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From:	General Secretariat of the Council
To:	Delegations
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Subject:	Proposal for a COUNCIL DIRECTIVE on Business in Europe: Framework for Income Taxation (BEFIT) - Summary by the Commission of the feedback received to the legislative proposal

Delegations will find in Annex the summary by the Commission of the feedback received to the legislative proposal for the directive on Business in Europe: Framework for Income Taxation (COM(2023) 532 final).



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
The Director-General

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Brussels
TAXUD.D.1.003/

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His Excellency Ambassador Willem van de Voorde,

RE: Summary of post publication feedback on Commission proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT)

In accordance with the Commission's Better Regulation guidelines and the Interinstitutional Agreement on better law making, the Commission wishes to inform the Council and European Parliament of the post adoption feedback received in accordance with the publication of Commission proposal for a *Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) (COM (2023) 532 final)* on 12 September 2023.

The Commission invited interested stakeholders to provide feedback on the published proposal under the "Have your say" web portal and provided for a period of eight weeks for responses. This period ended on 28 January 2024, and forty-nine contributions were received. All submissions are publicly available [here](#).

In accordance with the agreement between institutions, the Commission wishes to present a high-level summary of the received feedback to Council and Parliament so as to inform and assist the negotiations on the BEFIT proposal.

Please find attached two annexes, which provide detail on the proposal and a factual summary of the general themes identified in the feedback responses.

We look forward to the continued engagement with you on the proposals.

Yours faithfully,

Electronically signed

Gerassimos THOMAS

Enclosure: Annex I and II



Annex I

Description of the proposal- Business in Europe: Framework for Income Taxation (BEFIT)

BEFIT is a new legislative framework for corporate taxation in the EU. It introduces **common rules for computing the taxable results** of group members which operate in the internal market. The overall aim is to simplify tax rules and to ensure a level playing field for businesses in the EU. The framework builds on international developments in the field of corporate taxation, such as the OECD/G20 Inclusive Framework Two-Pillar Approach and reflects the realities of the modern economy.

BEFIT rules will be **mandatory for large groups** operating in the EU with annual combined revenues of at least EUR 750 million provided that the group prepares consolidated financial statements. This aligns the mandatory scope of BEFIT with the Pillar Two Directive adopted last year. Certain materiality thresholds will keep groups with a limited presence in the EU out of the mandatory scope of BEFIT in order to balance the burdens and benefits of the new system. However, the BEFIT rules will be optional for all groups (not covered by the mandatory scope) as long as they prepare consolidated financial statements.

To arrive at the taxable base for these groups, the first step is to **compute the preliminary tax result of each group member based on their financial accounts** which must follow accounting standards accepted under EU law, i.e., a national Generally Accepted Accounting Principles (GAAP) of a Member State or the International Financial Reporting Standards (IFRS). A limited number of tax adjustments, e.g., with regard to depreciation, are applied to the financial accounts to convert them into a tax base. The preliminary tax results of all group members will be **aggregated into one single tax BEFIT base**. This will entail cross-border loss relief, as losses will automatically be set off against profits across borders, as well as increased tax certainty in transfer pricing compliance for transactions within the BEFIT group.

As a second step, the aggregated tax base will be **allocated to the group members using a transitional allocation rule**. Accordingly, each group member will have a percentage of the aggregated tax base calculated as the average of the taxable results in the previous three fiscal years. Member States may allow for additional national adjustments to the share allocated to group members in their jurisdiction, which will leave room to address important national policy choices. The transitional rule may pave the way for a permanent allocation method that can be based on a formulary apportionment using substantive factors. The transition solution will allow the Commission services to take into account more recent data on the impact of the implementation of Pillars One and Two of the OECD/G20 Inclusive Framework on national tax bases.

In pricing transactions between BEFIT group members and associated enterprises outside the BEFIT group, the system will **facilitate transfer pricing compliance** through a new risk assessment tool referred to as the ‘**traffic light system**’. The substantive transfer pricing rules are not affected by the BEFIT rules.

The **administration** of the BEFIT rules will be carried out **through a hybrid one-stop-shop**. This entails that the process will be partly centralised as one group member will file the BEFIT information return with one tax administration in the EU. For each BEFIT group, a ‘BEFIT Team’ will be formed by representatives from the relevant national tax administrations, to ensure coordination and closer cooperation with a view to reaching tax certainty. Individual tax returns of group members, along with audits and appeals, remain local in the Member States. The hybrid system will prioritise simplicity and provide for an efficient use of resources.

Annex II

Feedback was received from forty-nine respondents from various business representative organisations and NGOs in the EU and worldwide.

A summary of the recurring themes adduced from the feedback is outlined below. It should be noted that this report is a high-level summary of the main areas identified in the feedback response and that a number of respondents raised additional issues to those identified herein, mostly specific to the industry that they represent. All feedback responses are available [here](#)

A. Aspects of the proposal on which respondents expressed support.

The majority respondents supported the overall objectives of the proposal; namely, tax simplification, tax certainty and a reduction of compliance costs for business, only some respondents welcomed the harmonisation efforts for a common EU wide tax base.

