

# FRESENIUS FAILING TO CARE

Global Tax Dodging by a  
German Healthcare Multinational



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**Tax dodging schemes by global pharmaceutical companies**  
**“corrode[s] the ability of governments everywhere to provide the public services that are essential to reducing poverty and that are particularly important for women. [These schemes] weaken governments’ ability to invest in health research, which has proven to be fundamental in medical breakthroughs.”**

from Oxfam International, **“Prescription for Poverty: Drug companies as tax dodgers, price gougers, and influence peddlers”**, September 2018

# EXECUTIVE SUMMARY

Fresenius, one of Germany's largest multinationals and the world's fourth largest healthcare company, is not as widely known as other iconic German brands, but it may become infamous as an example of how a European multinational aggressively avoids global corporate income tax. While tax dodging by US multinationals like Google, Apple, Facebook and Amazon, is well known, European multinationals are using many of the same tricks. However, unlike the tech giants, Fresenius's income is derived largely from government spending on healthcare, funded by taxpayers.

Fresenius, through its various divisions, is ranked in the top 260 global corporations.

**Fresenius Medical Care** is the world's largest dialysis company. With **Helios** in Germany and **Quirónsalud** in Spain, Fresenius is Europe's largest private hospital operator. **Vamed**, based in Austria, is a global hospital developer and operator. **Fresenius Kabi** is a producer and worldwide supplier of pharmaceuticals and medical equipment. Fresenius claims to be solely focused on improving human health and to be a socially responsible corporation; however, it has a track record of fraud, bribery and corruption and now appears to be engaged in aggressive tax avoidance.

The primary scheme used by Fresenius — and other tax-dodging multinationals — is transfer pricing, which shifts profits from subsidiaries in jurisdictions where they are genuinely earned into subsidiaries in jurisdictions where profits are taxed at low rates or not at all. Transfer pricing can occur on transactions involving debt and finance, goods and services and intangible property rights (intellectual property, patents, royalties, etc...). Fresenius, like other multinationals, claims that all related party sales are at "arm's length"; however, the evidence strongly

suggests that this is not the case and that Fresenius uses all forms of transfer pricing to avoid taxes where profits are earned.

Fresenius currently uses finance companies in Luxembourg, Ireland, the Netherlands and Delaware to issue €9 billion in debt traded in Luxembourg to finance its global operations. Global debt payments and favourable tax treatment of interest income in Luxembourg, along with other tax benefits, may shift profits to Luxembourg or other jurisdictions where little if any taxes are paid. As one example, in 2017 a Fresenius finance subsidiary in Spain accrued

**The primary scheme used by Fresenius is transfer pricing, which shifts profits from subsidiaries in jurisdictions where they are genuinely earned into subsidiaries in jurisdictions where profits are taxed at low rates or not at all.**

interest payments on this debt of over €100 million to finance companies in Ireland and the Netherlands.

Fresenius uses holding companies in Malta, the Netherlands, Delaware, Singapore, the Cayman Islands, the British Virgin Islands and has “branches” of German companies in Panama which own businesses globally. These structures — along with captive insurance companies in Malta, Bermuda and the Cayman Islands — may also allow Fresenius to shift profits to avoid corporate income tax on global operations.

An in-depth analysis of Fresenius’s Australian operations provides details of how transfer pricing and related party transactions — 99.9% of goods purchased in one case — dramatically reduce or eliminate taxable income. Fresenius supplies global operations through manufacturing facilities in India, but according to the Indian subsidiary’s most recent filing, the German multinational received government subsidies and tax refunds. These case studies and others provide insight into Fresenius’s global tax and transfer pricing schemes. Fresenius has been investigated and continues to be under audit by tax authorities in multiple jurisdictions.

Corporate income tax rates paid by Fresenius over a number of years are significantly lower than the corporate tax rates in key global markets like Germany and the United States. While tax paid in Germany is close to the statutory rate, it appears to be paid on profit levels that are significantly lower than would be expected. In 2018, Fresenius reported 23% of global sales in Germany, 32% of global employees, but only 10% of income. The misalignment of genuine economic activity, sales and employees, and income could be an indication of significant profit shifting. Fresenius reports holding €8 billion in untaxed profits in offshore accounts.

Fresenius provides a European case study of how the global tax system is outdated and

broken — and demonstrates the clear need for unitary taxation and formulary apportionment based on genuine economic activity. Proposals for unitary taxation of multinationals are now being discussed and debated globally through the OECD’s (Organisation for Economic Cooperation & Development) Inclusive Framework on Base Erosion & Profit Shifting (BEPS). Transfer pricing schemes used by Fresenius and other multinationals rob governments of the revenue needed to fund healthcare, education and other essential public services and must not be allowed to continue.

Fresenius should immediately be required to adopt the new Global Reporting Initiative (GRI) tax transparency standards to publicly report tax payment and economic activity on a country-by-country basis (CbCR). Fresenius already uses GRI reporting standards and produces confidential CbCR reports for tax authorities under the OECD’s BEPS Action Plan. Sustainability reporting would be enhanced with greater transparency on tax payments, policies and procedures.

Regional, national and local governments must ensure companies like Fresenius are in compliance with all existing reporting requirements and tax regulations and must change procurement policies to ensure higher levels of transparency and compliance for any company receiving government funding to provide public services.

Fresenius must improve its global conduct in relation to tax payments and transparency. Governments at all levels — and other stakeholders — have the capacity to require changes from Fresenius and other multinationals. Fresenius can either continue to utilise aggressive tax avoidance schemes or help lead the way forward and be an example for other companies to follow.

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# INTRODUCTION AND METHODOLOGY

As a world leading healthcare company, Fresenius depends heavily on public finances from tax payments. This report analyses how Fresenius's global structure facilitates aggressive tax avoidance which deprives governments of funding needed to pay for healthcare. This case study of Fresenius provides an example of a much broader problem and demonstrates how other European multinationals may use aggressive tax avoidance schemes in global operations. Since Fresenius and other healthcare companies depend on government funding, governments have the power — through public spending — to change corporate behaviour. The time has come to use that power to preserve government funding for public health.

Fresenius is a massively complex global giant involved in several separate but related industries. It would be impossible to evaluate the entire global corporate structure and tax practices as much information is not publicly available. This report attempts to evaluate certain jurisdictions that are known for tax avoidance and jurisdictions where public information can be obtained and analysed. The report primarily examines recent annual financial statements from Fresenius subsidiaries in several jurisdictions where they are publicly available.

Corporate documents, including annual reports and financial statements from Fresenius and its major divisions, have been reviewed to provide additional information. Relevant news articles and other reports have been cited where appropriate. While there have been reports on the tax practices of other pharmaceutical companies, this appears to be the first detailed analysis of Fresenius's global tax affairs.

It should be noted that corporate tax information is generally private and confidential, and

governments typically cannot disclose or discuss the tax practices of individual companies. Public reporting by corporations and filings of subsidiaries are typically inadequate to give the full picture of tax practices at national and global levels. However, this analysis of Fresenius's global tax practices provides useful insights into what appears to be the creation and use of complex corporate structures for the purpose of aggressive tax minimization. While these practices may be technically legal, they violate the spirit of the law and the OECD guidelines for multinationals, and are detrimental to the public funding Fresenius relies on.

The Fresenius case study provides clear examples of why tax and procurement rules at the national, regional and global levels need to be changed. These types of aggressive tax avoidance schemes should be made illegal, and much greater transparency should be required. Fresenius may also provide a clear example of why the outdated global tax system must move towards unitary taxation of all multinational corporations. The current system is based on the “arm's length principle” in which multinationals insist that sales within the company are on market terms. These assertions of sales at “arm's length” are in many cases clearly fiction, but difficult for tax authorities to challenge under current laws.

The primary means of tax avoidance by all multinationals is transfer pricing. Transfer pricing occurs when sales between subsidiaries of the same multinational are altered to shift profits from jurisdictions where genuine economic activity takes place (often indicated by the value of sales and number of employees) to jurisdictions where profits are taxed at lower rates or not taxed at all by utilising shell companies with little or no “real” economic activity. Transfer pricing can occur with loans and interest



payments, goods and services and intellectual property, such as patents and royalties. There is strong evidence that Fresenius uses all methods of transfer pricing to reduce corporate income tax payments where profits are genuinely earned.

This report begins with a brief background on Fresenius and then examines Fresenius's limited global reporting on tax issues as well as the mismatch between reported economic activity and income in Germany. There is a brief examination of Fresenius's troubled global auditor, KPMG, which also provides tax advice. An analysis of Fresenius's tax payments — or lack thereof — in Australia provides insight into how Fresenius may use related party transactions and transfer pricing to reduce global

tax free and interest payments from subsidiaries in other countries reduce taxable income. As one example, interest payments from Spain, due to the acquisition of Quirónsalud, are substantial. In 2017 alone, a finance subsidiary in Spain had accrued interest payments of €100 million owed to Fresenius finance companies in Ireland and the Netherlands. The report analyzes Fresenius finance companies in Luxembourg, Delaware, the Netherlands, Ireland and Malta. These companies issue debt traded in Luxembourg and have no employees or any genuine economic activity. The International Monetary Fund's concerns over the growing use of "phantom" investments by multinationals to avoid taxation and the European Commission's concerns over tax avoidance in each jurisdiction are also examined.

## **Fresenius's global structure facilitates aggressive tax avoidance.**

corporate income tax obligations. Related party transactions are trade between subsidiaries of the same multinational and are frequently used to facilitate transfer pricing. Fresenius, as with many other multinationals, conducts most of its global trade through related party transactions. One key Australian subsidiary does not appear to have paid any corporate income tax in a four-year period, according to data from the Australian Taxation Office, and 99.9% of goods purchased were from related parties.

The report then examines the critical role of Luxembourg in Fresenius's global corporate structure. Over €9 billion in corporate debt is traded in Luxembourg, where interest income is

Filings in the Netherlands reveal significant transfer pricing audits in Germany which resulted in tax refunds in the Netherlands after back taxes were paid in Germany. Even though Fresenius's Dutch finance company noted concerns about meeting filing deadlines, the Dutch entity has failed to file any new annual financial statements since 2016.

The report documents Fresenius's use of subsidiaries in key Caribbean tax havens, including "branches" of German companies in Panama and captive insurance companies. Bermuda, the Cayman Island and the British Virgin Islands — which remain United Kingdom (UK) overseas territories — are widely recognised

as key facilitators of multinational tax avoidance. The possible role of Fresenius's UK subsidiaries to facilitate global tax avoidance is also briefly examined. A UK subsidiary sold pharmaceuticals back into Europe, but reported a loss. The supply chain of these pharmaceuticals sold from the UK is traced back to India. The Indian subsidiary, where pharmaceuticals are manufactured and exported, received government subsidies and a corporate income tax refund in the most recent year. The Indian company is owned through Singapore, also recognised as a key global facilitator of multinational tax avoidance.

There is a brief review of Oxfam reports on global tax dodging by other pharmaceutical companies and how Fresenius has also lobbied governments in the United States at federal, state and local levels to reduce tax payments. Finally, the report concludes with recommendations for reform at company, national, regional and global levels.

More detailed information on Fresenius's troubled global record of fraud, bribery and corruption and on Fresenius's tax schemes in Australia is included in the appendix.

# BACKGROUND ON FRESENIUS

Fresenius SE and Co KGaA (Fresenius) is a publicly traded healthcare company based in Bad Homburg, Germany. Fresenius is ranked #258 on the Forbes list of the 2,000 largest public companies in the world.<sup>1</sup> In 2018, Fresenius employed over 275,000 people in 100 countries worldwide through 3,962 subsidiaries. Fresenius, the parent company, manages the group’s four business segments and produces consolidated accounts which incorporate all of its operations.<sup>2</sup> The company’s stated goal is “to ensure and expand its long term position as a leading international provider of products and services in the healthcare industry.”<sup>3</sup> Fresenius owns:

- 31% of Fresenius Medical Care (publicly traded);
- 77% of Fresenius Vamed;
- 100% of Fresenius Kabi; and
- 100% of Fresenius Helios.

Although Fresenius ultimately controls Fresenius Medical Care (FMC), as a separately traded public company, FMC files its own consolidated accounts.

## Fresenius group structure



The legal form of Fresenius is that of a partnership limited by shares (Kommanditgesellschaft auf Aktien — KGaA). The largest shareholder, which owns 26% of the company, is the Else Kröner-Fresenius-Foundation.<sup>4</sup> It is a non-profit foundation established in 1983 by Else Kröner, the deceased foster daughter of company founder Dr. Eduard Fresenius. The tax implications in Germany of the partnership structure and non-profit foundation ownership are beyond the scope of this report.

growing prevalence of diseases like diabetes and obesity are increasing global demand for dialysis services. It is one of the few medical services that is paid for by the US government and is generally provided as part of public health services in most countries.

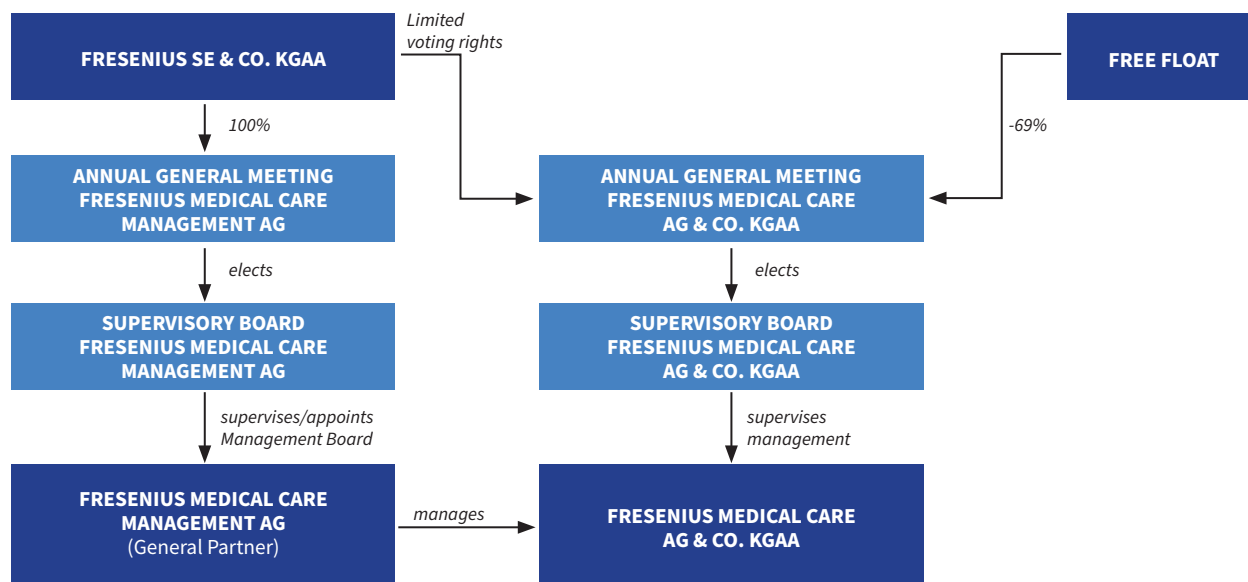
## Fresenius's Four Divisions

**Fresenius Medical Care (FMC)** provides dialysis services and healthcare products for patients with chronic kidney failure. FMC treats more than 333,000 dialysis patients in 3,928 clinics worldwide. North America, where it owns over 2,500 clinics, accounts for 70% of FMC's sales. FMC is the world's largest dialysis provider and the largest private provider in many of the countries where it operates. Dialysis is necessary for patients with kidney failure as it filters blood externally when kidneys no longer function. The

**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, eight 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, acquiring two hospitals in Colombia and one in Peru. In 2018, the German post-acute care business segment of Helios was transferred to Vamed.

## Management and Ownership Structure of Fresenius Medical Care<sup>5</sup>



**Vamed** provides a range of project and operations management services for hospitals and healthcare facilities, including consulting, project development, turnkey construction, and financing and management. It has over 900 projects in 90 countries and is now the leading post-acute provider in Europe with 67 facilities. In 2018, the company reported expanding global operations through new and significant contracts in several developing countries in Africa, the Middle East, Southeast Asia and Latin America. Vamed is a pioneer in public private partnerships (PPPs) in global healthcare services and conducts much of its business through joint ventures.

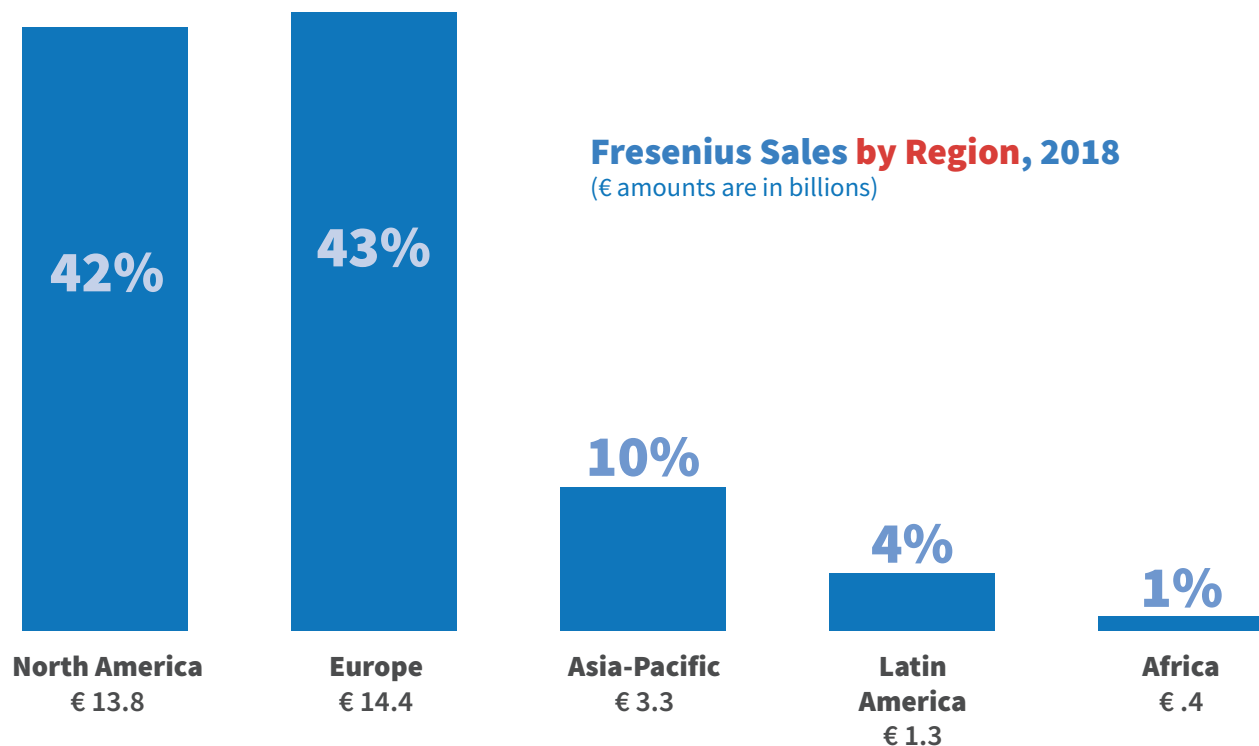
## Rising Global Profits and Regional and Segment Results

Fresenius has seen year over year increased profitability, and for fiscal year 2018, Fresenius SE reported group net income to shareholders of €2.03 billion, an increase of 12% from the previous year.<sup>6</sup> In 2018, Fresenius made €33.5 billion in sales worldwide and €4.7 billion in pre-tax profit. This represents a global profit margin of over 14% for the group. Europe accounted for 43% of global sales in 2018 and North America for 42% of sales and 26% of global employees. Germany had 31.8% of global employees and 21.9% of global sales in 2018, but only 10.2% of profits are reported in Germany.<sup>7</sup>

Fresenius Medical Care is by far the biggest business segment, generating nearly half of the group revenue and over half of the profit. Helios, with private hospitals in Germany and Spain, is the second biggest segment, generating approximately one-quarter of the profit.

