The Troubled Waters of VEOLIA’s Tax Management

Does Veolia use France and US as private tax havens?

CREDITS

AUTHOR: Jean Michel Matt

DATE: 27/10/2017

A REPORT COMMISSIONED BY THE GREENS/EFA GROUP IN THE EUROPEAN PARLIAMENT

WWW.GREENS-EFA.EU
@GREENSEP
WWW.FACEBOOK.COM/GREENSEFA/

Executive Summary

In past years, the Greens / EFA Group in the European Parliament issued studies and reports on different multinational companies such as IKEA, BASF or ZARA in order to find out what their tax policy is and if they pay their fair amount of tax. It is the view of Greens / EFA that everybody should pay his fair share of tax including multinational companies.

Particular interest of public scrutiny should be given to companies benefiting extensively from providing access to public services and depending strongly on public infrastructure. Another company that caught Greens / EFA eye has been a French multinational Veolia. The analysis shows that its **''efficient'' tax management has made it possible that an increasingly smaller part of profits made by VEOLIA in France is actually taxed**. VEOLIA is able to pay only very limited amounts of tax on profits made in two of its major countries of operation: France and the US, becoming some sort of tax havens for the group.

How is that possible? The VEOLIA group has entered tax group schemes in France, UK and US. The tax group scheme means that each subsidiary calculates its corporate tax on a standalone basis, and pays it to the mother company. This is especially interesting when some companies within the group have tax losses, which can be offset against the tax profits of other companies.

VEOLIA ENVIRONMENT created a tax group in France and was able to carry forward an **aggregate tax loss of EUR 3.6 billion by the end of 2016 in France**. The net aggregate profit made by companies within the French tax group seems to vary between EUR 300 and 600 million per year. This means that virtually any profit made by VEOLIA and its subsidiaries in France is not liable to tax for the next 10 years or so.

Tax savings resulting from this scheme have been of EUR 572 million in the last five years, and approximately EUR 2.7 billion since 2001. It is perfectly legal as Veolia has it's headquarter in France and is allowed to offset losses. Nevertheless, Veolia is taxwise in deficit in France for years, while it is making profits on an accounting basis. The tax group was created in 2001 and from 2002 onward it was loss making.

The share of the tax burden paid in France is relatively small, and quickly declining, the average effective tax rate applied to **VEOLIA's tax base is 10 to 12 points below the nominal French corporate tax rate**. The actual low tax burden for France results from profits made by subsidiaries that are not included in the tax group[1] and by taxes that cannot be offset against the group's tax losses, like, for instance the 3% contribution on dividends that had been applied since 2012 in France. Creating tax groups and offset losses against profits is in line with rules of the EU's Parent-Subsidiary Directive and many other companies use it. However, as Greens/EFA group in the European Parliament we are convinced that this case shows that the system can be hardly called fair.

With more than 2,728 subsidiaries, but disclosed data from only about 100, Veolia serves as an example why there is such a strong need for public transparency and information about corporations. The Greens / EFA Group in the European Parliament therefore and why the EU member states should swiftly agree on public Country-by-country reporting.

The Veolia also show again why we need to agree on a Common Consolidated Corporate Tax Base (CCCTB) in Europe that would enable to distribute the tax base fairly by where the economic profits are really created. Greens / EFA Group in the European Parliament therefore call on the EU Member States to agree urgently on the CCTB and CCCTB proposals in the Council.

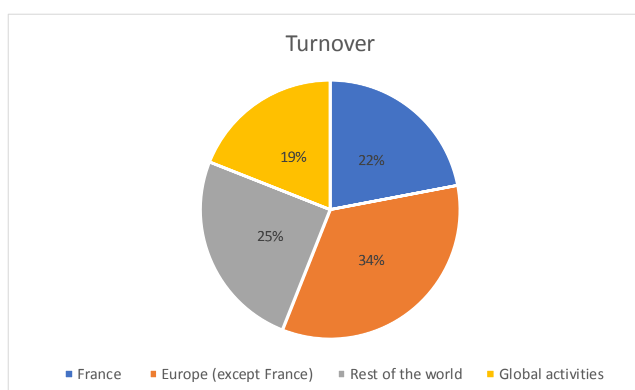
[1] The reason for his is generally because they are not owned at 95% or more by VEOLIA ENVIRONNEMENT

