



OXFAM MEDIA BRIEFING

April 9, 2019

Hazardous to Your Health:

How the Trump tax cuts to Big Pharma widen inequality and undermine the health of women and girls

Overview

The promise of the 2017 US corporate tax makeover was that, in exchange for deep tax cuts, US companies would invest, boost economic prosperity and create decent jobs. Any revenue losses from the corporate tax cuts would pay for themselves, proponents claimed, through economic growth and by tackling offshore corporate tax avoidance. But early evidence shows a very different picture. Amid growing concern that the pharmaceutical industry's pricing, tax and lobbying practices are undermining the health of millions of people in the US and across the globe, this briefing presents new findings on how the biggest corporate tax cut in a generation has benefited four of America's pharmaceutical giants. According to Oxfam's analysis of their end-of-year financial statements, Johnson & Johnson, Pfizer, Merck and Abbott Laboratories seem to have received almost \$7 billion last year from two central provisions in the new tax code, which the companies used to increase payouts to shareholders while research and development flat-lined. This corporate gain comes at a massive public loss, especially to the health and well-being of women and girls.

Executive Summary

Disease does not differentiate between rich and poor, but in the US and the world, medicines do. By failing to pay their fair share in taxes and charging high prices for medicines, pharmaceutical companies are ultimately denying access to health care and other essential public investments so vital to combat gender, racial and economic inequalities in the US and around the world.

In advance of Tax Day in the United States, there's a growing concern that the pharmaceutical industry's exorbitant pricing, tax avoidance and lobbying practices are undermining the health of millions of people in the US and across the globe. This briefing presents new findings on how the biggest corporate tax cut in a generation—the 2017 Tax Cuts and Jobs Act (TCJA)—has benefited four of America's pharmaceutical giants. This follows Oxfam's *Prescription for Poverty* study released last year, which revealed that Johnson & Johnson (J&J), Merck, Pfizer and Abbott Laboratories may have underpaid \$3.7 billion in taxes annually around the world by systematically shifting their profits to overseas tax havens between 2013 and 2015. Of that, the US may have lost \$2.3 billion annually to just these four companies' profit-shifting practices.¹

The promise of the 2017 US corporate tax cuts was that, in exchange for deep tax cuts, US companies would invest, boost economic prosperity and create jobs. Any revenue losses from the corporate tax cuts would pay for themselves, proponents claimed, through economic growth and by tackling offshore corporate tax avoidance. While it's still early, there is very little evidence that these four US pharmaceutical companies have ended their use of offshore tax havens or meaningfully invested in the US, according to Oxfam's analysis of their end-of-year financial statements. What's more, Johnson & Johnson, Pfizer, Merck and Abbott Laboratories seem to have received almost \$7 billion last year from two of the main provisions in the new tax code (\$1.7 billion from the corporate tax rate cut and \$5.3 billion from the tax break on previously untaxed offshore earnings). Pfizer topped the list with an estimated \$2.8 billion in tax savings, followed by Johnson & Johnson at \$2.5 billion, Merck at \$1.2 billion and Abbott at \$473 million.

This corporate gain comes at a massive public loss, especially to the health and well-being of women and girls. When health care funding is cut due to tax shortfalls, families lose medical care, and can be driven into poverty by health care debts. When health systems are under-funded, women and girls' own rights to health are placed in jeopardy while at the same time they are asked to step into the breach to provide unpaid care for their sick loved ones—compromising their own health and their prospects for education and employment. What's more, when governments and US states are deprived of corporate tax revenues, they often seek to balance the budget by raising consumption taxes, which tend to take a larger bite out of the income of poorer women. This is what happens when tax money, which could have been spent on the public good, is diverted to some of the world's most profitable firms. For perspective, the \$6.9 billion in tax breaks that just these four companies received in 2018 could have paid for any one of these programs so vital to combatting economic and gender inequality:

- Health insurance for more than two-thirds of the 3.8 million children in the US still left uninsured.²
- Almost doubling the comprehensive efforts to end the opioid crisis in the US, which killed almost 50,000 Americans in 2017 alone.³
- Increasing, by almost one-fifth, the National Institutes of Health budget, which facilitates essential research to develop new life-saving and life-enhancing medicines.⁴

- A comprehensive cervical cancer prevention and immunization program for 50 million 10-year-old girls and more than 750 million women of screening age in low- and middle-income countries for five years.⁵
- Doubling the budget of the US President's Emergency Plan for AIDS Relief (PEPFAR), which supports life-saving HIV treatment for more than 13.3 million people around the world.⁶
- Covering almost 20% of the financing gap to meet universal health coverage in 67 poorer countries, which could save 97 million lives.⁷

Just using one company as an example, the estimated \$2.5 billion tax giveaway the US government granted to Johnson & Johnson could have provided a six-month course of the company's drug, bedaquiline, to all those suffering from multidrug-resistant tuberculosis (TB) *seven times over*.⁸ Alternatively, J&J's 2018 tax breaks alone could have funded *two times over* the longer WHO-recommended drug regimen for the estimated 558,000 people suffering from multidrug-resistant TB for whom these new drugs remain stubbornly out-of-reach.⁹

Another one of the central fables of the US corporate tax makeover was that by allowing pharma giants to keep more of their earnings, these companies would choose to spend that extra cash in research and development (R&D), thereby creating a pipeline of life-saving and life-enhancing drugs. Despite the promises, the four drug companies prioritized investor payouts in the form of stock buybacks and dividends (\$52 billion) over research and development (\$31 billion). Pfizer and Merck, in particular, have aggressively bought back their own stock, repurchasing \$12 billion more in the full first year of the US corporate tax overhaul than in 2017. Their R&D spending, meanwhile, flat-lined.

Big Pharma is not alone in using their new cash to maximize the value of their stocks and returning much of their new cash to investors. This story is very much symptomatic of a much broader set of laws and policies found in the tax code, intellectual property protections, corporate governance, and anti-trust regulations that set companies in pursuit of the single-minded short-term goal of paying their investors and executives at any cost.

And it is no mystery who benefits most from this set of "shareholder first" rules that oblige companies to increase return to investors at almost all costs. The richest 10% of Americans now own 84% of all stocks.¹⁰ Men own significantly more equity in US companies than women: for every \$1 in company equity held by men, women hold 47 cents.¹¹ Racial gaps in the US stock market are also staggering,¹² with white Americans benefitting from a larger return on investment because they hold more stock than African-Americans and Latinos.¹³ Given the pre-existing wealth inequalities in the US, low-income people, women, and people of color lost out disproportionately from the record levels of stock buybacks during the first operative year of the TCJA. Poorer women of color face a triple threat. In the end, it is the most well-off in our economy—disproportionately rich white men—who benefit most when companies distribute excess capital from tax giveaways to shareholders and senior executives.

It wasn't always this way, and it shouldn't have to be this way. As with most drivers of inequality, aggressive tax avoidance, exorbitant drug prices and distortive lobbying are not natural phenomena. They result from deliberate choices made by companies and by the politicians who do their bidding. Changes in company practices and policy changes can therefore make a huge

difference in the lives of people, especially low-income women and girls of color who bear the brunt of these injustices.

We need to remember that Big Pharma still depends on the good will of the public. Without our taxpayer dollars, these companies would lack the research, the legal and patent protection as well as the healthcare market to exist at all. Working together, governments, companies, investors and ordinary people have the potential to make our economy work for the many, not just the few.

Toward that end, we call on the US government to:

Restore public confidence in the tax system by requiring multinational companies to be fully transparent—by requiring companies to publish country-by-country tax and financial reports.

Create a level playing field by ensuring large multinational companies pay their fair share of taxes where economic activity takes place—rather than shifting the tax burden onto consumers and workers.

Commission an independent evaluation to assess and address the TCJA's impacts on inequality in the US and abroad.

Ensure policies that enable access to affordable medicines in the US and around the world.

And we call on companies to:

Act more transparently—by publishing their full country-by-country reports of the tax and financial information necessary for the public to understand and assess the company's tax practices.

Pay their fair share—by publicly committing to pay tax on profits where economic activity takes place and to stop shifting profits to low-tax jurisdictions.

Use their influence responsibly—to shape a more equitable tax system for sustainable and inclusive growth.

Commit to transparency as a necessary step to enable access to affordable medicines for all by publicly declaring actual spending—on R&D, production, and marketing of medicines and pledging full transparency on medicine prices, clinical trial results, and patent information.

Introduction

Today, cutting-edge scientific breakthroughs are advancing human health worldwide, with medicines being developed to prevent so many avoidable deaths. World leaders are committed to universal health coverage and access to medicines in order to achieve Sustainable Development Goal 3 on health—and many of these aims are within reach by 2030. Together, these big leaps have the potential of radically diminishing health and economic inequalities, while making new strides to tackle maladies faced particularly by women. By doing so, these developments can both uplift women’s health rights while relieving the unpaid care burden women and girls face on a daily basis to look after their sick loved ones. By freeing millions of women in the US and around the world to pursue their highest potential in life, everyone benefits.

Oxfam’s *Prescription for Poverty* research findings, released in September 2018,¹⁴ documented how four pharmaceutical corporations—Johnson & Johnson (J&J), Merck, Pfizer and Abbott Laboratories¹⁵—seem to be systematically stashing their profits in overseas tax havens. This appeared to deprive rich and poor countries alike of \$3.7 billion in annual revenue in the period 2013-2015. Of that, the US lost \$2.3 billion annually to just these four companies’ profit-shifting practices: money that was urgently needed to meet the health needs of people in the US and around the world.

The very business models of these pharmaceutical companies rely, to a large degree, on taxpayer money, which pays for essential front-end research at the National Institutes of Health,¹⁶ protects their prized patents and other intellectual property, subsidizes various business, charitable and marketing activities, and pays for large swaths of the prescription drug market through publicly-funded programs such as Medicare, Medicaid and the Veteran’s Administration. Yet, when they avoid or underpay their taxes, these same companies fail to pay back into the system that sustains them. Women—particularly women of color—too often pay the steepest price as they are more likely to pay out of pocket for medicines,¹⁷ more likely to delay access to treatment when cost is implicated,¹⁸ more likely to bear the burden of care when loved ones can’t afford medicines, and often end up paying more than their fair share in consumption and sales taxes to fill in the funding gap caused by corporate tax avoidance.

After the significant changes to the US corporate tax code enacted in President Trump’s Tax Cut and Jobs Act (TCJA) in December 2017, Oxfam combed through the 2018 financial statements of these same four companies to understand how they made out. This analysis provides a preliminary assessment of some of the most pronounced effects of the US corporate tax makeover during its first operative year of 2018.¹⁹ While the data is not sufficient enough to know the precise impact of the US corporate tax changes, and one year is not long enough to arrive at any definitive conclusions, this preliminary evaluation does paint a compelling initial picture of the impact of the new US corporate tax regime.

