



Oxfam Manifesto on Tax for the French Presidency of the Council of the EU

December, 2021

As of January 2022, France will chair the Presidency of the Council of the European Union. The six-month period will be crucial for the EU tax agenda, as the EU will discuss and agree upon critical tax and tax-related files.

In its Manifesto Oxfam reviews these files and presents its recommendations:

- **Agree on a minimum effective tax rate at the EU level**, which is more ambitious and fairer than the global agreement at the OECD level;
- **Reform the criteria and process of the EU tax havens list to make it fairer and more transparent and clarify the assessment of harmful tax practices;**
- **Agree on an initiative to stop the use of shell companies.** This proposal must include consistent minimum requirements of real economic activity for companies in the EU;
- **Make the European Commission's proposal for a Carbon Border Adjustment Mechanism (CBAM) fairer and more coherent** by exempting poorer countries (LDCs), increasing support for climate action in developing countries and swiftly eliminating fossil fuels subsidies in Europe.

Background

France takes the helm of the EU Presidency at a challenging time. The escalating climate and socio-economic crisis related to the global COVID-19 pandemic means governments must find additional resources for the green transition and for the recovery. With the gap between the rich and the poor ever widening, the cost cannot fall on the poorest people and countries. Instead, it must come from the undertaxed and most wealthy and profitable people, companies, and countries.

Tax scandals, like the Pandora Papers, show that the wealthy are using tax havens and shell companies to avoid paying taxes. While, at the same time, multinational corporations, like tech giants and big pharma, are recording skyrocketing profits which are not being taxed because of an outdated tax system. The EU, member states and the French Presidency, all play a role in putting this to a halt.

In the next months, the French Presidency can steer the EU towards a fair and just recovery. To succeed, it must **put in place rules to sink tax havens, to end shell companies, to stop the race to the bottom in corporate taxation in Europe and make sure that the most polluting companies and countries, and not the least developed countries (LDCs), pay for their own pollution.**

Agree on a minimum effective tax rate at the EU level

On 22 December 2021, the European Commission will table a proposal to implement a minimum tax at EU level. This reform is part of a global agreement (BEPS2 - Base Erosion and Profit Shifting) agreed by 137 jurisdictions at the OECD level in October 2021. On the global arena the EU will lead the way as it is one of the first regions to implement the agreement, and the French Presidency will steer the negotiations in Europe and, likely, find an agreement in the next six months.

Oxfam [expressed](#) its concerns about the lack of ambition and the unfairness of the global tax deal as it favours mainly rich countries and ignores requests from low-income countries. The proposal on minimum tax funnels almost all revenue of the minimum tax to “residence” countries (where multinational companies have their headquarters), which are mainly high-income countries, rather than “source” countries (where multinationals operate), which are mainly low-income countries. As a result, the current proposal will see 60 per cent of the revenues from the new minimum tax rate going to the G7 countries, a club of the world’s wealthiest countries, while the 38 low-income countries, for which Oxfam has data, would collect less than 3 per cent of the revenue.

While the global agreement cannot be rewritten in the short term, the EU can become a role model for other countries and regions in its implementation of the agreement.

Oxfam's recommendations:

