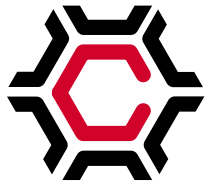


# FRESENIUS FAILING TO CARE

Global Tax Dodging by a  
German Healthcare Multinational



Centre for  
International  
Corporate Tax  
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# EXECUTIVE SUMMARY

Fresenius, one of Germany's largest multinationals and a leading global healthcare company, is not widely known like other iconic German brands but may soon become infamous for aggressive tax avoidance by a European multinational. While tax dodging by US multinationals like Google, Apple, Facebook and Amazon, is well known, European multinationals use many of the same tricks. Unlike the tech giants, Fresenius's income is derived largely from government spending on healthcare, funded by taxpayers. As a company aiming to improve human health and claiming to be socially responsible, Fresenius should proactively change its tax practices and help lead the way forward.

## **Fresenius's profits and taxes are not aligned with the place of economic activity**

At the global level Fresenius reports high profit margins. But national level accounts show losses or low profit margins in countries with high tax rates, resulting in an artificially low global tax rate. Fresenius's revenue comes mostly from countries with corporate income tax rates at or above 30%, but the global current taxes reported by Fresenius were 18,2% of profits in 2018 and averaged 25,8% since 2015. The average taxes paid by Fresenius over the last decade, based on actual tax payments, were only 25,2%.

Fresenius reported that Germany accounted for 23% of global sales and 32% of global employees, but only 10% of global income. According to financial reports, over the last four years German employees were only half as productive as the global average. Profitability compared to sales was 50% lower in Germany,

where the tax rate is 30%. In India where the tax rate has been 35%, Fresenius Kabi Oncology, a global producer of pharmaceutical products, made an average loss of 5,8% over the last four years. In Australia where the tax rate is 30%, government data reveals Fresenius Kabi made zero taxable profits over a three-year period. Fresenius holds €8 billion in untaxed profits in offshore accounts. Fresenius would have paid an additional €1,4 to €2,9 billion, if it paid corporate income tax at the statutory rates in Germany or US over the last decade.

## **Fresenius extensively uses corporate tax havens**

Fresenius is, or has been, present in 16 out of the 20 top corporate tax havens identified by the Tax Justice Network's Corporate Tax Haven Index. Fresenius uses financing companies in Luxembourg, Ireland, the Netherlands, and Delaware to issue and distribute €9 billion in debt. Intra-group debt is a key tool used by multinational companies to shift profits to tax havens. Fresenius's two Irish finance companies, despite no employees, made a profit of €47 million in 2017 by lending money to Fresenius subsidiaries in Spain and the US. Fresenius has holding and trading companies in the Netherlands, Delaware, Singapore, the Cayman Islands, the British Virgin Islands, Hong Kong,

**NOTE:** German number formats have been used throughout. A comma (,) is a decimal marker and period (.) is a separator for thousands. Currency formats put the currency symbol (€) in front of the amount.

## **This global web of tax havens may enable Fresenius to shift profits to avoid corporate income tax.**

Panama, and other tax havens. This global web of tax havens may enable Fresenius to shift profits to avoid corporate income tax. Fresenius subsidiaries in Bermuda, the Cayman Islands, and Malta supply captive insurance services, another tool frequently used to shift profits and avoid taxation.

### **Fresenius should contribute to improving the global tax system**

As a company committed to human and social welfare and largely dependent on public funding for healthcare, Fresenius should strive to be a global leader in transparency and responsible tax practices. Fresenius has an opportunity to provide a positive example for other corporations to follow and help advocate for necessary global tax reforms to level the playing field.

- Fresenius should dissolve tax haven subsidiaries and adopt the new Global Reporting Initiative (GRI) tax transparency reporting standards, which include public

reporting of tax payments and economic activity on a country-by-country basis.

- Fresenius should help ensure that the OECD's Inclusive Framework on Base Erosion and Profit Shifting (BEPS) reform proposals increase global tax revenues and distribute them equitably and transparently and include an effective global minimum tax — on a country-by-country basis and at an appropriate level — to stop the race to the bottom in corporate tax rates.
- A redistribution of taxing rights based on an agreed formula reflecting genuine economic activity would allow countries where Fresenius sells its products and services and countries where manufacturing is based to all benefit appropriately from Fresenius's high global profitability.