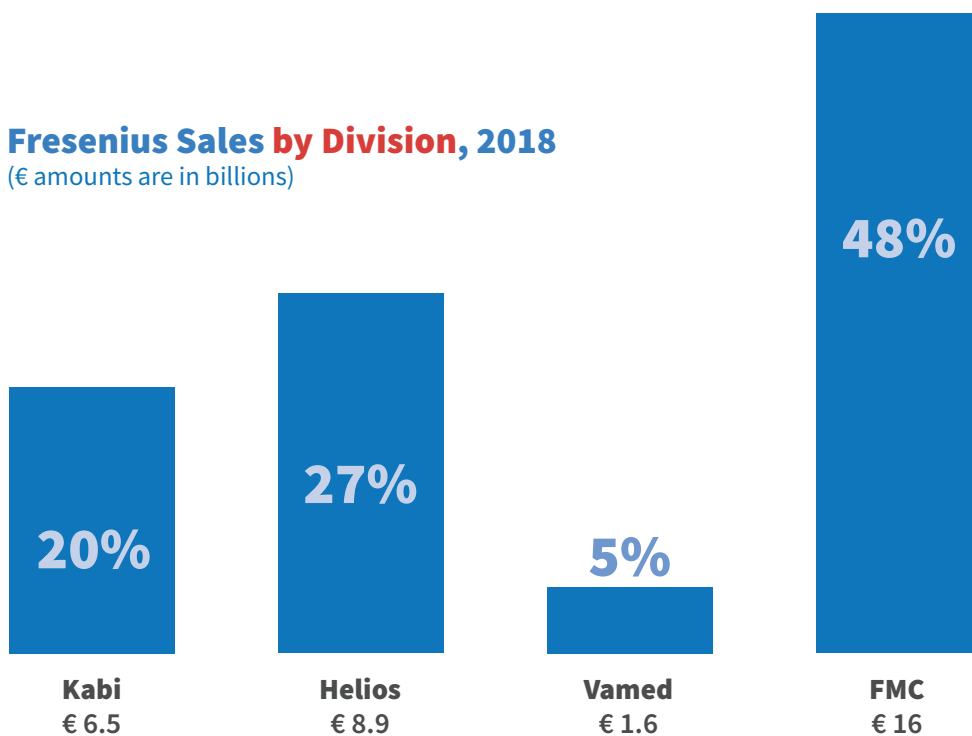
### Fresenius 2018 Segment Results (€ in millions)

	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%	6.3%



### Fresenius Sales by Division, 2018

(€ amounts are in billions)



While Fresenius presents itself as a highly profitable but socially responsible company, it has a troubled history of global fraud, corruption and bribery. Some key areas of recent corporate misconduct are documented in the appendix. However, there has been very little examination of Fresenius’s global tax avoidance schemes.

## **Fresenius Defends Tax Avoidance Through Luxembourg**

While tax authorities have questioned — and continue to question — Fresenius’s tax practices, limited information has made it into the public domain. Following widespread revelations in the 2014 journalistic investigation “Lux Leaks” of Luxembourg being used as a tax haven, a spokesperson for Fresenius Medical Care defended its corporate practices and said that five Luxembourg financing subsidiaries were listed in the annual report and that the “company’s efforts to reduce costs are *merely good business*”<sup>8</sup> (emphasis added). The spokesperson also said that the \$1 million in taxes “saved with the help

of the Luxembourg tax model” was small in comparison to the company’s total tax payments.<sup>9</sup>

This is a clear admission that the company considered tax avoidance to be a “good business” practice. Lost tax revenues from “the Luxembourg tax model” in all global jurisdictions were likely far greater than \$1 million. These aggressive tax avoidance practices and others continue today. Fresenius subsidiaries in Bermuda, the British Virgin Islands and Malta also feature in subsequent leaks published by the International Consortium of Investigative Journalists (ICIJ) and are contained in the ICIJ’s Offshore Leaks database.<sup>10</sup>

# FRESENIUS: REPORTING ON GLOBAL TAX ISSUES

A Fresenius Medical Care (FMC) 2017 annual report states that FMC is “subject to ongoing tax audits in the US, Germany and other jurisdictions. We could potentially receive notices of unfavorable adjustments and disallowances in connection with certain of these audits. If we are unsuccessful in contesting unfavorable determinations we could be required to make additional tax payments, which could have a material adverse impact on our business, financial condition and results of operations in the relevant reporting period.”<sup>11</sup>

An analysis over the last decade (2008–2018) reveals FMC’s effective tax rate to be an average of 24%, significantly below the 35% and 30% statutory corporate tax rates in effect in the US and Germany over most of that period.<sup>12</sup> An analysis of the Fresenius Group over the same period shows *an average effective tax rate of 21%* over the same period, even lower than the rate for FMC.<sup>13</sup> As these estimates use actual income tax payments in each year, they are a more accurate reflection of taxes paid than estimates using the income tax expense, which is an accounting figure.

If Fresenius had an effective tax rate of 30% (the statutory rate in Germany) or 35% (the statutory rate in the US until 2017), it would have paid an *additional €3.1 to €4.9 billion in corporate income taxes over the decade*. However, there are many legitimate reasons why an effective tax rate would be lower than statutory tax rates.

## Low Reported Global Tax Rates in 2018

In 2018, the Fresenius Group reported income before taxes of €4,664 million, with €476 million in Germany and €4,188 million in the rest of the world (“International”).<sup>14</sup> The company reports current income tax expense (not including deferred taxes) in 2018 of €850 million, with €153 million in Germany and €697 million in the International segment.<sup>15</sup> The estimated effective tax rate (current income and current tax expenses) is 18.2% globally, 32.1% in Germany and 16.6% for the International segment, significantly below the tax rate in most countries where Fresenius generates profits.

While the effective tax rate in Germany appears relatively high, as mentioned above and discussed in more detail below, the proportion of profits reported in Germany is significantly lower than the proportion of sales. The full tax rate is paid in Germany, but only after significant profits may have been shifted elsewhere. The low tax rates on the international segment may suggest that Fresenius is more aggressive on tax avoidance outside of Germany and/or that significant global profits are shifted to low or no tax jurisdictions.

Fresenius provides a reconciliation between the expected and actual income tax expense, which suggests a global effective rate of 20.4% in 2018, down from 22.7% in 2017.<sup>16</sup> Again, this is significantly below the corporate income tax rate in Germany and in many other countries where Fresenius generates substantial profits. These estimates also use income tax expense and not actual tax paid, which could show even lower effective tax rates. As discussed below,



US President Trump's US tax cuts have had a significant impact on reducing Fresenius's global tax rate and global corporate income tax payments.

The 2018 figures provide insight into the global breakdown of tax payments; however, the 10-year averages discussed above and the four-year averages below are much more reliable. Fresenius's own reconciliation and the methods used here to calculate effective tax rates are not without flaws but do provide guidance based on currently available public information.

## Is Fresenius Shifting Profits from Germany?

As mentioned above, the tax paid on reported profits in Germany closely matches the statutory corporate income tax rates and other additional tax rates. However, this is based on significantly lower income than would be expected from Fresenius's genuine economic activity in Germany, as reflected by both employees and sales. As the chart below indicates, in

2018 Germany had 32% of Fresenius's global employees and nearly 22% of global sales, but accounted for just over 10% of its income.<sup>17</sup> Sales and employee figures should be roughly aligned with reported income unless profit margins are significantly lower in Germany or profits are shifted from Germany to other jurisdictions with lower tax rates.

The number of employees in Germany was not reported prior to 2016, but the three-year average (2016–2018) shows the same pattern, with 33.3% of employees in Germany and 22.2% of sales. The three-year average of income before tax was 14.6%, but income before tax in Germany dropped substantially from €791 million in 2016 to only €492 million in 2017, after steadily rising since 2009. Over the decade (2009–2018), sales in Germany were 22.6% of global sales and the income before tax in Germany was 19.5% of global income. This indicates a growing gap between reported income in Germany and consistent sales in Germany, which remained at roughly 22% of global sales throughout the decade. An analysis of other countries is not possible as Germany is the only country where national level data is reported.

## Fresenius's German Presence (€ in millions)

	Germany	Global Group Total	% Germany
<b>Income Before Tax</b>	€ 476	€ 4,664	10.2%
<b>Current Income Tax Expense</b>	€ 153	€ 850	18.0%
<b>Employees</b>	88,560	276,750	32.0%
<b>Sales</b>	€ 7,359	€ 33,530	21.9%

## Low Four-Year Average Current Tax Expense

The table below shows Fresenius's profits and corporate income tax expense over four years (2015–2018).<sup>18</sup> Comparing an average over four years or longer reduces the impact of anomalies or “one-off” charges related to changes in statutory tax rates or the acquisition or disposal of assets that can distort figures in any single year. On average over the four years, Fresenius had a 26% current tax charge. If the tax charge were equal to the 30% tax rate in Germany it would increase the tax charge by an average of €156 million per year or €624 million over the four years.

Analysing the current tax charge rather than the total income tax charge in the profit and

loss statement removes “deferred taxation” from the total income tax charge, which may or may not ever be paid. Current tax is the figure most likely to give rise to a payment to a government. Deferred taxation represents the timing differences between certain tax reliefs and allowances received by the government and the speed at which they depreciate in the accounts. However, companies are under no obligation to say if or when the deferred tax liability will be paid and so it is always a conditional liability — highly subjective and uncertain as to timing. As mentioned above, the actual tax paid from a cash flow statement, as opposed to the tax expense, is generally a more accurate reflection of actual tax payments.

### Fresenius Group Results 2015–2018 (€ in millions)

	2015	2016	2017	2018	Average
<b>Turnover / Revenue</b>	€27,626	€29,083	€33,886	€33,530	€31,031
<b>Profit before tax</b>	3,262	3,745	3,922	4,664	3,898
<b>Tax charge</b> (profit and loss account)	965	1,051	889	950	964
<b>Current tax charge</b>	1,038	1,041	1,119	850	1,012
<b>Total tax charge</b> (including deferred)	965	1,051	889	964	967
<b>Current tax %</b>	31.8%	27.8%	28.5%	18.2%	26.0%
<b>Total tax %</b>	29.6%	28.1%	22.7%	20.4%	24.7%

## €8 Billion in Offshore Accounts

At the end of 2018, “Fresenius Medical Care has not recognized a deferred tax liability on approximately €8 billion of undistributed earnings of its foreign subsidiaries, because those earnings are considered indefinitely reinvested.”<sup>19</sup> In other words, *FMC is holding €8 billion in earnings in offshore accounts which have not been subject to income taxes*. Where is this money held?

The company also reports operating losses of over €1 billion that “can be carried forward for an unlimited period” and €282 million in operating losses which expire in coming years.<sup>20</sup> Operating losses can be used to reduce future income tax liabilities. If the €8 billion of undistributed earnings were taxed at 30%, it would produce an additional €2.4 billion in government tax revenues which would provide governments, particularly in the developing world, much needed revenue to fund healthcare.

The level of reporting on tax at Fresenius is remarkably opaque for a major global

**FMC is holding €8 billion in earnings in offshore accounts which have not been subject to income taxes.**

corporation — particularly for one so reliant on government spending. Fresenius and its various reporting divisions should be required to report tax payments on a country-by-country basis following the recent tax transparency reporting standards drafted by the Global Reporting Initiative (GRI).<sup>21</sup> The GRI standards are also in line with the country-by-country reporting under the OECD’s Base Erosion and Profit Shifting (BEPS) Action Plan with which Fresenius already complies. However, this information is reported only to tax authorities and not investors, the general public or government officials making healthcare procurement decisions. Tax authorities are obliged to maintain privacy of taxpayer information and cannot publicly discuss information from these filings.

## KPMG: Global Tax Evasion and Fraud

The role of an auditor in verifying the accuracy and integrity of the accounts of a large global company such as Fresenius is absolutely essential. If the auditor is not independent and is more focused on generating additional consulting fees than verifying accounts for shareholders, then the legitimacy of the audited accounts is seriously eroded. The independence of auditors, in the wake of corporate failures and misleading or inaccurate accounts, has come under increased scrutiny in recent years.

In particular, KPMG — one of the world’s “Big Four” accounting firms — has been involved in significant global tax and audit scandals. KPMG is both the auditor and tax advisor for Fresenius’s top-level companies and for most of its subsidiaries that have been examined. There are inherent conflicts in holding the roles of both auditor and tax advisor. In Australia, where the Big Four are facing a Parliamentary Inquiry and increasing scrutiny from regulators for failure to meet audit standards, former competition

regulators “are calling for the big four accounting firms to be banned from providing consulting and tax advice services to companies they are auditing.”<sup>22</sup>

In 2005, KPMG settled with the US government for USD\$456 million over the creation and sale of aggressive tax shelters to wealthy Americans, evading hundreds of millions of dollars in tax payments.<sup>23</sup> More recently, KPMG created a similar offshore tax evasion scheme in Canada, which the Canadian Revenue Agency called “grossly negligent.”<sup>24</sup> In South Africa, KPMG recently apologized for “misdeeds” after it was accused of facilitating tax evasion and corruption, and senior KPMG executives admitted ignoring “red flags” in audits for businesses linked to former President Jacob Zuma in order to win government contracts.<sup>25</sup>

In June 2019, the US Securities Exchange Commission (SEC) announced it had fined KPMG \$50 million USD for “ethical failures” involving two scandals.<sup>26</sup> In the first scandal, KPMG altered past audit work after receiving stolen information about inspections that would be conducted on the firm by an oversight board, which also resulted in conspiracy charges against several officials and prison time for an executive director.<sup>27</sup> In the second scandal, numerous KPMG audit professionals cheated on internal ethics training exams by improperly sharing answers and manipulating test results. In the UK, KPMG continues to be under investigation for audits of failed companies and has been fined more than £20m by UK regulators since June 2018.<sup>28</sup>

## **Fresenius Payments to KPMG**

In addition to audit fees paid to KPMG by FMC, substantial amounts have been paid for tax advice and other fees in recent years. The use of an auditor to advise on tax issues presents significant potential conflicts. Fresenius states that tax “fees are fees for professional services rendered by KPMG for tax compliance, tax advice on implications for actual or contemplated transactions, tax consulting associated with international transfer prices, and expatriate employee tax services, as well as support services related to tax audits. Other fees include amounts related to supply chain consulting fees.”<sup>29</sup>

In 2017, the FMC group paid €830,000 for tax fees, — a substantial increase over previous years — and €716,000 for other fees.<sup>30</sup> The other fees were down from €4.7 million in 2016 and €5.1 million in 2015, which in both years were primarily spent in Germany.<sup>31</sup> This seems to indicate substantial investigations related to supply chain and/or transfer pricing issues in Germany.

The 2018 annual report for the Fresenius Group, including FMC, continues to note the group “is subject to ongoing and future tax audits in the United States, Germany and other jurisdictions.”<sup>32</sup> In 2018, the Fresenius Group paid KPMG €24 million, €18 million for audit fees, €3 million for “Audit-related fees” (entirely in Germany), €1 million in tax consulting fees and €2 million in “Other fees.”<sup>33</sup>

# AUSTRALIA: A WINDOW INTO FRESENIUS'S GLOBAL TAX SCHEMES?

For the last four years, the Australian Taxation Office (ATO) has released public information about the tax payments of the largest companies operating in Australia. This data provides a greater level of transparency than in many other countries. Recent legislation also required some companies to provide an increased level of disclosure in annual financial statements beginning in 2018. Additionally, the ATO has had a major interest in tax dodging by multinational pharmaceutical companies, or “Big Pharma,” which market products and services in Australia. For these reasons, Fresenius’s operations and tax payments — or lack thereof — in Australia may provide insight into how Fresenius structures its affairs to avoid corporate income tax payments in other global jurisdictions.

## Corporate Tax Transparency Data

Fresenius operates in Australia through two primary subsidiaries, Fresenius Kabi Australia Pty Ltd and Fresenius Medical Care Australia Pty Ltd, that are the respective heads of two separate tax consolidated groups. In Australia, as in many countries, Fresenius is the largest provider of dialysis services and a significant provider of pharmaceuticals and other medical supplies and equipment.

Fresenius Kabi Australia Pty Ltd, for unknown reasons, is not in the ATO’s most recent annual listing for tax year 2016/17.<sup>34</sup> In the previous three years, Fresenius Kabi generated AUD\$538 million in total income, but in all three years generated zero taxable income and paid zero tax. Over the three years, Fresenius Kabi had an average

annual total income of AUD\$180 million. The 2018 financial statements provide guidance on how Fresenius Kabi was able to eliminate all taxable income in Australia over a period of at least four years, perhaps longer.

According to the ATO data, Fresenius Medical Care Australia Pty Ltd had total income of AUD\$670 million over four years for an average annual total income of AUD\$168 million. While total income rose every year to AUD\$180 million in 2016/17, taxable income and tax paid did not. The tax paid in every year was exactly 30% of taxable income (the corporate tax rate); taxable income ranged from 3.75% to 9.24% of total income and averaged 5.97%. This indicates a high level of expenses that reduced profit margins in Australia far below what Fresenius reported at the global level. The analysis of the 2018 financial statements for the key Australian subsidiaries (see below and in appendix B) demonstrates that expenses are largely with offshore related parties. Total tax paid over the four years was AUD\$12 million with an annual average of only AUD\$3 million in tax paid.

