Council of the
European Union

Brussels, 13 September 2023
(OR. en)

12965/23
ADD 2

Interinstitutional File:
2023/0321(CNS)

FISC 191
ECOFIN 870
IA 224

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	13 September 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2023) 308 final
Subject:	COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT REPORT Accompanying the documents Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) and Proposal for a Council Directive on Transfer Pricing

Delegations will find attached document SWD(2023) 308 final.

Encl.: SWD(2023) 308 final

EUROPEAN
COMMISSION

Strasbourg, 12.9.2023
SWD(2023) 308 final

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT REPORT

Accompanying the documents

Proposal for a Council Directive
on Business in Europe: Framework for Income Taxation (BEFIT)
and
Proposal for a Council Directive on Transfer Pricing

{COM(2023) 532 final} - {SWD(2023) 309 final}

Table of contents

1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT 6
   1.1. Business in Europe: Framework for Income Taxation (BEFIT) 6
   1.2. Framework for transfer pricing 9
   1.3. Introducing the initiative 9
2. PROBLEM DEFINITION 10
   2.1. What are the problems? 10
   2.2. What are the problem drivers? 12
   2.3. What are the consequences of the problem? 13
   2.3.1. High tax compliance costs 13
   2.3.2. Distortions in the market that influence business decisions 14
   2.3.3. Tax uncertainty and increase in disputes 15
   2.3.4. Businesses are discouraged from expanding cross-border 19
   2.4. How will the problem evolve? 19
3. WHY SHOULD THE EU ACT? 20
   3.1. Legal basis 20
   3.2. Subsidiarity: Necessity of EU action 20
   3.3. Subsidiarity: Added value of EU action 21
4. OBJECTIVES: WHAT IS TO BE ACHIEVED? 22
   4.1. General objectives 23
   4.2. Specific objectives 24
5. WHAT ARE THE AVAILABLE POLICY OPTIONS? 25
   5.1. What is the baseline from which options are assessed? 26
   5.2. Description of the policy options 26
   5.2.1. BEFIT 26
   5.2.2. Common approach to transfer pricing 35
6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS? 36
   6.1. Three Versions of the initiatives to be assessed 36
   6.2. Scope: How many company groups could be affected? 39
   6.3. Impact of the three Versions 40
7. HOW DO THE OPTIONS COMPARE? 50
   7.1. Comprehensive Version 51
   7.2. Light Version 52
   7.3. Composite Version 54
   7.4. Overall comparison and Coherence with other EU policies 56
8. PREFERRED OPTION 58
   8.1. BEFIT 58

8.2. Common approach to transfer pricing 60
8.3. REFIT (simplification and improved efficiency) 61
8.4. Application of the 'one in, one out' approach 61
9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED? 62
9.1. Monitoring 62
9.2. Evaluation 65
ANNEX 1: PROCEDURAL INFORMATION 66
ANNEX 2: STAKEHOLDER CONSULTATION (SYNOPSIS REPORT) 72
ANNEX 2A: TARGETED CONSULTATIONS – COMPILATION OF INTERVIEW REPORTS 82
ANNEX 3: WHO IS AFFECTED AND HOW? 104
ANNEX 4: ANALYTICAL METHODS 109
ANNEX 5: COMPETITIVENESS CHECK AND SME TEST 117
ANNEX 6: THE OECD TWO PILLAR APPROACH 119
ANNEX 7: TRANSFER PRICING 122
ANNEX 8: TERRITORIAL IMPACT ASSESSMENT – NECESSITY CHECK 136

Glossary

Term or acronym	Meaning or definition
ATAD	Anti-Tax Avoidance Directive
BEPS	OECD/G20 Base Erosion and Profit Shifting Project
CbCR	Country-by-Country Reporting
CCCTB	Common Consolidated Corporate Tax Base
CIT	Corporate Income Tax
CJEU	Court of Justice of the European Union
Consolidated financial accounting statements	These are financial statements of a group company in which the financial information of the parent company and its subsidiaries are presented as those of a single economic entity.
Deduction	Deduction denotes, in an income tax context, an item which is subtracted (deducted) in arriving at, and which therefore reduces, taxable income.[1]
GAAP	Generally Accepted Accounting Principles
GDP	Gross Domestic Product
GloBE Rules	Global Anti Base Erosion Rules
IFRS	International Financial Reporting Standards
Intangible assets	An intangible asset is an asset that is not physical in nature. Examples include patents, copyright, goodwill, trademarks, and software.
Inventory	Inventory or stock refers to goods that a business holds for the goal of resale, production or utilisation
MAP	Mutual Agreement Procedures
MNE	Multinational enterprise
OECD	Organisation for Economic Co-operation and Development
Profit distributions	A pay out of cash or property from a corporation to a shareholder.
Provisions	Provisions refer to any funds set aside from company profits to help budget for liabilities or obligations
SME	Small and Medium-Sized Enterprise
Tax adjustments	Taxpayers can subtract certain expenses, payments, contributions, fees, etc. from their total income
Tax depreciation	A tax deduction that allows the taxpayer to recover the cost or other

[1] https://www.oecd.org/ctp/glossaryoftaxterms.htm

	basis of certain property over the time you use the property.
Tax treaty	An agreement between two (or more) countries for the avoidance of double taxation. A tax treaty may be titled a Convention, Treaty or Agreement.[2]
Transfer pricing	Transfer pricing refers to the terms and conditions surrounding transactions within a multi-national company. This is explained in Annex 7.
Unilateral downward adjustments	In cross-border transactions, a downward adjustment is considered "unilateral" when it is applied by one tax authority, whether or not there has been a corresponding upward adjustment has been applied by the State where the other party to the transaction is subject to tax.

[2] https://www.oecd.org/ctp/glossaryoftaxterms.htm

1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

As President Von der Leyen in her 2022 State of the Union Address said, *"We need an enabling business environment (...) as our future competitiveness depends on it"*. It was announced in the Communication on Business Taxation for the 21st Century in May 2021[3] that the European Commission, drawing inspiration from the achievements in the context of the OECD/G20 Inclusive Framework Two-Pillar proposals, will table a legislative proposal for a common corporate tax framework for groups of companies in 2023. This is also included in the Commission Work Programme 2023[4], and it could be relevant from an own resource perspective, as set out in the 2021 Communication on the next generation of own resources for the EU Budget[5].

To address the current challenges related to corporate taxation in the internal market, particularly with regard to corporate groups, this impact assessment covers a proposal known as 'Business in Europe: Framework for Income Taxation', or 'BEFIT', and a complementary proposal to introduce a common framework for transfer pricing Therefore, the impact assessment will look at:

a) laying down of a common set of rules for computing the tax base of primarily large groups of companies in the EU (BEFIT) and,
b) integrating key transfer pricing principles, covering all transactions between associated enterprises, into EU law, to put forward certain common approaches for Member States.

1.1. Business in Europe: Framework for Income Taxation (BEFIT)

BEFIT is not a new tax, but a harmonised framework to determine EU businesses' taxable income in the Member States where they are established. **The rationale for this new initiative is threefold**.

Firstly, the idea to develop a harmonised corporate tax framework in support of the internal market has consistently been part of the EU policy history and first appeared in policy documents of the European Economic Community as early as the 1960s.

As we celebrate 30 years of the internal market, there are still no common rules for calculating the taxable income of EU businesses, but 27 different national systems, making it difficult and costly for companies to operate and grow and fully benefit from the internal market. Complexity increases tax uncertainty and tax compliance costs as soon as businesses start operating in more than one Member State. This unnecessarily discourages cross-border investment in the internal market. It also puts EU businesses at a competitive disadvantage, especially when compared to businesses operating in markets of a comparable size elsewhere in the world. The discrepancies in the interaction of 27 corporate tax systems create an uneven playing field which can cause distortions in the market and influence business decisions in investment and the financing of projects. It also leads to loopholes and complexities that open opportunities for aggressive tax planning or result in double or over-taxation. Simpler tax rules could help stimulate investment and

[3] COM(2021) 251 final.
[4] https://commission.europa.eu/strategy-documents/commission-work-programme/commission-work-programme-2023_en
[5] COM(2021) 566 final.

growth in the EU by reducing cross-border obstacles and freeing resources currently used for tax compliance towards economic activity. In an increasingly globalised and digitalised economy and an ever-closer integrated internal market, this remains of paramount importance.

Secondly, valuable insights gained from many years of Council negotiations and related analysis of taxation files can now be used to design BEFIT. Long negotiations on files like the first Parent-Subsidiary Directive (proposed in 1969[6] and adopted in 1990[7]), the Interest & Royalties Directive (first proposed in the early 1990s[8] and adopted in 2003[9]), and on the 2011[10] and 2016[11] CCCTB proposals, triggered valuable detailed technical analysis and a thorough exchange of views. This contributed to enhancing EU expertise in the field and about half of the measures of the ATAD[12] sprang from these discussions. The discussions of the 2011 and 2016 proposals concentrated on several items of the tax design that determine around 90% of the tax base.

It should be noted, though, that Member States also converged considerably in their approaches during those negotiations. For example, the use of financial accounting statements to calculate the taxable base, as envisaged by BEFIT, reflects this work by Member States. The same approach can be found in the Pillar 2 Directive, which the Member States unanimously adopted in 2022 and which follows the agreement reached internationally on the Two-Pillar Solution of the OECD/G20 Inclusive Framework[13]. Pillar 2 sets a minimum effective corporate tax rate and to determine this, the tax base is calculated starting from the consolidated financial statements of the group. The BEFIT proposal takes inspiration from this breakthrough, building on concepts with which both companies and Member States are already familiar to deliver further simplification for businesses in the EU[14].

In addition, key concepts of the previous corporate tax initiatives have in the meantime been taken up in other EU and international contexts. In 2020, the Council, the Parliament and the Commission agreed that a common corporate tax base could be the basis for an additional new own resource that the Commission will propose.[15] In 2021, the Member States agreed to use formulary apportionment

---

[6] COM/1969/6/FINAL, OJ C 39, 22.3.1969, p. 7–9.
[7] Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.
[8] SEC(90) 601 final; COM/90/571FINAL, OJ C 53, 28.2.1991, p. 26–29.
[9] Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States.
[10] COM(2011) 121/4 final.
[11] COM(2016) 685 final; COM(2016) 683 final.
[12] Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.
[13] https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf -138 member jurisdictions (including all Member States that are part of the OECD/G20 Inclusive Framework) have agreed to the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy.
[14] For a more detailed explanation on the two Pillars and their relations with BEFIT, see Annex 6.
[15] Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources.

for re-allocating taxable profits as part of Pillar 1 of the agreed statement on the Two-Pillar Solution of the OECD/G20 Inclusive Framework[16,17].

Thirdly, the context for EU tax policy has changed significantly. Technological progress and enhanced administrative capacity of Member State tax authorities have made the prospect of implementing and managing an EU-wide tax framework a more efficient and feasible proposition. Furthermore, in the wake of the COVID-19 crisis and in the context of economic uncertainty caused by the Russian war of aggression against Ukraine, reliable and sustainable public revenues are more important than ever. Other megatrends such as globalisation, digitalisation, climate change, environmental degradation, an ageing population, and a transforming labour market also require Member States to reflect on their tax mix and their priorities. For instance, while globalisation and digitalisation can contribute to economic growth and help reduce tax compliance costs, they may create new tax planning opportunities to manipulate and erode the tax base. In response, the EU and Member States have progressively adopted a variety of anti-tax evasion and avoidance measures. While these have been successful in addressing specific issues, they have added layers of complexity to Member States tax systems that businesses have to navigate.

In view of the above, it has become more pressing for EU tax policy to ensure that Member State tax bases are robust, sustainable and protected against abuse while reducing complexity in the internal market. Accordingly, the Commission intends to propose a new, comprehensive, more straightforward, and effective reform that will provide the Member States with a corporate tax framework that is fit for this purpose. The proposal will integrate the lessons learned from previous initiatives and reflect the changed context and tax policy landscape. More specifically, it will build on the following elements of the design of the two Pillars. The BEFIT rules for the computation of the tax base can: (i) draw inspiration from the way that the Pillar 2 Directive computes a tax base for the purpose of verifying whether corporate tax was due at the minimum effective rate; and (ii) build on the agreed approach of Pillar 1 for the allocation of taxable profits. These significant shifts in the structure of international tax rules in recent years make the key building blocks of BEFIT necessary to implement[18].

Since the Commission announcement in May 2021, the initiative has generally received support from civil society. The European Parliament supported the rationale of the Commission's proposal on BEFIT when calling for the adoption of new legislative proposals in 2022-2023[19]. BEFIT follows up on requests made by many stakeholders in the field of taxation at the Conference on the Future of Europe. Finally, the Council of the European Union and the European Parliament agreed

---

[16] Pillar 1 is the reallocation of taxing rights to market jurisdictions based on a formula. The OECD is currently finalising the technical work to develop a Multilateral Convention to give effect to Pillar 1 rules. The Commission is committed to present a legislative proposal to implement Pillar 1 within the EU once the OECD work are concluded. For a more detailed explanation of the OECD Two Pillar Approach and its interactions with BEFIT, see Annex 6.

[17] Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy – 8 October 2021, OECD/G20 Base Erosion and Profit Shifting Project.

[18] For a more detailed explanation of the OECD Two Pillar Approach, please see Annex 6.

[19] European Parliament resolution of 10 March 2022 with recommendations to the Commission on fair and simple taxation supporting the recovery strategy (EP follow-up to the July Commission's Action Plan and its 25 initiatives in the area of VAT, business and individual taxation) (2020/2254(INL))

as part of the 2020 Interinstitutional Agreement[20] that the Commission will present a proposal for new own resources linked to a common corporate tax base, which could build on BEFIT.

1.2. Framework for transfer pricing

Most Member States are also members of the Organisation for Economic Cooperation and Development (OECD) and are therefore committed to follow the OECD principles and recommendations. Article 9 (Associated Enterprises) of the OECD Model Tax Convention on Income and on Capital sets out the conditions for primary adjustments and for corresponding adjustments where economic double taxation arises. Although article 9 endorses the application of the arm's length principle it does not set out detailed transfer pricing rules.

Over time the OECD has developed the so-called OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD TP guidelines) which provide guidance on the meaning and application of the arm's length principle, primarily for OECD member countries to use in resolving transfer pricing disputes under tax treaties. Out of the 27 Member States, 23 are member of the OECD members (Malta, Cyprus, Bulgaria and Romania are not members of the OECD) and therefore, politically committed to follow the OECD TP guidelines to interpret the arm's length principle. However, despite the political commitment, the status and role of the OECD TP guidelines currently differs from Member State to Member State. In addition, **at the level of the Union the transfer pricing rules are currently not harmonised through legislative acts.** The domestic legislation in all Member States provides for some degree of a common approach on the basic principles by following the arm's length principle, but the specific rules and applications are not identical across Member States. This causes profit-shifting and tax avoidance opportunities, litigation and double taxation, as well as high tax compliance costs.

1.3. Introducing the initiative

The initiative is twofold and provides a holistic, coordinated and simplified framework to determine businesses' taxable income across the EU. More specifically, the proposals involve a common set of rules for the corporate income tax base of companies within large groups. This is a new framework that replaces the current 27 different ways for determining the taxable base in the national corporate tax systems for the groups of companies that fall within its scope. It will consist of common rules for computing the tax base of each group member and subsequently, aggregating and allocating the corporate tax base of the group across the EU. The transfer pricing aspects of this initiative are meant to endorse the arm's length principle and the OECD transfer pricing guidelines in EU legislation and also lay a steppingstone for Member States to agree to common approaches to transfer pricing[21] in the future. The aim is to ensure consistency in the way Member States treat

---

[20] Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources, EUR-Lex - 32020Q1222(01) - EN - EUR-Lex (europa.eu).

[21] Transfer pricing refers to the terms and conditions surrounding transactions within a multi-national company. It requires corporate taxpayers to determine the price at which transactions between associated enterprises must be set, in order to reflect the value of a comparable transaction between unrelated parties. In this way, the income should be allocated in a manner that is reasonable in the market. Currently, each Member State has its own transfer pricing rules and practices. This is explained in more detail in Annex 7.

transactions between associated enterprises and, thereby, prevent profit shifting, increase tax transparency, and reduce tax compliance and litigation costs for companies.

While the approach is clear, the specific design for the common framework on BEFIT and transfer pricing is associated with various policy options. This report assesses the impact of the policy options by reference to three combinations of the options under each of the two aspects and concludes on the preferred Version (preferred package of options).

2. PROBLEM DEFINITION

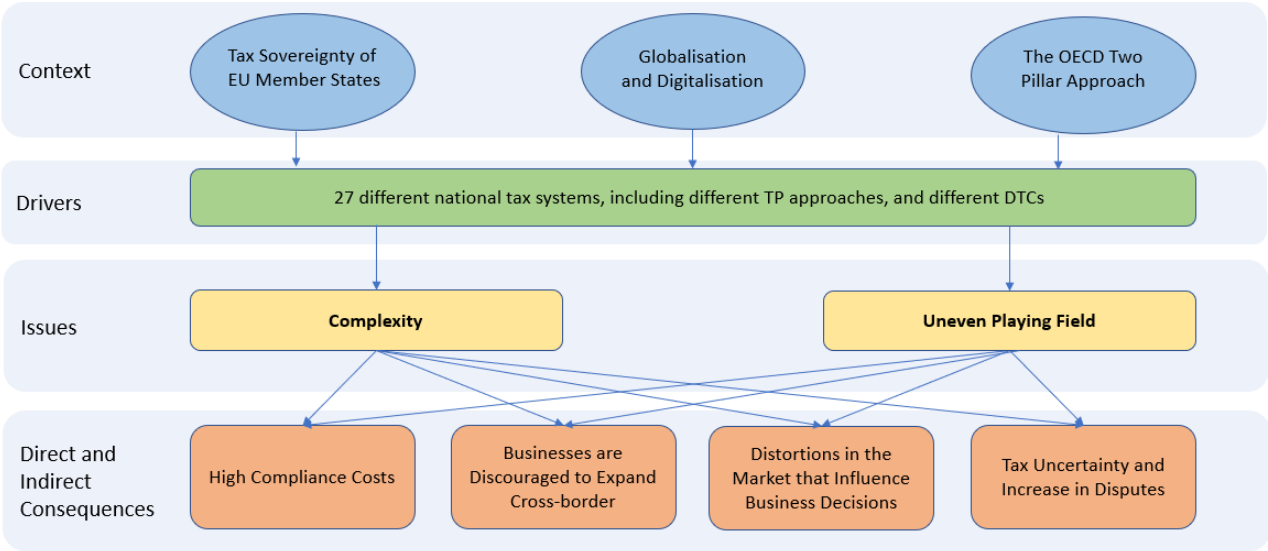
This section defines and analyses the problems and their drivers and assesses the evolution of these problems in the absence of EU policy intervention. The 'Problem tree' in Figure 1 presents the context, the drivers, the problem and the direct and indirect consequences that the initiative will be designed to address.

2.1. What are the problems?

The current systems of corporate income taxation in the EU give rise to high complexity and an uneven playing field for businesses. It was confirmed by stakeholders in the public consultation and the Call for evidence that this translates into businesses facing high compliance costs, barriers to cross-border operations, high risks of double or over-taxation leading to tax uncertainty and frequent, time-consuming legal disputes. The stakeholder consultations are summarised in the synopsis report in Annex 2. For instance, a large business association explained that while the international community cooperated on combatting tax fraud and evasion and EU directives aim to coordinate and strengthen tax rules, the implementation has not been consistent and coordinated among Member States which has led to misaligned tax bases in the EU, increased administrative burdens and significant tax compliance costs for businesses. A large firm also pointed out that tax disputes related to intra-EU transfer pricing and withholding tax elimination have increased.

These tax barriers for businesses impede the proper functioning of the internal market and hamper the prospect for achieving its potential in terms of efficiency gains. As a result, the competitiveness of the internal market is undermined. The problem that the initiative aims to address is therefore complexity and an uneven playing field and its inherent consequences as detailed below.

Figure 1 – Problem Tree



Tax complexity is an inherent feature of 27 jurisdictions, each designing their own rules according to national or regional circumstances and preferences. As governments try to adapt to new economic realities (e.g., globalisation and digitalisation) and to the emergence of new business models, the fragmented response among Member States has led compliance with more than one tax system in the internal market to become more complex. In addition, the unpredictability and inconsistency of tax administration practices across 27 Member States, as well as the limited effectiveness of dispute prevention and resolution mechanisms, contribute to tax complexity.

Recent research, including the Tax Complexity Index, indicates that tax complexity has increased significantly in the past years.[22] In addition to the multitude of design rules of each system as described below, the increase can be in part explained by the introduction at global level of measures to tackle tax fraud and evasion and aggressive tax planning. Transfer pricing regulations, in particular, appear to drive much of the complexity which relates to documentation requirements and the ambiguity and interpretation of these regulations. Moreover, the complexity of corporate tax systems is further associated with the multitude of legal provisions on anti-abuse rules, investment incentives and corporate reorganisations. Recent policy responses to both the COVID-19 crisis and to the economic uncertainty caused by the Russian war of aggression against Ukraine may add to the complexity.

A related problem is the **uneven playing field.** Beyond corporate tax rates and incentives, corporate tax systems in the EU have divergent features, for instance in the field of tax depreciation or tax-deductible items, and businesses operating across the EU may face stricter or more flexible tax interpretations depending on the Member State. Each of these systems lays down disparate administrative requirements for compliance and will interact differently with other tax systems, for instance, by way of a multitude of bilateral tax treaties. It follows that the resulting tax liability

[22] See for example, Hoppe, Schanz, Sturm, Sureth-Sloane (2021): The Tax Complexity Index – A Survey-Based Country Measure on Tax Code and Framework Complexity, *European Accounting Review*, DOI: 10.1080/09638180.2020.1852095.

computations and the required resources to comply with tax obligations tend to vary from one Member State to another. These differences lead to an uneven playing field for businesses across the EU.

2.2. What are the problem drivers?

Different national tax systems and many bilateral tax treaties

Corporate income taxation in the EU is characterised by 27 different corporate income tax systems and 27 distinct tax administrations. Each of these systems computes the national corporate tax base of businesses that are established in the respective Member State. A business that operates in all 27 Member States must therefore have the capacity to cope within 27 systems of corporate tax laws before it can file its 27 different tax returns. In addition, requirements and procedures for filing corporate income tax returns vary across Member States.

All systems have one common aim, i.e., to define the rules to arrive at the taxable results (profit or loss) for each taxpayer. Gross income (revenues) is generally taken as the starting point, on which tax laws allow certain expenses to be deducted. Among these deductible expenses, tax depreciation and amortisation of fixed assets generally have the largest impact. Additionally, there are adjustments for items of the base which are relevant for longer than a year, such as long-term contracts or provisions for future risks, and measures to take account of inflows and outflows of passive income, e.g., dividends, interest, royalties and rentals. While the aim is the same, the application of these items (e.g., rates, caps) can vary substantially across Member States. By way of example, as shown in the Annual Report on Taxation 2023[23], statutory tax rates vary among Member States from 10% to 31.5%. The model based effective tax rates which consider, amongst other things, tax support schemes put forward by governments vary from 9% to 29%. The same Report shows how various tax incentives vary across countries. Depreciation rates can vary significantly across countries by type of asset: e.g., just for fixed tangible assets it ranges from 2 years to 10 years and some countries use the so-called useful life with minima and sometimes maxima, while others use accelerated methods.

For cross-border businesses, which have income and expenses in multiple countries, each country also has to apply a method to determine which part of the income they will tax, and whether they allow foreign expenses to be deducted. The common method at national level for allocating the income of cross-border businesses is transfer pricing.[24] Each country currently sets a method nationally,[25] which means the same income may be taxable multiple times (or may not be taxed at all).[26] Foreign expenses, on the contrary, are rarely deductible. Cross-border loss relief is largely absent from national tax systems.

---

[23] See here https://taxation-customs.ec.europa.eu/taxation-1/economic-analysis-taxation/annual-report-taxation_enAnnual Report on Taxation (europa.eu) for a detailed analysis of tax systems across Member States

[24] Transfer pricing is explained in Annex 7.

[25] With the exception of common requirements that stem from CJEU case law, in the case of transfer pricing.

[26] This is regardless of the method chosen. Double taxation and double non-taxation are possible when countries have different transfer pricing practices, when one country uses transfer pricing and another uses a different allocation method, as well as when countries use different formulae.

Mismatches in the interaction between different national tax systems can result in double or over-taxation, or tax evasion and avoidance opportunities. Countries have also adopted a range of measures to address these issues, such as bilateral treaties, exchange of information, anti-abuse measures, and dispute prevention and resolution provisions. These are therefore also common features in national tax systems, but as researchers indicated in the public consultation, a fundamental concern remains regarding cross-border inconsistencies compared to the consistency of tax regimes for purely domestic situations.

In sum, although each of the national systems may feature similar elements for calculating the tax base, the legal qualification and practical application can differ widely. National rules have had different trajectories, have been subject to frequent changes to address variable political objectives, and although bilateral tax treaties and anti-abuse measures are often comparable and based on model rules, they have resulted in a multitude of rules that differs for each country. Hence, businesses that operate in a cross-border environment involving numerous Member State jurisdictions do not only have to comply with a complex combination of national legislation, but they have to deal with a bilateral international approach to allocating income through tax treaties. This illustrates only part of the source of complexity that companies must deal with.

For some companies, the need to navigate such complexity may constitute a significant barrier to do business. Almost two thirds of the public consultation survey respondents agree or strongly agree that the current situation with 27 different national corporate tax systems gives rise to challenges in the internal market. The next sections look at the problem and its consequences in more detail.

2.3. What are the consequences of the problem?

There are several negative direct and indirect consequences arising from tax complexity and an uneven playing field.

2.3.1. High tax compliance costs

The variety of features that permeate national tax systems, the discrepancies in the application and interpretation of such features, as well as differences in general administrative procedures across Member States have an impact on the tax compliance burden. A taxpayer has to bear an overall burden from the tax system, which consists of i) the actual amount of tax due, plus ii) the costs incurred to comply with the applicable tax regulations (e.g., costs associated with legal and accounting advice and time to file tax returns which multiply with the number of countries where the company has its activity). From the economic perspective of a taxpayer, administrative costs related to tax compliance can be regarded as an efficiency loss. This is because administrative tax compliance costs reduce the profits of businesses and increase the costs for tax administrations without leading to higher tax revenues. Complex tax compliance also creates broader economic costs and inefficiencies that do not immediately materialise as expenses: legal uncertainty and non-transparent systems can be significant obstacles to investment and thus hinder economic growth. Compliance costs can, therefore, be considered as an inherent waste of resources and a 'deadweight loss' which is undesirable for the entire society.

