

12 *Guilty Fogeys:*

Big Oil's **\$86 billion** offshore tax bonanza

ExxonMobil

Marathon Oil

Chevron

ConocoPhillips

Ovintiv

OXY Occidental

MURPHY
OIL CORPORATION

eogresources

TALOS
ENERGY

Apache

KOSMOS
ENERGY

HESS





Few letter-soup acronyms in Washington bureaucratese are so aptly pronounced as GILTI and FOGEI, two esoteric provisions in the tax code worth tens of billions of dollars to Big Oil's multinational majors.

Under the Trump Administration's radical 2017 tax law, companies that extract oil and gas overseas enjoy special exemptions within the Global Intangible Low-Tax (GILTI) regime covering Foreign Oil and Gas Extraction Income (FOGEI).

It is a fitting accident of nomenclature: FOGEI's GILTI carveout helps prop up the fossil firms most culpable for the climate crisis — to the tune of \$84 billion. An additional international tax loophole enjoyed by Big Oil is worth at least another \$1.4 billion, for a grand total of over \$86 billion in offshore tax giveaways.

As Democrats propose closing loopholes to help cover the cost of their \$3.5 trillion reconciliation package, these obscure subsidies present a rare chance to act on climate, fund infrastructure, and promote tax fairness in a single stroke.



Executive Summary



- A handful of Big Oil companies drilling overseas have benefited massively from carve-outs they won in the GOP's 2017 tax bill
- Closing this loophole would raise \$84.8 billion in revenue over 10 years from a handful of Big Oil companies — including Exxon, Chevron, and ConocoPhillips — according to government estimates
- The few companies benefiting most from these handouts have spent millions lobbying to preserve them since the Biden administration proposed ending fossil fuel subsidies, federal filings show
- Another \$1.4 billion in revenue or more could be recovered for taxpayers by eliminating a longstanding gimmick Big Oil companies use to reduce their US taxes by artificially inflating their foreign tax bills
- On top of these overseas-specific loopholes, oil, gas, and coal enjoy \$35 billion in longstanding domestic tax subsidies — a total of \$121 billion in polluter giveaways that can be repealed to help cover the costs of programs that help all Americans

Overview



President Trump's single biggest gift to Big Oil was buried on page 157 of 2017's radically pro-corporate [Tax Cuts and Jobs Act](#). Practically unnoticed at the time, this loophole and other fossil fuel foreign tax shenanigans present the Biden administration and Congress with [an opportunity](#) to raise \$86.2 billion from the biggest Big Oil companies over the next decade.

The Biden administration also wants to raise another \$35 billion from repealing domestic fossil fuel tax breaks that allow companies to more quickly deduct the costs of their investments. These gimmicks, [some in place over 100 years](#), have helped drive boom-bust cycles including the recent bubble in [US shale investment](#). [Over the next decade they](#) could increase the profitability of new oil and gas fields by more than 50%, with [almost all of the subsidy value flowing to excess profits](#), recent studies found.

Behind the obscure codewords — GILTI, FOGEI, FORI, dual capacity, Subpart F — lies a fact Big Oil has long sought to obfuscate: The tax system is larded with handouts that fossil fuel companies depend on for their profitability. To help pay for critical climate investments and the social safety net, Congress must eliminate these gratuitous benefits for companies that already impose monumental costs.

Getting to Know the Global Intangible Low-Tax Income (GILTI) regime

The \$84.8 billion subsidy for multinational drillers is a result of the [Global Intangible Low-Tax Income](#) (GILTI) regime put in place by the Trump tax cut.

Before 2017, profits earned by the overseas subsidiaries of US firms were taxed under a system called [deferral](#). US companies would postpone paying taxes on overseas profits until the money was transferred back to the US. Only then would they pay their US tax bill — minus any taxes paid to foreign governments. This led to predictable abuses: Corporations hoarded profits in offshore tax havens, avoiding paying their fair share while lobbying for one-off-bailouts known euphemistically as [repatriation holidays](#) that would allow those profits to return home while erasing all but a fraction of the taxes due.

The 2017 tax bill replaced this already-broken system with GILTI, a regime that effectively imposes a minimum tax on US companies' foreign profits, with the US collecting tax only where a company's income has been subject to an overall low foreign tax rate.

