

Profiting from a pandemic

How COVID-19 test kit producer Qiagen receives public money but avoids taxes



Vincent Kiezebrink & Jasper van Teeffelen

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The Centre for Research on Multinational Corporations (SOMO) is a critical, independent, not-for-profit knowledge centre on multinationals. Since 1973 we have investigated multinational corporations and the impact of their activities on people and the environment.



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SOMO

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Amsterdam, October 2020

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Executive summary

The biotech giant Qiagen is one of the leading producers of Coronavirus testing kits and has seen its profits shoot up since the start of the COVID-19 crisis. In this research, the Centre for Research on Multinational Corporations (SOMO) shows how Qiagen aggressively avoids taxes at the expense of the general public. Qiagen is originally a German company and its operational headquarters are located in Germany, but it has registered its parent company in the Netherlands.

Qiagen has used intercompany loans between its subsidiaries in European tax havens Malta, Ireland and Luxembourg to avoid corporate income tax in the Netherlands. Based on an in-depth investigation of two tax avoidance structures used by Qiagen, SOMO estimates the company has accumulated illegitimate tax credits and avoided Dutch corporate income tax to the tune of €142 million.

In the first case explored in this report, Qiagen took advantage of mismatches between the United States (US) and Luxembourg, and Luxembourg and Ireland, to avoid approximately €93 million in Dutch income tax between 2010 and 2018. In the second case, Qiagen set up an intercompany loan structure in Luxembourg and Malta, which enabled the company to accumulate up to €49 million in illegitimate tax credits.

This report also shows how Qiagen has benefited from public funding over the past 20 years. It has received millions in government funding from Germany, the US and the European Union (EU). Furthermore, the Government of the Netherlands and European Investment Fund partly funded the development of Qiagen's COVID-19 testing system by providing venture capital to the company bought by Qiagen in 2018 that developed the diagnostics platform used in Qiagen's test kit.

Key findings

- ❑ Qiagen has *received millions in public funding* from Germany, the Netherlands, the EU and the US. The Dutch Ministry of Economic Affairs has provided venture capital for the development of Qiagen's COVID-19 testing system.
- ❑ SOMO estimates Qiagen has accumulated illegitimate tax credits and *avoided Dutch corporate income tax to the tune of at least €142 million between 2010 and 2018*. The company used subsidiaries in tax havens Malta, Ireland and Luxembourg to take advantage of mismatches in transfer pricing regulation between these jurisdictions to avoid corporate income tax.
- ❑ The company has been able to avoid taxes as a result of a lack of *transfer pricing* regulation in EU tax havens *Malta and Ireland*. Qiagen has used a well-known tax avoidance technique in *Luxembourg* using *fictitious interest payments* on intercompany loans. The European Commission is currently investigating whether the use of this technique by another company constitutes *illegal state aid*.

Key policy recommendations

- SOMO is calling on Qiagen to immediately *abandon its tax avoidance structures* and its presence in EU tax havens. The EU and its member states need to improve legislation regarding harmful tax practices to address i.a. transfer pricing mismatches. Tax transparency can be improved by introducing EU-wide mandatory public country-by-country reporting legislation.
- Governments should not invest in companies that avoid taxes. These types of public investments should come with *public interest conditions* related to affordability, accessibility and to the sharing of knowledge and technology in data pools that can benefit the general public. Furthermore, public investments in vaccines, treatments and diagnostics should be *transparent*.

1 Introduction

Countries across the globe entered into a scramble for testing capacity after the COVID-19 outbreak.¹ This has caused test kit prices to rise and created mass shortages in supply as demand has soared. In this scramble, governments in the Global South are being outbid by wealthier governments in Europe and North America.² Companies that produce these test kits have seen profits grow rapidly. This report investigates one such company, Qiagen, which has its operational headquarters in Germany but has registered its parent company in the Netherlands. Its testing kit 'QIAstat-Dx Respiratory SARS-CoV-2 Panel' can deliver test results within an hour, and Qiagen supplies test kits in countries such as the Netherlands³ and the US, where the American Center for Disease Control recommended Qiagen's kits in its testing instructions.⁴ Qiagen has seen profits increase rapidly since the COVID-19 outbreak.⁵

Tax avoidance is a major problem in the pharmaceutical sector. A 2018 report by Oxfam revealed that each year the world's biggest pharmaceutical companies avoid an estimated US\$ 3.8 billion in tax in 16 countries.⁶ This report analyses the tax avoidance practices of Qiagen to investigate whether the company will be able to avoid taxes on the windfall profits it is making as a result of the COVID-19 pandemic. If Qiagen avoids taxes on the profits it makes from governments that are buying its testing systems, this would be particularly egregious considering these same governments could put the tax income to good use by buying more testing capacity.

Research by SOMO has also shown that pharmaceutical corporations have focused for years on generating immense profits and shareholder value at the expense of affordable and accessible medical solutions, while taking advantage of public funding.⁷ This report contains an overview of public funding received by Qiagen, to establish whether the company has received funding from the governments in countries where it is also avoiding taxes.

The report is structured as follows. Chapter 2 provides additional background about Qiagen and the amount of public funding Qiagen has received. In Chapter 3, two tax avoidance structures are explained as well as the research methodology used in this report. Chapter 4 provides conclusions and policy recommendations.

