Democrats Abroad on the GILTI Tax and Americans Abroad

What is the GILTI Tax?

GILTI (Global Intangible Low-Taxed Income) Tax was enacted within the 2017 Tax Cuts and Jobs Act (TCJA). The intention was to tax the deemed profits of overseas subsidiaries of large U.S. multi-national corporations and thus stop them from retaining untaxed profits overseas. The tax, however, hits the profits of foreign-registered companies owned by individuals living abroad as well. **The deemed profits of companies owned by individuals are declared on the return of the individual taxpayer and so can be taxed at up to 37%,** the highest individual marginal tax rate. Corporations should pay a GILTI tax of 21%. However, after a 50% exclusion and with an 80% credit for foreign tax paid and other offsets and deductions, which are not available to individual taxpayers, **corporations often pay no GILTI tax at all**, while US citizen shareholders do not usually have the same options.

Who is subject to GILTI?

- As many Americans initially struggle to get employment in a new country, they set up small businesses to earn a living. It is estimated that there are **tens of thousands of small American businesses abroad that are subject to GILTI.**
- Most American business owners abroad are set up as companies in order for them to operate efficiently in the country they trade in. Examples of small American businesses abroad include restaurant owners, yoga instructors, and IT support consultants.
- If Americans own over 50% of a foreign corporation, that corporation is deemed a Controlled Foreign Corporation (CFC) and is thus subject to GILTI. An American citizen business owner is subject to filing and must report their share of the CFC's profits on their personal filing and pay tax on the CFC's deemed profits at their marginal tax rate.

How has this impacted American small business owners abroad?

- An unknown number of small American businesses abroad have closed down since GILTI came into force.
- Treasury regulations issued on GILTI are unclear and difficult to understand, even for expat specialist accountants. In order for a small business to comply, they have to pay thousands of dollars for the accountant's time to calculate the tax. Many of these specialist expat tax accountants are also small businesses and subject to the tax as well.
- Many small business owners who attempted to comply with the law saw their U.S. tax filing bill soar, on top of being hit with an additional tax they were unprepared to pay. An unknown number of businesses have become non-compliant due to the erroneous filing, cost to file, and tax payment expected of them.
- Many small business owners have taken the Sec 962 election, which treats an individual like a corporation, in order to qualify for the lower tax rate and reduce their tax bill. However, it is unknown how this will impact their tax filings on an ongoing basis and annual compliance is very costly.

Why is the GILTI tax unfair?

- Small business owners are treated the same way as a large multi-national conglomerate like Google and Apple.
- But these small business owners are already subject to taxation in the country they live in and most of their businesses, unlike large U.S. corporations, do not have any dealings with the U.S.
- Before the TCJA passed, small business abroad were taxed on their profits in the jurisdiction where they are registered, with declared dividends taxable in the hands of the U.S. taxpayer. Now those business profits are also subject to the GILTI tax, with no offset for the tax paid to the country of jurisdiction. This is double taxation, and makes it difficult for small businesses to operate and directly goes against hundreds of tax treaties between the U.S. and foreign countries

Latest Activity to exempt business owners abroad from GILTI

- DA door knock visits to Capitol Hill since 2018 indicate most members of Congress are not aware of the impact GILTI has on small business owners abroad. Unfortunately, there is little to no appetite for Congress to enact any fixes to the problems with the TJCA.
- Congressional staff suggest we wait for a few years of filings to come in to see how much income was generated for the government from GILTI. Many of the businesses owned by Americans abroad, however, will not survive that long. We need a fix sooner rather than later.
- A court case was filed on June 12, 2020, *Monte Silver v. IRS & Treasury,* challenging the implementation of GILTI for violating the Regulatory Flexibility Act, Paperwork Reduction Act, and Declaratory Judgement Act – all provisions designed to protect small businesses. We are monitoring this case as it progresses through the court.

Our ask is simple; to exempt American small business owners abroad from the GILTI tax.