Think of it like a ball of yarn: As foreign profits pass through various stages of the [complicated equation](#) underlying GILTI, the ball unspools so that an ever smaller core remains eligible for taxation by the United States. Starting with overseas corporate profits, companies exempt ten percent of their investments in tangible assets like factories. Next, they deduct 50% of whatever profits are left over. Any taxable profits that remain are taxed at the historically low US corporate tax rate of only 21%. That final half is winnowed further as companies subtract credits for 80% of any taxes paid to foreign governments. An added advantage for companies is that GILTI is calculated globally, rather than on a country-by-country basis, meaning credits from taxes paid for operating in high-tax jurisdictions can offset profits stashed in tax havens.

In the end, foreign profits may be taxed as GILTI at no more than 13.125%, and very often no tax is imposed at all.

GILTI presents several glaring problems. Firstly, [the tax rate is too low](#). There is no reason why US companies making money overseas should pay lower taxes than companies with only domestic operations; it's a simple matter of fairness. Secondly, [GILTI incentivizes outsourcing](#). (There's literally a deduction — Qualified Business Asset Income, or QBAI — that reduces US companies' taxes for building factories in other countries and shipping jobs overseas.)



Big Oil's Big Break: No Taxation of Foreign Oil and Gas Extraction Income

For Big Oil, the main benefit of the 2017 overhaul is a little-noticed exemption within GILTI for Foreign Oil and Gas Extraction Income (FOGEI) of foreign corporations controlled by US companies. This is how giant companies like Exxon and Chevron can profit from extraction abroad and bring the profits home — without even having to worry about the standard GILTI equation. Instead, they pay no US corporate income tax on this foreign income at all.

The Treasury Department [estimates](#) that reversing this policy, when paired with other much-needed reforms to US taxation of foreign income, will raise tax revenues by \$84.8 billion this decade. Put another way, closing this gratuitous loophole would save the government nearly \$85 billion that could be used to mitigate the damage wrought by fossil fuels.

In addition to including FOGEI in the GILTI calculus, the Biden administration has proposed broader fixes to the system. It would eliminate the offshoring incentive, apply GILTI on a country-by-country basis, and reduce the deduction from 50% to 25%.¹ Tar sands and oil shale, which are currently exempt from FOGEI, would be added. Together with increasing the corporate tax rate to 28%, these changes will result in a fairer tax system that treats foreign and domestic profits more equally — and doesn't simply ignore polluters' overseas profits.

Exxon's "Close to A Billion Dollars" Loophole?

In a [conversation](#) secretly recorded by Greenpeace UK this summer, two ExxonMobil lobbyists spoke openly of their plans to undermine climate action, including their work with climate denying front groups, performative support for a doomed carbon tax, and close relations with key moderate senators. Although entirely on-brand for fossil fuels, the words shocked casual observers across Washington and beyond.

Amid the fracas, few noted the references in the leaked video to tax policy. Specifically, one lobbyist said the Treasury would require fewer tax increases, including on overseas profits, if Congress limited the scope of proposed infrastructure legislation to \$800 billion for roads and bridges, instead of \$2 trillion for a comprehensive climate solution.

Or as the [lobbyist put it](#): "The international tax piece is for, for ExxonMobil is close to a billion dollars."

He is presumably referring here to ExxonMobil's direct annual benefits from international tax loopholes like the foreign drilling exemption within GILTI — and disclosing the additional tax ExxonMobil would end up paying to the Treasury if these loopholes are closed.

Exxon's cynical lobbying doesn't stop here. The company has also [hypocritically fought tooth and nail against transparency](#) for the oil, gas, and mining industries despite years on the board of the Extractive Industries Transparency Initiative (EITI), the multistakeholder organization designed to set [global standards for transparency](#) in these sectors. By blocking proposals to require payments-to-governments disclosures in line with international best practice, Exxon has sought to draw a veil of secrecy over its tax benefits.

¹ These changes would also help to align GILTI with global tax reform efforts, as proposed at the OECD, which would also apply a country-by-country minimum tax with no exemption for the oil and gas industry.

The Dirty Dozen: Identifying Who Benefits from International Tax Subsidies

Only a relative handful of US oil and gas companies extract fuel overseas, entitling them to the FOGEI exemption. Not only is FOGEI limited to extractive activities near the wellhead, it also excludes all fuels other than oil and gas, including tar sands and oil shale. And oilfield services companies are generally left out, because it applies only to those with an [“economic interest in the minerals in place.”](#) Companies benefiting from FOGEI fall into two categories: integrated supermajors like ExxonMobil and Chevron, and independent drillers (companies that drill but don’t refine) with operations overseas.

