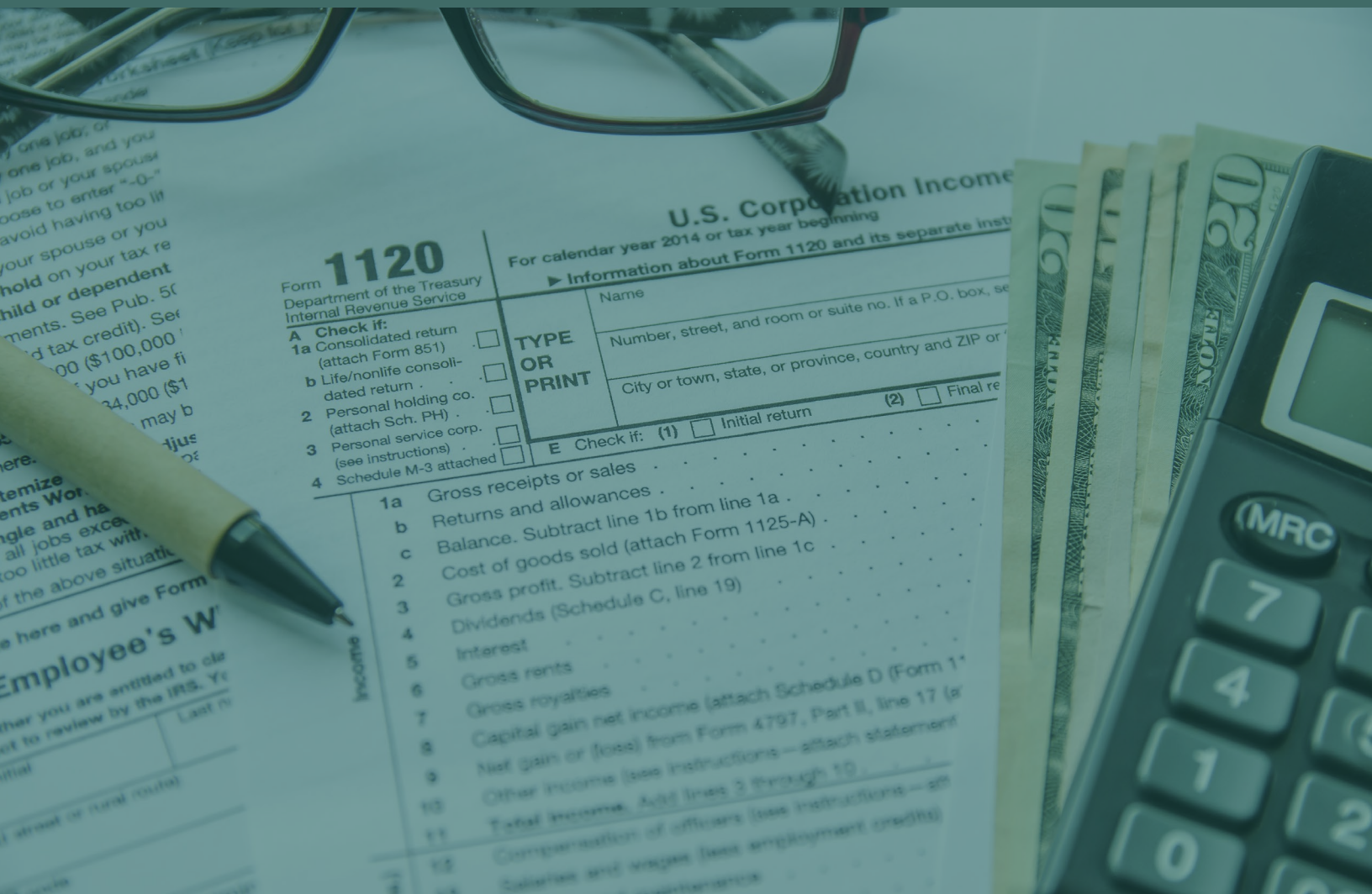


Interim Report: Big Pharma Tax Avoidance

Senate Finance Committee Investigation Reveals Extent to Which Pharma Giant AbbVie Exploits Offshore Subsidiaries to Avoid Paying Taxes on U.S. Drug Sales



Senate Finance Committee Chair Senator Ron Wyden, D-Oregon

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Interim Report: Senate Finance Committee Investigation Reveals Extent to Which Pharma Giant AbbVie Exploits Offshore Subsidiaries to Avoid Paying Taxes on U.S. Drug Sales

Provisions in the 2017 Republican tax law allow AbbVie to generate most of its sales in the U.S., while reporting virtually no income in the U.S. for tax purposes. In 2020, over 75% of AbbVie's sales were made to American consumers yet only 1% of AbbVie's income was reported in the United States for tax purposes. AbbVie's ability to exploit subsidiaries in offshore tax havens to avoid paying billions of dollars in taxes on U.S. prescription drug sales signals a clear need to reform the international tax code.