Even if one looks only at the directly related expenses, tax compliance costs for businesses are found to be high. A comprehensive survey-based study presenting an extensive analysis of the administrative costs to comply with tax obligations (tax compliance costs) has been carried out on

behalf the European Commission (2022).[27] This study estimates the administrative burden[28] of tax compliance for small and large businesses in Member States and the United Kingdom and finds that '*differences in the broader public administration of the countries do have an impact on the burden of compliance'*. In general, businesses incur an annual cost in meeting their tax compliance obligations that amounts to 1.9% of their turnover. Businesses in these 28 countries spend an estimated annual amount of around EUR 204 billion to comply with their tax obligations (tax compliance costs for all types of taxes). Furthermore, tax compliance costs have not declined over time. Total corporate tax compliance costs increased significantly (i.e., 114%) from 2014 to 2019.

Tax compliance costs are positively correlated with cross-border activities. This is because in such a context, two or more different sets of national tax rules would have to be applied in addition to possible common European and international norms. To demonstrate, a multivariate regression analysis was carried out on the above-mentioned survey's firm-level data. This is outlined in Annex 4. It shows that, everything else being equal[29], firms crossing borders will have significantly higher CIT related compliance costs. However, the effect of going international on compliance costs strongly interacts with the availability of a 'simplified tax regime' (as explained in Annex 4). Those are tax rules which are less complicated and easier to comply with, relative to regular CIT tax rules. Cross-border operating firms could reduce their CIT related compliance costs significantly only if they are subject to a simplified tax scheme. In this case, their compliance costs are one third below the cost of those firms which are not subject to simplified schemes, all other firm characteristics being the same. Simplified tax rules therefore offer a significant premium for firms operating in more than one jurisdiction. This argues for a comprehensive EU-wide corporate tax reform, making some tax rules common to groups of firms and making it more straightforward and less costly for firms to comply with these rules.

2.3.2. *Distortions in the market that influence business decisions*

The 2019 Flash Eurobarometer 507 "Businesses' attitudes towards corruption in the EU"[30] looked at how respondents agree with the statement "The complexity of administrative procedures is a problem when doing business". For the majority of Member States (17/27) more than 50% of their businesses agree with this statement, for several (12) it is more than 60% and in 4 Member States more than 75% of businesses agree with this statement. To the extent that tax compliance costs are associated with administrative procedures and with calculating and filing tax returns, these figures could be a proxy for how businesses feel about tax compliance costs and in the way they influence businesses decisions.

Indeed, as businesses grow larger and expand their operations, they need to make investment decisions, including on where to continue their expansion. In an increasingly integrated economy, such decisions can be numerous. The statistics of Country-by-Country Reporting (CbCR), for

---

[27] European Commission, Tax Compliance costs for SMEs: An update and complement" Final Report by VVA and KPMG, Luxembourg: Publications Office of the European Union, 2022.

[28] The administrative costs consist of two different cost components: the business-as-usual costs and administrative burdens. While the business-as-usual costs correspond to the costs resulting from collecting and processing information that would even be done in the absence of any legislation, administrative burdens stem from the part of the process which is done solely because of a legal obligation.

[29] The analysis controls for different firm sizes and differences firms' country- and sector-related specificities.

[30] See Businesses' attitudes towards corruption in the EU - Publications Office of the EU (europa.eu)

example, reveal that in 2018 a total of 29,500 MNE groups worldwide reported operations affecting 174,800 entities in the EU. Thus, if one counts only the entities involved in CbCR, there is an average of at least six EU entities per group, so that MNEs would on average have to comply with six different sets of corporate income tax rules.

These businesses, if and when they invest, have to undergo costly and time-consuming administrative procedures with the tax authority of each jurisdiction where they have a taxable presence. As said, the overall tax liability of groups usually has to be established in accordance with a complex mix of national tax rules which, depending on the international presence of the group, can engage more than one national system. This does not only require businesses to consider different tax rates and incentives, but also up to 27 different tax bases in the EU, with sometimes an unclear compilation of exemptions and tax expenditures. In addition, the tax treatment of a business can, independently from tax rates, vary significantly depending on the combination of Member States in which it is active, and a study has found that compliance costs in countries with higher compliance costs can be up to 3 times higher than in countries with the lowest costs[31]. This complexity increases with the number of Member States where businesses are active, which can be many for large groups.

Consequently, the design of each national tax system can influence the decision to invest and where and how much to invest, and in turn, it affects the level playing field in an integrated market. Put simply, some businesses may be inclined to invest in a particular Member State based mainly on the applicable corporate tax system, rather than on non-tax but important economic factors (e.g., skills, infrastructure, etc.), which can result in economic inefficiencies.

These differences could be associated with the observed uneven distribution of net inward and outwards FDI stock as a share of GDP across the EU (Annual Report on Taxation, 2023). As explained there in more detail, in some countries the FDI stock can be a lot higher compared to their GDP. While much may be explained by economic reasons, part may be explained by tax complexity and differences in tax treatment.

In sum, while in many other areas, there is significant progress in EU law to ensure that businesses can operate in the internal market under common standards, the proliferation of different corporate tax systems can still lead to distortions in investment decisions by businesses. By contrast, if there was a single set of corporate tax rules in the internal market for the computation of the tax base, such distortions could be significantly mitigated or avoided altogether.

2.3.3. *Tax uncertainty and increase in disputes*

Another consequence of complexity is tax uncertainty and the risk of double taxation and/or over-taxation, which results in tax disputes. This section first describes how double and over-taxation remain a problem. Next, it looks at legal rulings and the number of disputes to demonstrate that this remains a significant challenge to companies with associated costs.

[31] See FISC subcommettee SME tax compliance costs - IPOL_STU(2023)642353_EN.pdf

2.3.3.1. Double taxation

Double taxation can occur in the context of cross-border business restructurings and payments for which the state of destination does not fully relieve the tax paid in the state of origin. The absence of clear obligations, in particular when it comes to withholding taxes and taxes on capital gains, may also give rise to different interpretations resulting in double taxation.

Another area with an inherent risk of double taxation is transfer pricing. According to the current international standard, i.e., the arm's length principle, cross-border transactions between entities of the same group must be taxed on the same basis as comparable transactions between independent enterprises under comparable conditions. While double non-taxation in this area, an equally undesired outcome, is primarily dealt with through rules against aggressive tax planning, double taxation could occur if one Member State unilaterally adjusted the price set by a company on a cross-border intra-group transaction upwards, without the other Member State making an appropriate corresponding adjustment downwards. Feedback from the public consultation also included that the complexities of transfer pricing may even result in higher taxes for businesses than estimated. This also leads to tax disputes.[32] In the impact assessment to the Directive on tax dispute resolution mechanisms,[33] the total amount of tax involved in disputes pending at the end of 2014 was estimated at EUR 8 billion in the area of transfer pricing, whereas the total amount of all cases was EUR 10.5 billion. This corresponded to 3% of the total corporate income tax levied in the EU, which can give an idea of the magnitude of this issue. Recent studies also confirm that legal costs and the unilateral application of transfer pricing rules negatively impact investment and distort capital allocation.[34]

Regarding the overall prevalence of double taxation, 94% of corporate taxpayers that participated in a public consultation by the European Commission indicated that they had encountered a double taxation dispute.[35] This showed that, despite the existence of EU law instruments that aim to address double taxation[36] and bilateral tax treaties[37], the risk of double taxation is a significant problem for many businesses with cross-border activity. While bilateral tax treaties can resolve some of the double taxation occurrences, the heterogeneity among these treaties and differences in

---

[32] For numbers, see: https://taxation-customs.ec.europa.eu/taxation-1/statistics-apas-and-maps-eu_en

[33] SWD(2016) 343 final.

[34] E.g., R. De Mooij and L. Liu (2018), 'At a cost: the real effects of transfer pricing regulations'; S. L. Teles, N. Riedel, K. Strohmaier (2022) 'On the Real Consequences of Anti-Profit Shifting Laws: Transfer Price Documentation Rules and Multinational Firm Investment'.

[35] European Commission (2011). Summary Report of the Responses Received to the Commission's Consultation on Double Taxation Conventions and the Internal Market See section "Main Conclusions" - Annex A.

[36] The legal instruments applicable in this area are: COUNCIL DIRECTIVE 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (recast); COUNCIL DIRECTIVE 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States; COUNCIL DIRECTIVE 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (codified Version).

[37] A tax treaty, also called double tax agreement (DTA) is an agreement between two countries to avoid or mitigate double taxation. Such treaties may cover a range of taxes; however, the most common ones are in relation to income and capital taxes, including in respect of companies. Tax treaties tend to reduce taxes of one treaty country for residents of the other treaty country to reduce double taxation of the same income. Many tax treaties were already in place when the public consultation was conducted in 2010.

their interpretation and application could also give rise to double taxation. In addition, although almost all Member States concluded bilateral tax treaties with each other, some gaps and mismatches remain. Some Member States have terminated their bilateral tax treaties. Treaty networks have been usefully updated with the OECD/G20 Base Erosion and Profit Shifting Project (BEPS) Action 6 and the Multilateral Convention for Implementing Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, but this has also increased complexity and thereby uncertainty.

2.3.3.2. Risk of over-taxation

The limited availability of loss relief[38], including cross-border loss relief between Member States, leads to taxation of business profits which may not always reflect the overall result of the group's activities. The non-availability of cross-border loss relief can therefore result in over-taxation. Cross-border relief is currently mainly available in specific and very limited circumstances involving "final" losses within the meaning of CJEU case law[39].

In most cases where a business operates in two or more Member States, it is prevented from utilising losses incurred in another Member State. It follows that a business may turn out to be more highly taxed, compared to if that business had set up the same operations in one Member State only, even if there can be legitimate business reasons for doing so. For instance, because of location and available workforce, it could be better for a business to import and manufacture goods in one Member State but distribute it in another Member State. The contracts and transfer prices between the two group members can be stable, while maybe the cost of importing the goods increases significantly at some point. In this situation, the profits from the selling the final products may perhaps not be set off against the losses from importing the materials. In the same vein, it can thus be concluded that such limitations can distort investment decisions and the effective organisation of groups operating in the internal market (cf. section 2.3.3).

2.3.3.3. Increase in tax disputes

The risk of double taxation and over-taxation for businesses operating cross-border leads to a **lack of tax certainty** due to possible **tax disputes** between tax administrations of different Member States in cases where they take different views in relation to the treatment of a specific transaction within their corporate tax system. To increase their tax certainty, some businesses seek to obtain **tax rulings** from a tax authority in respect of the treatment of certain transactions, including cross-border arrangements. However, if the tax ruling is unilateral, other Member States concerned may still challenge the agreed treatment of such transactions. Therefore, even when a unilateral tax ruling is obtained, there is a real risk of tax disputes and possible double or over-taxation.

The importance of **tax disputes** is attested by the instruments that have been put in place, and are frequently used, to try to resolve them. For example, the EU Arbitration Convention[40] established

---

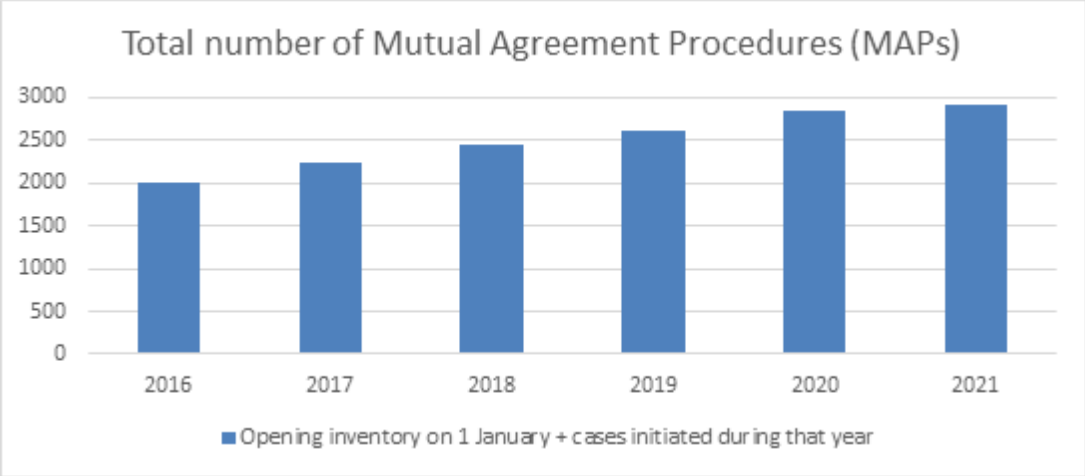
[38] Loss relief is a mechanism where a taxable loss suffered by a group company can be surrendered to another company of the same group, in order to offset/reduce taxable profits of the latter company.

[39] Marks & Spencer plc v David Halsey (Her Majesty's Inspector of Taxes) (Case C-446/03), 13 December 2005 [2005] I-10837.

[40] Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (OJ L 225, 20.8.1990, p. 10).

since the 1990s is a non-binding procedure to resolve transfer pricing disputes between Member States. As shown in Figure 2, the number of Mutual Agreement Procedures (MAP) between Member States under the Arbitration Convention is still increasing, which evidences that double taxation within transfer pricing is still a relevant issue.[41]

Figure 2 – Mutual Agreement Procedures (MAPs) under the Arbitration Convention



Additionally, the **Directive on tax dispute resolution mechanisms**[42] is a more recent hard-law instrument which can be used on the taxpayer's initiative. It provides legal certainty that certain disputes will be resolved within a given timeframe and covers, amongst others, transfer pricing disputes. Although dispute resolution mechanisms significantly facilitate the resolution of disputes, they do not prevent such disputes from occurring and often require a long timeframe before the parties reach an agreement. The root of the problem is therefore linked to the fact that a dispute arises in the first place.

For example, in 2021, there were some 2,300 ongoing MAPs[43] to settle disputes on questions of transfer pricing. According to the OECD, on average, these procedures take almost three years, and only half of them close with a full agreement.[44] Today, disputes associated with transfer pricing tend to be extremely lengthy (they may extend for over a decade), time-consuming and costly. Costs include those for staff of legal departments in companies, but also costly external legal advice. In 2017, the 2,400 firms captured by the above-mentioned survey had, on average, costs for outsourcing of compliance activities of more than EUR 4,000 per firm. For litigations in particular, the costs are a multiple of that amount. For example, German tax advisors could charge EUR 150 per hour.[45] A 40-hour week of work would then cost EUR 6,000, potentially resulting in a total cost per procedure of almost EUR 1 million if one assumes a duration of three years. Even this is a

---

[41] European Commission, Statistics on APAs and MAPs in the EU (europa.eu). The UK is excluded. See also: Mutual Agreement Procedure Statistics 2021 per jurisdiction - Inventory - OECD.
[42] Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.
[43] Included in the numbers shown in Figure 2.
[44] OECD, Multiannual Agreement Procedure Statistics.
[45] The fees for charges for tax advisors are regulated in many countries. In Germany, for example, the schedule of fees for tax advisors (Vergütungsverordnung) envisages a fee of up to EUR 75 per half an hour. Each week of work (40 hours) would then cost EUR 6.000.

lower-bound estimate as hourly fees for lawyers are usually much higher. Moreover, costs of litigation also include the teams in national tax administrations handling these cases.

2.3.4. Businesses are discouraged from expanding cross-border

One specific distortion that is of particular importance in the context of the internal market is the fact that complexity, and as a consequence a high tax compliance burden and tax uncertainty leading to potential litigation, hampers cross-border expansion altogether. In other words, complexity acts as a barrier for the expansion of businesses across borders in the internal market. Especially smaller groups may be affected by this when they wish to further develop their business, but also larger firms may for instance decide to concentrate their investment in a few jurisdictions to avoid dealing with many administrative or regulatory rules, including tax rules, while economically, it could be more interesting to spread operations. As a result, there may be less cross-border activity in the internal market and less direct competition between businesses. This in turn may impact negatively on innovation, investment, employment and growth in the EU. It would also hinder EU competitiveness vis-à-vis other global trading partners.

2.4. How will the problem evolve?

If no action is taken at the level of the EU to bring more simplification in the tax rules notably those regarding the calculation of the tax base for the taxpayers with extensive cross-border activity, the situation just described will persist, i.e., large tax compliance costs and high uncertainty and litigation costs, which are a deadweight loss and which can discourage expansion within the internal market and potentially inward foreign investment. Businesses report legal certainty and reduced complexity as important matters for economic decisions and wish to look at the internal market as one set of rules for compliance. While in some other areas, there is significant progress to simplify/converge in the definition of rules/standards, in what regards direct taxation complexity remains very significant as just described.

Moreover, the above discussed issues will not be prevented by existing EU policies. The Parent-Subsidiary Directive was adopted in the early 1990s, to eliminate double taxation of profits distributed by a company resident in one Member State to a parent company resident in another Member State. The Interest and Royalty Directive serves the same purpose. More recently, in 2017, rules on hybrids have been added to the Anti-Tax Avoidance Directive (ATAD) to deal with mismatches leading to double non-taxation where there is a different legal qualification of the same transaction between two Member States. However, these pieces of legislation do not cover the full range of issues, as transfer pricing compliance remains burdensome and expensive. This can be witnessed by the continued proliferation of transfer pricing expert advice in the legal and consulting profession. Disputes also remain prevalent and lengthy. In addition, within a group, some companies may be profitable and others loss-making in a certain tax year. In the current context, losses incurred in one Member State cannot be used against the profits of another company within the same group. This problem will continue to result in a risk of over-taxation.

Finally, it is important to mention that the status quo would be inconsistent with recent developments in the field of corporate taxation taking place at the international level, such as the OECD/G20 Inclusive Framework Two-Pillar Approach. The most recent example is the Pillar 2 Directive, as explained above and in Annex 6. Without EU intervention, large groups would have to go through uniform calculations worldwide to compute at which level they pay corporate tax but

within the internal market, they would still need to comply with multiple different rules for computing their tax liability in the first place.

3. WHY SHOULD THE EU ACT?

3.1. Legal basis

The legal basis for this initiative is Article 115 of the Treaty on the Functioning of the EU (TFEU). This provision allows for the approximation of laws of the Member States, which directly affect the establishment or functioning of the internal market. The initiative assessed here falls in the field of direct taxation and possess an aspect of primarily cross-border activity.

The rules of this initiative will provide a single corporate tax rulebook for the calculation of the tax base which will mainly be addressed to large groups of companies with taxable presence in the EU. As such, it will simplify tax rules for businesses in the internal market and is expected to stimulate investment and growth and contribute to ensuring more sustainable tax revenues for Member States. In addition, the framework for transfer pricing focuses on the practice of adjusting the price of transactions between associated enterprises and this refers to inherently cross-border operations.

The initiative therefore proposes changes to the status quo that can have a decisive and direct impact on improving the functioning of the internal market, by aiming to eradicate distortions. It simplifies existing rules as well as addresses complexity and its consequences, including tax compliance costs and tax uncertainty.

3.2. Subsidiarity: Necessity of EU action

In accordance with the subsidiarity principle laid down in Article 5(3) TFEU, action at EU level should be taken only when the aims envisaged cannot be achieved sufficiently by Member States acting alone and in addition, by reason of the scale or effects of the proposed action, can be better achieved by the EU.

Today's business models increasingly involve economic groups that operate globally, including across more than one Member State within the EU. In their conduct, groups have to adhere to different corporate tax systems in the 27 Member States. This is because the current framework of uncoordinated action, planned and implemented by each Member State individually, results in persisting fragmentation and complexity. This creates a serious impediment to business activity in the internal market.

Indeed, different country-specific rules imply high compliance costs for businesses active in cross-border operations within the internal market, as they must comply with various legal frameworks. This creates barriers; such a large administrative burden and tax uncertainty that discourage cross-border commercial activity. In addition, complexity associated with dealing with multiple tax administrations can give rise to lengthy and costly legal disputes and result in double or over-taxation, which again discourage cross-border investment. This situation is exacerbated by the fact that Member States' practices of applying the internationally agreed transfer pricing standards tend to vary (see Table in Annex 7). Such complexity and its consequences would be significantly reduced if businesses could benefit from a single EU-wide set of corporate tax rules, and this were coupled with closer coordination in applying the existing transfer pricing standards.

An EU-wide common set of rules would significantly limit the room for mismatches and, as such, address this problem in a comprehensive manner. The existence of 27 disparate corporate tax systems designed and managed at the national level inevitably overburdens compliant taxpayers and results in divergent tax treatments due to mismatches or unintended, different interactions between tax systems. This can limit sustainable growth across the EU because it can impede competitive economic activity and investment, including cross-border, and in turn limit tax revenues to be used for public expenditure. An EU-wide common set of rules would significantly limit the room for mismatches and, as such, address this problem in a comprehensive manner.

These problems are common to all Member States and cannot be effectively addressed by disparate national action. In fact, as they result from the very fragmentation and diversity of tax systems, national uncoordinated measures that would be put in place might have undesirable implications by adding further complication and forcing businesses to incur extra costs. In this context, an EU-wide initiative providing for a common set of rules would be effective in addressing such problems.

Similarly, while better cooperation between tax administrations may be beneficial to address some of the problems, this approach is mainly bilateral and can therefore be effective only to a limited extent. While double or over-taxation can indeed be prevented by double taxation conventions between Member States, such frameworks are corrective in that they intervene on the assumption that it would otherwise occur, and when it does occur, dispute resolution processes are lengthy and costly, as explained above. The approach is also of limited effectiveness when it comes to groups that operate in more than two Member States. Therefore, an EU-wide initiative is needed to be able to tackle the origin of double or over-taxation, or other forms of tax uncertainty, in the EU. An EU system can have technical features, such as the aggregation of the tax bases of the EU members of a group, that will eliminate the risk of double taxation and disputes. Moreover, an EU-wide platform such as the BEFIT Teams (explained below), which gathers tax inspectors from all concerned Member States, is also necessary to be able to provide early certainty instead of lengthy procedures.

The initiative assessed here aims to simplify the currently complex rules for corporate taxation in the internal market that result from the co-existence and interaction of 27 national and disparate corporate tax systems. Adopting a common approach would be the most effective way to correct the current distortions in the functioning of the internal market and achieve the desired outcome.

Since the problem is primarily of a cross-border nature, it can only be tackled by laying down legislation at the EU level. This initiative is therefore in line with the subsidiarity principle, considering that individual uncoordinated action by the Member States would only add to the current fragmentation of the legal framework for corporate taxation and fail to achieve the intended results. A common approach for all Member States would have the highest chances of achieving the intended objectives.

3.3. Subsidiarity: Added value of EU action

Action at the EU level would bring significant benefits to both businesses and tax administrations. Most key features of the initiative, such as a simplified calculation of the tax base and the allocation of aggregated profit to the eligible group members as well as a coordinated approach to transfer pricing, have a cross-border underpinning and could only be addressed, with an added value, within the context of a single set of rules. Common substantive corporate tax rules are also a prerequisite for administrative simplifications, such as a ‘one-stop-shop’ for groups of companies operating in the EU.

As explained above and in Annex 7, the allocation of profits among jurisdictions under the current systems is based on transfer pricing and specifically, the arm's length principle, the application of which is transaction-based and inherently subject to interpretation. This initiative would require that the allocable profit be computed in accordance with common rules, by either applying a limited number of adjustments to the financial statements of companies or by introducing a fully harmonised EU tax base, as set out in Chapter 5. Both these options would be expected to introduce the necessary unification across the EU and in this way, they would not only simplify the determination of the tax base for businesses, but also successfully tackle mismatches between 27 disparate national systems.

Moreover, a possible future formulaic approach to allocate profit within large corporate groups, which could eventually be designed at a later stage, could be based on factors that reflect a company's value and add objectivity to the exercise of sharing the base among group members. By limiting the margin for interpretation, a well-designed allocation rule would significantly reduce the number of disputes that currently arise in the application of transfer pricing rules. This would however only have added value if defined at EU level. If Member States use different factors or weightings, the risk of double taxation and disputes would remain.

Businesses and tax administrations would also derive a clear benefit from more clarity and certainty on transfer pricing rules. Consequently, enhanced tax certainty for transfer pricing for BEFIT groups as well as, more generally, a common approach whereby the OECD arm's length principle would be integrated in law and Member States would ensure a more consistent application of the OECD Guidelines, will bring added value at EU level.

In addition, for businesses active across the EU more broadly, the opportunity to comply with their fiscal obligations by referring to only one system of substantive corporate tax rules would bring gains in terms of administrative simplification. Such a system would be administered, to the extent possible, through a one-stop-shop, which would significantly reduce compliance costs for businesses. Dealing with the tax authorities of several Member States through a streamlined procedure would further minimise the number of disputes and ensure a consistent application of the rules. These two advantages, taken together, would have additional positive effects on the compliance of businesses, which cannot be achieved without EU intervention.