To generate a list of companies benefiting from the FOGEI exemption, we examined the six largest Exchange Traded Funds (ETFs) that track the performance of the US oil and gas industry and screened for US-based supermajors and independent drillers with overseas operations.

The resulting 12 companies represent a “Dirty Dozen” whose targeted tax benefits must be acknowledged and withdrawn.

The Dirty Dozen: Twelve US companies whose profits from foreign extraction are likely treated as FOGEI

Supermajors

ExxonMobil



Independent Drillers

ConocoPhillips

eog resources

OXY Occidental

HESS

Marathon Oil

Apache

MURPHY
OIL CORPORATION

KOSMOS
ENERGY

TALOS
ENERGY

Ovintiv

It is impossible to say precisely how much individual companies benefit using publicly available data — Exxon’s leaked admission about \$1 billion notwithstanding.

The table below includes foreign upstream earnings from supermajors and foreign earnings from independent drillers for each of the three full years since the 2017 tax cut.

Although some oil companies say they already pay high tax rates overall on their foreign profits, the current system allows multinational companies to use high-taxed income to offset low-taxed income to reduce or eliminate the income subject to the GILTI minimum tax — a benefit they would lose under the administration’s proposal to tax GILTI on a country-by-country basis. This change and closing the FOGEI loophole both were necessary to achieve the Treasury Department’s \$84.8 billion revenue estimate. Bottom line: The money would be recovered from companies that pay little to no taxes on their Foreign Oil and Gas Extraction Income.

Overseas earnings of the Dirty Dozen (all amounts USD)

Company	2018	2019	2020	Post-TCJA total
 ExxonMobil	12,340,000,000	13,906,000,000	-645,000,000	25,601,000,000
 Chevron	10,038,000,000	7,670,000,000	-825,000,000	16,883,000,000
 ConocoPhillips	7,106,000,000	4,820,000,000	447,000,000	12,373,000,000
 OXY Occidental	2,177,000,000	1,986,000,000	-383,000,000	3,780,000,000
 Apache	1,681,000,000	1,389,000,000	-259,000,000	2,811,000,000
 Marathon Oil	785,000,000	349,000,000	-146,000,000	988,000,000
 eog resources	156,842,000	78,689,000	17,425,000	252,956,000
 Ovintiv	N/A	N/A	185,000,000	185,000,000
 KOSMOS ENERGY	N/A	175,036,000	-78,049,000	96,987,000
 MURPHY OIL CORPORATION	-141,437,000	-78,701,000	28,095,000	-192,043,000
 HESS	439,000,000	559,000,000	-1,341,000,000	-343,000,000
				62,435,900,000

Data Issues



These figures do not reflect the specific benefits to each company; some of these companies may in fact generate foreign income and pay taxes primarily in higher-tax jurisdictions, which can limit tax obligations to the US. They do, however, indicate which companies have the most overseas drilling income that could potentially be subject to taxation under a revised GILTI regime where the FOGEI loophole is closed.

We include results from the fracker Ovintiv for the final year only, as it relocated from Canada to the corporate tax haven of Delaware in 2020. We record the offshore driller Kosmos, which relocated from Bermuda to Delaware in late 2018, for only the last two years. Talos Energy has made initial investments offshore in Mexico but has yet to report non-US income.

The ticker symbols of the top six ETFs we used to derive a list of FOGEI eligible companies are as follows: XLE, AMLP, VDE, XOP, OTH, IYE, AMJ. Where available, we recorded foreign pre-tax income as a proxy for FOGEI income. ExxonMobil and Chevron report foreign pre-tax income without disaggregating upstream from other sources of income, and so for both companies we reported non-US upstream net income. As stated above, the purpose of including these numbers is to contextualize the scale of international extraction operations and not to identify specific monetary benefits to specific companies. The full list of companies with links to relevant SEC filings is available [here](#).

A GILTI Conscience: Lobbying for Special Treatment



Given that President Biden’s proposals threaten a fossil fuel-friendly status quo, it’s no surprise many companies are already lobbying to protect their tax breaks.