2 Qiagen's role in the COVID-19 pandemic and public funding received by the company

Qiagen was founded by scientists working at the Heinrich Heine University of Düsseldorf⁸ as a spin-off of their academic research,⁹ and quickly grew to be one of the world's largest pharmaceutical test kit producers. The company's operational headquarters are located in Hilden, Germany (near Düsseldorf).¹⁰ However, it is formally a Dutch company, with its parent company registered in Venlo (close to the German border) in the Netherlands since 1997. According to Qiagen, this was not for tax reasons but because German law did not allow employees (e.g. managers) to own company stock.¹¹

Over the last ten years, Qiagen has made over \$952 million in profits.¹² Qiagen currently has more than 5,200 employees worldwide and had a revenue of over \$1.5 billion in 2019.¹³ The company does not pay out dividends but, since 2012, it has returned over \$700 million in cash to its shareholders through share buyback schemes.¹⁴ Its largest shareholders include investment funds like BlackRock, as well as hedge funds such as Davidson Kempner Capital Management.¹⁵

As a result of the Coronavirus pandemic, Qiagen has seen its profits grow rapidly. In response to the COVID-19 outbreak, Qiagen developed a specialised testing cartridge (the 'QIAstat-Dx Respiratory SARS-CoV-2 Panel') that can be used in its diagnostics platform, the QIAstat-Dx Analyzer. The cartridge contains the reagents (chemical agents) necessary to detect COVID-19 in a sample (e.g. a dry swab). The cartridge with the sample is inserted into the analyser, which then delivers test results in an hour.¹⁶ The Chief Executive Officer of Qiagen stated that the Coronavirus pandemic has led to an "unprecedented demand" for its product, which has been the reason behind the company's recent financial success. Qiagen saw its operating income and profits approximately double year-on-year between 2019 and 2020.¹⁷ Qiagen's net profit in the first half of 2020 was 75% higher than the same period last year.¹⁸

American biotech giant Thermo Fisher was set to buy the company in March 2020 for \$11.5 billion, but the deal fell through after its hedge fund shareholders revolted. These hedge funds felt the price was too low considering the increased business prospects of Qiagen after the Coronavirus outbreak, even after Thermo Fisher increased the price to \$12.5 billion.¹⁹

Public funding received by Qiagen

Qiagen has received a multitude of grants and subsidies from various governments. Although such information is not always easily accessible, mention of German subsidies for Qiagen go back all the way to 2000 and 2001, when the company received hundreds of thousands of US dollars in research and development grants from the German Government.²⁰ During that same period, Qiagen also received grants from the US Government, which has reportedly provided the company with over

\$10 million in grants and subsidies since 2004.²¹ The EU has also been generous in its support to Qiagen, providing the company with at least €2.38 million in grants and subsidies since 2009.²²

Since the start of the Coronavirus crisis, Qiagen has received \$598,000 from the US Government to develop its new QIAstat-Dx RPS2 test for COVID-19.²³ As part of Qiagen's largest investment programme so far, in September 2020 Qiagen invested over €110 million to expand its production capacity in its production sites in Hilden (Germany), Maryland (US) and Barcelona (Spain).²⁴

Dutch Government and European Investment Fund provided venture capital for development of Qiagen's COVID-19 testing kit

Qiagen's COVID-19 testing system (the QIAstat-Dx Analyzer and QIAstat-Dx Respiratory SARS-CoV-2 Panel) was not entirely developed by the German company itself. The diagnostics platform that is the basis of Qiagen's Coronavirus testing system was developed by the Spanish company STAT-Dx, which was bought by Qiagen in 2018.²⁵ In 2018, Qiagen bought STAT-Dx for up to \$191 million,²⁶ with the aim of commercialising and marketing its STAT-Dx DiagCore system, which Qiagen would rebrand as QIAstat-Dx.

Gilde Healthcare, a fund managing a €1 billion portfolio in European healthcare investments, was one of the main investors in STAT-Dx, as part of its venture and growth capital fund. In 2016, it was the lead investor in a "€31 million growth financing round" to enable the company to bring its DiagCoRE diagnostics platform to the market.²⁷ The Dutch Government and European Investment Fund have been investors in this Gilde Healthcare fund through the 'Dutch Venture Initiative' (DVI), a fund-of-funds that aims to provide fast-growing innovative companies with venture capital to enable them to attract other private investors.²⁸ The Dutch Venture Initiative is a revolving fund made up of contributions by three institutions: the Dutch Ministry of Economic Affairs (€130 million), the European Investment Fund (€67.5 million) and the Dutch 'Brabantse Ontwikkelings Maatschappij' (€5 million).²⁹

However, because the DVI does not publish any information about the specific companies it invests in, it is not possible to establish exactly how much DVI funding was invested in STAT-Dx.³⁰ According to its 2017 Annual Report, the DVI committed a total of €8 million to the Gilde Healthcare III fund (5.5% of this fund's total amount).³¹ Gilde Healthcare III in turn invested a total of €31 million in STAT-Dx in 2016, which is made up of contributions from other (private) investors and likely a portion of the DVI's €8 million total contribution to the fund.

Chapter 3 shows how Qiagen avoids taxes over its profits even though the company has received significant public funding.

Box 1 Protection of intellectual property at the cost of access to testing

Pharmaceutical giant Roche came under fire in the Netherlands for the company's unwillingness to share the recipe of testing materials that are necessary to test for the Coronavirus using their diagnostic machines.³² The protection of their trade secrets appeared to be more important than the capacity of medical laboratories to test for the Coronavirus. In response to public criticism in the Netherlands, Roche eventually gave in and shared its recipe with the public.^{33 34}

Responding to the COVID-19 crisis, the WHO created a global pool of rights to data, knowledge and technologies that could be useful in the prevention, detection and treatment of COVID-19. The Covid-19 Technology Access Pool (C-TAP) has support from the Netherlands and 40 other countries. It calls for companies and public institutions that hold intellectual property rights, data and knowledge to fight the pandemic to share this on a non-exclusive and global basis, in order to facilitate equitable, affordable and timely access to health products for all countries.

As we have read, countries (and regions like the EU) invest high amounts of money into vaccines, treatments and diagnostics to fight the pandemic. Countries and funders could condition their public funding to the use of C-TAP so access to for example testing material is increased worldwide and costs are reduced.³⁵

When the Coronavirus crisis accelerated in March 2020, Qiagen found itself lacking the supplies and production capacity to cover the skyrocketing demand for its test kits. The company was specifically lacking in so-called reagents – the chemical used to isolate a virus' genetical material before testing.³⁶ In the US, where use of Qiagen's diagnostics products is widespread, this led the Center for Disease Control (CDC) to allow labs to switch from Qiagen's diagnostics tests to those produced by Roche.³⁷ However, this did not resolve the shortage of reagents. This was because, apart from Roche's own production issues, the testing apparatus in many US labs works only with reagents following Qiagen's recipe.³⁸

Since the start of the epidemic, Qiagen has worked to rapidly increase its production capacity, but the bottleneck around reagents' availability seems to have remained.³⁹ Yale University reportedly developed a test that works without the use of reagents to get around the shortage.⁴⁰ Much like Roche in the Netherlands, Qiagen does not appear to have been willing to voluntarily disclose its reagent recipe to help provide labs the opportunity to generate their own reagents during this crisis.