In most cases of aggressive tax avoidance, taxable income is reduced artificially through various forms of transfer pricing. This appears to be the case with both of Fresenius’s Australian subsidiary companies. The apparent low rates of profitability in Australia contrast sharply with the profit margins that Fresenius reports globally for Fresenius Medical Care and Fresenius Kabi. Earnings before interest and tax (EBIT) and earnings before interest, tax, depreciation and amortisation (EBIDTA) are frequently used as key measures of profitability.

# If the Australian business is genuinely less profitable why does Fresenius continue to expand in Australia?

Globally, for the three years from 2016 to 2018, Fresenius reported EBIT margins for Fresenius Medical Care ranging from 13.9% to 14.5% and for Fresenius Kabi from 17.4% to 19.5%.<sup>35</sup> EBITDA margins were even higher. *Why are profit margins in Australia — less than 6% for Fresenius Medical Care and 0% for Fresenius Kabi — so much lower than global margins? If the Australian business is genuinely less profitable why does Fresenius continue to expand in Australia?*

## Tax Office on Big Pharma Tax Dodging

Big Pharma's aggressive tax avoidance has attracted significant scrutiny by the Australian Taxation Office (ATO). It appears that Fresenius is no exception. In a recent media interview, a senior ATO official commented that some multinationals claim to be like a postal delivery service shipping goods from overseas and pretending they have little or no actual business in Australia. While not referring to any particular company, he stated that pharmaceutical companies have: "got 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>36</sup>

Companies like Fresenius, despite significant sales and physical operations, appear to use transfer pricing to shift profits out of Australia into other jurisdictions where profits are taxed at lower rates or not at all. Dialysis treatments occur in Australia and drugs and other medical supplies are sold in Australia, but the profits end up elsewhere. The pharmaceutical industry, with annual sales of AUD\$42 billion, continues to be a major area of focus in the ATO's crackdown on multinational tax avoidance.<sup>37</sup> In the pharmaceutical sector, the ATO is "assessing a range of domestic and international tax risks associated with related party financing, thin capitalisation, intellectual property migration, consolidation, business restructures and research and development."<sup>38</sup> These are all forms of transfer pricing or profit shifting.

Of particular concern to the ATO are the: "non-arm's length conditions operating between entities in connection with their cross-border commercial and financial relations, resulting in the amount brought to tax in Australia not reflecting the contribution made by the Australian operations through functions performed, assets used and risks assumed. That is, the non-arm's length conditions don't reflect the economic contribution and value creation of Australian activities."<sup>39</sup>

Following the announcement in 2017 of the ATO's specific focus on tax avoidance in the pharmaceutical sector, a law firm commented that "it is likely the ATO is throwing the net relatively widely to target multinationals involved in the healthcare industry generally."<sup>40</sup> The law firm also noted that attention on the pharmaceutical industry had increased since a Senate Inquiry into Corporate Tax Avoidance

issued in interim report in 2015, which stated that the industry set “drug prices in Australia based on maintaining a small but astonishingly consistent profit margin of 3–4 percent while paying much larger revenues to parent companies overseas.”<sup>41</sup> This analysis appears to match Fresenius’s performance in Australia.

The appendix includes a detailed review of the filings of the key Australian subsidiaries. Below are some highlights which help explain how Fresenius’s tax schemes work in Australia and may shed light on Fresenius’s global tax practices.

## **99.9% of Raw Materials from Related Parties**

Fresenius Kabi Australia Pty Ltd paid over AUD\$5 million in loan repayments to related parties in 2018 but had nearly AUD\$18 million outstanding in ongoing related party loans. Interest paid to related parties in 2018 was over AUD\$1.15 million. In 2018, 99.9% (AUD\$48.7 million) of “raw materials and consumables used” were purchased from related parties and an additional AUD\$39.4 million was owed to related parties. One million (AUD) dollars was paid for services (“cost recharges”) provided by related parties. This extensive set of related party transactions, while all reportedly at “arm’s length,” demonstrates how transfer pricing has been used to virtually eliminate taxable income in Australia over a number of years. KPMG was both auditor and tax advisor.

## **Missing Millions and Tax Benefit**

KPMG was also the auditor for Fresenius Medical Care Australia Pty Ltd in 2018 but there is no disclosure of fees paid to KPMG. Oddly, the 2017 filings show audit fees of AUD\$133,000 paid to KPMG as lead auditor and AUD\$200,000 paid to

Ernst & Young, another of the big four accounting firms.<sup>42</sup> KPMG was paid AUD\$40,000 and Ernst & Young was paid AUD\$160,000 for “Taxation services.”<sup>43</sup> The dual auditors and tax advisers could be the result of a significant acquisition and expansion of the Australian business in 2017, but that is not explained.

There are major differences in the numbers reported for 2017 in the 2018 financial statements compared to the 2017 financial statements. However, there is no explanation. A change in accounting practices — requiring greater disclosure — is reported, but the filing states: “There is no impact on the recognition or measurement of amounts included in the financial statements.”<sup>44</sup> The 2018 filings report sales revenue in 2017 of only AUD\$161.3 million, compared to AUD\$254.1 million in the 2017 filing — and results from operating activities of less than AUD\$2.4 million, compared to AUD\$21.2 million in the 2017 filing.<sup>45</sup> The cash flow statement for the 2018 filing shows cash receipts from operations of AUD\$168.1 million in 2017 compared to AUD\$269 million in the 2017 filing.<sup>46</sup> How is this possible and why is it not addressed by the auditor?

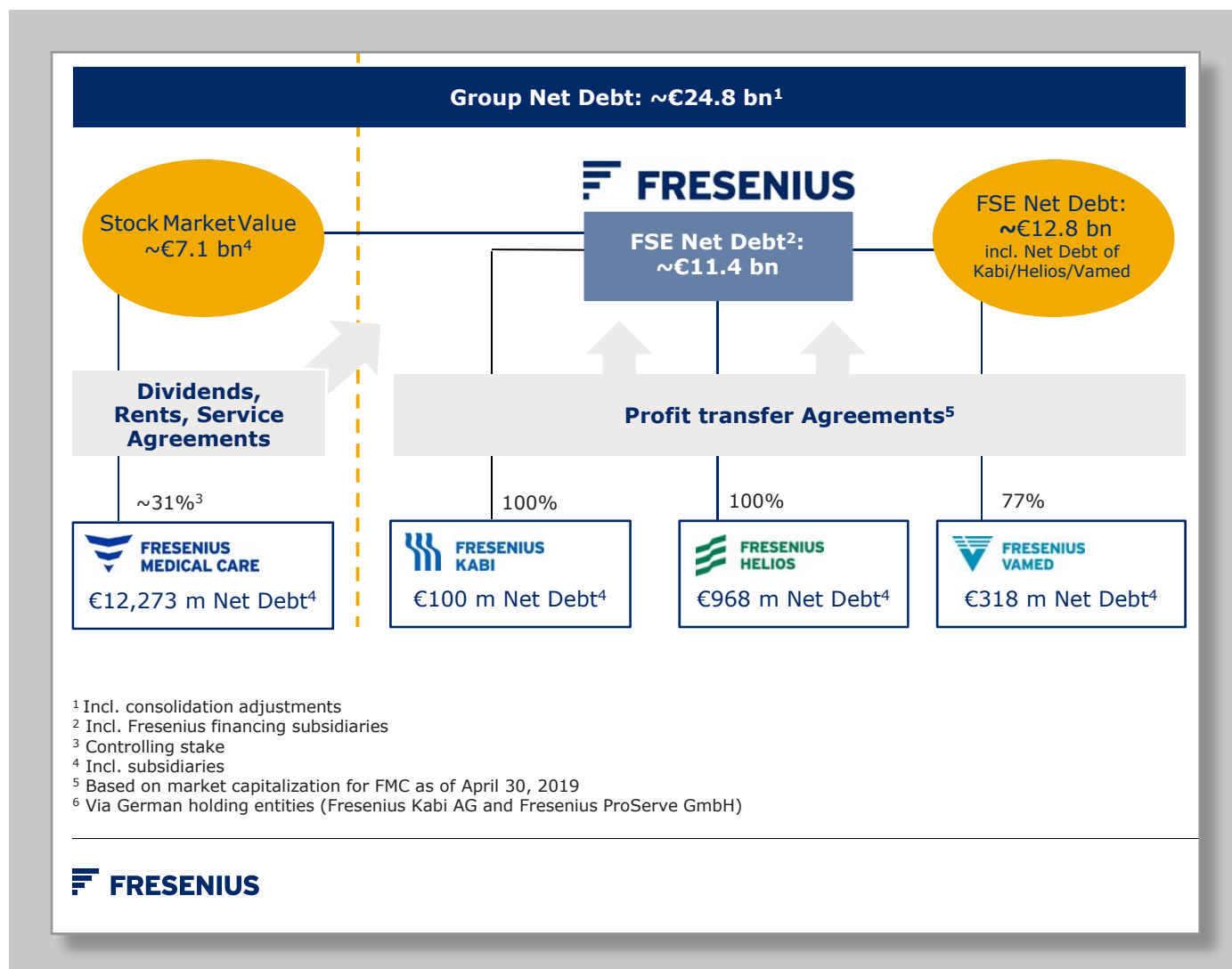
In 2018, Fresenius Medical Care Australia Pty Ltd reported a loss before tax of AUD\$9.4 million and an income tax benefit of AUD\$1.9 million, reducing the reported loss to AUD\$7.5 million.<sup>47</sup> This loss occurred despite a 4.3% increase in patient revenue driven by continued expansion. Once again, related party transactions and transfer pricing shifted profits out of Australia and helped engineer a tax benefit of almost AUD\$2 million.

Current loans from related parties totalled AUD\$68.2 million resulting in loan repayments and interest payments in 2018 of AUD\$3.5 million.<sup>48</sup> Excluding finance expenses, Fresenius Medical Care Australia Pty Ltd spent over AUD\$57.4 million in purchases from related parties and had an additional AUD\$16.7 million in balances outstanding. The largest purchases

were AUD\$43.2 million from Fresenius Medical Care Asia Pacific in Hong Kong, which was still owed an additional AUD\$14 million. Related party purchases of trading stock and equipment amounted to two-thirds of the cost of sales, excluding personnel expenses. Other offshore related party payments included nearly AUD\$1 million for IT and accounting services.

There is no doubt that these related party transactions had a significant impact on reported profits and taxes owed in Australia. This pattern of extensive related party lending and trading in Australia appears to represent a global pattern which could have a major impact on tax payments in all countries where Fresenius operates.

## Debt and Profit Transfer is a Core Part of Fresenius's Structure<sup>49</sup>





# FRESENIUS'S GLOBAL BANKING THROUGH LUXEMBOURG LOOPHOLES

Luxembourg, along with finance companies in several other European tax havens, plays a critical role in Fresenius's corporate structure and global debt financing. Related party debt payments to these entities and the impact of numerous "profit transfer agreements" in the global corporate structure may reduce reported profits and tax payments in countries around the world. Excluding other forms of debt, the Fresenius Group has issued bonds that at the end of 2018 had a book value of nearly €9 billion, which are traded on the Luxembourg Stock Exchange.<sup>50</sup>

As one example, in 2017 accrued interest payments from a Spanish finance subsidiary of over €100 million were owed to Fresenius finance companies in Ireland and the Netherlands on bonds traded on the Luxembourg Stock Exchange. It is not possible to determine how related party interest payments may have impacted tax payments in Spain, but these interest payments were nearly equivalent to one third of the €327 million in EBIT (earnings before interest and tax) reported by Helios Spain (Quirónsalud) in 2017.<sup>51</sup> Quirónsalud was

## Bonds of the Fresenius Group (net of debt costs)

	Notional amount	Maturity	Interest rate	Book value € in millions	
				2018	2017
Fresenius Finance Ireland PLC 2017/2022	€700 million	Jan. 31, 2022	0.875%	697	695
Fresenius Finance Ireland PLC 2017/2024	€700 million	Jan. 30, 2024	1.50%	696	696
Fresenius Finance Ireland PLC 2017/2027	€700 million	Feb. 1, 2027	2.125%	692	692
Fresenius Finance Ireland PLC 2017/2032	€500 million	Jan. 30, 2032	3.00%	494	494
Fresenius SE & Co. KGaA 2014/2019	€300 million	Feb. 1, 2019	2.375%	300	299
Fresenius SE & Co. KGaA 2012/2019	€500 million	Apr. 15, 2019	4.25%	500	499
Fresenius SE & Co. KGaA 2013/2020	€500 million	July 15, 2020	2.875%	499	498
Fresenius SE & Co. KGaA 2014/2021	€450 million	Feb. 1, 2021	3.00%	447	446
Fresenius SE & Co. KGaA 2014/2024	€450 million	Feb. 1, 2024	4.00%	450	449
Fresenius US Finance II, Inc. 2014/2021	US\$300 million	Feb. 1, 2021	4.25%	261	249
Fresenius US Finance II, Inc. 2015/2023	US\$300 million	Jan. 15, 2023	4.50%	260	248
FMC Finance VII S.A. 2011/2021	€300 million	Feb. 15, 2021	5.25%	297	297
FMC Finance VIII S.A. 2011/2018	€400 million	Sept. 15, 2018	6.50%	0	399
FMC Finance VIII S.A. 2012/2019	€250 million	July 31, 2019	5.25%	246	245
Fresenius Medical Care AG & Co. KGaA 2018/2025	€500 million	July 11, 2025	1.50%	496	0
Fresenius Medical Care US Finance, Inc. 2011/2021	US\$650 million	Feb. 15, 2021	5.75%	565	538
Fresenius Medical Care US Finance II, Inc. 2011/2018	US\$400 million	Sept. 15, 2018	6.50%	0	332
Fresenius Medical Care US Finance II, Inc. 2012/2019	US\$800 million	July 31, 2019	5.625%	698	666
Fresenius Medical Care US Finance II, Inc. 2014/2020	US\$500 million	Oct. 15, 2020	4.125%	435	415
Fresenius Medical Care US Finance II, Inc. 2012/2022	US\$700 million	Jan. 31, 2022	5.875%	610	581
Fresenius Medical Care US Finance II, Inc. 2014/2024	US\$400 million	Oct. 15, 2024	4.75%	347	331
<b>Bonds</b>				<b>8,990</b>	<b>9,069</b>

acquired by Fresenius in 2017 and had nearly 11.6 million patients and nearly 28,000 employees (FTEs) in Spain.<sup>52</sup> Bonds were issued to finance the acquisition.

While the Irish and Dutch finance companies are discussed in more detail below, the following table from only one of many finance companies shows the significant impact that interest payments can have on reducing taxable profits. The chart shows the largest loan balances with related parties of Fresenius Finance Ireland PLC at the end of 2018 and estimated interest payments based on total interest payments received from

related parties.<sup>53</sup> Receivable interest still owed is added to the total.<sup>54</sup> In 2018, over €137 million in interest payments were paid or still owed by related parties to this Irish finance company. These interest payments have a direct impact on reducing taxable income from the companies making interest payments. Tracking the flow of funds from lending and interest payments — and the impact on taxable income — across borders and between subsidiaries is not possible with limited publicly available information. Consolidation at higher level reporting eliminates the possibility of any detailed analysis.

### Largest Related Party Loan Balances and Interest Payment Estimates (€ in millions)

	Loan Assets	Interest Payment (est.)	Interest Receivable	2018 Total Interest Owed
<b>Helios Finance Spain SLU</b>	4,389	83	16	99
<b>Fresenius SE &amp; Co KGaA</b>	985	19	0	19
<b>Fresenius Kabi AG</b>	307	6	0	6
<b>Vamed Gesundheit Holding Deutschland GmbH</b>	284	5	4	9
<b>Fresenius Kabi Austria GmbH</b>	164	3	0	3
<b>Fresenius Kabi Deutschland GmbH</b>	74	1	0	1
<b>Fresenius Kabi Group France SA</b>	18	0	0	0
<b>Clinico Medical SP Zoo</b>	6	0	0	0
<b>TOTAL</b>	6,227	117	20	137

## **IMF Report on “Phantom” Investment**

A recent report by the International Monetary Fund (IMF) found that despite Luxembourg’s small size it hosted as much foreign direct investment (FDI) as the United States and more than China. However, the IMF described much of this investment as “phantom in nature” and passing “through empty corporate shells” with “no real business activities.”<sup>55</sup> “Rather, they carry out holding activities, conduct intrafirm financing, or manage intangible assets — often to minimize multinationals’ global tax bill.”<sup>56</sup> The report condemns the impact on tax collection in advanced, emerging and developing markets and states that: “a few well-known tax havens host the vast majority of the world’s phantom FDI. Luxembourg and the Netherlands host nearly half. And when you add Hong Kong SAR, the British Virgin Islands, Bermuda, Singapore, the Cayman Islands, Switzerland, Ireland, and Mauritius to the list, these 10 economies host more than 85 percent of all phantom investments.”

As this report demonstrates, Fresenius relies heavily on Luxembourg to finance its global operations and uses other internal EU tax havens — including the Netherlands, Ireland, Malta, the United Kingdom and its Caribbean offshore territories — as well as Singapore and Hong Kong. In February 2019, the European Union (EU) issued a report on “structures that allow multinational companies to engage in aggressive

tax planning” in seven EU countries.<sup>57</sup> Fresenius provides a road map to how five of the seven EU countries are used for tax avoidance. The EU report acknowledges these countries have taken some positive steps, but additional reforms are still needed to genuinely tackle the problem of tax avoidance.

## **Vodafone’s 0.3% Tax Rate in Luxembourg**

A recent analysis of Vodafone Group PLC, the first large multinational to voluntarily publish country-by-country tax payments, provides insights into how Fresenius and other multinationals use EU tax havens like Luxembourg and Malta to reduce global tax liabilities.<sup>58</sup> The “most notable feature is the size of profits reported in Luxembourg, far larger than sales, and in Malta, leading inevitably to the hypothesis that these two are the main conduit countries for the Group, with reported profits roughly equal to net profits for the Group as a whole and very low effective tax rates.”<sup>59</sup>

The effective tax rate on the €1,450 million of pre-tax profit — on revenue of only €187 million — in Luxembourg was a mere 0.3%.<sup>60</sup> This effective tax rate is close to zero and a hundred times lower than the statutory tax rate in Germany. In Malta, the effective tax rate on pre-tax profit of €124 million was 7.3%, less than a quarter of the corporate tax rate in Germany.<sup>61</sup> In the top ten countries ranked by revenues, Vodafone reported losses in six of them, including the top three: Germany, the UK and India.<sup>62</sup> Despite high revenues, losses were also reported in Spain and the Netherlands. Vodafone received tax refunds in both the UK and the Netherlands.<sup>63</sup> It is possible that losses in some countries were driven by infrastructure investments or other legitimate factors, but the overall pattern appears to show significant profit shifting.