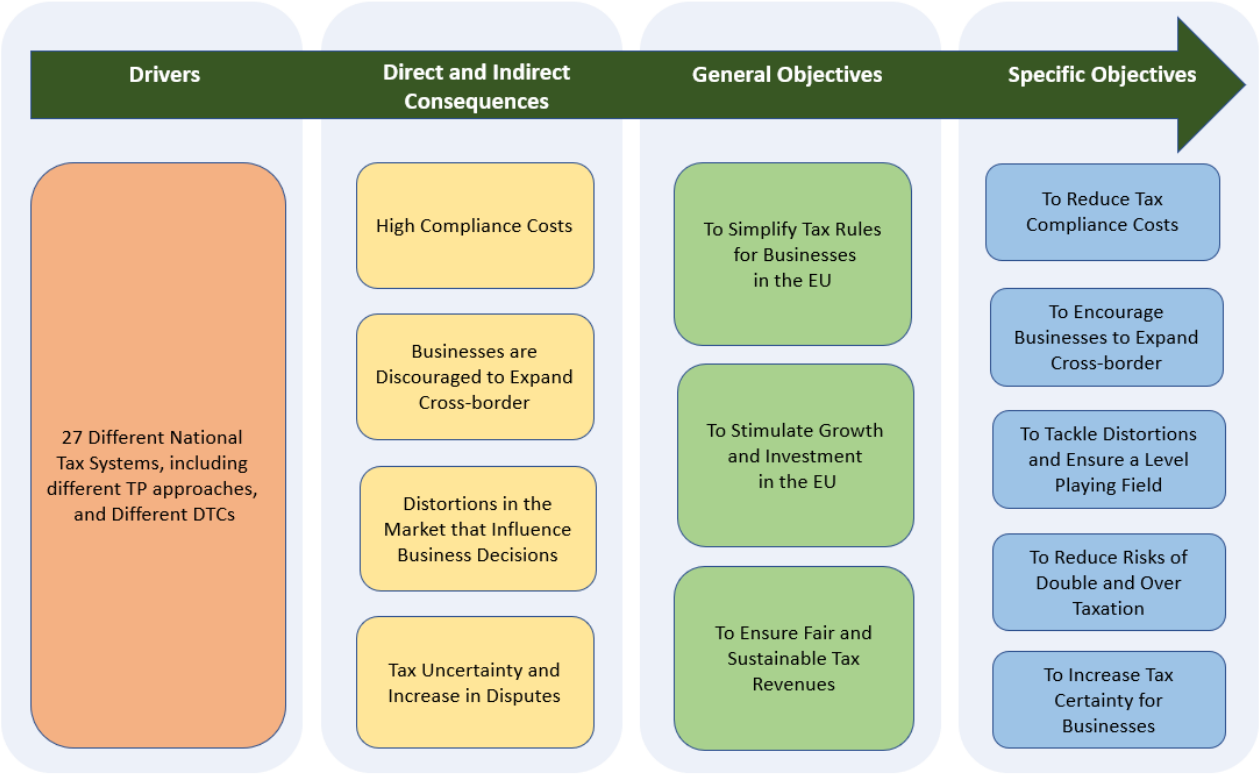
By decreasing compliance costs and tax obstacles, this initiative would in turn foster foreign and domestic investment as well as capital mobility in the EU for large groups, as businesses operating in different Member States should be able fully maximise the freedom of establishment and the free movement of capital without being hindered by tax regulatory obstacles.

Considering the scale and effects of the envisaged initiative, the objectives to attenuate the negative effects resulting from the current interaction of 27 disparate national tax systems and divergent transfer pricing practices and to create more favourable conditions for cross-border investment in the internal market would be better achieved at Union level.

4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

This section outlines the general and specific objectives that the initiative pursues to ensure a stable and consistent functioning of the internal market. The 'Intervention Logic' in Figure 3 presents these objectives jointly with the problem drivers and problems that the initiative aims to address.

Figure 3: General and Specific Objectives



4.1. General objectives

A primary objective of the initiative is to **simplify tax rules for businesses in the EU**. This should increase businesses' resilience by reducing compliance costs. The proposal will introduce a common framework with rules that are easier to comply with and that result in less cross-border tax disputes. Simpler rules would enhance tax certainty and facilitate the activities of companies that wish to operate in several Member States.

The proposal further aims to **stimulate growth and investment in the EU** by reducing the number of corporate tax systems that businesses must comply with in the internal market. It will make the environment for doing business more attractive[46]. By reducing the disparities between the existing corporate tax systems in the internal market, the proposal will also provide for a common approach to taxing profit that does not distort businesses' investment and financing decisions.

At the same time, this initiative aims to **ensure fair and sustainable tax revenues for Member States.** Taxation plays a fundamental role in raising resources for governments. Tax revenues provide governments with the means to invest in infrastructure and R&D and to deliver public services. This should be done in an effective and efficient manner being accountable to citizens and responding to their needs. As mentioned above, especially after the COVID-19 and the current

[46] As explained in Annex 3, the objectives of the initiative also relate to the Sustainable Development Goals (SDGs). Notably, the general objective to stimulate growth and investment should translate into a positive impact on SDGs no. 8 and 9.

energy crisis, there was a growth in general government expenditures and accordingly, an increased need for tax revenues.[47] This is made more important in view of the megatrends described before and to respond to the political priorities of the Commission including to fund the digital and net-zero transition.

4.2. Specific objectives

The specific objectives of the initiative contribute to achieving the general objectives. The specific objectives link directly to the problem and its consequences, as identified in Chapter 2.

The initiative aims **to reduce compliance costs for EU businesses**. Compliance costs can act as a barrier to growth. Therefore, it is important that these barriers be alleviated. Considering that EU businesses would be made subject to, or given the possibility of applying, a simplified set of tax rules, compared to the current environment, it should take less resources for businesses to comply. The envisaged common approach to transfer pricing can also have a significant impact on lowering the businesses' budget for tax compliance, as the formalities for compliance and the number of disputes is expected to be reduced.

Secondly, the initiative will contribute to **reducing distortions that influence business decisions and mitigate fragmentation in the internal market**. Several aspects of the initiative could help achieve this objective.

This initiative would provide a level playing field for groups of companies within its scope by establishing a uniform set of corporate tax rules for the members of the group operating in the internal market. In-scope businesses would thus benefit from a tax environment where tax competition would be kept within the limits of fairness and not be polluted with harmful features that would solely aim to attract investments based on tax motives. Therefore, when businesses had to take decisions about which Member State to invest in, or expand their operations to, they would face a more uniform corporate tax system, which would ensure that investment decisions are free from certain distortions. In addition, this objective would be reinforced by the gradual development of common and consistent approaches among Member States' tax authorities to the interpretation and application of transfer pricing norms. This would improve the business environment in the EU and contribute towards a **level playing field for businesses in the internal market**.

The initiative will aim **to encourage cross-border expansion.** This specific objective can mostly be achieved by providing simplification of the tax framework and establishing common rules. In this way, the businesses, particularly national groups or groups of a smaller size, would not face a cliff effect, i.e., a sudden increase in the compliance and other burdens when expanding their operations cross-border. In parallel, the initiative also aims to encourage larger groups to achieve further cross-border expansion. As EU businesses come in all sizes and shapes, it is important that the encouragement for cross border expansion is available to all such businesses.

---

[47] Eurostat, *Evolution of total general government expenditure, EU, 1995-2020, % of GDP.png*, available at https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Evolution_of_total_general_government_expenditure,_EU,_1995-2020,_%25_of_GDP.png.

Thirdly, the initiative also aims **to reduce the risk of double and over-taxation and tax disputes**. Issues for transfer pricing, an area with an inherent risk of double taxation, will be addressed, first, through a simplification of compliance with arm's length for transactions between a group member and a (non-group) associated enterprise and, second, through common EU approaches to the application of certain discretionary transfer pricing concepts. This bifocal approach would thus ensure a greater focus on alleviating the risk of double taxation to a greater extent. Secondly, cross-border loss relief through the aggregation of tax bases among the companies in a group would eradicate the risk of over-taxation in this context. Third, the initiative intends to reduce tax disputes for businesses operating cross-border, through establishing an effective administration mechanism that would require engagement by national tax administrations.

Finally, the initiative aims to increase **tax certainty and fairness for business**. A clear outcome from both the targeted and public consultations was the businesses' desire for tax, and more broadly, legal certainty. Tax certainty has always been a high priority for businesses, often highlighted as a more important concern than the tax rate. This has become an even more important issue due to the vast number of ambitious reforms in international corporate taxation in recent years.

5. WHAT ARE THE AVAILABLE POLICY OPTIONS?

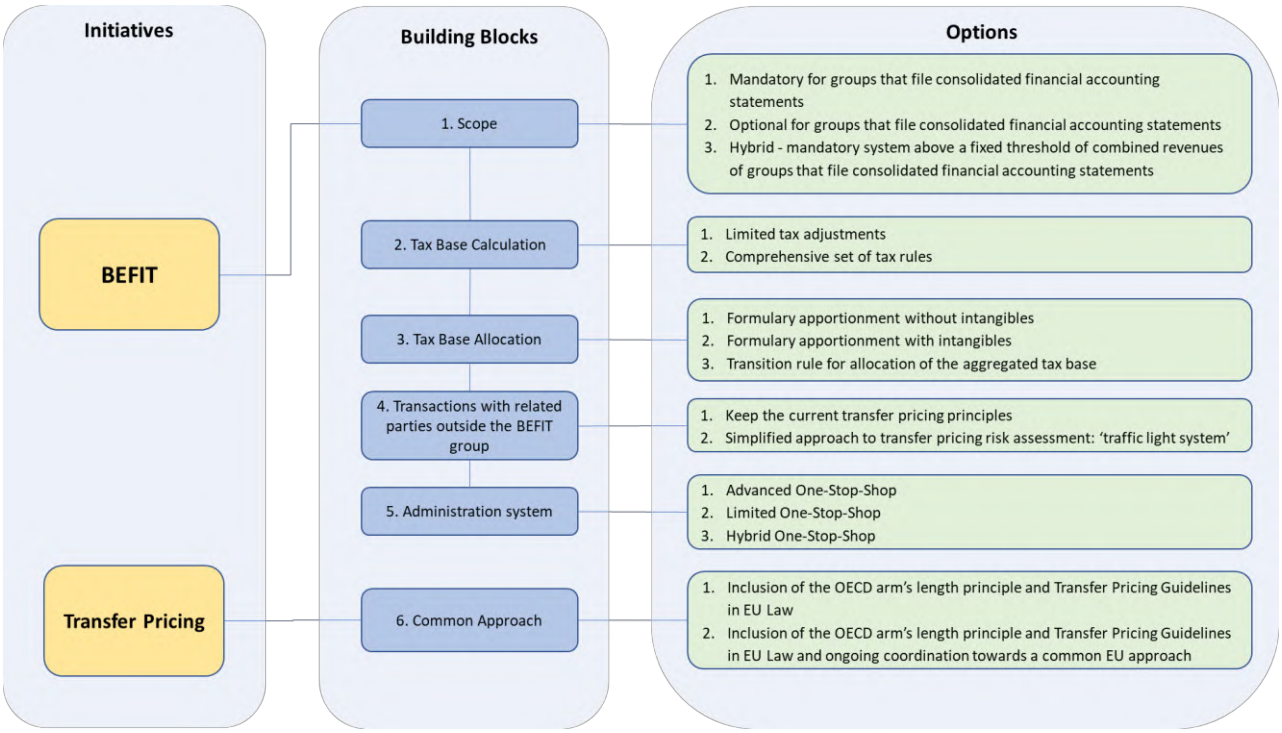
As explained above, the initiative to address current challenges in the field of corporate taxation involves a corporate tax system intended to apply to all sectors of economic activity without any envisaged exceptions based on the industry. As the initiative would replace the existing national corporate tax frameworks for the companies in its scope, they would be all-inclusive, i.e., no exemptions would apply to specific sectors of activity/industries (e.g., no exemptions for banks). There may however feature sector-specific rules (e.g., a carve-out for certain shipping income), in order to more accurately reflect the specific characteristics of certain industries and ensure that there are no distortions in the system. Its scope would mostly be delineated by choices about the size of groups, rather than the sector of activity. This is because the system would focus on primarily tackling challenges linked to cross-border businesses, which tend to be different for larger and smaller enterprises.

This initiative is twofold and covers options for:

A. **BEFIT** which is comprised of the following building blocks to arrive at a common set of rules for the corporate tax base of large groups: (i) scope, (ii) tax base calculation, i.e., to determine the preliminary tax result of each BEFIT group member, which would be aggregated at the BEFIT group level, (iii) allocation of the aggregated tax base to the eligible group members, (iv) transactions between BEFIT group members, on the one hand, and associated enterprises outside the BEFIT group, on the other hand, and (v) the administration of the system. These five building blocks are all essential to any corporate tax system, therefore the analysis in this Chapter assumes that all five building blocks are necessary, and none can be dropped. In this light, the options assessed involve alternatives under each building block.
B. A **common approach to transfer pricing** which considers the options of (i) including the OECD arm's length principle and transfer pricing guidelines in EU law; or (ii) in addition to (i) also regulate the prospect for ongoing coordination towards a common EU approach to certain transfer pricing practices. This is aimed to apply to transactions between associated

enterprises, i.e., entities that have some degree of association but are not within the same tax group.

Figure 4: Overview: Initiative, Building Blocks and Options



5.1. What is the baseline from which options are assessed?

The baseline policy option is to keep the existing policy framework. This means that the EU continues with 27 different corporate tax systems and no simplification at EU level is offered to businesses. Businesses operating in all 27 Member States would continue to calculate their tax liability based on national corporate tax bases as there would be no common rulebook. Maintaining the existing policy framework also means that the profit allocation within multinationals would continue to be performed by reference to existing transfer pricing rules, with all the complexities and uncertainties that this entails, as outlined in Chapter 2, and without any EU-wide coordination in the application of the guidelines that interpret the arm's length principle.

5.2. Description of the policy options

5.2.1. BEFIT - a common set of rules for the corporate income tax base of companies within large groups

5.2.1.1. Scope

BEFIT rules will apply to the EU members of groups of companies that prepare consolidated financial accounting statements. These are companies which are resident for tax purposes in the EU ("EU tax resident companies") and also EU-located permanent establishments of companies resident outside the EU ("EU-located permanent establishments").

In simple terms, a group of companies is a collection of a parent company and its subsidiaries whereby the parent owns a controlling interest in, and exercises a function of control over, the subsidiaries. In the case of groups that have a dimension beyond the EU, BEFIT will only apply to the EU members of such a group.

Three options are considered: (i) mandatory for all, (ii) optional for all, and (iii) a hybrid option: mandatory above a certain revenue amount, and optional below that.

Option 1: Mandatory for all EU members of groups that prepare consolidated financial accounting statements

Under this option, all EU tax resident companies and the EU-located permanent establishments which are members of a group that prepares consolidated financial accounting statements fall within the scope of the BEFIT rules, regardless of the level of annual combined revenues of such group. Member States would continue to establish corporate tax rates at national level, but all the EU tax resident companies and EU-located permanent establishments of in-scope groups would calculate their tax base in accordance with the common (BEFIT) rules.

Option 2: Optional for all EU members of groups that prepare consolidated financial accounting statements

Under this option, all EU tax resident companies and the EU-located permanent establishments which are members of a group that prepares consolidated financial accounting statements could opt to apply the BEFIT rules, regardless of the level of the annual combined revenues of such group.

To avoid 'cherry-picking' practices, this option would require that, in the event of opting in, all EU tax resident companies and EU-located permanent establishments of the group would be included in the option and for a set minimum period of time. Member States would continue to set corporate tax rates at national level, but all members of the opting-in groups would calculate their tax base in accordance with the common (BEFIT) rules.

Option 3: Hybrid - mandatory for all EU members of a group with annual combined revenues exceeding a certain amount and optional for all EU members of a group with revenues below this threshold

Under this option, the BEFIT rules would be mandatory, and replace the national corporate income tax system, for all EU tax resident companies and EU-located permanent establishments which are members of groups of companies with annual combined revenues beyond a certain threshold. Considering that BEFIT will build on the Pillar 2 Directive and should capitalise on the degree of harmonisation achieved in that context, it would be reasonable to align this threshold with that of the Directive, i.e., annual combined revenues exceeding EUR 750 million. All other groups, which prepare consolidated financial statements but record annual combined revenues below the agreed threshold, would have a right to opt in and apply the common rules. In such case, all EU tax resident companies and EU-located permanent establishments of the opting-in group would be subject to the BEFIT rules for a set minimum period of time.

5.2.1.2. Tax base calculation

Two options will be considered for this building block: (i) a limited set of tax adjustments to income as this is reported in the financial accounting statements, and (ii) a comprehensive and complete set of tax rules.

Option 1: Limited tax adjustments

The aim of BEFIT is to set up a simple, yet effective, common corporate tax system in the EU. To comply with this objective, the tax base of each BEFIT group member would be determined by applying limited common tax adjustments to its income. In the public consultation, a majority of the respondents was in favour of such an approach.

To ensure that the entire BEFIT group uses the same financial accounting standard as starting point in this exercise, the tax adjustments should be made to the 'reconciled' financial accounting statements of each group member, i.e., the financial statements (of each group member) adjusted to align with the standard followed for the consolidated financial statements of the group. The list of such adjustments (e.g., tax depreciation, treatment of profit distributions, deductibility of business expenses, long-term contracts, bad debt, provisions, taxes paid) would consist of certain items that represent a significant part of the current corporate tax base of a BEFIT group member (around 90%).

This is a fundamental difference between BEFIT and the approach that was followed in past initiatives of the Commission, notably the 2011 and 2016 CCCTB proposals. As introduced above, BEFIT builds on the rules for the determination of the tax base under the recently adopted Pillar 2 Directive, which use financial accounting statements as a starting point and subject the annual financial accounting result to a number of tax adjustments.

As the final step in the determination of the tax base, the preliminary tax results (i.e., the tax-adjusted financial accounting results) of all individual BEFIT group members **would be added together to establish an aggregated BEFIT tax base**. As a result, intra-group transactions, i.e., transactions between BEFIT group members, would be neutralised to avoid double deductions or double taxation, except for transactions relating to certain income from shipping activities for instance, which will not be included in the BEFIT tax base due to its specific treatment.[48]

Whether the aggregated BEFIT tax base is positive or negative, the profit or loss would still be allocated to the eligible group members. The part that would be allocated to each group member in each Member State through the allocation rule would be subject to a limited number of adjustments based on a list of items which would not be covered by the common rules (e.g., incentives for research and development, deductions of pension provisions, tax credits relating to transactions with third countries, etc.). As certain items of the tax base (e.g., pensions) have a strong national thrust and previous experience has demonstrated that Member States are not willing to share the tax

[48] This income is often covered by specific tax regimes, which have to be compatible with state aid rules and the tax liabilities would be calculated on the basis of the tonnage (i.e., the carrying capacity) of ships and not the actual profits or losses incurred. An exclusion of such an amount would, therefore, build on an acknowledged approach that is tailored to the realities in the shipping sector and widespread across countries.

base on these, it would be important to allow adjustments at national level for a limited number of items.

Option 2: Comprehensive set of tax rules

An alternative option for the tax base determination would be to compile a comprehensive corporate tax system with detailed tax rules, covering all aspects that determine the tax base of each individual BEFIT group member and the aggregation of these tax bases into a single base. This approach would resonate with the 2011 and 2016 exercises that led to the respective CCCTB proposals.

Instead of starting from the financial accounts, this option would involve putting together a fully self-standing statute of corporate tax rules, to lay down a common legal framework, which would primarily cover the calculation of the tax base of each individual BEFIT group member: that is, taxable revenues, tax exempt income, tax deductible expenses and non-deductible items, rules on timing (e.g., accrual of revenues, incurrence of deductible expenses), items with a tax relevance of longer than a year (e.g., long-term contracts, bad debt, provisions), depreciation, the treatment of tax losses, and a framework for transitioning into and outside of the system.

The aggregation of the individually computed tax bases of each BEFIT group member into a single aggregated base for tax purposes and the allocation of such aggregated base to the eligible group members would apply in the same way, as explained under option 1.

5.2.1.3. Allocation of the aggregated tax base

The third building block focuses on how to allocate the aggregated base to those group members in which the BEFIT group maintains a taxable presence. The basic principle to follow when deciding on the composition of a formulary apportionment is to choose factors that reflect the source of income generation. While most respondents in the public consultation were in favour of using a formula, there was no collective view on how it should be designed. For this reason, different options could be envisaged, including a transitional allocation rule which could possibly pave the way towards a formulary apportionment for the future.

Option 1: Formula without incorporating intangible assets

A first option would be to operate a formula with the three most commonly used factors: labour (which can include payroll and/or the number of employees), tangible assets (excluding financial assets except for specific sectors), and sales by destination.

This option is elaborated further below. These factors were also used in the 2011 and 2016 proposals for the CCCTB and reflect both the state of origin/production (tangible assets, payroll, number of employees) and the state of demand (sales by destination). Inventory and intangible assets would be excluded. The weighting of factors is also an important consideration. For all options under this building block, equal weighting would apply. This means that for this option, labour, assets and sales are treated as equally reflecting the source of income generation.

Option 2: Formula incorporating intangible assets

Under this option and with the aim of catering for the realities of modern economies, the proposal would consider ways to include intangible assets[49] as a factor in the formula, in addition to the three previously mentioned factors. The aim would be to better reflect income generation.

This approach received support in the public consultation particularly from businesses, business advisors, and business associations, and its absence under the previous proposals has been a source of criticism. The respondents in the public consultation who were opposed to this approach seemed to be concerned mainly by risks of tax planning. To achieve its aim and to avoid abuse, the proposal could consider different sourcing approaches and weighting of the factors. For these sub-options, equal weighting would apply. This means that for this option, labour, tangible assets, sales, and intangible assets are treated as equally reflecting the source of income generation.

Sub-option 2.1: Location where intangible assets are booked in financial accounts

The first sub-option would use legal ownership and (book) value as recorded in the financial statements to determine the location of intangible assets.

Sub-option 2.2: Location where research and development expenses, staff training expenses and costs for marketing and advertising are incurred

The second sub-option would use research and development expenses, staff training expenses, and costs for marketing and advertising as a proxy value for intangible assets (i.e., where intangible value is created). The proposal would consider the Member State of location of the BEFIT group member that ultimately incurred these expenses during the preceding five years, to determine where the intangible assets are deemed to be located. As payroll costs would be an important share of these research and development (R&D) expenses under this sub-option, the proposal would reduce the payroll component of the labour factor by an amount equal to the R&D costs in the intangible assets factor. In this way, there would be no double-counting of the researchers' salaries, i.e., under both the intangible assets and labour factors.

Such a solution draws inspiration from the principles set out in the OECD *modified nexus approach*. Under this sub-option, part of the tax base would be allocated to the Member State of location of the BEFIT group member that initiated and requested the eligible R&D activities and ultimately incurred such costs. It will have no impact whether such activities are outsourced or performed within or outside that Member State. This would also ensure overall tax symmetry whereby it would be ensured that the BEFIT group member which incurred or deducted eligible expenses for tax purposes is subsequently allocated the tax base[50].

---

[49] In simple terms an intangible asset is an asset without physical (or tangible) form. Examples include intellectual property such as patents and copyright.

[50] Under the BEPS Action 5 Report - to address base erosion and profit shifting allowing for low or no taxation without substance of income from certain intangible assets, the OECD and G20 countries developed the *modified nexus approach*. The principles set out intend to ensure that, in order for a significant proportion of IP income to qualify for benefits, a significant proportion of the actual R&D activities must have been undertaken by the qualifying taxpayer itself. Thus, a taxpayer may benefit from an IP regime, e.g. for royalty income and/or capital gains, only if and to the extent that it has incurred R&D costs related to that IP asset.

Option 3: Transition rule for allocating the aggregated tax base

A third option would be a transition allocation rule with transitional features that would last for a number of years. During this transition period, it would be possible to evaluate the effect of the implementation of Pillars 1 and 2 on national and the BEFIT tax bases with more accuracy, supported by more and improved CbCR data.

Such a method would allocate the aggregated tax base to the BEFIT group members based on a transition rule, which would look at each group member's percentage in an aggregated tax base that will most possibly represent the three-year average of the tax results of the group over previous fiscal years. Such an approach could pave the way towards a permanent allocation mechanism which might be based on a formulary apportionment.

During the transition phase, the allocation of the BEFIT tax base would thus depend on the individual tax results of the BEFIT group members. Therefore, it is important that intra-group transactions remain consistent with the arm's length principle during the transition. However, enhanced tax certainty can already provide both businesses and administrations with additional clarity and simplification. In line with international developments and continued experience in the EU in the area of transfer pricing, the initiative can propose risk assessment criteria to provide businesses with more predictability and to assist the efforts of tax administrations. With formulary apportionment, the requirement for consistency with the arm's length principle could be eliminated within the BEFIT group after the transition phase, which will bring further simplification.

5.2.1.4. Transactions with related parties outside the BEFIT group

As the remit of EU law is generally confined to the internal market, the intra-group allocation of taxable profits would only concern BEFIT group members and not associated enterprises that are located in third countries or in the EU but outside the BEFIT group (due to not fulfilling the ownership requirements). It therefore follows that other rules would need to apply for the allocation of profit between BEFIT-group members and their associated enterprises outside the BEFIT group.

Option 1: Keep the current transfer pricing practices

Under this option, the current transfer pricing practices would continue to apply to transactions with associated enterprises outside the BEFIT group, and as such these transactions should continue to be determined at 'arm's length'.

As explained in Annex 7, transfer pricing is a methodology for determining the pricing for tax purposes of transactions between related parties. This methodology has been developed because the price of transactions between associated enterprises can be abused, to shift profits from high- to low-tax jurisdictions by artificially increasing or decreasing such price. Pursuant to the current international standards, such transactions must be taxed on the same basis as transactions between third parties under comparable circumstances (so called 'arm's length' principle). The 'arm's length' principle underlies the profit allocation rules that can be found in Article 9 of the OECD Model Double Tax Convention[51]. Furthermore, the OECD Transfer Pricing Guidelines[52] provide

[51] https://www.oecd.org/ctp/model-tax-convention-on-income-and-on-capital-full-Version-9a5b369e-en.htm

guidance on the application of the arm's length principle, which is applied and recognised by all Member States[53].

Option 2: Simplified approach to transfer pricing risk assessment

As described in Chapter 2 and Annex 7, the interpretation and application of the 'arm's length' principle can vary between tax administrations and taxpayers. This could result in legal uncertainty, increased compliance costs and double taxation for businesses.

While respondents in the public consultation had a clear preference for maintaining the current transfer pricing rules, the majority was open to a more streamlined approach to risk assessment. This option envisages, in addition to the current transfer pricing principles, a simplified approach to transfer pricing risks to increase tax certainty. The intention would be to introduce a so-called **'traffic light system'** as a risk assessment tool for transactions between members of the (aggregated) BEFIT group, on the one hand, and their associated enterprises outside the BEFIT group, on the other. Transactions would be assessed as being of low, medium or high risk depending on how these transactions compare to a series of pre-set benchmarks agreed at EU level and published by tax authorities. It is important to clarify that the 'traffic light system' would not replace or change the 'arm's length' principle. Instead, it would allow businesses to know in advance the 'arm's length' returns (market based) that they would be expected to achieve in transactions with associated enterprises, provided certain conditions are preliminarily met.

5.2.1.5.Administration system

One of the key goals of BEFIT is to reduce compliance and administrative costs for taxpayers and Member States, which was welcomed by stakeholders in the public consultation. Accordingly, the administration system would be based on the so-called 'one-stop-shop' (OSS) principle. On this basis, procedures would be centralised and performed, **to the extent possible,** by the Filing Entity of the BEFIT group and the Filing Authority. The Filing Entity would be the EU Ultimate Parent Entity or any other designated BEFIT group member. The tax administration of the Member State where the Filing Entity is resident would be called the Filing Authority.

The policy choice under this building block is between an Advanced, a Limited and a Hybrid OSS. This distinction is relevant across the various aspects of the administration of the system, starting from annual filing and covering audits and the resolution of disputes.

