KPMG responds to European Commission public consultation on BEFIT proposal

European Commission – Fair taxation – Business in Europe – Framework for Income Taxation – BEFIT – Common corporate tax base – CCCTB

On January 24, 2024, KPMG[1] member firms in the EU submitted a response to the European Commission's (EC) public consultation on the BEFIT initiative.

KPMG welcomes the EC's ambition to simplify compliance requirements, promote tax certainty and reduce risks of double taxation. Nevertheless, we believe that the implementation of the BEFIT proposal in its current form and within the timeline proposed would not contribute to the achievement of this ambition.

The KPMG submission summarizes our key concerns, including the creation of new layers of complexity, incompatibility of key BEFIT design elements with the design of the Pillar Two rules, timing (particularly in light of the implementation timeline of the GloBE rules and the overall impact of BEPS 2.0, which can only be analyzed once the rules have been in place for sufficient time), the potential negative impact on investment, further pressure on the (already) limited resources of MNEs and tax administrations, etc.

We also note that some positive elements of the BEFIT proposal could be introduced on a standalone basis (e.g., the cross-border sharing of losses) or addressed directly by Member States.

[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.

Background

On September 12, 2023, the EC published its BEFIT Directive proposal, which provides for a common set of rules for determining the corporate tax base of EU-based entities that are part of a group with global consolidated revenues above a certain threshold. The proposal also includes a temporary mechanism for the allocation of profits to relevant Member States, which would then be subject to the corporate income tax rates of the respective Member States. For more information on the initiative, please refer to Euro Tax Flash Issue 521.

On September 19, 2023, the EC initiated a call for public feedback on the proposed Directive, to which KPMG responded in a letter dated January 24, 2024.

KPMG's feedback

KPMG member firms in the EU were pleased to provide comments on the EC's BEFIT proposal. KPMG welcomes initiatives that result in an actual reduction of the administrative burden for both taxpayers and tax administrations. However, it is important to assess further the most effective way of achieving this ambition. We believe that the current design and timing of the BEFIT proposal would not achieve the intended benefits.

The key concerns highlighted in the KPMG submission can be summarized as follows:

- Introduction of the BEFIT proposal in its current form would create unnecessary additional layers of uncertainty, complexity and administrative burden for businesses and tax administrations. In particular, the temporary nature of the proposed BEFIT allocation mechanism would foster uncertainty and create significant challenges for business seeking to make decisions about long-term investments in EU markets. There are also a number of areas where the BEFIT proposal could lead to the discouragement of investment, which need to be weighed against potential benefits.
- Member States would need clarity regarding the post-transition BEFIT allocation methodology, in order to make informed decisions about the potential impact of the proposal on their public finances in the medium to long-term.
- Key design elements of the BEFIT proposal are incompatible with the design of the Pillar Two rules. By reallocating taxable profits between jurisdictions in a way that is inconsistent with where those profits are recognized for financial accounting purposes, BEFIT would distort a group's Pillar Two calculations and potentially expose that group to unjustified top-up tax. This inconsistency is a direct consequence of a clash between the jurisdictional approach to minimum taxation under Pillar Two and the EU-wide approach envisaged by BEFIT. In addition, it is unclear how BEFIT would interact with Pillar One (once introduced) and existing international tax treaties.
- Sufficient time has not been allowed to assess the actual impact of the major overhaul of the international tax system arising from BEPS, particularly BEPS 2.0. The BEFIT proposal would likely need to be adapted in light of such impact, or the EC could conclude that the BEFIT proposal is inappropriate.
- At a practical level, the proposed BEFIT implementation date of July 1, 2028, is untenable as it comes only 18 months after the Pillar Two Transitional CbCR Safe Harbor will cease to apply, just when MNEs will be required to complete a full GloBE calculation in every jurisdiction that they operate in.
- Both MNEs and EU tax administrations are already capacity constrained in coping with the ongoing burden arising from the implementation of the BEPS 1.0 and OECD Pillar Two changes, not to mention all the other changes that have been made to domestic tax regimes across the EU. Given the scarce resources available at the level of tax administrations and MNEs, the introduction of a new tax regime at this time would be very challenging.
- MNEs (and tax administrations) will need to focus their limited resources on ensuring high levels of compliance with the complex new BEPS 2.0 rules. The complexity associated with Pillar Two should not be under-appreciated.

- Member States currently utilize a range of incentives and reliefs to encourage investment in their jurisdictions and in certain areas (e.g., digital transition and the achievement of net-zero targets). This flexibility also allows Member States to be targeted in approach and nimble in times of economic crisis. As direct taxation remains a core competence of each EU Member State, Member States may have concerns that BEFIT would limit their ability to use tax policy as a lever and tool to fit their economy, their resources and the type of business that can thrive in their economies. In this context, we wonder whether an attempt at harmonization would indeed achieve the intended administrative simplification, reduction of disputes and legal certainty for taxpayers.

While KPMG does not advocate for the introduction of BEFIT at this stage, we note that some positive elements from the BEFIT proposal could be introduced on a standalone basis (e.g., the cross-border sharing of losses) and that some simplification measures could be taken directly by Member States.

KPMG believe that any further analysis should consider a balanced perspective, with elements that provide for actual benefits for both MNEs and tax authorities while guaranteeing the tax sovereignty of EU countries and adhering to the principles of EU subsidiarity and proportionality.

We appreciate the opportunity to contribute to the EU public consultation and encourage the EC to maintain a continuous exchange with various stakeholders.

ETC Comment

Following the conclusion of the public consultation period, the EC is expected to review the feedback received with a view to informing discussions among the Member States in the appropriate Council working groups.

We note that as part of its program for the Presidency of the Council of the EU, Belgium welcomed the BEFIT package and expressed the intention to explore the usefulness of more unified tax rules in other fields over the long term. However, several EU Member States (e.g., Finland, the Netherlands) have already publicly raised concerns about the proposal, emphasizing that the timing is not ideal in view of ongoing fundamental changes to the international tax system. In addition, they have expressed concerns about the potential impact on national future tax revenue and the administrative burden triggered by the co-existence of three parallel profit tax systems (local tax regime, Pillar Two and BEFIT). The proposal is therefore likely to be subject to in-depth discussions in Council working groups, on the timing, the merits, and the technicalities of the initiative.

As the legal basis for the proposal is Article 115 of the Treaty on the Functioning of the EU (TFEU), the proposal would require unanimous approval in the Council to be adopted. Experience with discussions on the C(C)CTB proposals shows that it may prove challenging for all Member States to reach unanimous agreement on a common corporate tax base framework.

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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