B. Aspects of the proposal on which respondents raised issues.

Timing

The primary issue raised by way of feedback submissions was the timing of the BEFIT proposal. Many respondents criticised the publication of new rules before Pillar Two is fully implemented and its effects sufficiently evaluated. Some respondents were concerned that a layering of rules, (i.e. BEFIT will be applied in addition to national rules and Pillar 2) could increase the administrative burden and complexity for business. It was noted that the timeline for BEFIT should be closer aligned with the OECD Inclusive Framework's ongoing work on the Two Pillar approach, for example the deadline for BEFIT transposition is misaligned with the full implementation of Pillar two and the end of OECD safe harbour deadlines, and an alignment with Pillar One, Amount B is required. Some commented that 2028 is too soon and that negotiations should be postponed.

Alignment and interaction with Pillar 2

Most respondents referenced the very recent introduction of Pillar Two rules, the level of complexity introduced as a result of the new framework and made suggestions for greater alignment between Pillar Two and the BEFIT proposal, where feasible. Respondents identified the following areas for alignment to be considered: scope, definitions, thresholds, accounting methodologies, accounting adjustments and calculation of the tax base. Many respondents were concerned that the jurisdictional nature of Pillar Two rules is misaligned with the BEFIT proposal and that cross-border loss relief could result in lower effective tax rate payable and a potential for additional taxation. Many identified the proposed benefits of cross border losses being hindered by the mismatch between Pillar Two and BEFIT.

BEFIT does not achieve its aims of simplification, reduction in administrative burden and tax certainty.

Almost all respondents raised doubts on how the BEFIT proposal would effectively achieve the objectives of simplification, reduction in administrative burden and tax certainty. Many identified an increase in administrative burden and associated costs by way of the introduction of a new set of rules that will coexist with national rules, Pillar Two, and the flexibility afforded to Member States in terms of post allocation adjustments. Many identified a lack of simplification, due to the absence of full alignment with Pillar Two, CbCR rules, the burden of three tax returns and the lack of a full One Stop Shop. Many also identified the addition of layers of uncertainty and complexity, and a potential increased risk of disputes. Other respondents indicated that they would have liked to see dispute resolution mechanisms in the Directive. In particular, many respondents criticised the tax filing system, they considered the deadline of four months for the information return as too short and suggested the use of a single consolidated tax return for the group in the EU.

Transitional system of apportionment

Respondents raised issues with the transitional system of apportionment, the primary concern being that this could create an unstable environment for business and present a risk of double taxation, disputes, and increased uncertainty. Some respondents queried the compatibility with Amount A of Pillar One.

Formulary apportionment

Respondents were concerned about the lack of detail presented on a future roadmap towards formulary apportionment, which, they stated, makes it difficult to assess the fiscal impact. In terms of the introduction of a factor-based formulary apportionment in the future, there was a mixed response. Some respondents suggested the Commission should have immediately presented the formula and included intangible assets therein, while others disagreed stating that a formula should not be proposed at all as the profit allocation may be disproportionate and may cause issues with the arm's length principle. In addition, many raised questions on how the BEFIT apportionment will align with Pillar One, as Amount A has different thresholds.

Transfer Pricing

Some respondents welcomed the transfer pricing simplifications in BEFIT by virtue of the comfort zone and traffic light system, but simultaneously indicated that they were insufficient to provide adequate clarity. Others considered that there was no improvement in the transfer pricing framework, that the transfer pricing provisions presented a lack of simplification, the creation of a two-tier system and derogations from OECD guidance and the arm's length principle. In addition, many noted that the simplifications do not eliminate third country interactions and that compliance burden and disputes could be increased. Respondents also commented that BEFIT is not aligned with Amount B of Pillar One and noted that if the transaction is covered by Amount B a traffic light system should not be required.

Interaction with other EU direct taxation legislation

Some respondents criticised the layers of EU legislation that operate independently from each other as opposed to a collective EU legislative structure. Some suggested that there were inconsistencies between BEFIT and what has been presented before, such as in the Anti-Tax Avoidance Directive, where BEPS actions may no longer apply to companies in scope of BEFIT. Some commented that other direct taxation Directives, which are creating multiple layers and significantly increased compliance costs are an obstacle to growth. Some concluded that a review of compatibility should be undertaken.

The impact of BEFIT on double taxation treaties

Many respondents suggested that there was a requirement to consider the compatibility of BEFIT with existing double taxation treaties concluded with third countries. Several respondents stated that the treatment of permanent establishments may differ under BEFIT for example, if a non-resident has a permanent establishment in a Member State, the resident state has an obligation to relieve double taxation. This is determined by the arm's length principle but the BEFIT tax base attributable to that permanent establishment will be determined differently. Others suggested that the introduction of BEFIT could necessitate a renegotiation of tax treaties.

EU competitiveness

Some respondents commented that the BEFIT proposal, as drafted, could be damaging for EU competitiveness, particularly due to possible increased compliance costs and some noted that the transitional system for apportionment could create uncertainties that may affect future investment in the EU