United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510–6200

January 18, 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 information related to Bristol-Myers Squibb's (Bristol Myers) international tax practices, including the use of offshore subsidiaries to allegedly avoid paying as much as $1.4 billion in U.S. taxes. In particular, I seek to understand the circumstances in which Bristol Myers worked with advisors PricewaterhouseCoopers (PwC) and White & Case LLP (White & Case) to reorganize its operations in a manner that may have violated longstanding anti-abuse rules in place to prevent the creation of abusive tax shelters.

According to public reports, in 2012 Bristol Myers developed a sophisticated tax avoidance strategy where it shifted intellectual property rights for several prescription drugs to a newly created offshore subsidiary to shift untaxed gains and generate amortization deductions.[1] At the time, Bristol Myers's U.S. operations held patents on several drugs with a fair market value that had already been fully amortized for tax purposes, while an Irish Bristol Myers subsidiary held patents that it had not yet fully amortized and thus would produce tax deductions.[2] Bristol Myers then reportedly formed a new foreign partnership in Ireland by transferring the patent rights from existing U.S. and Irish affiliates to the newly created partnership. Bristol Myers then proceeded to allocate tax deductions from the new partnership structure in a way that would use amortization deductions associated with Irish patents to offset U.S. taxes [while simultaneously shifting untaxed gains of the U.S. affiliates to the foreign affiliate] and substantially lowering its tax rate.[3] This strategy was extraordinarily effective, as

[1] *An Accidental Disclosure Exposes a $1 Billion Tax Fight With Bristol Myers*, The New York Times, Apr. 1, 2021, https://www.nytimes.com/2021/04/01/business/bristol-myers-taxes-irs.html
[2] Id.
[3] Id.

Bristol Myers's effective tax rate declined from 24.7 percent in 2011 to negative 7 percent in 2012.[4]

As part of this effort, Bristol Myers allegedly sought the assistance of PwC and White & Case to review the tax implications of the arrangement. PwC and White & Case prepared lengthy tax opinion letters that were both well over 100 pages, yet apparently offered no interpretation as to whether the arrangement would violate longstanding anti-abuse rules in the Internal Revenue Code.[5] Since 1993, anti-abuse rules have been in place to prevent the shifting of income and profits within partnerships in order to avoid paying U.S. taxes. Specifically, the anti-abuse rules establish that the allocation of income between partners is "not reasonable" if "the contribution of property…and the corresponding allocation of tax items with respect to the property are made with a view to shifting the tax consequences of built-in gain or loss among the partners in a manner that substantially reduces the present value of the partners' aggregate tax liability."[6]

While the full facts and circumstances of this arrangement are not publicly available, it seems clear that all of the partners involved were related and familiar with the tax attributes of the other partners. If true, the failure by sophisticated outside advisors like PwC and White & Case to address the anti-abuse rules under § 1.704-3 raises serious questions as to whether such an omission was deliberate. In the years prior to 2012, the Internal Revenue Service (IRS) challenged several arrangements involving the shifting of income utilizing partnerships it considered to be abusive tax schemes. In several high profile cases, the U.S. federal government prevailed in court or secured substantial settlements, recovering billions of dollars in back taxes in the process.[7] In fact, it appears that the IRS found this arrangement to be an abusive tax shelter and is seeking to recover approximately $1.4 billion in back taxes.[8]

As Chairman of the Senate Finance Committee, I am investigating the means in which large multinational corporations shift profits overseas as a way to avoid U.S. taxes. This includes the role played by professional services and law firms in assisting these corporations in the development and execution of abusive tax shelters that allow these businesses to pay a tax rate that is a fraction of that paid by the average hard working American family. Accordingly, please provide answers to the following questions no later than January 28th, 2022:

1. Please explain in detail how Bristol Myers reduced its effective tax rate from approximately 25 percent in 2010 and 2011 to negative 6.9 percent in 2012.

