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To: The European Commission submitted online

EBIT's Comments on the Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) – Feedback period 19 September 2023 - 04 January 2024

Brussels, November 2023

Dear Commissioner Gentiloni,

EBIT's Members¹ thank the European Commission for the opportunity to provide feedback on the Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) (hereafter: Proposal for BEFIT Directive).

On 12 September 2023, the European Commission adopted the Proposal for BEFIT Directive. The objective is to establish a standardized framework for calculating the tax base of major corporations operating across various European Union (EU) Member States. This initiative is designed to streamline tax compliance processes and enhance the efficiency of tax collection by competent authorities. It is said to be grounded in existing international and EU tax agreements such as the international OECD agreement on the minimum level of taxation and the EU's Pillar Two Directive. The approach also stems from the recognition that the coexistence of 27 distinct national tax regimes within the EU constitutes a constraint and a burden for businesses. These disparities discourage cross-border investments within the EU and lead to disadvantages for EU based companies compared to their non-EU counterparts.

EBIT's Members are generally supportive of efforts by the European Commission to simplify and streamline tax compliance processes and enhance tax efficiencies for the benefit of both taxpayers and tax authorities. We consider however, that the Proposal for BEFIT Directive will not meet the objectives of simplification and streamlining because of the following considerations.

The Proposal for BEFIT Directive aims to be aligned with the OECD / IF Pillar Two and Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union (EU Pillar Two Directive). We noticed, however, that under Section 2 of the Proposal for BEFIT Directive different adjustments must be made than under the EU Pillar Two Directive. This would mean that in-scope companies and groups must perform additional computations both at EU and local level to determine the correct tax liability. In our opinion, the mechanisms that are proposed in the Proposal for BEFIT Directive will not reduce but add complexity and uncertainty to the international taxation framework. Besides the differences in adjustments, EBIT's Members also want to reiterate that for Pillar Two purposes, according to Article 16 (Adjustments to determine the qualifying income or loss), § 4, of the EU Pillar Two Directive, transactions between constituent entities located in different jurisdictions (including EU) must be consistent with the arm's length principle. Even under BEFIT, transfer pricing remains a crucial element as it is needed for the calculations under Pillar Two. Not applying the arm's length principle may lead to the determination of top-up tax.

¹ EBIT's Members include Airbus Group, BP, Carlyle, Carrier, Caterpillar, Diageo, GSK, Huawei, International Paper, Johnson and Johnson, JTI, PepsiCo, Pfizer, P&G, RELX, RTX, Schrodgers, SHV Group and Vattenfall. For more information on EBIT see: www.ebit-businessstax.com

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Importantly, EBIT's Members wish to reiterate that the introduction of the proposed BEFIT Directive is very ill-timed. MNEs have only recently adapted their internal systems to meet the requirements of BEPS, including the cumulative obligations under ATAD and the different DACs, and they are currently in the process of preparing and implementing the necessary changes as prescribed by OECD Pillar Two and the EU Pillar Two Directive. MNEs are grappling with this because of a lack of or changing guidance, and this only weeks before the minimum tax will be applicable. Adding new regulations -although only intended to come into force on 1 July 2028- stretches the available resources at MNEs enormously. This is likely to lead to errors and unwanted additional compliance. We would like to stress that not only the deviations on Pillar Two globe income but also the national deviations will lead to additional (unnecessary) complexity. The fact that next to the national tax filing obligation there will be also an additional tax return does not lead to less but more paperwork. This outcome is not helpful to taxpayers nor tax administrations and is surely not what the Commission intended.

EBIT's Members consider that the BEFIT rules, applied on top of the Pillar Two rules, not only lead to even more complexity, but also increase uncertainty and the risk of double taxation for companies. As the taxable profit will no longer have the local accounting rules as a basis but instead will be a reallocation of a consolidated profit and losses for the EU, there is a great possibility that BEFIT may have a spill-over effect on Pillar Two profit determination and vice versa. Significant differences between the two could arise resulting in top-up tax in some countries.

EBIT's Members therefore respectfully but strongly recommend the European Commission to:

1. Park the Proposal for BEFIT Directive until the changes required under OECD Pillar Two and the EU Pillar Two Directive have been fully implemented and absorbed in group systems and by businesses and tax administrations, and until any shortcomings or possible defects have been identified and possibly amended;
2. Review the data and experience from Pillar Two to reconsider the BEFIT Proposal and organize another consultation with business and other stakeholders;
3. Alternatively, make the BEFIT approach optional or a limited pilot project like ICAP, as part of a preliminary phase, so that willing and interested groups could attempt applying a potential BEFIT Directive. This way it could be established beforehand whether BEFIT can work and meet its stated objectives. EBIT's Members counsel against policy-making as you go along by the EU with this ill-advised and untimely experiment that in its current form will surely be very damaging to the competitiveness of EU business.

EBIT's Members trust this contribution is helpful to you and are always keen to exchange views and engage in dialogue with the European Commission on this important subject.

Yours sincerely,

European Business Initiative on Taxation – November 2023

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