Tax breaks have enormous consequences in the fight against inequality

When passing the largest tax overhaul in a generation, President Trump and Republican tax policy-makers heralded a new day. US companies would receive deep tax cuts, which would in turn drive business investment, boost economic prosperity and create jobs. Any revenue losses from the corporate tax cuts would pay for themselves, proponents argued, through economic growth and by ending profit-shifting and other forms of offshore corporate tax avoidance.²⁰

The New Rules of the Game for Taxing Multinational Companies in the US

Enacted in December 2017, the Tax Cuts and Jobs Act transformed the US corporate tax landscape, introducing a 'carrot and stick' approach to taxing multinational companies, specifically:²¹

Carrots to incentivize multinationals to leave tax havens and bolster US operations, assets and profits:

- A reduction in the corporate income tax rate from 35% to 21%
- The new tax rules effectively exempt any non-US earnings from being taxed in the US, and include a 'transitional' tax on past, offshore earnings to be paid over 8 years at a heavily discounted rate (8% or 15.5%)²²
- The Foreign Derived Intangible Income ("FDII") deduction, which aims to incentivize the development and ownership of intellectual property in the US by providing a reduced tax rate on the US taxpayer's foreign derived intangible income

Sticks to discourage US firms from shifting profits offshore:

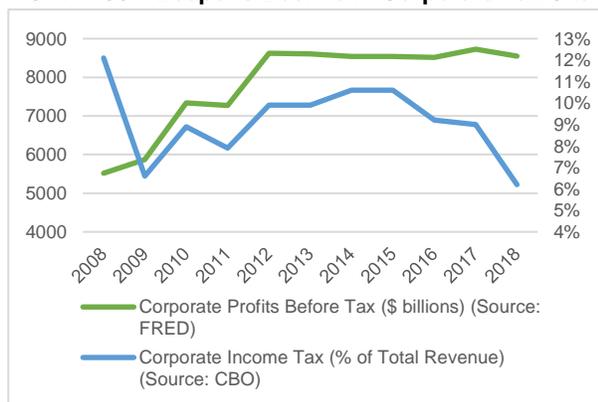
- The Global Intangible Low-Taxed Income ("GILTI") provisions, which essentially impose a minimum level of tax on the profits of certain foreign subsidiaries of US multinationals. The GILTI provisions effectively apply a minimum 10.5% tax rate on the subsidiaries' income²³
- The Base Erosion and Anti-Abuse Tax ("BEAT") effectively introduces a minimum tax on US corporate taxpayers with greater than \$500 million in annual receipts of 5% (in 2018) and 10% (up to 2026) after excluding specified 'base eroding' deductible expenses that are payable to foreign affiliates

On the first Tax Day after a full year of operation, there is very little evidence that the basic claims behind the US corporate tax cuts are anything but fictions and fables—with enormous consequences in the fight against inequality.

Vanishing corporate tax revenue in the US

Despite the promises, President Trump's corporate tax cuts are not paying for themselves. With a strong economy, record corporate earnings,²⁴ low inflation and low unemployment, experts predicted that overall Federal tax revenue should have grown by 7% in 2018, all else being equal.²⁵ Instead, overall tax revenue dropped 0.4% in 2018.²⁶

FIG. 1: TCJA Deepens Decline in Corporate Tax Share



Corporate tax payments, for their part, declined dramatically after passage of the TCJA, dropping an astounding 31% last year—the second largest drop since the government began tracking the data. The only other time corporations paid less from one year to the next was during the 2008/09 financial crisis.²⁷

With a booming economy and record profits, companies paid 92 billion dollars less in tax in 2018 than in 2017²⁸—largely due to the corporate tax makeover.

In one single year of operation of the tax cuts, the share companies pay of the overall US tax revenue dropped precipitously from 9% to 6%.²⁹ Individuals and workers, for their part, were forced to pay more of their share to the total tax take in payroll and personal income taxes.³⁰

Lower tax revenue outside the US

Fewer taxes means less investment in America's schools, hospitals and people. But it is not only the American people who suffer from tax revenue losses. International Monetary Fund (IMF) researchers estimate that the new US corporate tax regime could exacerbate an international race to the bottom, depleting tax revenues other governments of the world raise from multinational companies. Through a combination of profit-shifting, business relocations, and policy reactions—such as other governments responding by lowering their own rates—could cause a decrease in tax revenue, among foreign governments, averaging 4.5% to 13.5%.³¹ Some countries face disproportionate revenue risks from the US tax changes. Mexico, for example, with high trade exposure to the United States, could lose over 30% of its already-dwindling multinational tax revenue because of the US corporate tax makeover.³² While these are tentative estimates, the overall direction seems clear: the US corporate tax cuts may well be causing the spillover effect of depriving many countries of sufficient revenue to invest in the public services they need to combat gender and economic inequality, and to invest in human rights.³³

Pharma freebies: Company filings reveal financial boon for US drug companies

The pharmaceutical industry has long profited from the broken tax rules, and would have been one of the biggest losers from any true tax reform that ensured companies pay their fair share and vigorously tackled offshore tax avoidance. Yet, Oxfam's new findings of what actually occurred since the passage of the TCJA paint a different picture. This Tax Day, the practices of these four companies open a window into how President Trump's corporate tax cuts may well be accentuating inequality.

One year in, Johnson & Johnson, Pfizer, Merck and Abbott seem to have benefitted significantly from the corporate tax breaks. In 2018, these pharmaceutical giants together enjoyed an estimated \$7 billion in tax breaks from two main provisions of the TCJA, according to Oxfam's preliminary analysis of the companies' end-of-year financial statements.³⁴ If these companies are any indication, the corporate tax makeover appears to have done little so far to discourage the types of aggressive tax planning practices which cost taxpayers around the world billions of dollars every year.

After repeated requests, these four companies still hesitate to publish their country-by-country tax and financial reports (CBCR), making it next-to-impossible to fully understand how much they pay in taxes, and where. The financial information that is available is a bit like a 10,000-piece jigsaw puzzle strewn across the floor. Putting parts of the pieces together takes time and careful attention to detail, and we can never be sure of the complete picture in any depth. Yet looking deep into the companies' 10-K statements to the Securities and Exchange Commission (SEC), what emerges begins to paint a gripping picture.

Pharmaceutical companies on the whole paid billions less in tax in 2018

Despite the Trump administration's promises to use a carrot and stick approach to taxing multinational companies, these four pharma companies have mostly enjoyed the 2017 corporate tax overhaul as an extra-sweet carrot cake. Let's explore how the companies have benefitted from the post-TCJA sugar high.

For a big picture sense of what's happened, we look to the companies' global effective tax rate (ETR), as reported in their 2018 SEC filings. Adjusting for the one-off impacts of the TCJA,³⁵ we estimate that three of the four companies' global effective tax rates decreased, sometimes significantly.³⁶ In 2018, the actual rate Pfizer paid in tax globally across all its operations dropped from 20% over the five year average pre-TCJA down to 11%, according to these estimates. Johnson & Johnson and Abbott also seem to have dropped to 16.7% and 14.2%, respectively—lower than their effective rates in both 2017 and their 5-year average pre-TCJA. Merck is an outlier in this context, paying a higher global effective tax rate in 2018 than in 2017. While the global ETR is affected by a number of external events (e.g., changes to tax laws or tax rates around the world), a major driver of these trends arguably is the TCJA, which significantly changed tax outcomes as a result of both US and global operations.

FIG. 2: J&J GLOBAL EFFECTIVE TAX RATE

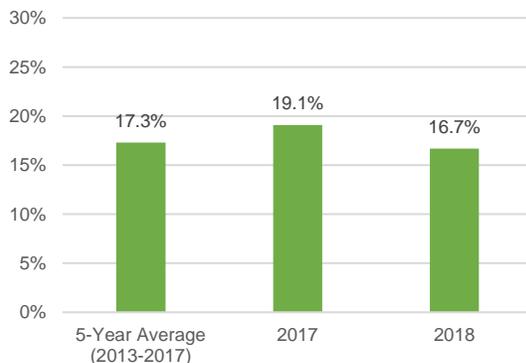


FIG. 4: PFIZER GLOBAL EFFECTIVE TAX RATE

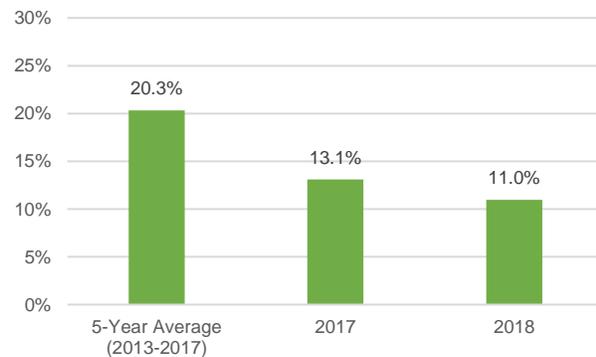


FIG. 3: MERCK GLOBAL EFFECTIVE TAX RATE

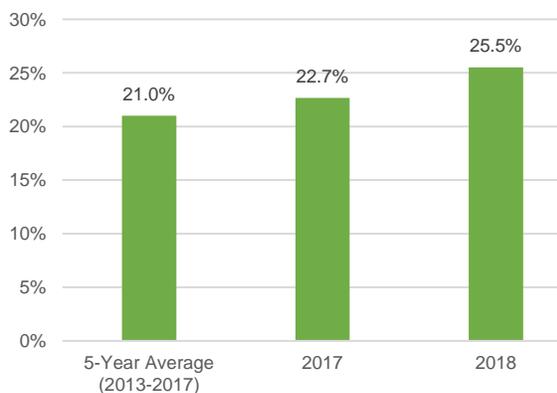
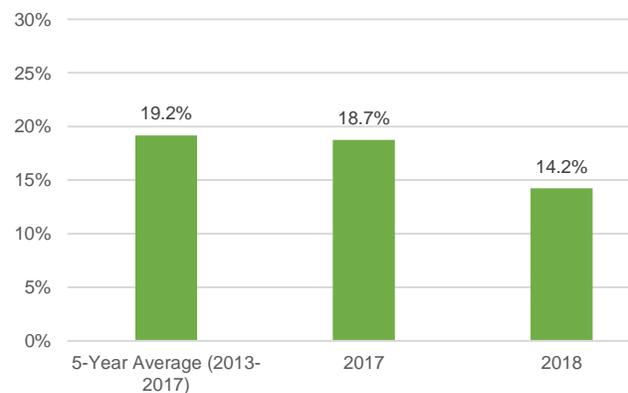


FIG. 5: ABBOTT GLOBAL EFFECTIVE TAX RATE



SOURCE: Oxfam analysis of companies' end-of-year 10-K financial statements filed at the Securities and Exchange Commission (SEC).

