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CFE Publishes Statement on European Corporate Tax Reform (BEFIT)

The CFE Tax Advisers Europe last week issued a statement responding to a public consultation of the European Commission concerning the proposed Council Directive: "Business in Europe: Framework for Income Taxation (BEFIT)". This corporate tax reform proposal aims to reduce the administrative burden for taxpayers and authorities with a harmonised corporate tax base and simplified Transfer-Pricing administration, according to the European Commission.

CFE supports measures that aim to reduce administrative complexity and improve the ease of doing business in Europe, however we query the need for BEFIT, the legal basis as chosen by the Commission (Article 115 of the Treaty on Functioning of the European Union), and the potential breach of the EU's fundamental principles of subsidiarity and proportionality. CFE also remarks that insufficient attention has been paid to the unpredictable impact of BEFIT on public finances of the Member States and, whilst the objective of BEFIT is to decrease complexity, compliance costs and legal uncertainty, the opposite seems to be the case.

CFE in its Statement sets out detailed remarks concerning the proposal, which we believe need to be taken into account before this directive could be subject to a vote for adoption. Of course, these remarks are not exhaustive, but we

believe are of fundamental importance to the successful implementation and acceptance of BFEIT in the long term:

- The legal basis chosen by the EU for the BEFIT Directive does not seem to be in line with EU law. The formulations provided by the European Commission are not sufficient in CFE's view to satisfy the legal basis to demonstrate that the aims of the initiative cannot be sufficiently addressed by the Member States themselves.
- The timing for the BEFIT proposal is not appropriate bearing in mind the implementation process of Pillar Two. The proposal needs further development to be synchronised in line with the process of implementation of Pillar Two. The interaction of BEFIT and the minimum tax rules would increase complexity to an unprecedented level, which would result in significant compliance costs and potentially make the EU a less attractive place to do business.
- Also, the timeframe for implementation is very short considering the impact on Member States and the enterprises involved. The directive outlines many legislative adjustments and needs to be more coherent in the broader perspective.
- CFE is concerned the tax administrations of Member States are not able and capable (yet) to deliver all launched initiatives on time, and would choose instead to opt for a standard implementation with reference to the guidelines, which ultimately creates legal uncertainty for the taxpayers and companies involved.
- The administrative costs for affected companies should not be underestimated, bearing in mind the three different tax filings in a year that would need to occur: Pillar Two, BEFIT and national filings. Also, knowing that this directive currently foresees a timeline of seven years after implementation, CFE urges the Commission to clarify up-front what the sustainable solutions will be, particularly given there is a risk that the temporary solution could become the permanent one, if BEFIT is adopted.
- The BEFIT rules also contain a set of tax adjustments to the financial accounting statements with certain tax depreciation rules and raises

timing and quantification issues. To prevent mismatches, and to contribute to the reduction of administrative burdens, the adjustments should align as much as possible with the adjustments under the Pillar Two rules. One possible method of simplification would be to specify the use of IFRS as a starting point for everyone within BEFIT.

Last week, the European Economic and Social Committee (EESC), organised a public hearing related to the BEFIT proposal, given EESC's support for "Commission's continuous efforts to develop a common corporate tax framework in support of the internal market." Dr. João Nogueira, Deputy Academic Chairman of IBFD and Member of CFE's ECJ Task Force participated at the hearing. More detail is available on EESC's X/ formerly Twitter feed.

Additional amendments to the proposal have also been made by the European Parliament's Committee on Economic and Monetary Affairs, mainly to insert further references which call for strengthening the anti-avoidance aspects and tackling cross-border corporate tax planning.

OECD Release Updated Assessment of Impact of Global Minimum Tax

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The OECD held a webinar this month to provide an update on its economic impact assessment of the Global Minimum Tax (GMT) from the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. Two working papers were released during the webinar, namely, the The Global Minimum Tax and the taxation of MNE profit and the Effective tax rates of MNEs: New evidence on global low-taxed profit. A presentation was given during the webinar setting out the key results of the impact assessment and working papers, predicting that countries which are dubbed as "investment hubs", generally low tax jurisdictions, will see the largest increases in corporate tax revenues. The countries include Bermuda, the British Virgin

Islands, Ireland, Jersey, Guernsey, Luxembourg, Netherlands, Switzerland and Singapore.