3 How Qiagen avoids taxes using EU tax havens

In its 2019 Annual Report, Qiagen states that it can take advantage of “foreign tax benefits” by using tax havens such as Singapore, Switzerland, Ireland, Dubai and Luxembourg:

“In 2019 and 2018, tax expense on foreign operations was favorably impacted by lower income tax rates and partial tax exemptions on foreign income primarily derived from operations in Germany, Singapore, Switzerland, Ireland, Dubai and Luxembourg. These foreign tax benefits are due to a combination of favorable tax laws, regulations, rulings, and exemptions in these jurisdictions. [...] Further, we have intercompany financing arrangements through Luxembourg, Dubai and Ireland in which the intercompany income is partially exempt.”⁴¹

In this chapter we investigate how Qiagen uses these intercompany financing arrangements in Luxembourg and Ireland to avoid taxes.

Research methodology

This report investigates two tax avoidance structures used by Qiagen. For this analysis only publicly available information has been used, primarily the annual accounts of Qiagen’s subsidiaries and data found in the corporate information databases Reuters Eikon and Orbis, as well as other online sources. All annual accounts of Qiagen’s subsidiaries have been extracted from the national corporate registries in their country of residence. The findings in this report and the estimations of tax avoidance are limited by the accessibility and quality of the information in the annual accounts published by Qiagen and its subsidiaries. We have limited our research to the two avoidance structures analysed below because of the availability of data presented in the annual accounts of the concerned subsidiaries. We recommend further research into possible tax avoidance by Qiagen through intercompany financing via Dubai, Singapore and Switzerland, and tax avoidance using intellectual property.

SOMO’s analysis and findings have been reviewed by two experienced fiscal experts with proven track records as fiscal advisors.⁴² As part of SOMO’s internal quality assurance policies, our reports are published or shared with external parties only after the investigated company has had the opportunity to respond to research findings. On 30 July 2020, SOMO sent Qiagen a copy of the research findings with a request to respond and provide comments. Qiagen replied that it “declines to comment”.⁴³

Tax avoidance case 1

How Qiagen can avoid taxes using a mismatch between Luxembourg and Ireland

Paper realities: a Luxembourg letterbox with a US branch

Since 2010, Qiagen has been using one of its Luxembourg subsidiaries to avoid taxes on the interest on intra-group income the subsidiary receives from its operations in the US. Qiagen Group uses the particular subsidiary in question – Qiagen US Finance Holding Luxembourg (Qiagen Luxembourg) – to finance its US operations through interest bearing loans.

Qiagen Luxembourg is located at 49 Boulevard Royal, Luxembourg,⁴⁴ the same address as Morgan and Morgan Trust Corporation, a clear indication that a trust firm in fact manages this subsidiary.⁴⁵ Furthermore, according to its annual accounts, Qiagen Luxembourg has spent nothing on wage costs throughout its existence, indicating that it has no employees.⁴⁶ These two indications combined show that Qiagen Luxembourg is likely a letterbox company set up to make use of legal or fiscal benefits for the Qiagen Group that Luxembourg has to offer, while conducting no real economic activity.

Qiagen Luxembourg was incorporated on 31 August 2010. On the same day, the company created a branch (or permanent establishment) in the US state of Nevada, also employing zero staff.⁴⁷ The next day, Qiagen Luxembourg set up two loans worth \$570 million to a Massachusetts-based Qiagen subsidiary, but then immediately transferred ownership of these loans to its branch.⁴⁸ By doing so, Qiagen was likely able to make use of a so-called hybrid mismatch – or gap in fiscal legislation – between the US and Luxembourg.

Box 2 The US-Luxembourg mismatch

Until 2016, the US and Luxembourg used different requirements to determine whether activities by a foreign company on their soil constituted a branch,⁴⁹ and whether those activities were therefore taxable in their jurisdiction.⁵⁰ This made it possible that Luxembourg tax authorities could attribute economic activity and profits to a US branch of a Luxembourg-based company, while the US tax authorities' stricter requirements for branches caused them to consider the branch non-existent, thus leading them to attribute those same profits to the Luxembourg-based company itself. With the Luxembourg tax authorities attributing the profit to the US branch, and the US tax authorities attributing the profits to the Luxembourg company, this mismatch allowed companies to avoid taxes in both countries, meaning that they paid no tax at all.

In this specific case, it is likely that Qiagen Luxembourg's Nevada branch was recognised by Luxembourg's tax authorities as being foreign and therefore not subject to the country's income taxes, while US tax authorities likely deemed the branch to be non-existent, thus leading them to attribute its income to Luxembourg. As such, both tax authorities would have refrained from taxing Qiagen Luxembourg's income, allowing the company to avoid taxes. From 2010 until 2015, Qiagen Luxembourg paid an average of 1.28% in corporate income tax in Luxembourg on its \$249 million in profits,⁵¹ a very low rate when compared to Luxembourg's statutory corporate income tax rate of more than 28% during that period.⁵² This low level of tax paid by Qiagen Luxembourg seems in line with the use of the hybrid mismatch tax avoidance structure described above.

