Tax Topics

July 15, 2025
Number 2735

NO MORE GILTI (WELL, SORT OF)

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How did you feel about the United States calling a foreign tax provision "GILTI" (Global Intangible Low-taxed Income)?[2] I always thought it was more than a little cheeky when some congressional staffer snuck in this tidbit during the late hours of tax reform, just before Christmas 2017.

The One Big Beautiful Bill Act (OBBBA)[3] contains legislation to modify international tax provisions affecting US shareholders of foreign corporations. One piece of good news in the OBBBA is that GILTI will soon be gone. The bad news is that it pretty much just got a new name: Net CFC Tested Income ("NCTI"? "NCFCTI?" Doesn't quite roll off the tongue, does it?). More importantly, the substance of the rule is not only retained, but made stricter.

Foreign Corporations

A US citizen is subject to taxation on worldwide income no matter where they live.

The United States has controlled foreign corporation ("CFC") rules which are designed to do a number of things. The principal objective is capital export neutrality: "Mobile" income of a US person should be taxed substantially the same way wherever invested. Mobile income refers to types that can easily be moved outside the United States. Primarily, this category consists of investment income (interest, dividends, rents, royalties, and capital gains), but there are other elements.

The idea behind these rules is that an American incorporating a company in a low-tax jurisdiction and having it earn income would not pay dramatically different tax than by investing directly. The United States has "Subpart F"[4] and "Foreign Personal Holding Company Income"[5] rules which largely accomplish this goal.

These rules don't make a lot of sense in the context of a Canadian-resident US citizen using a Canadian corporation (because Canada is foreign to the United States), but such are the vagaries of tax legislation.

GILTI Background

In principle, ordinary (non-Subpart F) income earned by a foreign corporation is exempt from US taxation. However, the notion of a full exemption (à la Canada)[6] did not sit well with drafters of US tax reform in 2017, especially where little foreign tax is paid.

The targets of GILTI were primarily the large multinational tech companies, which often sheltered income offshore at zero or low rates. However, the scope is much broader than the target; it includes Americans living in Canada.

[1] With thanks to Katherine Fayolle, BAS.

[2] Internal Revenue Code ("IRC") §951A.

[3] HR 1 – 110th Congress.

[4] IRC §952(a).

[5] IRC §954(c)(1).

[6] ITA §113(4), Reg 5907(1) "exempt surplus", "exempt earnings".

How GILTI Works

GILTI acts as a minimum tax on ordinary income. It applies to a US person who is a substantial shareholder (generally at least 10% by votes or value) in a CFC.[7]

By default, GILTI imputes ordinary corporate income to a US owner, but there are exceptions and modifications.

GILTI has a "high tax exclusion". If the effective local (e.g., Canadian) corporate income tax rate exceeds 18.9% (90% of the US statutory rate of 21%), it is possible to elect to exempt the income from GILTI.[8] This rule will generally exclude income subject to the Canadian general tax rate from GILTI, as Canadian statutory rates run from 23-29%, depending on the province of taxation.

It is possible to make a "Section 962 election", whereby the individual is subject to the US corporate tax regime.[9] This election indirectly allows a 50% deduction from income[10] and a foreign tax credit (only 80% of the Canadian corporate tax is allowed).[11]

GILTI allows a deduction for Net Deemed Tangible Income Return ("DTIR"). This works much like a second depreciation deduction (at a rate of 10%)[12] for assets (but not intangibles).

The effective GILTI rate is 10.5%, because the US tax rate is 21%, less the 50% income deduction.[13] But to eliminate GILTI entirely, the effective Canadian corporate tax rate has to be at least 13.25%, because of the 80% foreign tax credit ("FTC") limitation. This is before considering the impact of the DTIR.

What GILTI Means for US Shareholders in Canada

Most statutory Canadian corporate tax rates are higher than 13.25%, but there are exceptions. For instance, the combined federal-Manitoba small business rate is 9%.

It may be possible to avoid GILTI by claiming less than a full small business deduction and thus increase the effective Canadian corporate rate.[14]

GILTI has a number of hidden tricks that can trigger inclusion. A company that has losses may carry them to future or past years. The GILTI calculation does not match these deductions. Similarly, Canadian tax paid cannot be carried forward or back to calculate US FTCs (the GILTI FTC is a separate calculation).