# TABLE OF CONTENTS

## **Executive Summary — 1**

Fresenius's profits and taxes are not aligned with economic activity  
Fresenius extensively uses corporate tax havens  
Fresenius should contribute to improve the global tax system

## **Fresenius — good global citizen or aggressive tax minimizer? — 4**

Company background  
Fresenius reporting indicates tax avoidance  
Germany: A case study of under reporting income

## **A Global Pattern of Profit Shifting? — 10**

India (Fresenius Kabi Oncology Limited)  
Australia (Fresenius Kabi Australia & Fresenius Medical Care Australia)

## **Fresenius's presence in tax havens: “merely good business”? — 12**

Luxembourg  
Ireland  
Netherlands  
Delaware  
Singapore  
Others

## **Conclusions & Recommendations — 16**

More transparent reporting  
The need for reform of the global tax system

# FRESENIUS: GOOD GLOBAL CITIZEN OR AGGRESSIVE TAX MINIMIZER?

Multinational tax avoidance is a global problem. Aggressive abuse of the loopholes in the antiquated international corporate tax system allows multinationals to play countries against each other in a destructive race to the bottom. Some jurisdictions are trapped in a competition to offer the most beneficial rules to attract

artificially shifted profits. These jurisdictions make small and unsustainable revenues while causing huge revenue loss and undermining the funding of public services in the countries where profits are genuinely made. By aggressively avoiding taxes, some multinationals create an unfair competitive advantage in relation to the majority

## Fresenius and corruption

Fresenius presents itself as a highly profitable but socially responsible company; however, the company has a troubled history — leading up to the present — of global fraud, corruption and bribery. In early 2000, Fresenius Medical Care (FMC), North America, made a US\$486 million settlement with the US Department of Justice (DOJ) and pled guilty to criminal conspiracy charges over allegations that the company was involved in a wide-ranging conspiracy to defraud federal healthcare programs.

Again, in 2007, the DOJ joined a lawsuit against two units of FMC alleging fraud on home dialysis supply claims submitted to the federal government from 1999 to 2005; the government was

ultimately awarded US\$82.6 million, plus costs.<sup>2</sup>

In November 2018, the Chilean Court of Defence of Free Competition (TDLC) imposed fines equivalent to US\$27.7 million against Fresenius Kabi subsidiaries “for forming and maintaining a cartel to affect [government healthcare] tenders”.<sup>3</sup>

In March 2019, the US Securities Exchange Commission (SEC) and DOJ announced that Fresenius would pay US\$231 million to settle allegations that the company had realised financial benefits of over US\$140 million by paying millions of dollars in bribes to procure business through a variety of schemes in 17 countries, including: Saudi Arabia, Morocco, Angola,

Turkey, Spain, China, Serbia, Bosnia, Mexico, and eight West African countries.<sup>4</sup> Fresenius had allegedly used sham consulting contracts, falsified documents, and funnelled bribes through a system of third-party intermediaries. Senior management — including some from Germany — had actively thwarted compliance efforts, personally engaging in corruption schemes and directing employees to destroy records of the misconduct.<sup>5</sup>

In August 2019, a US federal court unsealed a whistleblower lawsuit alleging that FMC, DaVita (the world’s two largest for-profit dialysis providers), and the American Kidney Fund (a non-profit charitable organization) were involved in a longstanding kickback scheme.<sup>6</sup>

of responsible taxpayers. These corporations claim to save lives but fail to acknowledge that deaths occur as a result of aggressive tax avoidance depriving governments of vital resources to finance healthcare.

Evidence from previous corruption and bribery scandals suggests that Fresenius repeatedly prioritised maximising profits at the expense of care and responsible and ethical business practices. Tax avoidance is another central aspect of Fresenius's corporate behaviour that has received little public attention up until now. This case study shows in detail how Fresenius has set up a global structure with a multitude of tax haven subsidiaries to artificially and aggressively reduce its tax bill. While these practises may be legal, they do not live up to the "responsible

management and ethical business principles" that Fresenius claims are "an integral part of the Fresenius corporate culture."<sup>1</sup>

## Company background

Fresenius SE & Co KGaA (Fresenius) is a publicly traded healthcare company based in Bad Homburg, Germany. It ranks 258th on the Forbes list of the world's largest public companies<sup>7</sup> and aims to be "a leading international provider of products and services in the health care industry".<sup>8</sup> In 2018, Fresenius employed over 275.000 people in 100 countries and made pre-tax profits of €4,7 billion from global sales of €33,5 billion. Europe accounted for 43% of global sales,

## Fresenius group structure



Fresenius Medical Care is fully consolidated in the financial statements of Fresenius SE & Co. KGaA

<sup>1</sup> Before special items

<sup>2</sup> On a comparable basis

As of December 2018

including 22% in Germany, with North America accounting for another 42%.<sup>9</sup>

The largest shareholder of Fresenius (26%) is a non-profit foundation, the Else Kröner-Fresenius-Foundation.<sup>10</sup> The tax implications of the partnership structure and ownership through the non-profit foundation are beyond the scope of this report.