Under the Republican tax law, AbbVie has continuously paid an effective tax rate that is less than half the U.S. corporate tax rate of 21% and the marginal tax rate of 22% paid by an American family with a combined income of \$84,000. A multinational pharmaceutical corporation with annual sales of over \$50 billion in annual sales paid a lower tax rate than a postal service worker or a preschool teacher. It is unacceptable that this Republican led giveaway has only created more loopholes for big pharma to shift profits offshore.

Background and overview

The Senate Finance Committee is currently conducting an investigation into the tax practices of several large pharmaceutical corporations headquartered in the United States. The investigation, which is ongoing, was initiated to understand how the 2017 Republican tax law helped slash tax rates for large pharmaceutical corporations that pad their profits by selling American consumers essential prescription drugs for exorbitant prices. The Republican tax law made it easier for these corporations to use subsidiaries in offshore tax havens to avoid billions of dollars in taxes on U.S. drug sales and pay tax rates that are a fraction of that paid by the average working American family.

To better understand industry practices and operations, one of the companies the Committee contacted was AbbVie, Inc. ("AbbVie"). AbbVie is a publicly traded pharmaceutical company headquartered in Chicago and owns the exclusive rights to several blockbuster drugs, including Humira and Imbruvica. For several years, Humira was the best-selling prescription drug in the world.¹ AbbVie is an enormously profitable company that does most of its business in the United States. In 2021, AbbVie generated over \$56 billion in worldwide sales, with over 77% of those sales made in the United States. Over the last four years, AbbVie has sold an astounding \$62 billion worth of Humira in the United States.² Since AbbVie began to sell Humira in 2003, the price of Humira has been raised 27 times. Humira is now priced at \$2,984 per syringe, or \$77,586 for a year's supply, a 470 percent increase from when the drug entered the market.³ Additionally, multi-million dollar bonuses for AbbVie executives have been directly tied to rising revenue targets for Humira, creating incentives to continue raising drug prices.⁴

¹ Bloomberg, *Arthritis Top-Seller Humira Set for U.S. Rival After \$193 Billion in Sales*, Apr. 1, 2022, <https://www.bloomberg.com/news/articles/2022-04-01/top-seller-humira-set-for-u-s-rival-after-193-billion-in-sales>

² Letter from Scott Reents, Vice President, Tax and Treasury, AbbVie Inc., to Ron Wyden, Chairman, Senate Committee on Finance, Mar. 25, 2022 at pg. 2: "AbbVie Inc. and its U.S. affiliates earned gross receipts of approximately \$62 billion with respect to sales of Humira in the United States for the years 2018 – 2021."

³ Committee on Oversight and Reform, U.S. House of Representatives, *Drug Pricing Investigation: AbbVie-Humira and Imbruvica* (May 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Committee%20on%20Oversight%20and%20Reform%20-%20AbbVie%20Staff%20Report.pdf>)

⁴ AbbVie, Inc. 2018 proxy statement filed with U.S. Securities and Exchange Commission, available online at <https://www.sec.gov/Archives/edgar/data/1551152/000104746918001372/a2234651zpre14a.htm>

In 2018, AbbVie’s CEO Richard Gonzalez told a group of investors that the changes to the international tax regime made by the 2017 Republican tax law would cut AbbVie’s tax rate in half to 9 percent from an average of 22 percent in the years prior.⁵ That prediction turned out to be true, as AbbVie has paid stunningly low effective tax rates of 8.7% in 2018, 8.6% in 2019 and 11.2% in 2020.⁶ AbbVie estimates its tax rate in 2021 will be 12.5%.⁷ These rates are substantially lower than the current U.S. corporate tax rate of 21% and the marginal tax rate of 22% paid by an American family with a combined income of \$84,000.⁸

The Committee’s investigation focused on uncovering the extent to which AbbVie has exploited the Republican tax law to reduce taxes on U.S. drug sales through the use of foreign subsidiaries. The Republican tax law’s international provisions created incentives for drug companies like AbbVie to minimize taxes by holding intellectual property in a zero-tax jurisdiction like Bermuda and manufacturing in another low-tax jurisdiction, like Puerto Rico or Ireland.