1. **Setting a minimum effective tax rate higher than the agreed 15 per cent**, such as the 25 per cent called for by the Independent Commission for the Reform of International Corporate Taxation; in any case, not lower than the 21 per cent initially proposed by the US Administration. 15 per cent is far too low, it is barely higher than the current tax rate in some notorious tax havens like Mauritius.¹ According to the [EU Tax Observatory](#), an EU minimum tax rate of 21 per cent could double revenues for EU member states, and triple them if the tax rate is 25 percent. Ireland, whose main corporate tax rate is 12.5 per cent, has strongly advocated at OECD level to keep the minimum tax rate not higher than 15 per cent. But countries should be allowed to go higher if they want. Setting a minimum tax rate at 15 percent with no possibility to go higher, will bring Member States to a race to the minimum and be a victory for low tax rate countries in the EU.
2. **No exemptions to the rule.** The OECD agreement includes a so-called 'substance carve-out', which is a loophole that allows companies to pay a lower tax rate than 15 per cent in countries where they have many employees or tangible assets such as factories and machineries. Initially, carve-outs will be 8 per cent of the value of the tangible assets and 10 per cent of payroll. Those rates will decrease over a 10-year period to reach the long-run carve-out rate at 5 per cent of payroll and tangible assets. This translates into a sizable chunk of almost a quarter (23 per cent) of missing tax revenue for the EU in the first decade and 14 per cent in the following years according to research by the [EU Tax Observatory](#).
3. **Lower the revenue threshold to include more companies.** Currently the OECD agreement only applies to 10 – 15 per cent of the world's multinational companies, as only companies with a turnover of more than €750 million would be subject to the new minimum tax. This means for instance that most companies in Ireland [will not be impacted](#) by the new agreement.
4. **Define a comprehensive list of taxable profits**, which includes patent boxes (preferential tax treatment for income derived from intangible assets like royalties), and any kind of research and development incentives, and do not allow the deduction of previous losses (carry-forward of losses). The OECD has not yet provided a detailed definition of which profits are to be taxed. Countries could start competing for corporate investments by offering more deductions to avoid paying tax or narrowly define what constitutes corporate profits than other countries. Some EU countries have already started to ask for these types of exemptions. The EU must avoid the already very low minimum tax rate becoming completely ineffective because of different kinds of deductions of the tax base.

¹ According to OECD data on "[Composite Effective Average Tax Rates](#)" Mauritius has an effective tax rate of 13.8. The [#Mauritiusleaks](#) exposed the role of tax haven of the African country.

5. **Expand the minimum tax to domestic companies.** Currently the minimum tax only applies to companies that are not resident in a country, while domestic entities are excluded. This means that a country will collect the tax revenue from foreign subsidiaries but not from companies registered within its borders. The EU could be the front-runner and apply the minimum tax to domestic companies. This would increase the number of companies covered by the minimum tax, ensure coherence between domestic and foreign affiliates and [avoid risks of legal controversy at the EU level](#). The European Court of Justice (ECJ) could rule the difference in treatment between domestic and foreign affiliates as discrimination based on the Treaty principle of Freedom of establishment.²
6. **Cancel or reduce the revenue exemptions for smaller markets.** The OECD agreement allows an exemption for countries where multinationals have annual revenues of less than EUR 10 million and profits under EUR 1 million. These thresholds mean that the minimum tax would not apply to smaller markets and risk excluding harmful tax incentives in low-income countries. Tax incentives are responsible for creating aggressive tax competitions in [Asia](#), [Latin America](#) and [Africa](#) by driving down tax rates and decreasing resources for the governments to invest in public goods such as hospitals and schools.
7. **Commit to changing bilateral tax agreements with low-income countries providing them with more taxing rights.** The OECD agreement grants almost all tax revenue to “residence” countries, mainly rich countries, but there is a possibility for low-income countries to gain more revenues from the minimum tax. The so-called Subject to Tax Rule (STR) allows tax authorities in the source country to collect a top-up tax when a subsidiary of a multinational makes payments of royalties, interest and other high-risk payments to an affiliate that pays taxes in a country below a minimum rate of 9 per cent. This rule has the priority over the 15% minimum tax collected by the residence country. However, to be applied, the source country must request and obtain a change in the bilateral tax agreements. The EU can push European countries to change their bilateral tax agreements with low-income countries, in case the taxation falls below the 9 per cent. However, this low rate should not become the standard and cause a decline of higher levels of taxation in existing tax agreements.
8. **Do not block countries from introducing unilateral measures that are more ambitious than the OECD agreement and the EU implementation.** When deciding on how to implement the agreement at EU level, European legislators should not insert any clause that precludes countries the possibility to be more ambitious, for example on the tax rate or on the revenue threshold. In November 2021 [Spain](#) for example, has proposed to implement a minimum tax rate at 15% on companies with revenue above € 20 mln from 2022. While the final design is still to be finalized, the threshold considered is far below the OECD threshold of € 750 mln.