Fresenius' activities are split into four business segments organized under separate entities.

**Fresenius Medical Care (FMC)** is the largest business segment, generating nearly half of group revenues and over half of group profits. It is the world's largest dialysis provider and treats patients in 3.928 clinics worldwide. North America accounts for 70% of FMC's sales. Dialysis treatment is essential for patients with kidney failure and the growing prevalence of diseases like diabetes and obesity are increasing global demand. In most countries, dialysis is provided

as part of public health services. In the US, it is one of only a few government-funded medical services.

**Fresenius Kabi** is a pharmaceutical and medical device manufacturer specializing

in IV drugs, biosimilars, infusion therapy and transfusion technology. It has 20 pharmaceutical plants in 14 countries, 8 medical device plants and over 40 compounding centres.

**Helios**, comprised of Helios Germany and Helios Spain (Quirónsalud), is Europe's largest private hospital operator. Helios Germany operates 86 hospitals, 125 outpatient clinics, and 10 prevention centres. Quirónsalud operates 47 hospitals, 57 outpatient centres, and 300 occupational risk prevention centres. Helios has recently expanded into the South American market by acquiring hospitals in Columbia and Peru.

## Fresenius 2018 Segment Results (€ in millions)

	Medical Care	Helios	Kabi	Vamed
<b>Revenue</b>	16.547	8.993	6.544	1.688
<b>% of total</b>	49,3%	26,8%	19,5%	5,0%
<b>EBIT</b>	2.346	1.052	1.139	110
<b>% of total</b>	51,4%	23,1%	25,0%	2,4%
<b>Profit ratio</b>	14,2%	11,7%	17,4%	6,5%
<b>Employees</b>	120.328	100.144	37.843	17.299
<b>% of total</b>	43,5%	36,2%	13,7%	6,%

*EBIT, earnings before interest and tax, is a common profit measure. The profit ratio is EBIT over revenue.*

**VAMED** provides a range of project and operations management services for hospitals and healthcare facilities, including consulting, project development, turnkey construction, financing and management. It is now the leading post-acute provider in Europe and expanding global operations with over 900 projects in 90 countries.

## **Fresenius reporting indicates tax avoidance**

Multinational companies often use shell companies with little or no “real” economic activity to shift profits from the countries where genuine economic activity — meaning production, management, research, sales, etc. — takes place, to jurisdictions where profits are taxed at lower rates or not taxed at all. To do so they exploit the current tax system that calculates profits and taxes due for each separate entity, subsidiary, or group of subsidiaries, within a corporation. These subsidiaries from within the same corporate group then charge each other for loans, goods, services or the use of patents, technology and brand names. These so-called “transfer prices” are frequently artificially set so that profits accrue in tax havens with no taxes, low taxes, or preferential tax regimes. Multinationals insist that these transactions are at “arm’s length”, as if the parties were not related. It is difficult for tax authorities to contest company assertions.

When analysing tax avoidance strategies, the crucial questions are:

- Where does genuine economic activity occur?
- Where are profits declared? and
- How much tax is paid in each jurisdiction?



## Note on Methodology

Corporate tax information is generally private and confidential, and governments typically don't disclose or discuss the tax practices of individual companies. Financial reporting usually contains some information on taxes but is not available for all subsidiaries and countries. It is therefore usually not possible to conclusively evaluate the entire global corporate structure and tax practices of a company. Nevertheless, this report examines the most recent annual financial statements available from Fresenius subsidiaries around the world to provide analysis of global tax strategies used by Fresenius.

The financial reports contain different numbers on tax:

- The **total tax** reported in the profit and loss statement includes all taxes related to the year, including tax payments or refunds related to the year but due for payment or deduction only in future (so-called deferred taxes).
- The **current tax** reported in the profit and loss statement includes all taxes related to the year but excludes deferred taxes.
- The **taxes paid** according to the cash flow statement show the actual transfers made to tax agencies around the world in that year and can include pre-payments for the next year and payments for previous years, including the impact from any tax audits.

Fresenius differentiates between Germany and the rest of the world for total and current taxes but not for taxes paid. Therefore, unless otherwise stated we use current taxes. Furthermore, tax research distinguishes between statutory rates, meaning the tax rates applicable by law, and effective tax rates, usually meaning taxes compared to profits. However, most tax avoidance schemes aim to artificially increase costs and reduce taxable profits in countries where tax rates are higher.

