



BRUSSELS | 5 FEBRUARY 2024

CFE Opinion Statements on the EU Commission BEFIT & Transfer-Pricing Proposals

CFE Tax Advisers Europe has published two [Opinion Statements](#) concerning the EU Commission consultations concerning the proposed Council Directive: “Business in Europe: Framework for Income Taxation (BEFIT)” and the proposed Council Directive on Transfer Pricing.

These corporate tax reform proposals aim 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 [Opinion Statement](#) sets out detailed remarks concerning the BEFIT 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 BEFIT 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.

In relation to Transfer Pricing proposal, CFE in its [Opinion Statement](#) recommends a number of factors to be taken into consideration by the European Commission. CFE supports simplification, but it is not in favour of parallel standards as proposed by the Transfer Pricing Directive. This directive makes legal relationships intra-EU versus non-EU more complicated. Furthermore, it would be extremely challenging to codify the ambulatory, dynamic and evolving OECD Guidelines in EU legislation that would need to be implemented in the different national legislations of the Member States. Therefore, CFE considers that the legal basis of the Transfer Pricing Directive is not in line with the EU law, is not in line with the subsidiarity principle, and is therefore disproportionate. CFE is of the view that the explanations and formulations given by the European Commission do not adequately satisfy the legal basis and do not demonstrate that the aims of the initiative cannot be sufficiently addressed by Member States themselves.

CFE invites you to read the Opinion Statements and remain available for any queries you may have.

[CFE Opinion Statement on the EU Commission BEFIT Proposal](#)
[CFE Opinion Statement on the EU Commission Transfer Pricing Proposal](#)

EU Parliament & Council Hold Public Hearing on Seat of Anti-Money Laundering Authority

On 30 January, the European Parliament and Council held a [public hearing](#) on candidacy applications submitted by Member States to host the new EU AML EU regulator, the Anti-Money Laundering Authority. Applications were heard concerning the proposals of: Rome, Vienna, Vilnius, Riga, Frankfurt, Dublin, Madrid, Brussels and Paris. The hearing can be replayed [here](#).

It was the first occasion that a public hearing has been required in the process to determine the seat of an EU agency, and follows from the decision of the [EU Court of Justice](#) which held that the competence to determine the location of the seat lies with the EU legislature.

A decision on the seat is [expected](#) to take place in late February. The Council of the European Union and the European Parliament reached a [provisional agreement](#) on the reform of EU's anti-money laundering legislation in January. 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.

OECD Release Statistics on MNE Groups' Key International Tax Risks

The OECD's Forum on Tax Administration has [released statistics](#) from its International Compliance Assurance Programme (ICAP) carrying out multilateral risk assessments of an MNE group's key international tax risks. The statistics take into account relationships between the compliance programme and advance pricing arrangements and mutual agreement procedures, and how these processes can increase tax certainty and manage tax risks. According to the report:

Key takeaways from the statistics include:

- *20 ICAP cases were completed by October 2023, with more currently in progress.*
- *The average time taken from the start of an ICAP process to the issuing of risk assessment outcomes to an MNE was 61 weeks, which is higher than the maximum target timeframe of 52 weeks described in the ICAP handbook, in part due to the impact of Covid-19 on the second pilot.*
- *For 40% of MNE groups, all the main covered transfer pricing risk areas were considered low risk by all tax administrations that included them in the scope of the risk assessment.*
- *The risk area that received the highest proportion of low-risk outcomes was permanent establishments (considered low risk in 95% of instances where the topic was included in the scope of a tax administration's risk assessment), followed by tangible property (90%), intragroup services (88%), financing (76%) and intangible property (75%).*

MNEs interested in participating in the International Compliance Assurance Programme should reach out to the tax administration in which their group is headquartered. For MNEs headquartered in a jurisdiction that does not currently participate in ICAP, contact can be made with the OECD directly to express their

interest. Applications can be accepted at one of the two annual deadlines – 31 March and 30 September.

Next Meeting of the EU Parliament FISC : Good Tax Practices in the Fight Against Tax Avoidance

The next [meeting](#) of the FISC Subcommittee will take place on 13 February 2024, from 15:00 to 17:15, in the form of a public hearing on the topic of "Tackling tax obstacles in the internal market and the role of tax policies in promoting economic growth". A study commissioned by the FISC Subcommittee on "Good tax practices in the fight against tax avoidance - the signalling role of FDI data" will be presented after the hearing.

The next meeting thereafter will be on 19 March 2024, where an exchange of views will take place with the Commission, OECD and UN on the state of play and the future of European and international tax policy.

Save the Date: CFE Forum 2024 | Sharing the Tax Pie | 18 April 2024 | Brussels

CFE Tax Advisers Europe will hold its 2024 Forum on 18 April 2024 in Brussels on the topic of *"Sharing the Tax Pie: Revisiting the Role of the UN, EU & OECD in Tax Policy; and Taxable Presence Threshold (Fixed Establishment) in Indirect Taxation"*.

CFE's 2024 Forum will bring two excellent panels of speakers to discuss the allocation of tax base (Pillar 1 and the role of the UN, the EU and the OECD in international tax matters). Secondary taxation rights, in particular the subject to tax rule (STR) in the UN Model Tax Convention and OECD's Pillars bring up issues of divergent aspirations in tax policy between jurisdictions.

Further details concerning the panels, speakers and registration information will be made available in due course.

The selection of the remitted material has been prepared by:
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