The investigation found that the Republican tax law has enabled AbbVie to generate the bulk of their sales and profits for brand name drugs like Humira in the United States while booking those profits offshore for tax purposes. In AbbVie’s own words, “The changes made by the 2017 tax law altered U.S. taxation on foreign earnings for U.S. corporations and have had a significant impact on AbbVie’s effective tax rate.”⁹

The maneuvers employed by AbbVie to avoid paying U.S. taxes on Humira profits involve several key elements:

1. An AbbVie subsidiary in Bermuda, AbbVie Biotechnology Ltd., exclusively owns the patents, trademarks, economic rights and all other intellectual property rights for sales of Humira in the United States.¹⁰ No manufacturing, packaging or distribution of Humira or related inputs takes place in Bermuda. AbbVie Biotechnology Ltd. also has no employees in Bermuda.¹¹

(At pg. 37 discussion of executive compensation related to Humira revenues)

⁵ Reuters, *How U.S. tax reform rewards companies that shift profit to tax havens*, June 18, 2018,

⁶ AbbVie, Inc. financial results for 2018, 2019 and 2020: <https://news.abbvie.com/news/press-releases/abbvie-reports-full-year-and-fourth-quarter-2019-financial-results.htm>; <https://news.abbvie.com/news/press-releases/abbvie-reports-full-year-and-fourth-quarter-2019-financial-results.htm>

⁷ AbbVie Inc. financial results for 2021: <https://investors.abbvie.com/news-releases/news-release-details/abbvie-reports-full-year-and-fourth-quarter-2021-financial>

⁸ IRS 2022 marginal tax rates for individuals. 22% for incomes over \$41,775 (\$83,550 for married couples filing jointly) <https://www.irs.gov/newsroom/irs-provides-tax-inflation-adjustments-for-tax-year-2022>

⁹ Letter from Scott Reents, Vice President, Tax and Treasury, AbbVie Inc., to Ron Wyden, Chairman, Senate Committee on Finance, Sep. 7, 2021 at pg. 4.

¹⁰ Id. at pg. 5: “AbbVie’s intellectual property and associated rights to sell Humira in the United States have been consistently held by a subsidiary incorporated in Bermuda, operating through a branch in Puerto Rico.”; From Sep. 7, 2021 AbbVie response: “AbbVie Biotechnology Ltd. is the legal entity that holds the patents, trademark, economic rights, and all other intellectual property rights for sales of Humira in the United States. AbbVie Biotechnology Ltd.’s legal domicile is Bermuda, though it has a significant operating branch in Puerto Rico that reports the economic results from the sales of Humira and Skyrizi in the United States on its Puerto Rico tax return, so with respect to such sales, AbbVie Biotechnology Ltd. is effectively tax resident in Puerto Rico.”

¹¹ Letter from Scott Reents, Vice President, Tax and Treasury, AbbVie Inc., to Ron Wyden, Chairman, Senate Committee on Finance, Mar. 25, 2022 at pg. 1: “AbbVie Biotechnology Ltd. did not have a requirement for employees in Bermuda for the years 2018 – 2021, and other than meeting appropriate governance procedures had limited operations and activities in Bermuda.”

2. Though legally domiciled in Bermuda, AbbVie Biotechnology Ltd. operates through a branch in Puerto Rico that manufactures the Humira bulk drug substance and a fill-finish operation in which the bulk drug substance is filled into syringes or injectable pens.¹² These pre-filled syringes are then sold by the Puerto Rico branch to AbbVie Inc. in the U.S., which then packages and sells Humira to third party customers in the United States.¹³
3. In addition to facilities in Puerto Rico, AbbVie also has foreign subsidiaries in Singapore and the Netherlands related to the manufacture of Humira for the U.S. market if needed to meet demand.¹⁴ These entities also contract with third parties in Germany and Italy. AbbVie's responses to the Committee indicate that no manufacturing of Humira bulk drug substance, or finishing and filling activities take place inside the continental United States.
4. AbbVie Biotechnology Ltd. is effectively a tax resident in Puerto Rico and the associated income from sales to AbbVie's U.S. operations are reported on a Puerto Rico tax return.¹⁵ Since income from entities based in Puerto Rico are treated as foreign for tax purposes, income from Humira is taxed not at the U.S. corporate rate of 21%, but the much lower GILTI (Global Intangible Low-Tax Income) rate of 10.5% created by the Republican tax law. AbbVie can then lower its tax rate even further through the use of other tax credits.