While taxes are based on profit, it is important to also evaluate earnings or revenue by jurisdiction to identify profit shifting which is not captured by effective tax rates. Effective tax rates can deviate from statutory rates for various reasons. For example, they can be lower because companies use offsets for losses from previous years or because they receive profit distributions from related companies that are usually not taxable.

If effective tax rates at a global level are consistently below relevant statutory rates this can be an indication of profit shifting. Average effective tax rates, over a number of years, are better indicators than an effective tax rate in any single year.

Fresenius prepares a consolidated financial report that gives an overview of all global activities of the group. It contains information on profit and tax at the global level and in Germany but does not provide other country-specific information.

In 2018, Germany was responsible for €476 million out of total pre-tax profits of €4.664 billion.<sup>11</sup> Out of the global current taxes of €850 million, €153 million were due in Germany.<sup>12</sup> This results in an effective tax rate of 32,1% in Germany and 16,6% in the rest of the world, and a global average of 18,2% (current) or 20,4%

(total). The global effective tax rate, even after considering the impact of recent US tax cuts, is significantly below the statutory rates applicable in Fresenius's major markets. While the effective tax rate in Germany appears high, it is based on a low level of reporting profits in Germany.

In the four years from 2015 to 2018 average global effective tax rates for Fresenius have been 26% (current) or 24,7% (total) respectively. Looking at taxes actually paid according to the cash flow statements, Fresenius's average effective tax rate over a decade (since 2009) was even — at 25,2%.<sup>13</sup> This is significantly below the 30% and 35% statutory rates in Germany and the US (until 2017) and may obscure much lower rates — and profit shifting — at the national level in major markets.

## Germany: A case study of underreporting income

Fresenius's effective tax rate in Germany closely matches and even exceeds the statutory corporate income tax rate. However, compared to employees and sales, the profits allocated to Germany are low. As the chart below indicates, Germany had 32% of Fresenius's global employees and nearly 22% of global sales, but only accounted for 10% of pre-tax income in 2018.<sup>14</sup> This means, at least from an accounting point of view, Fresenius employees abroad were four times more profitable than in Germany, and Fresenius was nearly twice as profitable outside of Germany. This discrepancy gets somewhat smaller with the 4-year average (to eliminate possible anomalies)<sup>15</sup>, but remains significant. In the 4-year average global employees were twice as profitable (+ €8.113 per employee) and global operations were 50% more profitable (8,8% vs 12,6%). Why are German profits so low?

### German and Global: Misalignment of sales, employees, profits and tax in 2018

	Germany	Total	% Germany	4-year average
<b>Sales (€m)</b>	7.359	33.530	21,9%	23,0%
<b>Employees</b>	88.560	276.750	32,0%	33,5%
<b>Pre-tax income (€m)</b>	476	4.664	10,2%	18,4%
<b>Tax (Current, €m)</b>	153	850	18,0%	15,3%

	Germany	Total	Difference of Germany and Total	Difference
<b>Effective tax rate</b>	32,1%	18,2%	13,9%	0,9%
<b>Profitability</b>	6,5%	13,9%	-7,4%	-3,7%
<b>Profit per employee</b>	€5.375	€16.853	-€11.478	-€8.133

*How to read this table:* A difference of -7,4% in profitability means that in 2018 for every €100 of sales in Germany, Fresenius earned €7,4 less than in its global operations in total. A difference of -€8.133 means that between 2015 and 2018 one employee in Germany contributed €29.796 to Fresenius's profits while globally Fresenius realized profits of €62.329 per employee, a difference of €32.532 or an average of €8.133 per year.

# A GLOBAL PATTERN OF PROFIT SHIFTING?

Fresenius has paid substantial tax revenues in Germany, but potentially far less than if an appropriate level of profit based on genuine economic activity had been reported in Germany. A review of tax practices in other countries with similar tax rates indicates that these jurisdictions may have lost an even higher percentage of tax revenue due to profit shifting. If Fresenius had paid taxes at an effective tax rate of 30% (the statutory rate in Germany), or 35% (or the statutory rate in the US until 2017), it would have paid an additional €1,4 to €2,9 billion in corporate income taxes over the decade.<sup>16</sup> This number represents the global tax gap between the average 25% effective tax rate over the decade and the additional taxes that would have been paid at the official tax rates in Fresenius's two largest markets. However, this estimate obscures larger tax gaps and lost revenue at the national level.