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[4] Bristol-Myers Squibb, 2012 *Annual Report* at 45, https://s21.q4cdn.com/104148044/files/doc_financials/annual_reports/Bristol-Myers-Squibb-2012AR-lr.pdf
[5] *An Accidental Disclosure Exposes a $1 Billion Tax Fight With Bristol Myers*, The New York Times, Apr. 1, 2021, https://www.nytimes.com/2021/04/01/business/bristol-myers-taxes-irs.html
[6] 26 CFR § 1.704-3
[7] *Justice Department Prevails for a Second Time in Long-running Tax Shelter Case*, U.S. Department of Justice, Jan. 24, 2012, https://www.justice.gov/opa/pr/justice-department-prevails-second-time-long-running-tax-shelter-case; *Justice Department Prevails in Tax Shelter Case Involving $1 Billion in Tax Deductions*, U.S. Department of Justice, Feb. 27, 2013, https://www.justice.gov/opa/pr/justice-department-prevails-tax-shelter-case-involving-1-billion-tax-deductions; *Merck to Pay $2.3 Billion in Tax Case*, The Wall Street Journal, Feb. 15, 2007, https://www.wsj.com/articles/SB117146140594708543
[8] *An Accidental Disclosure Exposes a $1 Billion Tax Fight With Bristol Myers*, The New York Times, Apr. 1, 2021, https://www.nytimes.com/2021/04/01/business/bristol-myers-taxes-irs.html

2. Did Bristol Myers in 2012 shift intellectual property rights for prescription drugs from existing entities in the U.S. and Ireland to a newly created subsidiary in Ireland? If so, please explain the economic substance of this decision and whether it was done in a manner that substantially reduced Bristol Myers's aggregate tax liability. Please also describe whether any decision to shift income within partnerships was carried out with the intent to avoid paying U.S. taxes.

3. In 2012 did Bristol Myers use amortization deductions associated with patents in Ireland to offset U.S. taxes and substantially lower its effective tax rate?

4. Are reports that the IRS is seeking approximately $1.4 billion from Bristol Myers for a reorganization in 2012 it concluded to be abusive under the § 704(c) anti-abuse rule accurate? If so, please provide answers to the following:

    a. Did Bristol Myers ever report the tax controversy with the IRS to its investors or the public? Please also provide any public disclosures related to the matter.
    b. Is Bristol Myers contesting this decision by the IRS or does it intend to comply?

5. In 2012 did Bristol Myers obtain tax opinion letters from PwC and White & Case in connection with the formation of a new partnership in Ireland and the granting of intellectual property rights to Bristol Myers's subsidiaries in Ireland? If so, please describe whether those tax opinion letters addressed how such an arrangement would comply with § 704(c) regulations including the anti-abuse rule as described in § 1.704-3(a)(10). Please also provide a copy of any tax opinion letters Bristol Myers received from PwC and White & Case in 2012.

6. Were PwC and White & Case paid fees for non-audit tax advisory or consulting services in connection with the arrangement described in question 5? Please describe these compensation arrangements, including as they related to any tax opinion letters or any advice provided related to the arrangement.

7. In an earnings call with analysts on January 24, 2013, then Bristol Myers chief financial officer Charles Bancroft briefly referred to "tax planning strategies" and mentioned that "in Q4, we restructured some legal entities, which improved our earnings mix."[9] Please describe these efforts in detail, including how they lowered Bristol Myers's effective tax rate in 2012. Please also describe whether auditors reviewed these efforts prior to executing them, as well as the names of Bristol Myers's auditors for tax year 2012.

8. In 2010 and 2011, Bristol Myers reported $3.8 billion and $4.3 billion in U.S. earnings before income taxes.[10] In 2012, it reported a U.S. pre-tax loss of $271 million. Please

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[9] *Bristol-Myers Squibb's CEO discusses Q4 results-earnings call transcript,* Seeking Alpha, Jan. 24, 2013, https://seekingalpha.com/article/1131001-bristol-myers-squibbs-ceo-discusses-q4-2012-results-earnings-call-transcript
[10] Bristol-Myers Squibb, 2012 *Annual Report* at 45, https://s21.q4cdn.com/104148044/files/doc_financials/annual_reports/Bristol-Myers-Squibb-2012AR-lr.pdf

explain such a sharp decline in U.S. pre-tax earnings. Were these changes attributable to the shifting of U.S. income from U.S. affiliates to subsidiaries in low-tax countries, including Ireland, and/or the shifting of depreciation from low-tax countries into the U.S.?

Thank you for your attention to this important matter.

Sincerely,

Ron Wyden

Ron Wyden
Chairman
Committee on Finance