

European Commission Initiative for a Directive on Business in Europe: Framework for Income Taxation (BEFIT) - Public Consultation Paper

Fields marked with * are mandatory.

Introduction

The European Commission intends to table a legislative proposal for a new corporate tax system in 2023, as announced in its Communication Business Taxation for the 21st Century[1] in May 2021 and in the 2022 President von der Leyen's State of the Union Address[2]. This proposal is known as 'Business in Europe: Framework for Income Taxation', or 'BEFIT'.

There is currently no common corporate tax system in the EU. Rather, there are 27 different systems. The lack of a common corporate tax framework makes EU industries less competitive, due to distortions in investment and financing decisions (when motivated more by tax optimisation strategies than other considerations[3]). It also increases compliance costs for businesses operating in more than one EU country. This puts EU businesses at a competitive disadvantage compared to businesses operating in markets outside the EU[4].

To address this problem, the Commission intends to propose a new, comprehensive, structural reform of the EU business tax framework consistent with, and partially based on, the principles that underpin the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework Two-Pillar Approach[5]. BEFIT is not a new tax. It is a new set of rules to replace 27 different corporate tax systems for the businesses and companies affected. In the wake of the COVID-19 crisis, reliable and sustainable revenues from corporate income tax are more important than ever. As the Commission says in its Business Taxation Communication, its taxation priorities are to enable fair and sustainable growth and ensure effective taxation. BEFIT would help bring these about by providing EU countries with a fairer, simpler, more effective corporate tax system. Simplicity is paramount here.

This proposal builds on the experience gained in working on corporate tax initiatives over the last 10-15 years, especially the 2011 Common Consolidated Corporate Tax Base (CCCTB) and the two 2016 Common Corporate Tax Base (CCTB) and (CCCTB) proposals. These proposals were ultimately not accepted by Council, but lessons have been learned from their development and the discussions with EU countries. The discussions have fed into the development of the BEFIT proposal. The proposed new system will entail a different approach, in particular in relation to tax base adjustments and the design of a formula for allocating taxable profits.

BEFIT will apply to EU businesses or companies that are part of groups which, in most cases, are present in more than one EU country (the BEFIT Group). For compatibility with EU law and to maintain a level playing field, groups of companies that operate in only one country may also be included. BEFIT may apply to groups with global (consolidated) revenues above a certain threshold, or its scope could be broader than that, for a more inclusive system. The questions about BEFIT's scope ask for your views on these matters.

In the first place, the BEFIT proposal aims to establish the key principles that would underpin the features of a common EU corporate tax base. There are two broad ways of designing the tax base. One is to create a comprehensive and detailed system of common rules for the tax base, as in the CCCTB proposal. The other way, based on Pillar 2 of the OECD Approach, to establish the tax base by applying limited tax adjustments to companies' financial accounts. This second option uses their financial accounts as a starting point for calculating the tax base of each company in the group of companies in question. The next step is to consolidate the individual tax bases of all the group members before apportioning them, using a formula, to the EU countries where group members have a taxable presence. Finally, BEFIT will also look at applying a simplified approach to assessing the transfer pricing risk for transactions with businesses or companies outside the BEFIT Group (i.e. associated companies or group members resident in a country outside the EU).

This consultation seeks the public's views on the problem definition and aims, including in the various policy options, to design the main features of BEFIT: (1) the scope of the new system; (2) how to calculate the common tax base; (3) how to consolidate the individual tax bases of the members of the BEFIT Group and allocate the consolidated base across EU countries; (4) how to allocate profit for transactions with businesses or companies outside the BEFIT Group; and (5) what administrative simplifications could be introduced with the proposal.

To ensure that BEFIT really does simplify matters, as it is intended to do, and that as many businesses and companies as possible reap the benefits of it, it would be preferable to have limited sectoral carve-outs. This is why this consultation also looks at how the BEFIT formula for profit allocation could be put to best use in certain sectors, such as the financial services sector.

[1] COM(2021) 251 final.

[2] https://ec.europa.eu/commission/presscorner/detail/ov/speech_22_5493

[3] International Monetary Fund, 25 May 2021, 'Taxing Multinationals in Europe' report: <https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2021/05/25/Taxing-Multinationals-in-Europe-50129>.