## India

**Official tax rate:** 35%

### Fresenius Kabi Oncology Limited (FKOL)

**Profitability 2018–19:** -8,7%

**Profitability 4-year average:** -5,8%

**Net income tax in 2018–19, despite losses:** €0,4 million

Fresenius operates in India through several subsidiaries, including Fenwal India Private Ltd., owned through the Cayman Islands, and imports high value medical products from FMC East-Asia Ltd in Hong Kong. Fresenius Kabi Oncology Limited (FKOL) in India, owned through

Singapore, is a significant producer and exporter of generic drugs to Fresenius companies around the world. In 2017-2018 FKOL had revenue of €93.5 million, mostly from related parties.<sup>17</sup> It sold a large volume of products to Fresenius Kabi Oncology PLC in the UK, which sold exclusively to other Fresenius companies in Europe, and to Fresenius in Hong Kong which re-sells to Fresenius subsidiaries in Australia, New Zealand and elsewhere in the Asia Pacific region.<sup>18</sup> This Indian company also exported products and provided services to Fresenius Kabi Deutschland GmbH in Germany.

FKOL's revenue decreased by 4% in 2018-2019, but the pattern of related party transactions continued. However, the company reported a pre-tax loss of €7,8 million, which appeared to be driven by a decrease in services provided to Fresenius Kabi Deutschland GmbH of €8,1 million and an increase in services purchased from Fresenius Kabi Deutschland GmbH of €7.4 million.<sup>19</sup>

In 2017-2018, FKOL reported a small pre-tax profit of only €2,35 million<sup>20</sup> and a current tax charge of €0,8 million while receiving government grants and export incentives worth €3,2 million.<sup>21</sup> Government funded export incentives continued in 2018-2019. FKOL profitability was -8,7% in 2018-2019 and averaged -5,8% over the last four years. In 2018-2019 FKOL was disputing over €14,9 million in tax payments with various Indian government entities going back a number of years, including €5.3 million in transfer pricing payments.<sup>22</sup>

## Australia

*Official tax rate: 30%*

### Fresenius Kabi Australia (FKA)

*Profitability for 2018: 4,06%*

*Profitability, 3-year average  
(2016–2018): 6,27%*

*Income tax paid, 2018: €163.000*

### Fresenius Medical Care Australia (FMCA)

*Profitability for 2018: -5,59%*

*Profitability, 3-year average  
(2016–2018): 0,00%*

*Income tax paid, 2018: €1 million*

Fresenius is a significant provider of pharmaceuticals and other medical supplies and the largest provider of dialysis services in Australia, through Fresenius Kabi Australia Pty Ltd (FKA) and Fresenius Medical Care Australia Pty Ltd (FMCA), and respective subsidiaries. According to annual information published by the Australian Taxation Office (ATO), FKA generated €331 million in total income but had zero taxable income and paid zero tax for the years 2013-2014 to 2015-2016.<sup>23</sup> According to FKA's 2018 filings, it made after-tax profits of only €1,1 million. In 2018 it paid less than €163.000 in tax, up from under €10.000 in 2017 and zero for at least the three previous years. In 2018, FKA purchased 99,9% (€30 million) of "raw materials and consumables used" from related parties and had other offshore related-party transactions that further reduced profits and taxable income in Australia.

In 2018, FMCA reported a pre-tax loss of €5,8 million despite a 4,3% increase in patient revenue. Losses were partially driven by purchases of €26,6 million from Fresenius Medical Care Asia Pacific in Hong Kong, related-party interest payments of €2,2 million,<sup>24</sup> and other offshore related-party transactions.<sup>25</sup> FMCA has made small tax payments in every year, even

on losses in 2018. According to the four years of ATO data, after significant reductions in taxable income, it has been paid exactly at the 30% statutory rate. As stated above, multinationals shift profits offshore through transfer pricing before tax rates are applied. FMCA's three-year average 0% profitability were driven by losses in 2018. However, ATO data shows average profitability over the previous four years (2013-2014 to 2016-2017) of under 6%.

In 2015, an interim report of the Australian Senate Inquiry into Corporate Tax Avoidance raised the issue of tax dodging by pharmaceutical and healthcare companies<sup>26</sup> and since then the ATO has made the pharmaceutical industry one of its focus sectors.<sup>27</sup> In a recent media interview, a senior ATO official commented that some multinationals falsely claim to have little or no actual business in Australia and use transfer pricing to shift profits out of Australia. While not referring to any particular company, he stated that the companies have:

"people meeting the doctors, they've got people lobbying the pharmaceutical benefits scheme, they're actually selling stuff here... I describe this as the 'kidney donor' approach to transfer pricing: just because you can point to someone living a full life on dialysis, doesn't support a proposition that someone would remove their own kidneys and go on dialysis to transfer the 'risks and rewards' of their kidneys to someone else."<sup>28</sup>

# FRESENIUS'S PRESENCE IN TAX HAVENS — “MERELY GOOD BUSINESS”?

While Fresenius reports impressive global profit margins — averaging 14% for FMC and 18% for Kabi over the last three years — the case studies of Germany, India and Australia indicate far lower profit margins at the national or company levels. Despite significant genuine economic activity and continued investment, Fresenius's profits appear to be artificially low in these countries. If profits are not reported in Germany, India, Australia and other countries, where do they go?