After exploring this bigger picture of how much tax these companies paid globally, let's now zoom into how specific elements of the US corporate tax makeover affected these companies' tax payments in the US. Publicly available data does not permit a perfect estimation of the overall impact of the TCJA on these companies. In particular, the companies' 10-K reports do not provide sufficient information to understand the positive nor negative effects of the partial foreign earnings exemption, the FDII, GILTI and BEAT provisions. That being said, we can derive the impact of the rate cut specifically in a two-step process. First, we determine the companies' taxable income in the US in 2018. While this figure is not specifically disclosed in the companies' 10-K statements, we estimate it using other available data.³⁷ We then compare this US taxable income to the change in the US corporate tax rate from the previous 35% to the current 21% (a 14% drop).³⁸ As a direct result of the cut in the corporate tax rate, we estimate that these four companies paid \$1.7 billion less in tax in 2018.

FIG. 6: Estimated US tax break to four pharmaceutical companies from rate cut

COMPANY	ESTIMATED US TAXABLE INCOME IN 2018 (MILLIONS US\$)	TAX RATE DIFFERENTIAL	2018 ESTIMATED TAX CUT IN US (MILLIONS US \$)
J&J	6,114	14.0%	856
Merck	2,552	14.0%	357
Pfizer	3,181	14.0%	445
Abbott	N/A ³⁹	14.0%	N/A
Total			1,659

SOURCE: Oxfam analysis of companies' end-of-year 10-K financial statements filed at the SEC.

Breaking the Treasury: Big tax breaks on offshore profits

For decades, US companies have stockpiled masses of profits offshore—to the tune of \$2.6 trillion by 2017.⁴⁰ They did this by taking advantage of the previous tax rules which only triggered US tax on the profits of foreign subsidiaries when those profits are repatriated to the US-based parent company (for example, through a dividend). The pharmaceutical sector—with high profits protected by intellectual property rules—has been one of the leaders in this game, with the four largest US pharmaceutical companies reportedly holding \$352 billion in profits offshore.⁴¹ Pfizer's \$199 billion held offshore was the second most of any US corporation.⁴²

Under the TCJA, these companies are finally forced to pay a one-time 'transition' tax on these offshore profits incurred over the prior decades. But there's a catch. Rather than taxing these earnings at the rate when they were made (35%), the new US corporate tax regime taxes them at a steeply discounted rate (8% or 15.5%⁴³). The companies are also given eight years to pay back these unpaid taxes.

Looking carefully at the 2017 and 2018 financial reports, these four drug companies report an amount of their previously un-taxed offshore profits earned in previous years.⁴⁴ We conservatively assume that this transition tax liability was based on all the earnings being taxed at 15.5% rather than the lower 8% rate. We then estimate how these earnings would have been taxed at the pre-TCJA rate to come up with a one-time tax break stemming directly from the US corporate tax overhaul.⁴⁵

FIG. 7: Estimated Tax Breaks on Previously Untaxed Offshore Earnings

COMPANY	REPORTED TRANSITION TAX LIABILITY ON UNTAXED OFFSHORE EARNINGS (MILLIONS US\$)	ESTIMATE OF TRANSITION TAX LIABILITY AT 35% RATE WHEN EARNINGS MADE (MILLIONS US\$)	ONE-TIME TAX CUT (MILLIONS US\$)	TAX BREAK SPREAD OUT OVER 8 YEARS (MILLIONS US\$)
J&J	10,300	23,258	12,958	1,620
Merck	5,500	12,419	6,919	865
Pfizer	15,000	33,871	18,871	2,359
Abbott	3,010	6,797	3,787	473
Total	30,810	76,345	42,535	5,317

SOURCE: Oxfam analysis of companies' end-of-year 10-K financial statements filed at the SEC.

If Congress and the President had asked these four pharmaceutical giants to pay tax in full on their past offshore profits, these companies would have paid \$42.5 billion more in taxes. If spread out over the eight years they are given to pay,⁴⁶ this would be equivalent to **\$5.3 billion per year** in tax breaks, that is to say, lost public revenue in the US.

Tax havens a thing of the past?

One of the central motivations of the US corporate tax changes was to curtail offshore tax abuse, and encourage companies to move capital, operations and profits out of tax havens and to the US. This section evaluates how the TCJA has changed the tax rules of the game in ways which clamp down on offshoring by companies like Johnson & Johnson, Merck, Pfizer and Abbott.⁴⁷

In the case of these four drug companies, has the US corporate tax overhaul slowed the shifting of profits to other low tax jurisdictions? It will take time for companies to adjust their international tax practices to the new tax law, and so we cannot know for sure the ultimate effects for years to come. But we can make some preliminary assessments from what we observe at this early stage: the problem of offshore tax avoidance is not going away any time soon.⁴⁸

To understand the effects on profit-shifting practices of these four companies, we first compare their US profit margins to those around the world. If the tax changes achieved their stated aims, one would expect to see an increase in the US profit margins and a decrease in the international profit margins, especially in low-tax jurisdictions. While this is a rough metric given the lack of 2018 subsidiary data, it gives a good sense of the overall direction. Oxfam is not accusing the drug companies of doing anything illegal, and there are valid reasons why profit margins vary across countries. That being said, the pattern is significant. For three of the four companies (Johnson & Johnson, Pfizer and Abbott) there are huge discrepancies between their high international profit margins and their relatively low US profit margins in 2018. The gap has been widening in recent years, with only a very slight change to this trend in 2018 for Johnson & Johnson⁴⁹ and Pfizer. From this first piece of evidence, the TCJA is so far not that effective at combatting offshore corporate tax avoidance.

FIG. 8: J&J PROFIT MARGINS

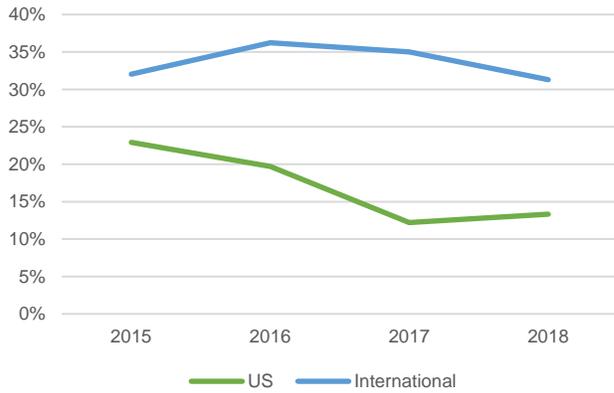


FIG. 9: PFIZER PROFIT MARGINS

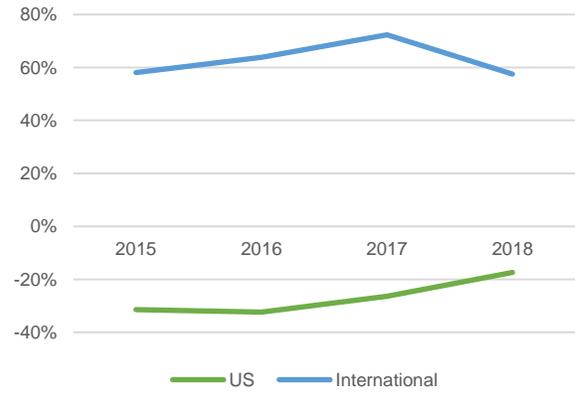


FIG. 10: MERCK PROFIT MARGINS

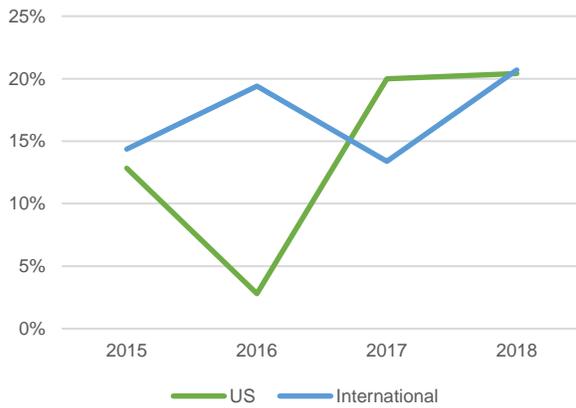
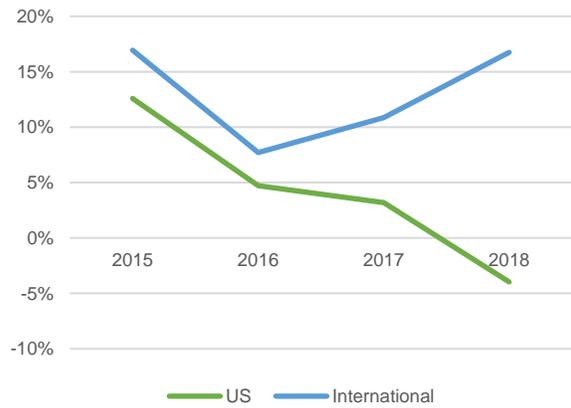


FIG. 11: ABBOTT PROFIT MARGINS



As a second indicator, we look to see if the new tax rules changed the tax structures these companies use to shield and significantly diminish their tax liabilities in the US and around the world. Put simply, are the companies still taking advantage of tax havens? The four pharmaceutical companies provide very limited information in their end-of-year financial statements about their global tax planning practices. Yet, what is uncovered shows some trends. Of the 83 new subsidiaries these companies created in 2018, 22 were in tax havens.⁵⁰ This indicates that Big Pharma’s extensive use of tax havens has not come to an end.

Finally, despite a central stated aim of the US corporate tax changes being to create a boom in new investment and manufacturing in the US, the actual results in the companies’ financial statements so far are not encouraging. While it is still early as it will take time to change long-standing practices, Johnson & Johnson’s assets in the US seems to have decreased, in particular its intangible assets,⁵¹ which are easier to relocate than tangible assets like plants. That big manufacturing boom? Merck and Pfizer increased their reported property plant and equipment by 3% and 2%, respectively. What’s more, the US imported more drugs from tax havens in 2018 than any year on record. The biggest source of pharmaceutical imports in 2018? Ireland and Switzerland.⁵² It is reasonable to conclude that—based on the limited information available—there is very little evidence yet that these pharmaceutical companies are investing inside the US, nor out of tax havens, as a result of the TCJA.

