

# An Empirical Assessment of the Likely Impact of the International Provisions of the TCJA

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**Date :** May 1, 2019

Dhammika Dharmapala, *The Consequences of the TCJA's International Provisions: Lessons from Existing Research*, CESifo Working Paper No. 7249 (Oct. 31, 2018), available at [SSRN](#).

The international provisions of the [Internal Revenue Code](#) are among its least well understood. Public Law 115-97, known informally as the "[Tax Cut and Jobs Act](#)" (TCJA), made significant changes to those provisions. One of the best evidence-based articles exploring the likely effects of those changes is [Dhammika Dharmapala](#), *The Consequences of the TCJA's International Provisions: Lessons from Existing Research*, CESifo Working Paper No. 7249, a second version of which was posted on SSRN in late October. In it, Dharmapala reviews the existing econometric literature and uses that literature to project the likely long-term consequences of those changes. Anyone interested in international tax policy will benefit from working through his evidence and conclusions.

Although Dharmapala initially defines his task in broad terms—"to review the most important of these new international tax provisions and to discuss their potential consequences, drawing on existing scholarly literature"—he ultimately narrows his focus to ownership distortions, distortions that implicate what is known in the literature as "capital ownership neutrality." He does not, for example, explore generally the likely effects of TCJA on incentives to offshore business operations or incentives to income-shift within a consolidated group. Instead, he notes that pre-TCJA, (1) "US MNCs [multinational corporations] [were] disfavored as vehicles for global portfolio investment" and (2) "the US tax imposed upon the repatriation of dividends created an incentive to delay repatriation, and led to the accumulation of cash holdings...in foreign affiliates," and asks whether the new changes are likely to ameliorate or exacerbate these distortions.

As to the first, he observes that "much of the impetus for international tax reform was spurred by concern about the US tax burden on US residence; a growing body of evidence suggested that the resulting distortions were quite large....Yet, the TCJA contrives to make this problem arguably even worse." (By "US residence" he means US parentage of multinational groups.) The new tax on global intangible low-taxed income (GILTI), in particular, "burdens US residence, and...may do so to greater extent than the repatriation tax regime it replaces."

The tax on GILTI, moreover, creates a new distortion: "The GILTI tax instead encourages US firms to acquire tangible assets in foreign countries, regardless of the local tax rate." "US MNCs become tax-favored buyers of routine foreign tangible assets." This violates capital ownership neutrality and creates dead-weight loss.

"In summary," he concludes, "the TCJA may well increase the tax burden of US residence for many (and perhaps most) US MNCs. It follows that the TCJA is unlikely to generate the types of benefits documented in the empirical literature on the territorial reforms carried out in the U.K. and Japan. Rather, the impetus for inversions, the competitive disadvantage for US MNCs in cross-border acquisitions, and the tendency for US MNCs to be disfavored as vehicles for portfolio investment will continue (indeed, possibly to an even greater extent than before)."

As to repeal of the so-called repatriation tax, Dharmapala concludes that the “primary impact of increased repatriations is an increase in shareholder payout.” He bases this conclusion in significant part on his work on the effects of the 2004 repatriation tax holiday effected by the [American Jobs Creation Act](#): “the AJCA [repatriation tax holiday] had no detectable impact on US investment or employment levels.” As a result, he concludes that “efficiency gains [from repeal of repatriation tax] are likely to be modest.” Importantly, he finds “no evidence supporting the claim that increased repatriations will increase US wages.”

The importance of having an economist with Dharmapala’s depth of knowledge and familiarity with the empirical literature writing about these issues cannot be overstated. I had reached similar conclusions using a purely theoretical model. Theodore Seto, [Modeling Changes in U.S. International Tax Rules](#), Tax Notes, April 8, 2019. Theory, however, is never an adequate substitute for fact.

In his closing paragraph, Dharmapala concludes that “the TCJA provides an illustration of the definition of politics...as ‘the art of looking for trouble, finding it everywhere, diagnosing it incorrectly and applying the wrong remedies.’” Unfortunately, his analysis persuasively supports this rather bleak assessment.

Cite as: Theodore P. Seto, *An Empirical Assessment of the Likely Impact of the International Provisions of the TCJA*, JOTWELL (May 1, 2019) (reviewing Dhammika Dharmapala, *The Consequences of the TCJA’s International Provisions: Lessons from Existing Research*, CESifo Working Paper No. 7249 (Oct. 31, 2018), available at SSRN), <https://tax.jotwell.com/an-empirical-assessment-of-the-likely-impact-of-the-international-provisions-of-the-tcja/>.