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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

December 8, 2022

Mr. Robert Bradway
Chairman and Chief Executive Officer
Amgen
One Amgen Center Drive
Thousand Oaks, CA 91320

Thank you for your September 16, 2022 letter responding to questions regarding Amgen Inc.'s ("Amgen") tax practices.¹ While I appreciate the information provided, the response declined to provide any specific information related to Amgen's pre-tax earnings, profit margins and tax paid in the United States. The response also failed to answer questions regarding where Amgen reports income for tax purposes, including how much of Amgen's taxable income is reported by offshore subsidiaries.

As you are aware, the Senate Finance Committee ("the committee") is conducting an investigation into how large pharmaceutical corporations headquartered in the United States are able to substantially lower their tax rates through the use of complex cross-border tax avoidance strategies. In particular, the committee's investigation seeks to uncover the full extent to which drug companies are able to exploit subsidiaries in low- or-zero-tax jurisdictions to avoid paying taxes on U.S. prescription drug sales.

As part of this investigation, I requested detailed information from Amgen to understand the methods by which Amgen paid an effective tax rate of 12.1 percent in 2018, 14.2 percent in 2019, 10.7 percent in 2020 and 12.1 percent in 2021; rates that are substantially lower than the statutory U.S. corporate tax rate of 21 percent.² Specifically, I requested country-specific information related to Amgen's pre-tax earnings, profit margins, employee headcount and tax paid for tax years 2018 - 2021. This included copies of Amgen'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 Amgen's taxable income for years 2018 - 2021, including how much of Amgen's taxable income was reported by controlled foreign corporations (CFCs).

¹ Letter from Sally Q. Yates on behalf of client, Amgen, Inc., to Ron Wyden, Chairman, Senate Committee on Finance, Sep. 16, 2022.

² Amgen Inc., 2021 form 10-K at F-23, <https://investors.amgen.com/static-files/918646ad-1110-40cb-a220-140944850c34>, [hereinafter Amgen 2021 10-K].

Unfortunately, Amgen declined to provide the committee this information, choosing to keep secret how much of its profits are reported by offshore subsidiaries that are treated as foreign for tax purposes. As noted in my previous letter on this matter, there appears to be a substantial discrepancy between where Amgen generates the vast majority of its prescription drug sales and where Amgen books profits from those drug sales for tax purposes.

In 2021, Amgen generated 70 percent of its sales in the United States yet reported just 28 percent of its pretax income in the United States. Although the United States accounted for \$18.2 billion of Amgen's sales in 2021, Amgen reported only \$1.85 billion in pre-tax income in the United States.³ In contrast, in the same year, Amgen reported international pre-tax income of more than \$4.8 billion on approximately \$7.7 billion in international sales.⁴ Since Amgen located more than 70 percent of its profits in jurisdictions treated as foreign for tax purposes, the income derived from U.S. customers may be taxed under the global intangible low-taxed income (GILTI) regime, rather than the 21 percent corporate income tax rate applied to domestic income. Under GILTI, foreign income is generally either fully exempt from tax, or receives a lower rate of 10.5 percent. If the vast majority of Amgen's profits from U.S. customers is taxed under GILTI rather than the statutory U.S. corporate tax rate, then the U.S. international tax system created by the 2017 Republican tax law appears to have encouraged and rewarded Amgen's shifting of profits offshore.

Amgen's sales of blockbuster arthritis drug Enbrel, for which Amgen charges over \$8,000 per month—equating to *over \$100,000 a year per patient*—showcases how prescription drug sales to U.S. patients are the company's biggest profit driver.⁵ In 2021, Amgen generated *38 times* more Enbrel sales in the United States than the rest of world combined. That year, Amgen sold more than \$4 billion worth of Enbrel in the U.S. compared to just \$113 million in the rest of the world. Since acquiring the rights to Enbrel in 2002, Amgen has raised its price 27 times and made more than \$70 billion from sales of Enbrel.⁶ Despite Enbrel being one of the best selling drugs in U.S. history, it remains unclear how much of Amgen's income from Enbrel and its other best-selling drugs is being reported in foreign jurisdictions for tax purposes, rather than being taxed in the U.S.

Amgen also refused to answer specific questions related to allegations that it shifted nearly \$24 billion in income to subsidiaries in Puerto Rico in order to avoid paying billions of dollars in federal taxes on U.S. prescription drug sales. Amgen claimed that its litigation with the Internal Revenue service (IRS) in federal tax court prevents it from disclosing to the committee the amount of income previously reported by its affiliates in Puerto Rico, including Amgen

³ Amgen 2021 10-K at F-17 and F-21

⁴ Amgen 2021 10-K at F-21

⁵ *The Top 10 Most Expensive Popular Brand-Name Drugs in the U.S.*, Goodrx Health, Jul. 14, 2021; <https://www.goodrx.com/healthcare-access/drug-cost-and-savings/top-10-most-expensive-popular-brand-name-drugs-us-how-to-save>

⁶ Committee on Oversight and Reform, U.S. House of Representatives, Drug Pricing Investigation: Amgen-Enbrel and Sensipar (October 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Amgen%20Staff%20Report%202010-1-20.pdf>); *A three-decade monopoly: How Amgen built a patent thicket around its top-selling drug*, Biopharma Dive, Nov. 1, 2021, <https://www.biopharmadive.com/news/amgen-enbrel-patent-thicket-monopoly-biosimilar/609042/>

Manufacturing Ltd (“AML”).⁷ Amgen’s response also conveniently dodged direct questions asking whether the company pays income taxes in Puerto Rico. While Amgen provided detailed information related to an annual excise tax it pays to the Commonwealth of Puerto Rico, it declined to clarify whether it pays any corporate income taxes on profits reported by entities in Puerto Rico.⁸ Amgen did not provide any explanation as to why it is prohibited from responding to the committee’s generic request, and the committee sharply disagrees with Amgen’s view that it cannot share such tax information with the committee as it is engaged in a dispute with the IRS.

