

## Repatriation Tax and GILTI Tax Regime

One of the flaws in the Tax Cuts & Jobs Act causes enormous harm for Americans abroad who own businesses in their countries of residence.

### Background

The new tax law ushers in a system of Territorial Taxation for Corporations. The new system has two troubling components for Americans abroad who own businesses because those businesses fall under the definition of “Controlled Foreign Corporation” under the Internal Revenue code.

Americans living abroad frequently set up their own businesses rather than obtain employment in their country of residence due to language barriers, cultural barriers or other matters that impact their access to local employment. 2014 research on the impact of the Foreign Account Tax Compliance Act (FATCA) found that 19.6% of respondents own their own business.<sup>1</sup> (This compares to 13.3% of U.S.-based Americans who own their own business.<sup>2</sup>) Up to 1.176m Americans abroad will be affected<sup>3</sup>.

#### 1. Repatriation Tax:

In transitioning to the new system, overseas subsidiaries of U.S. corporations which have profits that have not been repatriated to the U.S. parent company will be subjected to a 15.5% Repatriation Tax on profits going back to 1986. The profits will be deemed to have been repatriated to the U.S. parent, even if there is no movement of cash or on paper, and then taxed at a discounted corporate rate, after certain offsets and credits for tax paid to the country of incorporation. If, however, the offshore company is owned by a U.S. Person living abroad, rather than a U.S.- based corporation, the deemed profits are afforded no offsets nor credits for tax already paid.

- a. Corporations establish overseas subsidiaries with the objective of expanding the strength and value of the U.S.-based parent corporation. Americans abroad establish overseas businesses in order to make a living in the country in which they have made their lives.
- b. Provisions in the Internal Revenue Code enable corporations to minimize and possibly avoid these taxes altogether; Americans living abroad cannot.

**Repatriation Tax liabilities will cause enormous financial hardship and will certainly put many Americans abroad out of business.**

#### 2. Global Intangible Low-Tax Income (GILTI) Tax:

Disregard the name entirely because it is a misnomer. Going forward foreign businesses owned by U.S.-based corporations and individuals and U.S. Persons living abroad will be subjected to U.S. corporate tax on their profits, less about 10%. As with the Repatriation Tax, the tax will be applied whether or not the profits are repatriated to the U.S. As with the Repatriation Tax corporate owners of foreign businesses are afforded deductions (50%) and offsets (80% of foreign taxes paid) (in many instances the result will be no taxes owing) that U.S. Persons owning foreign businesses are not afforded. The U.S. Person owner of a foreign business will be paying tax twice on the same dollar of income. **GILTI tax will certainly force a great many American business owners abroad to abandon the enterprises they have worked hard to build.**

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<sup>1</sup><https://www.finance.senate.gov/imo/media/doc/Att%202%20Democrats%20Abroad%202014%20FATCA%20Research%20Report1.pdf>

<sup>2</sup> <http://www.politifact.com/truth-o-meter/statements/2015/apr/13/rick-santorum/90-american-workers-dont-own-their-own-business-ri/>

<sup>3</sup> State Departments estimates suggest 9 million Americans live abroad, 6.5m of them are voting age. If 19.6% of estimated 6m Americans abroad that are gainfully employed are running their own business then the figure of business owners abroad would be 1.176m.

### **Proposed remedy**

Democrats Abroad and a number of others are demanding an urgent remedy for this policy flaw. Our proposal:

Americans abroad with interests in foreign corporations should be exempt from the Repatriation Tax and from the GILTI Tax regime for any given year so long as two conditions are met.

- 1) we meet the conditions required for exemption under IRC Section 911 (bona fide non-resident for tax purposes), and
- 2) we are individual U.S. shareholders.

**This solution achieves the U.S. government's goal of capturing corporate tax it has been long-denied, whilst recognizing that the profits generated by overseas businesses owned by Americans abroad were always meant to remain abroad.**

### **Transition Tax grassroots campaign**

In the absence of Congressional action, Americans abroad are urging the Treasury and IRS to take the following actions:

1. Issue an immediate notice stating that for Americans abroad, the first payment under [IRC Section 965](#) (transition tax on untaxed foreign earnings) is due the earlier of October 15, 2018, or the issuance of further guidance.
2. Issue a further notice in line with our proposal.

Our research suggests these are the individuals at Treasury and the IRS who would need to implement these remedies. A broad, non-partisan alliance of Americans abroad is championing a grassroots campaign for American business owners abroad to write to them asking for urgent action.

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### **Resources:**

**Financial Times: Americans abroad hit by Trump's new repatriation tax rules 02/04/2018**

<https://www.ft.com/content/cb6762f4-09b9-11e8-8eb7-42f857ea9f09>

**Tax Journal: US Persons abroad hit by Trump's repatriation tax 02/08/2018**

<https://www.taxjournal.com/articles/us-persons-abroad-hit-trump-s-repatriation-tax-08022018>

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