Introduction

Since the Luxleaks scandal in November 2014, which revealed how about 350 large multinational companies were using loopholes in different tax laws across the European Union to minimise their tax contribution, the fight against corporate tax avoidance has become one of the priorities of the European Union. European Commission and European leaders have sworn that they will advance efforts in the fight against tax avoidance and aggressive tax planning. In past years, the Greens / EFA Group in the European Parliament issued studies and reports on different multinational companies such as IKEA, BASF or ZARA in order to find out what their tax policy is and if they pay their fair amount of tax. It is the view of Greens / EFA that everybody should pay his fair share of tax. The interest of public scrutiny should be targeted also on companies benefiting from providing access to public services and depending strongly on public infrastructure. Another company that caught our eye has been a French multinational Veolia.

VEOLIA ENVIRONEMENT[2] has its roots back in 1853, when it was created in Lyon (France) as so-called ''COMPAGNIE GENERALE DES EAUX". Until the mid of the 1990's, it concentrated on the French domestic market. However, this changed when Mr. Jean-Marie Messier was named president of the company, in 1996. He decided a number of acquisitions, amongst which US FILTER, a major global supplier of water treatment equipment, acquired for USD 6.2 billion in 19993. This had the consequence of turning the group into a true multinational. In 2000, the "environmental" activities (i.e. water, waste, energy and public transport) were dissociated from the rest of the group and were listed on the Paris stock exchange. Shortly after, they were rebranded as VEOLIA ENVIRONNEMENT.

In the last few years, the group has had to deal with the following major issues: (i) reducing the heavy debt burden inherited from the "Messier" years, (ii) dismantling and selling most of the US FILTER assets, the acquisition of which had proven a very bad deal, with an aggregate loss of nearly USD 4 billon, (iii) merging the public transport activities into TRANSDEV, a joint venture with French publicly owned CAISSE DES DEPOTS ET CONSIGNATION, and then deciding to divest from public transport. This shaky history has produced many changes in the group's structure and, for instance, turnover has oscillated within the last ten years, between EUR 22 and 35 billon.



However, VEOLIA ENVIRONNEMENT has now grown into a French based multinational, with 2,728 subsidiaries 4 in 47 countries, over the 5 continents. Its global consolidated turnover is EUR 25 billion in 2016, and its net operating result is in the range of EUR 600 million. VEOLIA employs some 613,000 employees worldwide. The group's activities are focused on services to local communities and include water supply (46%), waste management (34%),and energy supply (20%). VEOLIA's current stock capitalization is approximately EUR 11 billion.

[2] Unless otherwise stated the figures mentioned are drawn from VEOLIA ENVIRONNEMENT's annual financial reports
[3] http://www.nytimes.com/1999/03/23/business/vivendi-of-france-acquiring-us-filter.html?mcubz=3
[4] http://abonnes.lemonde.fr/economie/article/2014/02/13/cac-plus-de-1-500-filiales-offshore-pour-40-entreprises_4365506_3234.html

1. VEOLIA ENVIRONMENT's status as tax payer

It should first be noted that the consolidated accounts only show detailed information about integrated companies, that is companies which are deemed to be controlled by the consolidating company. This excludes such entities as joint-ventures, whose result is only incorporated as a bulk in the consolidated accounts.

This is by no ways a formal remark, when discussing VEOLIA ENVIRONNEMENT, as this group has entered into a series of cooperative ventures with other companies or entities. The latter, because VEOLIA ENVIRONNEMENT has no obligation to disclose detailed information about them, will be de facto excluded from this study.

The notes to the consolidated accounts give the following information about taxes on profit:

EUR mn	2012	2013	2014	2015	2016	TOTAL
Profit before tax - integrated companies	272,7	-47,7	417,3	606,2	557,2	1 805,7
Tax	-159,0	-128,3	-167,3	-199,5	-192,7	-846,8
Apparent tax rate	58,31%	n/r	40,09%	32,91%	34,58%	46,90%

The figures above are drawn from the annual financial report of each year. Figures provided in one particular report for "previous year" may be significantly different, because they take into account changes in the group's structure, which have been numerous in the case of VEOLIA.