Amgen’s refusal to disclose how much income is reported by its affiliates in Puerto Rico and elsewhere only heightens my concern that the company may have used profit shifting techniques to avoid paying billions of dollars in taxes on U.S. prescription drug sales. 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 2017 Republican tax law created loopholes that allow drug companies to pay low tax rates by shifting profits offshore for tax purposes.⁹ In one case, a major U.S. drug company generated 75 percent of its sales to U.S. consumers, yet booked 99 percent of its taxable income in offshore entities located in Bermuda and elsewhere.

Finally, Amgen’s September 16th letter references section 6103 of the Internal Revenue Code, which applies to information in the possession of the IRS or obtained by officers or employees of the United States from the IRS. As you are surely aware, section 6103 does not apply to information in the possession of the taxpayer. I take seriously the need to protect taxpayer privacy and the confidentiality of tax return information, but section 6103 does not prevent Amgen from providing any information contained in its tax returns to the committee, including how much of Amgen’s taxable income is reported by controlled foreign corporations.

The American public deserves a full understanding of the extent to which U.S. pharmaceutical companies have exploited weaknesses in international tax law, including the 2017 Republican tax law, to reduce taxes on U.S. drug sales through the use of subsidiaries in low- or zero-tax jurisdictions. In advance of potential public hearings and proposing new legislative changes, it is critical to understand how Amgen, a multinational pharmaceutical corporation based in the U.S. with annual sales of \$26 billion primarily made to U.S. customers, paid a lower tax rate than a postal service worker or a preschool teacher. Accordingly, please provide the following information no later than December 21, 2022:

⁷ Letter from Sally Q. Yates on behalf of client, Amgen, Inc., to Ron Wyden, Chairman, Senate Committee on Finance at 2, Sep. 16, 2022; “Amgen’s litigation with the IRS further limits our ability to respond. Many of the issues central to your requests are directly at issue with the litigation. For example, the amount of income reported by Amgen’s Puerto Rico manufacturing affiliate is at issue in the litigation.”

⁸ *Id.* at 4.

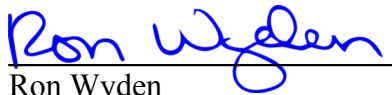
⁹ *Interim Report: Senate Finance Committee Investigation Reveals Extent to Which Pharma Giant AbbVie Exploits Offshore Subsidiaries to Avoid Paying Taxes on U.S. Drug Sales*, U.S. Senate Committee on Finance, July 2022, available online at <https://www.finance.senate.gov/imo/media/doc/Pharma%20Tax%20Report.pdf>

1. For each of tax years 2018 – 2021, please provide a detailed country-by-country breakdown of Amgen’s pre-tax earnings, profit margins, employee headcount, and tax paid.
 - a. Please also provide copies of Amgen’s IRS Form 9975 for tax years 2018 – 2021.
 - b. Please specify how much Amgen’s pre-tax earnings, profit margins, employee headcount, and tax paid was attributed to Amgen entities located in Puerto Rico.
2. What was Amgen’s taxable income each year for the years 2018 – 2021? What was Amgen’s taxable income in each year excluding income of controlled foreign corporations?
3. In 2021, Amgen reported U.S. revenues of \$18.2 billion and \$1.85 billion in U.S. pre-tax income. Please explain how Amgen generated more than 70 percent of its sales in the United States, but just 28 percent of its pre-tax income in the United States.
4. What was Amgen’s taxable income reported by Amgen Manufacturing Ltd., and any other Amgen entities located in Puerto Rico each year for the years 2018 – 2021?
5. Amgen’s 2021 annual report indicates that Amgen’s operations in Puerto Rico are subject to tax incentive grants through 2035. Please provide a detailed description of these tax incentive grants and copies of agreements entered into with the government of the Commonwealth of Puerto Rico as it relates to these grants.
6. For each year for the years 2010 – 2015, how much of Amgen’s taxable income was reported by Amgen entities in Puerto Rico?
7. Has Amgen signed any agreements with the Puerto Rico Department of Economic Development and Commerce or any entities of the Government of Puerto Rico with regard to the tax rate of Amgen’s operations in Puerto Rico? If so, please provide copies of any such tax agreements signed between Amgen and the Government of the Commonwealth of Puerto Rico.
8. Has Amgen signed any agreements with the Puerto Rico Department of Economic Development and Commerce or any other entities of the Government of Puerto Rico where Amgen’s operations in Puerto Rico are subject to an income tax rate of zero percent in Puerto Rico? If so, please provide copies of any such tax agreements signed between Amgen and the Government of the Commonwealth of Puerto Rico.
9. Please provide a detailed list of the entities that own patents, trademarks, or any other intellectual property right to sell Enbrel, Prolia, Otezla, XGEVA, Neulasta, Aranesp, Repatha, Kyprolis, and Nplate in the United States. For each entity, please identify the legal domicile, the jurisdiction for tax purposes and the number of employees.

10. To the extent any patent, trademark, or other intellectual property right in question nine is held by an entity legally domiciled outside the continental United States, or otherwise treated as foreign 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 an Amgen entity in the United States and/or third parties.

Thank you for your attention to this important matter.

Sincerely,



Ron Wyden
United States Senator
Chairman, Committee on
Finance