With the data available in the 10-Ks then, there is little evidence to show that the US corporate tax changes have had a meaningful impact on corporate tax avoidance by these four global drug companies. While it is still early, the huge discrepancies between high international profit margins and relatively low US profit margins remain for most of the companies. The revenue shares between the US and international sides of the business remain consistent, and there is still little evidence that the companies have increased their US holdings of tangible or intangible assets. The data provides no indication that the four pharmaceutical groups are either bringing revenue, assets or profits back to the US, nor rethinking structures that involve tax havens or low tax jurisdictions abroad. If that remains true, then one can expect the companies to continue to avoid paying billions of dollars in tax through many of the same tax tricks exposed in Oxfam's findings from last fall's *Prescription for Poverty* report.⁵³

Bringing it all together

In sum, Oxfam's analysis of the companies' financial statements uncovered that, together, the four companies seem to have received a \$1.7 billion windfall from tax rate cuts in 2018, with Johnson & Johnson at the top enjoying a \$856 million tax cut, Merck \$357 million and Pfizer \$445 million. Factoring in the tax break the companies received on their deferred, previously un-taxed, offshore earnings, Oxfam estimates that the four companies will pay \$5.3 billion less *per year* over the next eight years as a result of the US corporate tax changes. These four companies alone thus appear to be paying almost \$7 billion per year less in taxes as a result of these two central changes embedded in the US corporate tax overhaul.

FIG. 12: Estimated Tax Breaks Stemming from the 2017 US Corporate Tax Overhaul

COMPANY	ESTIMATED TAX CUTS FROM TAX RATE CHANGE IN 2018 (MILLIONS US\$)	ESTIMATED TAX BREAKS ON PREVIOUSLY UNTAXED OFFSHORE EARNINGS PER YEAR STARTING IN 2018 (MILLIONS US\$)	TOTAL (MILLIONS US\$)
J&J	856	1,620	2,476
Merck	357	865	1,222
Pfizer	445	2,359	2,804
Abbott	N/A ⁵⁴	473	473
Total	1,658	5,317	6,975

SOURCE: Oxfam analysis of companies' end-of-year 10-K financial statements filed at SEC.

These pharma giants are certainly not the only examples of multinational companies benefitting from the new US corporate tax regime, and they may not even be the worst offenders. But these billion-dollar tax giveaways—in parallel with the ease with which multi-billion-dollar companies like these take advantage of tax havens to reduce their tax contributions—provide a microcosm of the extent to which the wealthiest in our world play by an entirely different set of rules—with profound consequences.

The Human Price of Pharma Tax Breaks

Oxfam estimates illustrate how four big pharma companies received substantial tax breaks from the 2017 Tax Cuts and Jobs Act. But this gain to the companies comes at a massive loss to the public, especially the health and well-being of women and girls. Once available to the public in the form of US tax revenue, there are immense opportunity costs to what this money could have been spent on.

For perspective, the \$7 billion in tax breaks just these four companies received in 2018 could have paid for any one of these programs so vital to combatting economic and gender inequality:

Domestically:

- Health insurance for more than two-thirds of the 3.8 million children in the US still left uninsured, an important source of coverage for children of color and their mothers.⁵⁵
- Quality early childhood education for around 827,000 low-income children by funding 79% of the Head Start program budget,⁵⁶ in turn benefitting the mothers of these children.
- Doubling the entire annual budget of the Maternal and Child Health Block Grant, which provides essential funds for health issues ranging from women's health to newborn screenings to immunizations so children can attend school.⁵⁷
- Almost doubling comprehensive efforts to end the opioid crisis, which killed almost 50,000 people in 2017 alone⁵⁸ and contributed to a decline in US life expectancy for the third straight year.⁵⁹
- Increasing, by almost one-fifth, the National Institutes of Health's budget, which facilitates essential research to develop new life-saving and life-enhancing medicines.⁶⁰

Internationally:

- A comprehensive cervical cancer prevention and immunization program for 50 million 10-year-old girls and more than 750 million women of screening age in low- and middle-income countries over five years.⁶¹
- Doubling the budget of the US President's Emergency Plan for AIDS Relief (PEPFAR), which supports life-saving HIV treatment for more than 13.3 million people around the world.⁶²
- Increasing by five-and-a-half-fold US Official Development Assistance on gender equality programs.⁶³
- Covering almost 20% of the financing gap to meet universal health coverage in 67 developing countries, which could save 97 million lives.⁶⁴

Around 10 million people in our world today live with tuberculosis (TB). Over one million lost their lives from TB-related deaths in 2017,⁶⁵ making it the number-one infectious disease killer in the world. Exacerbating this epidemic is the rise of multi-drug-resistant TB (MDR-TB) among an estimated 558,000 people.⁶⁶ Growing evidence shows that newer drugs, especially bedaquiline produced by Johnson & Johnson, could significantly improve outcomes and dampen side effects. Yet, these new drugs remain stubbornly out-of-reach for 90% of eligible people.⁶⁷

But this is not inevitable. The estimated \$2.5 billion tax giveaway the US government granted to Johnson & Johnson could have provided a six-month course of bedaquiline to all those suffering from multi-drug-resistant TB *seven times over*.⁶⁸ What's more, J&J's tax breaks alone in 2018 could have funded *two times over* the longer WHO-recommended treatment regimen for MDR-TB for everyone suffering from multidrug-resistant TB.⁶⁹

Pharma freeloading: Patients and the public lose while drug companies spend tax breaks on investor and executive payouts

The four pharmaceutical companies analyzed here have received significant tax breaks from the US corporate tax overhaul, according to Oxfam estimates, with no evidence of diminishing offshore tax avoidance. But how have they used the fresh cash from their tax cuts? Have they invested what once was taxpayer money to create better and more affordable medicines?

One of the central fables of the US tax remodel was that by allowing companies to keep more of their earnings, these pharmaceutical companies would choose to invest that fresh cash in R&D and in capital investments, thereby innovating life-saving drugs and boosting overall economic prosperity. In an historic hearing on drug pricing in February of this year, members of the US Senate Finance Committee grilled pharma executives on whether they've used their new tax breaks to lower the costs of prescription drugs. Johnson & Johnson's Worldwide Chairman for Pharmaceuticals, Jennifer Taubert, testified that the tax cuts "provided us the opportunity to invest an incremental \$30 billion in R&D and capital investments in the US over the next four years. We think that's the best way for us to deliver for patients."

But how has the rhetoric held up to reality? Let's dive into the numbers from the four companies' own financial statements to assess if increased R&D has indeed been the priority.

Shareholders first, patients on the margins: Payouts boom while R&D stalls

Despite their promises over the past 18 months, three of the largest US drug companies reported in their 2018 financial statements that they've spent much more in investor payouts in the form of stock buybacks and dividends than in research and development.

Over the last decade, Johnson & Johnson, Merck, Pfizer and Abbot Laboratories spent, on average, \$38.6 billion on investor payouts each year, while spending an average of \$29 billion on R&D annually. Peeking into their financial statements for 2018, the first year of the US corporate tax cuts, reveals that these four companies, as a whole, distributed even more to their investors, while spending on R&D flat-lined. According to the companies' own 10-K financial statements, they together spent \$31 billion on research and development, basically stable in size since 2017. Yet, in the same year the companies spent \$52 billion on payouts to shareholders in the form of dividends and buybacks—two-thirds more than their R&D spending.⁷⁰ That is, these four companies spent \$21 billion more in paying out to investors than they did on R&D in the first full year of the new US corporate tax regime.

FIG. 13: Pharmaceutical company spending on stock buybacks, cash dividends, and research & development in 2018 (billions US\$)

COMPANY	REVENUE	STOCK BUYBACKS (BB)	CASH DIVIDENDS (DV)	INVESTOR PAYOUTS (BB + DV)	R&D	PAYOUTS AS % OF REVENUE	R&D AS % OF REVENUE
J&J	81.6	5.9	9.5	15.4	10.8	18.9%	13.2%
Pfizer	53.7	12.2	7.9	20.1	8.0	37.4%	14.9%
Merck	42.3	9.1	5.2	14.3	9.8	33.8%	23.2%
Abbott	30.6	0.2	1.9	2.1	2.3	7.0%	7.5%
Total	208.2	27.4	24.5	51.9	30.9	24.9%	14.8%

SOURCE: Oxfam analysis of companies' end-of-year 10-K financial statements filed at SEC.

While this trend toward prioritizing payouts over R&D has wavered over time across the companies, both Pfizer and Merck have increased their investor payouts quite aggressively since the passage of the US corporate tax overhaul. Together, their stock buybacks jumped over \$12 billion in 2018 while their R&D flat-lined.

FIG. 14: PFIZER INVESTOR PAYOUTS VS. R&D

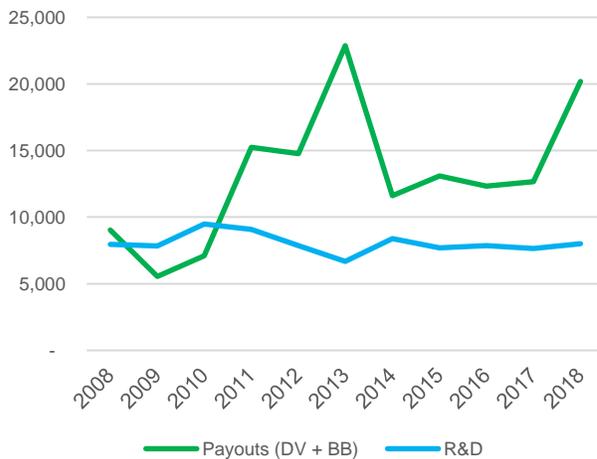


FIG. 15: MERCK INVESTOR PAYOUTS VS. R&D

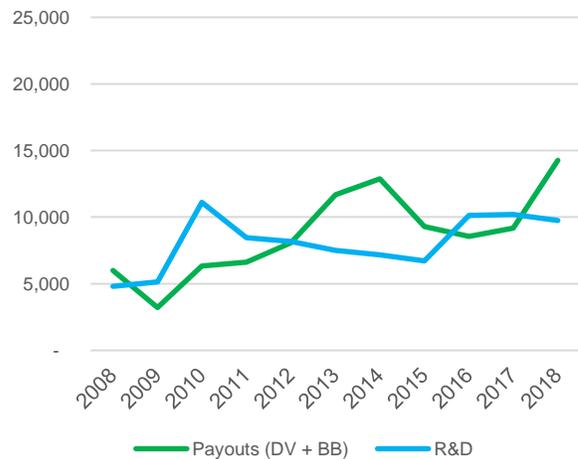


FIG. 16: J&J INVESTOR PAYOUTS VS. R&D

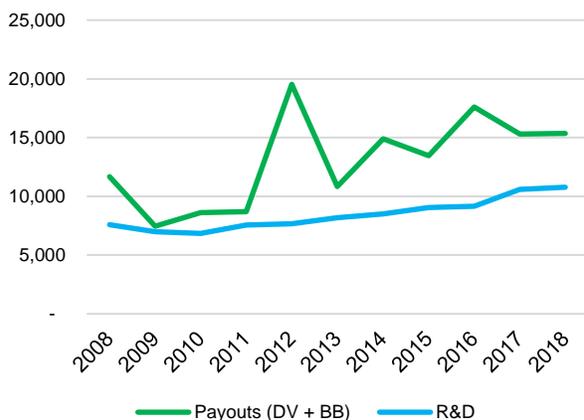
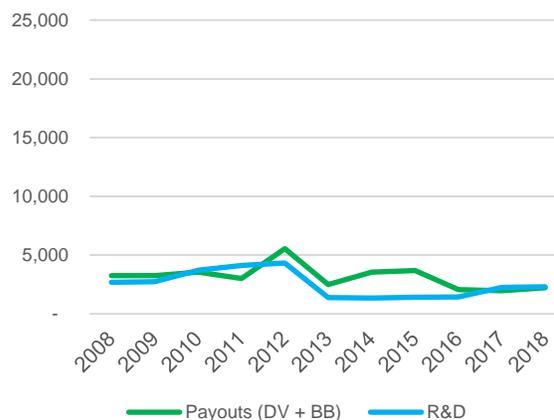