² Art. 49 TFEU and Art. 31 EEA11

Reforming the criteria and process of the EU tax havens list and clarify the assessment of harmful tax practices

In the first semester of 2022, member states are expected to progress on the reform of the criteria and the process of the EU list of tax havens. This work stems from the “[Communication on Tax Good Governance in the EU and beyond](#)”, published in July 2020, where the European Commission committed to reforming the way third countries are blacklisted and the mandate of the Code of Conduct Group (CoCG), the body within the Council which assesses harmful tax practices and is responsible for the EU list of tax havens.

CSOs³ and the European Parliament⁴ have criticized the EU tax havens list and the Code of Conduct Group for the weak and unfair criteria used to assess harmful tax regimes and blacklisted countries, as well as for the lack of transparency of the screening process. The blacklist does not include a single one of the world’s 20 worst corporate tax havens identified by [Tax Justice Network](#) in 2021, nor does it include any of the world’s 15 worst corporate tax havens identified by the still relevant 2016 [Oxfam analysis](#). A revised mandate of the Code of Conduct Group and definition of harmful tax regimes for EU Member States have been discussed in the ECOFIN on the 7th of December but did not pass. The reform of the criteria and process of the EU list of tax havens will take place in the next semester and, EU member states, under the French Presidency, have still the possibility to make the listing process meaningful and fit for purpose.

Oxfam’s recommendations:

- 1. Apply the same or even higher standards and visibility for European countries compared to third countries.** EU countries are not screened in the EU list of tax havens. The CoCG screens potential harmful tax regimes in the EU in a separate process with little transparency. This has caused a disparity between the treatment of countries in the EU and those outside. Botswana, for example, risks being put on the EU blacklist for failing to comply with an OECD tax transparency standard. Yet, Malta does not comply with the same tax transparency requirements and is not at risk of suffering any consequence as EU countries do not have to comply with this criterion.

In addition, when an EU country is found to have a harmful tax practice or favour aggressive tax planning practices, there is almost no kind of visibility and public scrutiny. This is very different from the EU tax havens list.

Applying the same standards and visibility in the EU as outside, is essential to ensure a coherent policy against tax havens.

³ See Oxfam report “Off the hook”, March 2019:

<https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620625/bn-off-the-hook-eu-tax-havens-070319-en.pdf>

See Tax Justice Network blog: <https://taxjustice.net/2019/09/05/geopolitics-trumps-eu-tax-haven-blacklist/>

⁴ See the European Parliament resolution “Reforming the list of tax havens”, January 2021

https://www.europarl.europa.eu/doceo/document/TA-9-2021-0022_EN.pdf and the European Parliament “Report on reforming the EU policy on harmful tax practices (including the reform of the Code of Conduct Group)”, October 2021, https://www.europarl.europa.eu/doceo/document/TA-9-2021-0416_EN.pdf

2. Update the criteria on harmful tax regimes in the EU blacklist by:

2.1 Expanding the definition of harmful tax regimes. Currently, a tax regime is considered harmful if it grants tax advantages to foreign companies rather than domestic companies. This criterion pushes countries into a 'race to the bottom' because they bypassed the rule by simply lowering tax rates for both domestic and foreign companies. A regime should be considered harmful even if it applies to both domestic and foreign companies. In the [draft revised Code of Conduct](#), the definition of harmful tax practices in member states was expanded beyond preferential tax regimes and included tax features of general application. The same should be proposed for the EU tax havens list.

2.2 Including zero or low level of taxation as a standalone criterion and not just an indicator. Currently, when the EU assesses a country's tax regime, it only considers its tax rate as a risk indicator, not a standalone criterion. Consequently, the EU list features none of the 12 countries in the world with a zero per cent tax rate. This is despite zero and low tax rate jurisdictions causing aggressive tax competition by attracting corporations with their null or extremely low levels of taxation. Countries with a zero and very low effective corporate tax rate should be automatically blacklisted. Moreover, tax regimes with tax rates below the OECD global minimum taxation rate (15 per cent) should be considered as potentially harmful and grey-listed, unless companies prove they have real economic activity e.g., employees, machinery, offices etc.