It is fairly rare for a US citizen in Canada to pay tax on GILTI. However, the complexity is severe, and the cost of complying is substantial. An incorporated professional can expect to pay thousands of dollars for forms (5471, 8992, 8993) to be properly prepared. This cost is in addition to the normal US tax return fee.

What Was Going To Happen Without OBBBA?

The Tax Cuts and Jobs Act of 2017[15] was required to meet certain revenue scoring tests to pass in the Senate with only 51 votes. One way Republican senators managed this result was by having certain provisions "sunset" after 10 years.

For 2026, the section 250 deduction was supposed to drop from 50% to 37.5%.[16] The threshold foreign corporate rate to avoid GILTI was thus destined to climb from 13.25% to 16.4% (not considering the DTIR).

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[7] IRC §951A(a), 951(b).

[8] Reg §1.951A-2(c)(7), IRC §954(b)(4).

[9] IRC §962(a).

[10] IRC §250(a)(1)(B)(i).

[11] IRC §960(d)(1).

[12] IRC §951A(b)(2)(A).

[13] IRC §11(b).

[14] CRA document 2016-0648481E5.

[15] PL 115-97.

[16] IRC §250(a)(3)(B).

Changes

The OBBBA repeals the DTIR.[17]

For a person making a section 962 election, the income deduction will be reduced from 50% to 40%.[18] The proportion of Canadian tax allowed as a credit will rise from 80% to 90%.[19]

The Canadian corporate threshold rate will thus rise to 14% (US tax of 21% * (1-40%), less 90% of Canadian tax of 14% yields zero).

These changes will be effective for corporations with taxable years beginning January 1, 2026 or later.[20]

Summary

Where a CFC has little or no material tangible assets to depreciate (and thus the DTIR is nominal), the new rules tax more heavily than the old rules, but less than if no action had been taken.

The new threshold rate is higher than all Canadian small business rates.[21] This fact, combined with the repeal of the DTIR, means just about all US-controlled Canadian small businesses are potentially exposed to NCTI.

And the compliance burden remains. Everyone says they want tax simplification, but it seems nobody is willing to legislate it.

CURRENT ITEMS OF INTEREST

Canada Rescinds Digital Services Tax

The federal government is engaged in negotiations on a new economic and security partnership with the United States. To support those negotiations, the Minister of Finance and National Revenue, François-Philippe Champagne, announced on June 29 that Canada would rescind the Digital Services Tax ("DST") in anticipation of a comprehensive trade arrangement with the United States.

Consistent with this action, Prime Minister Carney and President Trump have agreed the parties will resume negotiations with a view towards agreeing on a deal by July 21, 2025. The June 30, 2025 collection of the DST will be halted, and Minister Champagne will bring forward legislation to rescind the *Digital Services Tax Act*.

Some taxpayers have already remitted their DST; however, the CRA has indicated all DST refunds are on hold until legislation repealing the tax has passed. The House of Commons will not resume sitting until September 15.[1]

Government Confirms Non-Taxability of Canada Carbon Rebates for Small Businesses

On June 30, the Minister of Finance and National Revenue, François-Philippe Champagne, issued draft legislation to ensure that all Canada Carbon Rebates for Small Businesses are provided tax-free.[2] Specifically, payments received by corporations in respect of the 2019–2020 to 2023–2024 fuel charge years would not be included in income for tax purposes, and the final payment to be made under the Canada Carbon Rebate for Small Businesses (i.e., in respect of the 2024–2025 fuel charge year) will also be tax-free.

The government will introduce legislation in Parliament to implement these changes in the fall. Once the legislation receives Royal Assent, the CRA will have the authority to process amended T2 corporation income tax returns for those

[17] HR 1 § 70323(a)(2).

[18] HR1 § 70321(a)(2).

[19] HR 1 § 70312(a)(1).

[20] HR 1 § 70312(c).

[21] Québec has more restrictive small business deduction rules than the other provinces.