FIG. 17: ABBOTT INVESTOR PAYOUTS VS. R&D



Of course, these simple comparisons between investor payouts and R&D do not tell the full picture of company priorities. The current rules of today’s US economy compel all publicly-listed companies to maximize shareholder value as a first priority of business, so it’s unsurprising that companies would return some of their new cash from a massive tax cut to investors. The pharmaceutical sector is not alone in this respect, but symptomatic of a much broader set of laws and policies found in the tax code, intellectual property protections, corporate governance, and anti-trust regulations that set companies up toward the almost single-minded pursuit of short-term investor payouts.⁷¹

R&D spending is also not a perfect metric for efforts to increase the affordability of medicines to all. Pharmaceutical companies remain, for the most part, silent on what they actually spend their R&D budgets on. Are they dedicated to developing the most effective medicines to fight key diseases, or instead on developing the most profitable products? Are these R&D budgets invested in diseases more common in low- and middle-income countries or where the biggest markets are?⁷² Is the R&D money invested in medicines which respond to the material, and sometime very different, needs of women and girls? These remain unanswered questions. For this analysis, we take at face value the claims that company R&D is a key determinant in efforts to provide for more affordable medicine.

So while these comparisons don’t tell the whole picture, it is no mystery who benefits most from a set of rules which compel companies to increase return to investors at almost all costs. The richest 10% of Americans now own 84% of all stocks.⁷³ Men own significantly more equity in US companies than women. For every \$1 in company equity held by men, women hold 47 cents.⁷⁴ Racial gaps in the US stock market are also staggering,⁷⁵ with white Americans benefitting from a larger return on investment because they hold more stock than African-Americans and Latinos.⁷⁶ Given these existing wealth inequalities, low-income households, women and people of color (and especially low-income women of color) in the US lose out disproportionately from the record levels of stock buybacks during the first operative year of the TCJA.

In the end, it is the most well-off in our economy—disproportionately rich white men—who benefit most when companies distribute their excess capital from tax cuts to investors. If you care about growing inequalities, stock buybacks are particularly concerning as they, in contrast to dividends,

can allow trillions of dollars of stock market gains, held by the richest of US billionaires, to escape federal income taxation altogether.⁷⁷

A year into the US corporate tax makeover, evidence from the companies' very own financial statements illustrate that some of the most profitable US drug companies have used their record profits (derived from publicly-funded research, taxpayer-funded patent protection, overly-prized drugs paid for with public funds, and significant tax breaks) not so much to prioritize investment in innovation, but to assuage their investors, and their senior executives—to which we now turn.

Senior executive pay

One reason why stock buybacks are so popular with corporations is the loophole written into the 1996 US law on executive compensation. While the intent of the law was to rein in runaway CEO pay, the loophole allowed for unrestricted “performance pay,” with performance measured by increases in the price of company stock. Buybacks give a boost to stock prices by reducing the total number of available shares. Most outrageously, performance pay for executives was deductible from the companies' taxes—an element that was thankfully eliminated in the 2017 tax law.

Needless to say, drug company executives are some of the highest-paid executives around, making multiple millions annually, much of it through stock-based compensation. Pharmaceutical CEOs' average compensation in 2015 was \$18.5 million, 71% greater than the median earned by executives in all industries.⁷⁸ Even while Pfizer hiked the price of dozens of drugs in 2017, the compensation of its former CEO Ian Read jumped by 61%, putting his total compensation at more than \$26 million.⁷⁹ His deal is indicative of how CEO pay is structured to make stock price the measure of success. His massive compensation for 2017 also included \$13.1 million in stock linked to financial goals and stock price, in addition to an \$8 million “special equity award” linked to a rise in the company's stock.⁸⁰ If factoring in the actual realized gains of this stock received, Mr. Read's total compensation in 2018 was closer to \$47 million.⁸¹ Johnson & Johnson's CEO was paid \$20.1 million last year, according to the company's proxy statement, seemingly down from the \$29.8 million reported in 2017. Yet, after further analysis, based on the actual realized gains of stock in the period, his pay actually increased 55% from 2017 to \$46.4 million in 2018.⁸²

Buying Back and Cashing Out: How one Pharma Executive Personally Benefitted during a Surge in Buybacks following the Tax Cuts and Jobs Act

In late 2017, Merck announced \$10 billion in stock buybacks. In October, 2018, the company announced it would spend another \$10 billion repurchasing its own stock. Another funny thing started happening. Throughout this period, and as the stock price rose, Merck CEO Kenneth Frazier began aggressively selling stocks he received as part of his compensation package. In less than nine months of a very busy buyback period, Merck's CEO has sold an astonishing \$110 million of stock.⁸³

Transaction Date	Shares Sold	Average Share Price	Value of stock sold
7/31/2018	228,091	\$65.00	\$14,826,691
9/18/2018	279,851	\$70.08	\$19,611,818
10/2/2018	279,850	\$72.07	\$20,168,258

2/5/2019	231,566	\$78.08	\$18,079,654
2/15/2019	135,613	\$80.03	\$10,853,106
2/21/2019	95,953	\$80.01	\$7,677,541
3/4/2019	20,105	\$82.00	\$1,648,684
3/13/2019	18,725	\$82.00	\$1,535,454
3/20/2019	192,736	\$82.05	\$15,813,372
Total			\$110,214,578

SOURCE: SEC Form 4 at <https://www.secform4.com/insider-trading/310158.htm>

This episode paints a vivid picture of how company managers can personally enrich themselves during stock buyback periods. This mirrors a concern first brought to light by SEC Commissioner Robert Jackson in his analysis of inside selling in companies across the country: that stock buybacks “give executives an opportunity to take significant cash off the table, breaking the pay-performance link.”⁸⁴

Oxfam is not implying that Mr. Frazier was involved in any illegal activities. Indeed, this CEO is playing by a set of rules and policies that are rigged in his favor, in contrast to ordinary workers who have no chance at these sorts of games. Cases like this one are also emblematic of a deeper story about the US economy: companies in all sectors are becoming more extractive than productive.⁸⁵ The fact that Merck’s CEO cashed out over \$110 million during a significant spike in company share repurchases (see Fig. 15 above) also throws up warning signs for policy-makers and investors as to the intention, and ultimate effect, of the company’s stock buyback program, which surged since the 2017 tax reform.

In response, Oxfam is working with investors to require enhanced oversight over inside selling during stock buyback periods.

It cannot be understated that the very business models of these pharmaceutical companies rely on public will in the form of taxpayer money, which pays for essential front-end research at the National Institutes of Health,⁸⁶ protects the prized patents and other intellectual property, subsidizes various business, charitable and marketing activities, and pays for large swaths of the prescription drug market through publicly-funded programs such as Medicare, Medicaid and the Veteran’s Administration.

With so much economic anxiety across the US today, continuing to rely on offshore tax avoidance, while distributing so much of their 2018 tax giveaways to investors and already-high-net wealth executives, does not seem like a winning, long-term strategy for these companies. But what does public outrage matter if the corporations control the politics?

Power in politics

Power is, of course, the lynchpin which allows companies to rig the tax and intellectual property rules in favor of profit and payouts at the expense of patients and the public. Tax avoidance, rent-seeking and price-gouging by drug companies are symptomatic of the fundamental political inequalities in influence between the pharmaceutical sector and the public.

In 2018, the pharmaceutical industry altogether spent \$172 million to empower themselves politically through lobbying, on par with what they invested politically in 2017, and \$24 million more than the average over the previous five years. In 2018, the Pharmaceutical Research & Manufacturers of America (PhRMA), the industry’s largest trade association, increased its direct

political lobbying by 8% to a record \$27.9 million. While no health legislation was being seriously considered in 2018, a new trade agreement was negotiated and signed with Mexico and Canada that includes the strongest monopoly protections for intellectual property supported by pharmaceutical companies.⁸⁷ Key regulations to implement the corporate tax rules of the TCJA were also being written in 2018. Alongside the money they raised for PhRMA, the four companies Oxfam studied spent a total of \$28.6 million lobbying in 2018. Pfizer spent \$11.4 million in lobbying, Abbott \$3.7 million and Merck, \$6.9 million. Johnson & Johnson, for its part, spent \$6.7 million in direct lobbying in 2018, slightly less than in 2017 but well over the five-year average.⁸⁸

The immense financial returns on these lobbying investments are clear in the tax breaks the companies received, and the immense challenges patients and the public face when proposing solutions for more affordable medicines. And this influence extends beyond borders. Following a pattern of undue influence overseas, PhRMA urged the US trade rep in early 2019 to take “urgent action” against two dozen other countries over their patent and pricing policies aimed at increasing access to medicines, even though the actions of those governments are totally legal under WTO rules.⁸⁹

#ShePays: How tax cuts and tax avoidance affect the human rights of women and girls

On a daily basis, taxes save lives. In many countries around the world, including the US, the public funds schools, healthcare clinics, public safety programs, medicines and many other services so vital to a life of dignity. A well-funded public sector and investment in social programs, public health services and gender equality programs are especially essential for women to realize their human rights.