[4] Joint Research Centre, European Commission, 'Reducing tax compliance costs through corporate tax base harmonization in the European Union', *Journal of International Accounting, Auditing and Taxation*, Volume 41, December 2020, 100355 Salvador Barrios, Diego d'Andria and Maria Gesualdo: <https://www.sciencedirect.com/science/article/pii/S1061951820300562>.

[5] The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting has developed a two-pillar approach to addressing the tax challenges arising from the digitalisation of the economy. The approach consists of two pillars. Pillar One aims to ensure a reallocation of taxing rights between countries and a fairer distribution of the profits of the biggest multinationals. Pillar Two aims to limit corporate income tax rate competition by introducing a global minimum corporate tax rate of 15%.

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
-

- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Bob

* Surname

van der Made

* Email (this won't be published)

bob@vandermadeconsulting.com

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

* Organisation name

255 character(s) maximum

European Business Initiative on Taxation (EBIT)

* If you are an SME group, do you prepare consolidated financial statements?

- Yes
- No

* If you are responding on behalf of a business or company, do you have a taxable presence abroad?

- Yes
- No

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

26231733692-35

* Country of origin

Please add your country of origin, or that of your organisation.

This list does not represent the official position of the European institutions with regard to the legal status or policy of the entities mentioned. It is a harmonisation of often divergent lists and practices.

- Afghanistan
- Djibouti
- Libya
- Saint Martin
- Åland Islands
- Dominica
- Liechtenstein
- Saint Pierre and Miquelon

- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
-
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Nauru
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland

Bonaire Saint
Eustatius and
Saba

- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States

- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena
- Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

1. Problem definition

Question 1

Do you think the current situation, with 27 different national corporate tax systems, gives rise to problems in the internal market?

- Agree
- Partly agree
- Neutral
- Partly disagree
- Disagree
- Do not know

If you agree/partly agree with the above, what do you think are the problems?

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	Not at all	To a very limited extent	To some extent	Neutral	To a great extent	To a very great extent	Do not know
Competitive disadvantage for EU businesses, compared to businesses operating in large markets outside the EU	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
High tax compliance costs	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Risk of erosion of EU countries' tax bases due to aggressive tax planning	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

You can add to this non-exhaustive list in the box below:

500 character(s) maximum

If you identify high tax compliance costs as a problem, please provide an estimate of the magnitude of compliance costs:

250 character(s) maximum

If you partly disagree/disagree with what question 1 says, or are neutral, please explain why:

500 character(s) maximum

The main opportunity from BEFIT should be to reduce compliance costs, improve dispute resolution and enhance European competitiveness. BEPS 1.0 (through ATAD) and other initiatives have addressed already the issue of erosion through ATP – the experience with those measures should first be well-mapped before introducing other measures.

Question 2

What should the ultimate aim of a new EU corporate tax framework be?

Rank the elements below from 1 to 7 in order of importance.

	1	2	3	4	5	6	7	Do not know
Growth of business activity in Europe	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A more competitive single market that is more attractive to investors	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Greater legal certainty	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

More tax revenues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
A more robust corporate tax system that can withstand tax avoidance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reduction of tax compliance costs for businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reduction of administrative costs for national tax authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If "Other", please explain:

500 character(s) maximum

2. Main features of BEFIT

A. Scope

To determine whether a company that is tax-resident in the EU or an EU-located permanent establishment of a company established outside the EU falls within BEFIT's scope, it is envisaged to draw inspiration from the Pillar 2 rules and set a revenue threshold at group level or for each company.

Possible options would be to align BEFIT as much as possible with the Pillar 2 threshold, or further broaden its scope through mandatory or optional application, for example to cover SMEs.

Question 3

If the EU acted to establish the key features of a common tax base, which of the following options for the initiative's scope do you consider the most appropriate /effective, from the taxpayer's point of view and from a tax administration point of view?

	Very effective	Effective	Not very effective	Not effective at all	Do not know
A compulsory system without a threshold	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A threshold for compulsory application without a possibility for groups below the threshold to opt in	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A threshold for compulsory application with a possibility for groups/companies (including SMEs) below the threshold to opt in	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If "Other", please explain:

500 character(s) maximum

EBIT Members strongly believe that BEFIT should be an optional alternative that taxpayers may elect to participate in, rather than being compulsory. If it is well-designed, businesses will be encouraged to opt in but if it is not fit for purpose, they will not.

