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GILTI REGULATIONS: THE INTENDED EFFECTS COMPARED TO THE ACTUAL RESULTS

A Thesis Submitted

in Partial Fulfillment

of the Requirements for the Designation

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INTRODUCTION

With the introduction of the Tax Cuts and Jobs Act (TCJA) of 2017, one of the main objectives of the legislation was to attract and retain investments, profits, and jobs to the United States. This was done by punishing companies that would move assets, especially intangible assets, to low-tax jurisdictions. One of the main provisions enacted as a part of TCJA to prevent profit shifting and base erosion was the Global Intangible Low-Taxed Income (GILTI) provision (Russel, 2019). Under this new provision, certain types of U.S. companies, referred to as Controlled Foreign Corporations (CFC's), are taxed on the income that is said to have been derived from intangible assets that are held overseas.

GILTI tax is calculated by first taking a firm's total depreciable tangible property owned by the foreign affiliate and multiplying that number by 10 percent. Next, subtract the number per the previous step from the foreign affiliates taxable income to arrive at the firm's GILTI taxable income. Then, multiply the GILTI taxable income by the corporate tax rate for the U.S. of 21 percent. However, under GILTI, a firm is generally allowed to deduct 50 percent of their GILTI taxable income which makes the effective rate 10.5 percent. After that, firms are allowed to net a foreign tax credit of 80 percent of foreign taxes paid. So, if the country that the firm's foreign subsidiary is located in has a tax rate of 13.125 or higher then they will not be subject to a GILTI tax (*Tax Policy Center,* 2020). Understandably, GILTI regulations can be very confusing.

In this thesis, the proposed effects of GILTI have been analyzed and compared to the true effects of GILTI. Research has been done to see if GILTI is actually influencing firm's choices on investment location, if companies are involving themselves in even more creative tax planning, or if firms are simply absorbing the cost. This research will be important to show whether or not the current U.S. tax system is achieving its proposed goals. This research will also be useful for those that are looking to assess the success of Congress' actions when it comes enacting new tax legislation. Are companies bringing back foreign investment to the U.S. or are companies continuing to shift profits overseas showing a need to propose new legislation to achieve current goals?

LITERATURE REVIEW

GILTI is a confusing tax with many moving parts that make it difficult to understand how exactly the tax works. Before TCJA, firms were usually taxed on their profits earned overseas by the U.S. government. However, firms would usually defer bringing that income back to the U.S. to avoid paying any taxes on it until repatriation. This meant that many firms would hold their earnings in foreign countries to avoid paying any sort of tax on the earnings until there was a need for the cash or favorable tax treatment for repatriated earnings (Rosenthal, 2017). Thus, the tax base was eroded by those firms' practices.

Once TCJA was introduced, firms were mostly exempted from paying tax on their foreign income. Congress saw this as an opportunity for firms to move their operations to foreign countries and therefore, erode the U.S. tax base. One of the easy ways for firms to shift profits overseas is to move intangible property to foreign countries (Rosenthal, 2017). Intangible property is a favorite for firms to shift around because of how easy it is to move from country to country. A large piece of machinery costs a substantial amount of money to move around, but a patent only needs to be mailed and is therefore relatively inexpensive to move. This is where GILTI was introduced. GILTI made it so that profits derived from intangible property are taxed regardless of whether they were repatriated to the U.S (*Tax Policy Center*, 2020). Thus, GILTI is intended to reverse the erosion of the U.S. tax base.

To calculate GILTI is also a very arduous task. The first step in finding the GILTI taxes due is to find the GILTI tax base. According to Code Section 951(a) of the Internal Revenue Code, this is accomplished by taking “the excess of 10 percent of aggregate of such shareholder’s pro rata share of the qualified business asset investment of each controlled foreign corporation…” (951(a)). Essentially, any amount of income over 10 percent of a U.S. firm’s foreign entity’s depreciable tangible assets is subject to GILTI. Firms are then allowed to deduct 50 percent of the amount that is subject to GILTI. The remaining 50 percent is then taxed at the U.S. corporate tax rate of 21 percent. However, after all of that is said and done, firms are allowed 80 percent of foreign taxes paid as a tax credit to take against any GILTI tax that may arise. Currently, because of the 50 percent deduction and 80 percent foreign tax credit, any firm that has foreign operations where the tax rate is 13.125 percent or higher will pay zero tax on those earnings (*Tax Policy Center,* 2020). GILTI is not a tax provision for the weak of heart.