2.3. Speed up the inclusion of a criterion on beneficial ownership transparency. Some tax havens shroud the real owners of companies in ambiguity. This high level of confidentiality attracts corporates and wealthy people who may exploit this lack of transparency to illicitly reduce their tax. The EU must promptly introduce the criterion on transparency of beneficial ownership (BO). All secrecy jurisdictions listed in the Pandora Papers have a low score for the company ownership in the [Tax Justice Network Financial Secrecy Index](#). If a criterion on BO was already in place, several tax havens involved in the Pandora Papers would have already been on the EU's blacklist.

3. Strengthen the assessment of harmful tax regimes in EU MSs and in the blacklist by:

3.1 Including economic analysis to identify harmful tax regimes. In particular, consider whether flows of Foreign Direct Investments (FDI), e.g., foreign companies investing in a country, and passive income e.g., royalties, interest and dividend payments, are disproportionate compared to the country's gross domestic product (GDP). Looking at this data, [Oxfam](#) discovered that 5 European countries, Cyprus, Ireland, Luxembourg, Malta and the Netherlands, had levels of FDI and/or passive income significantly exceeding their economic weight for the period of 2017–2019. This strongly indicates that these countries use aggressive tax practices to attract investments and income (acting as offshore centres) or to act as a conduit towards other offshore centres, usually zero or low tax jurisdictions.

3.2 Better assessing the lack of real economic activity of multinationals in a country as a red flag indicator of corporate tax avoidance. Multinationals should be required to have a precise ‘adequate’ quantity of business and staff as proof of real economic activity (also called substantial economic presence) in a country. The same definition should be used in the EU initiative to fight the use of shell companies (see below). Moreover, the EU must monitor and evaluate the implementation of the substance criterion. Shell or letterbox companies – companies with no or very few employees or assets in a country – are often used by companies and individuals to lower their tax liability. The [OpenLux scandal](#) in 2021 showed that Luxembourg is hosting 55,000 offshore companies with no economic activity. Several of them are used for tax avoidance, evasion, or money-laundering purposes. More recently, the [Pandora papers](#) exposed how the wealthy use shell companies to pay less taxes or keep their financial activities hidden.

3.3 Carefully assessing all corporate tax regimes that can result in harmful tax competition. Harmful corporate tax practices include all aggressive tax rules that facilitate tax avoidance (such as low withholding taxes for interests, royalties and dividends) and zero tax or low-tax regimes that inherently attract profit shifting (regardless of whether they are applied to foreign or domestic companies) like patent boxes (preferential tax treatment for income derived from intangible assets like royalties), and tax holidays (temporary reduction or elimination of tax for certain products or services). Many EU governments and companies are abusing tax practices like patent boxes, research and development super deduction and tax credits. [Evidence shows](#) that these practices, introduced to support innovation, have instead led to a new, harmful race to the bottom in corporate taxation. [According to EU figures](#), 14 out of 27 EU countries had a patent box in 2019. All of them grant a tax [rate for patents, software and similar intangible assets below 15 per cent and half of them even below 10 per cent](#).

4. Do not blacklist countries for failing to endorse the global OECD standards. Since the establishment of the EU list of tax havens in 2017, the EU has listed several low-income countries for failing to comply with international standards. The problem is that these countries did not have the chance to agree on these international standards, and sometimes do not have the capacity to implement them. Botswana, for example, risks being blacklisted for failing to comply with an OECD tax transparency standard. A similar scenario could occur with the new OECD international tax agreement (BEPS2). The European Commission said it wants to introduce the Pillar 2 as new criterion.⁵ This could translate into the blacklisting of countries, like Nigeria and Kenya, that did not sign up to the Inclusive Framework and to the BEPS2 tax agreement, and into forcing low-income countries to endorse a tax agreement that counters their own national interests.

5. Make the Code of Conduct Group’s work more transparent and inclusive. The above-mentioned Code of Conduct Group works behind closed-doors and does not publish all documents. The secrecy and the political interests within this body have been clearly exposed by the [work](#) of the Dutch researcher Martijn Nouwen and the European Investigative Collaborations in November 2021. Since its establishment, some efforts have been made to increase the transparency of the group. Yet, several documents are still not accessible, like the minutes of each meeting and the composition of the group and sub-groups. In addition,

⁵ In the [Communication on Business Taxation for the 21st century](#), the European Commission announced that it “will propose to introduce Pillar 2 in the criteria used for assessing third countries in the EU listing process, so as to incentivise them to join the international agreement”.

the European Parliament and external stakeholders are excluded from the EU tax blacklist screening process. The work of the group could become more inclusive and democratic if the European Parliament was involved, and external stakeholders, like CSOs and experts, could have a voice in the process, through a working group or a consultative body.

