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Experts Agree: The Tax Cuts and Jobs Act Encourages Companies to Shift Activity Offshore

Under the TCJA, corporations that move more of their tangible assets abroad — meaning factories, shops, inventory — will be able to apply a 0% tax rate to more of their foreign profits. That's because the GILTI provision enables a corporation's foreign profits to enjoy a 0% tax rate up to an amount equal to 10% of the value of the corporation's offshore tangible assets. The higher the value of the corporation's offshore tangible assets, the larger the 10% figure will be, and the more foreign profits that can enjoy a 0% tax rate. For any foreign profits that exceed the 10% figure, GILTI enables the corporation to use a tax rate that is half the tax rate on U.S.-based profits. The end result is that foreign corporate profits are taxed substantially less than U.S. profits.

Joseph Stiglitz, Nobel laureate in Economics, University Professor at Columbia University, and Chief Economist of the Roosevelt Institute (November 2017)

> "What they're going to do is change the law so you're just not taxed on the money abroad. So, it used to be that you were taxed on it, until you—you didn't have to pay the tax until you brought it home. So, the answer to that is not to tax it at all. Of course, that's not going to be hurting the companies. They're just not going to be taxed. So it really encourages them to engage in the business offshore in some low-tax jurisdiction, because they get to keep the—they will never be taxed on that money. It's called the territorial system. So it actually will be a further lowering of the effective tax rate on corporations."

Stephen Shay, Former Deputy Assistant Secretary for International Tax Affairs in the United States Department of the Treasury (December 2017)

> "It (new tax law) creates a real incentive to shift real activity offshore."

Jared Bernstein, Former Chief Economist and Economic Adviser to Vice President Joseph Biden (November 2017)

> "The shift to territoriality does not dampen the existing incentives in our corporate code to offshore jobs. It exacerbates them, which will lead to more overseas production and the loss of jobs here at home."

Rebecca M. Kysar, Fordham University School of Law (April 2018)

> "There are several options to remove or reduce GILTI's offshoring incentives, all of which would require legislation...Congress should also explore the haircutting of deductions that are allocable to GILTI to equalize the treatment between foreign and domestic income further."

Gene Sperling, Former National Economic Adviser to Presidents Bill Clinton and Barack Obama (November 2017)

"This is a big flaw in Trump's plan: The more an American company moves its profitable operations to countries that have tax rates of 20 percent or higher—often rich countries that are seen as America's economic competitors—the more that company can shift profits to tax havens without paying taxes on those profits. And the more that U.S. companies already take advantage of tax havens, the bigger the incentive they will have to offshore operations to other advanced countries: This provision of the GOP plan encourages companies to blend income from low-tax countries with that from higher-tax countries, completely avoiding paying money to the U.S. government."

Kim Clausing, Expert on Tax Policy at Reed College (January 2018)

"It's sort of an America-last tax policy. We are basically saying that if you earn in the U.S., you pay X, and if you earn abroad, you pay X divided by two."

Lawrence Summers, Professor at and Past President of Harvard University. Former Treasury Secretary and Former Economic Adviser to President Barack Obama (November 2017)

"Proponents of the House approach defend it by pointing to international considerations. Unfortunately, the "territorial" approach being pushed by the House, which would renounce the objective of taxing the global income of U.S. companies, could easily encourage offshore production"

A report co-authored by; Daniel Shaviro, New York University School of Law; David Gamage, former special counsel to the U.S. Department of the Treasury, Office of Tax Policy; Darien Shanske, University of California, Davis - School of Law; Reuven S. Avi-Yonah, former consultant to the U.S. Department of the Treasury and the Organisation for Economic Co-operation and Development (OECD); Lily L. Batchelder, former deputy director of the White House National Economic Council; Clifton Fleming, former Professor-in-Residence in the Chief Counsel's Office of the U.S. (December 2017)

"The new GILTI regime, as structured, is highly problematic. This is due to the offshoring incentives that are created by the regime as well as the fact that it is applied on a global, rather than per-country basis."

"We can expect the GILTI regime, at the margins, to induce taxpayers to increase their tangible assets abroad, carrying jobs along with them. These dynamics run contrary to Congress's pronounced policy objective of discouraging offshoring."

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