Here are some highlights from the lobbying reports covering the first six months of 2021:

- Ten of the Dirty Dozen spent a combined \$14.2 million on lobbying this year. Eight of these reported lobbying on tax issues. Four of the eight — ExxonMobil, Chevron, ConocoPhillips, and Occidental — specifically mentioned lobbying on the 2017 tax cuts; three others mentioned intangible drilling costs (another longstanding tax subsidy that may be eliminated).
 - * [Chevron](#) and ConocoPhillips specifically mentioned lobbying on GILTI and FOGEI.
 - * Chevron also lobbied on energy policy with a laundry list of troubled extraction hotspots, including Angola, Burma/Myanmar, Iraq, Turkey, and Venezuela.
- ConocoPhillips, the largest US-based independent oil driller (with global operations as widespread as Malaysia and Libya), [reported lobbying](#) for “protection of 21% corporate tax rate in the Tax Cuts and Jobs Act.”
- In addition to its broad campaign, “protection of oil and gas tax provisions,” ConocoPhillips lobbied across a host of domestic issues including “polar bear incidental take” rules for Arctic drilling.

FORI and Subpart F: A Tax Cut for Refining and Selling Fossil Fuels



Separate from the foreign oil and gas extraction income exempted under GILTI/FOGEI, there is a category of income from transporting and refining oil and gas and selling refined fuels. The 2017 law also modified the treatment of this Foreign Oil Related Income (FORI) of foreign corporations beneficially owned by polluters.

Before 2017, this income was taxed under something called Subpart F. This section can be understood as a backstop to prevent abuse of the prior deferral system. It required that certain types of overseas profits, including FORI, be taxed immediately at the full US rate (minus foreign tax credits).

The Trump tax overhaul moved FORI from Subpart F into the new GILTI regime, at a cost to taxpayers of [\\$4 billion](#) over 10 years. This helped Big Oil in two important ways: It allowed them to permanently exempt from taxation an amount of income equal to ten percent of their spending on investments like pipelines and refineries. And it ensured that profits labeled FORI would be taxed at no higher than the 13.125% GILTI rate, rather than the already-low 21% rate under Subpart F.

The Biden administration's proposal would increase taxes on FORI by reforming the GILTI system and removing exemptions for tar sands and oil shale (though it would not restore FORI to Subpart F). By eliminating the exemption for the return on tangible assets, lowering the overall GILTI deduction to 25%, and increasing the overall tax rate, the gap between taxes on FORI income and domestic profits would shrink. Chairman Wyden's Clean Energy for America Act takes a more ambitious approach to tax fairness by restoring FORI to its pre-2017 treatment under Subpart F.

Dual Capacity Giveaways: Payments to Foreign Governments, Shrouded in Secrecy



As Congress debates eliminating polluter giveaways under FORI, advocates for tax fairness are highlighting yet another loophole benefiting multinational drillers: dual-capacity tax treatment.

The “dual” in “dual-capacity” refers to two kinds of payments many of these companies make to governments: taxes and other non-tax payments like royalties, which are fees paid to compensate local citizens and governments for resource extraction. Across the world, oil, gas, and mining projects are often subject to distinct fiscal regimes that include a mix of different payments to governments in the countries where they operate.

US companies are permitted to take tax credits for foreign taxes paid, but not for non-tax payments like royalties attached to specific economic benefits. In practice, however, the categories often are commingled — particularly when companies make a single combined payment including both taxes and fees. A foreign country may even [try to disguise](#) non-tax payments as a tax, knowing that in many cases a multinational company may receive a foreign tax credit from its home country. Existing regulation gives dual-capacity taxpayers vast latitude to assert what portions of their payments are taxes eligible to offset US tax bills.

The Biden administration’s [proposal](#) seeks to close this loophole by limiting foreign tax credits to whatever amount the company would have paid to the foreign government if it were subject to the generally applicable income tax in that country. The Joint Committee on Taxation has estimated that legislative fixes to implement this change would raise \$5.6 billion or \$13.1 billion; the administration’s estimate is just \$1.4 billion.

The estimates vary so widely in part because we have precious little visibility into Big Oil's payments to governments — and that's just how the companies want it. US oil and gas firms, particularly supermajors Exxon and Chevron and their American Petroleum Institute champions, consistently [resist disclosing](#) details about the taxes and other payments they make to the US and foreign governments. In fact, they have actively undermined the implementation of the global disclosure standard set by the international [Extractive Industries Transparency Initiative](#) (EITI) and the 30 countries that already require publication of these payments for each oil, gas, or mining project a company operates around the world.

