



Towards the “Business in Europe: Framework for Income Taxation” (BEFIT)” proposal

**CFE - EU Platform for Tax Good Governance
Presentation**

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CFE Tax Advisers Europe represents **33 European tax institutes and associations of tax advisers** from 26 European countries and is associated with more than 700,000 tax professionals via the Global Tax Advisers Platform (GTAP)

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Towards the BEFIT Proposal

European Commission:

- Corporate tax policy should facilitate the digital transition, by providing an environment where digital businesses can thrive
- Corporate tax framework needs to be adapted to better match the realities of a digitalised economy.
- It requires the digitalisation of tax administrations, so that tax authorities across the EU can make better use of new available tools.
- Tax policy should also support businesses for whom the impact of the digitalised economy has not yet been fundamental.
- BEFIT will be a deeper, more structural reform to the EU's business tax framework that will be consistent with, and build on, the OECD Two Pillar Approach.
- BEFIT will aim to reduce compliance costs for business, reduce tax avoidance opportunities and also support jobs, growth and investment in the EU.
- It should reduce compliance costs for businesses, facilitate cross-border investment, and provide the right environment for SMEs and larger enterprises alike to thrive in a green and digital Europe.

The Architecture of BEFIT: Key CFE Remarks

In setting out the architecture of the new EU corporate tax reform, the primary departure point should be outlining:

- Key objectives of the EU reform,
- The model under which the rules would be introduced,
- The interaction with Pillar 1 and Pillar 2, should these proposal be adopted,
- The feasibility of introducing formulary apportionment (the interaction of two concurrent systems),
- An economic model estimation and impact assessment on the effects of introducing formula apportionment,
- Agreement on the technical/ design elements of the formula taking into account tax sovereignty concerns of certain Member states

BEFIT: Potential Benefits

- Streamlining the operation of the European corporate tax systems
- Improving the competitiveness of the Single Market, against the background of a very challenging geopolitical environment that we operate in at this juncture in time
- Increasing transparency, clarity and simplification of corporate tax laws in the internal market as a prerequisite of ensuring the EU is in a position to attract foreign direct investment (“FDI”) and encourage indigenous business to grow
- SMEs play a vital role in developing the European economy and their success is pivotal to the success of the economy of the Single market.
- CFE welcomes any proposals that aid and facilitate SMEs to develop and expand their business in a cost-effective manner.
- Some CFE members believe that formula apportionment has the potential to facilitate SME’s wishing to expand into different Member States with the simplification and reduction of the compliance burden and associated costs.

Cooperative compliance as a corollary to the BEFIT reform



- Member States should co-operate with the help of the European Commission to develop effective co-operative compliance programmes suitable for all sizes and types of businesses and that facilitate cross-border trade and reduce the possibilities for double taxation. We call on the European Commission to encourage and enable exchanging best practices on co-operative compliance in Europe, and to issue recommendations for co-operative compliance fit for SMEs;
- Cooperative compliance programmes should be subject to transparency of tax administrations and respect of taxpayers' rights, as set out in national and international / EU law;
- Stakeholders should consider the advantages that voluntary public tax transparency – as an integral part of their sustainability policies. The European Commission should monitor and assess the effectiveness of voluntary tax transparency initiatives;
- Businesses and tax authorities should invest in the latest IT solutions to improve the quality of data, communication, and remote access to services. We look forward to the European Commission's initiatives aiming to promote IT solutions in tax administrations and stand ready to help.