At first sight, it appears that, over the last five years, the VEOLIA group has paid a healthy 46.9% of its profits in taxes.

However, a closer insight is needed:

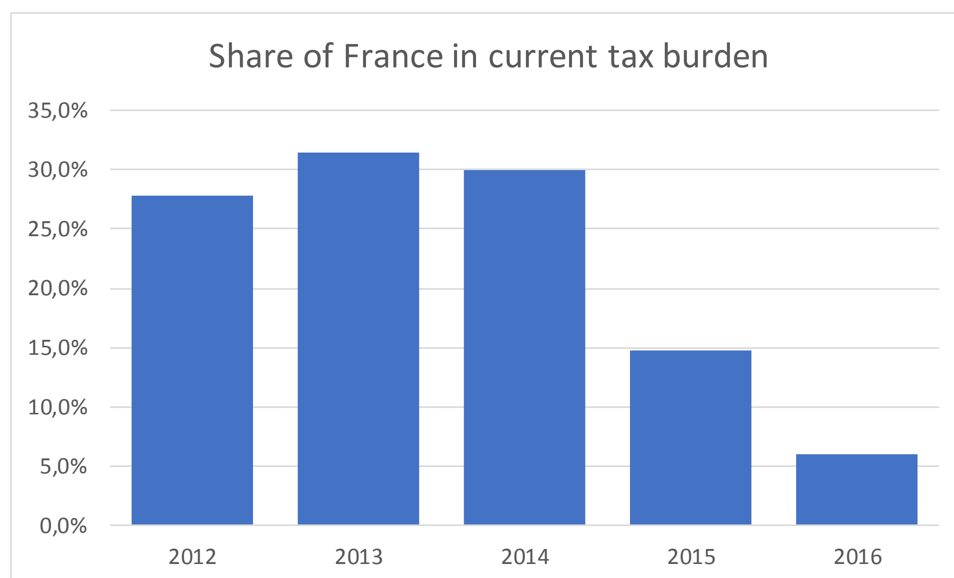
EUR mn	2012	2013	2014	2015	2016	TOTAL
Current taxes	-355,7	-167,5	-203,4	-227,0	-193,5	-1147,1
France	*-99,2*	*-52,6*	*-61,0*	*-33,5*	*-11,5*	*-257,8*
Other	*-256,5*	*-114,9*	*-142,4*	*-193,5*	*-182,0*	*-889,3*
Defferred taxes	196,7	39,2	36,1	27,5	0,8	300,3
France	*2,5*	*1,0*	*-15,1*	*0,3*	*-2,0*	*-13,3*
Other	*194,2*	*38,2*	*51,2*	*27,2*	*2,8*	*313,6*
Total taxes	-159,0	-128,3	-167,3	-199,5	-192,7	-846,8

Note: negative amount = tax burden, positive amount = tax allowance or credit

This exhibit shows the split between current taxes (i.e. actual tax to be declared and paid) and deferred taxes (burden or relief to occur, or not, in the future, based upon events which have already occurred: for instance, a tax loss carried forward in order to be offset against future profits).

Indeed, contrary to what happens in many groups, the apparent tax rate has not been increased by deferred (theoretical) taxes, on the contrary. In fact, deferred tax gains as shown here result mainly from losses carried forward in the US, as discussed later.

But what is striking is that the share of current tax attributable to French operations (22%) is, in average, below the share of France in the overall business, and is quickly falling:



The reasons for this rather surprising pattern will be explained later. VEOLIA does not give any figure as to the breakdown of the tax burden by country, other than France. It neither gives a full list of its subsidiaries and therefore, it is even not possible to determine exactly in which countries it has operations.

