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CFE Publishes Statement on European Corporate Tax Reform (BEFIT)

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.

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.

The European Commission published a document in late December 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.

UN Framework Convention: Website Launch & Structure Update

The United Nations have now 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.

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 will present their candidacies in a public hearing of the European Parliament.

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.

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