After examining GILTI regulations and its proposed effects, keeping corporate investment in the U.S., many argue that the proposed effects are not possible and often times the opposite happens. The Minnesota Law Review points this out in their article, *The Games They Will Play: Tax Games, Roadblocks, and Glitches Under the 2019 Tax Legislation.* First, it is explained how foreign tax credits are distributed on a global level and not on a country-to-country basis (*Minnesota Law Review,* 2018). Essentially, a firm that has foreign locations in two different countries with two distinct tax rates can easily take advantage of this arbitrage opportunity. If a firm has legitimate operations in a foreign country with a high tax rate, they may not be able to use all of their tax credits that are generated from that country. What they would do is apply the leftover credits to income subject to GILTI in a low-taxed country to wipe out part, or all of their tax liability.

One of the other problems that is mentioned in the Minnesota Law Review is that because firms are no longer taxed on their income derived from tangible personal property, firms may be incentivized to move jobs, equipment, and production to foreign countries to avoid paying taxes on that income (*Minnesota Law Review,* 2018). This argument makes sense because of the 10 percent return rule. The rule would incentivize firms to move their tangible assets overseas because they can completely avoid paying taxes on part or all of their income in certain foreign countries.

Minnesota Law Review goes as far to say that the current system will not achieve the current objectives and will in fact incentivize firms to move assets and investments out of the U.S. They offer a few suggestions to modify the current system. The first is to tax firms on a country-by-country basis. This would look like GILTI being applied to each country that a firm operates in individually. This would disallow the blending of foreign tax credits from high tax jurisdictions to low tax jurisdictions. The second suggestion is to get rid of the 50 percent deduction for GILTI. Instead of paying an effective rate of 10.5 percent, firms would pay the same U.S. corporate tax rate of 21 percent (*Minnesota Law Review,* 2018). These suggestions are laid out as the framework to retain investment in the U.S., the objective of GILTI regulations.

Rebecca Rosenberg of The Albany Law Review also takes a similar position to the Minnesota Law Review in the way the foreign tax credits for GILTI are treated. Rosenberg states, “Instead, the new rules enacted by the TCJA tend to give U.S. taxpayers a better than accurate foreign tax credit benefit, weighting the balance towards competitiveness and taxpayer-favorable results.” (Rosenberg, 2019) When Congress was drafting the legislation for GILTI and

TCJA they wanted to make sure that they were not subjecting firms to double taxation, that is why the foreign tax credit exists. However, Rosenberg argues that the credit is more generous than necessary to accomplish that goal. This is because cross-crediting across borders is allowed. The credit being used against certain GILTI tax liabilities may not accurately represent where the foreign tax was paid.

However, some still argue that GILTI is enough of a deterrent to firms moving investments outside of the U.S. Singh and Mathur (2019) bring up two different hurdles that firms will have to face to make offshoring worthwhile. The first of those is a new set of proposals from the Organization for Economic Co-operation and Development (OECD) called base erosion and profit shifting (BEPS) actions. Essentially, the OECD is attempting to do the same thing as GILTI, keep investments and the tax base in the country that the OECD believes they should be in. With BEPS, there are now more administrative hurdles and costs required to move intangible property to foreign countries to attempt and shift profit to low-tax jurisdictions. These costs can be substantial for firms as they may face much scrutiny from regulators which translates to increased costs (Singh & Mathur, 2019).

Along the theme of increased costs, firms will also have increased costs if they choose to move intangible property to foreign countries. Singh and Mathur (2019) argue that because of international tax laws, firms will have to pay things such as salaries for employees, administrative costs, rent on wherever they choose to locate, and whatever other costs they might incur to allow for the legitimate shifting of profits overseas. All of these costs can add up to be substantial for certain firms, especially when attempting to blend high-tax and low-tax jurisdictions to optimally use foreign tax credits for GILTI. Singh and Mathur (2019) do not ignore the fact that the pure tax arbitrage opportunity does currently exist for firms but instead argue that the issues of increased costs and increased regulations from BEPS can eat away at any advantage firms might gain from shifting their profits overseas (Singh and Mathur, 2019). While the actual GILTI tax might not be enough incentive, the combined costs associated could be enough to encourage domestic investment for U.S. firms.

