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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

August 11, 2022

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

Dear Mr. Bradway,

I write seeking information related to Amgen's tax practices including the methods employed by Amgen to pay an effective tax rate that has averaged just 12 percent over the last four years. As you may be aware, the Senate Finance Committee ("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 subsidiaries in low or zero tax jurisdictions to avoid paying taxes on U.S. prescription drug sales.

As part of this investigation, I seek to understand how Amgen has consistently paid tax rates that are substantially lower than the U.S. corporate tax rate of 21%. Since the passage of the 2017 Republican tax law, Amgen has paid an effective tax rate of 12.1% in 2018, 14.2% in 2019, 10.7% in 2020 and 12.1% in 2021.¹ Though the exact methods by which Amgen is able to achieve such low tax rates are unclear, it appears that a significant factor is "foreign earnings resulting from [Amgen's] operations in Puerto Rico".² Since income from entities based in Puerto Rico are treated as foreign for corporate income tax purposes, profits reported by Amgen in Puerto Rico are not taxed at 21%; rather, they are taxed at the much lower Global Intangible Low-Tax Income (GILTI) rate of only 10.5% created by the 2017 Republican tax law. Additionally, Amgen's operations in Puerto Rico are "subject to tax incentive grants through 2035."³

¹ 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].

² Amgen 2021 10-K at F-23

³ Amgen 2021 10-K at F-23

As a result of these arrangements, there appears to be a substantial discrepancy between where Amgen generates prescription drug sales and where Amgen books profits from those drug sales. In 2021, Amgen generated 70% of its sales in the United States yet reported just 28% 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.⁴ 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.⁵ That Amgen located more than 70% of its profits in jurisdictions treated as foreign for tax purposes, it would follow that the income derived from U.S. customers may be taxed under the low 10.5 percent GILTI rate applied to foreign income, rather than the 21 percent corporate income tax rate applied to domestic income. If this is true, then the U.S. international tax system created by the 2017 Republican tax law appears to encourage and reward 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.⁶ 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.⁷ Despite Enbrel being one of the best selling drugs in history, it is unclear how much of Amgen's income from Enbrel and other best-selling drugs is being reported in foreign jurisdictions for tax purposes, rather than being taxed in the U.S.

Sadly, it appears that exploiting subsidiaries in Puerto Rico and other low tax jurisdictions has been a longstanding practice for Amgen. Amgen has long had one of the lowest tax rates in the pharmaceutical industry, reporting a median 12.5% effective tax rate over the past decade.⁸ In 2013, Amgen paid a miniscule tax rate of just 3.5%.⁹

According to public reports, the Internal Revenue Service (IRS) has claimed that Amgen underreported its taxable income by nearly \$24 billion from 2010 to 2015 and is seeking \$10.7 billion in back taxes and penalties.¹⁰ The IRS has reportedly claimed that Amgen licensed intellectual property rights for prescription drugs to a subsidiary in Puerto Rico and

⁴ Amgen 2021 10-K at F-17 and F-21

⁵ Amgen 2021 10-K at F-21

⁶ *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>

⁷ 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%2010-1-20.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/>

⁸ *Amgen Fights IRS Over \$10.7 Billion Tax Bill*, The Wall Street Journal, Aug. 1, 2022, <https://www.wsj.com/articles/amgen-fights-irs-over-10-7-billion-tax-bill-11659346202>

⁹ Id.

¹⁰ Id.

inappropriately shifted profits to that subsidiary.¹¹ I have long been deeply concerned that major drug companies like Amgen have unfairly exploited transfer pricing rules and used other 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.¹² 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.

The American public deserves to understand why 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. The American public deserves a full understanding of the extent to which Amgen has exploited the 2017 Republican tax law to reduce taxes on U.S. drug sales through the use of subsidiaries in low-tax jurisdictions treated as foreign for tax purposes. Accordingly, please provide the following information no later than August 31, 2022:

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 8975 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% of its sales in the United States, but just 28% 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

¹¹ Id.

¹² *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>

6. incentive grants and copies of agreements entered into with the government of the Commonwealth of Puerto Rico as it relates to these grants.
7. For each year for the years 2010 – 2015, how much of Amgen’s taxable income was reported by Amgen entities in Puerto Rico?
8. 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.
9. 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.
10. 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.
11. 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.
12. For all *Enbrel* sales made in the United States in years 2018 – 2021, please provide how much tax was paid in the United States in each year.
13. For all profits attributable to *Enbrel*-related intellectual property rights from 2018 - 2021, please provide a detailed list of countries where Amgen 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