Vodafone's 2016–17 global revenue of €57.1 billion was larger than Fresenius's global sales of €33.9 billion in 2017, but Vodafone's pre-tax profits of €1.9 billion were near Fresenius's net income of €1.8 billion, representing a significantly higher profit margin for Fresenius.<sup>64</sup> Fresenius's use of subsidiaries in Luxembourg, Malta and other tax havens may have a comparable impact on shifting profits and reducing tax payments.

Vodafone's tax transparency measures came about after protests over tax dodging in 2010 forced the company to close several stores across the UK. While current tax practices are still open to criticism, Vodafone is now "held out as a paragon of responsible and transparent tax behaviour," and advises other companies on efforts to increase transparency.<sup>65</sup> There are lessons for Fresenius in Vodafone's experience.

Fresenius and other multinationals already report country-by-country tax payments to tax authorities under the OECD's Base Erosion and Profit Shifting (BEPS) Action Plan. A public country-by-country reporting standard has been approved by the Global Reporting Initiative (GRI) with strong support from global investors holding over USD\$10 trillion in capital.<sup>66</sup> Fresenius's Non-Financial Report — contained in its annual report — is prepared "in reference to internationally applicable standards for sustainability reporting set out by the Global Reporting Initiative (GRI) guidelines."<sup>67</sup> Fresenius should immediately adopt and implement the GRI tax transparency reporting standard and create an example for other multinationals to follow.

What profits does Fresenius book in Luxembourg, the Netherlands, Ireland, Malta and other tax havens and what taxes are paid there? What is the impact on corporate income tax payments in countries where Fresenius conducts genuine economic activity? How much revenue is lost and where?

## **FMC Finance VIII S.A.**

As of October 2018, Fresenius Medical Care AG & Co. KGaA (FMC) listed five subsidiaries in Luxembourg.<sup>68</sup> There have been, and continue to be, other Fresenius group subsidiaries in Luxembourg that are part of the broader corporate structure. The five subsidiaries are finance companies: Fresenius Medical Care US Finance Luxembourg S.à r.l., FMC Finance VIII S.A., Preafin III S.à r.l., FMC Finance VII S.A. and FMC Finance II S.à r.l..

The 2017 annual financial statements of FMC Finance VIII S.A. in Luxembourg provide an indication of the functions of the other Luxembourg subsidiaries. Like other finance companies in other jurisdictions, FMC Finance VIII S.A. has no employees and issues notes and lends money to other affiliates.<sup>69</sup>

"The Company is included in the consolidated financial statements of Fresenius Management SE...[and] is included in the consolidated financial statements of Fresenius Medical Care AG & Co KGaA," which is the parent company.<sup>70</sup> FMC Finance VIII S.A. had two "loans to related parties, each refinanced by issuance of bonds." There was a loan of €400 million with a maturity of 15 September 2018 and a loan of €250 million with a maturity of 31 July 2019.<sup>71</sup> A related Fresenius company outside of the FMC structure, Helios Kliniken GmbH, held €4 million worth of the bonds.<sup>72</sup>

The recipients of the loans and the country in which they operate are not identified other than being related parties and subsidiaries of the parent. There are three guarantors of the Notes, including two holding companies, the parent company and its subsidiary Fresenius Medical Care Holdings (FMCH). FMCH "functions exclusively as a holding company for the Parent's North American operations." The holding companies are "dependent upon the profitability and cash flow of their subsidiaries and payments by such subsidiaries to them in the

form of loans, dividends, fees, or otherwise...”<sup>73</sup>  
The third guarantor is Fresenius Medical Care Deutschland GmbH, “a German limited liability company and ...one of the principal operating companies within the Group.”<sup>74</sup> Fresenius Medical Care Deutschland GmbH “carries out its business activities on a global basis, but primarily in the European and Middle Eastern markets.”<sup>75</sup>

The proceeds of the Notes are advanced to the parent company and/or its subsidiaries and “the only assets of the Company will be

the intercompany receivables.”<sup>76</sup> In 2017, the company earned interest income of €39 million but had interest expenses of €39 million.<sup>77</sup> This resulted in a profit of €199,564 which was paid in a dividend to the sole shareholder.<sup>78</sup> Interest payments from other Fresenius subsidiaries in other jurisdictions may artificially lower reported profits and tax payments. It is impossible — with limited public information — to determine what impact this Luxembourg finance company or others may have on Fresenius’s tax payments in other jurisdictions.

## Using Luxembourg for Tax Benefits in International Corporate Structures<sup>79</sup>

### Luxembourg : a favorable tax environment

- ✓ No withholding tax on royalties, interest & liquidation proceeds
- ✓ No withholding tax on dividends paid to tax treaty corporation if 10% shareholding or acquisition price > € 1.2m. and 12 months holding period
- ✓ Maximum withholding tax on dividends : 15%
- ✓ Participation exemption : total exemption for dividends and capital gains income if 10% shareholding or acquisition price of € 1.2 m. for dividends / € 6m. for capital gains and 12 months holding period
- ✓ An 80% exemption for net income deriving from certain IP rights and capital gains realized on the sale of IP
- ✓ No or minor taxation upon exit or refinancing strategy
- ✓ No CFC rules
- ✓ Access to EU Directives (Parents/Subsidiary, Interest/Royalties, and Merger Directives)
- ✓ 64 double tax treaties (latest treaties : Hong Kong, Bahrain, Qatar, ...)
- ✓ Lowest VAT rate in the European Union (standard rate : 15%)
- ✓ Ruling practice and stable law environment

## **Delaware Debt Traded in Luxembourg**

The 2016 and 2017 annual financial statements from two companies in the US state of Delaware that issue bonds were obtained through the Luxembourg Stock Exchange. Delaware, widely regarded as a tax haven within the US, is the registered home for hundreds of Fresenius subsidiaries. There appear to be more Fresenius subsidiaries incorporated in Delaware, but conducting business elsewhere, than any other jurisdiction.

Fresenius Medical Care US Finance II, Inc. and Fresenius US Finance II, Inc. also have no employees beyond legally required directors and have no business other than issuing debt and relending the proceeds to related parties.<sup>80</sup> Fresenius Medical Care US Finance II, Inc. lends to Fresenius Medical Care Holdings, Inc. and its subsidiaries in the US.<sup>81</sup> Fresenius US Finance II, Inc. lends primarily to Fresenius Kabi USA, a wholly owned subsidiary of Fresenius Kabi Pharmaceuticals Holdings Inc. which, in turn, is an indirect wholly owned subsidiary of Fresenius SE & Co. KGaA.<sup>82</sup>

that has little or no employment, operations or physical presence in the jurisdiction where it is located.”<sup>84</sup> These special purpose entities are typically subsidiaries of multinationals “which undertake intra-group financing or treasury operations” in Luxembourg.<sup>85</sup>

“The absence of withholding taxes on outbound interest and royalty payments, and the possible exemption from withholding tax on dividends with treaty partners, may lead to those payments escaping tax altogether if they are not subject to tax in the recipient jurisdiction either.”<sup>86</sup> Luxembourg’s lack of taxation on interest income may explain why Fresenius has finance subsidiaries there and why it uses the Luxembourg Stock Exchange to list its bonds. The lack of taxation on certain types of income in the other jurisdictions — including Delaware, the Netherlands and Ireland — may explain why Fresenius uses particular subsidiaries to issue debt as well.

## **Tax Avoidance in Luxembourg**

The European Commission reports that high “capital flows, coupled with the absence of withholding taxes on interests and royalties and possible exemption on dividends, may be an indication that Luxembourg’s tax rules are used by companies that engage in aggressive tax planning.”<sup>83</sup> Inward and outward foreign direct investment in Luxembourg is amongst the highest in Europe, but a majority of the financial flows are linked to special purpose entities, “a legal entity

# FRESENIUS'S DUTCH FINANCE AND HOLDING COMPANIES

Fresenius has a large number of finance and holding companies in the Netherlands. Many of these entities do not file annual financial statements. A 2016 annual financial report, which as of August 2019 is the most current, was available from the Dutch company registry for Fresenius Finance II BV. Fresenius Finance II BV was incorporated in 2012 as a financing company — borrowing and lending among affiliated companies — and its sole shareholder is Fresenius SE & Co. KGaA.<sup>87</sup>

## **Raising Suspicion: Fresenius Finance II BV**

Ironically, the 2016 filing states that the “company has clear deadlines to inform the market about its performance — in line with the legal deadlines to submit annual accounts. Not meeting the deadlines may cause suspicion on the companies’ financial health and ability to meet all its requirements. In order to meet the deadline of depositing the financial annual accounts... management is working closely together with the advisors from Fresenius SE & Co KGaA and the Expert Advisory Panel.”<sup>88</sup> This Dutch company has not filed any further annual accounts since the 2016 filing.

At the end of 2016, the company had €808.4 million in loans outstanding to affiliated companies.<sup>89</sup> The parent company, Fresenius SE & Co KGaA was the largest recipient of loans, but loans were also made to other Fresenius Kabi affiliates in Austria, Spain, France, Germany, Sweden and Poland.<sup>90</sup> Despite significant loans — as with the Luxembourg finance company — interest payments and receipts largely cancelled

out profits. Interest income on loans to related parties in 2016 was €12.1 million and interest expense was €11.6 million.<sup>91</sup> The company had no employees and made no payments to directors.<sup>92</sup>

Separately, the company also had a term loan with balance of €806.1 million at the end of 2016 that was scheduled to mature in 2020.<sup>93</sup> The full amount of the loan was also lent to the parent company.<sup>94</sup> After the balance sheet date, in early 2017, the company entered into a new term loan of €900 million and an increased revolving facility of €300 million “and has lent the equivalent amount afterwards to related parties.”<sup>95</sup> Related parties are not named, and no subsequent filings have been made.

## **German Tax Audit on Transfer Pricing: Fresenius Finance BV**

Fresenius Finance B.V. filed a financial statement in 2015, but has since been deregistered.<sup>96</sup> In 2015, Fresenius Finance B.V. had issued €2.2 billion in notes and had provided loans to Fresenius SE & Co. KGaA, its parent company, of almost the full amount.<sup>97</sup> Fresenius SE & Co. KGaA, Fresenius Kabi AG and Fresenius ProServe GmbH were the guarantors for all of the Senior Notes and Eurobonds which were scheduled to mature from 2019 to 2024.<sup>98</sup>

The company’s operating result before taxes decreased to €1.8 million, driven by “extraordinary interest income on income taxes related to years 2002–2014 as a result of a tax audit on transfer pricing” resulting in large tax refunds in

the Netherlands in 2014.<sup>99</sup> The filing explains: “In 2014, the German tax authorities finalised a tax audit related to transfer pricing between the Company and its ultimate parent company in Germany. Pursuant to this tax audit in Germany, the taxable results of Fresenius Finance B.V. have been adjusted retrospectively for fiscal years 2002 – 2011, which in turn may lead to a refund of Dutch corporate income tax. During 2014, the transfer pricing model of the Company has been reviewed and assessed by the Dutch tax authorities. The outcome of this review is that the Company has received a refund for the years 2002 – 2014 in 2015.”<sup>100</sup>

In 2014, the company agreed with tax authorities to revise the method used for determining its taxable base since 2002.<sup>101</sup> While it is not entirely clear, the change appears to have reduced the taxable base in the Netherlands and shifted higher tax responsibility to the parent company in Germany. The 2015 filing states that “since Fresenius SE & Co KGaA act as guarantor for the obtained loans, the interest margin is tax levied in Germany and Fresenius SE & Co KGaA is a principal responsible for these taxes.”<sup>102</sup>

The revised method for determining the taxable base resulted in net tax payments from the Dutch tax authorities to the company of at least €4.4 million, including interest payments of €792,267.<sup>103</sup> How much the parent company may have paid in taxes in Germany since 2002 is not known. However, the increased tax liability in Germany, as a result of the audit by German tax authorities, may be the reason why this company has been deregistered and financing may have shifted to other Fresenius subsidiaries.

There are many Fresenius holding companies incorporated in the Netherlands which have ownership interests in other subsidiaries around

the world and/or related party transactions that may reduce tax payments in other countries. One of these holding companies, Fresenius Holding B.V., as of August 2019, had not filed annual accounts since 2016. The Dutch authorities should enforce requirements for Fresenius subsidiaries and other companies to submit current annual financial statements.

## **Tax Avoidance in the Netherlands**

The European Commission states that Dutch tax rules “appear to be used by multinationals engaged in aggressive tax planning structures” and that the “current absence of withholding taxes on royalties and interest payments... may lead to those payments escaping tax altogether, if they are also not subject to tax in the recipient jurisdiction”.<sup>104</sup> According to a study commissioned by the Dutch Ministry of Finance, Dutch letterbox companies — like the ones used by Fresenius — have “annual income flows (dividends, interest, royalties)” of €199 billion or 27% of the nation’s GDP.<sup>105</sup> The bulk of the payments, €177 billion, flow to other EU member states and the US and the remainder to low tax jurisdictions.<sup>106</sup>



# FRESENIUS FINANCE COMPANIES IN IRELAND

Ireland has been at the heart of several major multinational tax dodging scandals, including when the Irish government was forced to accept a €14 billion tax payment from Apple after the EU Commission ruled that the US technology giant benefitted from illegal state aid.<sup>107</sup> The head of Oxfam Ireland recently stated that there “is clear and growing evidence that Ireland is still acting as a ‘conduit,’ facilitating large-scale tax avoidance.”<sup>108</sup>

## Tax Avoidance in Ireland

In March 2019, the European Parliament, by a vote of 505 to 63, “adopted a detailed roadmap towards fairer and more effective taxation, and tackling financial crimes,” which included a statement that Ireland, Luxembourg, Malta, the Netherlands and three other EU countries “display traits of a tax haven and facilitate aggressive tax planning.”<sup>109</sup> The recent European Commission country report on Ireland noted that high “capital flows, coupled with limited application of withholding taxes on royalties and dividends may be an indication that Ireland’s tax rules are used by companies to engage in aggressive tax planning.”<sup>110</sup>

A recent research paper issued by the European Central Bank states that the “empirical analysis suggests that tax optimisation is an important

motive, particularly for sponsors of Irish-resident securitisation vehicles...”<sup>111</sup> The authors cite another recent report by the Central Bank of Ireland which finds that “certain provisions of the Irish tax code mean that Irish-resident SPEs can be highly tax efficient, with gains taxed at rates very close to zero.”<sup>112</sup> The report states that one “important element contributing to this is the extensive network of 73 double tax treaties maintained by the Irish government. If such a bilateral tax treaty exists, then whatever small tax payments that are made in Ireland can be used to discharge tax liabilities incurred in the partner country.”<sup>113</sup>

## Fresenius Finance Ireland PLC

Fresenius has two finance companies in Ireland: Fresenius Finance Ireland PLC (Public Limited Company) and Fresenius Finance Ireland II PLC, both directly owned by Fresenius Finance Holding Limited, a company registered in Ireland and ultimately owned by Fresenius SE & Co KGaA in Germany.<sup>114</sup> Fresenius Finance Ireland PLC in 2017 had net interest income of €39.8 million from its lending activities to other group companies.<sup>115</sup> Interest earned of €93.4 million was reduced by interest paid of €53.6 million.<sup>116</sup>

At the end of 2017, the company, with no employees other than one director, had €4.8 billion in long term loans to affiliates and €4.2 billion in loans guaranteed by the parent company, Fresenius SE & Co. KGaA.<sup>117</sup> The primary recipient of loans was Helios Finance Spain, S.L.U. which made €71.3 million in interest payments on €4.5 billion in loans.<sup>118</sup> The 2017

**The head of Oxfam Ireland recently stated that there “is clear and growing evidence that Ireland is still acting as a ‘conduit,’ facilitating large-scale tax avoidance.”**

filings of the Helios Finance Spain S.L.U. show a pending interest payment of €71.3 million on a total of over €90.2 million in accrued interest.<sup>119</sup> The Spanish filing also shows a loan of €1.2 billion from Fresenius Finance II, B.V. in the Netherlands, which had accrued interest of over €10.1 million.<sup>120</sup>

These interest payments, over €100 million in 2017, may artificially reduce taxable income in Spain. The loans are related to Fresenius’s 2017 acquisition of Quirónsalud, Spain’s largest hospital operator, for €5.76 billion.<sup>121</sup> The €100 million in interest payments were nearly one third of Quirónsalud’s 2017 earnings before interest and tax (EBIT). Large interest payments from the Spanish finance company to Fresenius finance

companies in Ireland and the Netherlands will continue for years to come and may have a substantial impact on reducing future tax payments in Spain. Smaller interest payments were received by other Fresenius affiliates in Germany, Austria, France and Poland.<sup>122</sup>

The 2018 financial statements of Fresenius Finance Ireland PLC state that the “key performance indicator for the business is net interest income,” which increased to €44.6 million from €39.2 in 2017.<sup>123</sup> The company continued to expand its lending to affiliates, Helios Finance Spain S.L.U. in particular. KPMG, the auditor, was paid €52,000 in total fees and other “assurance services” and €104,000 — down from €238,000 in 2017 — for “Tax advisory fees”.<sup>124</sup> As is the case throughout Fresenius’s global structure, there is a clear conflict in having KPMG provide both audit services and tax advisory services. The fact that tax advisory fees were double the audit fees also raises concerns.

## **Fresenius Finance Ireland II PLC**

Fresenius Finance Ireland II PLC, incorporated in April 2017, earned net interest income of USD\$8.3 million in 2017.<sup>125</sup> Interest on loans to affiliates of USD\$14.1 million was reduced by interest payable of USD\$5.8 million.<sup>126</sup> Interest income was entirely from Fresenius Kabi USA Inc., a business located in Illinois but incorporated in Delaware.<sup>127</sup> The company had loans to Fresenius Kabi USA Inc. totalling USD\$985 million.<sup>128</sup> A search conducted on the Delaware Secretary of State website showed exactly 500 companies incorporated in Delaware with the name “Fresenius.”<sup>129</sup> There are hundreds of other Fresenius subsidiaries registered in Delaware under other names but conducting business elsewhere.