Other key conclusions include:

- *The GMT will reduce global low-taxed profit by about 80%; from 36% of all profit globally to about 7%. This reduction stems from both the reduction in profit shifting and the application of top-up taxes.*
- *The remaining low tax profit mainly reflects the impact of the substance-based income exclusion. This reduction is present in all income groups, but largely concentrated in investment hubs. Remaining low-taxed profit is largely due to the presence of the substance-based income exclusion (SBIE), where the GMT takes account of the real economic activities of MNEs.*
- *Under the GMT, shifted profit is estimated to fall by half due to strongly reduced profit shifting incentives.*
- *Differences in taxation between jurisdictions are estimated to fall, which will likely increase the importance of non-tax factors in influencing investment decisions and improving the allocation of capital globally.*
- *Global corporate income tax (CIT) revenues are estimated to increase as a result of the application of top-up taxes and reduced profit shifting. The GMT is estimated to raise additional CIT revenues of USD 155-192 billion globally each year or between 6.5% and 8.1% of global CIT revenues with one third of these gains coming from reduced profit shifting.*

Speaking with the Financial Times, Manal Corwin, Director of the OECD Centre for Tax Policy and Administration, said that it would be key to watch how businesses react, but that decisions to set up structures would become less likely due to cost and incentive being reduced by the global minimum tax.

UN Framework Convention: Website Launch & Structure Update

The United Nations have published a website dedicated to updates on the UN Framework Convention progress, as mandated by UN General Assembly Resolution “Promotion of inclusive and effective international tax cooperation at the United Nations”; the General Assembly adopted resolution 78/230 on 22 December 2023. The resolution establishes an intergovernmental Committee mandated to develop draft terms of reference for a United Nations framework convention on international tax cooperation, with a view to finalising the UN Committee’s work by August 2024.

The dates for the UN meeting sessions are set for 26 April to 8 May 2024 and 29 July to 16 August 2024, in New York.

Tax Priorities of the Belgian Presidency of the Council of EU

Belgium now holds the Presidency of the Council of the EU until 30 June 2024, and recently published its Programme and Priorities for its Presidency.

Concerning economic and financial affairs, and its tax priorities, the Programme sets out that Belgium intends to prioritise work on *"narrowing the VAT gap, on EU own resources, on completing the mid-term review of the Multiannual Financial Framework (MFF), and on revising legislation related to the Customs Code as well as taxation rules for cross-border teleworking",* noting that introducing new priorities was not within the scope of its mandate, as the *"Belgian Presidency will straddle the close of one European parliamentary term and the start of another, it will work to finalise major outstanding files while also stimulating discussion on the economic state of the Union and its future"*.

The priorities also indicate that proposals concerning simplification and competitiveness, particularly for SMEs, will be a priority, such as the HOT proposal, stating that as *"European competitiveness faces increasing pressure, the EU's response must create a level playing field for businesses, especially SMEs, enabling them to compete fairly both within Europe and on the global*

stage".

EU Agreement on AML Reform

The Council of the European Union and the European Parliament have reached a provisional agreement on the reform of EU's anti-money laundering legislation. With the new package, all rules applying to the private sector will be transferred to a regulation, while the directive will deal with the organisation of institutional AML/CFT systems at national level in the member states. Regulation is a piece of EU legislation that is directly effective in all EU Member states and does not require further legislative action.

Commenting on the developments, Belgium's finance minister and current Chair, said: *"This agreement is part and parcel of the EU's new anti-money laundering system. It will improve the way national systems against money laundering and terrorist financing are organised and work together. This will ensure that fraudsters, organised crime and terrorists will have no space left for legitimising their proceeds through the financial system.",* Vincent Van Peteghem said.

In relation to the new AML EU regulator, AMLA, Member states have submitted applications to host this new EU body. Applications were received and these are the current proposals: Rome, Vienna, Vilnius, Riga, Frankfurt, Dublin, Madrid, Brussels and Paris. On 30 January, the nine applicants to host the EU's AML body presented their candidacies in a public hearing of the European Parliament.

CFE Opinion Statement on the EU Commission HOT Proposal

CFE Tax Advisers Europe issued an Opinion Statement on the EU Commission Proposal on establishing a Head Office Tax system for micro, small and medium sized enterprises and amending Directive 2011/16/EU. CFE in the statement

recommends that the following factors are taken into consideration by the European Commission:

- The Directive establishing a head office tax (HOT) system for micro, Small, and Medium-sized Enterprises is a further action to make it easier for small and medium-sized enterprises to do business in the internal market, as announced in the SME 'Relief Package'. The SME Relief Package, which the Commission adopted delivers much needed support for small and medium-sized enterprises to secure cash flow, to simplify and to invest and grow.
- The current systems of business taxation in the EU give rise to a significant degree of complexity. This translates into businesses facing high compliance costs, barriers to cross-border operation, risks of double and/or over-taxation leading to tax uncertainty and, frequently, time-consuming legal disputes. These setbacks constitute a significantly higher burden for Small and Medium-sized Enterprises than they do for large groups of companies.
- If Small and Medium-sized Enterprises wish to operate cross-border, they become taxable in more than one Member State as soon as their activity abroad creates a permanent establishment. Compliance with those obligations comes with fixed costs, which creates a barrier that can prevent Small and Medium-sized Enterprises from developing their business cross-border. This is especially the case at the inception stage of expansion, when the extent of activities carried out abroad would mainly be ancillary to the primary business operations in the state of origin.
- It is thus important that Small and Medium-sized Enterprises, which envisage growth and expansion across the border, through permanent establishments, can continue to apply the tax rules that they are familiar with to calculate the taxable result of their permanent establishments in other Member States. This will give these Small and Medium-sized Enterprises the opportunity to take the business decision that suits best, either to continue applying different sets of tax rules to their business operations or opt in for the head office taxation rules, after having taken

into account the size of the compliance costs and administrative complexity that can arise from dealing with distinct tax rules.

- The directive provides for a simplified approach to subjecting standalone Small and Medium-sized Enterprises operating cross-border in the EU to taxation in respect of their permanent establishments in other Member States. This simplified approach is referred to as 'Head Office Taxation'. The solution is limited to the taxation rules for the computation of the taxable result of permanent establishments and does not touch upon the social security rules applied in the Member State of the permanent establishment, nor does it affect the existing bilateral conventions on the avoidance of double taxation.
- Eligible Small and Medium-sized Enterprises will have the option to calculate the taxable result(s) of their permanent establishments based only on the taxation rules of the Member State of their head office, while the applicable tax rate(s) will remain that/those of the Member State(s) where the permanent establishment(s) is/are located. The option, and its renewal, are however strictly confined by eligibility requirements aimed to address potential risks of circumvention of the rules. Such an option shall last for five years, unless the Head Office changes residence in the meantime or the joint turnover of the permanent establishments becomes at least triple of the head office's turnover, in which case the HOT rules will cease to apply.
- At the end of each five-year period, Small and Medium-sized Enterprises will be entitled to renew their choice for another five years without limit as long as they continue to meet the eligibility requirements.
- The eligibility and termination provisions are designed to discourage abuse and potential tax planning practices, such as the deliberate transfer of the Head Office to a Member State with attractive features in its tax system that ensure low taxation. When a standalone Small and Medium-sized Enterprise decides to set up a subsidiary, or the joint turnover of its permanent establishments becomes at least double of the head office's turnover, or when it ceases to qualify as a Small and Medium-sized

Enterprise altogether, it cannot renew the HOT rules when the five-year period expires.

- A one-stop shop will enable in-scope Small and Medium-sized Enterprises to interact only with the tax administration of the Member State of their head office both for the procedure to opt in and for filing obligations and paying taxes. The 'filing entity' for all permanent establishments will be the head office of the Small and Medium-sized Enterprise. Small and Medium-sized Enterprises will thus file one single tax return with the tax administration of their head office (the 'filing authority'). This tax administration will then transfer the resulting tax revenues to each Member State where the Small and Medium-sized Enterprise maintains a permanent establishment. Such an approach will eliminate the complexities and related costs of having to deal with multiple tax systems and tax administrations.
- The Member State of the head office will apply the rates applicable in the Member State(s) where the Small and Medium-sized Enterprise maintains permanent establishments and subsequently, transfers the resulting tax revenues to the latter.
- Timely and streamlined exchange of information between the concerned tax authorities is provided for, in particular by using the existing framework set up by the directive on administrative cooperation in the field of taxation. Such exchanges shall be tailored so that it answers the needs and the simplification purpose aimed by this directive.
- In relation to audits, appeals, and dispute resolution, each Member State would retain the authority to audit permanent establishments within their jurisdiction. Member States also would be able to request joint audits that obligate the addressed Member State to participate, which would maintain the integrity of the tax audit process.
- Although in the opinion of CFE the aforementioned system of the optional application may create occasional competition distortions due to the varying tax rules for comparable businesses, according to the European Commission the proposed directive seeks to outweigh these risks, and the benefits overall would include significant reductions in tax compliance

costs for enterprises availing themselves of the HOT system. CFE recognises that cross-border businesses face high tax compliance costs in the internal market, as they must comply with various legal frameworks. This is particularly the case for Small and Medium-sized Enterprises, for whom these costs are proportionately much higher. Moreover, the existing disparities between Member States could create mismatches that lead to double (non-)taxation.

CFE and its Member Organisations stand ready to assist the Commission in considering the issues above in the course of the policy dialogue and public consultation.