Tax Certainty Considerations

- Concern exists about the implementation of formula apportionment – it will have practical implications and challenges for both tax authorities and taxpayers alike. In practice, the simultaneous operation of two systems (one with formula apportionment and one grounded in the ALP) would create significant implementation issues.
- Interaction with Pillars 1 and 2 should be carefully considered: The OECD agreed solutions on Pillar 1 and Pillar 2 are rightly intended to affect a limited number of companies at present, given the complexity of the proposed rules.
- Tax authorities will require additional time and financial resources to implement an additional supranational system and will have to oversee two concurrent systems of tax administration, depending on the chosen model for BEFIT.
- The situation will be compounded if there is not sufficient guidance provided on new measures, the legislation in its proposed form would not be sufficient to provide clarity, particularly in light of the lacuna that will inevitably develop in the interim period between the loss of domestic tax jurisprudence to the development of new European jurisprudence.
- Member States' corporate tax regimes are based on detailed legislation, guidance, precedents and case law spanning thousands of pages – all of this would become redundant under a formula apportionment regime based on new rules and new definitions, creating huge uncertainty for businesses and tax authorities.
- Tax certainty is of paramount concern to business, and should be the focus of attention in the legislative design of the proposal. Any proposed changes to the corporate tax system on a European wide level, no matter how laudable the ultimate aim, will not be successful if it leads to tax uncertainty, increased compliance burden and increased disputes.

BEFIT: Key Concerns

- There is no unanimous position within the CFE on introduction of formulary apportionment within the Single Market.
- A pivotal concern of certain CFE members is the erosion of national tax sovereignty and the effect this will have on the flexibility of Member States to react to fiscal and economic issues as they arise in the future.
- Several members are opposed to such a solution and would not wish to see abandoning the traditional rules of international tax law, including the arm's length principle.
- Even though it might be argued that countries, have now accepted the principle of formulary apportionment by signing up to Pillar One, but accepting “CCCTB” by another name is another matter entirely
- Economic impact assessment: one must consider the impact of formulary apportionment on the national Budgets of Member States. Member states must remain able to accurately forecast corporation tax receipts in with the principle of national tax sovereignty and the need to preserve the balanced allocation of taxing rights, as recognised by settled-case law of the Court of Justice of the EU

Formulary Apportionment

- A key principle must be that profits should be taxed where value is created. A lot of work has been done in the past years to clarify the meaning of this concept, which arguably remains somewhat disputable.
- Would sales from trade outside the EU would also be reallocated to other Member States based on an EU wide assets and labour formula?
- The danger that must be avoided is for two-tier system to develop within member states; one for companies within formulary system and another for the other companies. This will lead to inevitable compliance burdens and complexities for tax authorities
- The system will not eliminate the Arm's Length Principle and transfer pricing as we know it; only within the EU for the companies coming within the ambit of the legislation. MNEs will still be subject to traditional transfer pricing rules when dealing outside the EU. As above, this leads to a two-tier system, which will lead to increased complexity and compliance costs for companies and tax authorities.
- If there is an objective to prevent certain companies from abusing the ALP and the transfer-pricing provisions, certain provisions must be included to deter MNEs from engaging in formula-factor manipulation.
- Inclusion of sales introduces an element of destination-based would be more advantageous to the larger Member States. In this regard, intangibles should be considered as part of the formula. Given the importance of intangible assets in the modern business environment, ignoring the value that they generate would simply not be a realistic way of allocating profits.

Dispute Resolution

- Concerns exist about the potential dispute resolution mechanism in a corporate system based on a formulary apportionment.
- The primary concern is that the jurisprudence of domestic courts, developed over many years will become void and leave a vacuum in relation to legal certainty of key taxation concepts.
- The ECJ will become the legal forum for the resolution of disputes, with the ECJ as the ultimate arbitrator. In order to avoid legal uncertainty tax disputes would need to be resolved within a short timeframe
- It is vital that taxpayers have access to time effective and efficient recourse to dispute resolution, the ECJ would not be a time efficient or effective forum for dispute resolution under a formulary apportionment.
- A consideration must be given for a separate Forum for dispute resolution under the proposed formulary system.
- Given that BEFIT would completely overhaul the corporate tax system in the EU - the inherent uncertainty which results from this it would be crucial that disputes can be resolved in an efficient and speedy manner to ensure tax certainty.



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