US authorities catch on and Qiagen adapts

Leading up to 2016, US tax authorities seem to have caught on to the hybrid mismatch, as they started negotiations with Luxembourg to eliminate the differences between their treatments of branches.⁵³ Possibly anticipating this, in late 2015 Qiagen changed its US financing structure. A subsidiary was set up in Ireland, to which Qiagen Luxembourg contributed the two afore-mentioned loans plus a further \$430 million loan going to its US-based sister company, bringing the total value of the loans to approximately \$1 billion.⁵⁴

This Irish subsidiary – Qiagen US Finance Limited (henceforth 'Qiagen Ireland') – is administered by trust firm Intertrust⁵⁵ and has zero employees.⁵⁶ These two facts provide a clear indication that this is a letterbox company, set up to make use of the fiscal benefits offered by Ireland, while undertaking little real economic activity.

After receiving the contribution of the loans from Qiagen Luxembourg, Qiagen Ireland immediately lent the same amount (close to \$1 billion) back to Qiagen Luxembourg, at 0% interest. In turn, Qiagen Luxembourg lent the money onward to the US, with the same interest rates as before. Due to this change, the loans to the US no longer originate with Qiagen Luxembourg's Nevada branch, but now start at Qiagen Finance (Ireland) and pass through Qiagen Luxembourg ending up at a Qiagen subsidiary in the US. However, because the loan from Ireland to Luxembourg is free of interest, while the loan from Luxembourg to the US is not, the interest income on these loans still ends up at Qiagen Luxembourg.

Another mismatch: Luxembourg-Ireland

On the face of it, this new financing structure would imply that income on interest earned by Qiagen Luxembourg in Luxembourg would become subject to regular Luxembourg corporate income tax, at approximately 25%.⁵⁷ However, between 2016 and 2018 Qiagen Luxembourg's effective tax rate actually went down to an average 0.44%, a far cry from Luxembourg's 25% tax rate. This raises the question: Why did Luxembourg tax authorities not subject Qiagen's Luxembourg profits to the country's corporate income tax rate?

This is likely because the restructuring of its loans to the US allowed Qiagen to make use of another mismatch in tax legislation, this time between Luxembourg and Ireland.

While Luxembourg has implemented anti-tax avoidance rules governing intra-group financing structures like Qiagen's since 2016,⁵⁸ Ireland postponed their implementation until January 2020.⁵⁹ Such rules – better known as transfer pricing rules – specify that intra-group financing transactions are required to be priced as though they take place between independent parties, with each party protecting its commercial interests. Following these rules, one would expect loans between subsidiaries of the Qiagen Group to be accompanied by a commercially sensible interest rate, as transfer pricing rules dictate that the same terms that would be offered in the marketplace should be applied.

Instead, Qiagen provided a 0% interest rate on its loan from Qiagen Ireland to Qiagen Luxembourg. This is where the mismatch between Luxembourg's transfer pricing rules and Ireland's lack thereof comes into play. Because Ireland had no transfer pricing rules in 2016 when the loans were set up,⁶⁰ Irish tax authorities could allow a 0% interest rate on an intra-group loan. Following their jurisdiction's transfer-pricing legislation, however, Luxembourg's tax authorities will likely have concluded that a 0% interest rate on an intra-group loan did not reflect commercially sensible business practices. In protest against this violation of transfer pricing rules, Luxembourg's authorities are likely to have required Qiagen Luxembourg to apply a deemed – or fictional – interest rate to the loan, in line with what the company would have paid if it had acquired the loan from an independent lender. Considering that Qiagen Luxembourg merely seems to serve as a conduit for finance going from Ireland to the US, it appears likely that this deemed interest rate on the loan from Ireland was close to the 6% charged on the loan provided to the US.

Assuming that Qiagen Luxembourg applied this deemed interest rate, the company will have deducted the interest from its profit before paying income taxes, thereby significantly lowering their tax base and the taxes owed to Luxembourg tax authorities. Meanwhile, because Qiagen Ireland received no actual interest, profits were not taxed in Ireland either. In this manner, the mismatch on transfer pricing rules between Luxembourg and Ireland likely allowed Qiagen to avoid paying taxes on the profits it made from financing its US operations.

However, without access to Qiagen's internal administration, it is not possible to be certain why the Luxembourg tax authorities allowed Qiagen to pay nearly nothing in taxes on these profits. What is clear is that the fiscal treatment of Qiagen Luxembourg's letterbox company by tax authorities has allowed the Qiagen Group to avoid paying large amounts of taxes between 2010 and 2018.

Who loses out to Qiagen's tax avoidance?

Between 2010 and 2018, Qiagen Luxembourg made \$438 million in profits before taxes.⁶¹ These profits consisted entirely of interest income on the loans provided to Qiagen's US subsidiaries. On these profits, the company paid a total \$4 million in corporate income taxes, coming down to an extremely low 0.92% effective tax rate.⁶² After paying these taxes, Qiagen Luxembourg paid out nearly all of the remaining profits as dividends – \$416 million in total – to the group's ultimate parent company, Qiagen N.V. in the Netherlands.⁶³

Table 1 Qiagen Luxembourg – effective tax rates

Figures in \$ x 1,000,000

	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total	Average per year
Interest income	\$13.84	\$42.67	\$42.57	\$42.45	\$47.24	\$63.36	\$65.98	\$65.13	\$54.75	\$437.99	\$48.67
Net profit	\$13.63	\$42.11	\$41.98	\$41.9	\$46.37	\$62.5	\$65.57	\$65.42	\$54.89	\$434.37	\$48.26
Income taxes	\$0.17	\$0.53	\$0.53	\$0.50	\$0.78	\$0.71	\$0.37	\$0.07	\$0.38	\$4.04	\$0.45
Pre-tax profit	\$13.8	\$42.64	\$42.51	\$42.4	\$47.15	\$62.4	\$65.95	\$65.49	\$55.27	\$437.61	\$48.62
Effective tax rate	1.24%	1.24%	1.24%	1.17%	1.65%	1.14%	0.56%	0.11%	0.69%	n.a.	0.92%

To determine which country loses tax revenue due to Qiagen’s Luxembourg tax avoidance structure, the first step is to imagine how Qiagen would have set up its financing in a world where tax avoidance plays no role.