[1] www.cbc.ca/news/politics/ottawa-law-digital-service-tax-pass-1.7575354

[2] Draft legislative proposals and explanatory notes related to the Income Tax Act (Canada Carbon Rebate for Small Businesses) https://answerconnect.cch.ca/standalone_document/cchcaa22004f5798a176e73b3bf7a6ffabc67/draft-legislative-proposals-related-to-the-income-tax-act-canada-carbon-rebate-for-small-businesses-june-30-2025-may-27-2025?searchId=2710137409;
Explanatory notes related to the Income Tax Act (Canada Carbon Rebate for Small Businesses) https://answerconnect.cch.ca/standalone_document/cchca8aadf4542208158677d7b794b0729722/explanatory-notes-related-to-the-income-tax-act-canada-carbon-rebate-for-small-businesses-june-30-2025-jun-30-2025?searchId=2710138177.

who have already included the rebate in their taxable income, ensuring the rebate is processed as tax-free (i.e., not included in the taxable income reported in the T2). Further guidance will be provided by the CRA at that time.

The Government also confirms that eligible businesses that filed their 2023 tax return after July 15, 2024 and on or before December 31, 2024 will also be eligible to receive tax-free payments in respect of the 2019–2020 to 2023–2024 fuel charge years once the legislation receives Royal Assent. Eligible businesses that file their 2024 income tax return by July 15, 2025 will be eligible to receive a tax-free payment in respect of the 2024–2025 fuel charge year.

Finally, with the removal of the fuel charge from law and the winding down of proceeds return mechanisms, the government will no longer proceed with proposed changes announced in the 2024 Fall Economic Statement which would have expanded eligibility for the Canada Carbon Rebate for Small Businesses to cooperative corporations and credit unions, added a minimum payment for smaller businesses, and introduced a phaseout for larger businesses.

Middle-Class Tax Cut in Effect

As of July 1, the government's middle-class tax cut, a one-percentage-point decrease in the lowest tax rate (15% to 14%), is in effect. To reflect this tax reduction coming into effect halfway through the year, the full-year tax rate for 2025 will be 14.5% for the lowest tax bracket and the full-year rate for 2026 and future tax years will be 14%.

The CRA has updated its source deduction tables for the July to December 2025 period so that pay administrators are able to reduce tax withholdings as of July 1. This means that, effective July 1, individuals with employment income and other income subject to source deductions can have tax withheld at 14%. Otherwise, individuals will realize this tax relief when they file their 2025 tax returns in spring 2026.

G7 Statement on Global Minimum Taxes

Earlier this year the US Secretary of the Treasury outlined the United States' concerns regarding the Pillar 2 rules agreed by the OECD/G20 Inclusive Framework on BEPS and set out a proposed "side-by-side" solution under which US-parented groups would be exempt from the Income Inclusion Rule ("IIR") and Undertaxed Profits Rule ("UTPR") in recognition of the existing US minimum tax rules to which they are subject.

Discussions on this issue were informed by analysis of the respective minimum tax regimes, including consideration of recently proposed changes to the US international tax system based on the Senate amendment of H.R. 1 (introduced June 16, 2025), the *One Big Beautiful Bill Act* ("OBBBA"), the removal of section 899 in the Senate version of the OBBBA, and consideration of the success of Qualified Domestic Minimum Top-up Tax ("QDMTT") implementation and its impact.

On June 28, the G7 announced there is now a shared understanding that a side-by-side system could preserve important gains made by jurisdictions in the Inclusive Framework in tackling base erosion and profit shifting and provide greater stability and certainty in the international tax system moving forward. This understanding, which builds on the continued commitment to collaborate jointly through the Inclusive Framework to address the potential risks of base erosion and profit shifting, is based on the following accepted principles:

- A side-by-side system would fully exclude US-parented groups from the UTPR and the IIR in respect of both their domestic and foreign profits.
- A side-by-side system would include a commitment to ensure any substantial risks that may be identified with respect to the level playing field, or risks of base erosion and profit shifting, are addressed to preserve the common policy objectives of the side-by-side system.
- Work to deliver a side-by-side system would be undertaken alongside material simplifications being delivered to the overall Pillar 2 administration and compliance framework.
- Work to deliver a side-by-side system would be undertaken alongside considering changes to the Pillar 2 treatment of substance-based non-refundable tax credits that would ensure greater alignment with the treatment of refundable tax credits.