The US kickstarted the development of this global standard under Section 1504 of the Dodd-Frank Act in 2010. However, Big Oil's lobbying efforts have prevented that provision from being implemented with the strong project-level reporting necessary to prevent corruption. [Industry efforts to torpedo and weaken this transparency provision](#) continue to this day. (Already this year, Chevron and ConocoPhillips reported lobbying on this exact issue.)

In short, these companies have succeeded in making it vastly more difficult to ascertain how their payments to foreign governments break down, and therefore what their tax bills should be.

A window into the dual capacity taxpayer problem

Exxon and Chevron have refused to publish comprehensive data about their payments to governments, violating the Company Expectations of EITI — even though their representatives sit on the EITI Board. But they have had to disclose some information about payments — specifically for operations in countries that implement the EITI or for projects held by a subsidiary based in a country where national laws require all oil and gas companies to report payments by project. These key data sources showcase the range of types of non-tax payments these companies make that could potentially be mischaracterized as tax that is creditable in the US.

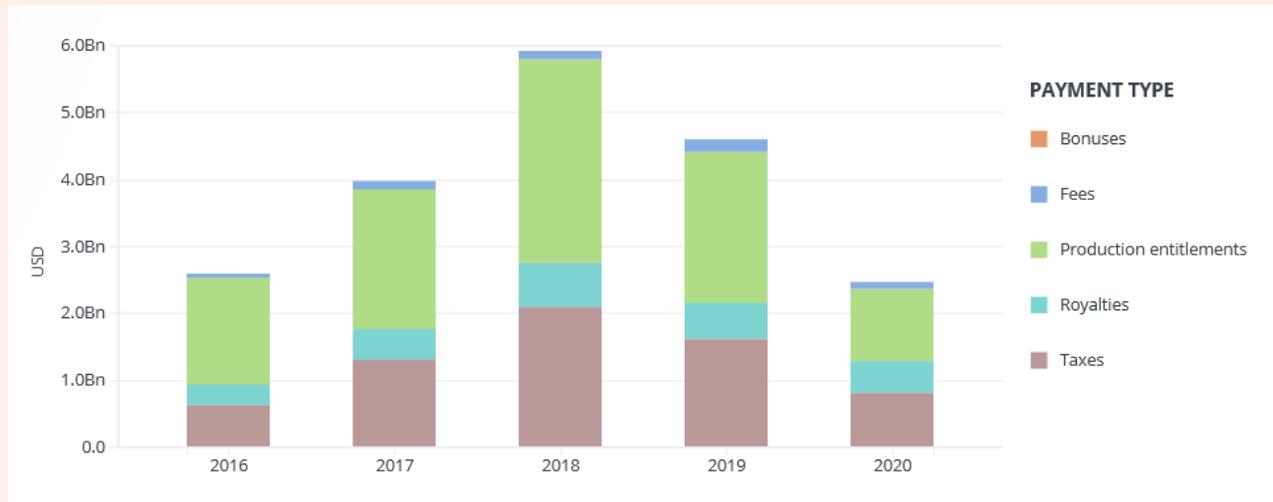
Example 1: Exxon's EITI reporting

[Nigeria's EITI reporting](#) shows payments from Shell, Exxon, and Chevron subsidiaries in 2015.

Exxon's subsidiary Mobil Producing Nigeria Limited (MPNU) made \$2.37 billion in payments in Nigeria, of which more than one-third are non-tax, according to [Nigeria's 2018 EITI report](#). None of those non-tax payments should entitle Exxon to a US tax credit. But because of incomplete disclosure, it's possible some or all were claimed anyway.

Example 2: Chevron's mandatory payment disclosure

Canada's mandatory payment disclosure law required Chevron's Canadian subsidiary, Chevron Canada Limited, to disclose payments it has made to governments globally. Together with its own foreign subsidiaries, [Chevron Canada has reported \\$19.5 billion](#) in payments to governments in Canada, Nigeria, and Indonesia from 2016-2020 across some 14 different projects:



Source: ResourceProjects.org

Chevron Canada’s foreign tax payments are eligible for a US tax credit — but they account for far less of the total Chevron Canada payments-to-governments than royalties and production entitlements. For too long, current US law has made it [easy for foreign governments or oil and gas companies to fudge](#) the creditable amount of “tax” paid abroad in order to artificially reduce the companies’ US tax bills. The payments made by Chevron do not indicate that Chevron has fudged its tax bill, but the scale of these non-tax payments for just one subsidiary of one oil company is telling.