Qiagen is a Dutch company, and without tax benefits as a motivation for the structures described above, one would expect the company’s intra-group loans to originate with its parent company in the Netherlands. There, Qiagen’s interest income on its loans would have been subject to the Netherlands’ corporate income tax.

This line of reasoning is strengthened by the fact that the profits made by Qiagen Luxembourg are all paid out to its Dutch parent company as dividends. The subsidiary in Luxembourg appears to serve merely as a financing vehicle that collects interest for its Dutch parent company, not as a company that undertakes any tangible economic activity. Table 2 details how much Dutch income tax Qiagen has been able to avoid, and how much more it would have had to pay if it had used a financing structure where the group’s parent company in the Netherlands had provided the loans, instead of Qiagen Luxembourg.

Table 2 Potential Dutch tax revenue losses due to Qiagen’s tax avoidance

Figures in \$ x 1,000,000

	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total
Dutch statutory income tax rate	25.5%	25%	25%	25%	25%	25%	25%	25%	25%	n.a.
Dutch tax avoided	\$3.52	\$10.66	\$10.63	\$10.60	\$11.79	\$15.78	\$16.49	\$16.37	\$13.82	\$109.66
Extra income taxes for Qiagen	\$3.35	\$10.13	\$10.10	\$10.10	\$11.01	\$15.07	\$16.11	\$16.30	\$13.44	\$105.62

Table 2 provides an approximation of what Qiagen would have owed the Dutch state, if it had provided its loans to the US from the Netherlands instead of from its Luxembourg letterbox company. The total figure, \$109.66 million (or €93 million), does not take into account any deductions Qiagen might otherwise have received in the Netherlands that could have lowered its effective tax rate.

Alternatively to the counterfactual scenario presented above, you could argue that, in a world without tax avoidance, Qiagen would have kept its headquarters in Germany. Germany is where the company originated, and where its operational headquarters are still located. In that alternative, Germany is the victim of Qiagen's apparent tax avoidance structure. If the loans had been provided from Germany, Qiagen's intra-group interest income would instead have been subject to German corporate income tax, which was around 30% for the 2010-2018 period.⁶⁴ Taking Germany as the legitimate source of Qiagen's intra-group loans, the country's tax revenue loss resulting from the tax avoidance scheme described above, for the 2010-2018 period, comes down to approximately \$130 million (or €110 million).

Tax avoidance case 2

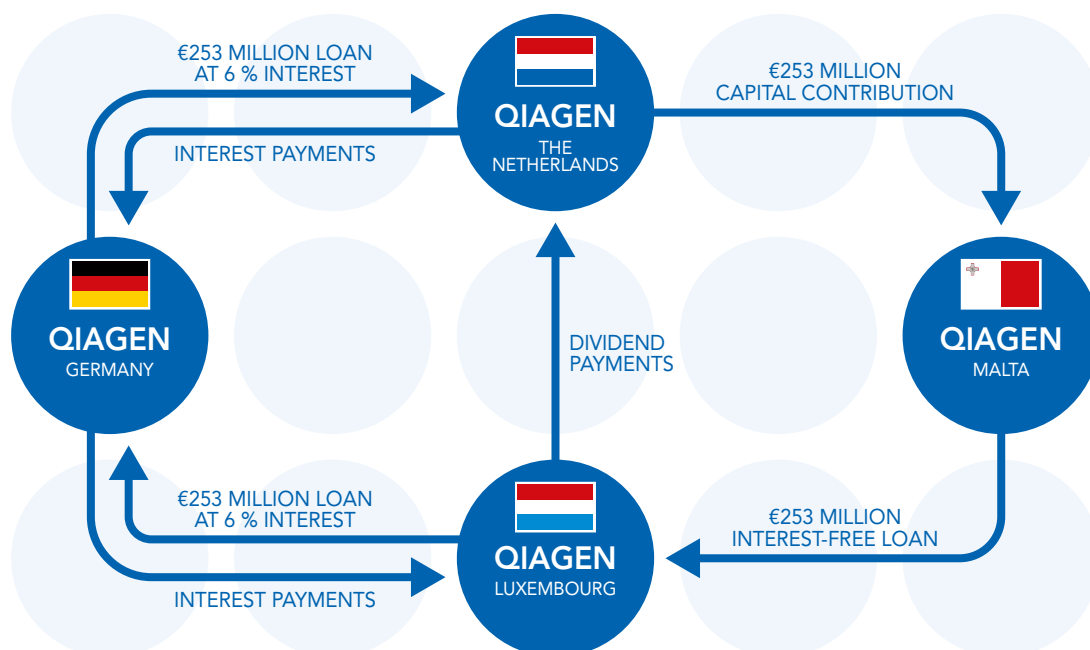
Qiagen channels loans through EU tax havens to be able to avoid up to €49 million in Dutch income tax

Intercompany loans through subsidiaries in tax havens Luxembourg and Malta

In this section we investigate how Qiagen set up two intercompany loan structures through Luxembourg and Malta in order to generate tax credits in the Netherlands. In 2011 and 2014, Qiagen's Dutch parent company, Qiagen N.V., made two large capital contributions into a Qiagen subsidiary in Malta (€253 million and €138.4 million respectively – see Box 4 for further details). This Maltese subsidiary, Qiagen Finance (Malta) Limited (henceforth referred to as 'Qiagen Malta'), is a letterbox company managed by trust and corporate service provider Vistra, which has offices in various tax havens and secrecy jurisdictions across the world.⁶⁵ Qiagen Malta took these capital contributions and immediately provided both sums as interest-free loans to Qiagen's Luxembourg subsidiary, Qiagen Deutschland Finance Holding S.à.r.l. (henceforth 'Qiagen Luxembourg'). This subsidiary is also a letterbox company set up by Qiagen and managed by another trust and corporate service provider, FIDCOMA.⁶⁶ Malta and Luxembourg are ranked by the Tax Justice Network's Corporate Tax Haven Index as the 23rd and 6th worst corporate tax havens in the world.⁶⁷

Qiagen Luxembourg took the two interest-free loans it received from Malta and on the same day loaned them onwards to Qiagen's German holding company, Qiagen Deutschland Holding GmbH, (henceforth 'Qiagen Germany') but with added interest (6% and 4.54% respectively). The German subsidiary immediately loaned the sums back to the Qiagen parent company in the Netherlands. Both loan sums therefore ended up back with Qiagen N.V. in the Netherlands: a financial merry-go-round of debt and interest. These loans were not used by Qiagen N.V. to finance R&D or other business activities. No money was actually loaned to provide capital to finance Qiagen's operational subsidiaries. The only purpose of this loan appears to have been to generate interest payments in the Netherlands in order to erode Qiagen's Dutch tax base. Figure 1 is a graphic representation of the first chain of intercompany loans set up by Qiagen on 29 July 2011.

