

Through Thick and Thin: BEFIT under Scrutiny

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In previous EU Tax Focus notes, attention was drawn to [FASTER](#) and [HOT](#), which have (so far) moved smoothly in the legislative procedure. In recent years, it has been made abundantly clear that, irrespective of whether other EU institutions progress and “complete” their parts quickly, the Council is not bound by them and can take as much time as it deems appropriate to debate and finalize technical discussions before (and if) it eventually adopts an EU initiative (e.g. [Unshell](#), [DEBRA](#)).

The [Business in Europe: Framework for Income Taxation \(BEFIT\) Directive](#) belongs to the “triplets” of initiatives launched by the European Commission on 12 September 2023 (along with [HOT](#) and the [TP Directive](#)). Until now, EU institutions and stakeholders have seemed rather hesitant to engage in any tax technical discussions.

What is BEFIT bringing to the table?

The [idea behind BEFIT](#) is to achieve simplification via replacing the 27 different ways of determining the taxable base (for entities which meet some materiality thresholds) with one common framework. BEFIT was launched with much optimism, which is likely attributable to the fact that – timing-wise – it capitalizes on the momentum created by the historic agreement reached on the [Minimum Taxation Directive](#). Scope-wise, a parallel must be drawn to its conceptual predecessors, namely the 2011 and 2016 attempts on harmonization of the corporate tax base, the CCTB and CCCTB, respectively. BEFIT appears to be loyal to national sovereignty, as it wishes to ensure that tax rates and enforcement policies fully remain with the Member States and thereby does not establish a full harmonization of corporate tax systems.

EU-headquartered groups with annual combined revenues of at least EUR 750 million, in addition to non-EU headquartered groups (if the relevant subset of their EU presence raises either at least EUR 50 million annual combined revenues in a certain reference period or accounts for at least 5% of the total revenues of the group), must comply with the BEFIT rules. However, smaller groups can opt in if they wish, provided they prepare consolidated financial statements.

Once a group falls within the “hybrid” scope of BEFIT, it needs to calculate the preliminary tax result of each group member through a simplified method. Such method uses the financial accounting result as a starting point to work on the subsequent adjustments (i.e. items to be included or excluded). Next, the preliminary tax results are pooled into a single tax base (the BEFIT tax base) and are subsequently allocated to eligible group members through a specific formula. As a final step, additional adjustments by application of domestic rules may be made. Such technical corrections are required to sustain the coherence of each specific Member State’s fiscal system. For example, tax losses that were accumulated before an entity started applying the BEFIT rules cannot be considered in the preliminary tax result (to avoid being shared among all Member States), but they should still be accounted for domestically.

From an administrative standpoint, the ultimate parent entity or the filing entity (for non-EU groups) will file one tax return (the BEFIT information return) covering the whole BEFIT group with its own tax administration (and will then share this with the tax administrations in the other Member States in which the group operates). A dedicated team composed of one or more representatives of each relevant tax administration – the BEFIT team – will assess the completeness and accuracy of the BEFIT information return. The remaining group members still have to file their individual tax returns with their jurisdictions to be able to domestically apply adjustments to their allocated part (their jurisdictions will then issue individual tax assessments).

Reactions so far

The European Parliament

A report on BEFIT was [scheduled](#) for a vote on multiple occasions during the first months of 2024, but it was repeatedly removed from the agenda of all ECON meetings, as well as from that of the European Parliament (where it was scheduled to be voted on during the plenary session of 23 April 2024).

National parliaments

Member States have actively voiced their thoughts and doubts concerning BEFIT. For example:

- [Ireland](#), [Malta](#) and [Sweden](#) have opined that BEFIT does not comply with the subsidiarity principle;
- [Finland](#), [Poland](#) and the [Republic of Slovenia](#) have raised tax technical concerns and called for further work on the proposal (e.g. objections to the cross-border loss relief mechanism, restrictions on fiscal sovereignty and potential administrative burdens in implementation of the proposal); and
- [Italy](#) and [Lithuania](#) have opined that BEFIT complies with the principle of subsidiarity (yet also pointed out a series of tax technical concerns).

The EESC opinion

In its [opinion](#) adopted during the [plenary](#) of 24 April 2024, the EESC overall supported BEFIT and the idea of removing administrative obstacles for taxpayers operating on a cross-border level, while mentioning its concerns on the following aspects (non-exhaustive list):

- From a tax technical standpoint, the EESC posed the question of whether article 48(2) of the BEFIT Proposal – which allows Member States to add tax base increases, tax deductions or tax incentives to their allocated parts – would add value or rather hinder BEFIT’s scope of reducing compliance burden;
- Considering how BEFIT ties in with other EU/international tax developments:
 - The EESC concurred with the Commission on the importance of the momentum created by the OECD/G20 international tax agreement on a global minimum level of taxation. It further noted that, in order to reduce costs, BEFIT should be aligned with the Pillar Two rules (for example, the possibility to offset cross-border losses in a BEFIT group will require clarifications vis-à-vis any time restrictions for carry-forwards/carry-backs and co-existence with Pillar Two);
 - The EESC recognized that – in theory – BEFIT would contribute to the “[EU Next Generation of Own Resources](#)”. However, given its anticipated long legislative procedure, it is difficult to estimate the amount of resources (potentially) available for the own-resource chapters and when such additional resources would be available.

What's next?

Technically, the adoption of BEFIT would require the European Parliament's opinion before it reaches the Council of the European Union (where unanimity needs to be obtained). During a [webinar](#) on HOT, EU officials (min. 44:20) recognized that the discussion on BEFIT is complex and will take time, confirmed that the legislative discussion has not yet commenced and noted that it is expected to start as from the end of May.

In light of the above, and with the hope that EU institutions and Member States will – when the time comes – engage in constructive discussions on the draft proposal, we may expect a turbulent and long way ahead for BEFIT before any tangible developments occur.

IBFD references

- For an overview of legislative initiatives at the EU level on direct tax matters from the moment they are planned by the European Commission until their adoption by the Council of the European Union, see the [EU Direct Tax Law Initiatives Tax Dossier](#).
- J. Provencher, A. Mulky Dange & S. Kuijper, [The BEFIT Directive: A Game Changer for Transfer Pricing or an Irrelevant Buzz?](#), 31 Intl. Transfer Pricing J. 1 (2024), Journal Articles & Opinion Pieces IBFD.
- F.S. Scandone, L. Scordo & L. Marino, [Pillar One, Pillar Two and BEFIT – The End of an Unexpected Journey?](#), 31 Intl. Transfer Pricing J. 1 (2024), Journal Articles & Opinion Pieces IBFD.
- A. Xygka, [BEFIT: A Blast From the Past or a Modernized Approach to Tax Simplification?](#), 64 Eur. Taxn. 1 (2024), Journal Articles & Opinion Pieces IBFD.
- J.J.A.M. Korving, [“BEFIT and HOT: FASTER and SAFE!” EU Law or Slogan for Slimming Pills?](#), 63 Eur. Taxn. 12 (2023), Journal Articles & Opinion Pieces IBFD.
- EU tax law developments are reported in the daily IBFD [Tax News Service](#).