Would you suggest different ways of determining who BEFIT should cover? Please elaborate.

500 character(s) maximum

Question 4a

Were a threshold established, which of the following alternatives do you consider the most effective?

	Very effective	Effective	Not very effective	Not effective at all	Do not know
Groups with over EUR 750 million of consolidated global revenues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Groups with over EUR 250 million of consolidated global revenues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Groups with over EUR 50 million of consolidated global revenues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
All groups, regardless of their revenues (including SMEs)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Standalone companies, regardless of their revenues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If "Other", please explain:

500 character(s) maximum

See our previous answer.

Question 4b

	Very effective	Effective	Not very effective	Not effective at all	Do not know
What do you think about an immediate mandatory application of BEFIT rules to the first category (groups under the first option), followed by their gradual extension to the other categories, then general mandatory application after a certain period of time?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Do you think that mandatory application to all companies from the beginning would be more effective?



If you do, please say why, e.g. benefits vs costs of introducing such an obligation for the companies likely to be affected by it.

500 character(s) maximum

BEFIT must be as attractive for business as possible & optional. Setting the tax rate is for the national governments. A staged approach whereby MS & EC can agree on implementing short-term, pragmatic solutions for important pending issues for business in line with Pillar 2 makes sense. Tax planning/structuring will remain possible & important under mandatory BEFIT, which would not necessarily effectively deal with how inter-company transactions are to be treated (MS & non-EU/ part implem. within EU)

Question 5

What do you think about excluding companies that are active in specific sectors of activity from the scope of BEFIT?

- Agree
- Partly agree
- Neutral
- Partly disagree
- Disagree
- Do not know

If you think this would be a good idea, what sectors do you think should be excluded and why? Please explain.

500 character(s) maximum

Question 6

If certain companies/sectors are excluded, what are your views on how to deal with groups that operate in a mix of sectors excluded from BEFIT and/or sectors /activities covered by BEFIT?

Would you be in favour of criteria referring to a revenue-based threshold for each group's activity?

For example, one possibility would be that where revenues arising from excluded activities exceed 50% of a company's total revenue (company, permanent establishment), the company's full income is excluded from the BEFIT tax base for the tax year in question. Or would you suggest a different way of doing things?

Please elaborate:

500 character(s) maximum

B. Calculation of the tax base

One of BEFIT's key objectives will be to reduce the complexity taxpayers are faced with in dealing with different tax systems when a group operates in several EU countries. With this in mind, several options can be envisaged for calculating the BEFIT tax base. One of these, in particular, is to establish a comprehensive set of tax rules to determine taxable income, or, drawing inspiration from Pillar 2, start from companies' financial accounting statements and make limited adjustments for taxation.

Question 7a

Given the potential compliance costs of this, which option do you consider more effective for calculating the BEFIT tax base?

Under the **first option**, all companies belonging to the same group would first prepare their individual financial accounting statements in accordance with the applicable accounting rules, then bring them into line with a single EU acceptable accounting standard (for the whole BEFIT Group), to ensure that all group members use the same accounting standard as a basis for computing their tax base under BEFIT. The financial accounting net income or loss of individual companies would require a limited number of interventions to take into account the main tax adjustments that usually form part of a tax base (e.g. accelerated depreciation of research and development (R&D) assets for tax purposes).

The **second option** would entail designing a comprehensive set of tax rules for all companies affected in all EU countries (BEFIT rules).

	Very effective	Effective	Not very effective	Not effective at all	Do not know
Make limited tax adjustments to companies' financial accounts (Pillar 2)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Put a comprehensive set of corporate tax rules in place	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

If other, please explain:

500 character(s) maximum

Our remark: although the reference to Pillar 2 indicates that the adjustments are only limited, in practice the adjustments are complex and burdensome.

Question 7b

If you've chosen the first option, would you be in favour of keeping these adjustments to a strict minimum?

- Agree
- Partly agree
- Neutral
- Partly disagree
- Disagree
- Do not know

Please explain your answer and/or provide further comments, preferably backed up with evidence, on what tax adjustments you think are critical:

500 character(s) maximum

With emphasis on strict minimum.

If "Other", please explain:

500 character(s) maximum

Question 8

Which of the following could constitute key adjustments to financial accounts, in order to calculate an accurate tax base for BEFIT?