Fresenius Finance Holding Ltd, the Irish parent company of two Irish finance companies,

reported a small loss and investments in affiliates worth €1.051 billion in 2017.<sup>130</sup> The company had no employees.<sup>131</sup> Investment in subsidiaries was made up of share capital in Fresenius Finance Ireland PLC and Fresenius Finance Ireland II PLC of €25,000 and €23,011, respectively, and capital contributions of €744.8 million and €306.7 million, respectively.<sup>132</sup> This capital was provided directly by the parent company in Germany, Fresenius SE & Co. KGaA.<sup>133</sup>

Three Fresenius companies in Ireland with no direct employees and no apparent business in the country make billions in loans to other Fresenius subsidiaries in Europe and the US. Given the complex financial flows in and out of Ireland and between various subsidiaries, it is impossible to have a clear understanding of the potential impact on tax payments in other jurisdictions. While providing group lending is a legitimate and often necessary function, is there any explanation for Fresenius's finance companies — domiciled in Ireland — other than tax avoidance? While these practices 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>134</sup>

# MALTA: TAX AVOIDANCE AND LAX REGULATIONS

Fresenius also has subsidiaries in Malta owned through Luxembourg. Fresenius Medical Care Malta Holdings Ltd was established in 2016 to “hold shares in subsidiaries” which at the end of 2017 were valued at USD\$1.016 billion.<sup>135</sup> The company held 100% of the shares in two other Malta companies:

- Fresenius Medical Care US Finance Malta Ltd — with a principal activity of financing
- Fresenius Medical Care Global Insurance Ltd — with a principal activity of captive insurance<sup>136</sup>

What role these companies have beyond finance and captive insurance is unclear, but the incorporations in Malta raise concerns about possible tax avoidance in both the US and Europe. The role of finance companies in tax avoidance has been discussed above, but offshore captive insurance companies have also been used to avoid tax and regulation.

## Luxembourg “US Finance” Company Owns Malta Holding Company

The parent company in Malta is a limited liability company owned by “Fresenius Medical Care U.S. Finance Luxembourg S.A.R.L., a limited liability company (LLC) registered in Luxembourg.”<sup>137</sup> Fresenius Medical Care Malta Holdings Ltd “is included in the consolidated financial statements of Fresenius Medical Care AG & Co KGaA. . .”<sup>138</sup> It generated a small loss and therefore paid no tax, but did generate a tax credit.<sup>139</sup>

Two directors of this Malta company are both directors in the other two Malta companies and appear to play significant roles in Fresenius Medical Care’s global structure. Director Gabriele Dux holds, or has held, positions in 16 other Fresenius entities registered in Luxembourg. Director Ilka Fluhrer is director in three of the same Luxembourg entities.<sup>140</sup> Ilka Fluhrer’s profile in LinkedIn shows that she has been the Director of Corporate Accounting for Fresenius Medical Care for over 17 years.<sup>141</sup>

## ‘Single Malt’ Concerns

A recent European Commission country report stated that “Malta’s tax rules appear to be used in aggressive tax planning structures, but some steps are being taken to limit such practices.”<sup>142</sup> The report goes on to state that high “capital flows, coupled with the absence of withholding taxes on royalty, dividend and interest payments, may be an indication that tax rules are used in aggressive tax planning structures.”<sup>143</sup>

Special concern has been raised about “Single Malt” structures which allow payments by Malta-based companies to escape tax altogether if payments are not subject to taxes in the recipient country due to provisions in bilateral tax treaties.<sup>144</sup> Concerns have also been raised about the recent expansion of insurance companies registered in Malta but operating in the EU and the lack of sufficient supervision.<sup>145</sup> Tax advantages and lack of regulation may be driving factors for Fresenius to establish companies in Malta. As discussed below, FMC also maintains captive insurance companies in Bermuda and the Cayman Islands.

# TROPICAL TAX HAVENS: FRESENIUS'S CARIBBEAN SUBSIDIARIES

While Fresenius relies heavily on finance companies in European tax havens, it is no stranger to Caribbean tax havens. At the end of 2018, FMC disclosed:

- two subsidiaries in the Cayman Islands (Asia Renal Care Ltd and Fresenius Medical Care Reinsurance Company [Cayman] Ltd);
- four subsidiaries in the British Virgin Islands (Cardinal Medical Services Ltd; Asia Renal Care Philippines Holdings Ltd; Redwood Medical Services Ltd & Asia Renal Care Asia Pacific Holdings Ltd); and
- one subsidiary in Bermuda (Fresenius Medical Care Risk Management Group, Ltd).<sup>146</sup>

The functions of Cardinal and Redwood Medical Services are unknown. FMC announced the acquisition of Asia Renal Care Ltd, “the second largest provider of dialysis and related services in the Asia-Pacific region (behind Fresenius Medical Care)” in 2010.<sup>147</sup> FMC stated that, if approved by antitrust authorities in Taiwan and Singapore, the acquisition would “add approximately \$80 million in annual revenue.”<sup>148</sup>

As of 2014, FMC owned Fresenius Medical Care Beteiligungsgesellschaft mbH in Germany, which owned Fresenius Arcadia Holding BV in the Netherlands, which owned Asia Renal Care Ltd in the Cayman Islands, which owned the four companies in the British Virgin Islands, two companies in Singapore (Asia Renal Care (SEA) Pte Ltd & Asia Renal Care (YB) Pte Ltd), two in Taiwan (Sheng Wei Consulting Management Co. Ltd and Sheng Kang Consulting Management Co. Ltd) and one in Hong Kong (Asia Renal Care (HK)

Ltd).<sup>149</sup> The Singapore company, Asia Renal Care (SEA) Pte Ltd, directly and indirectly owns several other Singaporean companies and directly owns a company in Japan, two companies in South Korea, three companies in Malaysia and one company in Thailand.<sup>150</sup>

Asia Renal Care Asia Pacific Holdings in the British Virgin Islands owns two companies in Malaysia (Asia Renal Care (KL) Sdn Bhd & Pantai-ARC Dialysis Services Sdn Bhd). Asia Renal Care Philippines Holdings Ltd, also in the British Virgin Islands, owns Asia Renal Care (Philippines) Inc. in the Philippines.<sup>151</sup>

What impact does this ownership structure through the British Virgin Islands, the Cayman Islands, Singapore and the Netherlands have on reported profits and tax payments in Malaysia, the Philippines, Japan, South Korea, Thailand or elsewhere in the Asia Pacific region? If the primary purpose of the ownership structure is not tax avoidance, what is it?

## Fenwal’s Cayman Islands Structure

In 2012, Fresenius Kabi acquired Fenwal Holdings Inc., “a leading US-based provider of transfusion technology products for blood collection, separation and processing,” which in 2011 had sales of USD\$614 million, nearly 5,000 employees worldwide and five manufacturing facilities.<sup>152</sup> The Fenwal business continues to be structured through various tax haven-based entities. The 2016 financial statements of Fresenius Kabi AG report an increase of nearly €153 million “paid into the equity of Fenwal International Inc.,

Grand Cayman, Cayman Islands.”<sup>153</sup> No further explanation of Fenwal or the increase in shares of the Cayman Island company were provided.

In 2014, Fresenius Kabi Pharmaceuticals Holding, Inc. owned Fenwal Inc., both incorporated in Delaware, which owned Fenwal International Inc., in the Cayman Islands.<sup>154</sup> Fenwal Inc. also owned Fenwal Canada Holdings Inc. and Fenwal Global Holdings LLC, both in Delaware; and Fenwal Sales Asia Pacific Pte Ltd in Singapore; and Fenwal Europe SPRL in Belgium. The Belgian entity owned other Fenwal companies in Denmark and Italy. The Cayman Islands entity owned Fenwal India Pvt Ltd in India. In 2014, the equity in the Cayman Islands company was €68 million and the equity in Fenwal Inc. in Delaware was €109 million. While the equity amounts have changed, presumably the same corporate structure still exists.

## Offshore Captive Insurance

The other Cayman Islands and Bermuda subsidiaries are offshore captive insurance companies and both owned by Fresenius Medical Care Holdings Inc. in New York, which was owned by Fresenius Medical Care North America Holdings Limited Partnership in Delaware, and in turn owned by Fresenius Medical Care Beteiligungsgesellschaft mbH (FMCBmbH) in Germany.<sup>155</sup> A 2014 document from FMCBmbH which amended the profit and loss transfer agreement between itself and its parent, Fresenius Medical Care AG & Co KGaA, stated that the purpose of FMCBmbH was “the investment in as well as the formation of joint ventures with domestic and foreign companies of all sorts, especially in the areas of pharmaceutical and medical engineered production, trade and sales companies as well as the acquisition and the transfer of know-how and licenses and the trade of goods of all sorts.”<sup>156</sup>

The amendments were to remain in compliance with changes to the provisions of the German Corporate Income Tax Act in “order to be able to continue the fiscal unity for income tax purposes.”<sup>157</sup> It is not clear what impact Profit and Loss Transfer Agreements may have on corporate tax payments in Germany or in jurisdictions around the world, but it is clear that they are a central component of Fresenius’s global corporate structure. As discussed below, FMCBmbH also has a “branch” in Panama.

Fresenius Medical Care Risk Management Group, Ltd in Bermuda and Fresenius Medical Care Reinsurance Company (Cayman) Ltd in the Cayman Islands are both captive insurance companies. The purpose of the Cayman Island company is to “assume risk for medical expenses for end stage renal disease patients eligible for Medicare Part C coverage.”<sup>158</sup> FMC Physician Reinsurance (Caymans) Ltd, another captive insurance company not disclosed elsewhere, was created to “assume risk for professional/medical malpractice insurance for nephrologists and their practices.”<sup>159</sup> The purpose of the captive insurer in Bermuda was to indemnify FMCH subsidiaries and joint ventures.<sup>160</sup>

These captive insurance companies are regulated only by the Cayman Islands and Bermudan governments and provide for tax deductibility of premiums from US federal income tax, accumulating premium income tax free and allowing dividends to be taxed at the lower capital gains rate.<sup>161</sup> What impact do these companies have on the quality and/or enforcement of insurance regulation in the US? What impact does this structure have on reported profits and income tax payments at the federal and/or state levels in the US?

## **German Company “Branches” in Panama**

Fresenius Medical Care Beteiligungsgesellschaft mbH (FMCBmbH) in Germany, a critical owner of global corporate assets including the captive insurance companies in Bermuda and the Cayman Islands and the entire North American business, set up a Panama branch in 2011 and incorporated a Belgium branch in 2018.<sup>162</sup> The use of Panama as a tax haven generated significant global attention through the “Panama Papers” leak publicised by the International Consortium of Investigative Journalists (ICIJ). The incorporation document of the Panama branch (translated from Spanish) states that the purpose of the entity, much like the German parent, is: “. . .the participation in, as well as, the execution of joint ventures with national and foreign companies of whatever nature, particularly companies in the fields of production, commercial and distribution of pharmaceutical products and medical technology as well as the acquisition and the assignment of know-how and licenses and the trade with products of whatever nature. The society can participate in similar companies or companies of the same nature, take care of their representation and/or establish branch offices. The society can manage all business and carry out appropriate actions to serve the social objective directly or indirectly. The society is empowered to participate as a collective partner in a national or foreign limited society.”<sup>163</sup>

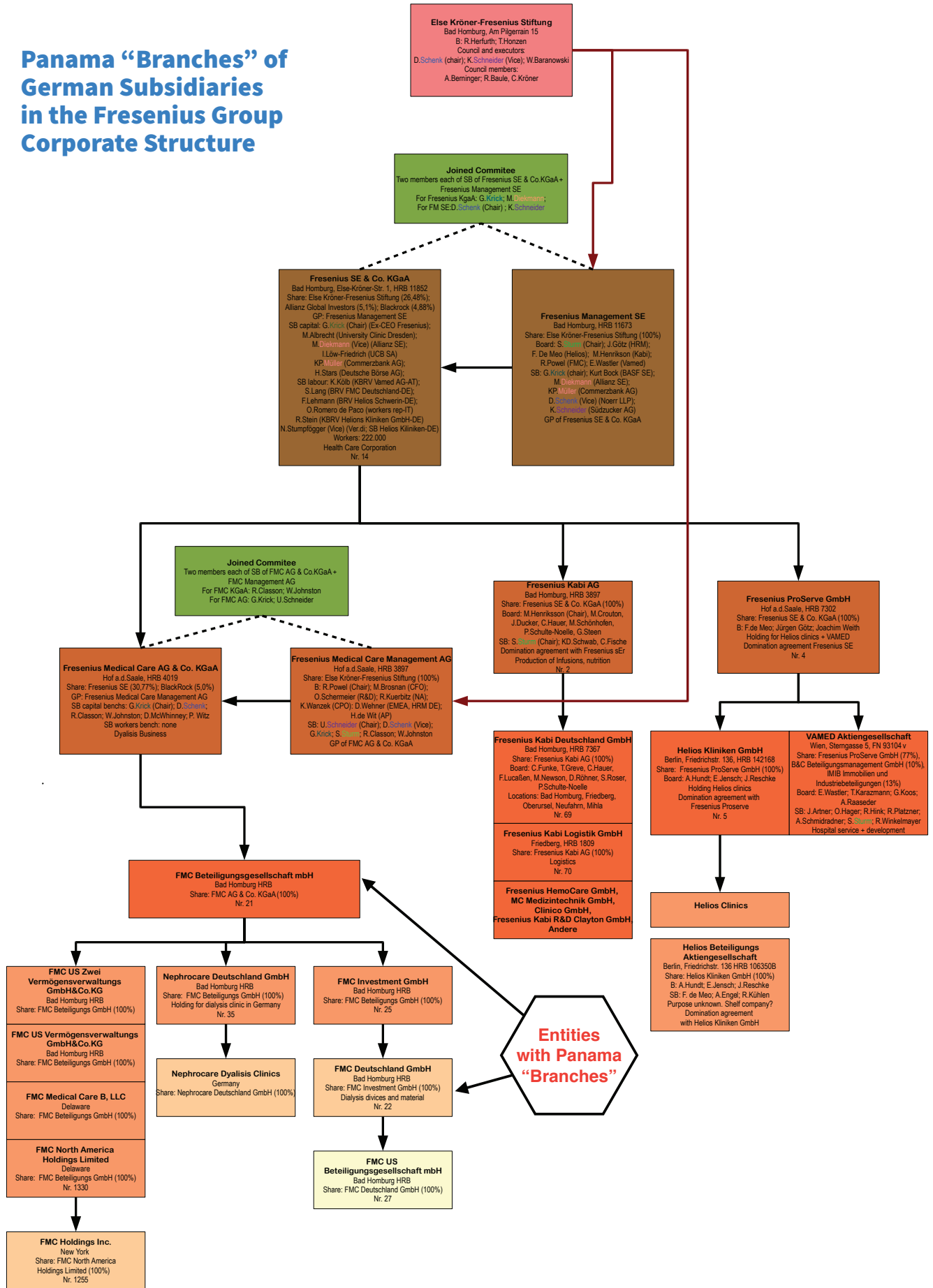
The Panama branch has a broad ability to engage in any global activity on behalf of the German parent company. Presumably there are tax

and other benefits from running various global operations through the Panama branch rather than the German company, but little information is available on the specific operations or functions of the Panama branch.

Fresenius Medical Care Deutschland GmbH also has a Panama branch which was set up in 2013.<sup>164</sup> The stated purpose of this Panama branch, although seemingly more focused on dialysis, is equally broad: “the development, production and distribution of as well as trade in products, systems and processes of the health field, including dialysis; The projection, planning, constitution, acquisition and operation of companies in the health field, including dialysis centres, also in separate societies or by third parties and the participation in such dialysis centres; The development, production, and distribution of other pharmaceutical products and the provision of services in these fields. The advice in the field of medicine and the pharmaceutical sector as well as in the scientific information and documentation.”<sup>165</sup>

These German subsidiaries are critical to FMC’s global structure. Global businesses or investments may be owned through the Panama branches rather than the German company, but they identify as being owned through Germany. The possible impact that might have on corporate income tax payments around the world is unknown because no current financial information is available. Is FMC’s North American business, including the Bermuda and Cayman Islands captive insurance companies, owned through Germany or the company’s Panama branch?

# Panama "Branches" of German Subsidiaries in the Fresenius Group Corporate Structure





# GLOBAL TAX AVOIDANCE THROUGH THE UK?

There are several Fresenius subsidiaries incorporated in the UK that serve the National Health Service (NHS) and the UK market. However, other Fresenius UK subsidiaries have limited or no domestic operations and only serve international markets. Does Fresenius set up these structures in the UK to take advantage of tax treaties with other jurisdictions or to utilise other loopholes in the UK tax system?

A recent European Commission country report on the UK stated that its tax system “appears to be one of the most attractive for ‘treaty shopping’ on dividend income.”<sup>166</sup> The report explains that treaty shopping “is the practice of structuring a business to take advantage of more favourable tax treaties available in certain jurisdictions.”<sup>167</sup> Multinational “companies may use the UK’s tax-exemption of dividends received from abroad and the lack of a withholding tax on outbound dividends paid, together with corporate tax residency rules to legally divert dividend flows with the aim of reducing or eliminating” tax liabilities.<sup>168</sup> The report also notes that the UK’s controlled foreign company rules are under investigation by the European “Commission on whether the rules allow multinationals to pay less UK tax, which would be in breach of EU State aid rules.”<sup>169</sup>

The Tax Justice Network’s Corporate Tax Haven Index, which “assesses jurisdictions on the extent to which their systems are designed to leech profits from elsewhere, including the lowest available rate of corporate and income tax and the aggressiveness of tax treaty networks” notes that OECD members are key drivers of profit shifting and ranks the UK as 13<sup>th</sup>.<sup>170</sup> However, the UK’s “overseas territories” occupy the top three places (the British Virgin Islands, Bermuda and

the Cayman Islands), and its crown dependencies (Jersey, Guernsey and the Isle of Man) occupy the 7<sup>th</sup>, 15<sup>th</sup> and 17<sup>th</sup> places respectively. Taken together, the UK network is the greatest enabler of tax avoidance globally.”<sup>171</sup>

## Profit Shifting on NHS Funds?

Fresenius’s UK dialysis business has eight subsidiaries under Fresenius Medical Care Holdings Ltd. By law, the company is required to disclose its tax strategy, but only discloses seven subsidiaries.<sup>172</sup> The 51% interest in Comprehensive Nephrology Services Limited in Trinidad and Tobago, which is listed in the financial statements, is not disclosed.<sup>173</sup> The subsidiary Fresenius Medical Care Renal Services (UAE) Ltd, incorporated in the UK but operating a dialysis centre in the United Arab Emirates, generated turnover of £5.4 million out of total turnover of £126 million in 2017.<sup>174</sup> Excluding the turnover from the United Arab Emirates, all other turnover was generated in the UK.<sup>175</sup>

Although not disclosed in the financial statements, most of the turnover is generated by NHS payments for the operation of over 50 dialysis centres and related services.<sup>176</sup> The EBITDA (earnings before interest, tax depreciation and amortisation) of the group declined to £11.8 million (from £14.4 million) due to “cost pressures and lower economies of scale within the clinical services business following the closure of a number of clinics as a result of NHS competitive tenders.”<sup>177</sup>

Gross profit of nearly £27 million was reduced by additional costs and expenses resulting in

profit of only £4.8 million and a tax charge of under £1.2 million.<sup>178</sup> There is no explanation of administrative expenses of £17.8 million or distribution costs of nearly £4 million.<sup>179</sup> Also impacting profit was nearly half a million pounds in interest payable to related parties on related party debt of £47.5 million owed by the company.<sup>180</sup> It appears that the UK may provide another locale where transfer pricing on related party transactions artificially reduced profits generated from publicly funded health services. While the UK may be losing tax revenues it may also be facilitating tax avoidance elsewhere.