An indispensable feature of the administration of the system would be the "BEFIT Teams" and this would be part of this building block, regardless of the choice of options. Its chief role would be to coordinate procedures which can be dealt with centrally amongst the individual national tax authorities.

Option 1: Advanced One-Stop-Shop

The BEFIT group would be in contact exclusively with the Filing Authority:

---

[52] OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*, (OECD Publishing, January 2022).
[53] For a more detailed explanation on transfer pricing, see Annex 7.

(i) The **BEFIT Information Return**[54] would have to be filed by the Filing Entity with the Filing Authority. Then, the Filing Authority would share the information of the BEFIT Information Return with the tax authorities of the Member States where the other BEFIT group members are tax resident (or, in case of permanent establishments (PEs), located).

(ii) The Filing Entity would file all the **individual tax returns**[55] of the BEFIT group entities with the Filing Authority. In addition, the Filing Entity would need to settle all corporate income tax liabilities for the BEFIT group through its single contact with the Filing Authority and the latter would distribute the tax revenues to all eligible national authorities.

(iii) Following a **tax audit**[56] or a procedure for **dispute resolution**[57], the revised tax assessments would be notified by the Filing Authority to the Filing Entity for all BEFIT group members. This is because the outcome of an audit or dispute resolution could lead not only to a revised tax assessment for every (or most) individual BEFIT group member(s) but also, as a knock-on effect, to a need for revising the aggregated tax base and allocated parts.

Option 2: Limited One-Stop-Shop

It would be for the local BEFIT group members to carry out most of the required administrative formalities:

(i) The information included in the **BEFIT Information Return** would be shared by each BEFIT group member with their local tax authorities. To obtain certainty as soon as possible on a number of aspects of the BEFIT Information Return, a coordination mechanism would be developed within the BEFIT Teams.

(ii) The **individual tax returns** would be filed by each BEFIT group member with its local tax authority. This means that there would be no engagement of the Filing Entity and Filing Authority. Each BEFIT group member would be responsible for their own individual tax return. Furthermore, BEFIT group members would have the possibility to opt for filing one individual tax return per jurisdiction (a so-called 'Jurisdictional One-Stop-Shop') for all the

---

[54] The BEFIT Information Return will provide information on key Elements of the BEFIT group, such as the identification of its members, the group structure, the scope, the aggregated tax base of the BEFIT group and the allocated parts.

[55] The individual tax returns will record the final tax liability of each BEFIT group member after limited additional adjustments to the apportioned share in accordance with the national law of the Member State where the BEFIT group member is tax resident (or in the case of PEs, located). It is envisaged to include a ceiling/cap to the permissible adjustments, for instance, in the form of a percentage of the apportioned share.

[56] To verify the filed individual tax returns, the local tax authorities of the Member State where a BEFIT group Member is located would be entitled to initiate and carry out tax audits. In addition, the Filing Authority and other local tax authorities would have the possibility to request such an audit, through the consultation process within the BEFIT Teams. Under none of the options for a one-stop-shop, is it envisaged to make changes to the national procedural rules that apply in Member States for audits.

[57] When a BEFIT group member does not agree with a revised tax assessment (which can be a result of a tax audit), the member will hold a right to challenge this assessment. Disputes in relation to revised tax assessments would primarily be settled locally, which means that a BEFIT group member would have the right to challenge the assessment in the Member State where it is tax resident (or in the case of PEs, located). In this context, it is envisaged that when it comes to challenging the revised tax assessment, a BEFIT group member would be entitled to the legal means offered by its Member State.

BEFIT group members in that jurisdiction. Tax revenues would be collected directly by the local tax authorities.

(iii) Following a **tax audit** or a procedure for **dispute resolution**, the revised tax assessments would be notified by the local tax authorities to each local BEFIT group member directly. In this context, the BEFIT Teams would have a coordinating function, to ensure that all impacted jurisdictions adjust the tax liability to reflect the relevant revised adjustment.

Option 3: Hybrid One-Stop-Shop

The hybrid OSS combines features from Options 1 and 2, with the aim to create an efficient administrative framework which can borrow as many features as possible from the Advanced OSS and fall back to the Limited OSS where national sovereignty in tax matters requires that action be taken locally.

More specifically, in the context of a hybrid OSS, the BEFIT Information Return would be dealt with centrally via the Filing Authority whereas the individual tax returns would be filed by each BEFIT group member with its local tax authority. The local tax authorities would also remain responsible for the BEFIT group members' settling of tax liabilities, as well as audits and dispute settlement in conformity with national tax sovereignty. When, however, the tax base of an individual company is updated following an audit or dispute settlement and this adjustment affects the taxable share of other companies within same BEFIT group, the BEFIT Teams would have a coordinating function in case of disagreement among tax authorities.

This hybrid OSS acknowledges the benefits of advanced coordination but is also designed to allow room for national-specific solutions in fields where national tax sovereignty is traditionally a sensitive issue.

BEFIT Teams

Regardless of which option is preferred, once the BEFIT Information Return is filed and it becomes known which entities are included in the BEFIT group, the Filing Authority would form together with the other relevant local tax authorities a BEFIT Team for the respective BEFIT group. There will be a Team for each BEFIT group. The chair of the BEFIT Team would be the representative of the Filing Authority. The purpose of this Team would be threefold:

(i) To coordinate processing the BEFIT Information Return, having the aim to reach agreement on a number of elements and within a certain period of time;

(ii) To coordinate the process of carrying out iterations of the allocation of the aggregated tax base where individual tax assessments are revised (for example, after an audit or juridical procedure in a Member State);

(iii) To provide a consultation instrument on all other stages of the procedure, including disagreements on revised assessments after audits and/or disputes.

The BEFIT Team is relevant to all options for the OSS.

5.2.2. Common approach to transfer pricing

The initiative on transfer pricing complements BEFIT in providing simplification in the area of transfer pricing, but is a separate topic from transfer pricing risk assessment within BEFIT. **BEFIT** would include a simplified approach to transfer pricing risk assessment of certain transactions of the BEFIT group. As such, this risk assessment tool would be limited to the specifics of BEFIT and would not touch upon the broader issue of divergent interpretations in the application of the arm's length principle and OECD Transfer Pricing Guidelines. **The initiative for a common approach to transfer pricing**, on the other hand, directly involves the interpretation which delineates the content of the arm's length principle. This is discussed separately here.

Out of the 27 Member States, 23 are OECD members and therefore, politically committed to follow the OECD Guidelines to interpreting the arm's length principle. However, in addition to some Member States not being OECD members, the status and role of the OECD Guidelines currently differ from Member State to Member State.[58]

Option 1: Inclusion of the OECD arm's length principle and Transfer Pricing Guidelines in EU Law

This option is about harmonising transfer pricing norms within the EU in the form of principles-based legislation. The arm's length principle would be integrated into EU law. In addition, the law would clarify the status and role of the OECD Transfer Pricing Guidelines and refer to the latest edition thereof for the interpretation of the arm's length principle. By effect, the Guidelines would be turned into a binding tool, but this would exclusively concern the (latest) edition which would be incorporated in EU law; not any revisions thereof. The aim would be to ensure that Member States follow the same principle and have a common approach to applying transfer pricing.

Option 2: Inclusion of the OECD arm's length principle and Transfer Pricing Guidelines in EU law and ongoing coordination towards a common EU approach

This option builds on Option 1. It would however not only aim to ensure that Member States apply the same principle but go a step further into implementing a mechanism which would ensure a coordination of views and interpretations of the OECD Guidelines among Member States.

As under Option 1, the arm's length principle would be incorporated in EU law and the legislation would clarify the role and status of the OECD Guidelines, but under this Option, these would also be complemented with a mechanism for coordinating their interpretation and application at EU level on an ongoing basis. The mechanism would consist in setting up an EU expert group or committee to discuss, and agree on, specific topics that pertain to the interpretation of the arm's length principle, as these may arise from the OECD Transfer Pricing Guidelines. The aim would be to ensure a coordinated approach to practical problems that emerge from transfer pricing practices

[58] For example, some Member States (Spain, Italy, Germany) makes direct reference to the OECD guidelines in their national provisions recognising the OECD guidelines as a source of interpretation not only for Article 9 of the tax treaties but also for domestic legislation as long as the guidelines do not conflict with specific domestic regulations. Other Member States (France, the Netherlands, Croatia) has not explicitly implemented the OECD guidelines into their internal legislation although they report to follow the guidelines in practice. Another group (Estonia, Hungary) reports that the OECD guidelines are not recognised as legally binding but that their administrative regulations are based on the same principles contained in the OECD Transfer Pricing Guidelines.

in the EU. This option would also be complemented with a specific anti-tax avoidance framework, for instance, to ensure that unilateral downward adjustments do not result in double non-taxation.

Discarded options

Three options should be discarded from the outset and will not be assessed:

(i) To develop an EU arm's length principle with subsequent EU-origin guidance. The arm's length principle is a global standard commonly accepted and applied worldwide. The EU cannot substantially depart from such standard since this would create frictions and inconsistencies, in particular in its relations with third countries.

(ii) To incorporate the arm's length principle only – without reference to the OECD Transfer Pricing Guidelines. This option would fall short of the policy objectives of this initiative, as the arm's length principle is not sufficient without the Guidelines for ensuring a common approach.

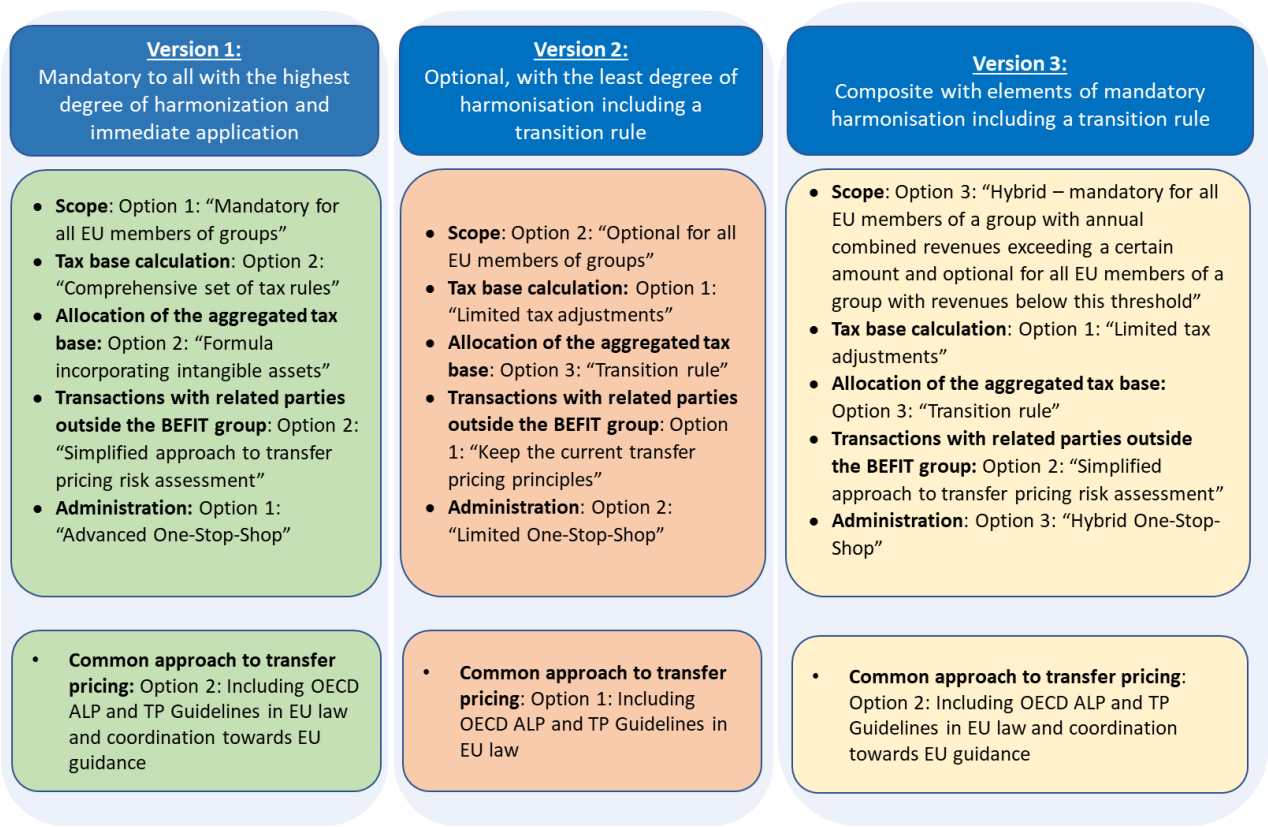
(iii) To follow the UN developed definition of the arm's length principle and Guidance. The UN has developed a practical manual which is intended to be used as interpretation tool of the arm's length principle in Article 9 of the United Nations Model Convention. The UN manual is meant to specifically address the challenges that many developing countries face in dealing effectively with transfer pricing issues. Most of the Member States are OECD members and are not represented at the UN fora. It thus makes more sense to refer to the OECD Guidelines.

6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

6.1. Three Versions of the initiatives to be assessed

As set out in Chapter 4, the initiative aims to introduce a common framework of corporate tax rules that will replace the current national corporate tax systems for the businesses in scope. It will aim to bring simplification for taxpayers and encourage growth and investment in the internal market, while levelling the playing field in which businesses operate. This Chapter explores the impact of the policy options. As not every single option, and combinations thereof, can be assessed individually, the identified options under the initiative were compiled in the form of packages, referred to as 'Versions'. These reflect the two extreme ends of a range and a middle-ground option: (1) the **highest degree of harmonisation ('Comprehensive')**, which is about laying down uniform corporate tax rules, to enter into effect immediately, and setting up a centralised administrative mechanism to operate such rules; (2) the **lightest approach ('Light')**, where harmonisation is limited and most of the features of the system remain optional. Under the "Light" version, Member States are given discretion to deviate within limits; and (3) the **middle-ground ('Composite')**, which integrates elements of the first two versions of options with the aim to achieve an adequate degree of uniformity, which implies that not all tax-technical and administrative features would be harmonised. The three Versions are presented in Table 2 and discussed in more detail below.

Table 2: Three Versions



Comprehensive Version – Rules are mandatory to all with the highest degree of harmonisation and immediate application. Such combination of options would ensure the broadest scope possible and, as a result, the most extensive simplification for tax administrations as, as it would replace current national rules on group taxation in the EU to a great extent.

BEFIT would translate into a comprehensive corporate tax system leading to a fully harmonised computation of the tax base, *de facto* replacing 27 disparate national tax systems for computing the tax base with a common one. The allocation formula would include intangible assets to best reflect today's economic reality. The Comprehensive Version would introduce a new 'traffic light system' as a risk assessment tool for transactions between a BEFIT group member and an associated enterprise outside the BEFIT group without departing from the internationally established arm's length principle. All administrative matters would be settled by one single entity of the group (Filing Entity) and one tax authority (Filing Authority). The entity would file all returns, i.e., the BEFIT Information Return of the group and all the separate tax returns of the BEFIT group members.

Transfer pricing norms would be harmonised in the form of principles-based legislation, which would include the arm's length principle and clarify the status and role of the OECD Transfer Pricing Guidelines. In addition, the rules would go a step further into implementing a mechanism which would ensure ongoing Member State coordination of views and interpretations of the OECD Guidelines, especially in light of any revisions and the needs of the internal market. The Comprehensive Version would entail setting up an EU expert group or committee to run the process.

Light Version – Rules are optional, with the least degree of harmonisation including a review mechanism. This version would bring along some changes to the status quo, but they would be narrower in scope, less comprehensive and with a provision for reviewing the allocation method. It would be optional for all groups, and thus provide a flexible framework, enabling groups to choose depending on their corporate structures and activities.

BEFIT would allow for a dual system whereby eligible groups in the EU will have the right to choose between BEFIT and their national tax system. For those joining BEFIT, it defines a starting point to compute the tax base; that is, the financial accounting statements. It would then subject the content of these accounts to limited common tax adjustments, to arrive at the tax results of the BEFIT group members, before being aggregated into the single BEFIT tax base. In addition, the allocation rule would be based on prior years' tax results and would be subject to review with a view to possibly proposing an allocation method based on formulary apportionment. The system would maintain the existing rules and risk assessment practices in the field of transfer pricing with regard to transactions between a BEFIT group member and its associated enterprises outside the BEFIT group. The Light Version proposes an overall coordinated approach to the administrative matters, while ensuring that tax audits and control remain locally administered by the Member States.

Transfer pricing norms would be harmonised in the form of principles-based legislation, which would include the arm's length principle and clarify the status and role of the OECD Transfer Pricing Guidelines.

Composite Version – A composite package with features of mandatory harmonisation including a review mechanism.

BEFIT would ensure common and mandatory rules targeted at the EU sub-set of large groups that are also in scope of the Pillar 2 Directive. These groups would be most likely to have extended cross-border structures and activities and be already familiar with certain features, in particular those which feature in Pillar 2. These groups could therefore be expected to benefit the most from the simplification that BEFIT offers. For computing the tax base, they would start from the financial accounting statements used for preparing their consolidated accounts and subject the reported income to a limited number of tax adjustments. The system would also include a transition rule to allocate the aggregated tax base based on the average of the tax results of the group over previous fiscal years, as well as a review clause aimed to assess the effects of the allocation method and address possible changes in the corporate tax environment after Pillars 1 and 2 have entered into force. The Composite Version would also propose the introduction of a new 'traffic light system' as a risk assessment tool for transactions between a BEFIT group member and its associated enterprises outside the BEFIT group. This would not depart from the arm's length principle. There would be a hybrid one-stop-shop in the administration, meaning that a part of the issues would be settled by the single Filing Entity of the group (Filing Authority), while all BEFIT group members would file separate returns with their local tax authorities.

Transfer pricing norms would be harmonised in the form of principles-based legislation, which would include the arm's length principle and clarify the status and role of the OECD Transfer Pricing Guidelines. In addition, the Composite Version would go a step further into implementing a mechanism which would ensure ongoing Member State coordination in interpretating and applying the OECD Guidelines, especially in the light of any revisions and the needs of the internal market.

The Composite Version would also entail setting up an EU expert group or committee to run the process.

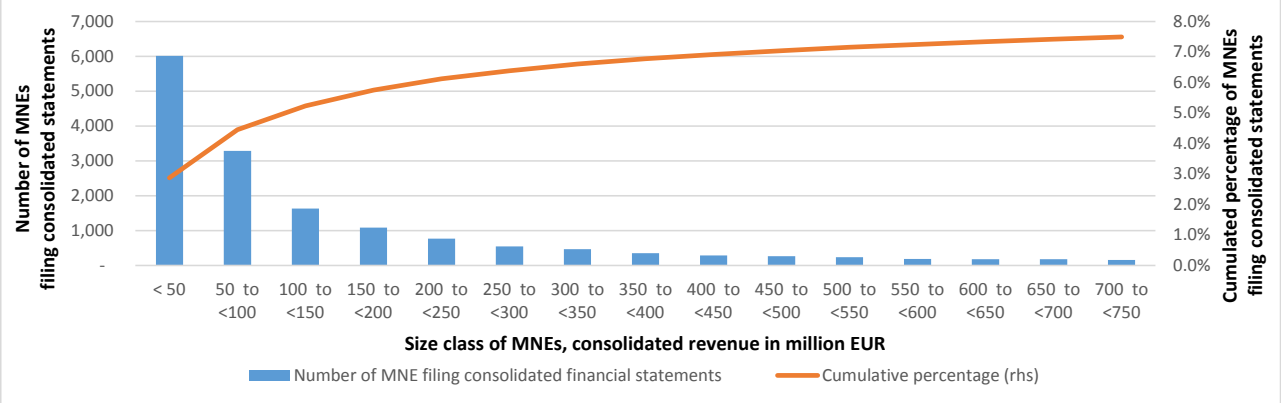
6.2. Scope: How many company groups could be affected?

The number of companies falling under this proposal depends on the Version to be chosen, and in turn, on the choices made by companies when the system is optional.

Under the Composite Version, an estimation of the number of today's MNEs that would be in scope of BEFIT is based, inter alia, on aggregate CbCR data for MNEs with a consolidated yearly revenue exceeding EUR 750 million.[59] For the most recently published reporting year (2018), CbCR data suggests that 4,082 MNEs in the EU fall into this category[60] and would thus be subject to BEFIT rules for large enterprises. They would also fall within the scope of the Directive on transfer pricing, which aims to integrate the arm's length principle in EU law and seek a common approach to the interpretation and application of the OECD Transfer Pricing Guidelines. The number of smaller MNEs below that threshold can only be approximated (see Annex 4 for more details). Based on the ECB's EuroGroups Register (EGR), there are some 209,000 groups in that category. Around 7.5% of them are estimated to prepare consolidated financial accounts (around 16,000 groups). Figure 5 below shows the estimated number of groups that have annual combined revenues up to EUR 750 million and prepare consolidated financial accounting statements. The number strongly declines as the size of groups increases. These groups would have the right to opt in into BEFIT and benefit from the new EU coordinated approach to transfer pricing. The population of these groups could be expected to grow as new rules will incentivise so-far domestic companies to invest cross-border.

Under the Comprehensive Version, all groups would be covered by BEFIT. The Light Version would be likely to involve a different mix of groups and potentially a smaller number of groups overall as it is optional.

Figure 5: MNE's with consolidated revenue < EUR 750 million, in scope of BEFIT (estimate)



TAXUD calculations based on EuroGroups data

[59] Country-By-Country Reports are typically filed by large MNEs (consolidated turnover at least EUR 750m) to the tax administration of the country where the ultimate parent entity is located. They contain information about a number of variables such as revenues, Profit/Loss Before Tax, taxes paid, sales, production etc. at firm level, showing how these variables are distributed across headquarters and subsidiaries in the different countries.

[60] There is no more recent data available, the OECD is in the process of obtaining such information for 2019 and 2020.

6.3. Impact of the three Versions

Quantifying the effects of the three Versions is difficult, given major data gaps and high uncertainty as there is no precedent of a corporate tax reform similar to this. In addition, there are interactions between the common rules for the tax base of large groups (BEFIT) and the common approaches to transfer pricing which cannot be quantified. For example, applying a common and simplified set of rules would impact on how the new common approach to transfer pricing would work in practice.

The analysis below provides an estimation of the possible costs and benefits of implementation. For the **benefits**, the analysis looks at both the direct pecuniary savings for compliance costs of businesses and the broader macro-economic impact thereof. For each, the analysis will try to give an upper and a lower bound estimation, based on the three Versions of the initiative, as outlined above.

Table 3: Classification of Versions analysed

	"Comprehensive"	"Light"	"Composite"
Very big groups (cons. turnover > EUR 750m)	Mandatory	Optional	Mandatory
Smaller groups	Mandatory	Optional	Optional

The mandatory scope of the Comprehensive Version includes all groups regardless of the size of their annual combined revenues. It has hence a 'wide' scope of application. The Composite is mandatory only for the largest groups and allows smaller groups to opt in.

Section 6.3.1 looks at how BEFIT could impact on the direct CIT compliance costs of companies. **Section 6.3.2** considers the savings associated with transfer pricing specifically. **Section 6.3.2** looks at the broader impact of establishing a group-wide tax base and the possibility of firms to offset losses against profit across borders. S**ection 6.3.4** sets out a comprehensive estimation of the costs of implementation for businesses and tax administrations, to the extent possible. **Section 6.3.5** considers environmental or social impacts that the initiative may have, and **section 6.3.6** any additional impacts such as on fundamental rights and competitiveness.

6.3.1. The impact on direct CIT compliance costs

Using firm-level micro data of the survey-study on companies' tax compliance costs and combining it with EuroGroups data presented in Figure 5 above and the CbCR data, allows us to estimate the potential savings regarding CIT-related compliance costs. Note that, as Table 4 below suggests, SMEs and in particular SMEs with no cross-border operations face the bulk of tax compliance costs, but there is clear scope to reduce tax compliance costs borne by large and small enterprises with cross-border presence and that would qualify to opt-into BEFIT.

Table 4: Number of firms, absolute and average CIT compliance costs (CC), cross-tabulated by firm size and cross-border activity, 2019

		Operating cross-country?		
		no	yes	Total
SME	CIT CC (bn EUR)	46.9	5.9	52.8
	.. per enterprise	3,223	3,308	3,232
	Number of enterprises	14,566,027	1,784,673	16,350,700
Larger Enterpr.	CIT CC (bn EUR)	0.8	0.3	1.0
	CIT CC per enterprise	9,929	8,266	9,436
	Number of enterprises	77,939	32,824	110,763
Total	CIT compl. Costs (bn EUR)	47.7	6.2	53.9
	.. per enterprise	3,259	3,398	3,274
	Number of enterprises	14,643,966	1,817,497	16,461,463

Source: Commission services, based on data from VVA/KMPG (2022).

Simplification via a common tax base and clearer transfer pricing rules have the potential to reduce large businesses' tax compliance costs. This is estimated as follows. We first conduct a regression analysis (see Annex 4 for more detail) which reveals that there is the potential for cross-border operating firms to reduce compliance costs by -32% if they are subject to some 'simplified tax system'. This figure holds if one controls for firm characteristics such as size (measured in terms of the number of employees and turnover). Without controlling for size, the potential relative advantage of simplified tax regimes is double that number: -65%. This finding implies that per group, the potential of reducing compliance costs tends to be higher if groups are bigger.

Table 4 above provides us the per company tax compliance cost for SMEs and larger enterprises with cross-border activities: EUR 3,308 for SMEs and EUR 8,266 for larger enterprises. If we use the numbers of Figure 5, we see that there are 5,373 MNEs with a turnover of less than EUR 50 million which can be seen as SME groups, 9,657 MNEs with a turnover in between EUR 50 million and EUR 750 million and 4,082 MNEs with a turnover of EUR 750 million. A total of 19,112 MNEs.

If only the very large MNEs with a turnover of EUR 750 million are in BEFIT and we consider a 32% cost reduction using the proxy obtained via the regression analysis, then the savings in tax compliance costs are EUR 11 million (on the original tax compliance costs of almost EUR 34 million), which would be a lower-bound estimate in the case, considering the above. If we then consider a 65% reduction in costs, this represents about EUR 22 million.