Senate Democrats have long warned that the GILTI system gave big corporations a huge reduction in the U.S. tax rate on foreign earnings and created incentives to offshore jobs and stash profits in tax havens. For example, the use of "global blending" in GILTI provides an avenue for the aggressive use of low-tax havens. Global blending allows multinationals to reduce or eliminate U.S. taxation of a significant share of their earnings by stashing income in low-tax havens, and then blending it with income from non-tax haven foreign jurisdictions. In the most aggressive cases (such as the structure identified in this report), these stashed profits are income derived directly from U.S. sales and U.S. customers. In addition, any of the income that actually did face U.S. tax would be able to access a tax rate of 10.5 percent, just half the U.S. corporate tax rate.

Data obtained by the Committee shows that AbbVie reports virtually no income in the U.S. for tax purposes

Throughout the Committee's investigation, AbbVie repeatedly declined to provide country-by-country information regarding AbbVie's pre-tax earnings, profit margins, employee headcount and tax

Letter from Scott Reents, Vice President, Tax and Treasury, AbbVie Inc., to Ron Wyden, Chairman, Senate Committee on Finance, Sep. 7, 2021 at pg. 3: "The Puerto Rico branch manufactures Humira bulk drug substance at its manufacturing facility in Puerto Rico. The manufacturing facility also has a fill-finish operation pursuant to which Humira bulk drug substance is filled into syringes that are either packaged or further assembled into injectable pens.

¹³ Id. at pg. 3: "The Puerto Rico branch sells pre-filled syringes to AbbVie Inc. and AbbVie Inc. performs assemble and final packaging for Humira sold in the United States."

¹⁴ Id. at pg. 3: "In addition to the primary activity (Puerto Rico), AbbVie has three foreign subsidiaries that also conduct some activities related to the manufacture (but not the sale) of Humira for the United States market. For assurance of supply purposes, an entity in [in Singapore] is approved to manufacture Humira bulk drug substance for the United States market, if needed to meet demand. A legal entity in the Netherlands contracts with two different parties, a third-party and a related legal entity located in Germany and Italy, respectively, to provide incremental Humira filling and finishing activities for the U.S. market."

¹⁵ Id. at pg. 3: "The sales made by the Puerto Rico branch and associated income are reported on a Puerto Rican tax return. Further, this income has been subject to U.S. tax on a current basis under the GILTI (Global Intangible Low-Tax Income) rules since 2017 tax law changes."

paid. AbbVie also declined to provide copies of AbbVie’s IRS form 8975, an annual country-by country tax reporting for all entities that are subsidiaries of a large parent corporation with income over \$850 million.

However, AbbVie did provide information related to AbbVie’s taxable income for years 2018 – 2021, including how much of AbbVie’s taxable was reported by controlled foreign corporations (CFCs). The foreign subsidiaries of a U.S. multinational corporation are generally going to be CFCs for tax purposes.¹⁶ Understanding how much of a company’s total taxable income is reported by CFCs provides a window into how much of a company’s income is reported offshore for tax purposes.

The data provided by AbbVie reveals the extraordinary extent to which the company has structured its operations to report minimal or no income in the United States for tax purposes, even though it is a U.S. company and a large majority of its revenue comes from U.S. customers.

In 2020, 99% of AbbVie’s taxable income was reported by offshore subsidiaries. According to data provided by AbbVie, CFCs reported 99% of AbbVie’s taxable income in 2020.¹⁷ This means that despite being headquartered in the U.S. and generating 75% of its sales in the U.S., only 1% of AbbVie’s taxable income in 2020 was subject to the U.S. corporate income tax rate of 21%. The 99% of AbbVie’s income in 2020 that was reported by offshore subsidiaries was likely able to access the substantially lower GILTI rate of 10.5 percent. This was not an aberration. In 2018, 95% of AbbVie’s taxable income was reported by controlled foreign corporations and AbbVie estimates that CFCs will report over 87% of AbbVie’s taxable income in 2021.