## **Why Does Fresenius Sell Pharmaceuticals from the UK to Europe?**

There are four subsidiaries in the Fresenius Kabi arm of the business.<sup>181</sup> A holding company, FHC (Holdings) Ltd, owns Fresenius Kabi Ltd and Calea UK Ltd, which primarily serve the UK market. The holding company has no income and no expenditures for the year and no employees other than the director.<sup>182</sup> Calea UK Ltd had total turnover of £62.6 million, £50.6 million from the sales of pharmaceuticals and related products and £12 million from homecare services in the UK, resulting in operating profit of £9.8 million.<sup>183</sup> Fresenius Kabi Ltd had £121 million in total turnover with 85% from the UK, 15% from Europe and small amounts from Australasia and South America, resulting in an operating profit of only £6.8 million.<sup>184</sup>

However, the most intriguing UK company is Fresenius Kabi Oncology PLC, a wholly-owned subsidiary of Fresenius Kabi Austria GmbH, which had £38.5 million in sales of generic pharmaceutical products but no sales in the UK market in 2017.<sup>185</sup> Sales to Europe more than doubled from the previous year and accounted

for 99% of all sales, with a small amount of sales to Canada.<sup>186</sup> However, loss before tax fell to £0.5 million, driven by an “inventory devaluation.”<sup>187</sup> Is this “inventory devaluation” an artificial way to wipe out taxable profit from this entity?

The company made sales to related parties in 2017 of nearly £38.2 million, not including over £4 million in receivables outstanding from related parties.<sup>188</sup> The fact that the UK-based company, owned through Austria by layers of German companies, is selling products entirely to related parties in Europe raises serious concerns about the likelihood of transfer pricing and major tax avoidance in the UK and across Europe.

In addition to sales entirely to related parties, virtually all products and materials are purchased from related parties. The statement that only one key product was “supplied from a third party, negatively affecting the cost of sales,” seems to confirm purchases almost entirely from related parties.<sup>189</sup> There is no further disclosure of the cost of related party purchases.

It appears that Fresenius Kabi Oncology Ltd in India is the UK company’s largest global supplier. Annual sales from the Indian company to the UK company were worth an estimated £17.7 million.<sup>190</sup> More than half of the UK company’s purchases were from this related company in India, which had its own tax issues (see below). Fresenius Kabi Oncology PLC in the UK — like most other Fresenius subsidiaries that have been examined — had significant amounts of related party debt. In 2017, the company paid £281,000 in interest on group loans, versus £3,000 on bank loans, and had loans from the parent company of over £21 million due within a year.<sup>191</sup>

Unexplained administrative costs of £4.7 million were the biggest factor in wiping out gross profit of £4.8 million and eliminating any UK tax liability.<sup>192</sup> There is no way to determine the

impact of these offshore related party purchases and sales and other related party transactions on taxable income in other countries due to limited disclosure in the UK and consolidation at the corporate level. However, these types of related party transactions appear to represent a broader pattern of profit shifting through transfer pricing across Fresenius's global operations.

As of August 2019, none of the other Fresenius UK entities mentioned above had filed 2018 financial statements. Fresenius Kabi Oncology PLC's 2018 financial statements reported a greater loss on the export of medical supplies into Europe and revealed that due "to the uncertainty of relations between the United Kingdom and the European Union because of the Brexit vote the Company's current business plan... is to stop its operations and trading businesses. This strategy is taken because the UK will lose the authority to release pharmaceutical products to European countries post 31<sup>st</sup> October 2019. This ensues with the decision of the ultimate parent company, Fresenius SE & Co. KGaA, in Germany to close UK activities."<sup>193</sup>

## Shifting Profits from Africa?

Fresenius's Vamed hospital development and management business has several UK-based subsidiaries. One Vamed company in the UK, Vamed Health Projects UK Ltd, incorporated in February 2017, was "currently implementing two main projects in Ghana and Zambia" and "is keen to expand with projects especially in Africa and in other parts of the world" in the "healthcare development sector."<sup>194</sup> The UK entity had one employee (including directors) and did not generate any income in the UK. 97% of its €18.7 million in revenue came from Africa and the remainder from Europe.<sup>195</sup> The company reported pre-tax profit of €1.3 million and a tax charge of €217,000 in 2017.<sup>196</sup> However, the tax payment was reported as a current liability

along with €17.1 million in amounts due to group undertakings, with no further explanation of related party transactions.<sup>197</sup> Are Fresenius's UK subsidiaries, with no business in the UK, facilitating tax avoidance in African and European countries?

## Jersey Bonds: 0% Tax Rate

In 2008, Fresenius Kabi acquired the US-based company, APP Pharmaceuticals, Inc. by creating a Jersey-based entity that issued bonds. The related announcement of the acquisition stated that through "APP, Fresenius Kabi enters the US pharmaceuticals market and achieves a leading position in the global I.V. generics industry."<sup>198</sup> The deal, including debt, was valued at USD\$4.6 billion.<sup>199</sup> In order to help finance the deal, Fresenius incorporated Fresenius Finance (Jersey) Ltd in Jersey, the British dependency in the Channel Islands. The only activity of this company was to issue €554.4 million in mandatory exchangeable bonds due in 2011, which Fresenius SE purchased and sold to institutional investors.<sup>200</sup> The proceeds of the bonds were lent to Fresenius Finance BV in the Netherlands, also the direct parent of Fresenius Finance (Jersey) Ltd<sup>201</sup> The loan was repaid, the bonds redeemed and the Jersey company was dissolved in 2011. The notes to the financial statements explain that the company was "subject to Jersey income tax at a rate of 0%."<sup>202</sup>

# INDIAN GOVERNMENT SUBSIDIES AND TAX REFUNDS FOR FRESENIUS'S GLOBAL PRODUCTION

Fresenius Kabi Oncology Ltd in India, 97% owned by a Fresenius subsidiary in Singapore, is a significant global producer and exporter of generic drugs and the largest supplier to Fresenius Kabi Oncology PLC in the UK.<sup>203</sup> Fresenius Kabi Oncology Ltd has been plagued for many years by warning letters from the US Food and Drug Administration (FDA) regarding concerns found during inspections of its manufacturing facilities in India.<sup>204</sup> Despite large sales volumes and subsidies from the Indian government, the Indian company had a net tax refund in the most recent financial year (ended 31 March 2018).<sup>205</sup>

The turnover of the company in 2017/18, mostly from related parties, was 73,437.27 Lakh (€90 million).<sup>206</sup> In addition to sales to the UK, there were large sales to other international related companies, including services provided to Fresenius Kabi Deutschland GmbH in Germany worth more than 25% of total turnover. The largest source of revenue after Germany, the UK and India, was Hong Kong. Drugs sold to Hong Kong are likely resold to Fresenius subsidiaries in Australia, New Zealand and elsewhere in the Asia Pacific region.

The company had 30,845.95 Lakhs in loans from the ultimate holding company, potentially using debt issued by other Fresenius financing companies in tax havens.<sup>207</sup> Total interest payments were 4,096.59 Lakhs and interest expense paid to German companies was 2,929.39 Lakhs.

While there was a small current tax expense, the credit on a deferred tax charge increased the reported profit after tax to 1,958.39 Lakh.<sup>208</sup> For

context, the reported profit on the manufacture and global export of pharmaceuticals from India was about half of the interest expense paid to related parties. Not only did Fresenius Kabi Oncology Ltd not pay any corporate income tax, it received a tax refund or credit from the Indian government. The company received a small government grant and export incentives of 2,522.79 Lakhs, more than the value of reported profits.<sup>209</sup> Given the importance of Indian production to Fresenius's global supply chain, it would seem reasonable that profits from manufacturing would be reported and taxed in India, not shifted elsewhere.

Fresenius Kabi Oncology Ltd reported that contingent liabilities, or "claims against the Company not acknowledged as debts," included two tax disputes. There was 6,340.20 Lakhs in an excise duty dispute and 6,843.14 Lakhs in an income tax dispute.<sup>210</sup> Fresenius Kabi India Private Ltd, which is separately owned but the largest Indian customer of the public company, also had a recent transfer pricing case before the Income Tax Appellate Tribunal.<sup>211</sup> Fresenius operates in India through several other subsidiaries owned through the Cayman Islands, including Fenwal India Private Ltd.

Fresenius Kabi Oncology Ltd, a subsidiary of one of Germany's largest multinationals, received financial support and subsidies from Indian governments — and a corporate income tax refund — while exporting significant amounts of generic drugs to related parties around the world. Does this Indian subsidiary represent broader tax avoidance practices by Fresenius in India and elsewhere in the developing world?

# “SINGAPORE SLING”?

The “Singapore Sling,” a classic cocktail invented in Singapore, now also refers to the practice of multinationals creating marketing hubs in Singapore to take advantage of extremely low tax rates to shift profits out of countries where they are genuinely earned.

Fresenius Kabi (Singapore) Pte Ltd owns 97% of the shares in Fresenius Kabi Oncology Ltd in India, which were valued at SGD\$431.6 million.<sup>212</sup> The Singapore company’s principal activities are listed as “trade in pharmaceutical products, medical devices and investment holding,” but the filings contain very limited information.<sup>213</sup> The immediate holding company of the Singapore company is Fresenius Kabi Austria GmbH in Austria — “and Fresenius Kabi AG and Fresenius SE, both incorporated in Germany, are the intermediate and ultimate holding companies, respectively.”<sup>214</sup>

The income statement reports revenue of nearly SGD\$5.3 million and gross profit of more than SGD\$3.1 million in 2017.<sup>215</sup> However, administrative expenses (SGD\$1.5 million) and distribution expenses (SGD\$0.9 million) reduced pre-tax profits to only SGD\$680,173.<sup>216</sup> These large and unexplained “administrative” expenses appear to be a hallmark of reporting by Fresenius subsidiaries globally and have the impact of reducing taxable income at a national level.

While there was a reported tax expense of SGD\$53,419, the cash flow statement indicates that no tax was paid in 2017 and a tax payment of only SGD\$34,770 was paid in 2016. The 2016 tax payment was entirely from withholding tax with no current year tax expense.<sup>217</sup> The income tax expense was reduced by SGD\$97,611 due to the “utilisation of tax benefits” in 2017 and SGD\$105,297 in 2016.<sup>218</sup> While the corporate income tax rate in Singapore is 17%,

many multinational companies there, as in Luxembourg, have negotiated concessional tax rates with the government. This may explain the “tax benefits.”

Purchases from related companies of SGD\$2.7 million outstripped the cost of sales of SGD\$2.1 million in 2017.<sup>219</sup> Purchases from related companies of SGD\$1.4 million were just under the cost of sales of SGD\$1.5 million in 2016.<sup>220</sup> Purchases were probably all from related parties and differences are likely due to timing and various payables and receivables from related parties. The filing provides no specific information about which related companies or which countries purchases were made from. In addition to this company which owns the Indian company, Fresenius has many other subsidiaries in Singapore which own other Fresenius businesses in Japan, South Korea, Malaysia and Hong Kong.

This Fresenius Singapore subsidiary and others could easily be used by Fresenius to shift profits globally to minimise tax payments in countries with higher tax rates or without undisclosed concessional tax deals. The Tax Justice Network’s Corporate Tax Haven Index ranks Singapore 8<sup>th</sup> in the list of “countries that have done the most to proliferate corporate tax avoidance and break down the global corporate tax system.”<sup>221</sup> As mentioned above, the list is topped by three British territories (British Virgin Islands, Bermuda and Cayman Islands), followed by the Netherlands, Switzerland and Luxembourg. Jersey, a British dependency, ranks 7<sup>th</sup>, and after Singapore, comes the Bahamas, Hong Kong and Ireland.<sup>222</sup> In short, Fresenius’s global operations provide a guide to many of the world’s top corporate tax havens.

# BIG PHARMA'S GLOBAL TAX DODGING RECORD

While benefitting heavily from government spending — including research incentives, subsidies, patent protection and procurement — large global pharmaceutical companies are notorious tax dodgers. Big Pharma's tax dodging tactics have become so problematic that the Obama administration issued new rules in 2014 and 2016 to prevent US-based Pfizer and AbbVie from acquiring Irish companies and moving corporate headquarters to Ireland to avoid even more US corporate income taxes.<sup>223</sup> A 2017 study by Americans for Tax Fairness found that the 10 largest US pharmaceutical companies held USD\$506 billion in profits offshore.<sup>224</sup> Nine drug companies were in the top thirty US “profit-offshoring corporations.” The fact that the 10 pharmaceutical companies made 57% of sales but only booked 23% of profits in the US is evidence of significant profit shifting.<sup>225</sup>

Fresenius appears to be following the playbook of Big Pharma companies for tax dodging, including structuring acquisitions to avoid tax and holding €8 billion in profits offshore. Oxfam's 2018 report, *Prescription for Poverty*, analyzed some of the key tax dodging schemes used by four pharmaceutical giants and the global impact of their schemes.<sup>226</sup> Oxfam found that between 2013 and 2015, Abbott, Johnson and Johnson, Merck and Pfizer deprived developing countries of over USD\$112 million a year in tax revenue that could have been used to fund public services, including healthcare. Additionally, the companies may have avoided even more in developed countries— an estimated USD\$3.7 billion annually. The consequences for funding healthcare, education, and infrastructure, particularly in less developed countries, are grave. As one example, revenue lost due to tax dodging by Big Pharma could have

provided vaccinations for preventable diseases for millions of children.

While none of the four drug companies in Oxfam's report publish country by country reporting on tax payments, publicly available data from subsidiaries shows a consistent pattern which indicates profit shifting to tax havens. Globally, these companies reported annual profit margins of up to 30%, yet in eight advanced economies the companies posted 7% profit margins, in seven developing countries the corporations averaged 5% profit margins, and in four tax haven countries that charge low or no corporate taxes the companies posted 31% profit margins. This pattern is similar to Fresenius's reporting of profit margins at the global and national levels.

For Big Pharma, including Fresenius, multiple profit-shifting strategies and loopholes may be employed to avoid taxes. These include establishing finance companies in tax havens to issue loans to subsidiaries, the interest of which is tax deductible; establishing holding companies to own drug patents and intellectual property and charge tax-deductible royalties to subsidiaries; transfer pricing; and other methods of profit-shifting.

## US Lobbying and Trump's Tax Cuts

In the United States, pharmaceutical companies spend more than any other industry influencing US government policy. Big Pharma's lobbying efforts are designed to limit or kill reforms on prescription drugs and maintain the high level of profits delivered by the status quo of a

dysfunctional US healthcare system. Big Pharma donates tens of millions to politicians' campaigns and political parties, employs the most lobbyists and are among the biggest spenders on lobbying across all industries. Fresenius is also a big spender on political lobbying in the United States, particularly when comparing the size of its US business to that of other Big Pharma companies. Fresenius Medical Care North spent USD\$2.3 million to lobby the federal government in the 2017 election cycle and another USD\$2.7 million in 2018.<sup>227</sup>

Big Pharma wields its influence to reduce tax payments and protect profits with great success. Oxfam's 2019 study, *Hazardous to Your Health*, found that the four big drug companies received \$7 billion in tax cuts from the Republican tax act of 2017.<sup>228</sup> The Trump tax cuts were enacted with the promise from US companies to use the savings to boost the economy, create more jobs and invest. However, instead of investing this windfall in research and development or lowering

around €90 million, €60 million from holdings in FMC and €30 million from Fresenius Kabi.<sup>229</sup> FMC stated that the 2017 income tax "expense" of the company decreased by 27% to €454 million and the effective tax rate dropped to 22.6% due to a reduction of €236 million from Trump's cut to the US corporate tax rate.<sup>230</sup>

## **Fresenius's Questionable Charity: Tax Benefits and State and Local Lobbying**

In California, FMC and its primary competitor DaVita have spent heavily to influence the state's political process in order to preserve profit margins and prevent consumer protection. The two companies have spent more than USD\$100 million in lobbying efforts to oppose a bill that "would crack down on a scam the dialysis duopoly has routinely engaged in, using a

# **Fresenius appears to be following the playbook of Big Pharma companies for tax dodging...**

drug prices, the four drug companies increased payouts to shareholders and executives through aggressive stock buybacks and dividends.