The reconciliation between apparent tax rate and nominal tax rate in France is also provided by the financial reports of VEOLIA:

	2012	2013	2014	2015	2016
Nominal tax rate in France	34,43%		34,43%	34,43%	34,43%
Differences in tax base	30,40%		-34,31%	-11,33%	-6,31%
Taxes on dividends	14,29%		3,45%	4,48%	3,08%
Differences in tax rates	-12,09%		15,98%	-9,32%	-12,24%
"Tax visibility"	-8,72%		20,54%	14,64%	15,62%
Apparent tax rate	58,31%	n/r	40,09%	32,90%	34,58%

Although VEOLIA does provide data relating to 2013, this has been considered non-relevant, since it applies to a consolidated gross loss, and not profit.

The first two lines do not seem to have specific implications. It is quite common to see that non-deductibility of certain losses, like depreciation of goodwill, will increase the apparent tax rate, while, for instance, tax credits, will lower it. Also, taxes on dividends are, by nature, not directly correlated to profit, and therefore impact accordingly the tax rate.

The two latter lines are of more direct interest. The "differences in rates", reflect the fact that, depending upon the country of taxation, the rates applied to the taxable base may be higher, or lower, than the French nominal rate of 34.43%.

In the case of VEOLIA, and with the exception of 2014[5], it appears that the actual average rate applied to the group's taxable basis is in the range of 22 to 24%. Of course, this cannot be regarded as resulting from obvious tax planning, since VEOLIA may have operations in a number of countries the nominal rate of which is below 24%. However, one should keep in mind that major countries of operation of VEOLIA, such as Germany, UK, Belgium or for example Spain have nominal rates above 24%.

Finally, "tax visibility" is a concept mainly covering changes of assumptions with regards to the possible use of tax losses, and the bonuses resulting from tax group rules in France, UK and US (see below). As the different components of this "tax visibility" are of different nature, and no breakdown is given by VEOLIA, it is somewhat difficult to interpret these figures.

At this stage, it is possible to conclude from the analysis of statements contained in the annual financial reports of VEOLIA that at first sight, the VEOLIA group appears to pay fairly significant amounts of taxes, as related to its profits before tax.

However, two facts should draw the attention for further investigation. First, the share of the tax burden paid in France is relatively small, and quickly declining. Second, the average effective tax rate applied to VEOLIA's tax base is 10 to 12 points under the nominal French corporate tax rate.

[5] The unusual figure of 2014 might be a consequence of the tax treatment of the net losses incurred in 2013

2. VEOLIA'S OWN PRIVATE TAX HAVENS: FRANCE AND US

Efficient tax management has made it possible that an increasingly smaller part of profits made by VEOLIA in France are actually taxed. VEOLIA is able to pay only very limited amounts of tax on profits made in two of its major countries of operation: France and the US, becoming some sort of tax havens for the group.

France

As described in the annual financial reports, VEOLIA ENVIRONNEMENT has created a tax group in France.

This allows to calculate corporate tax on the aggregate profits of a mother company (in the present case, VEOLIA ENVIRONNEMENT SA) and its subsidiaries, provided they are subject to corporate tax in France (foreign subsidiaries are excluded from this scheme), they are owned, directly or indirectly, at 95% or more by the mother company, and they have volunteered to step inside the tax group.

It should be noted that the taxable profit of the tax group is by no ways a consolidated profit, but is the addition of profits made by each entity, to which certain corrections are applied.

In this system, each subsidiary calculates its corporate tax on a standalone basis, and pays it to the mother company. The mother company calculates the group tax, and pays it to the Tax Authorities. The difference between the tax paid by the group and the sum of taxes paid by subsidiaries to the mother company is a profit (or a loss) of the mother company. Of course, this tax scheme is especially interesting when some companies within the group have tax losses, which can be offset against the tax profits of others.

A first clue as to the consequences of this tax regime is given in the consolidated financial report, where the following statement is made: "the tax deficit for the fiscal year arising from the tax group of Veolia Environnement has not been booked as an asset"[6].

