KPMG responds to European Commission public consultation on BEFIT

European Commission – Fair taxation – Business in Europe – Framework for Corporate Income Taxation – BEFIT – Common tax base – Formulary apportionment

On January 26, 2023, KPMG[1] member firms in the EU submitted a response to the European Commission's (EC) public consultation on the "Business in Europe: Framework for Income Taxation (BEFIT)" initiative.

KPMG supports the EC's ambition to simplify compliance requirements and promote tax certainty. However, we are concerned that the practical operationalization of the BEFIT initiative may in fact lead to increased cost and complexities. Accordingly, our submission highlights the need for further analysis to assess whether the envisaged goals can be achieved in practice. Our contribution also attempts to highlight key areas that require further consideration with a view to alleviating complexity and administrative costs. We also note the need for compliance with EU primary law principles and compatibility with international tax reforms and standards and tax treaties.

Our submission further advocates for a deferral of further BEFIT considerations until the Pillar One and Pillar Two rules have had sufficient time to be operationalized and business have had sufficient time to understand and comply with these changes to the international and EU tax systems.

Background

On October 13, 2022, the EC published a call for evidence for an impact assessment and asked for public feedback on proposed policy options for a new corporate tax system referred to as "BEFIT".

This initiative would provide common rules for determining the corporate tax base for EU-based entities that are part of a group with global consolidated revenues above a certain threshold. BEFIT would also include

[1] The comment paper was produced on behalf of KPMG member firms located in the EU forming part of KPMG's Europe, the Middle East & Africa (EMA) region. Throughout the submission, "we", "KPMG", "us" and "our" refer to the network of independent member firms operating in the EU.

provisions for the allocation of profits to Member States based on a pre-defined formula (formulary apportionment).

As part of the consultation, the EC further asked for views on how the administration of transfer pricing rules and the application of the arm's length principle could be simplified. Based on the consultation documents, the EC also aims to propose simplified filing requirements (e.g. a single EU corporate tax return combined with a one-stop-shop for submitting the group's tax returns), simplified interactions with tax authorities (e.g. a coordination of local audits), and providing for alternative dispute prevention and resolution methods.

For more information on the initiative, please refer to Euro Tax Flash Issue 489.

KPMG's contribution

KPMG member firms in the EU were pleased to provide comments on the EC's BEFIT initiative and welcomed the EC's ambition to simplify compliance requirements and promote tax certainty.

Given that the call for evidence and the public consultation were published simultaneously, our submission aims to address the issues noted in the call for evidence document as well as the points raised in the targeted questionnaire. The EC's initiative deals with a multifaceted issue that raises a number of complex questions, which warrant in depth and nuanced comments. We found that the framework of the questionnaire did not permit such detailed input and have therefore attempted to tackle the questions raised through a free-form response.

KPMG believes that international competitiveness of EU businesses may be enhanced when removing increasing levels of compliance costs, tax complexity and double taxation risk. However, we are concerned that the practical operationalization of the BEFIT initiative may in fact lead to increased cost and complexities. We believe that further analysis is needed to assess whether the envisaged goals can be achieved in practice and to determine the most appropriate design elements that would indeed alleviate the administrative burden currently faced by groups that operate across borders in the EU.

The KPMG contribution attempts to highlight key areas that should be given further consideration, including:

- how the BEFIT initiative fits into the international tax reforms, the implementation of which is currently ongoing in the EU – in particular, the EU Minimum Tax Directive and any potential EU action in response to the OECD's Pillar One initiative;
- ensuring compliance with the EU proportionality and subsidiarity principles;
- how to address complex transition issues;
- which design option are most likely to effectively reduce complexity and costs for both MNEs and tax authorities;
- avoidance of economic distortions (e.g. on local tax revenue, investment, employment, GDP, EU competitiveness);
- ensuring compatibility with international tax standards and tax treaties.

In addition, our submission advocates for a deferral of further consideration of BEFIT until, for example, the Pillar One and Pillar Two rules have had sufficient time to be operationalized – in particular in light of the intention (stated in the BEFIT consultation documents) to draw inspiration from those rules. Furthermore, taxpayers are currently over-burdened by the level of effort required to understand and comply with the changes already in motion as a result of BEPS (and the plethora of other recent changes). Tax authorities in EU Member States may be facing similar challenges in their own implementation efforts.

ETC Comment

It is important to note that this consultation does not relate to a legislative proposal. Instead, the EC has only been gathering views on different design options for the different BEFIT building blocks. Based on the public consultation page, the current indicative timing for the EC's adoption of a legislative proposal is the third quarter of 2023.

This proposal seems to be a priority item for the EC in 2023, who may be looking to build on momentum from the adoption of the EU Minimum Tax Directive to keep corporate taxation at the top of the EU's tax agenda. Since Member States agreed to suspend the examination of the DERBA proposal at the end of 2022, the EC may also decide to include in the BEFIT proposal rules that provide for a debt-equity balance reduction allowance to further promote its aim of providing for a level playing field for debt and equity, from a tax perspective.

We expect that more detailed input from stakeholders will be collected through a second public consultation once the legislative proposal has been published. Stakeholders that would potentially fall in scope of the new common corporate tax system should monitor this file closely and consider contributing to any future discussions on the EC's BEFIT initiative.

In light of the legal basis proposed by the EC, the BEFIT Directive would require unanimous approval in the Council. Given the experience with discussions on the C(C)CTB proposals, it may be challenging for all Member States to reach agreement on a common corporate tax base framework in the EU at this time. The EC will nevertheless have to provide Member States with assessments of the likely impact of the various proposed rules and various design options on each EU jurisdiction in order to facilitate consideration at Council level.

Should you have any queries, please do not hesitate to contact KPMG's EU Tax Centre, or, as appropriate, your local KPMG tax advisor.

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