

RON WYDEN, OREGON, CHAIRMAN

DEBBIE STABENOW, MICHIGAN  
MARIA CANTWELL, WASHINGTON  
ROBERT MENENDEZ, NEW JERSEY  
THOMAS R. CARPER, DELAWARE  
BENJAMIN L. CARDIN, MARYLAND  
SHERROD BROWN, OHIO  
MICHAEL F. BENNET, COLORADO  
ROBERT P. CASEY, Jr., PENNSYLVANIA  
MARK R. WARNER, VIRGINIA  
SHELDON WHITEHOUSE, RHODE ISLAND  
MAGGIE HASSAN, NEW HAMPSHIRE  
CATHERINE CORTEZ MASTO, NEVADA  
ELIZABETH WARREN, MASSACHUSETTS

MIKE CRAPO, IDAHO  
CHUCK GRASSLEY, IOWA  
JOHN CORNYN, TEXAS  
JOHN THUNE, SOUTH DAKOTA  
RICHARD BURR, NORTH CAROLINA  
ROB PORTMAN, OHIO  
PATRICK J. TOOMEY, PENNSYLVANIA  
TIM SCOTT, SOUTH CAROLINA  
BILL CASSIDY, LOUISIANA  
JAMES LANKFORD, OKLAHOMA  
STEVE DAINES, MONTANA  
TODD YOUNG, INDIANA  
BEN SASSE, NEBRASKA  
JOHN BARRASSO, WYOMING

JOSHUA SHEINKMAN, STAFF DIRECTOR  
GREGG RICHARD, REPUBLICAN STAFF DIRECTOR

## United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

July 27, 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 regarding Merck & Co., Inc.'s (Merck) refusal to provide the Senate Finance Committee ("the Committee") information it has requested related to Merck's tax practices. As you are aware, the Committee is conducting an investigation into how the 2017 Republican tax law helped slash tax rates for large pharmaceutical corporations headquartered in the United States. In particular, the Committee's investigation seeks to uncover the full extent to which drug companies are able to exploit foreign subsidiaries to avoid paying taxes on U.S. prescription drug sales.

As part of this investigation, I have requested detailed information from Merck to understand the methods by which Merck paid an effective tax rate of just 11% in 2021, approximately half the U.S. corporate tax rate of 21%. Specifically, I requested country-specific information related to Merck's pre-tax earnings, profit margins, employee headcount and tax paid for tax years 2018 - 2021. This included copies of Merck's IRS form 9975, an annual country-by-country tax reporting required for large corporations with over \$850 million in annual income. I also requested information related to Merck's taxable income for years 2018 - 2021, including how much of Merck's taxable income was reported by controlled foreign corporations (CFCs).<sup>1</sup>

Unfortunately, Merck has twice declined to provide the Committee this information, choosing to keep secret how much of its profits are reported by offshore subsidiaries for tax purposes. As noted in previous communications on this matter, there appears to be a substantial

---

<sup>1</sup> 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.

discrepancy between where Merck generates prescription drug sales and where Merck books profits from those drug sales for tax purposes.

In 2021, Merck generated more than 46% of its sales in the United States yet reported just 14% of its pretax income in the United States.<sup>2</sup> Although the United States accounted for \$22.4 billion of Merck's sales in 2021, Merck reported only \$1.85 billion in pre-tax income in the United States.<sup>3</sup> In contrast, in the same year, Merck reported international pre-tax income of more than \$12 billion on approximately \$27 billion in international sales.<sup>4</sup> That Merck located more than 85% of its profits in foreign jurisdictions in 2021 implies that the current U.S. international tax system created by the 2017 Republican tax law has encouraged and rewarded Merck's shifting of profits offshore.