Tax havens are jurisdictions with very low corporate tax or special regimes that help multinational corporations reduce effective tax rates. There are various definitions, lists, and rankings of tax havens and secrecy jurisdictions.

- The International Monetary Fund (IMF) recently found that a big share of foreign direct investment (FDI) is channelled “through empty corporate shells” with “no real business activities” but with the sole function to “carry out holding activities, conduct intrafirm financing, or manage intangible assets — often to minimize multinationals’ global tax bill.” Luxembourg and the Netherlands host nearly half of what they call phantom FDI, and 85% of it flows through only ten well-known tax havens.<sup>29</sup>
- The European Union (EU) recently identified seven EU countries that provide “structures that allow multinational companies to engage in aggressive tax planning.”<sup>30</sup>

- The Tax Justice Network recently released its corporate tax haven index that combines the relative importance of a country for corporate activity with its attractiveness as a tax haven and ranks 64 countries accordingly.

Fresenius stopped publishing a comprehensive list of subsidiaries in 2014, but at that time had more than 2,000 subsidiaries, including many in the world's worst tax havens. In particular, finance companies in Luxembourg, Ireland, and the Netherlands are critical to Fresenius's global structure and debt financing. Many of Fresenius's tax haven subsidiaries are empty corporate shells with no employees or genuine economic activity. FMC's annual report also mentions that FMC has collected €8 billion of undistributed earnings through its foreign subsidiaries and was planning to keep them indefinitely reinvested to avoid taxation in Germany.<sup>31</sup> While not distributing profits usually saves approximately 1,5% of tax in Germany, those profits may originate in countries where taxes at significantly higher rates have been avoided.

## Luxembourg

The European Commission country report on Luxembourg notes high capital flows to entities with little or no employment, operations or physical presence often related to intra-group financing or treasury operations and using the

## Presence in Global Tax Havens

Jurisdiction	TJN Ranking	IMF phantom FDI	EU harmful tax practices	Fresenius
British Virgin Islands	1	x		x
Bermuda	2	x		x
Cayman Islands	3	x		x
Netherlands	4	x	x	x
Switzerland	5	x		x
Luxembourg	6	x	x	x
Jersey	7			(x)
Singapore	8	x		x
Bahamas	9			
Hong Kong	10	x		x
Ireland	11	x	x	x
United Arab Emirates	12			x
United Kingdom	13			x
Mauritius	14	x		
Guernsey	15			
Belgium	16		x	x
Isle of Man	17			
Cyprus	18		x	x
China	19			x
Hungary	20		x	x
...				
Malta	23		x	x

absence of withholding taxes.<sup>32</sup> Luxembourg, along with finance companies in several other European tax havens, plays a critical role in Fresenius's corporate structure and global debt financing. Excluding other forms of debt, the Fresenius Group had issued current bonds, traded on the Luxembourg Stock Exchange, with a book value of €9 billion and had at least five Luxembourg subsidiaries.<sup>33</sup> One Luxembourg subsidiary, FMC Finance VIII S.A., had no employees and issued notes and lent money to other affiliates.<sup>34</sup> The other Luxembourg finance company subsidiaries appear to be similarly structured.

Following widespread revelations in 2014 of Luxembourg being used as a tax haven ("Lux Leaks"), a spokesperson for FMC defended corporate practices and said that the "company's efforts to reduce costs are merely good business" and that the taxes "saved with the help of the Luxembourg tax model" were small in comparison to the company's total tax payments.<sup>35</sup> No evidence was found to suggest that Fresenius has made any significant changes to its Luxembourg tax model since 2014.

