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The European Commission Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT), COM(2023) 532 final

Opinion

Näringslivets Skattedelegation(NSD) questions the Commission's timing for the renewed initiative. Companies currently need to allocate all necessary resources for the implementation and practical application of the Pillar II directive. Due to these circumstances, it has been difficult for NSD to receive sufficient input from companies.

NSD is concerned that BEFIT is built on the criticized and complex Pillar II rules, especially since all aspects of the Pillar II framework have not been fully adopted, leaving the effects of the new global tax rules untested and not yet evaluated. Furthermore, NSD objects to BEFIT's reliance on financial accounting rules, departing from traditional corporate tax bases. NSD does not believe that accounting rules are appropriate for tax purposes and is of the opinion that the International Financial Reporting Standards (IFRS) may not be a robust foundation for taxation and could potentially increase the risk of tax planning.

Despite supporting the Commission's goal of addressing cross-border tax obstacles, NSD does not believe that BEFIT's proposed framework will effectively achieve these objectives and alleviate the income tax compliance in the EU. In fact, NSD believes that the proposal will instead lead to the opposite. In order to ascertain their final tax liability, companies in scope would be required to file a Pillar II information return, a BEFIT information return and separate national tax returns in every Member State where they conduct business.

NSD is also concerned that important aspects of the BEFIT proposal are not aligned with Pillar II. The rules introduced by Pillar II are based on a jurisdictional approach, and in contrast to BEFIT, do not allow the blending of results across jurisdictions. The simultaneous application of both regimes could lead to mismatches and potential double taxation since the use of the BEFIT-allocation key may reduce the effective tax rates of some entities in certain Member States and result in a top-up tax under Pillar II. It is not clear how the two regimes will co-exist, and which regime takes precedence over the other.

The principals of NSD are:

**Stockholm Chamber of Commerce * Confederation of Swedish Enterprise
Swedish Bankers' Association * Insurance Sweden * Swedish Property Federation**

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NSD is also critical towards making BEFIT mandatory for multinational enterprises (MNEs). Optionality is key to ensure a competitive system. Without optionality, we are concerned that BEFIT may not evolve sufficiently over time to be competitive compared to tax systems in other important economic areas.

In conclusion, NSD finds the BEFIT proposal flawed and inadequate to achieve the Commission's goal of simplifying the EU tax environment. We question the suggested 65% reduction in tax compliance costs and find it highly unlikely that the complexities surrounding the Pillar II application will be resolved by the proposed effective date of July 1, 2028, when the BEFIT framework is intended to come into effect. NSD believes that the BEFIT proposal introduces a new hybrid tax system, adding additional complexity rather than harmonizing and simplifying the existing system. NSD therefore urges the Swedish Government to oppose the BEFIT proposal.

Background

On September 12, 2023, the Commission released a proposal for a directive called “Business in Europe: Framework for Income Taxation” (BEFIT), and two associated proposals on transfer pricing and a Head Office tax system.

The BEFIT proposal was first introduced as part of the “Communication on Business Taxation for the 21st Century” in May 2021¹ and is included in the Commission Work Program 2023. The proposal is also relevant in the context of the EU's own resources and budgetary considerations.

For over a decade, the Commission has tried to create a Common Consolidated Corporate Tax Base (CCCTB) in the EU. After failing to garner support for the initial 2011 CCCTB proposal, the Commission decided to try again in 2016, this time with a two-stage approach, starting with a Common Corporate Tax Base (CCTB)² without consolidation. After reaching agreement on CCTB the Commission intended to go forward with the second stage, adding consolidation (CCCTB)³. Due to extensive criticism the proposals were put on hold. The BEFIT proposal is the third attempt to harmonize the corporate tax base within the EU.

If adopted by Member States, the proposal is expected to come into force on January 1, 2028, with application to BEFIT groups starting July 1, 2028.

The proposal in short

The proposal is mandatory for EU-based groups with global consolidated revenue above EUR 750 million – the same threshold as Pillar II. Non-EU groups fall under BEFIT if their relevant EU part generates at least EUR 50 million in annual revenues or accounts for at least 5% of the total group revenue. Additional criteria apply for enterprises with an EU-ownership share below the 75% threshold. Smaller groups can opt in, bound by BEFIT rules for at least five years.

¹ [European Commission, Communication on Business Taxation for the 21st Century, May 18, 2021.](#)

² [Svenskt Näringsliv, opinion on CCTB, November 24, 2016.](#)

³ [Svenskt Näringsliv, opinion on CCCTB, November 24, 2016.](#)

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BEFIT groups would have to file a single preliminary tax return based on a fictitious common tax base for all their EU-based subsidiaries (BEFIT members). Each entity of the BEFIT group must determine its preliminary tax results starting from its financial statements prepared in accordance with the accounting standard used for consolidation purposes. The financial account statements must follow EU-law, using either the national generally accepted accounting principles (GAAP) of one of the Member States or the International Financial Reporting Standards (IFRS). BEFIT groups can offset net operating losses between their members in the same year and are also exempted from withholding taxes on transactions between group members.

Book income is then adjusted in accordance with the rules governing the BEFIT tax base to arrive at the corporate income measure for the preliminary BEFIT tax return. The mechanism is similar to the one in the Pillar II directive but BEFIT applies fewer adjustments.