Additionally, Merck has indicated that all profits from sales of blockbuster cancer drug *Keytruda*, including sales made to U.S. consumers, are "taxed in jurisdictions outside the United States."<sup>5</sup> Merck further stated that as *Keytruda* became an even larger portion of Merck's overall profits, this "increased the portion of Merck's overall income subject to tax outside the United States."<sup>6</sup> Since Merck holds the intellectual property rights to *Keytruda* in the Netherlands and manufactures the drug entirely in Ireland, Merck is able to avoid billions of dollars in taxes on profits from *Keytruda* sales in the United States.<sup>7</sup>

It is deeply concerning that because of the 2017 Republican tax law's international provisions, Merck has been able to avoid paying billions of dollars of taxes on profits from record-breaking prescription drug sales to U.S. consumers. Merck charges an annual list price of \$175,000 per patient for *Keytruda*. In the last three years, Merck has sold over \$24 billion in *Keytruda* in the United States alone.<sup>8</sup> *Keytruda* sales are so lucrative that the drug would be a Fortune 200 company on its own.<sup>9</sup>

---

<sup>2</sup> Merck & Co., Inc., 2021 form 10-K at 52, 132, <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000064978/adb74fbd-102d-4352-8aa7-d24d7159858e.pdf>, [hereinafter Merck 2021 10-K].

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

<sup>4</sup> Id.

<sup>5</sup> Letter from Robert Filippone, Vice President, U.S. Policy and Government Relations, Merck to Ron Wyden, Chairman, Senate Committee on Finance, Apr. 15, 2022 at pg. 3: "With respect to *Keytruda*, however, because it was discovered outside the United States and its patents have always been owned outside the United States, Merck's operating profit attributable to *Keytruda*-related intellectual property rights is taxed in jurisdictions outside the United States."

<sup>6</sup> Id at pg. 4: "As illustrated on page 53 of Merck's 2021 Form 10-K, *Keytruda* sales increased 55% from 2019 to 2021. This increase was substantially greater than Merck's overall revenue growth of 24% over the same period. Consequently, *Keytruda* became an even larger portion of Merck's overall income subject to tax outside of the United States."

<sup>7</sup> Letter from Robert Filippone, Vice President, U.S. Policy and Government Relations, Merck to Ron Wyden, Chairman, Senate Committee on Finance, Jun. 3, 2022 at pg. 4: "The patents associated with the core *Keytruda* intellectual property are owned in the Netherlands." and "*Keytruda* is manufactured by Merck in Carlow, Ireland using various inputs, including drug substance that is manufactured by third parties. Finished product is then sold into the United States for distribution by Merck's US affiliates."

<sup>8</sup> *The Keytruda boom*, Axios, Oct. 29, 2021, <https://www.axios.com/2021/10/29/keytruda-sales-merck-drug-prices>; Merck 2021 10-K at 137

<sup>9</sup> Id.

This is unfortunately not an isolated case within the pharmaceutical industry. A recent report by the Committee exposed how flaws in the international provisions of the Republican tax law created loopholes that allow drug companies to shift profits offshore for tax purposes.<sup>10</sup> In one case, a major U.S. drug company generated 75% of its sales to U.S. consumers, yet booked 99% of its taxable income in offshore entities located in Bermuda and elsewhere.

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 in 2017.<sup>11</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>12</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>13</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>14</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>15</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>16</sup>

The American public deserves to understand why Merck, a multinational pharmaceutical corporation with annual sales of \$48 billion, paid a lower tax rate than a postal service worker or a preschool teacher. This includes providing the American public a full understanding of the extent to which Merck has exploited the Republican tax law to reduce taxes on U.S. drug sales

---

<sup>10</sup> *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*, U.S. Senate Committee on Finance, July 2022, available online at

<https://www.finance.senate.gov/imo/media/doc/Pharma%20Tax%20Report.pdf>

<sup>11</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>12</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>13</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>14</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.cnbc.com/2017/02/20/ceos-call-for-tax-reform-in-letter-to-lawmakers.html>.

<sup>15</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>16</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>.

through the use of offshore subsidiaries. Accordingly, please provide the following information no later than August 9<sup>th</sup>, 2022:

1. For each of 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. 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?
3. For all *Keytruda* sales made in the United States in years 2019 – 2021, please provide how much tax was paid in the United States.
4. For all profits attributable to Keytruda-related intellectual property rights from 2019 - 2021, please provide a detailed list of countries where Merck paid taxes. Please also provide the amount of taxes paid in the United States.

Thank you for your attention to this important matter.

Sincerely,



Ron Wyden  
United States Senator  
Chairman, Committee on Finance