METHODOLOGY

The methodology that has been chosen for this thesis consists of two different parts. The first is a literature review of the commentary that has been given on GILTI since its inception. This will allow readers to get a better idea of the intentions behind GILTI and a critical analysis on its effectiveness on paper. There is an analysis of sources that are proponents of GILTI, skeptical of GILTI, and other sources that simply leave the interpretation open to the reader. This blend of sources allows a holistic view of GILTI from a theoretical perspective before diving into the application of the tax.

The second part of the methodology is examining the actual application of GILTI in the business environment. This has been done by reviewing earnings call transcripts and annual 10-K filings. This lends to an understanding of how business executives are actually reacting to GILTI and if GILTI is achieving the desired results. The earnings call transcripts are all from a fixed date, the fourth quarter of 2018, but vary across a wide range of industries. This allows an understanding of how GILTI has affected not just a singular industry or business, but the economic activity of American businesses as a whole.

RESULTS

APPLE

Now that arguments on both sides of the GILTI coin have been presented, the actual application of the tax can be presented. The first firm that will be examined is one that is notorious for profit shifting and tax avoidance, Apple. According to Americans for Tax Fairness, between 2009 and 2012 Apple had an effective tax rate of less than 1% on over $74 billion of profit (Americans for Tax Fairness, 2013). This lends financial statement users to believe that Apple would be a key target for GILTI. However, when actually looking at their earnings transcript and their 10-K a different story appears.

When first looking at the earnings call transcript for Apple it paints a bleak picture for GILTI. There are only 3 times that taxes are even mentioned, of which, none of them relate to GILTI or even repatriation (The Motley Fool, 2018d). These mentions are simply to state the effective tax rate and the federal income tax expense for the year. A similar picture is painted from looking at Apple's 10-K. However, the 10-K gives us a little bit more detail to analyze GILTI's effects.

The first thing to look at is the income statement for the year. While this does not give the answer to the ultimate question at hand of GILTI's effectiveness it does give a hint at it.

	2018	2017	2016
Computed expected tax	$ 17,890	$ 22,431	$ 21,480
State taxes, net of federal effect	271	185	553
Impacts of the Act	1,515	—	—
Earnings of foreign subsidiaries	(5,606)	(6,135)	(5,582)
Domestic production activities deduction	(195)	(209)	(382)
Research and development credit, net	(560)	(678)	(371)
Other	57	144	(13)
Provision for income taxes	$ 13,372	$ 15,738	$ 15,685
Effective tax rate	18.3%	24.6%	25.6%

Figure 1

(Apple Inc., 2019)

The first thing that is evident from figure 1 above is that GILTI is not its own line item on this portion of the statement. Sophisticated users of financial statements would know that this means that GILTI is not material enough to be individually stated in this case. In fact, the note to the financial statements shows that "Earnings of foreign subsidiaries" actually reduces income taxes. When looking through the rest of the 10-K there is no mention of GILTI as an expense that Apple is considering. There are many different mentions of taxes and income taxes, but none of them specifically call out GILTI.

The portion of the 10-K that best shows the portion of the TCJA that Apple is most seriously considering is under Note 4 – Income Taxes. "The Act also created a new minimum tax on certain future foreign earnings. The impact of the Act increased the Company's provision for income taxes by $1.5 billion during 2018. This increase was composed of $2.0 billion related to the remeasurement of net deferred tax assets and liabilities and $1.2 billion associated with the deemed repatriation tax, partially offset by a $1.7 billion impact the deemed repatriation tax had on the Company's unrecognized tax benefits." (Apple Inc., 2019, p.35) This portion highlights Apple's main concern when it comes to TCJA and new international taxation laws. Clearly, they recognize that there will be taxes on future foreign earnings, but their main focus is the repatriation tax created by the TCJA which will not be covered here. It is apparent that Apple is not concerned with GILTI as a major factor moving forward. This is likely due to the fact that most of their international operations funnel back to Ireland with a 12.5% tax rate. With a tax rate that is just below the magic 13.125% rate, the rate at which GILTI phases completely out, Apple has very little worry about GILTI.