EU Infringement Action Against Member States on Pillar 2 Implementation

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The European Commission has initiated steps for breach of EU law by Member states related to their obligation to implement Pillar 2 in the EU legal order, stemming from the Directive on Minimum Taxation (Council Directive 2022/2523). The Commission on 25 January 2023 sent notice letters to nine Member States that had failed to inform the Commission that they have taken national legislative steps to implement OECD's Pillar 2 into national law, as a matter of compliance with EU law. The following Member States have been subject to Commission's action: Estonia, Greece, Spain, Cyprus, Latvia, Lithuania, Malta, Poland and Portugal.

EU's implementation of Pillar 2, as agreed under the OECD/IF Agreement, could be contrasted with the lack of implementation in EU's largest trading partners. Tax Foundation's recent submission to the US Treasury on Pillar 1 makes references to the Pillar 2 implementation, noting that under the current design of Pillar 2, new and valuable IP will remain in the US and could result in significant sales to foreign customers, which would further strengthen US service exports. In addition, according to OECD's estimations, investment hub jurisdictions are expected initially to be largest beneficiaries of Pillar 2. According to the

mechanics of Pillar 2, MNEs with operations in any jurisdiction that adopts Pillar 2 will be subject to the minimum tax provisions regardless of the US implementation of Pillar 2 legislation. Pillar 1, in particular Amount A, requires US implementation as a HQ jurisdiction, for the rules to become effective and operational.

Meeting of the FISC European Parliament Subcommittee

The FISC Subcommittee held a meeting on 23 January 2024 in the form of a public hearing on the topic of “Capital Gains Taxation in the EU”. The Subcommittee hosted an exchange of views with: Mr Sean Bray, Director of European Policy at the Tax Foundation; Ms Chiara Putaturo, Deputy Head of Oxfam's EU Office and EU Inequality and Tax Policy Advisor; and, Ms Sarah Perret, Head of the Personal and Property Taxes Unit, Tax Policy and Statistics Division of the OECD’s Centre for tax Policy and Administration.

The exchange of views covered capital gains taxation across EU Member States and whether free movement of capital poses a potential risk for aggressive tax planning and evasion. The FISC thereafter reviewed possible recommendations it can make on potential measures that can be taken at EU level to address these risks, such as deeming certain capital tax regimes as harmful within the scope of the Code of Conduct Group on Business Taxation and expanding the scope of automatic exchange of information to include capital gains on immovable property and financial assets.

The Subcommittee also recently published a calendar of meetings for 2024, currently containing dates for Q1 meetings in 2024. Further information on the topics will be made available in due course.

European Commission Adopts 2024 Work Programme

The European Commission has adopted its Commission Work Programme 2024, setting out priorities and legislative proposals that will form the focus of the upcoming year. The Programme has a focus on simplification and competitiveness for EU business, with emphasis being placed on measures to be introduced for SMEs.

In terms of taxation, the Programme emphasises that progressing currently tabled legislative proposals will be the central focus, stating that the EU *"need to agree on the new rules on withholding tax procedures, the proposal to prevent the misuse of shell entities for tax purposes and a series of measures to modernise the EU's ValueAdded Tax (VAT) system and make it more resilient to fraud by embracing digitalisation. Furthermore, we need to advance on the proposal to improve business taxation (BEFIT and transfer pricing) and the comprehensive reform of the EU Customs Union."* The Programme document claims that the BEFIT proposal on business in Europe: framework for income taxation could reduce tax compliance costs for businesses operating in the EU by up to 65%.

It also emphasises as priority progressing the Commission's regulatory fitness and performance programme (REFIT), establishing a Head Office Taxation system to simplify rules and cut tax compliance costs for SMEs expanding their operations across borders as a key priority for 2024.

EU Commission Publishes FAQs on EU Minimum Tax Directive

The European Commission published a document setting out a range of non-binding FAQs concerning interpretation of the EU Minimum Tax Directive, reflecting discussions held with the Commission and Member States on transposition and implementation of the Directive. Notably, the FAQs confirm the Commentary to the OECD Model Rules could be relied on for matters concerning interpretation and consistency in approach between the Member States.

The FAQs cover issues concerning: IIR and UTPR, computation of qualifying

loss or income, computation of adjusted cover taxes, computation of the ETR and top-up tax, special rules for corporate restructuring and holding entities, tax neutrality and distribution regimes, administrative provisions and transition rules.

CFE's 2023 Tax Policy Report

The CFE Tax Advisers Europe has published its 2023 Tax Policy Report. The Tax Policy Report is an annual publication which provides a detailed analysis of significant primary law and tax policy developments at both EU and international level that have occurred over the course of the year which would be of interest to tax advisers. It also includes an overview of selected CJEU case-law and relevant European Commission decisions.

We invite you to read the Tax Policy Report, and remain available for any questions or comments that you may have.

The selection of the remitted material has been prepared by: Aleksandar Ivanovski & Brodie McIntosh