The taxable income of the BEFIT group is then allocated to the Member States by using the average share of the BEFIT tax base originating in their jurisdiction over the past three fiscal years. After additional adjustments in the respective Member State the national corporate income tax rate is applied to the allocated income. Consequently, group members will still have to calculate their allocated taxable income according to the rules in the relevant jurisdiction.

The proposal also introduces a “traffic light system” that evaluates corporate tax profits from BEFIT tax returns against a profit benchmark – representative for independent entities in these sectors operating in the EU – and classifies the transactions of a BEFIT group within a low-, medium- or high-risk zone.

Comments

NSD questions the Commission’s timing for the renewed initiative. Companies currently need to allocate all necessary resources for the implementation and practical application of the Pillar II directive. Due to these circumstances, it has been difficult for NSD to receive sufficient input from companies.

NSD is concerned that the BEFIT proposal builds on the criticized and overly complex Pillar II rules. Furthermore, since the Pillar II framework has not been adopted in its entirety, the effects of the new global tax rules have not yet been tested and evaluated.

In addition, by basing the BEFIT framework on Pillar II, the proposed framework moves away from a traditional corporate tax base to one that relies on financial accounting. NSD does not believe that accounting rules are appropriate for tax purposes. Furthermore, this would mean that accounting bodies, such as the International Accounting Standards Board (IASB) will have a decisive role in designing the tax base. NSD is of the opinion that the IFRS is not a robust base for taxation and will likely increase the risk of tax planning.

NSD supports the Commission’s aim to address cross-border obstacles in the corporate tax field. However, we do not believe that the proposed framework will enable the realization of these objectives. On the contrary, the submission of BEFIT information returns would, in our opinion, increase the administrative burden rather than reducing it.

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While the BEFIT proposal relies on financial accounting rules, other important aspects of the proposal are not aligned with Pillar II. The rules introduced by Pillar II are based on a jurisdictional approach and, in contrast to BEFIT, do not allow the blending of results across jurisdictions. The simultaneous application of both regimes could lead to mismatches and potential double taxation since the use of the BEFIT allocation key may reduce the effective tax rates of certain entities in some Member States, resulting in a top-up tax under Pillar II. It is not clear how the two regimes will co-exist, and which regime takes precedence over the other.

NSD has noted that pure domestic groups that meet the threshold, are covered by the directive. Unlike in the Pillar II directive, BEFIT does not seem to have any exceptions for these groups. Consequently, BEFIT may potentially result in higher taxation for certain domestic groups. Such a scenario would hardly qualify as a simplification.

The proposal seeks to create a “one-stop-shop” for EU-tax returns. NSD agrees with the Commission that MNEs would benefit from a system where they would be able to file a single tax return for all their EU activities with just one tax authority rather than multiple tax authorities. However, in our view, this is not what the Commission is proposing. Instead of filing their national tax returns under a single set of rules to determine their final tax liability, a BEFIT group will have to file one preliminary tax return to calculate the BEFIT tax base allocated to Member States, in addition to all their national tax returns. On top of this, and even though the adjustments to be made to the BEFIT tax base are intended to be considerably simpler than those required under Pillar II, businesses in scope will be required to make separate sets of computations for Pillar II and for BEFIT.

Furthermore, as much as NSD welcomes simplified transfer pricing mechanisms to address both intra-BEFIT group transactions and extra-BEFIT group transactions, transfer pricing compliance will still be required, and some areas will continue to be subject to national interpretation, review, and audit.

Even though the possibility to offset cross-border losses and to exempt certain intra-group payments from withholding taxes may eliminate some cross-border frictions within the EU, NSD believes that since BEFIT has a different tax base than Pillar II, it will create an additional layer of complexity for businesses operating under the framework.

NSD is also critical towards making BEFIT mandatory for MNEs. Regardless of how competitive a new system may be, any shift from a domestic tax system to a common system within the EU will present significant costs. These costs may occasionally outweigh the benefits of a new system. A compulsory shift could therefore prove to be contradictory in terms of economic growth and competitiveness. Optionality is key to ensure a competitive system. By making the system optional, it would be subjected to a “market test”, which would ensure the system’s competitiveness in an international context. Without optionality, we are concerned that BEFIT may not evolve sufficiently over time to be competitive compared to tax systems in other important economic areas.

When the Commission presented its first CCCTB proposal in 2011, many businesses were cautiously positive. Although far from perfect and in need of substantive changes, it was at least based on a reasonable foundation. NSD finds the current BEFIT proposal flawed in many ways and NSD does not believe that the proposal is adequate to achieve the Commission’s stated aim to simplify the tax environment within the EU. We find it highly

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unlikely that tax compliance costs could be reduced by anywhere near the 65% suggested in the impact assessment. NSD also finds it highly unlikely that the complexities and administrative burdens related to Pillar II application will be resolved by July 1, 2028, when the BEFIT framework is set to come into effect.

NSD urges the Swedish Government to oppose the BEFIT proposal. Instead of creating a truly harmonized and competitive system within the EU, the BEFIT framework seems to introduce, on top of the upcoming minimum tax system, a new hybrid tax system with a mix of an EU tax base and 27 national tax bases. In our view, this will only add another layer of complexity to an already complex system and increase the administrative burden for businesses.

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