Fresenius benefitted greatly from the Trump tax cuts. Fresenius Medical Care AG & Co. KGaA and its largest shareholder, Fresenius SE & Co. KGaA, both expected Trump's tax cuts to have a significant impact on 2017 after-tax earnings. FMC expected a €200 million (USD\$237.3 million) benefit and Fresenius forecast a "one-off gain" of

shadow charity called the American Kidney Fund to significantly juice their reimbursement from private insurance plans."<sup>231</sup> Fresenius and DaVita are the largest contributors to the American Kidney Fund. In 2018 the two companies made tax-deductible contributions of USD\$247 million.<sup>232</sup> Switching people to private insurance allows for much higher billing rates than the companies receive from the government funded Medicare program. With this "charity" scheme,

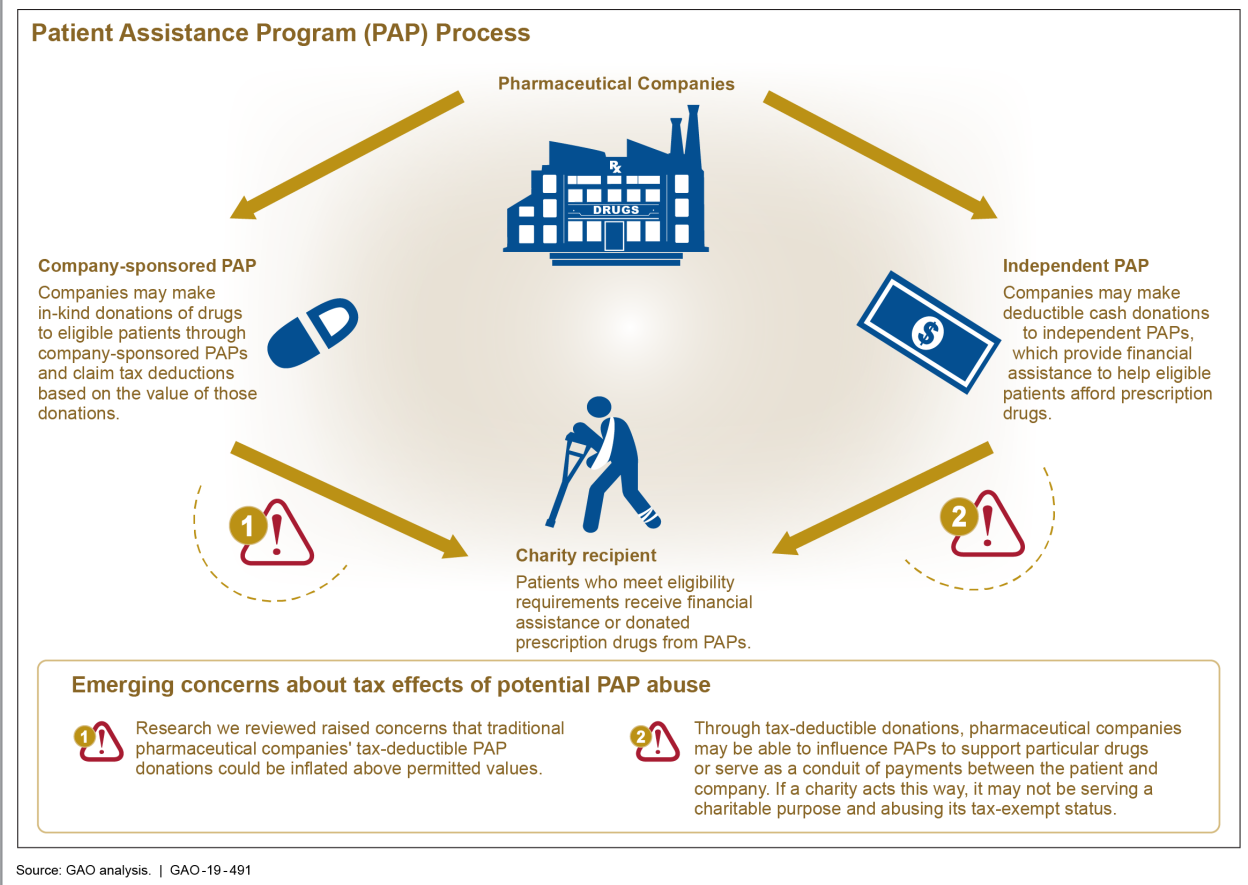
Fresenius significantly boosts profit margins and creates large tax deductions.

Such schemes have recently caught the attention of the US Government Accountability Office (GAO) which suggested more should be done to identify abusive schemes involving tax-exempt entities. The report provided a few schemes as examples, including one that could have involved the American Kidney Foundation. The report stated these “schemes threaten our tax system’s integrity and fairness when taxpayers believe that individuals and businesses are not

paying their fair share” and when “tax-exempt entities such as charities are involved, abusive tax schemes are even more disruptive, as they also erode the public’s confidence in the integrity of the charitable sector.”<sup>233</sup> The GAO report stated that income tax deductions could be up to 10% of the corporations’ taxable income and raised concerns of abuse because “pharmaceutical manufacturers’ profits generated from sales of their products to individuals receiving help from patient assistance programs that they donate to.”<sup>234</sup>

## How Patient Assistance Programs Operate and Where Abuse Can Occur

Figure 3: How Patient Assistance Programs Operate and Where Abuse Can Occur





Fresenius has directly influenced voters and political candidates through political spending. Fresenius Medical Care contributed a total of USD\$34.3 million for the 2017–2018 election cycle in California.<sup>235</sup> Nearly USD\$240,000 was given to candidates while USD\$34 million was given to “No on Proposition 8: Stop the Dangerous Dialysis Proposition, sponsored by the California Dialysis Council.” This industry-funded front group fought a ballot measure intended to limit dialysis industry profiteering from aggressive billing practices.

Fresenius is also adept at influencing local governments in the US to lower property tax payments, which are the primary funding source for local schools and other public services. Unlike Amazon’s recent efforts to win corporate subsidies from local governments, Fresenius’s subsidies have received little or no public scrutiny. With new construction underway in Tennessee, Illinois, Wisconsin and North Carolina, Fresenius Kabi has brokered agreements with municipalities, counties and states for tax credits and subsidies.

The largest of these new development projects is a USD\$250 million expansion of the plant in Melrose Park, Illinois, which will be 30 miles from Fresenius Kabi’s US headquarters in Lake Zurich and will increase production of injectable drugs.<sup>236</sup> The Village of Melrose Park will contribute USD\$15 million in tax-increment

financing subsidies. The Village is also reportedly subsidizing the company’s water usage, and the county government will provide a 12-year property tax reduction in addition to state tax credits. A public information request to the Illinois Department of Commerce and Economic Opportunity revealed that Kabi is receiving a USD\$4.7 million tax credit from the state. Other possible state tax credits are confidential.

Fresenius Kabi donated USD\$1,250 to the re-election campaign of the Mayor of Melrose Park in 2016.<sup>237</sup> Political spending has helped Fresenius and other pharmaceutical companies increase profits and reduce tax payments at local, regional, national and global levels and negatively impacted public health and consumers.

# CONCLUSIONS AND RECOMMENDATIONS

Fresenius, like other multinationals, uses a range of transfer pricing tactics to aggressively reduce income tax obligations in countries around the globe where it generates significant profits. However, unlike most other multinationals, Fresenius is highly dependent on government funding for public healthcare. Governments around the world which procure goods and services from Fresenius through its myriad of global subsidiaries must require greater transparency to ensure that Fresenius follows the spirit and the letter of the law. It is a requirement under the Organisation for Economic Co-operation and Development (OECD) Guidelines for multinationals to follow the spirit of the law regarding taxation.

Public contracts and government funding should be denied to any multinational that avoids tax obligations. If companies like Fresenius refuse to increase the transparency of tax payments — including related party transactions and transfer pricing — and be held accountable for public funding, they should be denied any future contracts or funding.

As a global corporation, Fresenius should immediately publish an annual report of country by country tax payments. Fresenius already provides this information to various tax authorities under the obligations created by the OECD’s Base Erosion and Profit Shifting (BEPS) Action Plan, but this information should be produced for investors, other government agencies and the general public.

The Global Reporting Initiative (GRI) has recently developed a reporting standard on tax transparency that includes public country by country reporting and has been backed by

investment funds holding over USD\$10 trillion in assets. These new reporting standards also require country by country reporting on economic activity including sales, employees and assets. Fresenius already reports under other GRI sustainability standards and should immediately adopt the GRI tax transparency

**Public contracts and government funding should be denied to any multinational that avoids tax obligations.**

reporting standard. If Fresenius does not immediately adopt the GRI tax transparency reporting measures, governments should make it a requirement of any future contracts.

Ultimately, Fresenius provides a clear example of why the current global tax system is in need of a major overhaul. Fresenius subsidiaries are not acting independently but as part of a global corporate structure and should be treated and taxed accordingly. Fresenius and other large multinationals need to be taxed at the global

level and have the revenues shared according to where profits are generated. There are active discussions at the OECD about a global unitary taxation system and Fresenius provides a clear case study of why these changes are both necessary and urgent. Germany and other national governments need to support these changes and ensure they are implemented and enforced in a fair and transparent manner so that all nations will benefit. While sales are important, the level of employment must also be a strong component of how tax revenue is allocated to each country.

Fresenius and other multinationals must be prohibited from using transfer pricing schemes which rob governments of revenue for healthcare, education and other essential public services. Fresenius provides an example of a European based multinational taking advantage of loopholes in the current global tax system to avoid tax obligations where profits are generated.

Without waiting for change at the global level, local, regional and national governments must make sure companies like Fresenius are in compliance with all existing reporting requirements and tax regulations. They must change procurement policies to ensure higher levels of transparency and compliance for any company receiving government funding to provide public services. The German government should investigate possible reforms to increase transparency, restore confidence and ensure that German companies meet their global tax obligations. Other large German multinationals may also be using aggressive tax avoidance schemes to reduce corporate income tax payments in Germany and in other countries around the world. The European Union should continue to pressure member states to close loopholes that allow multinationals to legally avoid income tax payments where profits are generated.

Fresenius should show global leadership by agreeing to increase transparency and advocate for a fairer global tax system that can adequately fund global healthcare needs. Hopefully Fresenius will not simply deny any wrongdoing and provide the standard corporate response that it “follows the law” in all countries where it operates. Fresenius and other multinationals must not take advantage of any and all possible legal loopholes, but rather must understand and accept a broader responsibility to meet social needs, including paying corporate income tax obligations in all countries where it operates.

While regional, national and global tax loopholes need to be closed by changing laws and regulations, responsible companies should not be engaged in a race to the bottom to pay as little in tax as possible by ignoring the intent of existing laws. Fresenius must separate auditing and tax advisory services, implement a more equitable tax strategy based on transparency and communicate with shareholders on the need for a new approach to taxation.

Fresenius must improve its global conduct in relation to tax payments and transparency. Governments at all levels — and other stakeholders — have the capacity to require changes from Fresenius and other multinationals. Fresenius can help lead the way by changing its approach to taxation and providing a positive example for other corporations to follow.

# APPENDIX A

## FRESENIUS: RESPONSIBLE GLOBAL BUSINESS PRACTICES?

This report focuses on Fresenius’s global tax practices, but it is important to put the tax issues in the broader context of concerns about Fresenius’s global corporate conduct. While Fresenius makes robust claims about social responsibility, it has been convicted of serious violations and its practices have been frequently criticised.

Fresenius Kabi’s website proclaims that it is among the most reputable companies in Germany. “Honesty, fairness and trustworthiness — these are attributes that Fresenius Kabi can identify with. And more than that: Fresenius Kabi has been recognized for its dedication to these values.”<sup>238</sup> The Fresenius Medical Care webpage states that the company’s conduct, “which is applied in every division worldwide... is based on our company’s core values of quality, honesty and integrity, innovation and progress.”<sup>239</sup>

However, an examination of Fresenius’s history and global operations raises a long list of concerns. Time and again, Fresenius has found itself at the centre of investigations into fraud and corruption globally. Following is a brief summary of some of Fresenius’s most egregious examples of corporate malfeasance, including fraudulent billing of government programs, corruption, bribery and collusion.

### Fraudulent Billing Settlements in the United States

In early 2000, Fresenius Medical Care reached a USD\$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 defrauding Medicare and other federal healthcare programs. The DOJ alleged that three units of the company, LifeChem Inc. Laboratories, NMC Homecare Inc. and NMC Medical Products Inc., conspired to “defraud government payers by charging for disputed intravenous feeding of dialysis patients, charging for blood tests deemed unnecessary and violating anti-kickback laws by providing payments, discounts, yacht trips and bear-hunting excursions in Alaska to attract potential customers for the LifeChem blood testing business.”<sup>240</sup> The settlement included USD\$101 million in criminal fines, and USD\$385 million in civil recoveries.<sup>241</sup>

In 2007, the US DOJ joined a false claims whistleblower lawsuit against Fresenius Medical Care. The suit was against two of the company’s units, Renal Care Group (RCG) and Renal Care Group Supply Company (RCGSC), and it alleged that certain home dialysis supply claims submitted to Medicare between 1999 and 2005 were fraudulent. Under federal law, the Medicare program pays companies that provide dialysis supplies to End Stage Renal Disease (ESRD) patients only if the companies that provide the supplies are truly independent from dialysis facilities and the ESRD patient chooses to receive supplies from the independent supply company.

Defendants set up a sham billing company, RCGSC, that was not independent from RCG. Further, RCG interfered with ESRD patients’ choice of supply options, requiring patients to “move to RCGSC.”<sup>242</sup> The US government was ultimately

# Time and again, Fresenius has found itself at the centre of investigations into fraud and corruption globally.

awarded USD\$82.6 million plus costs. “The Court’s orders in this case discuss the concerns of multiple RCG employees who complained about the operation and Medicare billing activity of the RCGSC, including one regional manager who wrote, *‘I do not wish to go to jail,’* and felt the company’s actions *‘were not in the best interests of patients,’* after receiving a corporate directive about converting patients into the RCGSC.”<sup>243</sup> [Emphasis added]

## **Bribery and Corruption: USD\$231 Million Settlement of US Foreign Corrupt Practices Act**

In March 2019, the United States Securities Exchange Commission (SEC) and Department of Justice (DOJ) announced that Fresenius would pay USD\$231 million to settle allegations that the company had violated the Foreign Corrupt Practices Act (FCPA).<sup>244</sup> The FCPA “was enacted for the purpose of making it unlawful for certain

classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business.”<sup>245</sup> The FCPA is widely recognised as one of the most effective anti-corruption measures in the world.

According to press releases by both departments, the settlement included USD\$147 million in disgorgement and interest to the SEC and USD\$84.7 million in criminal penalties to the DOJ stemming from antibribery and anticorruption violations spanning 17 countries, including: Saudi Arabia, Morocco, Angola, Turkey, Spain, China, Serbia, Bosnia, Mexico and eight countries in West Africa.

The US government agencies found that Fresenius realised financial benefits of over USD\$140 million by paying millions of dollars in bribes to procure business through a variety of schemes, including using fake consulting contracts, falsifying documents and funnelling bribes through a system of third-party intermediaries. Senior management, including some from German headquarters, actively thwarted compliance efforts, personally engaged in corruption schemes and directed employees to destroy records of the misconduct — and “lower-level employees were berated if they didn’t destroy their laptops or delete emails.”<sup>246</sup> Examples of corruption from the SEC and DOJ findings include:

- In Saudi Arabia, FMC paid over USD\$4.9 million in improper payments to publicly employed doctors and government officials to retain or obtain business. Senior officials at FMC’s German headquarters received reports of the regional general manager submitting false invoices among other improper practices beginning in 2009, but did not fire the person until 2013. Other schemes involved paying off Saudi customs officials to avoid penalties and fees, paying doctors influential in awarding public tenders and altering or destroying records

in FMC accounting to conceal bribes. In all, FMC profited by over USD\$40 million from these schemes.<sup>247</sup>

- In West Africa, senior FMC officers bribed public doctors and officials from 2007–2012 by entering into sham consultant and service agreements and providing kickbacks in exchange for assistance obtaining business and timely payments from product sales.<sup>248</sup>
- In Turkey, FMC entered into joint ventures with publicly employed doctors from 2005–2014, giving them shares in exchange for those doctors directing business from state hospitals to FMC clinics.<sup>249</sup>
- In Spain, FMC’s Internal Audit team found significant red flags in both 2010 and 2014 about payments to public officials — including a lack of documentation for payments related to gifts, donations and consultancy — in exchange for influencing public tenders. The payments continued to publicly employed doctors until 2015, and FMC benefited over USD\$20 million from the improper conduct.<sup>250</sup>
- In China, senior management at FMC directed bonus payments to publicly employed healthcare staff based on the number of treatments provided and/or new patients treated, and the amount of equipment purchased from FMC. The payments were recorded as “center marketing fees.” FMC profited over USD\$10 million from this improper conduct.
- In the Balkans, four doctors were paid over USD\$329,000 by FMC while on the public tender commission that FMC sought business from. In addition, FMC paid USD\$393,000 for travel and accommodations for those same four doctors and their spouses to attend a

conference in the US, which included personal trips to New York City and Cancun, Mexico. FMC also made over USD\$1 million in payments to “speed up” the clinic privatisation process for four clinics. FMC profited over USD\$10 million overall as a result of this improper conduct.<sup>251</sup>

“By engaging in widespread bribery schemes across multiple countries, the company prioritized profits over compliance in its dealings with foreign government officials,” said Tracy Price, Deputy Chief of the SEC Enforcement Division’s FCPA Unit.<sup>252</sup> The company has agreed to retain an independent compliance monitor for two years and self-report its FCPA compliance efforts for the year after the monitor expires.

## **Chile Fines Fresenius Kabi USD\$27.7 Million for Collusion**

In November 2018, the Chilean Court of Defence of Free Competition (TDLC) announced that it had accepted a collusion requirement proposed to the court by Chile’s National Economic Prosecutors Office (FNE). As part of its resolution, the court imposed fines equivalent to USD\$25.6 million (30 thousand Annual Tax Units) and USD\$2.1 million (2,463 Annual Tax Units) on the Fresenius subsidiaries.<sup>253</sup>

The case was brought by the FNE against Laboratorio Biosano S.A., Fresenius Kabi Chile Ltd and its subsidiary Laboratorio Sanderson S.A. “for forming and maintaining a cartel to affect tenders called by [Chile’s] Central Supply of the National System of Health Services (Cenabast) to acquire ampoules of medicines.”<sup>254</sup> The case stemmed from an investigation into complaints filed by the Office of the Comptroller General of the Republic and the Ministry of Health. According to a legal alert issued by one prominent global law firm, “[t]he evidence of the case was obtained both from the carrying out of intrusive proceedings (entry

search and seizure, interception and recording of communications) and from the background provided by Laboratorio Biosano,” who were granted leniency for their cooperation.<sup>255</sup>

In explaining what factors were used to determine the fines, the court said: “in relation to the deterrent effect, this circumstance is closely related to the seriousness of the conduct imputed in the file. In effect, it is a collusive agreement that was executed for at least 14 years on products of vital importance to the public health system.”<sup>256</sup>

National Economic Prosecutor for the FNE, Mr. Mario Ybar, further commented on the seriousness of the case, stating: “it is unacceptable for companies to collude and it is even more reprehensible that they do so by affecting the State in public tenders, especially if they are medicines, as in this case. We hope that a sentence as clear as the one issued by the Court will help situations like this disappear from our markets.”<sup>257</sup>

## **US Charity in Illegal Kickback Scheme**

In August 2019, a US Federal Court unsealed a whistleblower lawsuit which alleges that Fresenius Medical Care, 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. The scheme was designed to boost profits for the American Kidney Fund’s largest donors — Fresenius and DaVita, which together provide nearly 80% of the charity’s funding.<sup>258</sup>

The lawsuit, filed by a former 12-year American Kidney Fund employee, alleges that the American Kidney Fund “steered financial aid to patients of its two biggest corporate donors — the dialysis chains DaVita and Fresenius — while denying help to people who used smaller, unrelated clinics, in violation of anti-kickback laws. . . .”<sup>259</sup> Of the numerous allegations outlined in court filings, the whistleblower alleges that the practices: “make a mockery of the OIG [Office of Inspector General] Advisory Opinion that was designed to separate the provision of charitable grant funding to patients from the financial influence of providers. This kickback scheme creates a circle of quid pro quo solicitation of donations in exchange for payments and incentives, which has been continually creating false claims in violation of the False Claims Act 31 U.S.C § 3729(a)(1)(A) at the expense of government programs.”<sup>260</sup>

The United States Department of Justice has elected not to intervene in the whistleblower case at the time it was unsealed but retains the right to intervene at a later date. Any settlement agreement or dismissal must be submitted to the DOJ prior to any court approval.<sup>261</sup>

## **Increasing Scrutiny for Insurance Scheme**

The recently unveiled lawsuit was announced after years of increasing scrutiny into the practices of certain large, for-profit dialysis corporations by the US Centers for Medicare and Medicaid, the Department of Justice<sup>262</sup> and commercial health insurers for shifting End Stage Renal Disease patients away from publicly funded healthcare programs onto private commercial plans which pay substantially higher reimbursement rates.