Recent Publications

The following documents were recently issued/updated:

- T4114(E), Canada Child Benefit and related provincial and territorial programs (Guide) (www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4114/canada-child-benefit.html);
- RC4210, GST/HST Credit (www.canada.ca/en/revenue-agency/services/forms-publications/publications/rc4210/gst-hst-credit.html); and

- The SR&ED Review Process: A Guide for Claimants (www.canada.ca/en/revenue-agency/services/scientific-research-experimental-development-tax-incentive-program/technical-review-a-guide-claimants.html).

INTERNATIONAL NEWS

Trump Signs US Tax Reform Law

US President Donald Trump has signed the One Big Beautiful Bill Act into law, following final approval from the House of Representatives by 218 votes to 214.

The legislation makes permanent the tax cuts for businesses included in the Tax Cuts and Jobs Act, including immediate expensing for spending on capital equipment and for research and development.

The legislation also provides that the Section 199A pass-through deduction will be made permanent but will remain at 20%, rather than being raised to 23% as had previously been proposed by the House.

The Bill also restores more beneficial rules in place during Trump's first term regarding the business interest expense deduction limitation.

The legislation will also repeal green technology tax relief measures introduced during former president Joe Biden's term.

The legislation includes individual tax policies that will be regressive overall. Among numerous measures, the draft bill will, however, permanently raise the child tax credit to US$2,200 and introduce an additional deduction for seniors of US$6,000.

The single-person standard deduction is being raised to US$15,750, up from US$15,000 (double for married couples filing jointly), and new deductions will be introduced for the duration of Trump's term for overtime pay and tips, of US$12,500 and US$25,000, respectively. Further, a deduction will be introduced for vehicle loan payments.

The state and local tax deduction cap will be raised to US$40,000 until 2030, when the existing US$10,000 cap will be restored, and these deductions will phase out when a taxpayer's modified adjusted gross income reaches US$500,000. In addition, the estate gift tax exemption will rise significantly to US$15 million for single taxpayers (double for married couples).

A new 1% tax will be introduced on certain overseas remittances. This rate is significantly lower than the 3.5% rate initially proposed by the House.

In a move that is expected to reduce American households' Medicaid coverage, the tax on healthcare providers will be progressively reduced, to reach 3.5% by the fiscal year 2032.

The Bill is expected to add US$3.4 trillion to the US deficit over a 10-year period and provides for a US$5 trillion increase to the US debt ceiling.

New UK-US Trade Deal in Force

The new trade agreement between the UK and the US entered into force on June 30, 2025.

The agreement provides for a concessionary 10% tariff rate on up to 100,000 automobile exports to the US market, down from 27.5%. Further, the US has removed tariffs on aerospace sector exports, such as engines and aircraft parts.

The US has also reduced its 50% tariff on foreign aluminum and steel to 25%, which will continue subject to the conclusion of ongoing trade-related talks between the two nations by July 9, 2025.

In return, the UK has offered the US tariff-free access for US ethanol exports capped at 1.4 billion litres. Further, within a quota of 13,000 tonnes, the UK will scrap a 20% levy on US beef.

US Alters Reciprocal Tariff Rates for 10 Countries

Following the US Administration's announcement of a three-week delay to the reinstatement of the so-called reciprocal tariffs until August 1, US President Donald Trump has confirmed updated future tariff rates for 14 countries.

The reciprocal tariffs were to be restored on America's trading partners after a 90-day pause on July 9, 2025. Presently, the US is currently levying a 10% tariff rate on all of the covered trade partners in lieu of these tariffs. However, Trump has warned that countries face an additional 10% levy for "aligning" with "anti-American policies" of the "BRICS" countries — Brazil, Russia, India, China, and South Africa.

