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In this article, the author estimates the actual revenue effects of four international provisions of the Tax Cuts and Jobs Act and compares his estimates to the projections made by the Joint Committee on Taxation staff in December 2017.

Since the publication of my article on generally accepted accounting principle effective tax rates (ETRs) of large U.S. nonfinancial corporations,[1] several readers have asked if my database would allow me to determine whether the international tax provisions of the Tax Cuts and Jobs Act (P.L. 115-97) are having the revenue effects that were anticipated when the law was enacted. In investigating that, I identified four international provisions with revenue projections I could evaluate:

- the transition tax on the post-1986 earnings and profits of 10-percent-owned controlled foreign corporations;
- the global intangible low-taxed income regime;
- the foreign-derived intangible income regime; and
- the base erosion and antiabuse tax.

Table 1 summarizes the projections of the federal tax revenue consequences of those provisions, prepared in December 2017 by the Joint Committee on Taxation.[2] In this article, I consider whether those projections seem reasonable, given the results I have obtained from the Form 10-K financial statements for large U.S. corporations.[3] I make several conclusions. First, the JCT projections of the revenue gains from the transition tax appear to be 25 percent higher than what I would estimate based on Form 10-K financial statement data. Second, the projected revenue gains from the GILTI provisions seem, if anything, to be understated. Third, between fiscal 2019 and fiscal 2022, the JCT estimated gains from the FDII provisions because it projected large taxable gains on projected repatriations of CFC-owned intangible assets. To my knowledge, those projected taxable gains have not materialized, and the FDII has actually substantially reduced federal tax revenue. Fourth, the JCT projected substantial BEAT-related revenue gains. I expect that the actual increase in tax revenues from the BEAT will be a small fraction of the increase that the JCT projected in 2017. Fifth, the JCT projected that

[1] Thomas Horst, "The TCJA's Impact on GAAP Effective Tax Rates of Large U.S. Nonfinancial Corporations," *Tax Notes Int'l*, May 27, 2019, p. 821.

[2] Joint Committee on Taxation, "Estimated Budget Effects of the Conference Agreement of H.R. 1, the 'Tax Cuts and Jobs Act,'" JCX-67-17 (Dec. 22, 2017).

[3] I define a large corporation as one whose market capitalization as of October 3, 2018, was at least $25 billion.

Table 1. Joint Committee on Taxation's Projections of the Impact of Certain International Tax Reform Provisions on Federal Tax Revenues, FY 2018-2027 ($ Billions)

	<A>	<B>	<C>	<D>	<E>	<F>
		Recurring Provisions				
Fiscal Year	**Transition Tax**	**GILTI**	**FDII**	**BEAT**	**Subtotal**	**Total**
2018	78.6	7.7	-0.2	0.8	8.3	86.9
2019	49.6	12.5	4.8	4.3	21.6	71.2
2020	16.5	9.6	6.9	13.3	29.8	46.3
2021	15.6	9.5	6.6	16.1	32.2	47.8
2022	15.7	9.3	0.2	17.1	26.6	42.3
2023	27.2	9.0	-11.4	16.8	14.4	41.6
2024	47.5	9.2	-15.7	15.9	9.4	56.9
2025	64.4	9.3	-20.2	16.5	5.6	70.0
2026	33.0	15.1	-18.4	21.6	18.3	51.3
2027	-9.4	21.2	-16.3	27.0	31.9	22.5
2018-2022	**176.0**	**48.6**	**18.2**	**51.7**	**118.5**	**294.5**
2018-2027	**338.8**	**112.4**	**-63.8**	**149.6**	**198.2**	**537.0**

Source: Joint Committee on Taxation, "Estimated Budget Effects of the Conference Agreement of H.R. 1, the 'Tax Cuts and Jobs Act,'" JCX-67-17, at 7-8 (Dec. 22, 2017).

together, the GILTI, FDII, and BEAT provisions would result in a significant increase in federal tax revenues. Based on my evidence, the combined effect of those provisions is more likely to be a loss. Finally, I estimate that between fiscal 2018 and fiscal 2027, the net revenue gain from the transition tax, GILTI, FDII, and BEAT will be less than 50 percent of the cumulative net revenues projected for those four provisions.

Transition Tax

The transition tax is a one-time tax on the post-1986 earnings and profits of 10-percent-owned CFCs of 15.5 percent for E&P invested in liquid assets and 8 percent for all other assets. It is assessed in the corporation's fiscal year that starts in 2017, but U.S. corporations could — and generally did — elect to pay the total tax in eight annual installments starting with that fiscal year.