Figure 1 Qiagen's intercompany loan structure



Qiagen uses a mismatch between Luxembourg and Malta

Qiagen was able to set up this tax avoidance structure because Malta does not have adequate transfer pricing regulation, which creates a mismatch similar to the one described in case 1 between Luxembourg and Ireland (which also did not have transfer pricing regulation). Transfer pricing rules stipulate that an intercompany loan, such as the one between Qiagen Malta and Qiagen Luxembourg, should follow the "arm's length principle".⁶⁸ This principle means that a transaction should be treated as though it took place between independent parties, with each party protecting its commercial interests. In this case, it is hard to imagine that an independent company would agree to provide a €253 million loan for nine years against no interest. However, Malta still does not have strong transfer pricing regulation to enforce the arm's length principle.⁶⁹ Therefore, its tax authorities likely allowed the interest-free loan.

Luxembourg does have transfer pricing regulation and therefore could be expected to have required Qiagen to apply a deemed (or fictitious) interest rate to the loan that fits what a commercial lender would have charged for the loan. However, the Luxembourg tax authorities' application of a deemed interest payment is based on the assumption that the other country, Malta, also applies a deemed interest income. Since Malta does not have transfer pricing regulation, the result is the same as in case 1: Qiagen creates a cost in Luxembourg that is not matched by an income in Malta. This enables Qiagen to pay barely any tax on its interest income in Luxembourg. Luxembourg's recognition of

deemed or fictitious interest payments is a well-known tax avoidance technique that has even been investigated by the European Commission (see Box 3).⁷⁰

Qiagen pays very little tax in Luxembourg

The application of deemed interest payments by the Luxembourg tax authorities would also explain why Qiagen Luxembourg barely paid any tax on the interest income it received from Germany. As Table 3 shows, Qiagen Luxembourg paid only €1 million in corporate income tax between 2011 and 2018, while it registered over €142 million in pre-tax profit. This adds up to an average effective tax rate of a mere 0.89% between 2011 and 2018. Luxembourg's statutory income tax rate ranged from 28.8% to 26.01% between 2011 and 2018.⁷¹ If Qiagen's interest income had been subject to regular corporate income tax in Luxembourg, the company would have owed Luxembourg's tax authorities approximately €40 million instead of the €1 million it actually paid.⁷²

Qiagen Luxembourg repatriated most of its nearly untaxed interest income as dividend back to its parent company Qiagen N.V. in the Netherlands. From 2011 to 2018, it distributed over €139 million in dividends to the Netherlands.⁷³ Because of the EU's Parent-Subsidiary Directive, this dividend income is exempt from dividend withholding tax in Luxembourg, and exempt from corporate income tax in the Netherlands.⁷⁴

The deemed interest rate applied by Qiagen probably corresponds to the interest rate Qiagen Luxembourg charged for the loans to Germany. Qiagen could then offset Qiagen Luxembourg's interest income received from Germany against the (entirely fictitious) interest payments it should have made to Malta. As a result, the tax authorities barely recognise any taxable income for Qiagen Luxembourg, and the company pays next to no income tax. As in case 1, it is not possible to determine exactly why Qiagen pays barely any tax in Luxembourg without insight into Qiagen's internal administration.

Table 3 Corporate income tax paid by Qiagen Luxembourg (Qiagen Deutschland Finance Holding S.à.r.l.)⁷⁵

Figures in € x 1,000,000

	2011	2012	2013	2014	2015	2016	2017	2018	Total	Average per year
Interest income	€6.63	€16.53	€15.51	€17.08	€21.07	€21.84	€21.8	€21.8	€142.25	€17.78
Pre-income tax profit	€6.61	€16.53	€15.50	€17.07	€21.06	€21.83	€21.76	€21.71	€142.07	€17.76
Income tax paid in Luxembourg	€0	€0.15	€0.33	- €0.14	€0.24	€0.21	€0.19	€0.04	€1.03	€0.13
Statutory tax rate Luxembourg	28.80%	28.80%	29.22%	29.22%	29.22%	29.22%	27.08%	26.01%	-	28.45%
Effective tax rate	0%	0.92%	2.13%	n. a.	1.15%	0.97%	0.87%	0.19%	-	0.89%

Box 3 Investigation by the European Commission into Luxembourg's treatment of fictitious interest payments

In 2019, the European Commission opened a state aid investigation into tax avoidance by Huhtamäki, a Finnish packaging company.⁷⁶ Huhtamäki provided interest-free loans from Ireland to a Luxembourg subsidiary to finance other group companies with loans that do charge interest. However, thanks to a number of tax rulings, the Luxembourg tax authorities allowed the Huhtamäki Luxembourgian subsidiary to deduct fictitious, or deemed, interest payments for these interest-free loans from its taxable base. According to the European Commission, the tax rulings explain that “deemed interest is an interest which is recorded as a deductible cost in the tax profit and loss account of the company but which does not correspond to an actual cost incurred by the company”.⁷⁷

The problem is that, while Luxembourg recognises a “downward transfer pricing adjustment” (i.e. deemed interest payments), it is considered a unilateral downward adjustment because the other party does not recognise an “upward adjustment”, i.e. a deemed interest *income* for the interest-free loan. As a result, a fictitious cost is created in Luxembourg while this is not offset by a (taxable) income in the country where the loan originated (e.g. Ireland or Malta).