Table A: AbbVie data on Consolidated Taxable Income vs. Consolidated Taxable Income excluding income of Controlled Foreign Corporations

Below please find a table summarizing AbbVie’s U.S. consolidated taxable income for the requested years. AbbVie’s 2021 U.S. tax return is not due until October 17, 2022 (including extensions), and therefore an estimate is provided for 2021, although we note that this estimate of 2021 U.S. taxable income may change.

Taxable Year	Consolidated Taxable Income (Form 1120, Line 30)	Consolidated Taxable Income excluding income of CFCs*
2018	\$25.5 billion	\$1.1 billion
2019	\$6.6 billion	\$(1.1) billion
2020	\$9.5 billion	\$0.1 billion
2021 (Estimated)	\$12.7 billion	\$1.6 billion

*Income excluded from controlled foreign corporations (CFCs) is comprised of the Section 965 inclusion amount, Subpart F income, the GILTI inclusion amount and the Section 78 gross-up.

¹⁶ A Controlled Foreign Corporation (CFC) is a foreign corporation that is majority owned by U.S. shareholders that own at least 10 percent of the foreign corporation.

¹⁷ Letter from Scott Reents, Vice President, Tax and Treasury, AbbVie Inc., to Ron Wyden, Chairman, Senate Committee on Finance, Mar. 25, 2022 at pg. 3, Data responding to following question from Chairman Wyden: *What Was AbbVie’s taxable income each year for the years 2018 – 2021? What was AbbVie’s taxable income in each year excluding income of controlled foreign corporations?*

Conclusion and recommendations

The Committee's investigation into AbbVie reveals how the 2017 Republican tax law's international provisions rewarded large multinational corporations that shift profits overseas. The Committee believes that AbbVie's tax structuring is an illustrative example of the broader U.S. pharmaceutical industry. To date, other entities contacted by the Committee, including Merck & Co. and Abbott Laboratories, have refused to substantively cooperate. However, the Committee intends to continue its investigations in order to provide Congress and the public with a complete understanding of the effects of the 2017 Republican tax law on the pharmaceutical industry.

It is unacceptable that a *U.S. company* that profits off of record-breaking prescription drug sales to *U.S. consumers* is able to avoid paying billions in taxes due to a Republican tax giveaway that was crafted behind closed doors and rushed through Congress. It is even more unacceptable that a company like AbbVie pays half the tax rate paid by a working American family. Republicans took the wrong approach to cross-border taxation, and their policies need an overhaul.

It is imperative that Congress enact needed international tax reforms that would close loopholes that allow drug companies like AbbVie to stash their profits in tax havens. These measures should include:

- Applying GILTI on a "country-by-country" basis to shut down tax haven abuse and offshoring, rather than continuing to use global blending;
- Increase the GILTI rate to bring it closer to the U.S. corporate income tax rate;
- Fix additional design flaws that incentive offshoring, created massive loopholes for abuse, and benefitted companies that most aggressively utilize tax havens.