Rank your responses below from 1 to 8 in order of importance.

	1	2	3	4	5	6	7	8	Do not know
Depreciation of fixed assets	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exemption of received profit distributions (non-deductibility of linked expenses)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exemption of the income and non-deductibility of the losses of a permanent establishment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Non-deductibility of corporate taxes and similar profit-based taxes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules on addressing the debt bias	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Tax credit on income already taxed outside the EU (other than exempt income) such as interest, royalties and other income paid to a company within the scope of BEFIT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Anti-abuse rules on common issues such as a general anti-abuse rule (GAAR), controlled foreign company (CFC) rules, interest deduction limitation and hybrid mismatches	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules on entering and leaving BEFIT (corporate restructuring and transition phase)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If "Other", please explain:

500 character(s) maximum

As a next step, the individual tax bases of all group members (i.e. EU tax-resident companies or EU-located permanent establishments of companies established outside the EU) would be added together to form a consolidated tax base. Given consolidation eliminates intra-group transactions in the EU, it would no longer be necessary to apply transfer pricing to transactions between a consolidated group's companies. Instead, a formula would be used to allocate profits between the different EU countries in which the group operates with a taxable presence.

Another outcome of such consolidation would be the relief of cross-border losses if one group member is, or two or more group members are, loss-making for tax purposes.

Question 9

Should cross-border loss relief be part of the system?

- Agree
- Partly agree
- Neutral
- Partly disagree
- Disagree
- Do not know

If you agree/partly agree with the above, tell us what you think the implications will be:

500 character(s) maximum

Implementing short-term, pragmatic Pillar 2-proof solutions for some very important pending issues for business, e.g. allowing cross-border loss relief temporarily within the EU – makes sense.

If you disagree/partly disagree, please elaborate, in particular on ways of disallowing cross-border loss relief in a consolidation system:

500 character(s) maximum

C. Distribution of the tax base across EU countries using a formula (formulary apportionment)

It is envisaged that the consolidated tax base of the BEFIT Group to the different EU countries in which the group operates will be apportioned using a formula. An international consensus, reached for the first time, on the use of a profit allocation formula in Pillar 1, could help pave the way for the use of a formula in BEFIT. The Pillar 1 formula only uses one factor, while the more complex BEFIT should use at least three

factors. However, the principle that for the first time a formula replaces the use of the arm's length principle is an important precedent.

Formulary apportionment is a mechanism for allocating the tax base among eligible jurisdictions (EU countries) on the basis of a set of pre-determined weighted factors. This formula would replace the existing transfer pricing rules for allocating profit among eligible EU countries.

Question 10

Would you agree that the tax base should be apportioned to the different EU countries using a formula (formulary apportionment)?

- Agree
- Partly agree
- Neutral
- Partly disagree
- Disagree
- Do not know

If you agree/partly agree, please tell us what impact you think such an allocation mechanism may have:

500 character(s) maximum

If you disagree/partly disagree, please suggest possible alternatives for allocating the tax base:

500 character(s) maximum

As we are indicating in our enclosed BEFIT additional comments letter, questions of the tax base and the apportionment are a red herring/too soon/unlikely to be achievable – instead they should focus on measures to achieve administrative efficiencies.

When a formula is used, the most frequent factors for allocating profit are tangible assets, staff numbers, payroll and sales by destination. The higher these are in an EU country, the greater the share of profit that will be allocated to this country.

An alternative would be to also include intangible assets in the formula. As neither the categories of intangible assets recognised for accounting purposes nor the methods for evaluating them are harmonised across the EU, they could be taken into account using a proxy. This could include R&D expenses and marketing and advertising costs, combined with a nexus requirement (to be fulfilled by the company allocated a share of profits deriving from those intangibles).

Question 11a

Would you be in favour of profit allocation using a formula based on a combination of weighted factors, such as tangible assets, labour (a combination of staff numbers and payroll) and sales by destination, but not intangible assets?

- Agree
- Partly agree
- Neutral
- Partly disagree
- Disagree
- Do not know

Question 11b

Or would you be in favour of a BEFIT formula including the above and one or more intangible assets?

- Agree
- Partly agree
- Neutral
- Partly disagree
- Disagree
- Do not know

If you agree/partly agree, how should the value of intangible assets be taken into account, e.g. accounting value (risk of tax abuse), proxy (which ones), or some other way?