The JCT's December 2017 projections of the transition tax payments are shown in Column <A> of the table.[4] As indicated, the JCT's estimate of cumulative transition tax revenues for the 10-year budget window was $338.8 billion.

In the GAAP financial statements evaluated in my earlier article, U.S. corporations accrued 100 percent of the transition tax liability in the fiscal year that started in 2017, even if they elected to pay the tax in eight annual installments. Based on the GAAP financial statements for fiscal years starting in 2017, I calculated an aggregate transition tax liability of $225.7 billion for the 151 U.S. large nonfinancial corporations in my database.[5] I also tabulated the transition tax liabilities reported on the 2017 Forms 10-K for 33 large U.S. financial service corporations, as well as five large inverted corporations with a foreign

[4] The "Fiscal Year" column refers to the U.S. government's fiscal year.

[5] Although many U.S. corporations revised their initial transition tax estimate in the following fiscal year, the cumulative net effect of the subsequent year revisions has been negligible.

parent that still filed the form.[6] The total transition tax accrual for the 33 financial service corporations was $13 billion, and for the five inverted corporations was $3.7 billion. Thus, the total for all 189 large corporations that filed a Form 10-K for a fiscal year starting in 2017 was $242.4 billion.

That overall total is approximately 72 percent of the JCT's December 2017 estimate of $338 billion. While my database does not include any large, closely held U.S. company (including U.S. subsidiaries of foreign multinationals) or any U.S. corporation with market capitalization of less than $25 billion, I still doubt that the total transition tax liabilities of omitted corporations could make up for the significant difference between the JCT's estimate and mine. My rough estimate is that actual transition tax revenues will ultimately be no more than 80 percent of the JCT's 2017 projected total — that is, the JCT's projection will be 25 percent higher than actually realized transition tax revenues.

GILTI

The TCJA required U.S. corporations to include GILTI in their first fiscal year starting after December 31, 2017. Broadly speaking, GILTI arises when a U.S. corporation has a CFC that accrues post-tax tested income that exceeds 10 percent of the CFC's investment in depreciable property. The JCT's estimates of the revenue increase from GILTI are shown in Column <B> of Table 1. Smoothing the blip in JCT projections of GILTI revenues in fiscal 2019, I infer that the JCT expected that GILTI would annually generate approximately $10 billion starting in fiscal 2018.

To compare the JCT GILTI revenue estimate with my database, I first estimated the worldwide earnings before tax for the 151 large U.S. nonfinancial corporations for their fiscal years starting in 2018. Based on the financial statements for the 124 corporations that by August 1, 2019, had filed a Form 10-K for a fiscal year starting in 2018, and projecting results for the remaining 27 corporations that had not filed by that date, I estimate that the aggregate worldwide earnings before tax for all 151 corporations for fiscal years starting in 2018 will be $925 billion.

Table 2 summarizes effective tax rate adjustments reported by the 22 "Type A" U.S. corporations that itemized the separate effects of TCJA provisions.[7] In evaluating the JCT's TCJA revenue estimates, I have assumed that the ETR adjustments made by those 22 corporations are typical of the ETR adjustments that would have been reported by U.S. corporations that do not itemize separate effects of TCJA provisions.[8]

Table 2, Column <B> summarizes the GILTI-related impact on the ETRs reported by Type A U.S. corporations. The last two lines in Column <B> indicate that the simple average of those reported ETR adjustments is 1.5 percent, and the weighted average ETR adjustment is 0.5 percent. Accordingly, my estimate of GILTI's impact on the 151 corporations in my database is $9.25 billion (1 percent[9] of $925 billion). Given that my estimate of worldwide earnings before tax — $935 billion — does not include the earnings before tax of financial service, inverted, privately held, and smaller-capitalization corporations, it appears that the JCT's annual GILTI revenue projection of $10 billion could be too low.

FDII

The TCJA allows U.S. corporations to claim a tax deduction equal to 37.5 percent of their FDII in the first fiscal year starting after December 31, 2017. Broadly speaking, FDII arises when a U.S. corporation derives from the export of U.S. goods and services income that exceeds 10 percent of the depreciable property used in the production of that income.

The JCT projections of the tax revenue resulting from the FDII provisions are shown in

[6] Those five corporations are Medtronic PLC, Allergan PLC, Eaton Corp. PLC, Johnson Controls International PLC, and Ingersoll-Rand PLC.

[7] A corporation that separately itemized at least one adjustment to its ETR for a specific TCJA provision is a "Type A" reporter.