In order to fully understand the implications of this statements, we need to refer to the individual accounts ("comptes sociaux") of VEOLIA ENVIRONNEMENT, where a description of deferred tax indicates the following:

EUR mn	2012	2013	2014	2015	2016	TOTAL
Agregate tax losses carried forward	2 477,7	2 905,7	2 905,7	3 457,8	3 578,6	
Savings resulting from tax group scheme	121,6	121,7	105,2	123,9	99,5	571,9

Note: the aggregate tax losses for 2013 and 2014 show exactly the same amount in VEOLIA's financial statements, which is probably due to a typing mistake

Indeed, VEOLIA ENVIRONNEMENT has set up its tax group scheme in 2001, and, from 2002 onwards, this tax group was loss making, accumulating an aggregate loss of EUR 3.6 billion at the end of 2016.

[6] VEOLIA ENVIRONNEMENT Reference Document 2016, p.188 – similar statements are included in the Reference Documents of previous years

As the net aggregate profit made by companies within the French tax group seem to vary between EUR 300 and 600 million per year, this means that virtually any profit made by VEOLIA and its subsidiaries in France is not liable to be taxed for the next 10 years or so.

Tax savings resulting from this scheme have been of EUR 572 million in the last five years, and approximately EUR 2.7 billion since 2001.

How has this been possible to achieve? Back in 2001, when VEOLIA ENVIRONNEMENT (then VIVENDI ENVIRONNEMENT) has been segregated from the rest of VIVENDI group, it was pledged with a heavy burden of debt, initially amounting to some EUR 17 billion and resulting from Mr Messier's frenzy of acquisitions.

And it seems that what had been designed then was an offspring of a classical tax avoidance scheme, called "thin capitalization": in this scheme, the operating company would be endowed with very little share capital, and its mother company (presumably located in a tax-friendly country) would lend it whatever funds are needed for its business. The operating company wold then be able to deduct interest paid to the mother company from its taxable income, while Mother Company would pay no tax or little tax on interest received.

But, in the present case, the mother company was not located in a tax-friendly place, but, on the contrary, in a place with some of the highest possible tax rates.

Therefore, it seems VEOLIA has opted for what might be called a "thick" capitalization scheme: subsidiaries, and especially those located in countries with low effective tax rates (including the US, see below) were allocated with plentiful of capital, through share capital increases, or debt waivers, therefore yielding high results, and being able to pay significant dividends. These dividends would qualify for the mother/subsidiary regime, and therefore be taxed within the mother company up to only 5% of their actual amount.

On the other hand, most of the debt would be concentrated in the mother company, which would be allowed to deduct interest from its taxable profit.

The following simplified profit and losses account, based upon VEOLIA ENVIRONNEMENT 2016 figures, shows how an accounting profit of EUR 514 million can turn into a tax loss of EUR 121 million:

Income	Expenses	Accounting wise	Tax wise
Operating income 600	Operating expenses 660	-60	-60
Dividends 620		620	31
Interest received 190	Interest paid 590	-400	-400
Other financial items 400		400	400
	Extraordinary losses 150	-150	-150
Tax paid by subsidiaries 104		104	0
	Misc. non-deductible items		58
	NET RESULT	**514**	**-121**

The actual tax burden for France, as described above, results first from the profits made by subsidiaries that are not included in the tax group (generally because they are not owned at 95% or more by VEOLIA ENVIRONNEMENT. Secondly, by taxes that cannot be offset against the group's tax losses, like, for instance the 3% contribution on dividends that had been applied since 2012 in France.

It is now easy to understand why the tax burden from French origin has been both low and declining every year. Most of the operating profits arising from activities in France have been offset against the tax losses of VEOLIA ENVIRONNEMENT, and tax planning has been enforced to reduce or eliminate, year after year, those specific cases where taxation would still apply, thus making the scheme more and more efficient.

One interesting remark that can be made is that there is always an advantage in find, as is the case here, "uncommon" tax schemes: indeed, when the tax authorities discover that one given scheme is getting popular (as this has been the case for thin capitalization, for instance), they feel the collection of taxes as a whole being under threat, and will usually prompt specific legislation in order to prevent or limit this scheme's tax effects. On the other hand, the tax authorities will usually have little or no tools to combat uncommon tax schemes: since general anti-avoidance law is quite delicate to enforce, and the stake can be regarded as less vital, these schemes are thus less likely to be attacked by authorities.