Initiative to Fight the Use of Shell Companies

On 22 December 2021, the European Commission will present a legislative proposal to fight the use of shell companies. The aim is to stop the use of “fake” companies in the EU which are created with the sole purpose of avoiding taxation. Tax scandals, like the [Pandora Papers](#) and [OpenLux](#), show how wealthy individuals and multinationals use shell companies both inside and outside Europe to avoid paying their fair share of tax.

Following the European Commission’s proposal, EU countries will negotiate the proposal and the French Presidency will have an important role in guiding these negotiations.

This is a remarkable initiative by the Commission which can have an impact on the review of the Code of Conduct Group too (see above). However, to make it effective, the final proposal must not be watered down.

Oxfam recommendations for a robust proposal are:

1. **To carefully assess the economic presence of a company in a country.** There must be a quantitative definition of economic substance, and not a definition open to interpretation, like “adequate” economic substance without a precise number. The substance criteria must also take into account physical factors (e.g. staff, equipment, premises). This approach is already adopted in the EU state aid guidelines.
2. **To include unconventional companies**, like equity-holding companies, most of which were at the heart of the [Openlux](#) scandal, as well as **IP companies**.
3. **To include penalties** for companies who do not comply or report false information.

Carbon Border Adjustment Mechanism

In July 2021, the European Commission presented a proposal for a Carbon Border Adjustment Mechanism (CBAM) as part of its climate package (Fit for 55). The CBAM is a mechanism that makes companies exporting into the EU purchase a carbon permit reflecting the amount of CO2 emission embedded in their exported goods. It is a tariff rather than a tax. It will apply to certain sectors (steel, iron, cement, fertilisers, aluminium, and electricity) and only when the exporting countries have lower CO2 emission standards compared to the EU.

EU countries in the Council have started discussing the file, and the main decisions are expected during the French Presidency.

Oxfam is concerned that the French presidency will present CBAM as the silver bullet to tackle the climate crisis. It should not be a distraction from other key issues such as reducing emissions within the EU by at least 55% by 2030. Oxfam is also concerned that CBAM will disproportionately affect Least Developing Countries, while allowing EU companies to continue polluting. The UN body on trade and development (UNCTAD) has raised the same concern, [confirming](#) that CBAM could push the gap between rich and poor countries even wider.

This is even more worrying given the existing inequality in the climate crisis. The poorest and marginalized people are most severely affected by the climate crisis. Yet, they are the least responsible for carbon emissions. [Oxfam](#) estimated that the richest 10 per cent of the world's population were responsible for over half (52 per cent) of the world's total carbon emissions from 1990 to 2015, while in the same period, the poorest 50 per cent in the world were responsible for just 7 per cent of total carbon emissions. [New Oxfam estimates](#) show that the carbon emissions of the richest 1 per cent are set to be 30 times the amount compatible with the Paris Agreement goal of 1.5°C in 2030. Meanwhile, the carbon footprints of the poorest half of the global population are set to remain well below the 1.5°C compatible level. The EU must make sure CBAM does not increase inequality and undermine low-income countries fight against the climate crisis.

Oxfam recommendations are:

