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## Taking Stock of Tax Policy in Von Der Leyen's EU Mandate

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The European Parliament has published a [factsheet](#) detailing the past and ongoing taxation policy initiatives in the EU mandate of Commission President Ursula von der Leyen. The Parliament factsheet notes that "despite significant economic challenges, the fiscal stability of EU Member States has demonstrated resilience in recent years. National tax administrations have responded rapidly to constantly changing circumstances and have been quick to install tax benefits for the poorest households or to provide tax relief for struggling businesses. To support the European economy's rebound, the European Commission put forward a 'package for fair and simple taxation' in July 2020, listing 25 distinct (soft or hard law) initiatives the Commission would undertake in the area of taxation during its mandate."

The Fair Taxation package was followed up by a Communication on 'business taxation for the 21st century', with number of legislative proposals, aimed at reducing tax obstacles for businesses in the Single Market and enhancing the fight against tax fraud and aggressive tax planning. In spite of the upcoming European elections, the EU legislative process regarding the European Commission pending tax initiatives is still ongoing, such as the BEFIT proposals and reform of the European energy taxation rules. More detail regarding the ongoing EU taxation initiatives is available in Table 1 of the [document](#).

## CFE Statements on the EU's BEFIT & Transfer-Pricing Proposals

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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](#)

## Harmful Tax Practices Update (OECD & EU Blacklist)

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The OECD has published an [update](#) on the work concerning the implementation of the minimum standard on countering harmful tax practices within the members of the BEPS Inclusive Framework, as agreed with the BEPS Action 5. According to the OECD, jurisdictions continue to make progress in addressing harmful tax practices, with the total number of regimes reviewed by the Forum on Harmful Tax Practices reaching 322 with over 40% of those regimes being abolished or in the process being abolished.

The peer review process of the tax regimes considered harmful which were abolished or amended include Albania (abolishing of industry incentives on software production and development); Armenia (abolishing the IT projects regime); Hong Kong (new regime on profits tax concessions for family offices

declared not harmful); and United Arab Emirates (new regime on free zones, designed in compliance with FHTP standards, declared not harmful).

Separately, EU officials met on 7 February in Brussels, to prepare an update of the EU blacklist on non-cooperative jurisdictions for tax purposes, in the framework of the Code of Conduct Group (Business Taxation). Items under discussion included Draft Code of Conduct group report on the update of the EU list; Draft Council conclusions on the revised EU list; New criterion 1.4 on beneficial ownership information, and Standstill/rollback review process. The next meeting of the group is scheduled for 1 March in Brussels.

## European Parliament Tax Subcommittee: Good Tax Practices in the Fight Against Tax Avoidance

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The next [meeting](#) of the FISC Subcommittee will take place today (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.

## OECD Release Statistics on MNE Groups' Key International Tax Risks

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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.

[Save the Date: CFE Forum 2024 | Sharing the Tax Pie | 18 April 2024 | Brussels](#)

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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 and registration information will be made available in due course.

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