500 character(s) maximum

Partly agree, but there are issues with the valuation of IP; this is only a better option than the formula without IP.

Do you have any suggestions for the content of the intangible assets factor(s) (e.g. references to R&D or marketing and advertising in a given EU country)?

500 character(s) maximum

All valuable IP should be considered – avoid labelling.

Do you have suggestions for any additional factors?

500 character(s) maximum

Several options are considered regarding the weight of each factor. In the sample formula below, all four factors mentioned above are included and equally weighted (1/4). The share of profit of group member F will be determined as follows (N.B. G refers to the whole group):

$$\begin{aligned}
 \text{Share } F = \text{Consolidated Tax Base} * & \left[\frac{1}{4} \left(\frac{\text{Sales by destination } F}{\text{Sales by destination } G} \right) \right. \\
 & + \frac{1}{4} \left(0.5 \frac{\text{Payroll } F}{\text{Payroll } G} + 0.5 \frac{\text{No of employees } F}{\text{No of employees } G} \right) + \frac{1}{4} \left(\frac{\text{Tangible assets } F}{\text{Tangible assets } G} \right) \\
 & \left. + \frac{1}{4} \left(\frac{\text{Intangible assets proxy } F}{\text{Intangible assets } G} \right) \right]
 \end{aligned}$$

In this formula, the EU country of destination (market jurisdiction) is less represented than the EU country of origin, as only one quarter of all factors, i.e. sales by destination, allocates profit to the market jurisdiction. To compensate for this, a possibility could be to apply an increased weighting to sales by destination (e.g. a double weighting, giving two fifths of the overall weighting to sales by destination and three fifths to origin).

Question 12

Do you think sales by destination should be given a higher weighting in the formula?

- Agree
- Partly agree
- Neutral
- Partly disagree
- Disagree
- Do not know

If you agree/partly agree, what percentage of the formula should be represented by the EU country of destination and what percentage by the EU country of origin?

250 character(s) maximum

Please explain your answer, in particular with reference to how the formula factors should be weighted.

500 character(s) maximum

Question 13

For certain sectors of activity with specificities that cannot be addressed by the factors of the generally applicable formula, it may be necessary to adjust certain features and design sector-specific versions of the formula, to ensure a fair allocation of profit.

For which sector(s) of activity would you see a potential need for a sector-specific formula and why?

500 character(s) maximum

What would you include in such a formula's factors?

500 character(s) maximum

Difficult to reconcile BEFIT form.apportionment (FA) with ALP standard & OECD Pillars/ principles also politically: FA may lead to different outcomes and be inconsistent with BEPS recommendations. The EU's and OECD's approaches to the role of IP assets differ. IP assets inclusion may be welcomed but how to include? Most IP is not reflected in financial statements. Mandatory BEFIT runs risk of contravening a basic agreed OECD BEPS project principle: profits should be taxed where value is created.

D. Allocation of profit to companies outside the BEFIT Group

Under BEFIT, the arm's length principle[1] will continue to apply to pricing transactions between companies of the BEFIT Group and (i) companies of the same group that are tax-resident outside the EU (i.e. outside the BEFIT Group); and/or (ii) their associated companies[2] in the EU or a country outside the EU. The planned initiative could therefore simplify the methods for applying transfer pricing rules, to give taxpayers greater legal certainty but without deviating from the arm's length principle.

[1] An internationally acknowledged principle according to which the price agreed in a transaction between two related parties must be the same as the price agreed in a comparable transaction between two unrelated parties.

[2] Companies that are part of a group, but not of the BEFIT Group, so below the accounting threshold for consolidating financial statements.

Question 14

Regarding transactions between BEFIT Group companies and companies outside it:

	Agree	Partly agree	Neutral	Partly disagree	Disagree	Do not know
Should the status quo be maintained for transfer pricing rules, as has been the case until now?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Should compliance with transfer pricing rules be simplified even if the process involves the use of proxies?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Do you agree that this can be done, e.g. using certain benchmarks?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

What other ways of simplifying do you suggest? And how do you see them working?

500 character(s) maximum

To provide tax certainty, the proposal envisages developing a system based on macro-industries' benchmarks. This would not replace the arm's length principle, and companies would still need to carry out the necessary transfer pricing analysis. But it would provide guidance on how tax authorities assess the risk of certain transactions without departing from the OECD rules.