[8] My assumption that the TCJA adjustments itemized by Type A corporations are typical of the results that would have been reported by other corporations — that is, types B and C — is supported by my analysis of the prime candidates in my May article, *supra* note 1. That analysis led me to conclude that the difference between Type A corporations versus types B and C corporations is in their willingness to fully disclose how the TCJA affected their ETRs, rather than how large an effect the TCJA had on their ETRs.

[9] One percent is the midpoint between the 1.5 percent simple average and the 0.5 percent weighted average.

Table 2. Impact of GILTI, FDII, and BEAT on Effective Tax Rates of Type A U.S. Corporations

	<A>	<B>	<C>	<D>	<E>
	Company Name	**GILTI**	**FDII**	**BEAT**	**Total**
1	3M Company	1.1%	-1.3%	0.0%	-0.2%
2	Abbott Laboratories	0.0%	-1.9%	0.0%	-1.9%
3	Archer-Daniels-Midland Company	1.0%	-1.0%	0.0%	0.0%
4	Biogen Inc.	1.6%	0.0%	0.0%	1.6%
5	Boeing Company	0.0%	-4.7%	0.0%	-4.7%
6	Bristol-Myers Squibb Company	1.6%	0.0%	0.0%	1.6%
7	Corning Incorporated	3.6%	0.0%	0.0%	3.6%
8	Fidelity National Information Services Inc.	0.0%	-1.8%	0.0%	-1.8%
9	General Dynamics Corporation	0.0%	-1.2%	0.0%	-1.2%
10	Intel Corporation	0.0%	-3.7%	0.0%	-3.7%
11	Iqvia Holdings Inc.	10.7%	-7.6%	0.0%	3.0%
12	Lockheed Martin Corporation	0.0%	-1.0%	0.0%	-1.0%
13	Microsoft Corporation	0.0%	-1.4%	0.0%	-1.4%
14	Netflix Inc.	3.5%	0.0%	0.0%	3.5%
15	Nextera Energy Inc.	0.0%	0.0%	0.0%	0.0%
16	Philip Morris International	1.2%	-1.1%	0.0%	0.1%
17	Raytheon Company	0.0%	-4.2%	0.0%	-4.2%
18	Regeneron Pharmaceuticals Inc.	0.0%	-1.0%	0.0%	-1.0%
19	Roper Technologies Inc.	1.1%	-1.2%	0.0%	-0.1%
20	Texas Instruments Incorporated	0.4%	-5.3%	0.0%	-4.9%
21	Thermo Fisher Scientific Corporation	5.1%	-1.4%	0.0%	3.7%
22	Valero Energy Corporation	2.1%	0.0%	0.0%	2.1%
23	**Simple Average — All Companies**	**1.5%**	**-1.8%**	**0.0%**	**-0.3%**
24	**Weighted Average — All Companies***	**0.5%**	**-1.9%**	**0.0%**	**-1.4%**

*Weighted average is based on corporations' worldwide earnings before tax.

Note: Based on SEC Form 10-K filings as of August 1, 2019.

Table 1, Column <C>. Because the FDII tax deduction reduces a U.S. corporation's federal tax, I expected that the JCT would therefore project a reduction in revenues. But as shown in Column <C>, the JCT projections show a substantial revenue increase in fiscal 2019-2021. After fiscal 2022, a switchover year, the JCT projected that the FDII provisions would result in substantial reductions in revenue.

Based on my inquiries, I understand that the JCT's FDII revenue projections reflected not only a reduction in federal taxes because of the FDII deduction, but also offsetting increases resulting from large taxable gains that U.S. corporations would recognize on projected repatriations to the U.S. parent corporations of intangible assets that their CFCs owned before the enactment of the TCJA. While I am sure that many U.S.

corporations have significantly restructured their foreign operations based on the TCJA's international provisions, I am unaware of any evidence that those restructurings resulted in substantial payments of additional U.S. tax.

My best guess of the impact of the FDII provisions on federal taxes paid by U.S. corporations in fiscal years starting in 2018 would be a reduction of 1.8 to 1.9 percent of their worldwide earnings before taxes.[10] In absolute terms, the rate of FDII-related tax reductions is higher than the comparable rate of GILTI-related tax increases.[11] In short, the FDII provisions are likely resulting in substantial revenue reductions, rather than the substantial increases projected for fiscal 2019-2021.[12]

BEAT

The BEAT, which applies to U.S. corporations having average annual gross receipts of at least $500 million, is determined in large part by the percentage of tax-deductible payments to foreign-related parties ("base-erosion payments"). Importantly, base-erosion payments generally do not include payments recorded as a reduction in gross receipts, including payments for costs of goods sold. In other words, base-erosion payments are for expenses that are recorded below the gross profit line on a corporation's financial statements.