If all other large MNE groups of companies bigger than SMEs opt in, then savings would amount to almost EUR 37 million, that is, 32% of today's EUR 80 million tax compliance costs for these MNEs, i.e., EUR 26 million per year plus the EUR 11 million for the EUR 750 million MNEs. If we consider a 65% potential this would mean EUR 74 million. If we were to consider that also SMEs with cross-border presence, i.e., the MNEs in Figure 5 with a turnover of less than EUR 50 million, then the savings for this group would be 32% of today's EUR 18 million (the 65% is only considered for larger companies), that is, almost EUR 6 million in savings. In sum, if all groups with a cross-border presence took part, i.e., in the "Comprehensive" Version of BEFIT and in "Composite" Version of BEFIT, then the direct tax compliance cost savings as a result of simplification would be respectively EUR 42 million (32%) as a lower-bound estimate and EUR 80 million (65%) as an upper-bound estimate.

While these numbers may not sound very large overall, for each of the companies and groups they may still be significant or non-negligible. These savings could then be spent on production activities with a positive impact on growth. Note, too, that the results are derived from the combination of three datasets and therefore may need to be interpreted with caution. Hence, results here could be underestimating the true tax compliance costs of larger companies since the per company costs are derived from a study-survey whose main focus is SMEs. These savings could then be spent on production activities with a positive impact on growth.

6.3.2. *Savings associated with harmonising transfer pricing rules and enhancing tax certainty for firms and tax authorities*

The compliance with transfer pricing rules imposes high costs for both subsidiaries and parent entities. This is because it requires complex supporting documentation and high expenses on external advice and/or personnel time. Moreover, uncertainty about the outcome of tax inspections on transfer prices is quite high. As for tax authorities, the most complex task today is checking fairness and compliance of transfer prices with the arm's length principle. This exercise requires a deep knowledge of both the underlying rules and of the specific transactions between related parties. Disproportionate sanctions and tedious tax disputes list among the consequences of transfer pricing. Hence, both companies and tax administrations can expect additional savings from the proposal on transfer pricing, due to the implementation of simpler/clearer transfer pricing rules and because, for the groups applying BEFIT, the risk of transactions would be assessed based on criteria that provide more predictability. This would reduce significantly:

- direct expenses on tax compliance activities related to transfer pricing;
- uncertainty about the tax inspections on transfer prices;
- the efforts (including staff time) of tax authorities to define whether a transfer price agreement is compliant or not;
- the number of tax disputes over transfer prices;

In other words, for both groups and tax administrations, we expect a net reduction of the full-time equivalent employees that would be allocated the respective tasks. Correspondingly, there can be a significant reduction of legal costs. Chapter 2 already provided an indication of the magnitude of litigation and legal costs. These are reported to be in the thousands to millions of euro a year per firm. It is expected that the benefits, in terms of cost savings associated with less litigation and legal costs, would be higher in the case of the Comprehensive and Composite Versions, than in the Light Version, as regular guidance will also be provided.

6.3.3. *The impact of introducing common EU rules to calculate the tax base of group entities and aggregate these into a single EU-level tax base*

BEFIT will introduce a common group-wide corporate income tax base covering related entities located in the EU. This has consequences for firms to the extent they are today not able to offset certain subsidiaries' losses against other subsidiaries' profits. BEFIT will also introduce a common set of rules the calculate the corporate tax base of each group member, and most importantly: common rules for the tax depreciation of capital. This section looks at the impact of these major structural changes.

6.3.3.1. Cross-border loss offsetting as a result of an aggregated BEFIT tax base

A common (group-wide) CIT base automatically brings the advantage of cross-border loss relief: groups can offset losses made by certain subsidiaries against profits made by other subsidiaries. As a result, the groups' CIT base declines, which results in lower CIT tax payments for companies.

Based on Orbis, a firm-level database, this section attempts to estimate the impact of this offsetting of losses against profits of the same year. The intention is to interpret the resulting losses in the EU's CIT revenue as a careful estimate for subsidiaries of very big MNEs.

It is upper-bound to the extent that, as a result of cross-border loss offsetting, there would be fewer loss carry forward, as more losses will be offset in the year they are made by the group. The analysis does not fully take this into account and the difference in losses carried forward to future years cannot be adequately modelled.

The analysis looks at subsidiaries of MNEs with a turnover of at least EUR 750 million per year. These are the groups for whom BEFIT will be mandatory in both the Composite and the Comprehensive version. The Orbis-sample for the year 2021 covers some 4.000 MNEs worldwide with a turnover of more than EUR 750 million. Of those MNEs, there are unconsolidated accounts of almost 100.000 subsidiaries in the EU, for some 80.000 of whom there is information about profits/losses before tax. Offsetting losses against profits in 2021 would have reduced the EU's CIT base by around EUR 31 billion, equivalent to 0.2% of the EU's GDP, or to 1.7% of the EU's total CIT tax base. From the companies' point of view, this would mean lower CIT payments.

Based on this information, the European Commission's Joint Research Centre has used its Cortax general equilibrium model to estimate the macro-economic impact that would fit this CIT relief for firms. As firms pay less CIT, this would lower their cost of capital, inducing them to invest more. As CIT payments decline by 1.7%, investment shifts up by 0.2%, pushing up EU GDP by 0.1% in the long term.

6.3.3.2. Common BEFIT depreciation rules

BEFIT would bring a harmonisation of depreciation rules in the EU. In a first scenario, a simple set of depreciation rules is considered. It assumes that the depreciation for all buildings are set at 28.5 years (equivalent to straight depreciation of 3.5% p.a.) and at 5 years for all other assets (20%). The Joint Research Centre's Cortax model is used to simulate the impact of these common depreciation rules.

In terms of generosity, these rules would roughly reflect the current average over Member States' rules. Therefore, with these new rules in place, total CIT revenue in the EU would change only slightly (decline by 0.7%), pushing the capital stock up by 0.1% and GDP by some +0.04%.

To demonstrate the impact of alternative depreciation rates, a second scenario foresees longer straight-line depreciation of commercial buildings over 40 years (i.e., only 2.5% per year), while industrial buildings would be depreciated over 25 years. Other than buildings, fixed tangible assets would in this case be depreciated over 7 years (14%), and intangible assets over 5 years (20%). Due to longer deprecation of commercial buildings and other tangible assets, these rules seem somewhat stricter than is reflected by the average of existing national rules in the EU.

As a result, a second simulation with Cortax finds that the new rules tend to increase the EU's CIT base, and thereby CIT revenue by some 6%. The decline in depreciation allowances would thus produce a surplus in a government's budget in the short term, but also an increase in the cost of capital for firms. The latter would reduce somewhat the incentive for firms to invest. This would possibly lead to a decline in the capital stock, with eventual negative consequences in terms of GDP.

6.3.3.3. Overview of the structural effects of BEFIT

The table summarizes the last two sections' simulation results.

	CIT tax revenue	Total tax revenue	Capital	GDP
Cross-border loss relief (simulated for MNEs >750m)	-1.7%	-0.02%	+0.2%	+0.1%
Common depreciation (simulated for all MNEs)				
----- Scenario 1	-0.7%	-0.02%	+0.1%	+0.04%
----- Scenario 2	+6%	+0.05%	-0.7%	-0.3%
Better legal certainty due to common rules	not quantifiable			

The effects of changing depreciation rules described in the previous section were calculated with Cortax assuming that depreciation was introduced for *all* MNEs, while the proposal would only mandatorily apply to a sub-set of MNEs above a turnover threshold of EUR 750 million (smaller businesses would be able to opt in on a voluntarily basis). This is the reason why they cannot be directly compared with the effects stemming from the cross-border loss relief. The latter was explicitly calculated for MNEs with a turnover of at least EUR 750 million.

There are an estimated about 4.000 MNEs beyond that turnover threshold and some 14.000 MNEs below as shown in Figure 5 above. That is, MNEs with turnover of EUR 750 million or more make roughly one fifth of all MNEs potentially in scope of BEFIT. All else being equal, the positive GDP-effect of the cross-border loss relief would therefore have been stronger had all MNEs been included in the analysis (which did not happen because smaller MNEs are less well represented in Orbis).

Moreover, there are positive second-round effects due to better tax transparency and legal certainty as firms in scope would face only one common set of CIT rules. The resulting productivity-increase is not included in the above analysis and is expected to lead to a positive aggregate effect of BEFIT on GDP in the long run. Altogether, the BEFIT package is therefore likely to increase GDP.

6.3.4. The impact of formulary apportionment as a method to allocate the BEFIT tax base

As for the allocation of the BEFIT tax base (section 5.2.1.3), options 1 and 2 foresee the introduction of an apportionment formula. The allocation formula would, after establishing an EU-wide CIT base of MNEs, apportion that aggregated tax base following a number of factors. These are in option 1 as follows: labour (which can include payroll and/or the number of employees), tangible assets, and sales by destination. Option 2 also includes intangible assets as a factor in the formula. Based on the OECD's statistics of Country-By-Country Reporting (CbCR, see Annex 4 for explanation), the EU as a whole would gain additional CIT revenue in the short term which may

be in the order of magnitude of some 0.1% of GDP, assuming that only MNEs with a turnover of at least EUR 750 million are included. This holds true both when including (option 2) or not including (option 1) intangible assets in the formula.

The impact may nevertheless affect Member States differently. This means that in the shorter term, some Member States may have significant benefits, while for other Member States there may not be a direct gain. It is difficult to estimate the effects accurately, given uncertainties and limited data availability. Therefore, option 3 considers an allocation of the BEFIT tax base that ensures stability during a transition. During this transition, it will be possible to estimate the impact of the new tax base and potential effects of introducing formulary apportionment with more accuracy.

6.3.5. *Costs for companies and tax administrations*

Costs cannot be estimated with any precision because the new initiative does not have a precedent that we can refer to. Moreover, there is no dedicated data that one can reliably use to produce very concrete estimates. It is also noteworthy that under the public consultation and dedicated stakeholder consultations (including MNEs and tax administrations) estimations of such costs were not provided, not even at a qualitative level. This is primarily because a business has to know the technical details of a new system to simulate its cost. In addition, the cost is expected to differ substantially depending on the business model. For instance, an in-scope group which is centrally organised should be expected to have less costs than a retail group that maintains a large number of subsidiaries. Below, we attempt to describe some of the possible costs, noting that these are likely to be relatively very small when compared to the potentially large cost savings derived from simplification.

Concerning tax administrations, a holistic picture is hard to obtain. There are fundamental differences in capacity and expertise between Member States' authorities, and the workload will depend on the amount of Filing Entities (i.e., ultimate parent entities, or if there is no ultimate parent entity, the designated filing entity) that are present in each respective Member State. For this purpose, the administrations would need to dedicate resources so that the BEFIT Information Returns can be filed by their resident Filing Entities. The administrations have to transmit these BEFIT Information Returns to the other administrations where the BEFIT group has its taxable presence and chair a BEFIT Team including those administrations. Smaller Member States, with less resources in their public sector, would be unlikely to accommodate a large number of MNEs headquartered in their territory. So, the fact that these Member States may be short of resources is unlikely to create a concern in practice, assuming that these Member States would accommodate a small number (if any) of Ultimate Parent Entities (UPE).

Regarding the BEFIT Teams, while there will have to be a Team for each BEFIT group, this is not expected to result in substantial additional costs (other than setting up a simple communication and consultation tool) but rather in a re-allocation of existing resources. This is because a BEFIT Team brings together tax inspectors from the Member States where the group operates. Instead of each Member State separately dedicating human resources to assess the tax liabilities of the same cross-border groups, these available resources will now be used collectively in a more effective and targeted manner. Each inspector would be responsible for the group entities in their own jurisdiction. In addition, Member States already need to dedicate resources to cross-border issues that require agreement between different Member States, and to lengthy disputes or procedures. Finding consensus on some of these issues within the BEFIT Team and based on common standards would also be a more efficient re-allocation of existing resources.

When considering the Composite and Light Versions in implementing the common rules for computing the tax base (BEFIT), which would be, respectively, either primarily directed at large groups with annual combined revenues exceeding EUR 750 million or entirely optional, the following costs are expected to be incurred:

1. Recurrent costs of adjustment and administrative nature, which include personnel time:

   a) for tax administrations, dealing with the BEFIT Teams: costs associated with exchanging information on the content of the Information Return and checking compliance with the risk assessment mechanism of the 'traffic light system';

   b) for the Filing Entity for the group, which aggregates all the preliminary tax results: costs associated with filling in the Information Return and submitting it to the tax authorities;

   c) for tax administrations: additional costs associated with coordinating action among different tax authorities in case of tax inspections;

2. One-off adjustment costs for groups and tax administrations associated with updating IT systems to calculate the tax base or other administrative systems to run any related exchanges of information;

3. One-off adjustment costs for the training of company staff and tax administrations to adjust to the new system.

Some of these costs may not actually be additional costs. Companies and notably the Parent Entity, which may also be the Filing Entity, already prepare consolidated financial statements. The groups of companies which fall within the scope of BEFIT already prepare consolidated financial statements in accordance with the requirements of their national accounting standard. The financial accounting statements which are used as a starting point for computing the tax base are therefore already available and would not require taxpayers to undertake additional compliance actions. Furthermore, the infrastructure for carrying out exchanges of information is already in place as Member States engage in exchanges of information, including automatic exchanges, in a variety of fields under the Directive on Administrative Cooperation[61]. This said, companies will still need to invest in IT software updates and new programmes, to facilitate the computation of the tax base in accordance with the new rules. Yet, the cost will be substantially lower, as compared to what this would amount to if it also included an installation of hardware. There will also be a possibility of receiving EU financial support.

When it comes to tax administrations, one should consider that in several Member States' tax administrations, there is currently personnel dealing with corporate income tax files that involve groups within the mandatory scope of BEFIT. This staff would need to be trained, which should be seen as a one-off cost for tax administrations, and change job description, in order to shift into working on BEFIT groups. As explained above, these officials would most possibly also participate in the BEFIT Team of their assigned groups.

---

[61] Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, OJ L 64, 11.3.2011, p. 1–12.

Regarding training, the costs are expected to be limited as the simplification of the rules also translates in fewer staff needed to undergo such functions at company group level and in national tax administrations. It should accordingly be noted that for the latter, EU funding could be available to support national administrations. This is also possible in the case of item 1.c) above.

When considering the Composite and Light Versions in connection with **transfer pricing**, there will not be any additional costs for large groups or national administrations, as there are currently large numbers of staff dealing with transfer pricing in each Member State. The change will therefore mostly consist of a limited re-assignment of tasks/ job descriptions and as said, a possible and likely reduction of full-time equivalent staff allocated to these tasks.

Under the Comprehensive Version, some additional, short-term adjustment and perhaps non-negligeable administrative costs could be generated for smaller groups who would face mandatory rules for the computation of their tax base (**BEFIT**). Indeed, for smaller groups, there could be a need to learn and adapt to the new rules for the calculation of the tax base. The costs would mostly be those listed above for BEFIT. Under the Composite Version, the companies under BEFIT would be likely to already undergo similar tasks and costs. However, the Comprehensive Version could possibly have the effect that many, especially small, groups would have to face a large adjustment and start some of the tasks anew. Accordingly, for tax administrations, the fact that a larger number of groups would fall in scope could require some additional oversight costs.

Hence, when comparing the benefits shown in previous sections with the possible costs discussed here, one could claim that benefits would be expected to make up for the costs notably when it comes to the Composite Version. This could generate significant savings associated with the reduction in tax compliance costs and with important expected macroeconomic effects from the investment (which brings higher GDP and higher tax revenue). It would be the outcome of freed resources and additional cross-border activity (which increases productivity and eventually leads to an increase in EU GDP) at expected low cost. Under the Light Version, as it is optional, the benefits would be much lower, although at similar low costs. The Comprehensive Version would give rise to benefits on the high end, but some administrative costs would also be higher. In this context, one would expect that the Composite Version be the most cost-effective. Chapter 7 accommodates a comparison of options in terms of how they could contribute to achieving the identified objectives of this initiative.

The quantification of costs is extremely difficult for a multitude of reasons. The absence of a precedent of comparable magnitude to the initiative leaves little room for solid cost-estimation based on historical data. What is more, the **nature of the initiative is cost reduction** through significant simplification. Costs linked to the introduction are therefore **transitional of nature** as both tax administrations and businesses will have to adjust to the new rules. Much of these adjustments will be linked to the phasing-in of new IT solutions, or upgrade of existing systems. Both taxpayers and tax administrations will have to make that investment.

For **businesses**, a point of orientation may be the 2022 Commission proposal regarding VAT rules for the digital age[62] (ViDA) which suggests an EU-wide digital reporting requirement (DRR) for

[62] Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age. COM(2022) 701 final. Available here.

VAT, preferably for intra-EU transactions. One of the main objectives is to standardise the information that needs to be submitted by taxable persons on each transaction to the tax authorities in an electronic format. While the nature of ViDA is different, there are **similarities to the envisaged initiative.** For example, there are administrative costs of implementation and linked to running a digitally supported, more standardised system that enables the exchange of information between firms and authorities.

The Impact Assessment associated with the proposal for the VAT in a digital age (hereafter: IA ViDA)[63], which is in turn supported by a dedicated study (hereafter: ViDA study)[64], reckons that DRRs generate administrative burdens in the form of **implementation costs and ongoing costs**. Implementation costs include acquiring physical and intangible capital, know-how. These investments will turn into costs as they are written off, resulting in annualised costs. Ongoing costs mainly cover recurrent expenses for personnel running the system. Already today, there are a number of different DRR systems in the EU. Among those, **SAF-T** (Standard Audit File for Tax) is a file containing reliable accounting data exportable from an original accounting system, for a specific time period and easily readable due to its standardisation of layout and format that can be used by authority staff for compliance checking purposes. One of its possible uses is the reporting of transaction data. Therefore, while of course not tailored to the envisaged initiative, **SAF-T is relatively close to what is needed**, i.e., the exchange of accounting information and transactions, based on a simple standardised file that can be read by firms and authorities across the EU.

SAF-T today is in place in Lithuania, Poland and Portugal.[65] Based on the existing evidence, the ViDA study has come up with an estimation of the implementation costs and ongoing costs imposed by the application of SAF-T per company and year. Four firm size classes are distinguished, see columns 2 to 4 in Table 5. The study covers the first ten years after implementation of SAF-T. One-off costs are annualised through depreciating physical and intangible investment over a period of five years.[66]

Table 5: SAF-T system: implementation and ongoing costs, EUR per year and firm (annualised)

	Implementation	Ongoing costs	Total
	EUR/year/firm		
All SME			
Micro	130	80	210
Small	620	290	910
Medium	1060	250	1,310
Large	**1900**	**570**	**2,470**

Distribution of taxable persons potentially covered by DRR (intra-EU transactions only). Source: ViDA IA, pp. 139-140 for the distribution of firms.
Other sources: ViDA Study, pp. 44-45 for the cost per firm (col. 1 to 3); Table 4 above for the absolute firm population, TAXUD calculations.
Remark: Definition of Micro companies: less than 10 employees; small companies: 10-49 employees; medium-sized companies: 50-249 employees; large companies: 250 employees and over.

[63] Impact assessment report - SWD(2022)393. Available here.
[64] European Commission, Directorate-General for Taxation and Customs Union, Luchetta, G., Giannotti, E., Dale, S. et al., *VAT in the digital age – Final report. Volume 1, Digital reporting requirements*, Publications Office of the European Union, 2022, https://data.europa.eu/doi/10.2778/541384.
[65] ViDA IA, p. 14.
[66] ViDA Study, p. 43.

Taking these costs per firm as a reference, one can use them to calculate the cost per group of companies in BEFIT. Using the number of groups in Figure 5 above, namely that we have a total of 19,112 MNEs (of which 4,082 are MNEs with a turnover of EUR 750 million and 5373 and SME groups).

If we consider all possible large MNEs in scope of BEFIT and that they face administrative costs of EUR 570 on average per year, this makes a total cost of some EUR 8 million per year for these MNEs. The cost for SME groups would be (taking an average value of EUR 207 for SMEs) a total of about EUR 1 million. This means total recurrent administrative costs of about EUR 9 million. In the long run, these costs are expected to decline due to **learning effects**. Following a similar process, we obtain the following one-off costs due to the implementation of the initiative, this is EUR 29 million. One can see these costs as an **upper-bound estimate** as the frequency of reporting information for BEFIT purposes to tax authorities will be (much) lower than would be the case for transaction-based information exchanges in the context of VAT.

This means that a direct comparison with the cost estimates for the ViDA proposal may overestimate the implementation costs of this initiative. For this reason, if we were to consider only half of the costs estimated in relation to SAF-T, then a **lower-bound estimate** would correspond to one-off costs of about EUR 15 million and recurrent costs of around EUR 5 million per year.

For **tax administrations**, the annual costs of DRR in the form of SAF-T systems are much lower than for businesses. A consultation amongst tax administrations where SAF-T is in place resulted in estimated one off costs of up to EUR 11 million and per Member State, i.e., a total of EUR 297 million.[67] Likewise, this amount covers the cost induced by all firms who have to deal with the administration of VAT, whereas the number of MNEs in scope of the initiative is much smaller.

6.3.6. Environmental and social impacts

No particular and direct environmental impact is expected. Indirectly, one could perhaps consider that the resources freed from tax compliance costs could be used by companies to invest in more environmentally sustainable production methods if companies wished. Regarding employment and social impacts, resources freed from tax compliance costs could be used in productive activities. These in turn could mean hiring new staff and/or training new staff. Alternatively, companies could choose to use the extra resources, in order to pay higher wages. In both cases, this could have a potential positive employment and social impact. Additional resources, either as savings or generated via investment could also be distributed among shareholders. It is however difficult to estimate such impacts with precision since they would depend on the decision of each company on how to use its additional spare resources.

6.3.7. Additional impacts

The analysis also considered whether the initiative may impact **fundamental rights**. It is not expected that there would be a considerable effect. The initiative would contribute to levelling the playing field, removing cross-border barriers, and providing certainty. While that does not mean the problems outlined in Chapter 2 lead to any discrimination or unjustified restrictions, this could be

[67] ViDA Study, p. 33.

beneficial for equal treatment, the freedom to conduct a business and the protection of property. The proposal will also ensure that the protection of personal data is guaranteed.

The impacts on **competition** have also been taken into account, as described, for instance, in the competitiveness check in Annex 5. Certain policy options are more likely to have such impact than others. For example, for BEFIT, the options for the scope will be a decisive factor. An optional scope under the Light Version may be cost-efficient as it will allow businesses that are likely to benefit to opt-in but it would nevertheless be less effective in reducing complexity or levelling the playing field. The Comprehensive Version, on the other hand, would be more effective but would not necessarily reduce compliance costs for all groups of companies as it does not consider differences in size and activities. Finally, the Composite Version seems to strike a balance between ensuring a level playing field for the groups of companies that are most likely to be affected by the current differences in the internal market but without increasing compliance costs for groups that are less likely to benefit from a single set of rules.

7. HOW DO THE OPTIONS COMPARE?

The initiative has three general objectives: to simplify tax rules, to stimulate growth and investment in the EU, and to ensure fair and sustainable tax revenues for Member States (Chapter 4). These are to be achieved through several specific objectives: reducing tax compliance costs; encouraging cross-border expansion; tackling distortions in the internal market and thereby levelling the playing field; reducing risks of double and over-taxation as well as of tax disputes; and increasing tax certainty for businesses (Chapter 4). To fulfil the envisaged objectives in the most efficient way, the assessment considers three Versions that are designed on the basis of different combinations of policy options (Chapter 5) and, accordingly, have different impacts (Chapter 6).

In this Chapter, we compare effectiveness and efficiency of the three Versions and check their coherence with existing policies of the Commission in the field of direct taxation. The tables below show a scale that indicates to what extent each of the three Versions contributes to achieving the envisaged specific objectives and in turn the general objectives. The scale is based on the following four steps: (0) irrelevant/no change, (+) limited contribution, (++) partial contribution, and (+++) substantial contribution.

7.1. Comprehensive Version: Mandatory for all with the highest degree of harmonisation and immediate application

Comprehensive Version: Mandatory for all and fully-fledged corporate tax base					
Objectives					
	To reduce tax compliance costs	To encourage cross-border expansion	To tackle distortions in the market and thereby level the playing field	To reduce the risk of double and over taxation and tax disputes	To increase tax certainty and fairness for businesses
BEFIT					
Scope: Mandatory for all EU members of groups	+	++	+++	+++	++
Tax base: Comprehensive set of tax rules	+	++	+++	+++	++
Allocation of the aggregated tax base: Formulary apportionment with intangible assets	++	0	+	+++	+
Transactions with associated enterprises outside the group: Simplified approach to transfer pricing risk assessment	+	++	+	++	++
Administration: Advanced One-Stop-Shop	+	++	0	++	++
Rating for BEFIT	+	++	++	+++	++
Common Approaches to TP					
Inclusion of the OECD arm's length principle and Transfer Pricing Guidelines in EU law and coordination towards common EU Guidance	++	0	++	+++	+++
OVERALL RATING	++	++	+	++	++

Effectiveness:

- The mandatory-for-all character of this version in combination with the common rules for computing the tax base should diminish the differences between corporate tax systems. Version 1 therefore **substantially contributes** to **eliminating distortions in business decisions** caused by the interaction of disparate tax systems and also the **risk for double- and over-taxation**. The inclusion of the arm's length principle in EU law and the prospect for common approaches among Member States to the interpretation of the OECD Transfer Pricing Guidelines also contributes substantially to eliminating double taxation. This outcome would also **enhance tax certainty and fairness** for taxpayers.

- A mandatory-for-all system is expected **to encourage cross-border expansions** due to the common rules. However, this positive effect could be significantly mitigated, especially at the outset, by the introduction of a fully-fledged corporate tax system, which would involve high transition costs. This could cause a temporary set-back for many EU businesses, notably groups of a smaller size and with less resources.

Efficiency:

- The mandatory character for all is likely to create **important costs for compliance** for groups of companies of a smaller size. These would primarily be one-off costs linked to the transition towards a new tax system and in the longer term, could contribute, in a limited manner, to the reduction of compliance costs. The expected decrease in the numbers of transfer pricing disputes should bring **some cost-savings but this would not necessarily be enough to make up for the expenses of the new BEFIT administrative structures** that would apply to all groups of companies.