Exhibits

Exhibit 1: AbbVie Effective Tax Rate for years 2013 - 2021

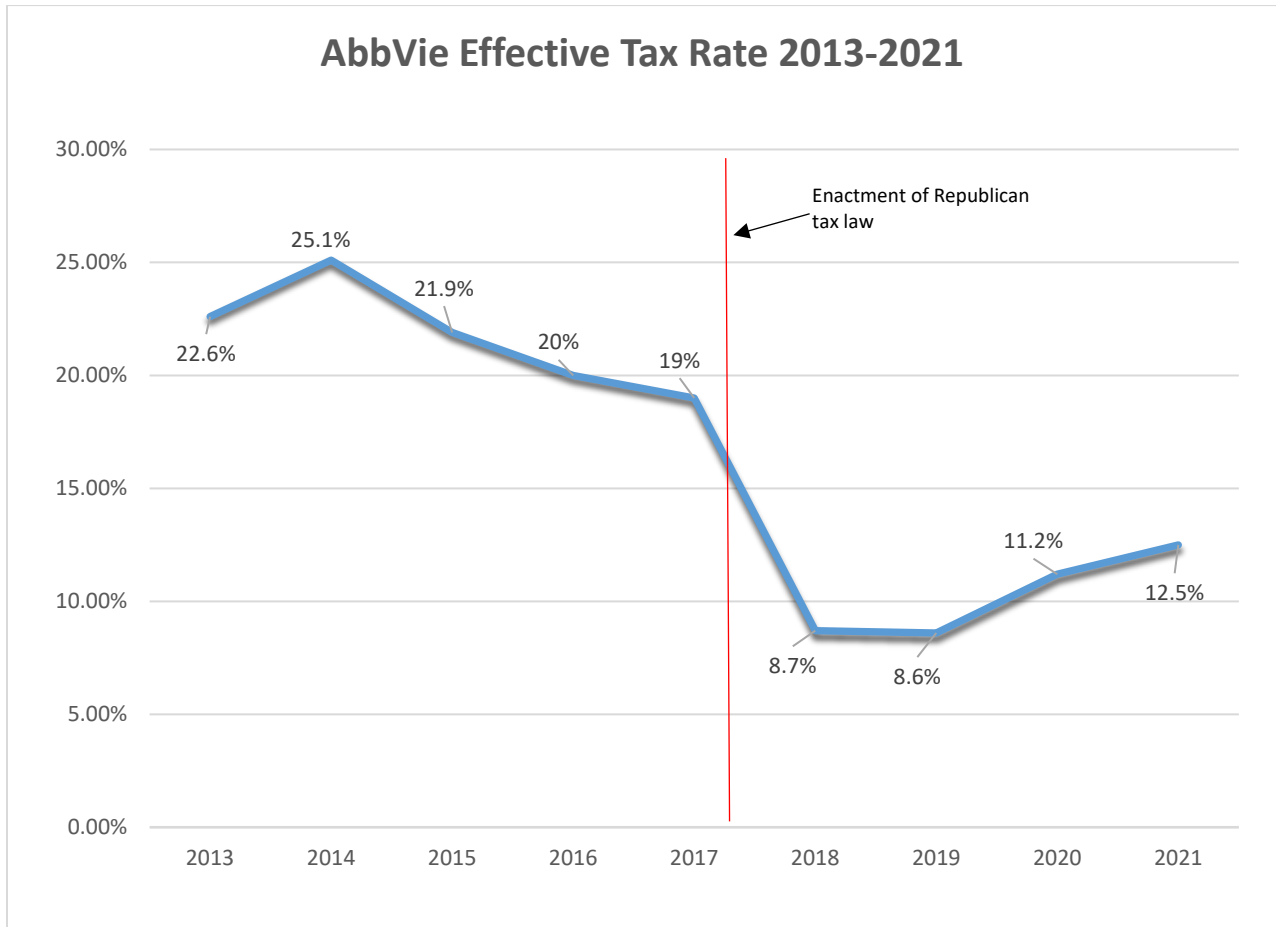


Exhibit 2: Percentage of 2018 AbbVie taxable income reported offshore