The JCT projections of the additional federal tax payments resulting from the BEAT provisions are shown in Table 1, Column <D>. In every year after fiscal 2019, the JCT's projections of the additional tax payments resulting from the BEAT are higher than the contemporaneous GILTI projections.[13] By contrast, none of the 22 Type A U.S. corporations that had filed a Form 10-K by August 1 and itemized the separate effects of the TCJA provisions on their ETRs recorded a BEAT adjustment. By contrast, 12 Type A corporations reported a GILTI adjustment, and 16 reported an FDII adjustment.

[10] See the last two lines of Table 2, Column <C>.

[11] See the last two lines of Table 2, columns <B> and <C>.

[12] Table 1, Column <C>.

[13] Compare Table 1, columns <B> and <D>.

I also reviewed the Forms 10-K for fiscal years starting in 2018 for 32 large U.S. financial services corporations, as well as for five large inverted corporations, which were not included in the database for my May article. I found only one corporation that disclosed any adjustment to its ETR because of the BEAT.[14]

As noted, my Form 10-K financial statement database also does not include any U.S. subsidiaries of foreign parents other than the five inverted companies discussed. Some of those U.S. subsidiaries, particularly those that provide insurance and other financial services, may have paid higher U.S. tax because of the BEAT.

Despite the lack of public information about the BEAT's effect on U.S. subsidiaries of foreign parents, I expect that the additional BEAT-related revenue will prove a small fraction of the large JCT revenue gains shown in Table 1, Column <D>. My low expectation is based mainly on the fact that only one of the reviewed 161 Forms 10-K for fiscal years starting in 2018 discloses any BEAT-related ETR impact. Others have reinforced that low expectation:

> The proposed BEAT regulations mostly turned out favorably for the rarified set of taxpayers to which they might apply. There is evidence that those taxpayers had the ear of Treasury officials, who must have given up sleep to accommodate all the meetings at Main Treasury. Treasury made pro-taxpayer calls that would be hotly contested if they were against taxpayers. But those choices will probably pass unexamined — do-good groups don't have standing to sue.[15]

Combined Revenue Effect

Table 1, Column <E> shows the JCT projections of the net tax revenue gains resulting from the GILTI, FDII, and BEAT provisions as a

[14] The 2018 Form 10-K for Goldman Sachs Group Inc. reports an ETR adjustment for non-U.S. operations that includes the impact of GILTI and the BEAT. Goldman Sachs does not disclose the separate ETR effects of either the BEAT or the GILTI provisions; rather, it discloses that those two provisions, when combined with other unidentified (and likely foreign) tax provisions, produced an overall net reduction of 0.7 percent in its 2018 ETR.

[15] Jasper L. Cummings, Jr., "The APA, *Chevron*, and the BEAT," *Tax Notes*, Apr. 8, 2019, p. 225, at 240.

whole. My analysis of the combined ETR impact of those provisions for the 22 Type A corporations is reflected in Table 2, Column <E>. Because the tax savings from the FDII provisions in Table 2 outweigh the tax increases from the GILTI provision, and because the BEAT has no reported impact, both the simple and weighted averages in the last two lines of Table 2, Column <E>, indicate a net tax reduction for the three provisions combined. While my database has its limitations, I still expect that together, the GILTI, FDII, and BEAT provisions will reduce federal tax revenue, rather than yield the substantial increases the JCT projected in 2017.

Conclusion

My two principal conclusions are: (1) the actual cumulative revenues resulting from the one-time transition tax will be no more than 80 percent of the JCT's cumulative total over the 10-year forecast window, and (2) the combined effect of the GILTI, FDII, and BEAT provisions will be a tax revenue loss. Combining those two conclusions, I estimate that the net revenue gain from fiscal 2018-2027 from the transition tax, GILTI, FDII, and BEAT will be less than 50 percent of the cumulative revenues that the JCT projected in 2017.[16] ■

[16]Eighty percent of the JCT's cumulative transition tax projection — $338.8 million — equals $271 billion. If total transition tax revenue of $271 billion is reduced by net revenue losses from GILTI, FDII, and the BEAT, the overall result will be less than 50 percent of the JCT's cumulative projected revenues from all four provisions — $537 billion, the amount shown on the last line of Table 1, Column <F>.