7.2. Light Version: Optional, with the least degree of harmonisation including a transition allocation rule

Light Version: Optional, with the least degree of harmonisation including a transition allocation rule					
Objectives					
	To reduce tax compliance costs	To encourage cross border expansion	To tackle distortions in the market and thereby level the playing field	To reduce the risk of double and over taxation and tax disputes	To increase tax certainty and fairness for businesses
BEFIT					
Scope: Optional for all EU members of	++	+++	0	+	0

groups					
Tax base: Limited tax adjustments	+++	+++	++	++	++
Allocation of the aggregated tax base: Transition allocation rule	++	0	+	+++	++
Transactions with associated enterprises outside the BEFIT group: Keep the current transfer pricing principles	0	0	0	+	+
Administration: Limited One-Stop-Shop	+	+	0	+	+
Rating for BEFIT	++	+	+	++	+
Common Approaches to TP					
Inclusion of the OECD arm's length principle and Transfer Pricing Guidelines in EU law	+	0	++	+	+
OVERALL RATING	++	+	+	++	+

Effectiveness

- The optional-to-all scope of this Version demonstrates **some degree of effectiveness in reducing compliance costs,** but the optionality has **no effect on tackling distortions in the market, or increasing tax certainty for taxpayers. There is only limited effectiveness in reducing double taxation**.

- Under an optional scope, the '**traffic light system**' can still contribute, to a limited extent, to **preventing double taxation and securing tax certainty**, in particular, for taxpayers.

- The inclusion of the arm's length principle in EU law would contribute to having **less divergent interpretations of the OECD Transfer Pricing Guidelines and to eliminating double taxation as well as to enhancing tax certainty and fairness** for taxpayers. However, in the absence of EU coordination on future revisions of these Guidelines, its effectiveness would be limited.

- For **groups that may be planning to expand across the border**, simplification would broadly address most objectives and notably, **the reduction of compliance costs and the avoidance of double taxation**.

Efficiency

- This Version shows limited efficiency because, by making optional the scope of BEFIT, it would involve, **for tax administrations,** the setting up a new tax system without knowing how many eligible groups will opt in. In other words, it could be too costly an exercise and cost-ineffective in delivering on the objectives.

- Legislating to integrate the **OECD arm's length principle in EU law, without including any dynamic reference** to the OECD Transfer Pricing Guidelines, would be an **inefficient** way to achieve the objectives of this initiative, as it would require that a new EU legal instrument be proposed each time that the Guidelines are revised.

7.3. Composite Version: Features of mandatory harmonisation including a transition allocation rule

Composite Version: Features of mandatory harmonisation including a transition allocation rule					
Objectives					
	To reduce tax compliance costs	To encourage cross border expansion	To tackle distortions in the market and thereby level the playing field	To reduce the risk of double and over taxation and tax disputes	To increase tax certainty and fairness for businesses
BEFIT					
Scope: 'Hybrid', i.e., mandatory for all EU members of groups with annual combined revenues exceeding a certain threshold and optional for EU members of groups with revenues below this	++	+++	+++	++	0

Tax base: Limited tax adjustments	+++	++	+++	+++	++
Allocation of the aggregated tax base: Transition allocation rule	++	0	+	+++	++
Transactions with associated enterprises outside the BEFIT group: Simplified approach to transfer pricing risk assessment	+	++	+	++	++
Administration: Hybrid One-Stop-Shop	+	++	0	++	++
Rating for BEFIT	++	++	++	++	++
Common Approaches to TP					
Inclusion of the OECD arm's length principle and Transfer Pricing Guidelines in EU law and coordination towards common EU positions	++	0	++	+++	+++
OVERALL RATING	++	++	++	+++	++

Effectiveness

- For the groups of companies within the mandatory scope of BEFIT, the system achieves **high effectiveness in tackling market distortions** and **reducing the risk of double taxation and tax disputes**. However, the overall picture, as it also includes the optional element for groups below the agreed threshold, eventually contributes only partially to the above objectives. It could be that over time it becomes attractive to more firms, increasing its effectiveness.

- For **groups that may be planning to expand across the border**, the options above contribute effectively to this objective because the rules are optional and therefore, can be used by those who can benefit from the system.

- The aggregation of tax bases within the group and a common, simple method for allocating income would **contribute to reducing instances of double taxation as well as disputes.** As a result, there will be **less costly procedures related to transfer pricing.** However, this contribution would be partial, if compared to the overall picture, because it would only concern the BEFIT group members. So, double taxation will persist amongst those outside the scope of the BEFIT and, possibly, in transactions between BEFIT group members and entities outside the group.

Efficiency

- Although the OSS will involve one-off costs, in order to be set up (i.e., staff training, IT systems, etc.), the BEFIT Teams would contribute to some degree of **tax certainty**.

- Keeping the rules optional for groups outside the mandatory scope, would allow them to choose the simplest and **most cost-efficient option**. Such a prospect would **maximise the potential positive effects of BEFIT**.

- As it is difficult to estimate the effect of formulary apportionment as a method for allocation of the BEFIT tax base with accuracy, given uncertainties and limited data availability, this option also appears more efficient for the general objective to ensure the sustainability tax revenues. A transition rule ensures stability and allows to estimate the impact of the new tax base and potential effects of introducing formulary apportionment with more accuracy.

7.4. Overall comparison and Coherence with other EU policies

How Do the Versions Rate in Achieving the Objectives?					
	To reduce tax compliance costs	To encourage cross border expansion	To tackle distortions in the market and thereby level the playing field	To reduce the risk of double and over taxation and tax disputes	To increase tax certainty and fairness for businesses
Comprehensive Version: Mandatory for all and fully-fledged corporate tax base	++	++	+	++	++
Light Version: Optional, with the least degree of harmonisation including a transition allocation rule	++	+	+	++	++
Composite Version: Features of mandatory harmonisation,	++	++	++	+++	++

including a transition allocation rule					

7.4.1. Comparison between the Three Versions: The Trade-offs

The Comprehensive Version provides for the most extensive degree of harmonisation, which implies that its features score high in effectiveness (i.e., substantially or partially effective) when they are assessed against the specific objectives of the initiative. On the other hand, the components of this Version lose in efficiency, as they are quite expensive to run, in particular when it comes to setting up the requisite administration structures for operating a OSS. In addition, it would be a difficult exercise for Member States to compromise for political agreement on a fully harmonised corporate tax system.

The Light Version, on the other hand, stands on the opposite side of the spectrum. Its features allow a significant degree of fragmentation to persist and on this basis, their effectiveness in achieving the objectives is assessed to be lower than under the Comprehensive Version. However, the discretion that this Version allows Member States could make political agreement easier to obtain, especially if Member States consider that their businesses can reap some simplification benefits in an efficient manner, meaning without a need for very costly investments on the side of the tax administrations. In addition, given that BEFIT would be optional, groups of companies would only opt in if they were convinced that the benefits would make up for the costs involved in transitioning to the new system.

Finally, **the Composite Version scores the highest of the three Versions** because it not only proves effective in achieving the specific objectives of the initiative but in addition, demonstrates efficiency, as its limited mandatory scope is delineated to solely include those groups who can mostly benefit from the common rules and can afford the transition. Furthermore, it envisages a method of allocation based on previous years' tax results, which would ensure the sustainability of national tax revenues and allow for a possible future evaluation of a formulary apportionment method.

7.4.2. Coherence with other EU Policies

Other EU policies in the area of corporate taxation include the Parent-Subsidiary Directive, Interest & Royalty Directive, the Merger Directive[68], the ATAD, and the Pillar 2 Directive. These policies address double taxation in cross-border payments of dividends, interest, and royalties as well as mismatches between national corporate tax systems that arise in cross-border situations.

BEFIT would be specific to groups. Where there is an overlap in scope with, for instance, the Parent-Subsidiary Directive, BEFIT would prevail as *lex specialis*. Other policies such as the ATAD would act as a complement to BEFIT for anti-tax abuse, which can be clarified in the

[68] Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States.

proposal, and certain specific adjustments to the interest limitation rule would be integrated for consistency. For the interaction with the Pillar 2 Directive, see Chapter 1 and Annex 6.

Comparing the different Versions, it should be noted that each Version consists of the same building blocks and coherence will mainly be ensured at a technical level. Nonetheless, the Comprehensive and Composite Versions almost obtain the same rating in achieving the objectives but experiences from other initiatives, e.g., UNSHELL and DEBRA, show that Member States are often only willing to agree to common rules that are strictly necessary. Chances for a successful outcome are therefore more likely for the Composite Version. This is also coherent with the Pillar 2 Directive (as it will be largely based on the same rules for adjusting the financial accounting statements for tax purposes). Regarding Pillar 1, it seems that BEFIT can accommodate where there is an overlap in the two systems. For more details, see Chapter 1 and Annex 6.

From a broader perspective, the initiative would also interact with other policies. The agreement of common approaches to transfer pricing may establish a level playing field and ensure a stronger legal base in the fight against aggressive tax planning practices which are carried out through transfer pricing arrangements. The Commission, and in particular DG COMP, has carried out numerous assessments as to whether such arrangements may constitute illegal state aid. However, without an EU approach to transfer pricing, such arrangements can rarely be effectively addressed by state aid rules. This creates an inconsistency with the Commission priority to create an economy that works for people.

8. PREFERRED OPTION

Chapter 5 outlined the available options, including discarded options, Chapter 6 presented selected combinations of options in three distinct Versions and assessed the impact of each. Chapter 7 compared these Versions against the objectives (from Chapter 4) on the basis of effectiveness, efficiency and coherence. On the basis of the assessment conducted, the preferred Version is the ***Composite version with features of mandatory harmonisation including a transition allocation rule.*** Each of the preferred options, which feature in Composite, are analysed below.

8.1. A common set of rules for the corporate income tax base of companies within large groups (BEFIT)

All the options considered for the purposes of BEFIT were based on the creation of a group taxation system. The mandate for this project in the Communication on Business Taxation for the 21st Century required the development of a tax system that builds on the existing international tax framework, in particular the OECD/G20 Inclusive Framework Two Pillar Approach. Therefore, the preferred policy option for this component can co-exist with existing Member State corporate tax systems and be compatible with the two Pillars. The overall structure of BEFIT in five building blocks was taken as a given starting point from the outset of the project and this is why the existence of the building blocks a prerequisite and never questioned. The analysis below is about the options under each of the five building blocks.

8.1.1. Scope: Hybrid option

BEFIT will have a *hybrid scope* (*option 3*). This means that the system will be mandatory only for groups that prepare consolidated financial accounting statements and earn annual combined revenues exceeding EUR 750 million. The system will be optional for smaller groups of companies but it will always be a condition of eligibility that they prepare consolidated financial accounting statements. This threshold will be in alignment with the GloBE Rules under Pillar 2, which ensures a consistent approach that complements this internationally agreed framework on a minimum level of taxation.

The hybrid scope therefore strikes the best balance between achieving the objective of simplicity for large groups of companies without forcing a greater administrative burden on smaller-sized groups. Accordingly, it ensures tax certainty for larger groups, which generally have greater cross-border exposure, and optionality for smaller groups. It creates the best mix of the optional and mandatory scope for groups, which leads to a business environment that can stimulate growth and investment in the internal market.

8.1.2. Tax base calculation: Limited tax adjustments to the financial accounts

Option 1 for a simplified tax base complies in the best way the objective to simplify tax rules and stimulate growth and investment. The calculation of the tax base will be the result of applying a limited series of tax adjustments to the financial accounting statements of each BEFIT group member, as prepared to reconcile with the consolidated statements of the group. Additionally, the framework follows closely the approach in Pillar 2, which should imply that Member States will have familiarity with the rules. To provide space for growth and investment, Member States will also be allowed to individually apply additional adjustments to their allocated part in areas not covered by the common rules (e.g., certain tax incentives). The alternative option, which would resonate the CCCTB, would contribute to simplicity but to a lesser extent, as it would replace 27 tax systems but set up a detailed framework which would be entirely different from accounting rules.

8.1.3. Allocation of the aggregated tax base: Transition rule for allocating the aggregated tax base

Option 3 is the preferred choice. This will be a tax base allocation referring to the average of the taxable results of each BEFIT group member over previous fiscal years, for instance three fiscal years (rolling baseline percentage). This option would allow for the possibility of introducing an allocation formula based on substantive factors at a later stage.

The preferred option is a compromise which immediately addresses the existing challenges in the internal market through a simple system while accommodating the general views of stakeholders in the public consultation with regard to the challenges of introducing a new comprehensive corporate tax system at the same time as Member States are in the process of implementing the OECD Pillars 1 and 2.

A review mechanism would ensure that the effects of the rolling tax base allocation will be monitored and analysed. Together with new CbCR data and studies of the impact of Pillars 1 and 2, these data will inform on the prospect for introducing a profit allocation rule that could be based on a formula. The aim would be to arrive at a permanent allocation rule that would better reflect the

modern economic reality and the tax environment after the OECD Pillars 1 and 2 have come into effect. A dynamic approach would, to the greatest extend possible, contribute to the objective of stimulating growth.

8.1.4. *Transactions with associated enterprises outside the BEFIT group: Simplified approach to transfer pricing risk assessment*

Option 2 is the preferred one for this building block. It aims to introduce simplification in the method for assessing the risk of transfer prices between BEFIT group members and their associated enterprises. The options were to keep the existing framework or introduce a risk assessment tool for transfer pricing arrangements. Considering that simplification is an overarching issue in BEFIT, the introduction of a transparent and harmonised framework for risk assessment using profit markers should lower compliance costs for EU businesses and improve efficiency in the use of resources within businesses and tax administrations. On this basis, BEFIT will propose the introduction of a 'traffic light system' under which, each transaction will have to be assessed as being of low, medium or high risk, depending on how it compares to a series of pre-set benchmarks. This system will allow predictability of tax administrations and in this way, provide an incentive to taxpayers for further engagement. Accordingly, an increase in commercial activity will open the way for growth and, accordingly, higher tax revenues.

8.1.5. *Administration system: Hybrid One-Stop-Shop*

The preferred option is the Hybrid OSS. This option combines the Advanced OSS and the Limited OSS. It means that the BEFIT Information Return would be dealt with centrally via the Filing Authority whereas the individual tax returns would be filed by each BEFIT group member with its local tax authority. The local tax authorities would also remain responsible for the BEFIT group members' settling of tax liabilities, as well as audits and dispute settlement in conformity with national tax sovereignty. When it comes to elements of the administration of BEFIT, which touch upon national tax sovereignty, in particular audits and dispute resolution, it is unavoidable that local tax authorities have to maintain most part of their current role and therefore the limited OSS applies.

This option prioritises simplicity and the avoidance of increased administrative burden for tax administrations and creates the best possible balance between the simplicity of an OSS and the role played by Member States' national authorities. The BEFIT Teams will play an important role in this balance. They will aim to reach early agreement on several items of the BEFIT Information Return and provide tax certainty, which should decrease compliance costs, at least gradually, and foster the internal market as an environment of growth and investment.

8.2. Common approach to transfer pricing

The preferred option is to include the OECD arm's length principle and Transfer Pricing Guidelines in EU law alongside the gradual development of common approaches to the practice of applying transfer pricing. This option will ensure a coordinated interpretation and application of the arm's length principle within the EU. It will provide tax certainty for taxpayers, and tax administrations will have to deal with less disputes. Furthermore, making this a binding approach, and in combination with anti-abuse provisions, it should bring down the opportunities for companies to use transfer pricing for aggressive tax planning purposes. Option 2 will deliver the best on all pursued objectives. It will ensure greater simplicity by encouraging a common

interpretation and application of the arm's length principle and the OECD Transfer Pricing Guidelines. In addition, it will stimulate growth and investment through ensuring that the EU can react quickly and coordinate on the interpretation and application of the guidance.

8.3. REFIT (simplification and improved efficiency)

All groups in the mandatory scope of BEFIT and all groups that file consolidated financial accounts and opt into BEFIT will benefit from tax simplification by applying a single set of tax rules to calculate their tax base across the internal market.

This simplification will reduce tax compliance costs (e.g., administrative, legal and time costs), because BEFIT groups will no longer be required to prepare and compute their taxable results according to complex sets of national tax rules but, rather, be able to file a centralised tax return (one-stop-shop) and will benefit from early, EU-wide tax certainty on some items of the tax base, thanks to the closer cooperation within the BEFIT Teams, explained above. It also entails, for example, limited additional learning costs to familiarise with the common corporate tax rules, as the rules for computing the tax base will be harmonised. Finally, by allowing this system to be optional for smaller groups as long as they file consolidated financial statement, they will be given the opportunity to reach a business decision that suits best, namely after assessing the compliance costs and administrative complexity that can arise from dealing with distinct tax rules.

8.4. Application of the 'one in, one out' approach

The 'one-in, one-out' approach consists of offsetting any new burden for citizens and businesses resulting from the Commission's proposals by removing an equivalent existing burden in the same policy area. As noted above, the preferred option has the potential to significantly reduce tax compliance costs for groups of companies. Estimated tax compliance cost savings could range from EUR 11 million to EUR 22 million if only MNEs with a turnover of EUR 750 million are in and EUR 42 million per year to EUR 80 million per year if smaller groups of companies also opt in. While it is difficult to identify the precise nature of such costs savings, one can assume that the great majority are related to administrative activities/reporting obligation linked to national tax rules, rather than adjustment costs. On the other hand, the additional costs for businesses that will apply the new rules are tentatively estimated between EUR 15 million to EUR 29 million one-off costs to businesses and around EUR 297 million one-off costs for tax administrations. Recurrent costs would range from EUR 5 million to EUR 9 million per year for business groups.

9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

Monitoring and evaluation are key constituents of this initiative, regardless of the policy options to be finally selected. Progress towards achieving the objectives of the initiative will be monitored and evaluated on the basis of the data already collected and possible new information.

9.1. Monitoring

The Commission will periodically monitor the implementation of the legal proposals and their application in close cooperation with the Member States. Monitoring in a continuous and systematic way will allow the Commission to identify whether the policy proposal is being applied as expected and to address implementation problems in a timely manner. Collection of factual data on the suggested monitoring indicators will also provide the basis for the future evaluation of the initiative (see section 9.2).

In terms of objectives, as described in Chapter 4, the general objectives of the proposal are to simplify tax rules for businesses in the EU and have the effect of stimulating growth and investment and ensuring sustainable tax revenues for Member States. The specific objectives that have to be materialised to set the path for achieving this are to: (i) reduce compliance costs, (ii) encourage cross-border expansion, (iii) ensure a level playing field and reduce distortions in the internal market, and (iv) reduce the risk of double and over-taxation.

Below, indicators are suggested to measure the success of the initiative on both BEFIT and transfer pricing, in light of these objectives. The tools in Table 6 are targeted to specific objectives, which are more suited for measurement.

- A positive evolution of EU GDP, which could indicate that the initiative has effectively **reduced distortions in the internal market** and **stimulated growth and investment in the EU**;
- A decrease in the number of cases in which Member States had to shut down artificial tax schemes, which could indicate that the initiative has **reduced distortions in the internal market** and **enhanced tax certainty and fairness**.
- A decrease in the number of mutual agreement procedures (MAPs) between Member State tax administrations, which could indicate that the initiative has **reduced the risk of double or over-taxation and disputes**.
- A positive evolution of the corporate income tax base of Member States, which could indicate that the initiative has contributed to **ensuring fair and sustainable tax revenues for Member States**.
- An increase in the number of large groups that fall under the mandatory scope, which would reflect that groups in the EU have grown larger and increased their revenues, which could indicate that the initiative has effectively **encouraged cross-border expansion** and **stimulated growth and investment in the EU**.
- An increase in the number of groups below the threshold for mandatory application which have opted in. This would indicate that the benefits, such as possibly **reducing compliance costs and enhancing tax certainty**, of the new system have been effective from a business perspective and contributed to **stimulating growth and investment in the EU**.

- A decrease in tax compliance costs for in-scope groups, relative to their turnover, which could indicate that the initiative has effectively **reduced compliance costs for EU businesses**.
- An assessment of good functioning of the administrative framework and in particular, of the efficiency of the filing system through one tax authority as well as the effectiveness of the BEFIT Teams in giving early legal certainty on certain items, could indicate having achieved **simplified tax rules, reduced compliance costs and/or enhanced tax certainty**.
- A decrease in the number of transfer pricing disputes within the EU, which could indicate that the initiative **enhanced tax certainty and fairness**. This indicator would measure whether the aggregation of the BEFIT tax base and enhanced tax certainty for BEFIT groups through risk assessment criteria, as well as the common EU approach to a series of transfer pricing topics have effectively reduced the numbers of disputes.

Table 6: Objectives, Monitoring Indicators and Measurement Tools

Specific Objectives	**Indicators**	**Measurement Tools**
To reduce compliance costs for EU businesses	Implementation and first BEFIT running costs for groups under BEFIT, relative to turnover Training costs for human resources in business and tax administrations Number of groups that opted in BEFIT Number and cost of double taxation disputes between Member States, which feature as "new entries" (after BEFIT started to apply) in MAP procedures and Arbitration	Survey/questionnaire for large groups, by DG TAXUD, possibly with external assistance, in cooperation with Member State tax authorities Data received by DG TAXUD from Member State tax authorities, which would have this information available as 'Filing Authorities' Data collected by DG TAXUD on new MAPs and numbers of cases under the Arbitration Convention and Directive on tax dispute resolution mechanisms

To encourage cross-border expansion	Number of large groups that fall under the mandatory scope of BEFIT Number of groups opting to apply BEFIT	Survey on aggregated data by DG TAXUD for Member State tax authorities, which would have this information available Data received by DG TAXUD from Member State tax authorities, which would have this information available as 'Filing Authorities'
To reduce distortions that influence business decisions in the internal market and thereby level the playing field for EU businesses	Number of cases in which Member States had to shut down artificial tax schemes Evolution of EU GDP	Information to be provided by tax administrations through a survey that will be circulated by DG TAXUD National accounts and GDP statistics by Eurostat
To reduce the risk of double or over-taxation and disputes	Number of double taxation disputes between Member States, which feature as "new entries" (after BEFIT started to apply) in MAP procedures and Arbitration	Data collected by TAXUD on new MAPs and numbers of cases under the Arbitration Convention and Directive on tax dispute resolution mechanisms

As for the sources of information that will be used, the official Balance-of-Payment statistics take stock of the Foreign Direct Investment (FDI) flows and income streams thereof. From the macro-economic perspective, this will also be a crucial publicly available indicator. Regarding tax revenues and other administrative information, considering that the Commission is not a tax authority, it does not possess primary sources of information. The main sources that TAXUD could make use of, to derive useful and comprehensive information will be the tax administrations themselves, as they will be operating the initiative, and the taxpayers in scope of the rules. It will be important that Member States provide useful numerical data, including data that they will have collected from taxpayers, to allow TAXUD to come to conclusions on the above topics. For this purpose, the legal draft will lay down an obligation for Member States to report to the Commission all requisite aggregated information for a comprehensive assessment.

In order to measure an isolated effect, the initiative can be monitored using also econometric techniques which typically rely on time series of macro-economic magnitudes where the impact of the shock can be controlled for. Provided there are no overlapping relevant legislative changes or shocks, it will be possible to assign an increase in foreign direct investment (FDI) to the initiative even in the short term, by comparison with a model-based reference scenario based on past statistical information.

The Commission will review the situation in the Member States regularly and publish a report. The monitoring framework will be subject to further adjustments in accordance with the final legal and implementation requirements and timeline.

9.2. Evaluation

Considering the magnitude of the initiative and the fact that it will introduce several novel features in corporate taxation, it will initially be necessary to give Member States time and all necessary assistance, in order to properly implement the EU rules. On this premise, it would be more effective to have the first evaluation not earlier than five years as of when the rules start to apply. After establishing a first picture at that point in time, the evaluation of the initiative should assess the extent to which the outlined objectives have been met. It will also analyse the extent to which the expected simplifications for the targeted stakeholders have materialised and assess the related administrative and regulatory burden. The Commission will inform about the evaluation results in the form of a Report.

In addition, for BEFIT, it is foreseen that the evaluation will include a review of the transition allocation rule. The review will *inter alia* be based on information gathered on the application of BEFIT together with new CbCR data and an analysis of the impact of OECD Pillars 1 and 2. The aim of the review is to ensure that the allocation method reflect the modern economic reality and the new corporate tax environment after the OECD Pillars 1 and 2 have come into effect. If the Commission deems it appropriate based on the review, it may adopt a legislative proposal to amend the allocation method, possibly by introducing a formula.

ANNEX 1: PROCEDURAL INFORMATION

10. LEAD DG, DECIDE PLANNING/CWP REFERENCES

The lead Directorate General is the Directorate General for Taxation and the Customs Union (DG TAXUD).

References:
- Agenda Planning: Business in Europe: Framework for Income Taxation (PLAN/2022/663)

- Call for Evidence for an Impact Assessment: Business in Europe: Framework for Income Taxation (BEFIT) (Ref. Ares(2022)7086603)

- The initiative was announced in the Communication on Business Taxation for the 21st Century, COM(2021) 251 final.

11. ORGANISATION AND TIMING

An interservice steering group was set up to steer and provide input to this impact assessment report. The steering group, led by the Secretariat-General, met on: 2 September 2022, 18 November 2022, 6 March 2023 and 11 April 2023. The following Directorates General were invited to the Inter-Service Steering Group (ISSG): AGRI, BUDG, CNECT, COMM, COMP, ECFIN, EEAS, EMPL, ESTAT, FISMA, GROW, INPTA, JRC, JUST, REGIO, SJ, OLAF, TRADE. In addition to the meetings of the Inter-Service Steering Group, DG TAXUD met in bilateral meetings with representatives of the following Directorates General to discuss the analysis in the impact assessment, the design of options, and other policy issues: COMP, FISMA, GROW, JRC. The report was submitted to the Regulatory Scrutiny Report on 26 April 2023.

12. CONSULTATION OF THE RSB

The Impact Assessment report was scrutinised by the Regulatory Scrutiny Board and discussed in the relevant meeting on 24 May 2022. In the opinion dated 26 May 2023, the Regulatory Scrutiny Board outlined recommendations which were integrated in the impact assessment.

It was found necessary that the initiatives assessed in the report that received the positive opinion with reservation from the Regulatory Scrutiny Board will be presented as separate proposals. For this reason, this impact assessment report only assesses the impact of the proposal for a Council Directive on BEFIT and the proposal for a Council Directive on Transfer Pricing.

This represents faithfully the analysis on BEFIT and Transfer Pricing contained in the scrutinised impact assessment and integrates the recommendations of the Regulatory Scrutiny Board in that regard. The main changes to the document are summarised in Table A1.