JOHNSON & JOHNSON

The second firm analyzed is Johnson & Johnson (J&J). The focus will be mostly on their 10-K as it offers the most valuable insight into how they view the effects of GILTI. It is important to first note that GILTI is mentioned 19 times throughout their 10-K in comparison to Apple's 10-K, which never mentions GILTI. The area that holds the highest importance is as follows.

> As a result of the GILTI deferred tax charge and the other adjustments to the provisional amount, the Company recorded a total of $1.6 billion of adjustments to the 2017 provisional charge increasing the Company's annual effective tax rate by approximately 9%. (Johnson & Johnson, 2018, p.59)
>
> During 2018, the Company reorganized the ownership structure of certain foreign subsidiaries, which resulted in a reduction of certain foreign withholding taxes were recognized as part of the provisional TCJA tax charge in the fourth quarter of 2017. Following the completion of this restructuring in the fourth quarter 2018, and as a result of resulting clarification by Swiss tax authorities regarding the applicability of withholding tax to repatriation of certain earnings, the Company reversed a deferred tax liability of $2.8 billion and a related deferred tax asset of $0.9 billion for U.S. foreign tax credits, for a net deferred tax benefit of $1.9 billion.

First, in 2017 GILTI partially caused J&J's effective tax rate to increase by 9%. At first glance this would cause the reader to assume that GILTI is behaving as intended, penalizing companies for shifting profits to foreign countries. However, further down, it shows that GILTI had an unintended consequence. J&J, instead of continuing to pay GILTI or bring investment back to the U.S., restructured some of their foreign subsidiaries to avoid certain taxes. Again, another company has taken actions to avoid paying GILTI outside of the desired action of bringing back investments and jobs to the U.S.

When looking at J&J's earnings call transcript, there is a similarly bleak picture for GILTI. When talking about international taxes and TCJA, the CEO said, "Regarding taxes in the quarter. Our tax rate of 2.6% includes adjustments related to the Tax Cuts and Jobs Act that will be further highlighted in the tax footnote in our upcoming 10-K" (The Motley Fool, 2019d). There is not specific mention of the restructuring to lower income taxes and certainly no mention of the impact of GILTI. When looking at the earnings call transcripts and the 10-K for J&J, clearly they have considered the impact of GILTI on their firm but have taken undesirable actions to mitigate the impact and continue to move income to foreign countries.

ALPHABET

Next, a firm that also has significant Irish activity similar to Apple will be looked at, Alphabet or the parent company to Google. Alphabet's earnings call transcripts offer almost no indication that GILTI has affected them in any manor at all. The only real mention of any tax impact that can be seen in the transcript is the mention of the tax expense (The Motley Fool, 2019b). There is no mention of GILTI or even a single mention of how the changes to international taxation have affected the firm.

Taking a more detailed look at Alphabet's 10-K shows how TCJA has affected the firm. Similar to the statement that Apple gave, Alphabet simply states "the Tax Act reduced the U.S. statutory tax rate from 35% to 21% and created new taxes on certain foreign-sourced earnings and certain related-party payments" (Alphabet, 2018, p.77). In their 10-K, Alphabet continues with more detail about accounting for the changes enacted by TCJA. The main focus is not the actual expense of any of the new taxes to the business, besides the repatriation tax, but is instead focused on setting up the accounts and reserves for the tax law changes. This, again, shows that large companies are not concerned with the actual tax on their foreign earnings of any kind, but instead continue to absorb or find ways to mitigate its impact.

3M

Next, the impact of GILTI on 3M will be analyzed. There are two pieces to pull out that are relevant to the discussion on the impact of GILTI. The first is as follows, "3M has recorded current tax on GILTI relative to 2018 operations and will continue to account for GILTI as a period cost when incurred." (3M, 2018, p.86). This first part shows that GILTI is in fact having an impact on 3M's business and they are recognizing a cost associated with it. As discussed earlier, GILTI only applies in countries where the tax rate is above 13.125% which means that it is likely that 3M is using some sort of income shifting program that GILTI is intended to prevent.