Under such a system, the transaction between a company of the BEFIT Group and one outside it would be assessed as being of low, medium or high risk for not complying with the arm's length principle. This would depend on how payment for the transaction compares to a series of benchmarks for each category of macro-industry (e.g. automotive) and type of activity (e.g. distribution).

What this approach aims at is transparency, through the publication of certain profit markers (possibly in the form of a range) for tax authorities' risk assessment framework.

These profit markers are indicative illustrating what would be tax authorities' likely approach to certain transactions. For example, if the profit margin of a low-risk BEFIT Group company in the distribution sector fell into the 'low-risk' zone, tax authorities would generally not check the transfer pricing results of the relevant transaction.

Question 15a

Do you agree with streamlining tax authorities' transfer pricing risk assessments of transactions between members of the BEFIT Group and companies outside it?

- Agree
- Partly agree
- Neutral
- Partly disagree
- Disagree
- Do not know

Question 15b

Should this approach apply to both inbound and outbound transactions?

- Yes

No

Please elaborate.

500 character(s) maximum

Question 15c

In your view, what are the most important homogenous macro-categories for grouping industry sectors for the purposes of benchmarking?

Please elaborate.

500 character(s) maximum

3. Administration

BEFIT will aim for a significant reduction in the compliance burden of taxpayers and the administrative costs for tax authorities. However, this does not exclude the fact that some additional compliance and administrative costs could arise in certain circumstances.

Question 16

As a taxpayer, do you see any benefits the BEFIT initiative would bring regarding your current compliance costs, e.g. their nature, size, etc.?

As a tax administration, do you see any benefits the BEFIT initiative would bring regarding your current administrative costs, e.g. their nature, size, etc.?

Please explain your response.

500 character(s) maximum

Question 17

As a taxpayer, do you anticipate that the BEFIT initiative will bring additional compliance costs?

As a tax administration, do you anticipate that the BEFIT initiative will bring additional administrative costs, apart from the obvious regulatory costs that most likely will arise at the beginning?

Please explain your response:

500 character(s) maximum

We do not know if BEFIT will reduce compliance costs for groups, this depends on what it would ultimately look like: if it comes with a big, complex, unaligned new set of rules around the tax base, then the compliance burden will increase significantly. If BEFIT is aligned (say) with Pillar 2, then perhaps it just stays the same/marginally improves.

The envisaged reductions in the administrative and regulatory burden can be grouped into three broad categories:

1. filing simplifications relating to tax returns,
2. simplifications relating to interactions with tax authorities, and
3. dispute resolution.

	A	B
1	Filing simplifications	a single EU corporate tax return combined with a one-stop-shop for submitting the group's tax return and possibly settling annual tax liability
2	Audit simplifications	a coordination of audits, including joint audits, by the tax authorities of EU countries in which the group has a taxable presence
3	Dispute resolution	alternative dispute prevention and resolution methods in addition to the existing national judiciary system

Question 18

Which of the following types of simplification would be the most useful in terms of reducing the compliance (as a taxpayer)/administrative (as a tax administration) burden?

Please rank your responses from 1 to 3 in order of importance.

	1	2	3	Do not know
Filing simplifications	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Audit simplifications	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Dispute resolution	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

If other, please explain:

500 character(s) maximum

Would you suggest any other ways of reducing compliance costs for taxpayers/administrative costs for tax authorities?

500 character(s) maximum

Final remarks, additional information

Is there anything else you would like to bring to the attention of the Commission?

Although not necessary, you can upload a brief document, such as a position paper, if you think additional background information is needed to better explain your position or to share data, studies, etc. that the European Commission could consider in preparing its initiative.

Any uploaded document will be published alongside your answers to the questionnaire, the essential part of this public consultation. Documentation is optional, as additional background reading to better understand your position.

If you have decided in 'About you' that your contribution is to remain anonymous, make sure you remove any personal information (name, email) from the document and its properties.

If you wish to provide additional information (e.g. a position paper or a report) or raise points not covered by the questionnaire, you can upload this additional information here.

Comments:

1000 character(s) maximum

Please upload your file(s)

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

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/EBIT_additional_comments_on_the_EC_public_consultation_on_BEFIT_-_January_2023.pdf

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Contact

TAXUD-UNIT-D1@ec.europa.eu