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## United States Senate

COMMITTEE ON FINANCE  
WASHINGTON, DC 20510-6200

April 4, 2022

Mr. Robert M. Davis  
Chief Executive Officer and President  
Merck & Co., Inc.  
2000 Galloping Hill Road  
Kenilworth, New Jersey 07033

Dear Mr. Davis

I write seeking information related to Merck & Co., Inc.'s (Merck) international tax practices, including the methods employed by Merck to pay an effective tax rate of 11% in 2021.<sup>1</sup> Despite being a company headquartered in the United States that does more than 46% of its sales in the United States, Merck reported just 14% of its pretax income in the United States.<sup>2</sup>

As you are aware, in addition to being Merck's legal domicile and the primary location for Merck's research and development activities, the United States is the market for nearly half of Merck's total global sales.<sup>3</sup> Although the United States accounted for \$22.4 billion of Merck's sales in 2021, Merck reported just \$1.85 billion in pre-tax income in the United States. In contrast, in the same year Merck reported international pre-tax income of more than \$12 billion on approximately \$27 billion in sales.<sup>4</sup> This substantial discrepancy between Merck's domestic and international pre-tax income appears to be the result of Merck's use of subsidiaries in several well-known low-or-zero tax jurisdictions, which yielded a "favorable impact on [Merck's] effective tax rate compared with the U.S. statutory rate of 21%."<sup>5</sup>

Despite the United States market being the source of nearly half of Merck's revenues and its richest price premiums, it appears that the company has minimized profits in the United States while reporting substantial foreign profits to avoid paying U.S. corporate income taxes. That

<sup>1</sup> Merck & Co., Inc., 2021 form 10-K at 63, <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000064978/adb74fbd-102d-4352-8aa7-d24d7159858e.pdf>, [hereinafter Merck 2021 10-K].

<sup>2</sup> Merck 2021 10-K at 132.

<sup>3</sup> Merck 2021 10-K at 52, 132.

<sup>4</sup> Merck 2021 10-K at 52, 132.

<sup>5</sup> Merck 2021 10-K at 132.

Merck located more than 85 percent of its profits abroad implies that the current U.S. international tax system created by the 2017 Republican Tax Law failed to stem Merck’s offshoring, and instead seems to encourage it. These offshore profits are taxed at special rates in countries including Singapore, Ireland, and Switzerland—which has granted Merck a special “tax holiday” for a “newly active legal entity” which is effective through 2030.<sup>6</sup>

Merck was fully dedicated to supporting the 2017 Republican Tax Law. Lobbying disclosures show Merck spent significant resources supporting the bill, and Merck’s former CEO Kenneth Frazier repeatedly pressed decision-makers on taxes.<sup>7</sup> Following a January 2017 meeting with President Trump, Mr. Frazier said he and other pharmaceutical executives and lobbyists had focused their discussion on tax policy.<sup>8</sup> Following a February 2017 meeting between President Trump and manufacturing CEOs, Mr. Frazier again said they had discussed changes to the tax code.<sup>9</sup> The February meeting came shortly after Mr. Frazier signed a letter to House and Senate leadership supporting the push for new tax legislation.<sup>10</sup> The letter Mr. Frazier signed was organized by a group—American Made Coalition—that Merck was a member of and that was formed specifically to advocate for changes to tax law.<sup>11</sup> Additionally, in December 2017, after the Senate first passed the tax law, Merck was listed in a Senate Finance Committee press release as supporting the legislation.<sup>12</sup>

As Chairman of the Senate Finance Committee, I am conducting an investigation into the 2017 tax law’s international provisions, and I seek Merck’s continued engagement on this matter. In particular, I seek to understand how the law created incentives for large multinational corporations to use offshore subsidiaries to report profits overseas as a way to avoid U.S. taxes. The law’s flawed design enables large multinational corporations that primarily operate in the

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<sup>6</sup> Merck 2021 10-K at 132.

<sup>7</sup> *Issues Lobbied By Merck & Co, 2017*, OPEN SECRETS, Retrieved Mar., 25, 2017; [https://www.opensecrets.org/federal-lobbying/clients/issues?cycle=2017&id=D000000275&spec=TAX&specific\\_issue=Taxes#specific\\_issue](https://www.opensecrets.org/federal-lobbying/clients/issues?cycle=2017&id=D000000275&spec=TAX&specific_issue=Taxes#specific_issue).