The second piece of 3M's 10-K that is worthy of being pointed out is their reconciliation of the effective income tax rate, figure 2 below.

	2018
Statutory U.S. tax rate	21.0 %
State income taxes - net of federal benefit	1.0
International income taxes - net	0.2
Global Intangible Low Taxed Income (GILTI)	1.1
Foreign Derived Intangible Income (FDII)	(1.3)
U.S. TCJA enactment - net impacts	2.5
U.S. research and development credit	(1.5)
Reserves for tax contingencies	1.2
Domestic Manufacturer's deduction	—
Employee share-based payments	(1.4)
All other - net	0.6
Effective worldwide tax rate	23.4 %

Figure 2

(3M, 2018)

What this schedule is showing is how 3M has arrived at their effective tax rate for the year. Obviously, the focus here is the effect of GILTI, which shows that it added 1.1% to their effective tax rate for the year. This shows that, while GILTI did have a material effect on the effective rate, it was not a large driver of the rate. Again, as seen with the other firms that have been analyzed, there is no mention of GILTI influencing the investment location decision making of the firm.

This is further echoed when looking at the earnings call transcript for 3M. There are a few mentions of the effects on taxes and TCJA on 3M's financial results for 2018, however, none of them mention GILTI. Instead, they relate to the transition tax that arose from TCJA. "First, during the quarter, we recorded a net $0.04 tax charge. This charge relates to the transition tax and the deductibility of our Q1 2018 legal settlement associated with the Tax Cuts and Jobs Act." (The Motley Fool, 2019f). Once again, GILTI is not punitive enough to even get a mention, let alone affect investment location decisions.

AMAZON

Amazon is a firm that has found itself the target of many different hit pieces in the news on avoiding paying income taxes in the United States and is the next firm that will be analyzed. The best place to start is with their earnings call transcripts. The analysis of their transcript is quite easy as there is not a single mention of taxes in general (The Motley Fool, 2019a).

Looking at Amazon's 10-K, there are a few important things to note. The first is a quote on their global expansion. "We are rapidly and significantly expanding our global operations, including increasing our product and service offerings and scaling our infrastructure to support our retail and services businesses." (Amazon, 2018, p.6). If GILTI was penalizing enough, supporters of

GILTI would hope to see that Amazon would be looking to expand its U.S. operations over its global operations. However, as shown, Amazon is looking to further expand their global footprint outside of the U.S. A little further into the 10-K, Amazon does at least consider taxes as a risk of international expansion. “In addition to risks described elsewhere in this section, our international sales and operations are subject to a number of risks, including: laws and policies of the U.S. and other jurisdictions affecting trade, foreign investment, loans, and taxes” (Amazon, 2018). Finally, in the notes to the financials in the “Income Taxes” section, the only mention of the effects of international taxation is that “Certain foreign subsidiary earnings are subject to U.S. taxation under the U.S. Tax Act, which also repeals U.S. taxation on the subsequent repatriation of those earnings.” (Amazon, 2018, p.63). Again, no mention of GILTI affecting any sort of decision making for Amazon.

PROCTER & GAMBLE

Next is a firm that pays 18% to 19% of its non-U.S. income in foreign taxes, Procter & Gamble (Rubin, 2019). Even with such high foreign income taxes we still see quotes like, “Tax reform was around a $150 million benefit,” in P&G’s earnings call transcripts (The Motley Fool, 2018b). This is even more surprising given P&G’s high concentration in international markets.

There is also a mention of GILTI in P&G’s 2018 10-K in line with what other firms have said. “We have elected to account for the tax effects of GILTI as a current period expense when incurred.” (P&G, 2018, p.47). Again, another firm that is simply absorbing the cost as an additional expense on the business. One highlight that is worth pointing out in P&G’s 10-K is in their reconciliation of their actual income tax rate. It is shown that “Country mix impacts of foreign operations” had a benefit of 6.8% in 2017 (pre-TCJA), but only had a 4.7% benefit in 2018 after TCJA took effect. This shows that the changes to foreign taxation, including GILTI, did lower the benefit that P&G received from their foreign operations. However, as has been a theme, there is no mention of GILTI influencing the investment location of firms.