United States

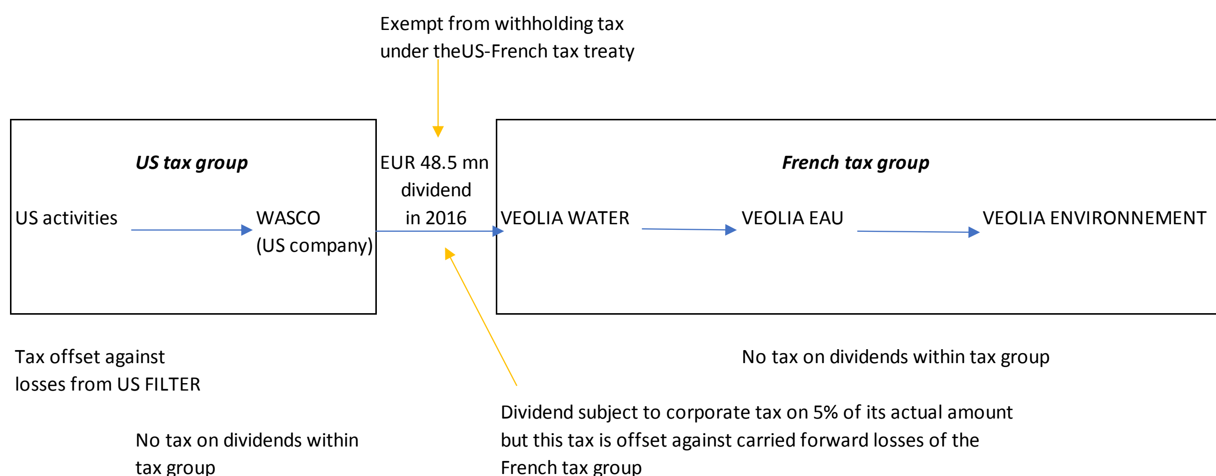
As stated above, VEOLIA has initiated its US operations by the acquisition of US FILTER, which was later discovered to be in a much worse standing as initially forecast. Therefore, most of the activities of US FILTER had to be either sold at low price, or dismantled, thus resulting in heavy losses.

In the 2016 annual financial report, VEOLIA states that *" As of 31 December 2016, Veolia holds ordinary tax losses in its US tax group scheme, that arise from the restructuring of its Water activities in 2006, and caused by losses incurred by former US Filter activities."*[7]

These carried forward losses have been activated up to the amount of EUR 228 million, but might be up to EUR 4 billion, subject to an ongoing review by US Tax Authorities.

VEOLIA does not disclose detailed information about its US subsidiaries, and specifically does not state if all or only some of its US business is included in the scope of the US tax group. But as a practical result, this means that all, or at least a significant part, of present activities of the group within the US are virtually exempt from taxes.

A combination of this scheme with the tax group scheme in France is shown below:



[7] VEOLIA ENVIRONNEMENT Reference Document 2016, p.190

In 2015, US activities of the group have generated a profit, which allowed WASCO (former mother company of US FILTER) to distribute in 2016 a dividend of EUR 48.5 million to its French holding, VEOLIA WATER. This will later be redistributed, through VEOLIA EAU to VEOLIA ENVIRONNEMENT.

The combination of the effects of the US tax group scheme, the US-French tax treaty and the French tax group scheme ensure that this amount of profit will have been subject to no corporate tax whatsoever, neither in the US, nor in France.

To conclude, The VEOLIA group has entered into tax group schemes in France, US and UK. In France, a structuring that allows VEOLIA ENVIRONNEMENT to deduct a heavy interest burden, while its income come to a large extent from dividends subject to the mother/subsidiary exemption has permitted savings on corporate tax of EUR 2.7 billion since 2001. Losses of EUR 3.6 billion are still carried forward.

Efficient tax planning has made it so that an increasingly smaller part of profits made by VEOLIA in France are actually taxed. In the US, VEOLIA has accumulated losses up to possibly EUR 4 billion, from former US FILTER group. These losses are used to offset against profits made by the group in the US. Therefore, VEOLIA is able to pay only very limited amounts of tax on profits made in two of its major countries of operation: France and the US, which have become some sort of tax haven for the group.

