The “GILTI” Truth: Navigating U.S. International Tax Policy

Center Forward Basics

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Overview

In the 2017 Tax Cuts and Jobs Act (TCJA), Congress included a new minimum tax on United States companies’ foreign income known as **global intangible low-taxed income (GILTI)**. The new tax is often viewed as a global minimum tax, and despite what the acronym implies, it subjects U.S.-headquartered companies to tax at a headline rate of 10.5% on almost all foreign earnings in the year they are earned. The tax does not apply to foreign-headquartered companies. GILTI replaced the former “deferral system” where companies were taxed when they brought earnings onshore to the U.S. Many companies avoided doing so because of the high tax rates that would be incurred with repatriation.

GILTI was implemented in the 2017 TCJA to help pay for the general corporate income tax rate reduction from 35% to 21%. It also provided a disincentive for U.S. firms to move their assets and profits to countries with lower tax rates. The GILTI tax rate is equal to the U.S. corporate tax rate, but companies can deduct up to 50% of their foreign income for GILTI calculations, resulting in an effective rate of at least 10.5%. Along with much of the TCJA set to expire in 2026, the 50% deduction will drop to 37.5%, resulting in a GILTI headline rate of 13.125%. While the general corporate tax rate of 21% will not expire, if lawmakers do not maintain the 50% deduction in their next tax bill, the headline GILTI rate could jump even higher.

As lawmakers negotiate a new tax bill in 2025, GILTI will be one of the most impactful provisions on companies with international operations. This Basic will explore how GILTI works for global corporations, how the international tax law is set to change in 2026, and the possible paths ahead for changing the tax law.

How GILTI Works

Companies headquartered in the U.S. are taxed in many ways. The U.S. Treasury taxes corporations headquartered in the U.S. on domestic income, as well as income earned abroad through **Controlled Foreign Corporations (CFCs) -** corporate entities owned by a **U.S. Parent Corporation (USP)** that are organized in other jurisdictions but are directly or indirectly owned 50% or more by American shareholders. Naturally, foreign jurisdictions also tax corporations in the countries in which they operate. Coupled with incentives from the **Foreign-Derived Intangible Income (FDII)** regime to encourage earning income within U.S. borders, GILTI was written to discourage U.S. corporations from moving their highly mobile and intellectual property assets and other operations overseas and ensuring some minimum level of tax revenue from their affiliates based in low-tax jurisdictions.

GILTI generally applies to **active income** earned abroad, including income

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In order to meet our challenges we need to put aside the partisan bickering that has gridlocked Washington and come together to find common sense solutions.

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Key Terms:

- **Controlled Foreign Corporations (CFCs):** a corporate entity that is registered and conducts business in a different jurisdiction or country than the residency of the controlling owners. A U.S. corporation that operates overseas with U.S. shareholders who have a 50% share or that company.
- **Foreign-Derived Intangible Income (FDII):** income that comes from exporting products or royalty income tied to intangible assets held in the United States. The TCJA introduced this concept.
- **Active Income:** Income earned from regular business operations, such as sales of goods and services.

from regular business activities such as products sold or services provided. **Passive income** earned from interest, dividends, royalties, rent, or other investments is not subject to GILTI and is taxed under Subpart F in the tax code. However, some income from financial services activities is defined as active income under GILTI. Any income not taxed under Subpart F is taxed under GILTI.

GILTI also distinguishes between **tangible** and **intangible assets**. Under the GILTI computation, companies may deduct an amount equal to a 10% return on certain tangible assets – referred to as Qualified Business Asset Investments (QBAI) – including physical assets, such as trucks, machines, and factories. Intangible assets, including income earned from patents, trademarks, brand names, and other intellectual property, are not eligible for a deduction under GILTI since these assets are easier to move across national borders to lower-tax jurisdictions.

Foreign tax credits (FTCs) are also factored into calculating a corporation's tax burden under GILTI. The U.S. tax code grants FTCs to corporations operating internationally to prevent them from being taxed twice - by the local jurisdiction and the U.S. The U.S. FTCs allow companies to use the taxes paid in other jurisdictions to reduce their U.S. tax burden. Still, under GILTI, companies are limited to deducting only 80% of foreign taxes imposed on their foreign income subject to GILTI. The GILTI tax rate is written as half of the U.S. corporate tax rate, 10.5% in 2025. Due to the 80% FTC rate, a Controlled Foreign Corporation generally needs to pay an effective tax rate of around 13.125% to a foreign jurisdiction for the U.S. tax after credits to zero out. This has led some to call GILTI an "effective global minimum tax" of 13.125% (rather than the 10.5% headline rate). If the headline GILTI rate jumps from 10.5% to 13.125% when TCJA provisions expire in 2026, the effective global minimum tax rate for U.S. companies will jump to roughly 16.5%.

When a U.S. Parent Corporation earns income through its foreign subsidiaries (CFCs), the U.S. tax code requires it to allocate and apportion some domestic expenses to foreign income. Because certain expenses the company pays in the U.S., such as interest, research and development, and overhead costs, can benefit domestic and international operations, the U.S. requires some of their expenses to be allocated to their foreign income. This allocation can further reduce the amount of a company's foreign tax credits available for deduction, thereby increasing the foreign tax that a company must pay to avoid any incremental tax on the income. This, paired with the 80% limitation of FTCs, can result in what some tax experts call **artificial double taxation**. The "double" tax comes when a company's income is subject to tax in multiple jurisdictions - once by the local country and again by the U.S. under GILTI. The U.S. expense allocation rules can result in part of the same income being taxed twice – locally and by the U.S. – and leave some credits "stranded" abroad in a single taxable year.