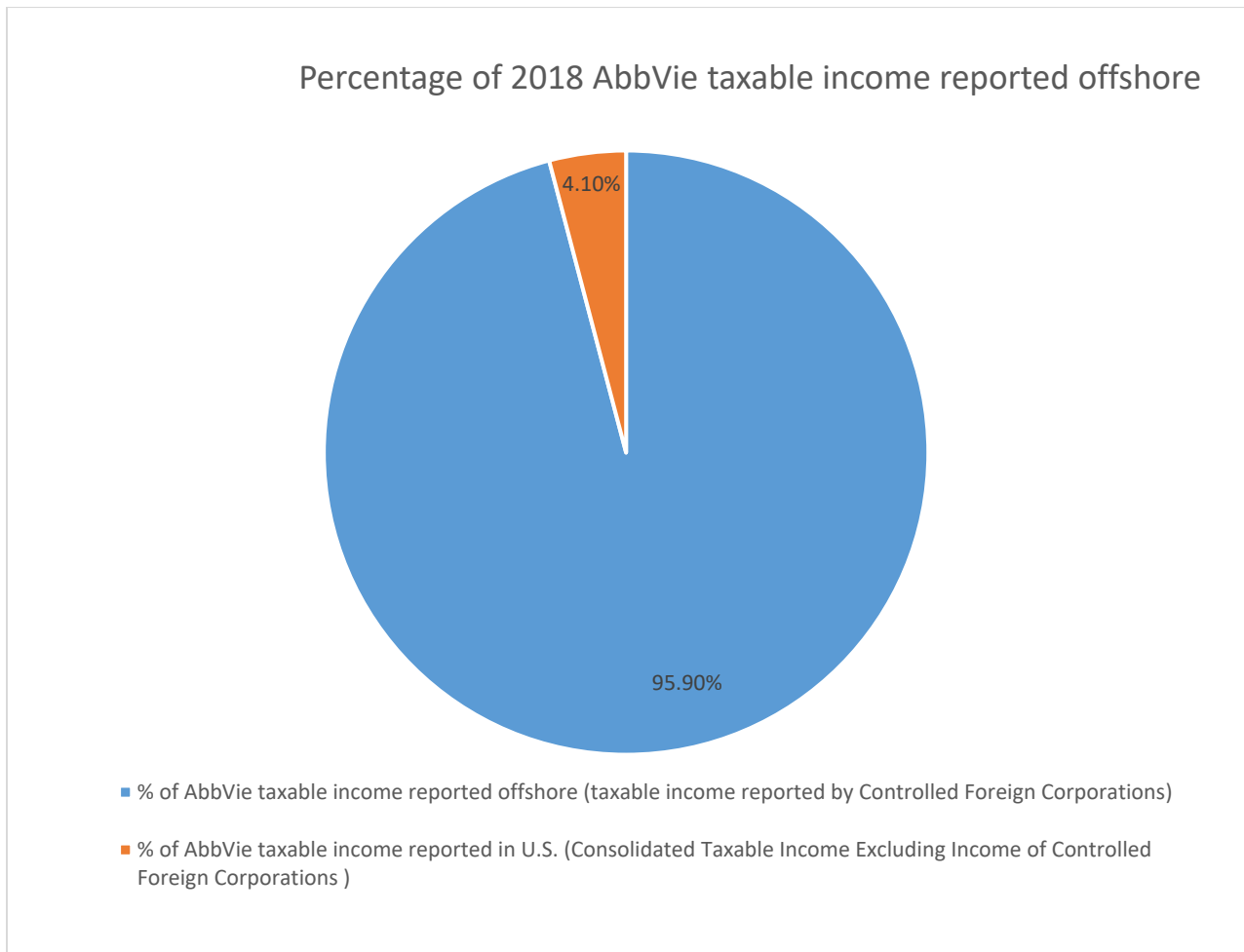


Exhibit 3: Percentage of 2020 AbbVie taxable income reported offshore

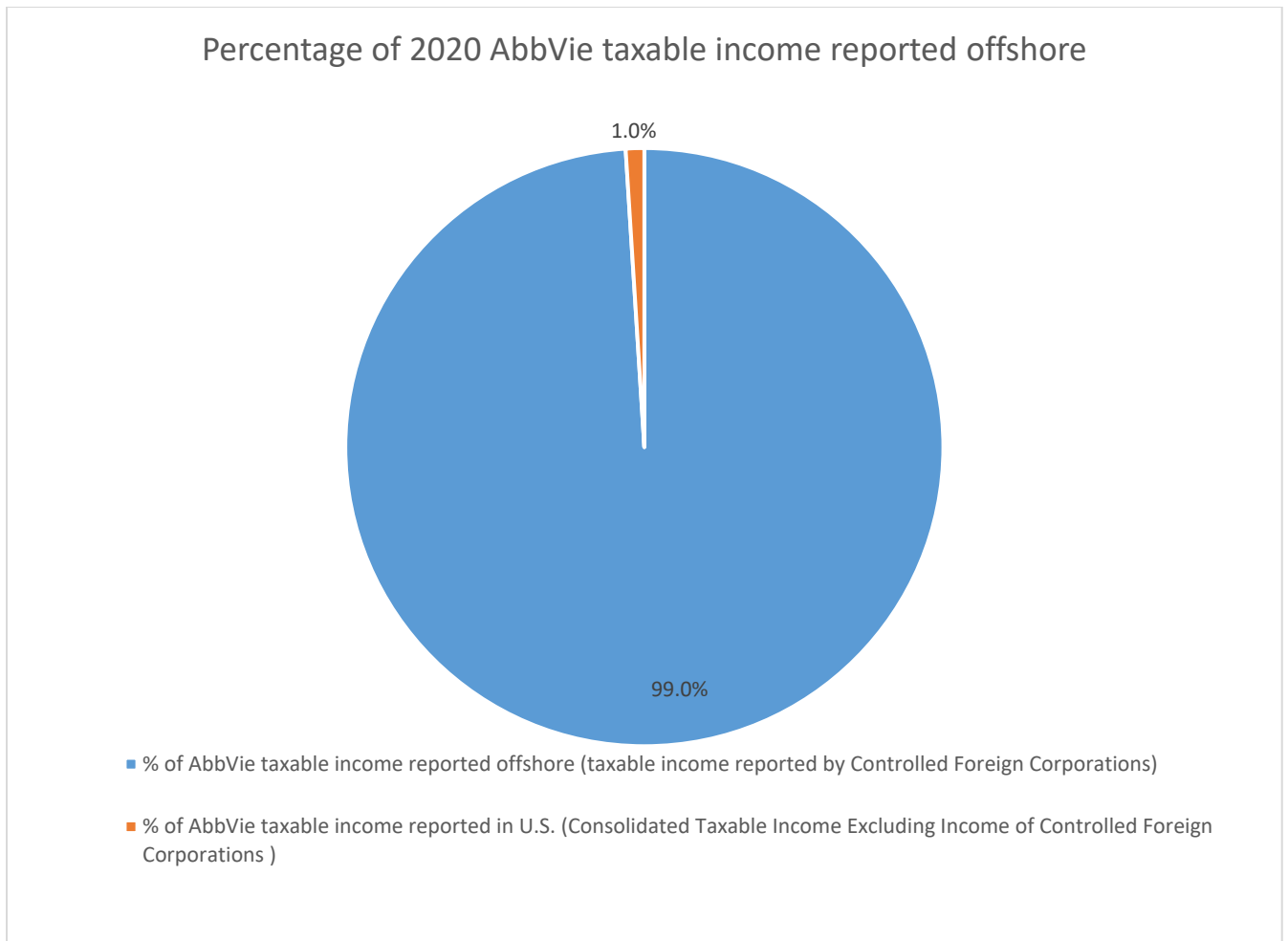