While some rates are unchanged compared with those announced in April 2025, the newly announced reciprocal tariff rates that would be imposed from August 1 are as follows:

- Bangladesh: 35%, down from 37%;
- Bosnia and Herzegovina: 30%, down from 35%;
- Cambodia: 36%, significantly down from 49%;
- Indonesia: 32%, in line with the April rate;
- Japan: 25%, up from 24% in April;
- Kazakhstan: 25%, down from 27% in April;
- Laos: 40%, down from 48%;
- Malaysia: 25%, up from 24%;
- Myanmar: 40%, down from 44%;
- Serbia: 35%, down from 37%;
- South Africa: 30%, in line with the April rate;
- South Korea: 25%, in line with the April rate;
- Thailand: 36%, in line with the April rate; and
- Tunisia: 25%, down from 28%.

EU To Extend Road Levy Waiver for Zero-Emission Heavy Goods Vehicles

The European Commission has proposed extending the current exemption from road tolls and user charges for zero-emission heavy-duty vehicles.

In a bid to encourage companies to invest in zero-emission heavy-duty vehicles, the Commission has said the measure should lapse on July 1, 2031, rather than from January 1, 2026. The measure is part of the Commission's Industrial Action Plan for the European automotive sector.

The Commission said:

> The upfront cost of these vehicles is currently higher than their conventional counterparts, making them less attractive to buyers. This remains one of the main barriers to their wider deployment. By waiving tolls and user charges, the EU intends to make zero-emission trucks and buses a more viable option for businesses.

The Commission noted the proposed exemption period will be synchronized with the EU's CO_2 emission performance standards for new heavy-duty vehicles which target a 43% reduction in emissions by 2030.

RECENT CASES

Business Expense Deduction for Pre-Operational Activities Denied

The Appellant appealed the Minister's reassessment disallowing a deduction of $15,436 in claimed business expenses for the 2019 taxation year. The central issue was whether the Appellant was carrying on business in 2019, as required under paragraph 18(1)(*a*) of the *Income Tax Act* to claim such deductions. The Appellant, a chartered professional accountant, co-founded Agkinex Inc., a corporation focused on agricultural technology, in December 2019. He asserted that he spent the latter half of 2019 preparing for business operations, including travel, meetings with potato farmers in Prince Edward Island, and software development for field trials planned for March 2020. However, the corporation did not generate income, issue salaries, file tax returns, or undertake any actual business operations in 2019. It was later dissolved for failing to file required annual returns.

The appeal was dismissed. The Appellant argued that his 2019 expenditures, primarily related to travel, home office, and hotel costs, were incurred in the course of starting the business. The Court found the Appellant's actions constituted preliminary steps and did not satisfy the judicial test for commencement of business activity. The Court concluded that, while the Appellant had the intention to operate a business, he had not taken the essential steps to commence it. The appeal was dismissed as the Appellant failed to rebut the Minister's key assumptions that he had not carried on business in 2019 and that the expenses were not incurred in the course of any business activity.

¶51,654, *Lienaux v. The King*, 2025 DTC 1041

CRA Decision Set Aside Failing to Address Conflicting Record Evidence

The Applicant sought judicial review of a decision by the CRA denying her request to cancel tax assessed on excess contributions made to her tax-free savings account ("TFSA") for the 2021 and 2022 taxation years. The CRA refused relief under subsection 207.06(1) of the *Income Tax Act* on the ground that the Applicant had not removed the excess contributions within a reasonable time after being notified of the overcontribution. The Applicant argued she did not become aware of the excess contributions until the spring of 2023 when she contacted the CRA regarding an unrelated income tax refund. She submitted the overcontributions arose from an honest mistake after inheriting funds from her sister's estate. Although the CRA claimed to have electronically issued notices of assessment in July 2022 and July 2023, the Applicant stated she never received them.