- **Passive Income:** Income earned from investments or activities not related to regular business operations, such as dividends, interest, rents, and royalties.
- **Tangible Assets:** Physical assets used in business operations, such as buildings, equipment, and machinery.
- **Intangible Assets:** non-physical business properties, such as patents, trademarks, and copyrights.
- **Foreign Tax Credits (FTCs):** Credits that allow U.S. taxpayers to offset taxes paid to foreign governments against their U.S. tax liability on the same income.
- **Double Taxation:** Double taxation occurs when the same stream of income is effectively taxed by two different jurisdictions—and the taxpayer cannot fully eliminate one of those tax burdens through credits or deductions.
- **Organization for Economic Cooperation and Development (OECD):** An organization of about 38 countries, consisting of the G20 powers and others working together and sharing ideas on trade, tax policy, education, and economic development.
- **Qualified Minimum Top-Up Taxes (QDMTTs):** Domestic taxes designed to ensure that income earned within a country is subject to a minimum effective tax rate, aligning with the OECD's global minimum tax framework to prevent low-tax outcomes.
- **Safe Harbor:** A simplified rule that allows taxpayers to meet certain legal or tax requirements without having to calculate full liabilities, as long as they fall within defined thresholds set by tax authorities or international frameworks.

A Changing International Landscape - OECD and Pillar II

Some large multinational companies, commonly called multinational enterprises (MNEs), have developed sophisticated methods for moving profits worldwide to low-tax jurisdictions, even where they lack meaningful business operations in those countries, sometimes called base erosion and profit shifting (BEPS). G20 countries and the **Organization for Economic Cooperation and Development (OECD)** have been working to develop a harmonized global tax regime to address this for nearly fifteen years. While some member states have implemented measures to address BEPS, and it is no longer the same level of concern that prompted the OECD's work over a decade ago, OECD member countries are still interested in harmonizing international tax structures.

The OECD plan is organized into two main pillars and was introduced as a framework in 2019. Pillar I lays out rules to ensure MNEs pay taxes in the countries where they make sales and do business, even if they do not have physical offices or factories. Pillar II is essentially a global minimum tax based on a straightforward idea **-** MNEs should pay a 15% tax in every jurisdiction in which they operate. In practice, if a multinational pays an effective tax rate lower than 15% in a country where they do business, another country **-** usually where they are headquartered**-** can charge additional taxes to make up the difference. The two pillars were designed to reduce profit-shifting and inhibit the "race to the bottom" in writing domestic tax codes, where countries compete to cut corporate tax rates to keep businesses based within their jurisdiction, but ultimately hurting public funding.

Following negotiations, roughly 140 OECD member countries agreed to the Pillar I and II frameworks in late 2021. The OECD agreement is not binding, and member states must introduce laws to enforce the rules. In 2023, the OECD released guidance for a key feature to make Pillar II enforceable: **Qualified Domestic Minimum Top-Up Taxes (QDMTTs)**. These allow the issuing country to collect additional taxes so that MNEs pay an effective tax rate of 15% on income earned in their jurisdiction. Under the Pillar II rules, without a QDMTT, the additional tax revenue up to the 15% minimum could be collected by other jurisdictions (usually where the MNE is headquartered), not necessarily by the jurisdiction where their subsidiaries operate and earn that revenue. In 2024, some OECD countries, mainly in Europe, started to adopt Pillar II rules and pass domestic QDMTTs.

As international jurisdictions have started adopting Pillar II, the U.S. GILTI regime is in contention with QDMTTs. Without reforms, U.S. multinational companies may face additional tax burdens, complying with bottom-up taxes worldwide and the U.S. tax bill under GILTI. In the blueprint released in 2020, the OECD recognized the similarities between GILTI and Pillar II, and proposed that GILTI could exist under a "**safe harbor**" if the base rate rises to effectively meet a 15% global minimum tax. A safe harbor for GILTI would adjust enforcement rules and allow companies to avoid multiple jurisdictional tax calculations as long as their tax burden meets certain standards. If accepted, this would guard MNEs from multiple layers of top-up taxes, eliminate double taxation, and significantly reduce administrative burdens.

During negotiations for the Inflation Reduction Act in 2022, lawmakers debated several changes to bring GILTI in compliance with Pillar II, which did not ultimately pass. Proposals included reducing the GILTI tax deduction to effectively increase the tax to at least 15% and limit GILTI FTCs on a "country-by-country" basis. Some policymakers argue that GILTI was an early version of a global minimum tax and fulfills the spirit of Pillar II, even if technical details differ. Others caution that U.S. companies will be subject to double tax and disputes with trading partners without formal alignment.

Looking Ahead

As negotiations for a new tax bill are underway in 2025, there is no clear legislative path forward for GILTI and Pillar II compliance. Business leaders and tax experts also continue to push for their preferred fixes to expense allocation rules and a looser limit on FTC reimbursement. Tax writers will likely face increasing pressure from the business community and international partners for a clear and certain path ahead, especially as more countries pass their top-up taxes and Pillar II is gradually adopted worldwide.

Links to Other Resources

- Bipartisan Policy Center - The 2025 Tax Debate: GILTI, FDII, and BEAT Under the Tax Cuts and Jobs Act
- Bloomberg – How to Calculate GILTI Tax on Foreign Earnings
- Congressional Research Service - GILTI: Proposed Changes in the Taxation of Global Intangible Low-Taxed Income
- Tax Foundation - Risks to the U.S. Tax Base from Pillar II
- Tax Policy Center - Lessons the United States. Can Learn from Other Countries' Territorial Systems for Taxing Income of Multinational Corporations