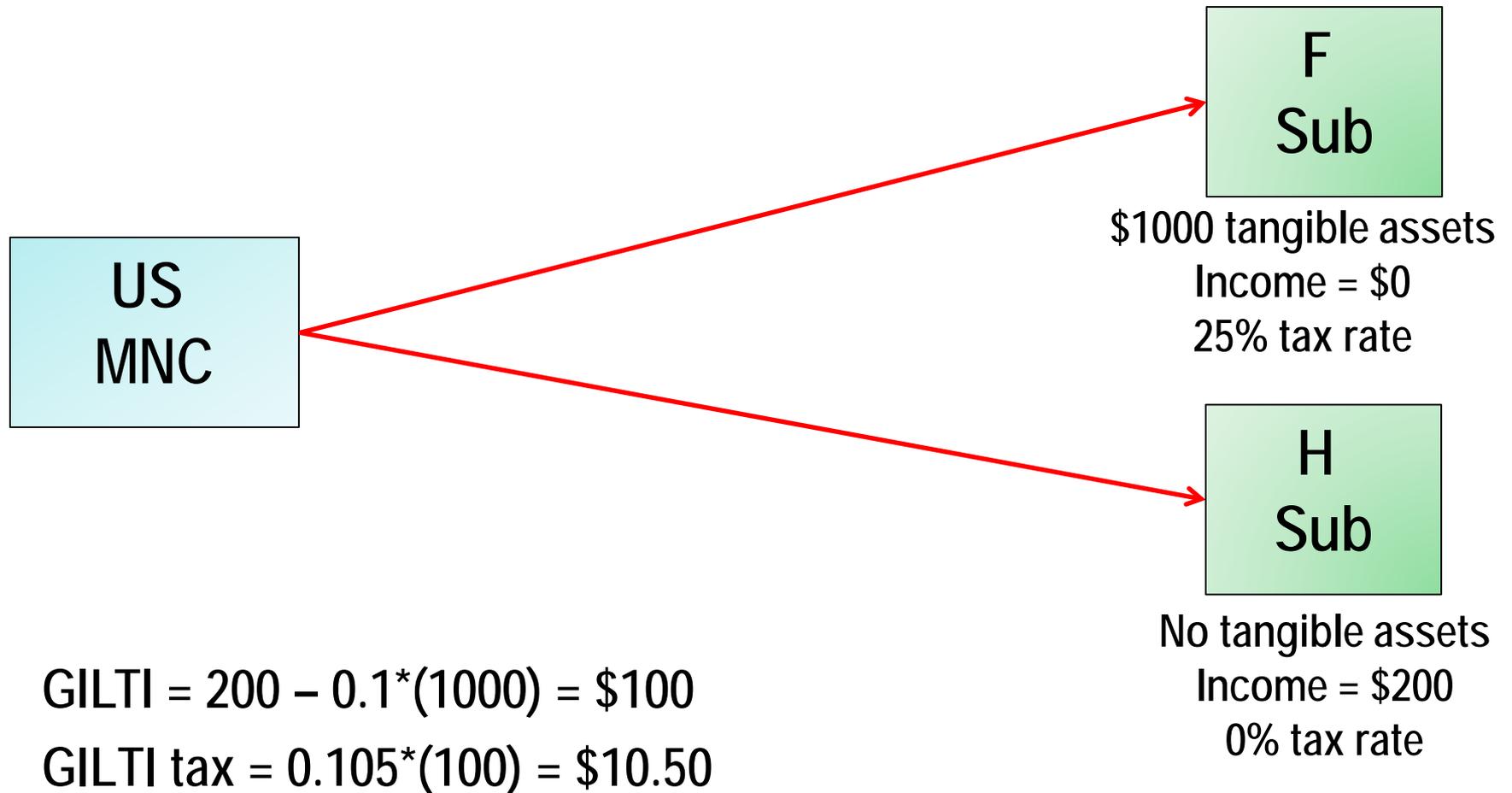


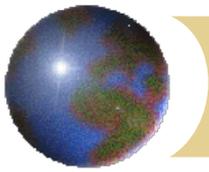
# Tax Burden on US Residence

- 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



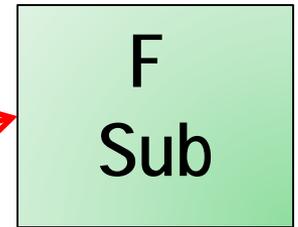
# GILTI Tax: Ownership Distortions



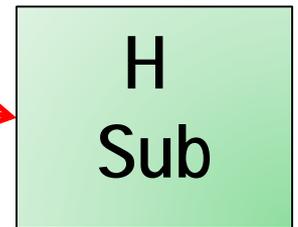


# GILTI Tax: Ownership Distortions

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



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



No tangible assets  
Income = \$200  
0% tax rate

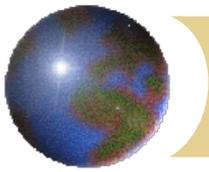
$$\text{GILTI} = 267.67 - 0.1 \cdot (2000) = \$66.67$$

$$\text{Foreign tax} = 0.25 \cdot (66.67) = \$16.67$$

$$\text{\$ 78 gross-up} = \$4.17; \text{FTC} = 0.8 \cdot (4.17) = \$3.30$$

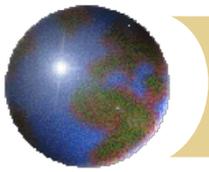
$$\text{GILTI tax} = 0.105 \cdot (66.67 + 4.17) - 3.30 = \$4.11$$

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



# 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
    - (A) such property is transferred, or held, temporarily, or
    - (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”