The application for judicial review was allowed; the decision was set aside; $75 in costs was awarded. The Court held the CRA officer's decision was unreasonable because it materially relied on the presumption that the 2021 Notice of Assessment ("NOA") had been delivered electronically without addressing contradictory information in the CRA's own records. One internal record indicated the 2021 NOA was sent electronically, while another suggested it was sent by paper. The officer did not engage with this inconsistency or substantiate the presumption of delivery. As the conclusion the Applicant had failed to act promptly was central to denying the requested relief, the Court found this omission to be fatal to the decision's reasonableness. Although the Applicant's TFSA remained in excess into 2023, and although the legislation requires both a reasonable error and prompt removal of the excess, the CRA's decision did not include a clear finding on whether a reasonable error had occurred. The Court set aside the decision and remitted the matter to a different CRA officer for redetermination. The Applicant was awarded $75 in costs for the filing fee.

¶51,670, *Naugle v. AG of Canada*, 2025 DTC 5084

CERB and CRB Decisions Set Aside and Sent Back for Review

The CRA issued two decisions declaring the Applicant ineligible for the Canada Emergency Response Benefit ("CERB") and the Canada Recovery Benefit ("CRB"). The Respondent filed a written motion under Rule 369 of the Federal Courts Rules for an order setting aside these CRA decisions and referring the file back to the CRA for reconsideration, pursuant to subsection 18(1) of the *Federal Courts Act*. The Applicant opposed the Respondent's motion because the order sought did not guarantee the CRA decision-makers would consider her arguments, which she claimed required specialized knowledge of self-employed accounting. She requested that the CRA's decisions be set aside.

The Respondent's motion was allowed. The jurisprudence has clearly established the method of calculating income for the purposes of the CERB and CRB programs is not prescribed in the CERB Act and the CRB Act and that Parliament's intention is to leave the method of calculating income to determine the eligibility of individuals for the CERB and CRB programs to the administrators who administer these programs. It would be contrary to the jurisprudence to dictate to administrative decision-makers how they must carry out their calculations to determine an individual's eligibility. However, the CRA's administrative decision-makers made unreasonable decisions because they were not adequately justified in light of the reasonableness standard of review dictated by the *Vavilov* decision. More specifically, the unreasonable nature of the decisions is manifested by the fact the decision-makers did not address the main arguments made by the Applicant who proposed a calculation method. The Court noted the Respondent's admission that the lack of explanation or discussion of the key issues raised by the Applicant in the decisions rendered them unreasonable since the decisions did not specify, implicitly or explicitly, why the decision-maker's calculation method used to establish the Applicant's income was more appropriate than the calculation method proposed by the Applicant. As for the remedy, the Court agreed with the Respondent who argued the appropriate remedy was to set aside the two decisions in question and to refer the Applicant's files back to the CRA for a new review and decision in light of this order. Furthermore, the Court could not grant a remedy required by the Applicant that was not sought in her Notice of Application.

¶51,671, *Girard-Lortie v. AG of Canada*, 2025 DTC 5085

Denial of Charitable Donation Tax Credits for Cash Contributions in GLGI Scheme Upheld

The Appellants challenged the Federal Court of Appeal's dismissal of their appeals from reassessments denying charitable donation tax credits claimed under the Global Learning Gifting Initiative ("GLGI") program. Although they conceded the in-kind courseware licenses were worthless, the Appellants argued their cash contributions to registered charities under the GLGI structure should still qualify as valid gifts under the *Income Tax Act* ("ITA"). The Tax Court had found the entire arrangement, including the cash donations, was a single interconnected transaction designed to obtain inflated tax benefits. It concluded the Appellants lacked the requisite donative intent, as they expected to receive benefits exceeding their cash contributions. This conclusion was not challenged on appeal.

The appeal was dismissed. The Federal Court of Appeal affirmed that a valid gift under section 118.1 of the ITA must be made voluntarily without the expectation of benefit. The Court rejected the Appellants' argument that the cash receipts should be assessed in isolation, holding instead that the GLGI arrangement must be evaluated as a whole. The Court also clarified that the "value" of any advantage, under subsection 248(32) of the ITA, must be interpreted objectively, and not based on the donor's perceived or expected worth. As the Appellants admitted they entered the program to receive exaggerated tax credits, the Court found no error in the Tax Court's ruling that no part of their contributions constituted a true gift. Accordingly, the appeal was dismissed, and costs of $8,000 were awarded to the Crown.

¶51,663, *Walby et al. v. The King*, 2025 DTC 5076

TAX TOPICS

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