## Ireland

Ireland boasts one of the lowest statutory corporate tax rates in the EU: 12,5%. In addition, the extensive network of double taxation agreements makes it a favoured location for multinationals seeking to achieve effective tax rates much closer to zero.<sup>36</sup> Ireland is infamous for the so-called "Double Irish with a Dutch sandwich" which refers to shifting profits into an entity incorporated in Ireland while not being required to pay any tax there. According to the European Commission, the US company Apple Inc. has received illegal benefits amounting to €13 billion over the years.<sup>37</sup>

Fresenius has several subsidiaries in Ireland, including two finance companies: Fresenius Ireland Finance PLC and Fresenius Ireland

Finance II PLC. For 2017, without any full-time staff, they made profits of US\$47 million — mainly from passing funds raised in Luxembourg onto the subsidiaries in the US and Spain and charging a top-up of up to 1% on the interest rates. In Spain, the corresponding interest payments reduced pre-tax profits by over 25%.<sup>38</sup> The loans are related to Fresenius's 2017 acquisition of Quirónsalud, Spain's largest hospital operator.<sup>39</sup>

## Netherlands

According to the European Commission, Dutch tax rules "appear to be used by multinationals engaged in aggressive tax planning structures".<sup>40</sup> Many multinational companies use Dutch holding companies to profit from a very beneficial network of double tax agreements that allow for profits to be transferred to the Netherlands without being taxed in the source country.

Fresenius has various Dutch holding companies directly and indirectly holding shares in subsidiaries in other notorious tax havens such as Singapore, the Cayman Islands, the British Virgin Islands, and Hong Kong. Another Dutch subsidiary, Fresenius Finance II B.V., with no employees, had €808,4 million in loans outstanding at the end of 2016 (the most recent filing) to affiliated companies including Fresenius SE & Co KGaA and Fresenius Kabi affiliates in Austria, Spain, France, Germany, Sweden, and Poland.<sup>41</sup>

In 2014, the German tax authorities determined that the predecessor company, Fresenius Finance B.V., had since 2002 wrongly transferred interest payments from Germany to Netherlands because the German companies were carrying the risks for the underlying loans. As a consequence, Fresenius had to pay the foregone tax in Germany but received tax refunds of at least €4,4 million, including interest payments of €792.267 in the Netherlands.<sup>42</sup> Fresenius Finance B.V. has since been deregistered.

## Delaware

Delaware is widely regarded as a tax haven and secrecy jurisdiction within the US due to its lax reporting obligations and no taxation on interest income, and is the registered home for hundreds of Fresenius subsidiaries. There may be more Fresenius subsidiaries incorporated in Delaware but conducting business elsewhere than any other jurisdiction outside of Germany. Fresenius Medical Care US Finance II, Inc. and Fresenius US Finance II, Inc. have no employees and have no business other than issuing debt traded in Luxembourg and re-lending the proceeds to related parties.<sup>43</sup> A search of the company registry in Delaware identifies 500 companies beginning with “Fresenius.” There are hundreds more Fresenius subsidiaries in Delaware with other names.

## Singapore

According to the Tax Justice Network, Singapore ranks 8th on the list of “countries that have done the most to proliferate corporate tax avoidance and break down the global corporate tax system.”<sup>44</sup> While the corporate income tax rate in Singapore is 17%, many multinational companies, as in Luxembourg, have negotiated concessional tax rates with the Singapore government. Fresenius has several subsidiaries in Singapore owning other subsidiaries in India, Japan, South Korea, Malaysia, Hong Kong and elsewhere.

Fresenius Kabi (Singapore) Pte Ltd owns 97% of the shares in Fresenius Kabi Oncology Limited in India and paid no tax in 2017<sup>45</sup> and only minimal withholding tax in 2016 (see page 10).<sup>46</sup>

## Others

In 2018, FMC reported several subsidiaries in tax havens in the Caribbean, including the Cayman Islands, the British Virgin Islands and Bermuda.<sup>47</sup> Fresenius Medical Care Risk Management Group Ltd in Bermuda and Fresenius Medical Care Reinsurance Company (Cayman) Ltd in the Cayman Islands both provide internal insurance services. Fresenius can deduct insurance premiums from US federal income tax, accumulate premium income tax free, and allow dividends to be taxed at the lower capital gains rate.<sup>48</sup> Two subsidiaries in Malta, and one holding company, also conduct insurance and finance activities. For a short period Fresenius had a finance subsidiary in Jersey, subject to a zero percent tax rate.

Two German subsidiaries, which are a key part of the global corporate structure, have branches in Panama with the ability to conduct a wide range of global business ventures.<sup>49</sup> Offshore companies in Panama are obliged to pay an annual license fee, but “foreign-sourced income is generally not taxed at all.”<sup>50</sup>



## Fresenius's Global Web of Tax Haven Subsidiaries



# CONCLUSIONS AND RECOMMENDATIONS

Through tax policy, regulation, and conditions on public funding governments can require changes from Fresenius and other multinationals. As a world-leading healthcare company, Fresenius depends heavily on public finances. Therefore, Fresenius should strive to be a global leader in relation to transparency and responsible tax strategies. If Fresenius set a positive example for other corporations to follow it could provide a competitive advantage. Fresenius investors and other stakeholders can and should help Fresenius on that path.

