

In Germany, for Fresenius Medical Care, the tax years 2002 through 2009 are currently under audit by the tax authorities. The other entities of the Fresenius Group are currently subject to tax audits for the tax years 2006 through 2009. The Fresenius Group recognized and recorded the current proposed adjustments of this audit period in the consolidated financial statements. All proposed adjustments are deemed immaterial. Fiscal years 2010 until 2013 are open to audit.

In the United States, the tax years 2009 and 2010 are currently under audit by the tax authorities. Fiscal years 2011 until 2013 are open to audit. Fresenius Medical Care Holdings, Inc. (FMCH) is also subject to audit in various state jurisdictions. A number of these audits are in progress and various years are open to audit in various state jurisdictions. All expected results for both federal and state income tax audits have been recognized in the consolidated financial statements.

Fresenius Medical Care filed claims for refunds contesting the Internal Revenue Service's (IRS) disallowance of FMCH's deductions for civil settlement payments taken by FMCH in prior year tax returns. As a result of a settlement agreement with the IRS, Fresenius Medical Care received a partial refund in September 2008 of US\$37 million, inclusive of interest, and preserved its right to pursue claims in the United States Courts for refunds of all other disallowed deductions, which totaled approximately US\$126 million. On December 22, 2008, Fresenius Medical Care filed a complaint for complete refund in the United States District Court for the District of Massachusetts, styled as Fresenius Medical Care Holdings, Inc. v. United States. On August 15, 2012, a jury entered a verdict for FMCH granting additional deductions of US\$95 million. On May 31, 2013, the District Court entered final judgment for FMCH in the amount of US\$50 million. On September 18, 2013, the IRS appealed the District Court's ruling to the United States Court of Appeals for the First Circuit (Boston).

Subsidiaries of Fresenius SE & Co. KGaA in a number of countries outside of Germany and the United States are also subject to tax audits. The Fresenius Group estimates that the effects of such tax audits are not material to the consolidated financial statements.

The following table shows the changes to unrecognized tax benefits during the year 2013:

€ in millions	2013
Balance at January 1, 2013	284
Increase in unrecognized tax benefits prior periods	22
Decrease in unrecognized tax benefits prior periods	-9
Increase in unrecognized tax benefits current periods	14
Changes related to settlements with tax authorities	-54
Reductions as a result of a lapse of the statute of limitations	-1
Foreign currency translation	-8
Balance at December 31, 2013	248

Included in the balance at December 31, 2013 are €251 million of unrecognized tax benefits, which would affect the effective tax rate if recognized. The Fresenius Group is currently not in a position to forecast the timing and magnitude of changes in other unrecognized tax benefits.

It is Fresenius Group's policy to recognize interest and penalties related to its tax positions as income tax expense. During the fiscal year 2013, the Fresenius Group recognized €1 million in interest and penalties. The Fresenius Group had a total accrual of €14 million of tax related interest and penalties at December 31, 2013.

13. EARNINGS PER SHARE

The following table shows the earnings per share including and excluding the dilutive effect from stock options issued:

	2013	2012
Numerators, € in millions		
Net income attributable to shareholders of Fresenius SE & Co. KGaA	1,011	926
less effect from dilution due to Fresenius Medical Care shares	1	2
Income available to all ordinary shares	1,010	924
Denominators in number of shares		
Weighted-average number of ordinary shares outstanding	178,672,652	172,977,633
Potentially dilutive ordinary shares	1,231,688	1,547,170
Weighted-average number of ordinary shares outstanding assuming dilution	179,904,340	174,524,803
Basic earnings per ordinary share in €	5.66	5.35
Fully diluted earnings per ordinary share in €	5.62	5.29