# CHRONICLE OF THREE YEARS OF STRUGGLE OF THE SOCIALIST DEPUTIES

## MULTINATIONALS MUST PAY THEIR TAXES

By Boris Vallaud and
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## MULTINATIONALS MUST PAY THEIR TAXES

BY BORIS VALLAUD, ON 08 . 02 . 2019

*This device, developed in conjunction with economist Gabriel Zucman, aimed at reforming the taxation of multinationals so that they pay their income tax where they make their turnover, in order to thwart their strategies of exfiltration of their profits to entities located in tax havens, was proposed as an amendment on November 15, 2018, and rejected by the majority, on the 2019 finance bill.*

Every year, 40% of the profits of multinationals are artificially transferred to tax havens, and thus $600 billion in taxable income is lost to the states.

In 2016, U.S. companies made more profits in Ireland than in China, Japan, Mexico, Germany and France combined. And out of these staggering profits, they paid a paltry 5.7%.

The European Union, for its part, loses the equivalent of 20% of the amount of corporate tax collected each year through the artificial relocation of profits to tax havens. For France alone, this aggressive tax optimization corresponds to a loss of more than 5 billion euros per year.

As for the developing countries, they are deprived of major resources in terms of the official development assistance they receive. According to some NGOs, they lose up to 10 times more in fiscal resources than they receive in public aid.

The race for the lowest tax payer disarms the States and erodes their sovereignty a little more each day. It affects everything, the loyalty of the economy, the purchasing power of households on which taxation is based, public services that lack resources, and the environment, which is never the priority. This weakness of the States deprives them of the means necessary to fight against inequalities through investments in education, health systems and environmental protection. A

A vicious circle is set in motion, with aggressive tax optimization fuelling unsustainable inequalities and jeopardizing the future. It feeds all the frustrations, all the resentments, all the challenges of liberal democracy.

Yet we can act.

Numerous and well-documented works are now available from researchers proposing to reform the legal mechanisms in order to bring multinationals back into the common corporate tax law, by recovering the tax base that escapes the States due to aggressive tax optimization practices. They generally suggest, for greater efficiency, a strong cooperation between States to achieve this. This is why the European Union has made it a priority project, but without result for the moment, the project of corporate tax reform (CCCTB) designed by the European Commission remains blocked by the European Council since 2011.

If European and international cooperation remains a primary objective, it is possible to act without waiting for the entire international community to make up its mind. This is the meaning of the present amendment, written in collaboration with the economist Gabriel Zucman.

We can change the definition of the taxable base in France. Each company domiciled abroad selling goods or services in France for an amount exceeding 100 million euros (this amount may change in the future) would become subject to corporate income tax, whether or not it has a permanent establishment in France. Taxable income would be calculated by multiplying the Group's consolidated worldwide profits by the fraction of its worldwide sales made in France.

In doing so, this system aims to give substance to a simple principle: multinationals must pay their taxes where they make their turnover. This amendment proposes to change the method of calculating the corporate tax base, without changing the rate. The adoption of this amendment would amend the General Tax Code so that multinationals would pay their corporate tax in France in proportion to the percentage of their worldwide sales made in the country.

If, for example, a multinational corporation makes 10 billion Euros in consolidated profits worldwide, and 10% of its turnover is generated in France, then its corporate tax will be calculated on the basis of 10% of this 10 billion, or 1 billion Euros. Even if these profits had been artificially transferred for accounting purposes to countries with zero or very low taxation.

In order to follow the logic of this amendment and really fight against tax evasion, an anti-abuse clause is provided for. The tax authorities reserve the right to disregard sales made to tax-exempt or low-tax territories when calculating the proportion of worldwide sales made in France. This measure prevents

companies report a disproportionate share of their sales to non-group customers in tax havens.

This reform requires the renegotiation of international tax treaties, in particular in order to avoid double taxation. A general principle can be the following:

- Groups headquartered in France are taxable in France on their worldwide profits (regardless of the fraction of their sales made in France), with a tax credit to cancel all corporate taxes paid to foreign states.
- Groups whose head office is located abroad are taxable in France on their worldwide profits allocated pro rata to sales made in France. Countries where the head offices are domiciled grant tax credits to offset the tax paid in France.

In an interim period allowing for the conduct of negotiations, until the end of 2028, profits made in France calculated in accordance with the law would remain fully taxed in France if they are higher than those resulting from the application of the proposed new rules. During this period, the proposed new rules would allow, under domestic law, additional profits currently taxable abroad to be taxed as and when the relevant tax treaties are renegotiated. The purpose of this transitional measure is to avoid double non-taxation while other countries (and tax treaties) adjust.

With this system, France can begin pioneering work to rebalance the balance of power between States and multinationals. This is a necessary path that does not exhaust the monumental task of fighting against tax optimization and tax fairness, but is resolutely committed to it.

It formulates choices that future work can make evolve.

As regards the revenue distribution key, since the proposed reform applies only in France, it has been decided not to include the wage bill and capital in the key to avoid the risk of encouraging multinationals to relocate to low-tax countries. The choice made was guided first and foremost by the defence of French interests and its industrial fabric, and therefore to opt for a formula based on sales alone.

This choice leaves other countries free to choose a system that takes all three factors into account, since not all countries need to apply the same formula for taxation to work (U.S. states apply different formulas).

The search for a fair global tax raises the question of developing countries, countries of production that do not have a domestic market that can

to provide a significant taxable base. The reform undertaken by this amendment is intended to recover the tax base from multinationals that escape the scrutiny of all the States of the world. It will have a positive collateral effect for developing countries, which are already the first victims of the tax optimization imposed on them by multinationals. The continuation of work undertaken at the global level (such as the European CCCTB project, blocked since 2011, envisages taking into account, in addition to turnover, the distribution of assets and payroll), as well as the renegotiation of tax treaties in the case of France, should provide an opportunity to address tax equity between countries of production and consumption, by considering, for example, ways and means of deducting other taxes (production taxes, operating rights, etc.) from the corporate tax base.

In the case of integrated groups, the breakdown by sales changes the location of their taxable base to the countries where the downstream companies' customers reside.

However, this is a big improvement over the current system in which these groups are de facto left to choose the country where they wish to declare their profits through the use of transfer pricing (in practice, they most often choose Ireland or Bermuda). The amendment therefore once again favors France.

In order to determine the location of sales in the digita l world, it is necessary to start from VAT statements (advertisements sold by Google to French customers are subject to VAT in France), and to include a number of users in the calculation of turnover per country. This reform can also be used to improve accounting standards for digital companies and transparency in this sector.

For foreign groups with headquarters outside France, access to the French market will be conditional on providing the tax authorities with a country-by-country breakdown of their worldwide sales, as well as the amount of consolidated worldwide profits. The information provided on the amount of sales made in France may be verified using VAT statements. Double taxation issues will be instrumentalized by certain lobbies but in practice are of secondary importance compared to the current double non-taxation. A good example: American multinationals liked to complain about the fact that the tax credit granted by the American tax authorities did not erase 100% of foreign taxes but in practice it erased well over 90% .

This proposal is part of a long-term struggle, which must first and foremost lead to the States regaining their tax bases, a condition and expression of their sovereignty. It is not up to the multinationals to make States compete with each other, but if necessary, it is up to the States to define the rules that apply to economic actors and, if necessary, to develop cooperation and development aid policies between them.