A 21 June 2019 bond filing of Fresenius Medical Care US Finance III Inc., a wholly owned subsidiary of Fresenius Medical Care, disclosed a similar legal dispute with the private commercial

insurer United Healthcare. The filing states: “On April 8, 2019, United Healthcare served a demand for arbitration against FMCH. The demand asserts that FMCH unlawfully “steered” patients by waiving copayments and other means away from coverage under government-funded insurance plans including Medicare into United Healthcare’s commercial plans, including Affordable Care Act exchange plans...”<sup>263</sup>

The increased scrutiny into the relationship of for-profit dialysis providers and the American Kidney Fund has also drawn the attention of Wall Street analysts. For example, a 2019 report issued by JP Morgan estimates that Fresenius Medical Care generates nearly USD\$300 million in operating income from patients receiving charitable premium assistance.<sup>264</sup> Fresenius’s US charity scheme is also drawing the attention of state legislators in California, the company’s largest market, and possibly other US states as well. Large tax-deductible contributions to the American Kidney Fund also reduce taxable income and tax payments in the US.



# APPENDIX B:

## DETAILS OF FRESENIUS'S KEY AUSTRALIAN SUBSIDIARIES

### Fresenius Kabi Australia Pty Ltd

Fresenius Kabi Australia Pty Ltd files annual financial statements with the Australian Securities and Investments Commission (ASIC), the government agency responsible for regulating companies. The 2017 filings were “special purpose” accounts which allowed the company to be exempt from many Australian accounting standards. The 2018 filings are Tier 2 general purpose financial statements prepared under “Reduced Disclosure Requirements” because “in the opinion of the directors, the Company is not publicly accountable.”<sup>265</sup> The 2018 filings provide some additional information but also avoid the full range of Australian accounting standards. The filings cover three years and show declining profits in all years and a plethora of related party transactions which appear to reduce reported profits in Australia and therefore tax payments.

In 2017, the company's principal activities were the manufacture, compounding and wholesale of pharmaceutical products and the company had net profit after tax of AUD\$5 million, down from AUD\$9.3 million in 2016.<sup>266</sup> In 2018, the principal activities were wholesale and distribution of medical devices, pharmaceutical and compounded products and net profit after tax was under AUD\$1.8 million.<sup>267</sup> Despite an apparent shift in principal activities, the filing reported “no significant changes” to the company's business in 2018. Fresenius Kabi Australia Pty Ltd continued to be directly owned by Fresenius Kabi Deutschland GmbH in Germany.

Revenue from the sale of goods increased to AUD\$67.9 million in 2017 from AUD\$58.4 million in 2016.<sup>268</sup> Revenue from the sale of goods further increased in 2018 to just under AUD\$78 million.<sup>269</sup> The 2017 income statement shows that profit before tax rose to AUD\$7 million but was reduced by a tax expense of AUD\$2 million.<sup>270</sup> In contrast, in 2016 the profit before tax of AUD\$2.7 million was increased to AUD\$9.3 million by a tax benefit of AUD\$6.6 million.<sup>271</sup> The 2016 tax benefit is not explained.

The notes to the 2018 financial statements show no current tax expense recognised in profit or loss and show a deferred tax expense of nearly AUD\$1.4 million, largely driven by a reduction of previously recognized tax losses.<sup>272</sup> These tax numbers are for accounting purposes and don't reflect actual tax payments. The cash flow statements show no income tax paid in 2016, AUD\$15,660 paid in 2017 and AUD\$264,520 paid in 2018.<sup>273</sup> The small amount of corporate income tax payments in 2017 and 2018 pale in comparison to what appears to be a tax refund of AUD\$6.6 million in 2016.

Loan repayments to related parties were AUD\$2 million in 2017 and over AUD\$5 million in 2018.<sup>274</sup> The company's loans from related parties remained at AUD\$17.9 million at the end of 2018.<sup>275</sup> Interest expense due to related parties was AUD\$888,433 in 2017 and AUD\$733,594 in 2018.<sup>276</sup> However, the disclosure on related party transactions reports interest paid to “subsidiaries of Fresenius SE & Co KGaA” of AUD\$941,602 in 2017 and AUD\$1,151,792 in 2018.<sup>277</sup> For comparison sake, interest paid to related offshore parties was many times greater

than any corporate income tax paid in Australia. What explains the sizeable differences between the interest expense and interest paid to related parties? Which subsidiaries are involved?

In 2017 92.5% of “raw materials and consumables used” were purchased from subsidiaries of Fresenius Kabi Deutschland GmbH.<sup>278</sup> In 2018, that figure was 99.9% and amounted to over AUD\$48.7 million in purchases from related parties.<sup>279</sup> Additionally, at the end of 2018 there was an additional AUD\$39.4 million owed to related parties and nearly AUD\$1 million in cost recharges paid to related parties.<sup>280</sup> These remarkable offshore related party transactions — 99.9% of raw materials — raise major concerns about the use of transfer pricing to shift profits out of Australia.

Shares in Fresenius Kabi Australia Pty Ltd are owned by Fresenius Kabi Deutschland GmbH and the ultimate controlling party is Fresenius SE & Co KGaA.<sup>281</sup> The Australian company owns Fresenius Kabi New Zealand Ltd, which does not file any financial statements in New Zealand.<sup>282</sup> In 2018 Fresenius Kabi New Zealand made purchases from the Australian parent worth over AUD\$2.4 million and at the end of the year still owed nearly AUD\$1.3 million.

The auditor, KPMG, was paid AUD\$104,751 for the audit and review of financial reports and another AUD\$43,000 for taxation and transfer pricing in 2017.<sup>283</sup> KPMG Australia was paid AUD\$113,096 for audit services and AUD\$47,650 for “taxation” in 2018.<sup>284</sup>

## **Fresenius Medical Care Australia Pty Ltd**

In 2018, Fresenius Medical Care Australia Pty Ltd reported a net operating loss after tax of AUD\$7.5 million, compared to a profit of nearly \$1.3 million in 2017.<sup>285</sup> The loss was achieved despite a 4.3%

growth in revenue from an increase in patients, partially driven by three new clinics in Western Australia.<sup>286</sup> The 2018 revenue was AUD\$168.3 million, which resulted in AUD\$10.9 million in cash generated from operations.<sup>287</sup> The revenue was primarily from dialysis products (AUD\$93.4 million) and dialysis services (AUD\$70.8 million).<sup>288</sup> The principal activities of the company, the sale of pharmaceutical products and medical equipment and providing dialysis services, continued.<sup>289</sup>

A significant increase in 2017 revenue and profits was driven by the acquisition of a 70.29% ownership interest in Australian Day Hospital Holdings Pty Ltd, which was funded through a capital injection and intercompany loans from Fresenius Medical Care AG & Co. KGaA.<sup>290</sup> The intercompany loans, while financing a major acquisition, may represent a significant transfer of profits out of Australia. Total sales revenue in 2017 of AUD\$254.1 million after costs of sales and other expenses resulted in income of AUD\$21.2 million from operating activities.<sup>291</sup> Again, the margins in Australia are considerably lower than what Fresenius reports globally. Finance costs of AUD\$11.7 million further reduced profit before tax to only AUD\$12 million.<sup>292</sup> Are these legitimate financing costs, or are offshore related party payments being used to artificially reduce taxable income in Australia?

With no explanation, the 2018 filings report sales revenue in 2017 of only AUD\$161.3 million (compared to AUD\$254.1 million in the 2017 filing) and results from operating activities of less than AUD\$2.4 million (compared to AUD\$21.2 million in the 2017 filing).<sup>293</sup> The cash flow statement for the 2018 filing shows cash receipts from operations of AUD\$168.1 million in 2017 compared to AUD\$269 million in the 2017 filing.<sup>294</sup> How is this possible with no explanation? Which figures are correct? Did the auditor, KPMG, miss this discrepancy? Has ASIC, the regulator or the ATO examined the difference in reported numbers for 2017?

The 2018 filing does state that as a result of federal tax legislation the company is now required to prepare and lodge general purpose financial statements instead of the previously used special purpose financial statements, which allowed for reduced disclosure. Despite this change in accounting practices, the filing states: “There is no impact on the recognition or measurement of amounts included in the financial statements.”<sup>295</sup>

The 2018 filing does contain significantly more detail on related party transactions. The only detail reported in 2017, other than related party loans, was a current related party payable of AUD\$15 million, down from AUD\$19.6 million in 2016.<sup>296</sup> The 2017 filing reports an income tax expense of AUD\$4.5 million, but income tax paid of AUD\$5.9 million.<sup>297</sup> The 2017 income tax expense and tax paid were relatively small in comparison to AUD\$13.1 million in interest paid and AUD\$125.7 million in repayment of loans to related parties.<sup>298</sup> Are these legitimate financing costs or profit shifting via offshore related party loans?

In 2017, the repayment of borrowings to related parties was more than offset by AUD\$201.3 million in a new loan and AUD\$135 million in the issuance of shares.<sup>299</sup> The notes to the financial statements show current loans from a related party of AUD\$60.8 million and non-current loans from a related party of AUD\$178.7 million.<sup>300</sup> The current loans were from Fresenius Medical Care AG & Co KGaA and had interest rates of 2.71% to 3.36%.<sup>301</sup> The related party non-current loans were an FMC Senior Debt Facility of AUD\$135.5 million at 5.26% and an FMC Mezzanine Facility of AUD\$43.3 million at 7%.<sup>302</sup> These interest rates are significantly higher than current bank lending rates in Australia. Although not disclosed, it is very likely that this debt — and repayments — originated from and go to a financing subsidiary of the ultimate parent company located in a tax haven.

In 2018, Fresenius Medical Care Australia Pty Ltd reported a loss before tax of AUD\$9.4 million and an income tax benefit of AUD\$1.9 million, reducing the reported loss to AUD\$7.5 million.<sup>303</sup> However, the cash flow statement shows income tax paid of AUD\$1.7 million.<sup>304</sup> The notes explain that the income tax benefit was derived from a current benefit of AUD\$289,000 and a deferred tax benefit of AUD\$1.6 million from the origination and reversal of temporary differences.<sup>305</sup> Fresenius Medical Care Australia Pty Ltd “is the head entity in a Multiple Entry Consolidated (MEC) tax consolidated group comprising the company and its related entity, Fresenius Medical Care South Asia Pacific Pty Ltd.”<sup>306</sup>

The tax payments made may have been on behalf of this entity which is separately owned by Fresenius Medical Care Beteiligungsgesellschaft mbh, a company incorporated in Germany,<sup>307</sup> or possibly, the Panama branch of the German company. Fresenius Medical Care South Asia Pacific Pty Ltd owns Fresenius Medical Care Seating (Australia) Pty Ltd, which generates revenue primarily from the design and manufacture of a range of healthcare seating.<sup>308</sup> Despite sales revenue of over AUD\$6 million in both 2016 and 2017, the company reported losses in both years.<sup>309</sup>

The 2018 filing of Fresenius Medical Care Australia Pty Ltd provides significantly more details on related party transactions than the 2017 filing. The current loans from related parties totalled nearly AUD\$68.2 million. The four loans that matured in 2019 were with Pontormo GmbH and FMC AG & Co KGaA. A fifth loan, at 6% interest for AUD\$8.8 million, was ongoing with the Australian subsidiary Fresenius Medical Care Packs Pty Ltd.<sup>310</sup> Loan repayments and interest payments in 2018 totalled nearly AUD\$3.5 million.<sup>311</sup>

Excluding finance expenses, Fresenius Medical Care Australia Pty Ltd spent over AUD\$57.4 million in purchases from related parties and had an additional AUD\$16.7 million in balances

outstanding. The largest purchases were AUD\$43.2 million from Fresenius Medical Care Asia Pacific in Hong Kong with an additional AUD\$14 million in balance outstanding. Purchases were also made from two other related parties in Hong Kong and related parties in Australia, Japan, Malaysia, France, Germany, Singapore, Taiwan and Canada. Related party purchases of trading stock and equipment amounted to two-thirds of the cost of sales, excluding personnel expenses. Other related party payments included nearly AUD\$1 million for IT and accounting services to related parties in Germany and the Philippines.

There is no doubt that these related party transactions had a significant impact on reported profits and taxes owed in Australia. This pattern of extensive related party lending and trading in Australia appears to represent a global pattern which could have a major impact on tax payments in all countries where Fresenius operates.

## **The New Zealand Branch**

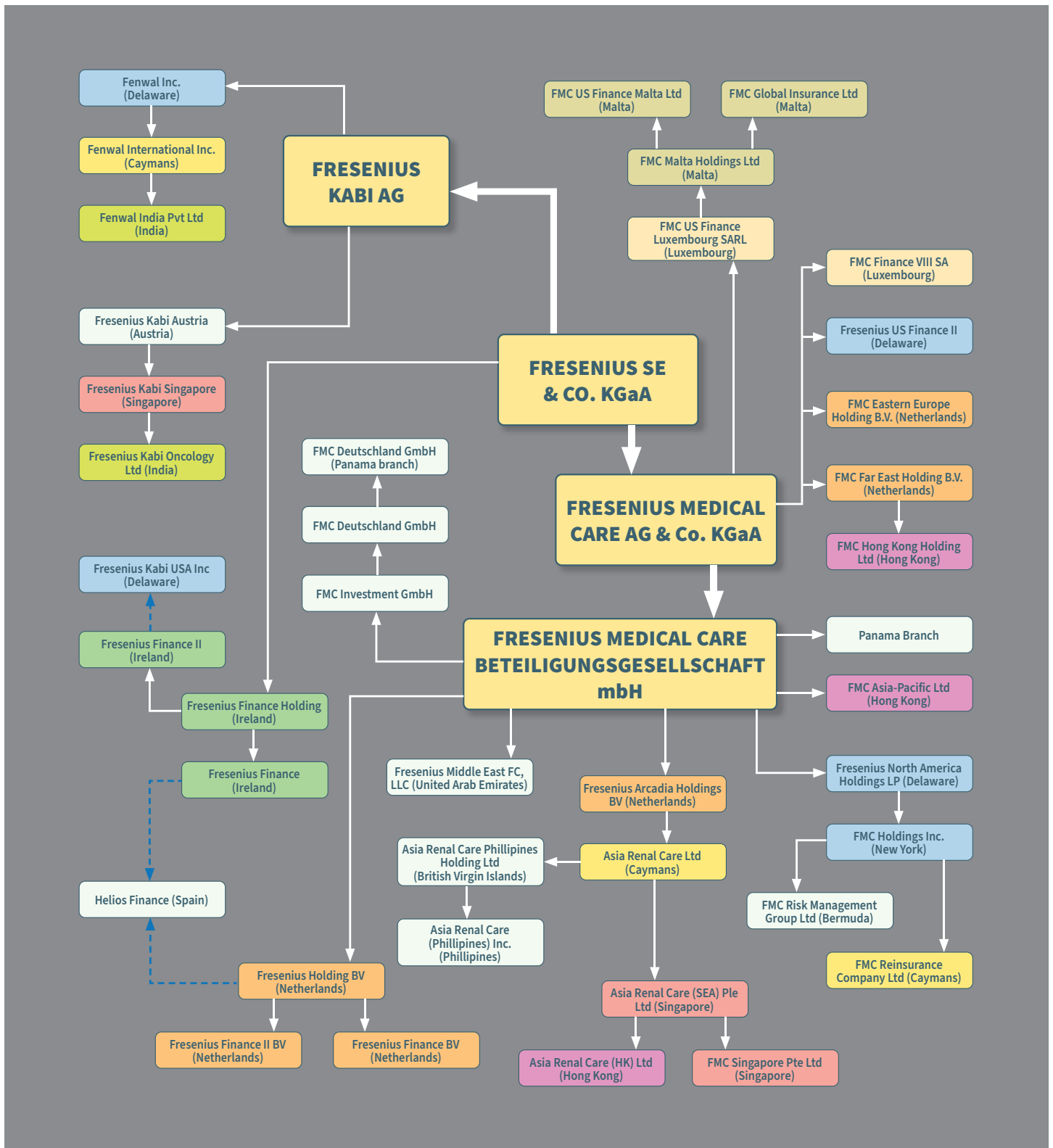
The pattern is definitely repeated by the New Zealand branch of Fresenius Medical Care Australia Pty Ltd. The New Zealand branch did file 2017 financial statements in New Zealand, but as of August 2019 had not filed 2018 financial statements.<sup>312</sup> The company is an importer and distributor of dialysis fluids and related products which had sales revenue of NZD\$16.8 million and reported a profit of NZD\$20,309 in 2017.<sup>313</sup> The New Zealand branch purchases equipment and consumables for resale from the following

related entities: Fresenius Medical Care Australia (Head Office), Fresenius Medical Care Asia Pacific, Fresenius Medical Care Japan, Fresenius Medical Care Hong Kong and Biocare Technology Co Ltd.<sup>314</sup>

Fresenius Medical Care Hong Kong, Fresenius Medical Care Asia Pacific and Biocare Technology Co Ltd are all incorporated in Hong Kong.<sup>315</sup> There were NZD\$5 million in purchases from the head office in Australia and NZD\$7.6 million in purchases from Fresenius Medical Care Asia Pacific in Hong Kong, including an outstanding balance of NZD\$2.8 million.<sup>316</sup> This business, like the parent in Australia, purchases products from related offshore parties and reselling with minimal profits reported at the country level.

The New Zealand branch, like the immediate Australian parent, had various related party loans. Fresenius Medical Care AG & Co KGaA, the ultimate parent company, was repaid NZD\$500,000 in 2017 and was still owed NZD\$1.5 million.<sup>317</sup> The New Zealand branch made NZD\$53,875 in interest payments on this loan.<sup>318</sup> Related party interest payments in New Zealand were more than 2.5 times greater than the reported profits. Once again, related offshore party lending and other means of transfer pricing serve to reduce reported profits and corporate income tax payments at the national level. The cash flow statement shows income tax paid in New Zealand of NZD\$55,643 in 2017, which is significantly higher than the income tax expense of NZD\$7,898 and more than double the reported after-tax profit of NZD\$20,309.<sup>319</sup> No explanation is provided in the annual financial statements.

# APPENDIX C: FRESENIUS'S GLOBAL WEB OF TAX HAVEN SUBSIDIARIES



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