- 1. Grant an exclusion or an exemption period to Least Developed Countries (LDCs).** During this exemption period, the EU can build a partnership to support these countries in the green transition. These countries are classified as LDC's as they experience severe structural impediments to sustainable development and are highly vulnerable to and impacted by economic and environmental shocks. The introduction of a carbon border adjustment could see products imported from these countries becoming less competitive than they are currently in the EU market. This could result in lower exports to the EU with potential negative impacts on building up their government coffers for investment in public services such as hospitals and schools and a loss of jobs. This could even undermine the investments of those countries in a just transition further risking a disproportional shifting of the burden of adjustment to the climate crisis to the world's poorest countries. Affected LDCs include Mozambique for the aluminium and steel, Zambia for steel, Guinea and Sierra Leone indirectly for bauxite, which is included in aluminium.⁶
An exemption for LDCs would not result in a big impact on CBAM's purpose to stop carbon leakage since the risk of leakages towards these countries is negligible. From an environmental perspective, carbon embedded in products imported from LDCs is only a small portion of the carbon in EU's total imports and if we exempt LDCs and small islands developing states, we will only see a small increase in their emissions, according to [UNCTAD](#). Exempting low-income countries from the CBAM would not be particularly costly for the EU or the planet. But it could be too much of a cost for low-income countries, and for their fight against the climate crisis.
- 2. Increase support for climate actions in low-income countries.** Revenues collected from CBAM should be earmarked for climate actions taken by EU countries and for international climate action. A share of the revenues should be reserved for LDCs, as recommended by [UNCTAD](#). This increasing support should be considered additional and should not displace other critical resources needed in LDCs. Moreover, resources should comply with the development effectiveness principles and should be provided based on climate priorities as determined by people and their governments, with a priority towards community led initiatives. The European Commission's proposal states most revenues from CBAM will go to the EU budget to help the economic recovery of EU countries, which

⁶ According to [IEEP](#), climate vulnerable countries that will be directly impacted include: Mozambique (aluminium and steel); Ghana (aluminium); Cameroon (aluminium); Zimbabwe (steel); Zambia (steel); Nigeria (steel); Algeria (fertilisers); Libya (fertilisers); Egypt (fertilisers); Trinidad and Tobago (fertilisers); Tunisia (fertilisers); and Morocco (electricity). Climate vulnerable countries that will be indirectly impacted notably include those that are heavily reliant on bauxite exports. Guinea, Sierra Leone and Guyana (bauxite, included in aluminium). Among them, LDCs are Mozambique, Guinea, Sierra Leone, and Zambia. Mozambique would be the most exposed LDC.

risks increasing the perception of the measure as protectionist and unfair. In the context of the COVID-19 crisis, many governments in low-income countries do not have resources to support their economies and people. Yet, they are being asked to contribute to the recovery of Europe.

This support is direly needed if we consider the fact that rich countries [failed](#) to deliver on their promises to mobilise 100 billion USD annually in climate finance to support climate action in poorer countries. Oxfam [estimated](#) that the current trends in climate finance mean climate-vulnerable countries could miss out on between 68 billion and 75 billion USD in total over the six-year target period (2020 - 2025).

3. **Accelerate the phase out of free allowances under the Emission Trading System (ETS).** EU companies in sectors deemed to be exposed to a significant risk of carbon leakage e.g. in the steel sector, receive a high number of free allowances. This means they get a free pass on paying for their carbon emissions. This practice has been criticised with analysis showing that not only does it slow down the decarbonisation of high carbon-emitting sectors, but also allowed those industries to make a profit out of this system.⁷ In addition, the CBAM and the free allowances cannot coexist because they have the same declared objective that is to tackle carbon leakage. Having both would be unfair, incoherent with EU climate goals and incompatible with WTO rules. Therefore, free allowances need to be removed if a CBAM is introduced. The current European Commission proposal includes a gradual phase-out of free allowances from 2026 - 2036 as the CBAM is phased-in. This means that during a time when the EU should be punishing polluting companies, it is instead bolstering a harmful system that favours them until at least 2036. The timing is excessively too long and needs to be reduced.

⁷ The EU's Emissions Trading System: free allocation of allowances needed better targeting, European Court of Auditors, 2020, https://www.eca.europa.eu/Lists/ECADocuments/SR20_18/SR_EU-ETS_EN.pdf
Additional profits of sectors and firms from the EU ETS, Committed to the Environment, 2021, https://carbonmarketwatch.org/wp-content/uploads/2021/06/CE_Delft_Additional_Profits_ETS.pdf
A New Hope - Recommendations for the EU Emissions Trading System Review, Carbon Market Watch, 2021, <https://carbonmarketwatch.org/publications/a-new-hope-recommendations-for-the-eu-emissions-trading-system-review/>