AMERICANS FOR TaxFairness

August 10, 2016

The Honorable Jacob Lew United States Treasury Secretary U.S. Department of the Treasury 1500 Pennsylvania Ave., N.W. Washington, D.C. 20220	The Honorable John Koskinen Commissioner Internal Revenue Service 1111 Constitution Avenue, NW Washington, D.C. 20224

Dear Secretary Lew and Commissioner Koskinen:

Americans for Tax Fairness (ATF) greatly appreciates the IRS's pursuit of up to [$5 billion in U.S. taxes owed by Facebook] due to its apparent aggressive use of transfer pricing to shift U.S. profits offshore. We want to bring to your attention a similar highly aggressive use of transfer pricing by Gilead Sciences, which is shifting billions of dollars of income from the United States to its offshore subsidiaries, most likely in Ireland, to avoid U.S. taxes and benefit from substantially reduced tax rates. We urge the administration to bring the full force of your enforcement capabilities against Gilead to collect the tax dollars that rightfully belong to the American people before the European Commission (EC) acts first in a state aid case.

The facts about Gilead are detailed in a [recent ATF report]. Gilead, the world's sixth most valuable pharmaceutical corporation, has become notorious here and in other developed nations for the exorbitant pricing of its hepatitis C (HCV) medications, which went on the market in 2013. ATF's report found that Gilead's sales, overall profits and untaxed offshore profits have soared since then. Gilead's worldwide revenues *tripled*—from $11.2 billion in 2013 to $32.6 billion in 2015. Corporate pre-tax profits climbed even more: rising from $4.2 billion to $21.7 billion from 2013 to 2015, a *five-fold* increase. Meanwhile, the deferral tax loophole enabled Gilead to achieve a *three-fold* increase in untaxed offshore profits, as those profits rose from $8.6 billion in 2013 to $28.5 billion in 2015 even as *two-thirds* of 2015 revenues were generated in the United States. A particularly troubling fact is that Gilead's purported offshore profits increased dramatically at the same time its U.S. sales revenues skyrocketed but its U.S. profits inexplicably dropped, suggesting Gilead may be improperly shifting a significant portion of its U.S. profits offshore to dodge U.S. taxes.

The facts suggest that Gilead may be declaring its offshore profits in Ireland, a tax haven, because the key HCV drug (Sovaldi) from which Gilead derives most of its profits has been "domiciled" there since 2013 even though the patent is registered in the United States, and the bulk of Gilead's HCV sales is in the United States. Gilead reports to the Securities and Exchange Commission that it would owe $9.7 billion in taxes if it brought the $28.5 billion in profits home, meaning that it owes a 34% tax rate to the United States on its offshore income. Because the company receives a foreign tax credit for taxes already paid, this means that the only way the company could owe 34% on this offshore income is if it is currently paying a foreign tax rate of only 1%. That is far below the 12.5% corporate rate listed on Irish Revenue's website, potentially exposing Ireland to yet another EC state aid case, similar to the Apple state aid case, where a special Irish tax ruling may have conferred a very low tax rate on Gilead.

Media reports indicate that Secretary Lew has recently written to and visited with EC officials to pressure the EC not to pursue state aid cases against European Union nations that facilitate American corporate tax dodging. If successful, those state aid enforcement actions would force European Union nations, typically the tax havens of Ireland and Luxembourg, to collect substantially higher taxes from U.S. firms sheltering profits there. Such successful enforcement efforts would have the eventual, beneficial effect of dissuading U.S. corporations from hiding their American-made profits in foreign tax havens. But the immediate effect would be the collection by a foreign nation of tax revenue that rightfully belongs to U.S. taxpayers.

Instead of allowing massive profit shifting by an American company and then pleading with EC officials not to pursue collection of unpaid taxes to Ireland, ATF urges the United States to bring its full enforcement resources to bear to immediately investigate Gilead's profit-shifting tactics so that the correct amount of income is reported—and the correct amount of taxes are paid—here in the first place.

More broadly, ATF recommends that the Treasury Department work to get the U.S. Congress to close the deferral tax loophole, which incentivizes U.S. corporations to shift their profits offshore where they can indefinitely defer paying U.S. taxes on them.

Sincerely,

Frank Clemente
Executive Director
Americans for Tax Fairness

CC:
The Honorable Orrin G. Hatch, Chairman, U.S. Senate Committee on Finance
The Honorable Ron Wyden, Ranking Member, U.S. Senate Committee on Finance
The Honorable Kevin Brady, Chairman, House Ways and Means Committee
The Honorable Sander Levin, Ranking Member, House Ways and Means Committee
Mark J. Mazur, Assistant Secretary for Tax Policy, U.S. Department of the Treasury
Robert B. Stack, U.S. Deputy Assistant Treasury Secretary for International Tax Policy
William J. Wilkins, Chief Counsel, Internal Revenue Service