Table A1: TAXUD revisions following the RSB positive opinion with reservations

Comments of the RSB	*How and where comments have been addressed*
(C) What to improve	
(1) The report should elaborate on the	We have further clarified **the lessons learned**

lessons learned from the previous corporate tax initiatives. It should better explain how the initiative fits with the OECD Pillar I and Pillar II work. It should also summarise the main features of the national tax frameworks.	**from previous corporate tax initiatives** in the introduction (Chapter 1). This part now includes an assessment of the outcome of previous negotiations and how this has been reflected in the proposal. The report now also includes **a better explanation of links with Pillars 1 and 2**. This is addressed in the introduction (Chapter 1) and the dedicated Annex 6 on the OECD Two Pillar Approach. In the introduction, this is done in different places: (i) how the use of financial accounting statements in Pillar 2 corresponds to a lesson learned from the 2011 and 2016 corporate tax proposals; (ii) to illustrate, among others, that the context for tax policy has significantly changed; and (iii) on which design features BEFIT builds. In Annex 6, the parts on Pillar 1 and on Pillar 2 have both been extended. The two Pillars are also addressed in the new Section 2.4 that was added to explain how the problem will evolve with EU intervention. Section 2.2 'What are the problem drivers' now summarises **the main features of the national tax frameworks**. In particular, it explains that all systems have a common aim and include rules on income, deductible expenses, adjustments, the allocation of income of cross-border businesses, and common features to deal with mismatches/interactions between the systems (treaties, exchange of information, anti-abuse rules, disputes). This section has also been extended with elements from the Commission's most recent Annual Report on Taxation (ART) of 2023, which includes a comprehensive overview of the different features of the tax systems of the Member States.
(2) The report should better discuss the robustness of the Corporate Income Tax-related compliance cost estimates under the baseline. It should also better substantiate, with further evidence, the description of the consequences. It should clarify the causal link between the design of a particular tax system and business decisions and discuss the available evidence on the magnitude of double	**The robustness of the Corporate Income Tax-related compliance cost estimates under the baseline** are set out in greater detail in Section 6.3.1.1 and Annex 4. The report acknowledges limitations of the available data in this regard. It also clarifies that the 10% assumption is an illustrative scenario to be able to estimate the effects, in absence of reliable information about cross-border investment behaviour following a reform of BEFIT's nature and magnitude. Annex

taxation and/or over-taxation. It should explain how the problem will evolve without EU intervention, with a consideration of relevant ongoing and existing legislation (including international policies).	4 also provides more explanation for the assumptions for the survey-based projection of compliance cost reduction and explains the regression results (see Chart A4.1). **The description of the consequences** has been further substantiated. In Sections 2.2 and 2.3 on problems and consequences, stakeholders' views have been added to make it clearer that, in addition to Annex 2 and the published factual summary of the public consultation, the input has been duly considered and that it confirmed identified issues, from the perspective of different categories of stakeholders. The description now also refers to additional sources, including the Commission's own 2023 Annual Report on Taxation (ART) and a study by the European Parliament 'Overview on the tax compliance costs faced by European enterprises – with a focus on SMEs'. As specifically mentioned in the comments, **the link between the design of a particular tax system and business decisions** has been reformulated to better correspond to what is intended. It is elaborated on in Section 2.3.3 and now also includes additional data, from the ART, and stakeholder input from a survey – both in support of what is indeed a logical explanation. **The available evidence on the magnitude of double taxation and/or over-taxation** is discussed in Section 2.3.4. While available evidence is limited, this part has been reviewed to make it clearer that the number and costs of tax disputes are a form of evidence of the importance of double and over-taxation. In addition, the section has been elaborated by adding limited numbers and studies. For over-taxation, a hypothetical example was added to illustrate how this is relevant, even if the section does not include numerical data. A new Section 2.4 was added to **explain how the problem will evolve with EU intervention**. This considers relevant ongoing and existing legislation and international policies. Notably, it discusses relevant EU directives and the OECD/G20 IF Two-Pillar Approach. In addition, the part on subsidiarity (in **Chapter**

	3) has been reviewed to clarify that better cooperation between tax administrations cannot solve the problems through bilateral agreements. This part has also been expanded for transfer pricing. In **Chapter 4**, the objectives have been reviewed to include fair and sustainable tax revenues as a general objective, rather than a specific objective, because it did not directly relate to an identified problem/consequence. The general objective to ensure a level playing field has been moved to the specific objective to reduce distortions in the internal market. The two are related. In Annex 3, a table has been added to briefly explain how the objectives in Chapter 4 relate to the Sustainable Development Goals (SDGs). **Chapter 5** now includes explanation for the exclusion of shipping activities. Chapter 5 has also been updated to reflect the legal draft as much as possible (e.g., BEFIT 'networks' are now BEFIT 'teams'). More generally, the whole document has been verified for consistency. The report has also been updated in Chapter 8 to reflect that the preferred option for the administration of BEFIT would be a Hybrid One-Stop-Shop.
(3) The report should better explain the analysis of benefits. It should clarify the validity of the cost saving estimates. It should better explain the 'simplified tax regime' variable used in the regression analysis and clarify whether this is a reasonable representation of the options proposed in this initiative. The report should better discuss the likely uptake (and hence aggregate cost saving potential) of the option packages with voluntary elements. When presenting the macroeconomic benefits, the report should explain the assumptions and method behind the estimates. It should strengthen, with further evidence, the claim that international companies are more productive than their non-multinational counterparts.	**Chapter 6**, as well as **Annex 4**, have been updated to better explain the analysis of the benefits. The assumptions and method behind the broader macro-economic estimates are further explained in Annex 4. The annex provides additional explanation of the long-term simulations, in particular *Cortax.* This includes the assumptions made, which is also why it is complemented by a series of sensitivity analyses: the long-term effects on GDP and tax revenues are set out for different hypotheses. It also discusses the country-by-country reporting data that is used for the analysis. Annex 4 also clarifies the validity of the cost saving estimates and includes an explanation of the 'simplified tax regime' variable in Box 1. It provides literature/studies as evidence on the point that cross-border businesses would be more productive than businesses which do not expand across borders. In addition, a Section 6.3.1.6 on additional impacts has been added for

	fundamental rights and competition. To make the analysis of benefits more evident, we have also added a dedicated summary of the expected benefits of the three assessed Versions in Section 6.3.3.
(4) The report should quantify the costs introduced by this initiative. The analysis should build on relevant examples as well as stakeholder views. In line with this, the report should strengthen the presentation of the one in, one out approach and revise the presentation of costs and benefits in Annex 3.	**Chapter 6** has been elaborated to include a dedicated sub-section on estimating transition costs. This part explains why it is difficult to quantify the costs and it considers the ViDA proposal and SAF-T as examples for comparison. The same chapter provides a more detailed explanation of the costs of tax administrations for filing and for the BEFIT Teams. We have also revised Annex 3 to include costs estimates and to address the comments as best as possible. However, the report also affirms that it is difficult to estimate as BEFIT has no precedent. The report and the corresponding Annex 2 also provide further details on the views received from different stakeholder groups.
(5) The report should better present and discuss the distributional impacts of the initiative. It should provide the estimates of the GDP and tax revenue % increases in absolute (EUR) terms.	A discussion of the estimated distributional impacts of the initiative is difficult in the current circumstances with the available CbCR data and while the implementation of Pillars 1 and 2 is pending. The proposal therefore only includes a transition allocation rule which refers to the average of the tax results of the previous three fiscal years, with the purpose of ensuring that the impacts of the BEFIT framework can be assessed more accurately once the effects of implementing Pillars 1 and 2 materialise.
(6) The report should present a consistent description of the monitoring arrangements with indicators that more clearly outline what success would look like for this initiative.	**Chapter 9** has been revisited in order to provide a consistent description and to factor in more targeted monitoring for the initiative. It now includes more indicators and the description of the tools that will be used for measurement are more detailed. We also clarified where the information could be gathered, and that evaluation would require cooperation from the Member States. As indicated, this has also been added in the legal draft.

13. EVIDENCE, SOURCES AND QUALITY

The evidence base for this impact assessment report is based on various different sources:

- Modelling by the European Commission's Joint Research Centre based the CORTAX model.
- Feedback on the open public consultation and call for evidence, as summarised in the synopsis report in Annex 2.
- Exchanges with additional stakeholders through the Platform for Tax Good Governance and with Member States in Commission Working Party IV
- Further exchanges with additional stakeholders (i.e., MNEs) on an ad-hoc basis.
- Desk research and quantitative analysis.

ANNEX 2: STAKEHOLDER CONSULTATION (SYNOPSIS REPORT)

1. The stakeholders' Engagement Strategy

The consultation strategy for the present initiative encompasses the following activities:

- Feedback to the Call for Evidence published on the Commission website on 13 October 2022[69].
- Public consultation from 13 October 2022 to 26 January 2023.
- Targeted consultation to key stakeholders.

The main objectives of the different consultation streams are to (i) provide stakeholders and the wider public with the opportunity to express their views on relevant elements, (ii) gather specialised input to support the analysis of the impact of the initiative and the risks it may entail, (iii) contribute to design the technical aspects of the future initiative, and (iv) to satisfy transparency principles and help to define priorities for the future initiative.

2. Feedback on the Call for Evidence

The consultation period through this feedback mechanism took place between 13 October 2022 and 26 January 2023 via the Commission website[70]. 46 contributions were submitted during this consultation period by the following categories of stakeholders:

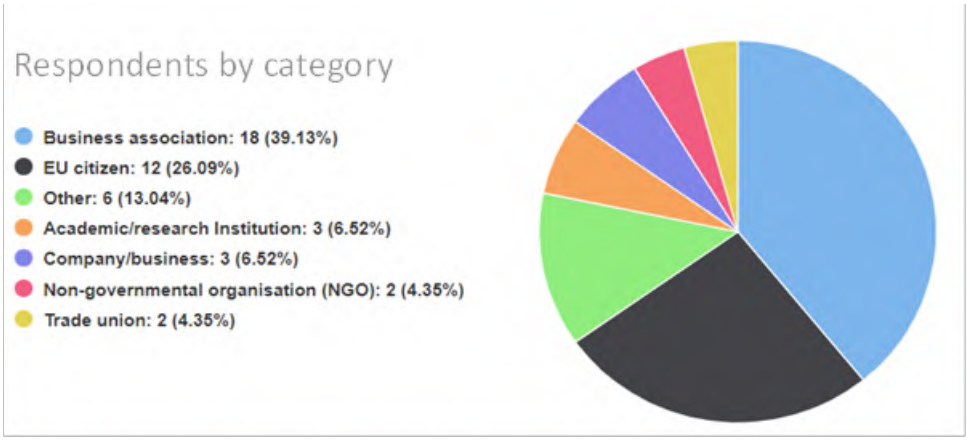


Chart 1 - Overview of stakeholders providing feedback to the inception impact assessment

Overall, stakeholders supported the objectives of the initiative and confirmed existing challenges for the internal market. It was recognised that businesses face complexity and high cost in order to comply with the rules of 27 different national corporate tax systems. In principle, feedback showed that a common corporate tax system can help achieve the envisaged policy objectives of the initiative. However, respondents also expressed diverging views on the proposed policy options. Some of the respondents acknowledged that a common corporate tax system together with a

---

69 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13463-Business-in-Europe-Framework-for-Income-Taxation-BEFIT-_en

70 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13463-Business-in-Europe-Framework-for-Income-Taxation-BEFIT-_en

formulary apportionment of the aggregated tax base to eligible Member States could be an important step towards fairer taxation. Others underlined that a global approach would be more favourable. Regarding the timeframe, respondents, especially businesses and business associations, raised concerns due to the implementation of the global OECD Two-Pillar Approach which will be burdensome for businesses in the coming years. On this basis, the respondents stressed that this implementation should be completed and assessed before introducing another set of multilateral corporate tax rules.

Regarding the scope of BEFIT, several respondents suggested that the BEFIT proposal should have a broad scope. Most of them preferred the rules to be optional for all companies, including SMEs. One stakeholder also underlined that this integration of SMEs should apply regardless of cross-border activities and also be applicable to partnerships.

Regarding the formulary apportionment, 17 respondents (37%) were in favour of including intangible assets in the formula, while four respondents were against it. The remaining respondents did not have a clear opinion on intangible assets as they presented a two-sided view. On the one hand, these respondents argued that intangible assets are the main value driver of most MNEs and should, therefore, be included to reflect economic reality. On the other hand, they argued that intangible assets should be excluded in order to prevent tax avoidance. Several respondents also underlined that due to differences in business activities there should also be sector specific formulae.

Concerning the administration of BEFIT, both business associations and businesses strongly supported the proposed "One-Stop Shop". They also stressed the importance of tax certainty and a tax disputes mechanism.

In general, business associations welcomed an initiative that could reduce administrative burden and compliance costs and, additionally, strengthen competitiveness within the EU. Some stakeholders, however, raised concerns as to whether BEFIT would be the right proposal to achieving the envisaged objectives. In their concerns, business associations questioned whether the proposed BEFIT approach, ultimately, would be able to reduce the administrative burden. They underlined that BEFIT would introduce a new Corporate Income Tax system within the EU which would operate alongside the existing systems in Member States. They emphasised the need for ensuring compatibility of BEFIT with international tax standards and tax treaties as the Arm's Length Principle would still be applicable to transactions with entities located in non-EU-jurisdictions. In this regard, concerns were also raised as to whether BEFIT could end up increasing administrative costs, rather than reducing them.

3. Public Consultation

The public consultation was launched on 13 October 2022. It remained open until 26 January 2023 for a total of 12 weeks. The consultation questionnaire was first published in English. Two weeks later it was published in the other 22 official EU languages.

The questionnaire consisted of 18 questions which cover the main impact assessment elements, including the problem definition, envisaged objectives, and the various policy options for the design of the features of BEFIT. Views were, in particular, requested on: (i) The scope of a new corporate tax framework; (ii) The calculation of a common tax base; (iii) the aggregation of the tax bases of members of the BEFIT group and the allocation of this aggregated tax base across Member

States; (iv) The application of transfer pricing rules to transactions with parties outside the BEFIT group; (v) Administrative simplifications.

Stakeholders also had the opportunity to upload additional contributions.

In total, 77 responses were received. The majority of the respondents (Almost 73%) were business associations and businesses.

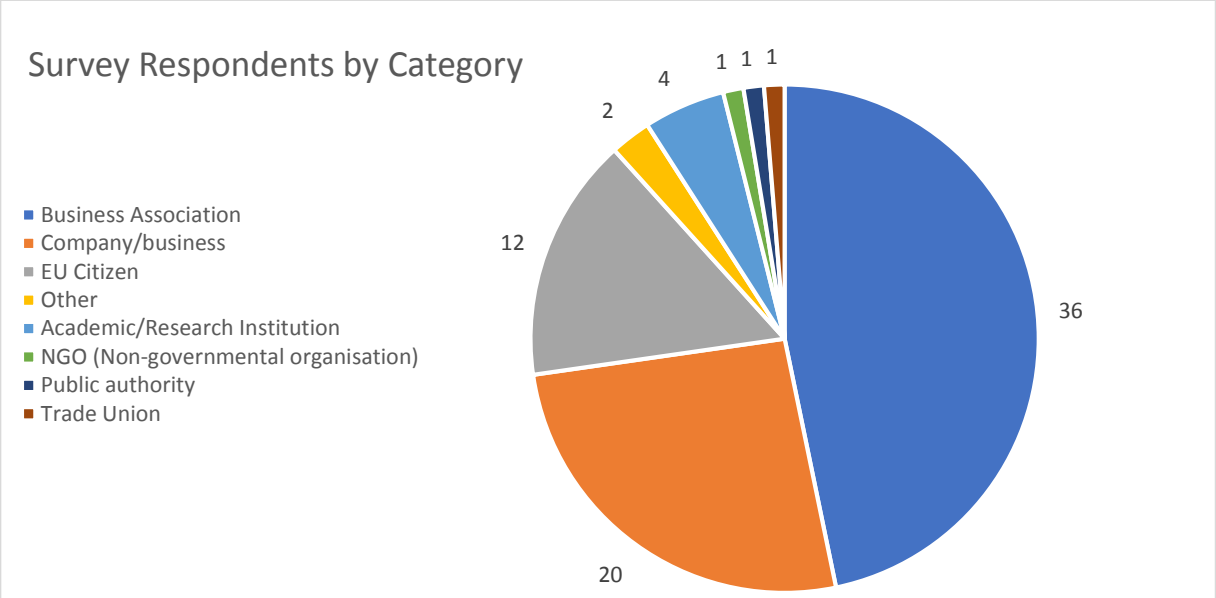


Chart 2 - Overview of stakeholders providing feedback to the public consultation

The respondents that represented businesses, business associations, organisations etc. differed in size. Out of these, 10 were micro (1 to 9 employees), 13 were small (10 to 49 employees), 16 were medium (50 to 249 employees), and 26 were large (more than 250 employees).

The respondents also had numerous countries of origin, in particular Member States. The highest number of replies came from Germany (22), followed by respondents that could not be traced back to one single Member State ("EU wide")(12), France (9), Italy (7), Netherlands (5), and Austria (3).

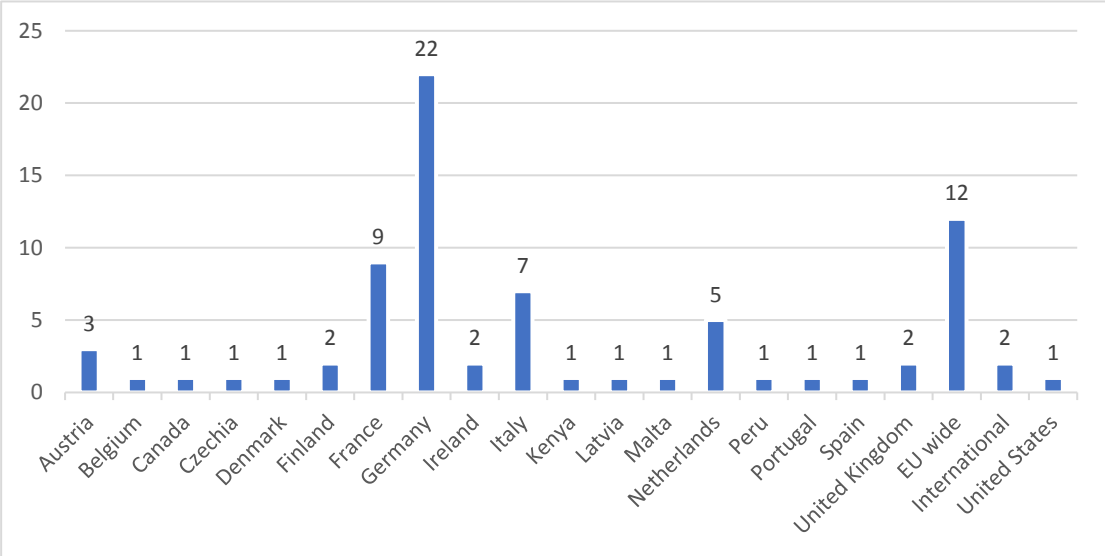


Chart 3 - Country of origin of stakeholders providing feedback to the public consultation

In addition to, or instead of, replies to the standardised questionnaire, 30 position papers were submitted by stakeholders, mainly representing research institutions and business associations. Seven respondents provided identical, or quasi-identical, replies. This analysis considered all such answers. However, one stakeholder submitted two replies to the public consultation. Since this does not comply with the rules for feedback, one of the two answers was disregarded, while the other was considered for the purposes of this analysis.

All respondents did, in general, acknowledge the idea of introducing a proposal that would remove obstacles related to corporate income taxation and distortions in the internal market. However, most of the respondents had various concerns about the timing due to the implementation of GloBE rules under Pillar 2 that effectively enter into force on 1 January 2024. While some respondents, particularly business associations, pointed out that the scope should be aligned with Pillar 2, others only expressed interest in a fully optional BEFIT system. For a new common set of corporate tax rules, the majority of the respondents would prefer to use financial accounting statements as a starting point for computing the tax base followed by a limited series of tax adjustments. Some respondents had concerns about the formula for the apportionment of the tax base, while many others stressed the importance of including intangible assets in the formula. Especially businesses did not seem to support the idea of neutralising intra-group transactions within the BEFIT group through the aggregation of tax bases, when current transfer pricing rules (following the arm's length principle) would remain applicable to transactions with related parties outside the BEFIT group. As a dual system could create additional administrative costs, the majority of respondents would prefer to keep status quo for transfer pricing. This said, a majority would agree to the potential benefits of streamlining the tax authorities' transfer pricing risk assessment. To reduce the administrative burden, most respondents strongly supported filing simplifications, e.g., through a "One-Stop-Shop".

3.1 Views on Problem Definition

50 respondents (65%) agreed, or partly agreed, that the current situation with 27 different national corporate tax systems in the Member States gives rise to problems in the internal market. Less than 10 % (partly) disagreed. Furthermore, 39 respondents (51%) agreed, at least to a great extent, that high compliance costs constitute one of the problems.

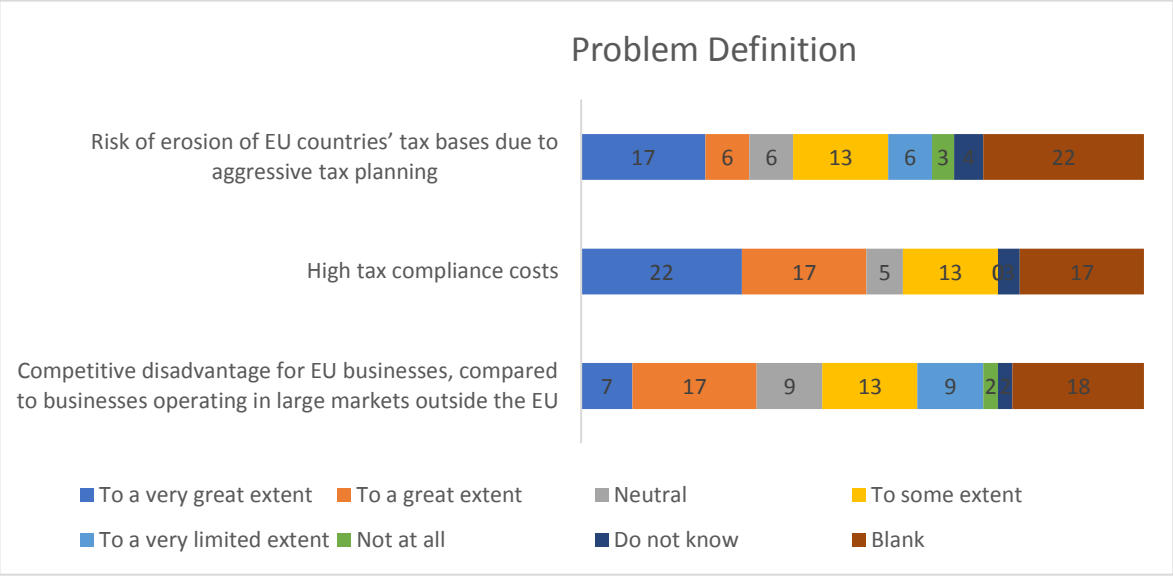


Chart 4 - Problem Definition, what do you think are the problems?

3.2 Views on Objectives for a new EU corporate tax framework

Respondents found the three most important objectives of BEFIT to be *stimulating growth of business activity in Europe* (26), *ensuring greater legal certainty* (22), and *reducing compliance costs for businesses* (14). The reduction of administrative costs for national tax authorities and raising more tax revenues were considered as the least important objectives by the respondents.

3.3 Views on Main Features of BEFIT

To inquire about the most effective scope of application for BEFIT, several questions were asked in this regard. 41 respondents (53%) considered a threshold for mandatory application with a possibility to opt in for others to be (very) effective. A threshold without a possibility to opt in, i.e., mandatory for, and applicable to, only certain groups of companies, was not considered effective. 23 respondents (30%) considered that a mandatory application without a threshold, i.e., mandatory

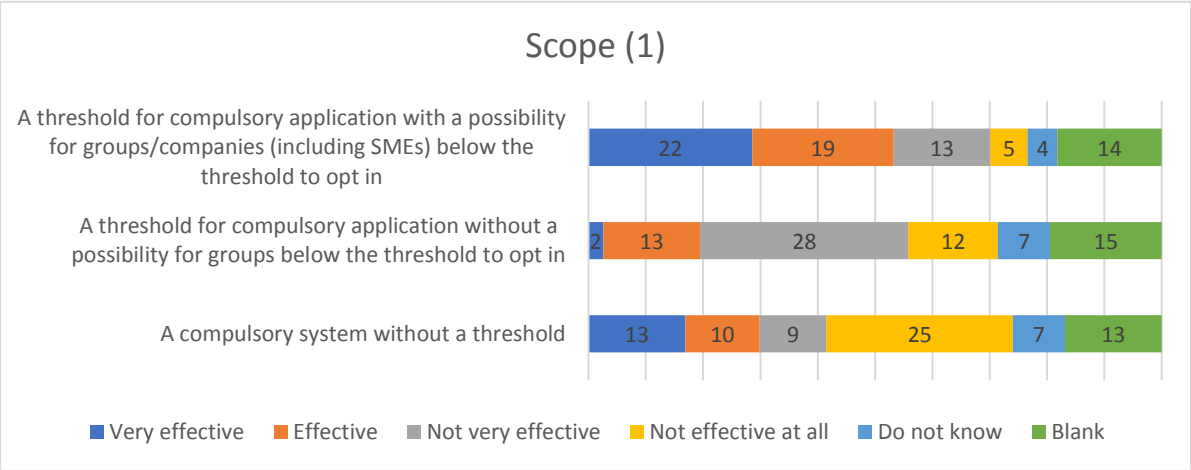


Chart 5 - Answers on the Scope of BEFIT (1)

for all groups of companies, would be (very) effective.

Concerning the potential threshold, nearly 1/3 considered that BEFIT would be very effective if a threshold were set at consolidated global revenues exceeding EUR 750 million.

In contrast, less than 10% considered a threshold below EUR 750 million, but exceeding EUR 50 million, in consolidated global revenues to be very effective. The respondents considered that BEFIT would be very effective either: (i) if the threshold is above EUR 750 million, or (ii) if it is mandatory for all groups of companies.

Concerning the possibility of excluding some businesses from the scope of application due to certain sector-specific activities, nearly 50% disagreed or partly disagreed with such a prospect.