FEDEX

FedEx, the international and domestic shipping, and delivery company is a firm that one would reasonably expect to be impacted by GILTI due to their international presence. However, as seen from their 10-K and earnings call transcript, this is not the case. Alan Graf, Jr., the Chief Financial Officer said “Obviously, we benefited greatly from the TCJA tax rate and 100% expensing for the next 5 years,” during their 2018 earnings call (The Motley Fool, 2018c). While this does not directly mean that GILTI has had no effect on FedEx’s business, as this likely relates to the lower federal income tax rate, there is no mention of GILTI during the call.

This is similarly echoed in FedEx’s 10-K filing. While there is mention of GILTI, it is noted simply as to how the firm is accounting for it instead of how they are dealing with the actual expense from an operational perspective. When looking at the federal tax rate reconciliation, it is shown that “Foreign operations” account for a measly $43 million increase in federal taxes. This makes up just 3.4% of their total federal income tax expense for the year (FedEx, 2018). This number is comprised of many different international tax regulations which means that GILTI makes up only a portion of the immaterial 3.4%. In fear of sounding like a broken record at this point, this is simply not enough for a firm to change their business model around international investment.

ADOBE

The next firm that will be analyzed is a firm with a large amount of intangible assets which could likely lead to GILTI exposure, Adobe. When looking at the earnings call transcript for Adobe there is one key section that gives us a look into the effects of GILTI and changes in international tax law. “In Q4, Adobe's effective tax rate was 3% on both a GAAP and a non-GAAP basis. Both rates were lower than targeted due to a more favorable-than-expected geographic mix of earnings, as well as the favorable resolutions of certain income tax matters.” (The Motley Fool, 2018a). This shows that Adobe was able to come in with a lower tax rate than expected due in part to the changes of international tax. Given the fact that Adobe is a software firm, it is reasonable to assume that part of those geographic earnings would be subject to GILTI.

Adobe’s 10-K also gives a view into how they are working around GILTI and international tax changes. Adobe calls out their restructuring as a way that they have lowered their effective tax rate. “The lower effective tax rate was primarily due to the effects of the Tax Act enacted on December 22, 2017 and a change to our corporate tax structure from which we serve our foreign customers that provided us the ability to deduct more expenses against our earnings in the U.S.” (Adobe, 2018, p.47). Similar to what was discussed about J&J earlier in our analysis, Abode is another firm that restructured their international organization to avoid GILTI and take advantage of the global tax system put in place under TCJA.

FORD MOTOR COMPANY

Next will be another firm that has restructured their foreign operations in response to TCJA and GILTI, Ford Motor Company. First, looking at their earnings call transcript there is no evidence that GILTI has negatively impacted their business. As is stated in their earnings call transcript, “Second, company adjusted EPS in the quarter was $0.30 per share and this includes an adjusted effective tax rate of negative 4% driven by the favorable impact of U.S. tax planning and tax reform.” (The Motley Fool, 2019e). Ford is showing here that TCJA provided a benefit to the firm, most likely from the lower federal tax rate, but their 10-K shows that is not the full story.

As will be shown shortly, in 2017, in anticipation of TCJA, Ford restructured their non-U.S. operations to recognize a large tax benefit. "The fourth quarter 2017 net income includes tax benefits of $520 million and $484 million related to U.S. tax legislation in the Tax Cuts and Jobs Act of 2017 and non-U.S. restructuring, respectively." (Ford Motor Company, 2018, p.59). This is another prime example, similar to Adobe and J&J on how firms are avoiding to pay the new taxes enacted by TCJA.

However, one thing to note is that Ford was nowhere near able to eliminate their U.S. tax on non-U.S. earnings.

Reconciliation of effective tax rate			
U.S. statutory rate	35.0 %	35.0 %	21.0 %
Non-U.S. tax rates under U.S. rates	(1.0)	(4.8)	(1.2)
State and local income taxes	2.3	2.2	2.0
General business credits	(3.1)	(3.8)	(9.2)
Dispositions and restructurings	7.4	(11.7)	4.6
U.S. tax on non-U.S. earnings	(8.6)	(7.8)	8.1
Prior year settlements and claims	—	(0.2)	1.1
Tax-exempt income	(6.9)	—	—
Enacted change in tax laws	(4.2)	(8.2)	(3.0)
Valuation allowances	2.7	5.8	(8.6)
Other	(6.4)	(2.3)	1.2
Effective rate	32.2 %	4.8 %	15.0 %

Figure 3

(Ford Motor Company, 2018)

As shown, in the far-right column of figure 3, U.S. tax on non-U.S. earnings added 8.1% to Ford's effective tax rate. However, when combined with the fact that Ford restructured their non-U.S. operations in anticipation of TCJA, it appears that they currently have no intention to bring back those investments to the U.S. to avoid the related taxes.