3. General Recommendations

1. **EU Member states must stop blocking public transparency for multinationals and agree on public Country-by-Country reporting.**
   With more than 2,728 subsidiaries, but disclosed data from only about 100, Veolia can indeed serve as an example why there is such a strong need for public transparency and information about economic activities of multinational corporations. It corporation and why the EU member states should swiftly agree on public Country-by-country reporting

2. **EU Member States must urgently agree on the Common Consolidated Tax Base (CCCTB) for Europe.**
   We urgently need new common rules for fair allocation of profits of companies in the EU in order to ensure that the taxes are really paid were profits are generated. GGreens / EFA Group in the European Parliament therefore call on the EU Member States to agree urgently on the CCTB and CCCTB proposals in the Council and to ensure this important reform.

3. **End Unanimity in the EU tax legislation. The European Parliament needs to be given full co-decision powers in tax policy.**
   European citizens demand ambitious reform of EU policies but what we can see is too little to slow thanks to the unanimity in the Council and the fact that it only member states who can decide on tax matters.

4. **Need for a minimum corporate tax rate in Europe**
   There is a visible a stronger pressure in Europe for lowering the corporate tax rate. This the case of the UK, Netherland, Belgium or Central European Hungary opting for 9 % corporate tax rate. This dangerous race to the bottom should be prevented, by agreeing on a minimum corporate tax rate in Europe.

5. **Veolia should change its tax management**
   Although it can be legal what Veolia is doing with its tax groups, it is morally unacceptable to use legal instrument in such a way. Paying fair share of tax should be the top CSR priority of ever company.

References:

MAIN REFERENCES

- VEOLIA ENVIRONEMENT Reference documents and financial statements (2001 to 2016), available on: https://www.veolia.com/fr/groupe/finance/information-reglementee/publications-et-informations-financieres/rapport-financier-annuel-document-de-reference

- SEC filings, available on: http://google.brand.edgar online.com/default.aspx?companyid=97451

- Veolia UK Tax Strategy, available on: https://www.veolia.co.uk/sites/g/files/dvc636/f/assets/documents/2017/10/2017_Tax_Strategy_Document.pdf

- Other company information, available on www.infogreffe.fr

OTHER SOURCES

- ''Vivendi of France aquiring US Filter, Claudia Deutsch, 23.03 1999, available on: http://www.nytimes.com/1999/03/23/business/vivendi-of-france-acquiring-us-filter.html?mcubz=3

- ''Les 1 500 filiales « offshore » des entreprises du CAC 40'', Mathilde Damge, Le monde, 13.02.2014, available at : http://abonnes.lemonde.fr/economie/article/2014/02/13/cac-plus-de-1-500-filiales-offshore-pour-40-entreprises_4365506_3234.html

- ''Rapport d'information sur la lutte contre les paradis fiscaux: : si l'on passait de la parole aux actes ?'', Par Alain Bocquet,Nicolas Dupont-Aignan,commission des affaires étrangères, Assemblée Nationale, Octobre 2013

- ''What a Waste: Outsourcing and How it Goes Wrong'', Par Andrew Bowman,Ismail Ertürk,Peter Folkman,Julie Froud,Colin Haslam,Sukhdev Johal,Adam Leaver,Michael Moran,Nick Tsitsianis, Manchester University Press 2015

- ''Summons fights involving work product and disclosures to testifying experts continue in United States v. Veolia Environment'', Baker Mackenzie, 07.01.2014, available on https://www.lexology.com/library/detail.aspx?g=b051475a-fc20-4371-966d-d16729b2581a

- "L'eau des multinationals, les vérités inavouables", Roger Lenglen, Jean-Luc Touly, Fayard 2006

- ''L'eau beaucoup trop chère'', Raphaël Ruffier-Fossoul, Lyon Capitale, 14.03. 2007 available on http://www.lyoncapitale.fr/Journal/Lyon/Actualite/Economie/L-eau-beaucoup-trop-chere

- Data revue-project.com

- Other available information https://fr.wikipedia.org/wiki/Veolia