United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510–6200

December 28, 2022

Giovani Caforio
Chairman of the Board and Chief Executive Officer
Bristol Myers Squibb
430 E. 29th Street, 14th Floor
New York, NY 10016

Dear Dr. Caforio,

I write seeking additional information related to Bristol-Myers Squibb's (Bristol Myers) international tax practices. 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. While the committee's inquiry of Bristol Myers in relation to this investigation has thus far focused on a specific transaction involving the formation of a foreign partnership, the committee also seeks to understand the full extent to which Bristol Myers may be using offshore subsidiaries to avoid paying taxes on U.S. prescription drug sales.

As part of this investigation, the committee has previously sent Bristol Myers detailed questions regarding Bristol Myers' formation of a foreign partnership in Ireland and the concomitant shifting of intellectual property rights of numerous profitable drugs to that partnership.[1] In particular, the committee sought to understand whether this transaction helped Bristol Myers substantially reduce its tax liability in violation of anti-abuse rules under Section 704(c) of the tax code. Based on responses Bristol Myers has provided the committee through outside counsel, it appears this transaction helped Bristol Myers avoid paying a significant amount of federal taxes, which the IRS is seeking to collect. [2]It also appears that Bristol Myers

[1] Letter from Senator Ron Wyden, Chairman, Senate Finance Committee to Bristol Myers Squibb, Jan. 18, 2022, https://www.finance.senate.gov/imo/media/doc/RW%20to%20Bristol-Myers%20Squibb%201-18-22%20final.pdf; Email from Patricio Gonzalez, Majority Staff, Senate Finance Committee to outside counsel to Bristol Myers Squibb, Mar. 29, 2022.
[2] Email from Brendan Parets on behalf of client, Bristol Myers Squibb to Patricio Gonzalez, Majority Staff, Senate Finance Committee, Apr. 12, 2022.

received formal opinion letters addressing the application of Section 704 (c) to this transaction from professional accountants and attorneys at PricewaterhouseCoopers and White & Case. [3]

While the committee appreciates Bristol Myers cooperation with regard to the aforementioned transaction, the committee seeks new information related to the substantial discrepancy between where Bristol Myers generates the vast majority of its prescription drug sales and where Bristol Myers books profits from those drug sales for tax purposes. The committee also seeks to better understand the means by which Bristol Myers paid an effective tax rate of just 13% in 2021, a rate which is substantially lower than the statutory corporate tax rate of 21%.[4]

In 2021, Bristol Myers generated 63 percent of its sales in the United States yet reported only 19 percent of its pretax income in the United States.[5] This discrepancy is reflected through the dramatically different profit margins apparently earned in the U.S. and offshore. Although the United States accounted for $29 billion of Bristol Myers's sales in 2021, Bristol Myers reported only $1.59 billion in pre-tax income in the United States – a profit margin of just 5.5 percent.[6] By contrast, Bristol Myers reported more than $6.5 billion in international pre-tax income of on approximately $17.1 billion in international sales – a profit margin of over 38 percent.[7] Though U.S. prescription drug sales were far and away Bristol Myers biggest profit driver, it appears Bristol Myers booked the vast majority of its profits offshore for tax purposes and had returns that were 600 percent larger offshore.

Since Bristol Myers located approximately 81 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 Bristol Myers'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 Bristol Myers' shifting of profits offshore.

The American public deserves a full understanding of the extent to which U.S. pharmaceutical companies may have taken advantage of weaknesses in international tax law, including the new provisions of 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 Bristol Myers, a multinational corporation with annual sales of $46 billion, paid a lower tax rate than a postal

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[3] Letter from Robert Kelner and Brian Smith on behalf of client, Bristol Myers Squibb, to Ron Wyden, Chairman, Senate Finance Committee, Jan. 28, 2022.
[4] Bristol-Myers Squibb Company, 2021 form 10-K at 94, https://d18rn0p25nwr6d.cloudfront.net/CIK-0000014272/f4a6942f-7e0d-4d3e-9ef4-b3b0a9d617d7.pdf [hereinafter Bristol-Myers Squibb 2021 10-K]
[5] Bristol-Myers Squibb 2021 10-K at 1 and 94
[6] Bristol-Myers Squibb 2021 10-K at 47 and 94
[7] Bristol-Myers Squibb 2021 10-K at 47 and 94

service worker or a preschool teacher. Accordingly, please provide the following information no later than January 16, 2023:

1. For each of tax years 2018 – 2021, please provide a detailed country-by-country breakdown of Bristol Myers's pre-tax earnings, profit margins, employee headcount, and tax paid.

    a. Please also provide copies of Bristol Myers's IRS Form 8975 for tax years 2018 – 2021.

2. What was Bristol Myers's taxable income each year for the years 2018 – 2021? What was Bristol Myers's taxable income in each year excluding income of controlled foreign corporations?

3. In 2021, Bristol Myers reported U.S. revenues of $29 billion and $1.59 billion in U.S. pre-tax income. Please explain how Bristol Myers generated 63 percent of its sales in the United States, but just 19 percent of its pre-tax income in the United States.

4. Please provide a detailed list of the entities that own patents, trademarks, or any other intellectual property right to sell *Revlimid, Eliquis, Opdivo, Pomalyst/Imnovid, Orencia, Sprycel, Yervoy, Abraxane, Reblozyl, Empliciti* in the United States. For each entity, please identify the legal domicile, the jurisdiction for tax purposes, and the number of employees in each jurisdiction.

5. To the extent any patent, trademark, or other intellectual property right in question four is held by an entity legally domiciled in a foreign jurisdiction or a jurisdiction treated as foreign for tax purposes (including any U.S. territory or possession), 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.

6. Please provide a detailed explanation as to how Bristol Myers's effective tax rate declined to 13% in 2021, including the impact of any favorable tax incentives, grants, exemptions or other tax related arrangements Bristol Myers has with jurisdictions located outside the United States.

Thank you for your attention to this important matter.

Sincerely,

Ron Wyden
Chairman
U.S. Senate Committee on Finance