But the US doesn’t even have data comparable to what Nigeria and Canada collect from our companies’ subsidiaries. Until regulators implement the Dodd-Frank 1504 provision mandating these reports in line with the global standard, Big Oil will continue hiding the ball, limiting our ability to ensure these companies are taxed fairly.



Ending Big Oil's Special Tax Treatment



The Biden administration and Democrats in Congress are crafting a \$3.5 trillion legislative package to address the climate crisis and other issues crucial for everyday Americans. This measure can pass the Senate with only 51 votes, thanks to a procedural maneuver called budget reconciliation. In addition to major expansions of the social safety net such as Medicare coverage for hearing and dental, the pending legislation is expected to include the US' largest investments in renewable energy and climate resilience.

For reasons both political and procedural, this new spending must be offset with new revenue. Majority Leader Chuck Schumer has called for “corporate and international tax reform” to help fill the gap — a broad umbrella that should unequivocally cover both domestic tax breaks and the GILTI loophole.

After over a hundred years of fossil fuel subsidies, including four years with the egregious Trump tax cuts, it is time to begin repairing the damage. The good news is that as Congress contemplates major tax and revenue changes, many of the necessary bills have already been introduced.

- **The [End Polluter Welfare Act](#) from Senator Sanders and Representative Omar** eliminates the widest list of oil, gas and coal subsidies, including century-old tax breaks like intangible drilling costs and the depletion allowance as well as newer gimmicks like “[royalty relief](#)” that allow oil and gas to be drilled for free from the Gulf of Mexico. It would also eliminate the GILTI exemption for extraction income (FOGEI), restore refining income (FORI) to its treatment under Subpart F, and prevent fossil fuel companies from abusing their dual-capacity taxpayer status.

- **The [No Tax Breaks for Outsourcing Act](#) from Senator Whitehouse and Representative Doggett** would reverse the damage of the GOP tax cut by ensuring that all foreign profits are taxed at the same rate as domestic profits. It would also eliminate the GILTI exemption for income from extraction, and restore refining income to its treatment under Subpart F.
- **The [Corporate Tax Dodging Prevention Act](#) from Senators Sanders and Representative Schakowski** would also eliminate tax breaks and loopholes that encourage corporations to shift jobs and profits offshore. The bill specifically includes a provision to prevent fossil fuel companies from abusing their dual-capacity taxpayer status by disguising royalty tax payments to foreign governments as foreign income taxes in order to benefit from US tax credits.
- **The [Clean Energy for America Act](#) from Senator Wyden** was passed by the Finance Committee in May. It would overhaul the current system of renewable energy tax credits and create a technology-neutral framework of incentives available to all zero-emissions sources. Although it includes potential lifelines for fossil fuels like carbon capture and hydrogen, it would also eliminate a suite of fossil fuel tax subsidies, including the GILTI exemption for extraction income (FOGEI). It would also return refining income (FORI) to Subpart F. In Committee markup a provision to prevent fossil fuel companies from abusing their dual-capacity taxpayer status was also added.
- **The [End Oil and Gas Tax Subsidies Act](#) from Representatives Blumenauer, Casten, McEachin, and Porter** would eliminate a range of domestic tax code subsidies for fossil fuels and would prevent fossil fuel companies from abusing their dual-capacity taxpayer status. However, the bill would not eliminate the GILTI exemption for extraction income (FOGEI) or restore refining income (FORI) to its treatment under Subpart F.
- **The [Build Back Better Act](#)** from Chairman Neal closes many of the international tax loopholes discussed above to help cover the costs of the \$3.5 trillion reconciliation package. It would include FOGEI in GILTI, eliminate the exemption for tar sands and oil shale, and limit the ability of dual capacity taxpayers to misrepresent royalty payments as income taxes. It would implement a variety of international and domestic tax reforms resulting in a higher effective rate on GILTI income. It would also shift the GILTI system to country-by-country. Disappointingly, however, the current bill does not address subsidies for domestic fossil fuel production.

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