Exhibit 4: AbbVie total net revenue for years 2018 – 2021

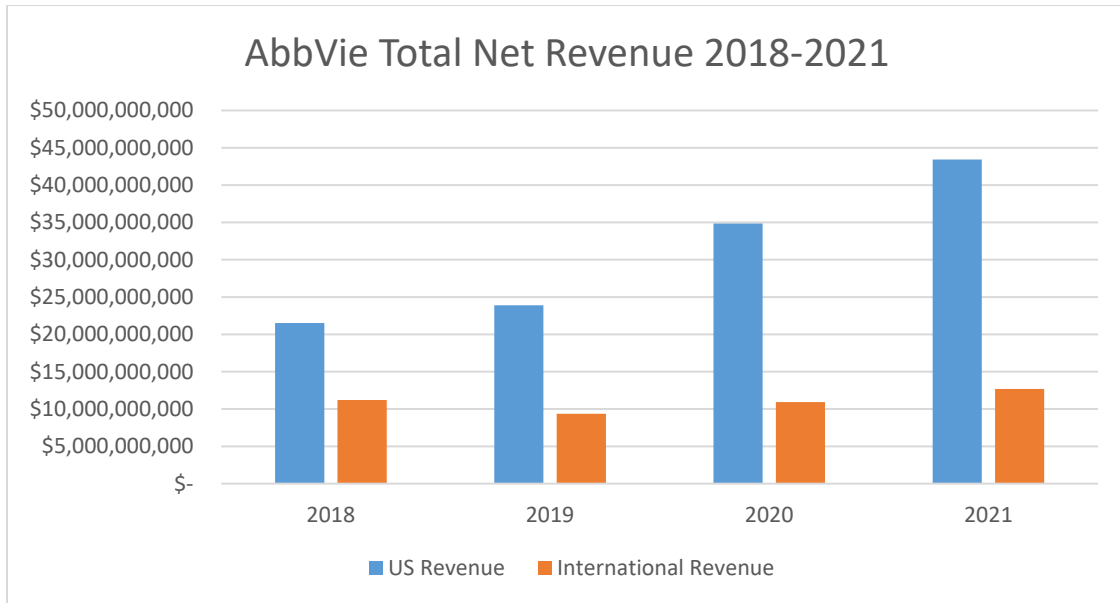


Exhibit 5: AbbVie Humira net revenue for years 2018 – 2021