These deemed interest payments correspond to the interest payment that Huhtamäki would have paid to an independent party for these loans, according to the arm's length principle. Because Huhtamäki can offset its interest income with these fictitious interest payments, the company is able to erode its taxable base and only pays taxes on a small amount of profit. This resulted in the company paying very little profit tax in Luxembourg. It appears likely that Qiagen is able to use the same strategy of deemed interest payments to offset the interest income it received from Germany. It is possible Qiagen has received similar tax rulings in Luxembourg as Huhtamäki. However, this is information that is not publically available.

Qiagen can potentially avoid €49 million in Dutch corporate income tax

Qiagen can use the interest payments for this chain of loans to erode its tax base in the Netherlands. Qiagen N.V. has received two loans from Qiagen Germany.⁷⁸ The interest expenses for these loans can be deducted from the profit of Qiagen N.V. to reduce its tax base. However, the annual accounts of Qiagen Germany indicate that it did not yet receive interest for the two loans from Qiagen N.V.⁷⁹ In the calculations below we assume that Qiagen N.V. will at some point pay the accumulated interest to Qiagen Germany, seeing as that interest is owed.

In order to erode its tax base, Qiagen N.V. needs to be profitable. For the years 2011 until 2014, Qiagen N.V. did not report on its pre-tax income, so it is not possible to calculate whether Qiagen used interest expenses to reduce its profit. From 2015 until 2018, Qiagen N.V. did report on its

pre-tax income, which shows the company made a loss each year.⁸⁰ For the years that Qiagen's parent company was loss-making, it can carry forward its losses for up to nine years, according to Dutch tax law.⁸¹ As a result, Qiagen can use the losses made by its parent company in the future to reduce its taxable base in the Netherlands. Should the company do so, this would enable Qiagen to avoid up to €49 million in Dutch corporate income tax. Considering the intricate and (supposedly) deliberate nature of this avoidance structure, and the ease with which Qiagen could shift intra-group financial flows to generate profits at Qiagen N.V., it appears likely that Dutch public coffers will be missing out on tax revenue from Qiagen in the years to come.

From 2019 onwards, the Dutch interest deduction limitation rule enters in effect, which stipulates that companies can only deduct interest payments from their taxable profits to a maximum of 30% of those profits.⁸² This means that from 2019 onwards, Qiagen's ability to use its interest payments to lower its taxable base in the Netherlands will likely be restricted.

Table 4 Potential corporate income tax avoided in the Netherlands

Figures in € x 1,000,000

	2011	2012	2013	2014	2015	2016	2017	2018	Total
Interest payments loan 1 (calculated using 6% annual interest)	€9.49	€22.27	€22.27	€22.27	€22.27	€22.27	€22.27	€22.27	€168.88
Interest payments loan 2 (calculated using 4.54% annual interest)	-	-	-	€1.57	€6.28	€6.28	€6.28	€6.28	€26.7
Statutory tax rate in the Netherlands	25%	25%	25%	25%	25%	25%	25%	25%	25%
Pre-tax income Qiagen N.V.	Unknown	Unknown	Unknown	Unknown	€(53.29)	€(67.22)	€(17.03)	€(164.86)	
Potential Dutch corporate income tax avoided using carry-forward losses	€2.37	€5.69	€5.69	€6.09	€7.26	€7.26	€7.26	€7.26	€48.9

How Qiagen could also use this structure to avoid taxes in Germany

The interest payments in the loan structure examined in this case can be used to erode Qiagen's tax base. As explained above, because Qiagen N.V. has agreed to an interest-bearing loan with Qiagen Germany, this has enabled the company to build up tax credits using the interest payments for the loan. However, it is also possible Qiagen uses the loan structure to erode its German tax base rather than the Dutch tax base. The fact that Qiagen Germany did not receive any interest payments from Qiagen N.V. in the Netherlands – at least for the years 2015-2018⁸³ – gives a hint that this may be the case. At the same time, Qiagen Germany has been paying interest to Qiagen Luxembourg for its two loans. If it does not end up receiving the interest owed to it by Qiagen N.V., that would mean that Qiagen has instead eroded its tax base in Germany. If the base erosion takes place in Germany, this means that Qiagen could have avoided up to €42,674,700 in German corporate income tax between 2011 and 2018, using an average German corporate income tax rate of 30%.⁸⁴ However, without

insight into Qiagen's internal administration it is impossible to ascertain what the company intends to do, and whether it will end up eroding the Dutch or German tax base.

Box 4 Step-by-step explanation of the two loans

Loan 1 – 29 July 2011

1. Qiagen N.V. makes a capital contribution of €253 million to Qiagen Finance (Malta) Limited.⁸⁵
2. Qiagen Finance (Malta) Limited provides a nine-year interest-free loan of €253 million to Qiagen Deutschland Finance Holding (Luxembourg) S.à.r.l.⁸⁶
3. Qiagen Deutschland Finance Holding (Luxembourg) S.à.r.l. loans the full sum onwards to Qiagen Deutschland Holding GmbH, for nine years against a 6% interest rate.⁸⁷
4. Qiagen Deutschland Holding GmbH provides a nine-year €253 million loan with a 6% annual interest rate, to Qiagen's parent company, Qiagen N.V., based in The Netherlands.⁸⁸

Loan 2 – 1 October 2014

1. Qiagen N.V. makes a capital contribution of €138.4 million to Qiagen Finance (Malta) Limited.⁸⁹
2. Qiagen Finance (Malta) Limited provides a nine-year interest-free loan of €138.4 million to Qiagen Deutschland Finance Holding (Luxembourg) S.à.r.l.⁹⁰
3. Qiagen Deutschland Finance Holding (Luxembourg) S.à.r.l. loans the full sum onwards to Qiagen Deutschland Holding GmbH, for nine years against a 4.54% interest rate.⁹¹
4. Qiagen Deutschland Holding GmbH provides a nine-year €138.4 million loan with a 4.54% annual interest rate, to Qiagen's parent company, Qiagen N.V., based in The Netherlands.⁹²

In the most recent annual report of Qiagen Malta, the company states that on 30 June 2019 it has re-assigned the two loans from Qiagen Malta to a Qiagen subsidiary in Dubai. Further research is required to determine what the implications are of this shift.