Yet, corporate tax dodging reduces the funds available to invest in public services, with particularly disproportionate, adverse impacts on women. Revenue shortfalls can shrink public budgets for social services, leading to spending cuts that disproportionately affect low-income populations. Girls and women are hit the hardest, because they are more likely to live in poverty, more likely to rely on publicly funded health care, and less likely to be able to pay out-of-pocket for health care.⁹⁰

Women are affected by cuts in public spending on healthcare in a number of ways: they are not able to access the health service they need for themselves; the cost of treatment may deter women from using health services, which has dire consequences on their health; and the lack of affordable medicines or healthcare increases the likelihood that family members get sick, increasing the unpaid care workload borne by women. The price of cancer medicines, for example, may mean that women live without treatment—risking their lives.⁹¹ Lack of investment

in cancer care means that people are forced to sell their assets and borrow money to access care, falling deeper into poverty. In this sense, corporate tax avoidance, unaffordable medicines and under-funded healthcare are both causes, and consequences, of inequality.

Budget constraints can also lead to chronic under-funding of other key institutions and programs that are crucial for gender equality and women's rights, including education, childcare and eldercare. When public services are inadequate or unavailable, women step in as caregivers, often compromising their own health and their opportunities for education and employment. This additional burden on women entrenches inequalities between men and women in terms of opportunities to move out of poverty or advancing their life opportunities. Women are disadvantaged even further when, in an effort to make up revenue shortfalls, state governments increase their reliance on more easily administered but regressive taxes, such as consumption or value-added taxes on basic goods and services which women tend to spend more of their income on than men.⁹²

Corporate tax avoidance is not a victimless practice, but has profound effects on economic, racial and gender inequality. Rather than lavishing the shareholders and executives of some of the most profitable companies on earth with even more disposable income, the US government could have chosen to spend what was formerly taxpayer money on expanding health services for women and girls, while investing more in developing new life-saving and life-enhancing treatments. These treatments, in turn, could have advanced women's health rights, while relieving some of the unpaid care burden women assume when their family members become sick.

What we can accomplish together: Recommendations for policy and practice

In the end, Big Pharma depends on the good will of the public and a functioning tax system to thrive. Without our taxpayer dollars, these companies would lack the innovation, the legal protection and the healthcare market to exist at all. Working together, governments, companies, investors and ordinary people have the potential to transform pharmaceutical companies into more responsible and more transparent actors—producing life-enhancing medicines in the public good and available to all, without discrimination.⁹³

We call on Johnson & Johnson, Merck, Pfizer and Abbott Laboratories to:

Act more transparently—by publishing their full country-by-country reports (CBCR) of key tax and financial information necessary for the public to understand and assess the company's tax practices.

Pay their fair share—by publicly committing to pay tax on profits where economic activity takes place, and to stop shifting profits to low-tax jurisdictions.

Use their influence responsibly—to shape a more equitable tax system for sustainable and inclusive growth. This would include publicly disclosing all contributions made to political candidates, policymakers, trade associations, think tanks, coalitions, and other political entities to influence policy in the US and abroad, and publicly committing to align the corporations' financial contributions and private advocacy with their credos and codes of conduct on tax policy and access to medicines.

Commit to transparency as a necessary step to enable access to affordable medicines for all—by publicly declaring actual spending on R&D, production, and marketing of medicines and pledging to full transparency on medicine prices, results of clinical trials, and patent information.

We call on the US government to:

Restore public confidence in the tax system by requiring multinational companies to be fully transparent—by requiring companies to publish country-by-country tax and financial reports, which all large US multinational corporations are already preparing.

Create a level playing field by ensuring large multinational companies pay their fair share of taxes where economic activity takes place—rather than shifting the tax burden onto consumers and workers. As a start, this would require combatting offshore tax avoidance by equalizing the rates at which US multinational companies' domestic and foreign profits are taxed, and better cracking down on "inversions," whereby US multinational companies move their residence (on paper) to tax havens to lower their tax bill.

Commission an independent evaluation to assess and address the TCJA's impacts on gender and economic inequality in the US and abroad—improving upon the tax spillover assessments the Republic of Ireland, the Netherlands and the IMF have already carried out.⁹⁴

Ensuring policies that enable access to affordable medicines in the US and around the world—by requiring corporations to disclose the cost of R&D, production, and marketing of medicines before approving product registration, by taking action to implement the recommendations of the UN High-Level Panel report at the national level and by actively promoting implementation by international institutions including the WHO, the WTO and the UN. The US government should also support the draft resolution to be discussed at the World Health Assembly, in May 2019, which is seeking to improve the transparency of markets for drugs, vaccines and other health-related technologies.

We call on investors to:

Engage with multinational companies—on how they can become more responsible and transparent taxpayers.

Support efforts to require companies to publish country-by-country tax and financial reports—as necessary information for more nuanced financial, risk and governance analysis.

We call on people around the world to:

Join Oxfam to demand that all companies pay their fair share of taxes, and stop cheating women and girls out of the chance to beat poverty.

Research Methodology

The research results were based on a careful analysis of 10-K financial reports filed by the four pharmaceutical companies with the US Securities and Exchange Commission (“SEC”). These filings contain financial statements for the companies’ global operations with specific data on income taxes, cash flows, geographical results and other disclosures. The 10-K reports also include qualitative information on various issues, including business, geographical, segment and financial overviews as well as commentary on items disclosed in the financial statements, such as income tax disclosures. This information was reviewed to better understand the underlying data trends, and to identify information relevant to the research.

Data and disclosures from the 10-K reports were used to calculate the following: profit margins, effective tax rate, transition tax liability, estimate of taxable income and spending on R&D, dividends and stock buy-backs. Effective tax rate was calculated as the reported tax expense divided by the reported earnings before tax. Profit margin was calculated as the reported profit divided by the reported revenue. Estimate of US taxable income was calculated as the reported US current tax expense divided by the US statutory tax rate.

The 10-K reports also include a list of the corporate groups’ subsidiaries, with their names and jurisdictions. These lists were manually reviewed to identify the name and jurisdiction of any new entities in 2018, and to determine the total number of group subsidiaries.

Broadly, the information and results in the 2018 10-K reports were compared to the 2013-2017 data from the 10-K reports. The data was analyzed to identify changes and trends and, by extension, estimate the impacts of the TCJA in 2018. Where appropriate, multi-year data comparisons were used to smooth out exceptional financial results.

Much of the 10-K data from the period 2013-2017 was compiled as part of Oxfam’s *Prescription for Poverty* research that was released in September 2018.⁹⁵ This new research drew from those datasets, while layering on additional data for 2013-2017 as well as including the new data from the 2018 10-K reports. All data, including data related to foreign operations, was obtained from the 10-K reports which are presented in USD. Accordingly, all amounts are in USD and no currency conversion was required.

The four pharmaceutical companies’ 10-K reports included specific TCJA tax items in 2017 and 2018. Broadly, these related to the TCJA’s transition tax on undistributed foreign earnings and to the re-measurement or reversal of pre-existing deferred tax assets and liabilities. These essentially represent “one-off” impacts for the companies and their accounts to transition to the new corporate tax system brought about by the TCJA. The purpose of this research is to understand the underlying impacts of the TCJA on the four pharmaceutical companies. Given the distortive nature of these transitional adjustments, the “one-off” TCJA tax expenses and benefits were excluded from the underlying data and analysis, where appropriate. No other adjustments have been made to the financial, tax and other data of the selected pharmaceutical companies.

Company engagement

Oxfam reached out to all of the companies named in this briefing to share the data gathered, the methodology employed, and the findings of our research. We also sent them our recommendations, with the aim of engaging them directly regarding responsible corporate tax

practice. Johnson & Johnson provided constructive feedback that has been incorporated into this analysis. The other companies neither confirmed nor denied the research findings.

Acknowledgements

To better understand the ways in which drug companies arrange their financial and tax operations, Oxfam spoke with current and former executives from the top 10 pharmaceutical and accounting firms on the condition of anonymity, as well as other tax experts. These executives and experts described the carefully designed corporate structures, which systematically minimize the amount of profit allocated in higher-tax jurisdictions.

For this particular research, Oxfam expresses deep gratitude to the groups and individuals with whom we consulted, including:

- A current head of tax for a global 100 company, who wishes to remain anonymous
- An international tax and transfer pricing specialist, attorney and Certified Public Accountant formerly staff of a Big 4 accounting and advisory firm, who wishes to remain anonymous
- Tommaso Faccio, head of secretariat of the Independent Commission for the Reform of International Corporate Taxation (ICRICT), a lecturer in accounting at Nottingham University Business School (UK), and a former transfer pricing senior manager at a Big 4 accounting and advisory firm
- Alex Cobham, Chief Executive, Tax Justice Network
- Senior tax advisor and Certified Public Accountant with an expertise in international taxation within the pharmaceutical industry, formerly a staff member of a Big 4 accounting and advisory firm, who wishes to remain anonymous

Niko Lusiani, Senior Advisor at Oxfam America, authored this brief.

ENDNOTES

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- ¹⁵ In 2013, Abbott spun off its proprietary R&D-based pharmaceutical business into a separate corporation named Abbvie, while Abbott focused on medical devices, diagnostics, nutrition, and branded generic pharmaceuticals. See “Abbott Completes Separation of Research-Based Pharmaceuticals Business,” PR Newswire, January 2, 2013, <https://www.prnewswire.com/news-releases/abbott-completes-separation-of-research-based-pharmaceuticals-business-185406542.html>. Abbott does not sell pharmaceuticals in the US, although Abbott does continue to sell pharmaceutical products as a significant part of its global business. While Abbott, like Johnson & Johnson, provides a variety of health care services and products, this report refers to Abbott as a pharmaceutical or drug company. In addition, this report focuses on the US-based pharmaceutical company Merck and Company, Inc., sometimes known as Merck Sharp & Dohme (MSD) outside the US, not the German-based pharmaceutical company Merck KGaA.
- ¹⁶ All 210 drugs approved in the United States between 2010 and 2016 benefited from publicly funded research, either directly or indirectly. See Galkina Cleary et al., “Contribution of NIH Funding to New Drug Approvals 2010–2016,” Proceedings of the National Academy of Sciences (PNAS) 115, no. 10, 2018 at <http://www.pnas.org/content/early/2018/02/06/1715368115>
- ¹⁷ Kaiser Family Foundation, “Women’s Health Survey, Chapter 5: Women and Health Care Cost,” 2013
- ¹⁸ Ibis Reproductive Health, “Research Brief: The Impact of Out-of-Pocket Costs on Abortion Care Access,” 2016
- ¹⁹ Once more detailed information becomes available, particularly in relation to the four pharmaceutical companies’ foreign subsidiaries, Oxfam envisages completing a more comprehensive analysis. But even then, this sort of research – which by nature is missing key data from company’s global tax and financial reports – illustrates in real terms why public country-by-country financial and tax reporting is so important to both understand corporate tax behavior and craft policy responses fit for purpose.
- ²⁰ Marketplace, “Chairman Brady has faith that the GOP tax cuts will pay for themselves,” Nov. 30, 2017 at <https://www.marketplace.org/2017/11/30/economy/chairman-brady-has-faith-gop-tax-cuts-will-pay-themselves>
- ²¹ There are a variety of less prominent provisions which affect all US companies – multinational and domestic – which lay outside the scope of this analysis.
- ²² According to the Internal Revenue Service, foreign earnings, held in the form of cash and cash equivalents, are taxed at a 15.5 percent rate, and the remaining earnings are taxed at an 8 percent rate. See <https://www.irs.gov/newsroom/irs-issues-guidance-on-transition-tax-on-foreign-earnings>
- ²³ After considering deemed tax credits.
- ²⁴ Data used from Federal Reserve Economic Data on Corporate Profits After Tax with Inventory Valuation Adjustment (IVA) and Capital Consumption Adjustment (CCAdj), Billions of Dollars, Quarterly, Seasonally Adjusted Annual Rate, at <https://fred.stlouisfed.org>
- ²⁵ Tyler Evilsizer, “Putting the ‘Trump tax cuts will pay for themselves’ myth to bed,” Feb. 19, 2019 <https://thehill.com/opinion/finance/430604-putting-the-trump-tax-cuts-will-pay-for-themselves-myth-to-bed>
- ²⁶ https://www.wsj.com/articles/u-s-tax-revenue-declined-0-4-in-2018-11550084426?mod=hp_lead_pos4
- ²⁷ Oxfam analysis, using CBO’s January 2019 report The Budget and Economic Outlook: 2019 to 2029, Appendix F, www.cbo.gov/publication/54918
- ²⁸ Idem.