<sup>8</sup> *Trump Signals Willingness to Weigh Pharma Concerns*, US NEWS, Jan. 31, 2017; <https://www.usnews.com/news/health-care-news/articles/2017-01-31/after-vilifying-drug-companies-donald-trump-meets-with-executives>; *After Meeting With Pharma Lobbyists, Trump Drops Promise To Negotiate Drug Prices*, VOX, Jan. 31, 2017; <https://www.vox.com/policy-and-politics/2017/1/31/14453740/trump-medicare-prescription-drugs>.

<sup>9</sup> *Manufacturing CEOs Push Border Tax During Meeting With Trump*, BLOOMBERG via INDUSTRY WEEK, Feb. 24, 2017; <https://www.industryweek.com/the-economy/public-policy/article/22007132/manufacturing-ceos-push-border-tax-during-meeting-with-trump>.

<sup>10</sup> *American Made Coalition “Our Letter to Congress”*, INTERNET ARCHIVE, Feb. 21, 2017; [https://web.archive.org/web/20170222161536/americanmadecoalition.org/our\\_letter\\_to\\_congress](https://web.archive.org/web/20170222161536/americanmadecoalition.org/our_letter_to_congress); *American CEOs Send Letter To House: Kill The ‘Made In America’ Tax*, CNBC, Feb. 21, 2017; <https://www.cnn.com/2017/02/20/ceos-call-for-tax-reform-in-letter-to-lawmakers.html>.

<sup>11</sup> *More Than 25 American Businesses Launch Coalition To Support Tax Reform*, Press Release, AMERICAN MADE COALITION via PR NEWswire, Feb. 2, 2017; <https://www.prnewswire.com/news-releases/more-than-25-american-businesses-launch-coalition-to-support-tax-reform-300401391.html>; *American Made Coalition “About Us,”* INTERNET ARCHIVE, Viewed Mar. 25, 2022; [https://web.archive.org/web/20170625232703/https://www.americanmadecoalition.org/about\\_us](https://web.archive.org/web/20170625232703/https://www.americanmadecoalition.org/about_us).

<sup>12</sup> *More Than 200 Industry Stakeholders and Job Creators Support Senate Tax Overhaul*, Press Release, SENATE FINANCE COMMITTEE, Dec. 4, 2017; <https://www.finance.senate.gov/chairmans-news/more-than-200-industry-stakeholders-and-job-creators-support-senate-tax-overhaul>.

United States to structure their operations in a way that allows them to pay a tax rate that is a fraction of that paid by hard-working American families. Accordingly, please provide answers to the following questions no later than April 15, 2022:

1. For tax years 2019 – 2021, please provide a detailed country-by-country breakdown of Merck’s pre-tax earnings, profit margins, employee headcount, and tax paid.
  - a. Please also provide copies of Merck’s IRS form 9975 for tax years 2019 – 2021.
2. Please provide a detailed list of all tax incentives, grants, and holidays that Merck received from foreign jurisdictions in tax years 2019 – 2021.
3. Please provide a detailed explanation as to how Merck’s effective tax rate declined to 11% in 2021, compared to 22.9% in 2020 and 21.8% in 2019, including the impact of provisions in the Tax Cuts and Jobs Act of 2017 on Merck’s effective tax rate for these years.
4. What was Merck’s taxable income each year for the years 2019 – 2021? What was Merck’s taxable income in each year excluding income of controlled foreign corporations?
5. In 2021, Merck reported domestic revenues of \$22.4 billion and \$1.85 billion in pre-tax income. Please explain how Merck generated more than 46% of its sales in the United States, but just 14% of its pretax income in the United States?
6. Please provide a detailed list of the entities that own patents for the trademarks, or any other intellectual property right, to sell Keytruda, Gardasil/Gardasil, Januvia/Janumet, ProQuad/M-M-R II/Varivax, Bridion, Lynparza, Molnupiravir, Pneumovax, Simponi, RotaTeq, Isentress/Isentress, Lenvima in the United States. For each entity, please identify the legal domicile, the jurisdiction for tax purposes, and the number of employees.
7. To the extent any trademark or other intellectual property right in question six is held by an entity legally domiciled outside the United States, or otherwise treated as outside the United States for tax purposes, please identify the location that such pharmaceuticals that are sold into the United States are manufactured, and explain the arrangement by which the pharmaceuticals are sold to a Merck entity in the United States and/or to third parties.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Ron Wyden". The signature is written in a cursive, flowing style.

Ron Wyden  
Chairman  
Committee on Finance