GOLDMAN SACHS

The final firm that will be analyzed is Goldman Sachs. When looking at their earnings call transcript and their 10-K, they both tell a similar story. Their earnings call transcript is relatively dull when it comes to any mention of taxes, let alone GILTI. It is presented that Goldman's effective tax rate for the year was 16%, which is less than the federal rate of 21%, but there is very little guidance on the causes of that fluctuation (The Motley Fool, 2019c).

Looking at Goldman's 10-K, there is a little bit more information regarding GILTI, but nothing to suggest major changes as a result.

> Income tax expense associated with GILTI is recognized as incurred. During 2018, the IRS issued proposed regulations relating to BEAT and GILTI. Our 2018 effective income tax rate includes estimates for BEAT and GILTI that are based on our current interpretation of these proposed regulations. We do not expect that the finalization of these proposed regulations will have a material impact on these estimates. (Goldman Sachs, 2018, p.55)

BEAT, or Base Erosion and Anti-Abuse Tax, is a tax that behaves similarly to GILTI but will not be discussed here. As with many of the previous firms, Goldman is simply recognizing and absorbing the expense of GILTI every quarter. It is also said that any change in estimates of GILTI will not have a material impact on Goldman's effective tax rate estimate. This is the same story that has been shown with almost every other firm where GILTI is simply not enough to influence the decision making of the firm when it comes to investment location.

CONCLUSION

GILTI is a regulation that is intended to bring back investment to the United States by taxing companies moving their profits overseas. However, the question still remained if this would be the actual effect of GILTI, or if firms would simply find new and unique ways around the tax.

This thesis set out to analyze the actual results of a tax regulation intended to bring back investment to the United States.

Looking at the evidence around the effects of GILTI, it appears that GILTI is ineffective for the purpose it was created. Some firms, such as J&J and Ford Motor Company, have taken measures to mitigate the impact of international taxation including GILTI. The restructuring that these firms have undergone has not brought back any investment to the U.S. but has instead further cemented these firms in their foreign subsidiaries. Other firms, including most of the firms that were analyzed in this paper have instead chosen to just absorb GILTI as another cost of doing business. For many of these large firms GILTI is simply not punitive enough to influence them to make any changes. They can use the tax credits that they receive from their legitimate international operations to reduce any sort of GILTI liability that arises from their offshoring operations.

While the intent of GILTI is something that most people would see as a good thing, the execution by Congress was not there. There are a couple of different things that Congress could have done differently to improve GILTI's effectiveness. One of those is to simply eliminate the 50% automatic deduction of GILTI income. By eliminating the deduction, corporations are able to effectively treat that income in the same manner as ordinary income earned by U.S. corporations are treated. This way, even if firms continue to offshore their income it will still be treated as though it's earned in the U.S. The other change that could be made to increase GILTI's effectiveness is to move GILTI to a territorial system instead of a global one. In other words, instead of allowing firms to use foreign tax credits earned in Germany and applying them to income in Ireland, only allow firms to use credits in the country that they are derived from. This will allow firms with legitimate international operations to continue to receive the same benefit in those countries but will work to partially prevent the offshoring of income. If Congress follows these two simple guidelines, then GILTI may be able to function as intended instead of acting as just another tax for firms to avoid or absorb.

Undoubtedly, corporations need to be held responsible for paying their share in taxes; it is also equally Congress' responsibility to hold these corporations accountable. This thesis has shown that the analyzed corporations currently are not paying their fair share in taxes. Incidentally, Congress continues to pass laws that are insufficiently punitive to change a company's behavior relating to taxes. This thesis is a step in the direction of showing Congress and the rest of the United States that politicians making tax laws need to be aware of the unintended consequences of the bills and regulations that are enacted.

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