²⁹ Idem.

³⁰ Idem.

³¹ Beer, Klemm, Matheson, “Tax Spillovers from US Corporate Income Tax Reform,” IMF Working Paper No. 18/166, July 13, 2018, at <https://www.imf.org/en/Publications/WP/Issues/2018/07/13/Tax-Spillovers-from-US-Corporate-Income-Tax-Reform-46055>

³² Idem.

³³ Center for Economic and Social Rights (CESR), “Tax abuse leads to human rights abuse,” July, 2018 at <http://www.cesr.org/tax-abuse-leads-human-rights-abuse>

³⁴ See methodology and analysis below.

³⁵ Given their distortive nature, adjustments have been made to the 2017 and 2018 data to exclude the one-off transitional impacts of the TCJA, as reported in the companies’ 10-Ks. Broadly, these one-off impacts are as a result of the transitional tax on previously accumulated foreign earnings, the reversal of deferred tax liabilities that had been booked on previously accumulated earnings, the remeasurement of deferred tax liabilities and deferred tax assets at 21% rather than 35% and the deferred tax liability that arises in 2018 by accounting for GILTI under the deferred method (applicable to J&J only). Both the transitional expenses and the transitional benefits have been excluded from the underlying analysis of this section.

³⁶ As a global measure, the global effective tax rate (ETR) is driven by many other factors, such as changes to tax laws or tax rates in other jurisdictions, differences in the jurisdictional mix of earnings or irregular or one-off tax items such as business or asset disposals.

³⁷ The four pharmaceutical companies’ US taxable income is ultimately determined in the IRS tax filings, and is not specifically disclosed in the 10-K reports. However, the taxable income for a given year can be estimated based on the current tax expense. Under US tax accounting rules, a current tax liability or asset is recognized for the estimated taxes payable or refundable on tax returns for the current period (or prior periods). Current tax expense is separate to deferred tax expense. Deferred tax expense represents the accounting for items which, whilst occurring in the current financial year, will not have a tax impact until future years. Current tax expense represents the amount of tax expense pertaining to current year taxable income from continuing operations. As the current tax expense disclosed in the 10-K is already tax affected, it must be grossed up for the purposes of estimating taxable income, as follows: Estimate of US taxable income = US current tax expense ÷ statutory tax rate (21% in 2018). Although this method is imperfect, it is one of the best available approaches to estimating the selected pharmaceutical companies’ taxable income in the US. Accordingly, the tax accounting disclosures have been used to estimate each company’s US taxable income for 2018. The years 2013-2017 have also been computed for comparison.

³⁸ As stated, this method focuses almost exclusively on the impacts of the tax rate change given the lack of reliable and relevant information in the 10-Ks and more generally. This then assumes that there is, on net, neither a positive nor negative effect of the FDII, GILTI and BEAT provisions.

³⁹ Abbott’s US tax expense was negative so our estimation method is not applicable here.

⁴⁰ Institute for Taxation and Economic Policy, quoted in Rochelle Toplensky, “Multinationals Pay Lower Taxes Than a Decade Ago,” Financial Times, March 12, 2018.

⁴¹ Institute for Taxation and Economic Policy, “Offshore Shell Games 2017,” October, 2017 at <https://itep.org/offshoreshellgames2017/>

⁴² See Americans for Tax Fairness, “Bad Medicine: How GOP Tax Cuts Are Enriching Drug Companies, Leaving Workers and Patients Behind,” April, 2018 at <https://americansfortaxfairness.org/pharma-leaving-workers-patients-behind/>

⁴³ According to the Internal Revenue Service, foreign earnings held in the form of cash and cash equivalents are taxed at a 15.5 percent rate, and the remaining earnings are taxed at an 8 percent rate. See <https://www.irs.gov/newsroom/irs-issues-guidance-on-transition-tax-on-foreign-earnings>

⁴⁴ The specific transition tax liability (including the 2018 revisions) was disclosed in the Income Tax Note of each company’s 10-K reports.

⁴⁵ The transition tax calculation is extremely complex and requires detailed information on the nature of foreign earnings, foreign tax payments, details of subpart F income and credits (none of which is public information), which Oxfam does not have access to. In order to estimate the tax benefit obtained as a result of the companies paying the reduced transition tax on accumulated foreign profits (rather than having to pay 35%) the following assumptions have been made: 1) As the company’s 10-K reports are not specific, it has been conservatively assumed that the transition tax liability was based on all the earnings being taxed at 15.5% rather than the more concessional 8% rate. 2) It has been assumed that the amount of foreign tax credits in the selected pharmaceutical companies transition tax provision is in the same proportion to the rate (15.5%) as had the profits been repatriated without the TCJA (i.e., at 35%). This appears to be reasonable given that under the transition tax, the foreign tax credits are reduced proportionately. Therefore, the repatriation tax liability that would have accrued without the TCJA can be estimated by grossing up the provision for the difference in tax rate as follows: Estimate of liability = Transition Tax Provision x 2.259 (35%/15.5%). This approach assumes that the tax liability was effectively committed at the time of earning the foreign profits and, therefore, at some point the company would be liable to tax at 35% on all the accumulated foreign earnings (less applicable tax credits).

⁴⁶ Under the TCJA, the transition tax liability is payable over 8 years beginning in 2018. However, the liability is unevenly distributed in those 8 years, with 8% of the total liability payable in each year from 2018-2022, then 15% payable in 2023, 20% in 2024 and 25% in 2025. For the purposes of this analysis, our approach has been to characterize the tax break as being evenly distributed across the 8 years.

⁴⁷ For forecasts on how the TCJA may affect profit-shifting by firms more broadly over time, see Clausing, “Profit Shifting Before and After the Tax Cuts and Jobs Act,” Oct. 2018 at <https://ssrn.com/abstract=3274827> or <http://dx.doi.org/10.2139/ssrn.3274827>

⁴⁸ Phillips, “Post-TCJA, International Corporate Tax System Still Leaking Hundreds of Billions in Profits,” Nov. 2018 at <https://itep.org/post-tcja-international-system-still-leaking-hundreds-of-billions-in-profits/>

⁴⁹ In response to this data, JNJ explained that the pattern observed is a result of a number of factors including one-time items as well as increased US R&D investment in 2017 and 2018, following the CEO’s announcement in April 2018 that, “The US tax legislation passed late last year is creating the opportunity for us to invest more than \$30 billion in R&D and capital investments in the U.S. over the next four years, which is an increase of 15%.”

⁵⁰ Little is disclosed about the specific nature of each restructure. However, it is possible such restructures are opportunities to alter asset or subsidiary ownership, group transactions or other structures that may be relevant to tax and TCJA outcomes. For the purposes of this analysis, the following jurisdictions were considered tax havens or low-tax jurisdictions: Bermuda, Cayman Islands, Netherlands, Switzerland, Singapore, Ireland, Curacao, Hong Kong, Cyprus, Bahamas, Jersey, Barbados, Mauritius, British Virgin Islands. This is consistent with Oxfam’s list of the top 15 corporate tax havens in “Tax Battles: The Dangerous Global Race to the Bottom on Corporate Tax”, Dec. 2016, at <https://www.oxfam.org.au/wp-content/uploads/2016/12/bp-race-to-bottom-corporate-tax-121216-en-EMBARGO.pdf>. The 2018 10-K reports disclose only “significant subsidiaries.” It is possible that some of these subsidiaries existed previously but only became significant in 2018. The 10-Ks list the following total number of significant subsidiaries in 2018: J&J: 256, Merck: 404, Pfizer: 431 and Abbott: 577.

⁵¹ J&J reports in its 2018 10K that its total long-lived assets in the US decreased, of which approximately 84% are intangible assets.