4 Conclusion: Qiagen must stop avoiding taxes and put the public interest over profit

Qiagen is able to avoid approximately €142 million in taxes

This report shows how Qiagen can avoid taxes by taking advantage of gaps in tax laws and regulations in EU tax havens. By structuring loans through its network of subsidiaries in these tax havens, the company has been able to avoid at least €93 million in corporate income tax between 2010 and 2018, and built up tax credits worth up to €49 million. In its annual report Qiagen admits as much, stating that its tax expense is “favorably impacted” by a “combination of favorable tax laws, regulations, rulings, and exemptions” in tax havens.⁹³ Qiagen is able to use intercompany loans between its subsidiaries in Ireland, Luxembourg and Malta to take advantage of mismatches in tax regulation between these countries and avoid corporate income tax.

In the coming years Qiagen will likely continue to see profits grow as its testing systems play a key role in the fight against COVID-19. In this report we show that Qiagen has been willing and able to set up intricate intercompany financing structures to avoid taxes. It therefore appears likely that Qiagen will continue to do so in the future and avoid taxes on the profits it makes as a result of governments across the world buying its test kits. The taxes avoided by companies like Qiagen could be a crucial resources for governments in the fight against COVID-19, instead of boosting company profits and shareholder value.

Qiagen has benefited from public funding

Qiagen’s tax avoidance is particularly troubling considering the company has received significant public funding. Qiagen has received millions in government funding from Germany, the EU and the USA over the past 20 years. The development of its Coronavirus testing kit was partially developed through venture capital from an investment fund from the Dutch Ministry of Economic Affairs, pooling money from the Dutch Government and the European Investment Fund. This illustrates a wider issue in the pharmaceutical and medical devices industry, as well as other sectors: companies avoid taxes while at the same time taking advantage of public funding. The findings in this report therefore also show the need for stronger public interest conditions and transparency regarding government funding and investment in the private sector.

We ask governments to reconsider policies wherein they make triple investments in the development of medicines and medicinal tests: by investing in the development of a product, by then paying for the product itself, and finally by allowing the company to avoid taxes over the profits it makes as a result. Governments are well positioned to improve conditions to public investments related to affordability and accessibility. A concrete example is the COVID-19 patent pool proposed by the WHO and Costa Rica.

Policy measures continue to be necessary to tackle corporate tax avoidance

Tax avoidance remains a global problem as European tax havens such as Luxembourg and Malta continue to facilitate companies in their tax planning strategies. The EU has taken crucial steps to tackle tax avoidance in response to the OECD's Base Erosion and Profit Shifting project.

This research shows further action by EU member states continues to be necessary. Public country-by-country reporting is a key instrument in the fight against tax avoidance by creating transparency over the amount of tax companies pay in the countries they are active. This would force companies like Qiagen to show how much (or how little) tax they pay in countries like Luxembourg. A directive on country-by-country reporting from the European Commission has so far been blocked by member states.⁹⁴ As President of the Council of the EU until December 2020, Germany should put country-by-country reporting on the agenda of the Council and call on EU member states to support the European Commission directive.

Furthermore, the EU should revise its Code of Conduct on business taxation, which contains criteria by which harmful tax practices can be assessed. This revision should address transfer pricing mismatches as examined in this report. This report shows once again that EU member states also act as tax havens. This why the criteria of the EU list for the list of 'non-cooperative jurisdictions for tax purposes' (also known as the EU tax haven blacklist) should also be applied to EU member states instead of only non-EU jurisdictions as is currently the case. Finally, a minimum effective tax rate agreed by the either the EU or OECD is a crucial way to ensure that companies pay their fair share of taxes.

SOMO makes the following policy recommendations:

Regarding tax avoidance:

- ❑ *Qiagen* needs to stop avoiding taxes. It should not make use of mismatches in transfer pricing regulation between EU Member States with the purpose of avoiding corporate income tax. Furthermore, *Qiagen* should take steps to abandon its presence in tax havens.
- ❑ *Public country-by-country legislation* is a key to increase tax transparency by requiring all large multinational corporations to make country-by-country reports publicly available for each country in which they operate⁹⁵. As *President of the Council of the EU* until December 2020, *Germany* has a unique opportunity to put public country-by-country reporting on the agenda of the EU's Competitiveness Council.

- ❑ To tackle all *harmful tax practices and aggressive tax planning in the EU*, we advise that member states in the EU agree with a complete and comprehensive revision of the *Code of Conduct on business taxation*. Harmful tax practices such as avoidance through interest free loans and transfer pricing mismatches need to be addressed. Furthermore, EU member states should make all tax rulings with companies publicly available.
- ❑ The EU should apply the criteria of the *EU list of non-cooperative jurisdictions* equally to member states. The case of Qiagen makes it clear once again that European countries lose substantial amounts of tax revenue to European tax havens.
- ❑ *Global tax reform* is needed to end tax avoidance, and governments should agree on a *minimum effective tax rate*. In case no agreement can be found at OECD level, countries in the EU should agree to introduce a minimum effective tax rate in the European Union.

Regarding the public funding of (Coronavirus) vaccines, treatments and diagnostics, such as tests:

- ❑ Public investments in medical tests, medications and vaccines should come with *public interest conditions* related to affordability, accessibility and to the sharing of knowledge and technology in data pools such as the *COVID-19 Technology Access Pool (C-TAP)* initiative set up by the WHO and with support of 41 countries in total at the moment, including the Netherlands.⁹⁶ Access conditions should be based on equity, fairness and need. Qiagen should fully support and participate in this initiative.
- ❑ Governments and public institutions should be *transparent* about all types of public funding provided for the development of vaccines, treatments and diagnostics, and should *not make public investments* in companies that have been shown to engage in *tax avoidance*.

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