Regional, national, and local governments must ensure companies like Fresenius are in compliance with existing reporting requirements and tax regulations and change procurement policies to ensure higher levels of transparency for any company receiving government funding. Instead of waiting for global agreement on new rules, Fresenius should show leadership and agree to increase transparency and advocate for a fairer global tax system that adequately funds global health care needs.

Instead of offering the standard corporate response that it “follows the law” in all countries Fresenius should aim to fulfil the spirit of those laws and pay a fair share of tax wherever it operates. Fresenius should dissolve its subsidiaries in tax havens and implement a more equitable tax strategy based on transparency, and should communicate with shareholders and governments on the need for a new approach to taxation.

## **More transparent reporting**

As a large publicly-traded multinational, Fresenius fulfils existing accounting standards by providing relatively detailed information on its business segments and geographical regions, including a separate presentation of its activities in Germany and the rest of the world. With revenue above €750 million, Fresenius is obliged to report its business activities on a country-by-country level to various tax agencies. But this is not enough. Fresenius, like many other multinationals, currently uses the Global Reporting Initiative (GRI) standards to report on sustainability issues. Fresenius should immediately adopt the new GRI standards on tax transparency.<sup>51</sup> The GRI standards are globally recognised and widely used in Germany. The GRI’s new tax transparency reporting standard includes a public country-by-country report on tax payments and economic activity.

Public or publicly funded entities around the world that procure goods and services from Fresenius should require greater transparency. If companies like Fresenius do not agree to increase the transparency, including related-party transactions and transfer pricing, and agree to be publicly accountable, future contracts or funding should be denied.

## **The need for reform of the global tax system**

Increased transparency alone will not end the use of tax avoidance schemes, but increasing public exposure can drive both regulatory and behavioural changes. Ultimately, since many of these schemes are legal, global tax reforms are needed. For example, Fresenius subsidiaries around the globe are not independent, they are

part of a large global corporate structure and should be treated — and taxed — accordingly. Instead of taxing each entity separately and determining transfer prices for intra-firm cross-border exchanges, taxing rights for each country should be based on the share of global profits that corresponds to real economic activity in their country. This requires a change in the current international tax system.

The Organisation for Economic Co-operation and Development (OECD) and its Inclusive Framework, which aims to create broad global collaboration on tax reform, are currently discussing far-reaching reforms of the international tax system. Governments, including the German government, have an important role to play to ensure that these reforms make a real difference, especially for developing countries.

One element of the reform to stop the harmful race to the bottom is an effective **global minimum tax** to ensure that no matter where profits are shifted, tax payments never fall below the agreed minimum. Global tax experts are demanding a minimum effective corporate tax rate of 25%.<sup>52</sup> However, multinationals and some governments will be pushing for lower rates that would be inadequate. This minimum rate should apply for each entity of a corporate group, and each country where a company is active, rather than at a global level.

A minimum tax at the global level would have little impact on Fresenius or other companies as operations in higher tax jurisdictions could be blended with tax haven subsidiaries. If a sufficient minimum tax was set at country level, shifting finance activities to Ireland or other jurisdictions would become less attractive. Considering the high number of entities in tax havens with no or very low corporate tax rates, the effects of a minimum tax rate at a country level would

go far beyond Ireland for Fresenius and other multinationals.

The second element of the reform is a **redistribution of taxing rights** to the place where economic activity takes place. The G24, with strong support from India, have suggested replacing the current system of transfer pricing by redistributing global profits using a formula that captures sales and customers as well as production facilities and employees. The OECD is currently considering only redistributing profits above a certain level of profitability (e.g. 10%) and only based on sales.

With global profitability levels of 14,7% Fresenius would clearly be subject to this proposal. Considering the low profit levels reported in countries with major economic activity — including Germany with 6,5%, or subsidiaries in India and Australia — such a redistribution has the potential to make real differences. Nevertheless, the case of Fresenius shows clearly that by using sales as the only determinant of redistribution, countries such as India that contribute to the economic success mainly through its factories and employees, would be clearly disadvantaged.

Fresenius should seize the opportunity to immediately address the lack of transparency in its global tax payments and be an advocate for global tax reforms that level the playing field and adequately fund healthcare and other public services around the globe.

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