⁵² Setser, “When Tax Drives the Trade Data,” Council on Foreign Relations, March 2019 at <https://www.cfr.org/blog/when-tax-drives-trade-data>

- ⁵³ Oxfam, “Prescription for Poverty: Drug companies as tax dodgers, price gougers, and influence peddlers,” Sept. 2018 at <https://www.oxfam.org/en/research/prescription-poverty>
- ⁵⁴ Abbott’s US tax expense was negative so our estimation method is not applicable here.
- ⁵⁵ National Women’s Law Center, “By the Numbers: Data on Key Programs for the Well-Being of Women and Their Families,” June 2018 at <https://nwlc-ciw49tixgw51bab.stackpathdns.com/wp-content/uploads/2018/06/FINAL-By-The-Numbers.pdf>
- ⁵⁶ Idem.
- ⁵⁷ HRSA: Maternal and Child Health, “Funding by Source: FY 2019,” at <https://mchb.tvisdata.hrsa.gov/Financial/FundingBySource>
- ⁵⁸ Bipartisan Policy Center, “Tracking Federal Funding to Combat the Opioid Crisis,” March 2019 at <https://bipartisanpolicy.org/library/tracking-federal-funding-to-combat-the-opioid-crisis/>
- ⁵⁹ NCHS Data Brief, “Mortality in the United States, 2017,” Nov. 2018 at <https://www.cdc.gov/nchs/data/databriefs/db328-h.pdf>
- ⁶⁰ NIH, “What We Do” at <https://www.nih.gov/about-nih/what-we-do/budget>
- ⁶¹ Campos et al. “Comprehensive Global Cervical Cancer Prevention: Costs and Benefits of Scaling up within a Decade,” July, 2016 at <https://www.cancer.org/content/dam/cancer-org/cancer-control/en/reports/the-cost-of-cervical-cancer-prevention.pdf>
- ⁶² US President’s Emergency Plan for AIDS Relief (PEPFAR) 2018 Annual Report to Congress at <https://www.pepfar.gov/press/2018annualreport/index.htm>
- ⁶³ 2017 OECD data on “Amount Spent on projects with a primary gender equality focused” at <https://stats.oecd.org/#>
- ⁶⁴ Stenberg et al. “Financing transformative health systems towards achievement of the health Sustainable Development Goals: a model for projected resource needs in 67 low-income and middle-income countries,” *The Lancet Global Health* Volume 5, Issue 9, July 2017 at [https://doi.org/10.1016/S2214-109X\(17\)30263-2](https://doi.org/10.1016/S2214-109X(17)30263-2)
- ⁶⁵ World Health Organization, Tuberculosis at <https://www.who.int/news-room/fact-sheets/detail/tuberculosis>
- ⁶⁶ MSF Access, “DR-TB Drugs Under the Microscope, 5th Edition,” Oct, 2018 at <https://msfaccess.org/dr-tb-drugs-under-microscope-5th-edition-abridged>
- ⁶⁷ Idem.
- ⁶⁸ Oxfam analysis based on WHO Global Tuberculosis report 2018 and MSF, <https://msfaccess.org/dr-tb-drugs-under-microscope-5th-edition-abridged>
- ⁶⁹ The WHO recommends an 18 to 20-month treatment regimen, which includes more potent drugs (bedaquiline, linezolid, levofloxacin, clofazimine, and cycloserine) that can help improve cure rates, reduce deaths and cause people far fewer side effects. Statistic is Oxfam analysis based on WHO Global Tuberculosis report 2018 and MSF Access, “DR-TB Drugs Under the Microscope, 5th Edition,” Oct, 2018 at <https://msfaccess.org/dr-tb-drugs-under-microscope-5th-edition-abridged>
- ⁷⁰ Oxfam analysis of companies’ end-of-year 10-K financial statements filed at the Securities and Exchange Commission (SEC).
- ⁷¹ Roosevelt Institute, “Profit over Patients: How the Rules of Our Economy Encourage the Pharmaceutical Industry’s Extractive Behavior,” Feb. 20, 2019 at <http://rooseveltinstitute.org/profit-over-patients/>
- ⁷² Sablich, “Less than four percent of private investment in health R&D targets the developing world,” Brookings Institution, April, 2018 at <https://www.brookings.edu/blog/techtank/2018/04/06/less-than-four-percent-of-private-investment-in-health-rd-targets-the-developing-world/>
- ⁷³ Wolff, “Household Wealth Trends in the United States, 1962 to 2016: Has Middle Class Wealth Recovered?” NBER Working Paper No. 24085, Nov. 2017 at <https://www.nber.org/papers/w24085>
- ⁷⁴ Carta, “The Gap Table: Analyzing the gender gap in equity,” Sept. 2018 at <https://carta.com/blog/gap-table/>
- ⁷⁵ Shin & Hanna, “Decomposition Analyses of Racial/Ethnic Differences in High Return Investment Ownership after the Great Recession,” 26 J. FIN. COUNSELING & PLAN. 1, 2015; See also Hamilton and Linden, “Hidden Rules of Race are Embedded in the New Tax Law,” Roosevelt Institute, May 2018 at <http://rooseveltinstitute.org/hidden-rules-new-tax-law/> and Economic Policy Institute and Prosperity Now, “Race, Wealth and Taxes: How the Tax Cuts and Jobs Act Supercharges the Racial Wealth Divide,” Oct. 2018 at <https://prosperitynow.org/resources/race-wealth-and-taxes>
- ⁷⁶ “Over the full 1983-2016 period, the average annual return on gross assets for white households was 0.76 percentage points greater than that of black households and 0.72 percentage points greater than that of Hispanics. The differences reflected the greater share of high yield investment assets like stocks in the portfolios of whites and the greater share of housing in the portfolio of the two minorities.” See Wolff, E N (2018), “The Decline of African-American and Hispanic Wealth since the Great Recession,” NBER Working Paper No. 25198; According to polling in 2015, 86% of white households owned stock, compared with 67% of African-Americans. Ariel Investments, “Black Investor Survey 2015” at <https://www.arielinvestments.com/content/view/3006/1850/>
- ⁷⁷ Hemel and Polsky, “There’s a Problem With Buybacks, but It’s Not What Senators Think,” Tax Notes, Feb. 2019 at <https://www.taxnotes.com/tax-notes/distributions/theres-problem-buybacks-its-not-what-senators-think/2019/02/18/294qk>
- ⁷⁸ Data from S&P Global Market Intelligence and Equilar. See Krantz, “Drug Prices Are High.”
- ⁷⁹ Arstecnica pegs Reid’s compensation at \$27.9 million; Equilar 200 put it at \$26.2 million. See arstecnica, “Pfizer CEO Gets 61% Pay Raise—to \$27.9 Million—as Drug Prices Continue to Climb,” March 16, 2018, <https://arstecnica.com/science/2018/03/amid-drug-price-increases-pfizer-ceo-gets-61-pay-raise-to-27-9-million/>; Equilar 200 reported in Equilar and New York Times, “The 10 Highest-Paid CEOs in 2017.”
- ⁸⁰ Arstecnica, “Pfizer CEO.”
- ⁸¹ Axios, “The latest on health care executive pay,” March 20, 2019 <https://www.axios.com/health-care-executive-ceo-pay-2018-cc10295c-1ac2-41ca-9e78-d834aa724050.html> and <https://docs.google.com/spreadsheets/d/1AYInXwBnQVlataORgdLz17OI4XaK6785hfAsiLFz84U/edit#gid=0>
- ⁸² Axios, “First look at 2018 pay for health CEOs,” Mar. 14, 2019 at <https://www.axios.com/first-look-health-ceos-pay-fd4f6dd7-0ed6-4027-b745-6d2d2043d42f.html> and <https://docs.google.com/spreadsheets/d/1AYInXwBnQVlataORgdLz17OI4XaK6785hfAsiLFz84U/edit#gid=0>
- ⁸³ Oxfam analysis using SEC Form 4 filings between July, 2018 and March, 2019 at <https://www.secform4.com/insider-trading/310158.htm>
- ⁸⁴ See Commissioner Robert Jackson, Jr. “Stock Buybacks and Corporate Cashouts,” June 11, 2018 at <https://www.sec.gov/news/speech/speech-jackson-061118>
- ⁸⁵ Palladino, “Ending Shareholder Primacy in Corporate Governance,” Roosevelt Institute, Feb. 2019 at <http://rooseveltinstitute.org/ending-shareholder-primacy-corporate-governance/>
- ⁸⁶ All 210 drugs approved in the United States between 2010 and 2016 benefited from publicly funded research, either directly or indirectly. See Galkina Cleary et al., “Contribution of NIH Funding to New Drug Approvals 2010–2016,” *Proceedings of the National Academy of Sciences (PNAS)* 115, no. 10, 2018 at <http://www.pnas.org/content/early/2018/02/06/1715368115>
- ⁸⁷ Stat News, “Trade deal between U.S. and Mexico is criticized for allowing high drug prices to continue,” Aug. 2018 at <https://www.statnews.com/pharmalot/2018/08/29/mexico-trade-rep-data-protection>

⁸⁸ All Oxfam calculations in this paragraph are based on data from Federal Elections Commission filings compiled by the Center for Responsive Politics at <https://www.opensecrets.org>.

⁸⁹ Stat News, “PhRMA asks the U.S. trade rep to place added pressure on four countries over patent and pricing policies,” Feb. 8, 2019 at <https://www.statnews.com/pharmalot/2019/02/08/patents-canada-japan-korea-malaysia/>

⁹⁰ Women are less likely than men to receive employer-provided health insurance simply because, worldwide, half of women are formally employed, compared with three-quarters of men. UN Women, “Progress of the World’s Women 2015”. In Nigeria, female-headed households are twice as likely to be unable to seek treatment for an ill family member compared with male-headed households. See Kaiser Family Foundation, “Gender Differences in Health Care, Status, and Use: Spotlight on Men’s Health,” slide 3, <https://www.kff.org/womens-health-policy/fact-sheet/gender-differences-in-health-care-status-and-use-spotlight-on-mens-health/>; and Michael N. Onah and Veloshnee Govender, “Out-of-Pocket Payments, Health Care Access and Utilisation in South-Eastern Nigeria: A Gender Perspective,” PLoS ONE 9, no. 4 (2014). See also UN Women, *The Beijing Declaration and Platform for Action Turns 20 (2015)*

⁹¹ Oxfam in Peru, “The other fight against cancer,” Nov. 2018 at https://cng-cdn.oxfam.org/peru.oxfam.org/s3fs-public/file_attachments/The%20other%20fight%20against%20cancer.pdf

⁹² Grown and Valodia (eds.), *Taxation and Gender Equity*, Routledge, 2010

⁹³ A fuller set of proposals can be found at the conclusion of Oxfam, “Prescription for Poverty: Drug companies as tax dodgers, price gougers, and influence peddlers,” Sept. 2018 at <https://www.oxfam.org/en/research/prescription-poverty>, as well as Oxfam, “Dollars and Sense: Corporate responsibility in the era of Trump,” April, 2018 at <https://www.oxfamamerica.org/explore/research-publications/dollars-and-sense/>

⁹⁴ See Irish Department of Finance, “IBFD Spillover Analysis: Possible Effects of the Irish Tax System on Developing Economies,” 2015; Ministry of Foreign Affairs, the Netherlands, *Evaluation Issues in Financing for Development: Analysing Effects of Dutch Corporate Tax Policy on Developing Countries*, 2013; Kleinbard, Clausen and Matheson, *U.S. Corporate Income Tax Reform and its Spillovers*, IMF Working Paper No. 16/127, July 2016, at <https://www.imf.org/external/pubs/cat/longres.aspx?sk=44050.0>

issues-in-financing-for-development.pdf; For an analysis of these spillover assessments, see Lusiani and Cosgrove, “A Strange Alchemy: Embedding Human Rights in Tax Policy Spillover Assessments” in Alston and Reisch (eds.) *Tax, Inequality and Human Rights*, Oxford University Press (forthcoming 2019).

⁹⁵ Oxfam, “Prescription for Poverty: Drug companies as tax dodgers, price gougers, and influence peddlers,” Sept. 2018 at <https://www.oxfam.org/en/research/prescription-poverty>