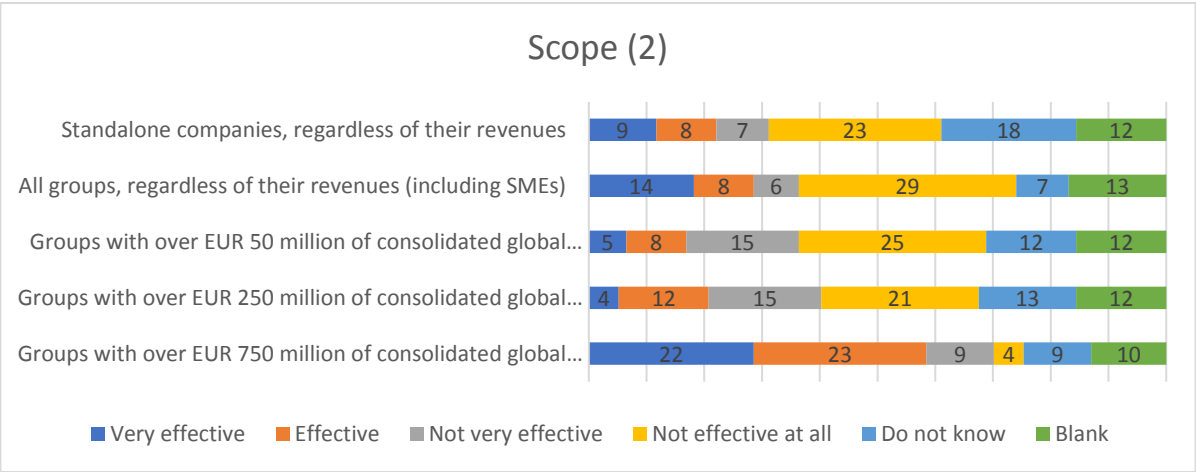


Chart 6 - Answers on the Scope of BEFIT (2)

Approximately 20% expressed (at least partly) support for such an approach.

Another main feature of BEFIT is the calculation of an aggregated tax base. In this regard, 45 respondents (58%) considered that using the financial accounting statements as a starting point followed by certain tax adjustments for arriving at the BEFIT tax base (same principles as in GloBE rules under Pillar 2) could be (very) effective. 42 respondents (55%) would be in favour of restricting the required tax adjustments to a minimum, i.e., they (at least partly) agree.

With regard to the actual required tax adjustments, respondents had different views on which tax adjustments to the financial accounts should be the key. According to the replies, adjustments that (i) *give tax credits for tax already due on income outside the EU, and (ii) take into account interest, royalties and other income paid to a company within the scope of BEFIT* were considered to be the most important. Adjustments in relation to *entering and leaving BEFIT (corporate restructuring and transition phase)* were seemingly the least important.

In relation to the prospect for cross-border loss relief, respondents had a strong joint view. Whereas only 3% (out of 64 respondents who replied to the question) disagreed, a strong majority of more than 2/3 were in favour. Taking into account those respondents who also partly agreed, almost 90% supported cross-border loss relief.

The aggregated tax base will be allocated using a formula to the Member States in which a group operates. As to whether the tax base should be apportioned to the eligible Member States using a formula, respondents also had a strong view. Whereas 18 respondents disagreed or partly disagreed with such an approach, more than 50% (42 of 77) thereof agreed or partly agreed. Without taking into account those who did not answer or had no answer, a strong majority of 2/3 (42 of 62) was in favour of this approach.

Considering how a formula for the apportionment of the aggregated tax base should be designed, the respondents had different opinions, particularly in regard to whether intangible assets should be taken into account. In fact, their answers seemed relative to the different respondent categories which they belong to.

Out of the 34 respondents (44%) who supported the idea of including intangible assets in the formula, 31 came from the area of business associations or businesses. Those who were in favour of excluding intangible assets from the formula (almost 25%) were EU citizens or came from the academic research area. Only 5, corresponding to less than 10% of the respondents, who would agree to exclude intangible assets came from the field of business associations or businesses.

On the weight of different factors in the formula, a fifth part of the respondents (approximately 20%) agreed or partly agreed with the approach of giving higher weighting to sales by destination. However, the opinions were widely spread as almost 30% disagreed or partly disagreed with the idea of giving sales by destination more weight.

On questions concerning how transactions between members of the BEFIT group and related parties outside the BEFIT group should be treated, the respondents had the clear view that the status quo for transfer pricing rules should be maintained. From a group of 57 respondents (excluding those who did not reply or did not know), a majority of 35 (60%) were in favour (agreed or partly agreed) of this approach, whilst almost 1/3 opposed (disagreed or partly disagreed). Regarding the

idea of using certain pre-fixed benchmarks for the allocation of profit to related parties outside the BEFIT group, the majority did not respond or had no opinion.

In relation to risk assessments performed by national tax authorities in transfer pricing cases concerning transactions between members of the BEFIT group and related parties outside the Group, 42 respondents (more than 50%) agreed or partly agreed to a possible streamlining across the Member States. Only 9% (partly) disagreed. On this approach, almost two thirds had the opinion that a possible streamlining should be applicable to both inbound and outbound transactions. Only 2 respondents did not favour this approach (under 3%).

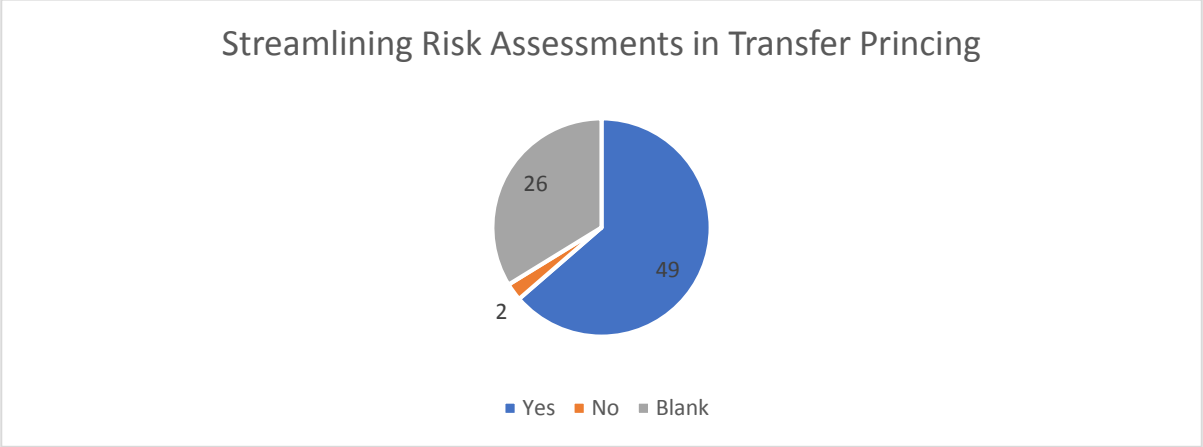


Chart 7 - Streamlining tax authorities transfer pricing risk assessment

Finally, respondents had a clear message regarding potential simplifications in relation to the administration of BEFIT. Out of 60 respondents, almost two thirds (63%) would prioritise filing simplifications over audit simplifications. The least favoured option for potential simplification and reduction of compliance costs was dispute resolution. It was favoured by only 20% but almost 50% ranked it as the least effective option which could provide for simplification.

The results in this sub-section have to be considered with the caveat that a significant percentage of the respondents to the survey did not provide replies directly to the questionnaire but submitted own comments through position papers.

4. Position Papers

A total of 30 position papers were received. Out of these, 8 position papers were already included and evaluated in the Call for Evidence. Two of them were not linked to BEFIT. A synopsis of the relevant comments is grouped in 3 categories depending on the industry/sector of the respondent.

4.1 Positions of Tax Advisers

6 position papers came from respondents in the area of tax consultancy. From this category, most of the respondents argued that they are in favour of addressing the issues related to the existence of 27 different corporate tax systems in the internal market and establishing a common corporate tax framework within the EU. They emphasised that, if designed accurately, such an initiative could boost the competitiveness of the internal market, reduce compliance costs, and support investment in the EU.

Aside from the potential benefits of a common corporate tax framework, the respondents raised concerns about the timing as introducing new rules would entail a risk of increasing the administrative burden. Such risk is not desirable when businesses are currently engaged in implementing GloBE rules under Pillar 2. Nonetheless, all respondents of this category pointed out that it would be important to closely align BEFIT and Pillar 2 and ensure a proper interaction between the two systems, in order to achieve the envisaged policy objectives, particularly the simplification prospect.

The majority of the respondents also supported the idea of using the consolidated financial accounting statements as a starting point for the calculation of the BEFIT tax base as this would ensure cost efficiency and entail greater simplicity for businesses.

Finally, all respondents of this category had a clear common view on the formulary apportionment. According to their replies, the formula (and the factors it will be built on) should appropriately reflect the contribution to value creation. Profits should be attributed to the jurisdiction where the economic activity and investment take place. On this basis, all respondents stressed the need for including intangible assets as a factor in the formula. Several respondents even pointed out that the formula should distinguish between acquired and self-generated intangible assets.

4.2 Positions of Business Associations

13 position papers were received from respondents qualified as business associations. Respondents of this category argued that the current EU tax framework is inadequate for taxpayers. In addition, most of the respondents underlined that the removal of income tax obstacles in the internal market would be essential to enhance growth and competitiveness in the EU. Removing such obstacles could also foster innovation and support the creation of jobs. All of them saw the harmonisation and streamlining of tax rules as a way forward to facilitate cross-border trade and activities. Nonetheless, some of the respondents had strong doubts as to whether BEFIT would be the right initiative to tackle the issues.

Respondents recognised enhanced tax certainty as the most important objective of an initiative like BEFIT. All of them strongly supported that BEFIT should be aligned with existing multilateral tax agreements and other international initiatives, such as the GloBE rules under Pillar 2. Like in the position papers from tax advisors, the respondents of this category were concerned about the potential risk that BEFIT increases the administrative burden, even if it would only be for a short period, due to businesses' ongoing process of implementing Pillar 2.

For the scope of BEFIT, the respondents supported the idea that BEFIT should be optional for all groups of companies, including both MNEs and SMEs. If, however, the mandatory application were to be subject to a threshold, the respondents stressed that the possibility for opting-in should be considered for the groups not reaching the threshold.

Regarding the calculation of the BEFIT tax base, the respondents of this category did not demonstrate a joint view. Some stressed that a common corporate tax base should be based on a uniform accounting system, such as IFRS. Since this accounting system is already applied, it would lead to an effective cost relief for businesses. However, some respondents also underlined that the tax base calculation should be aligned with the GloBE rules under Pillar 2 in order to avoid the need for complying with several sets of rules and calculations.

Respondents pointed out that the formulary apportionment could lead to a substantial simplification. In order to achieve a fair distribution of the taxable base among Member States, intangible assets should be included as a factor in the formula as they represent a key value driver in many businesses. Without intangible assets the composition of the formula would not reflect modern economy and the formula would already be considered "outdated".

Respondents also stressed the need for a reduction of compliance costs for businesses operating in the internal market. In particular, they underlined that BEFIT should remove unnecessary reporting requirements. Several respondents favoured the proposed "One-Stop-Shop" solution, which would allow groups in scope to settle all filing issues with only one tax authority. In their view, this would effectively reduce the administrative burden and limit tax disputes.

Finally, the respondents found that the proposal was not clear regarding the coexistence of BEFIT and transfer pricing rules. Although some respondents acknowledged that BEFIT could eliminate tax frictions resulting from transfer pricing disputes, others pointed out the importance of keeping the current transfer pricing principles.

4.3 Positions of Academia

One academic research organisation submitted a detailed position paper welcoming an EU initiative targeted at strengthening the competitiveness of EU businesses and increasing the willingness to invest in the EU. The respondent underlined that a common corporate tax framework in the EU which is closely aligned with the OECD Pillar 1 and 2 projects represents a promising approach to tackle issues related to administrative burdens and tax certainty.

In order to achieve the main objectives of BEFIT, such as a reduction of compliance costs, it is argued that the proposal should have a wide scope and allow for SMEs to opt in. This would ensure a level playing field and, at the same time, not force SMEs to apply BEFIT rules.

Regarding the formulary apportionment, the respondent underlined that the inclusion of intangible assets could lead to tax planning due to the high mobility of these assets. Consequently, intangible asset be excluded from the formula.

This position paper pointed out, in line with the other respondents, that BEFIT could increase the administrative burden, at least in the transition period immediately after the adoption of the initiative. On this basis, it was stressed that the proposal should carefully balance tax accuracy and administrative costs.

5. Targeted Consultations

Over the course of the policy development process, a number of interviews and meetings were carried out with different stakeholders, including businesses of different sizes operating in different sectors. The key take-aways from these discussions are compiled in separate meeting reports that can be found in *Annex 2A*. Overall, it can be said that the stakeholders favour the objectives of simplification, tax certainty, and tax competitiveness but their views on the design of the initiative vary relative to their size and activities.

Many stakeholders were from bigger groups that would be in scope of BEFIT irrespective of whether a threshold of EUR 750 million was introduced. The stakeholders did, in general, see a value in having a broad scope and alignment with GloBE rules under Pillar 2. One stakeholder

found that there could be competition between companies around the scope of the proposal, e.g., if a EUR 750 million turnover criteria is introduced, as groups may try to limit their turnover if they wish to avoid being in scope of BEFIT. Another stakeholder was in favour of introducing BEFIT rules with a narrow scope with the possibility of widening it over time.

Some financial and insurance institutions proposed to exclude certain business sectors, such as banks and insurance companies, from the scope as these sectors operate on the basis of a peculiar business model and are already highly regulated by sector specific rules.

Stakeholders which were members of bigger groups were, generally, in favour of a simple approach using a common accounting standard, such as IFRS, as a starting point for the calculation of the tax base. In the absence of one common standard, one member of a bigger group asked for guidance on how to reconcile the differences between accounting standards, such as US GAAP and IFRS, for both taxpayers and tax administrations in the EU. Many stakeholders informed that they do not currently have consolidated financial accounts at EU level and that this could create an additional administrative task.

Most stakeholders did not wish for a fully harmonised tax base. Instead, they drew attention to then need for applying a number of limited tax adjustments, though, the opinions on which tax adjustments are needed vary. Some of the adjustments that were considered important, included depreciations, cross-border loss relief, dividends, amortisation. Stakeholders also seemed to share the view that Member States should still be able to design specific aspects of their apportioned share of the tax base. One question how revenue deriving from activities in third countries would be treated in the calculations.

Some stakeholders from financial and insurance institutions stressed that if they were to be in the scope of BEFIT, an alternative sector specific formula should apply. One proposed that adjustments to the formula for financial services in the CCCTB proposal could be followed.

On the allocation of the aggregated tax base, most stakeholders preferred a hybrid approach with a formula that includes intangible assets. Different opinions were expressed on how to estimate the value of the intangible assets. Sales and labour were considered other important factors in a well-functioning formula. As to the effects of the apportionment, several stakeholders asked for clarification on the interaction between BEFIT and the OCED's Pillar 1 and/or 2 projects. One stakeholder expressed concerns regarding the timing of BEFIT and these cost-heavy OECD projects, while other stakeholders expressed the need for a transition period.

In general, not many views were exchanged on transfer pricing as most stakeholders seemed to favour a continuation of the current rules. While one stakeholder underlined the need for guidance on how to use the arm's length principle in the EU, others were in favour of the 'traffic light system' in the risk assessment.

All stakeholders favoured administrative simplifications and found a "One-Stop-Shop" to be crucial for legal certainty and reducing compliance costs. Some added that a common administration should have features that provide for filing one single tax return, sorting out disagreements with all EU tax administrations at an early stage, and a dispute resolution mechanism.

ANNEX 2A: TARGETED CONSULTATIONS – COMPILATION OF INTERVIEW REPORTS

Key Takeaways from the BEFIT Building Blocks Interview 25.3.22 #1

25.3.2022

The interview opened with a short overview from the company about their business model and the tax considerations for them. They are a telecommunications company.

On the tax base they believe that simplicity is key and the closer we can align to accounting standards the better. A One Stop Shop is critical for any proposal and legal certainty is one of the biggest challenges facing companies. They were involved in providing stakeholder input on the CCCTB proposal in the past and are supportive of the BEFIT goals. Tax planning is not a major feature of their industry as it is difficult to shift the tax base. Important elements of a tax base would be capital allowances (depreciation), and rules on rollover relief, and dividends should be exempt. IFRS should be the basis and adapted to the specifics.

However MS should also be able to design locally specific aspects of the tax base and consideration should be given to accommodate national rules. Local tax should also be taken into consideration as a tax expense for reducing the corporate tax base.

Regarding the methods for profit allocation, they liked the second option – the hybrid option, which involves using pre-determined benchmarks for remunerating the routine functions and a formula for apportioning the residual. They noted that in their industry intangibles are often kept where they were acquired, as business expansion happens through acquiring local telecoms. Withholding taxes, in particular when they are charged outside the EU on inbound payments, are also something that should be dealt with in a proposal.

Key Takeaways from the BEFIT Building Blocks Interview 30.3.22 #2

The company began by giving a general overview of their business, they are a large company in the retail sector.

TAXUD gave the background to the project and structured the conversation around the four building blocks.

I. Scope
On scope they did not have much to add on this point as they will be in scope regardless of the option chosen due to their large turnover. They noted that there could be competition between companies around the scope of the proposal – for example if set at €750m turnover then companies may try to limit their turnover if they wish to avoid being in scope.

II. Tax Base
On the base they noted the general trend is to follow IFRS. They stated this is positive for large groups. They were not in favour of creating a harmonised EU tax base from scratch.

The company thought the starting point should be to use the second sub option based on the financial accounts: *To use the financial accounts of each EU tax resident entity within the group.* This would be easiest and simplest way to proceed. A participation exemption or double tax relief adjustment will be needed.

The company stressed the importance of using a common standard for the accounts otherwise we cannot compare different companies. Most companies use IFRS, apart from US where US GAAP is more common. Adjustments to the financial accounts should be limited but it is also important to maintain certain tax incentives to keep the EU competitive. They also noted that third country losses should be taken into account.

III. Profit Allocation
For building block 3 the question is how do we simplify the profit allocation rule? TAXUD explained the two different options – either a formula or a hybrid approach.

The company preferred an option as close as possible to Pillar 1 – the hybrid approach. They raised the questions: what is the rule order between BEFIT and P1, and what happens if you distribute to countries outside the EU. TAXUD noted that the purpose of BEFIT is to establish a new tax system and arrive at a corporate tax liability, but P1 comes on top of this. To be reflected how we can ensure P1 obligations are fulfilled for MNEs in scope.

IV. Administration
As regards administration the company expressed preferences for a One Stop Shop, Dispute Resolution provisions, and the elimination of double taxation – it is important that tax doesn't need to be paid twice on the same income.

Key Takeaways from the BEFIT Building Blocks Interview 07.4.22 #3

This is a company that operates in the pharmaceutical sector, conducting R&D, manufacturing and distribution activities.

TAXUD gave the background to the project and structured the conversation around the four building blocks.

I. Scope
On scope the company did not have much to add on this point as they will be in scope regardless of the option chosen due to their large turnover. They were just asking for clarifications on the computation of the thresholds, within or outside EU. They had understood the 250 mil and 750 mil threshold as a cumulative conditions: 750 mil for the group to be in scope, and eventually 250 mil for the EU part of the activities.

II. Tax Base
On the tax base they noted that, as per now, their general trend is to follow local national GAAP and when they consolidate they follow IFRS (+ adjustments). At present they do not consolidate financial account at EU level and as a consequence either of the two sub-options would be entail some work for them, but feasible. They do plan to move to IFRS in the future.

Should the IFRS be among the accounting principles selected for BEFIT, the accounting/tax adjustments to be ruled shall include the tax amortisation for those intangibles – such as trademark and goodwill – for which IFRS prescribe impairment and no annual amortisation: for instance, a specific tax rule in this respect, allowing tax amortisation, had to be enacted by Italy (without such rule, groups like this company might reconsider adopting IFRS due to, among other reasons, this unfavourable mismatch if compared with local GAAP, where amortisation is allowed). They suggest to explore what if a PE does not file financial accounts according to national law.

On the depreciation/ amortisation side, a simpler, standardised time horizon of depreciation of assets would be a plus (against declining balance method in CCCTB). Cross-border loss relief also important to be explored under BEFIT; like the IT rules, e.g., a % of the EU consolidated tax base.

III. Profit Allocation

For building block 3 the question is how we simplify the profit allocation rule. TAXUD explained the two different options – either a fully fledge formula or a hybrid approach.

The company explored and raised several questions;

Among the proposed options, they seem to prefer the hybrid approach. They noted that the value of intangibles are not visible (so a formula based on "labour and (fixed) assets" would not suit their activity). They are sceptical on establishing a "fixed margin remuneration" for routine activity and they would rather prefer a 'traffic light system', considering that the possibility to vary remuneration within pre-determined ranges can better mirror changes in the group P&L structure due to restructuring or refocusing activities (e.g., new competitive forces, new portfolio etc.); they mentioned that the possibility to agree in advance with tax administrations on the range of the remuneration or to rebut the presumption of a "fixed margin" would be key in any case;

With regard the allocation of residual profit, they noted that considering only third-party costs as allocation key seems too narrow and that also related party cost should be considered e.g., cost contribution arrangements which are ultimately beneficial to the entire group.

IV. Administration

As regards administration the company expressed preferences for a multilateral tool, risk reduction tool, to cope with the implications arising from BEFIT, which would put all national tax administrations together (opt in/ opt-out).

Key Takeaways from the BEFIT Building Blocks Interview 07.4.22 #4

The company began by giving a general overview of their business. They are a company that operate in the haut-de-gamme manufacturing sector. They are in favour of simplification, tax certainty, but also tax competitiveness.

TAXUD gave the background to the project and structured the conversation around the four building blocks.

I. Scope
On scope the company did not have much to add on this point as they will be in scope regardless of the option chosen due to their large turnover.

II. Tax Base
They have a preference for sub option i) – *to use financial accounts of each EU entity (+ adjustments) and then consolidate*. They already follow IFRS, but they do not consolidate the EU tax base. On the base they noted they already follow IFRS (+ adjustments). Moreover, as they do not consolidate at EU level at present; their position is neutral; they would need to appoint one EU entity to consolidate, but that is feasible. They are in favour of IFRS with few adjustments.

High interest on the future scope for competition among MS: What is the definition of profit in (should the tax base be determined at the level of EBIT or anything else): is the tax rate left to MS to decide?; what is the treatment of interest deduction (NID when financing through equity), will tax incentives still be available (e.g. patent box income, R&D costs incentives, tax credits…). TAXUD explained that some aspects of the tax system will remain within the prerogative of the MS (provided all other rules are respected, e.g. MET rate, patent boxes), and some of them still need to be explored and taken into account in light of future actions, such as DEBRA etc. On the other hand, we expect that MS in the negotiation phase will defend as much as possible their possibility to remain competitive in this area, and the tax incentives.

III. Profit Allocation
For building block 3 the question is how do we simplify the profit allocation rule. TAXUD explained the two different options – either a formula or a hybrid approach.
The company seem to prefer the *hybrid approach*. They are not in favour of an approach that would allocate too much profit (give a premium) to "market jurisdictions"; In any case, they stress that a common set of rules could be helpful but what is key is having a common administration of the rules with the possibility to have an early tax certainty in agreement with the EU tax administrations.

IV. Administration

As regards administration the company expressed preferences for a One stop shop; one tax return, dispute resolution provisions – all crucial if BEFIT is meant to reduce "compliance costs". Multilateral agreement, risk reduction tool, to cope with the implications arising from BEFIT, which would put all national tax administrations together.

Key Takeaways from the BEFIT Building Blocks Interview 8.04.2022 #5

The company began by giving an overview of their business: they are a financial institution.

TAXUD explained the goal of the proposal is to create a new tax system for the EU, the intention is not to look at rates as this is being dealt with by Pillar 2.

This company are the first financial services company interviewed. While they considered that the second policy option involving a hybrid approach to profit allocation was the best, however they are of the view that the banking industry should be carved out either from the BEFIT proposal altogether or only from the formulary apportionment for allocating profits. They noted that banking is a highly regulated industry. They do not believe that a formula is an effective method to allocate profit within a banking group. They also noted that intangibles are not a feature of the banking industry and explained that they often use Cost Sharing Agreements for doing their transfer pricing across the group. They also clarified that they provide banking services from "bricks and mortar" offices around Europe and they are not a fintech company.

Key Takeaways BEFIT Interview 12.4.22 #6

This is a fashion company. The company understands that the aim of this proposal is simplification. From their point of view, transfer pricing is simple. The company indicated they would like a follow up meeting to further discuss the proposal. They undertook to go into detail on the options paper and come back to COM.

Tax Base
As regards the tax base, not all companies in their group use IFRS. The company would like to see an simplification of the tax base. They believe that relying on financial statements would bring simplicity. COM noted that all companies in the group would have to file on the basis of the same system. The company noted that Pillar 2 and the process to arrive at an effective tax rate will create a lot of complications in practice.

Transfer Pricing
As regards transfer pricing they have selected their TP approach in consultation with tax authorities. They did not have an initial view on the 'traffic light system'. As regards benchmarks they noted that in the past they have preferred a worldwide approach.

As regards country by country reporting they noted that it involved a huge amount of work for MNEs however they do not receive feedback from tax authorities and so it is difficult to know their views on the relevance of the information they provide.

Administration
On tax administration the company do not have a difficulty dealing with more than one tax authority. They have joined the OECD International Compliance Assurance Programme and their relationship is very good with the tax authorities. Their tax strategy is based on maintaining good relations with the tax authority.

Key Takeaways from the BEFIT Building Blocks Interview 26.4.2022 #7

This is a large multinational group involved in the design, construction, operation etc. of transport infrastructure

Scope: On scope they believe that we should maintain consistency with other initiatives such as the CCCTB proposal, Pillar 2 and Country by Country Reporting. A level playing field is an important consideration as regards the scope. In the construction industry, branches are needed as the entity should be present in the country.

Tax Base: The company believe that we should stick as close as possible to financial accounts. They noted that there had been moves in this direction in the 1990s in Spain. The company use IFRS and they find that financial accounting rules are quite appropriate for dealing with their business due to the fact that construction normally takes more than one year. The company also thought it would be better to use the financial accounts of each EU tax resident entity within the group

Profit Allocation: The key consideration here is that this should be kept as simple as possible. It is natural to allocate on the basis of sales. Any profit allocation formula should take into account how to treat licenses under the assets factor (such as for toll roads), without creating a distortion.

Key Takeaways from the BEFIT Building Blocks Interview 27/04/2022 #8

The Interviewed MNE is a European fashion brand and have local subsidiaries in 7 Member States and 25 third countries.

They mentioned that their main intercompany transactions are covered by Advance Pricing Agreements

On the scope of BEFIT, they agreed that the tax group should be a sub-set of the global group and encompass only the EU tax resident entities. They were also in favour of aligning the threshold for the captured groups with that of Pillar 2 (i.e., annual combined worldwide revenues of 750 million).

On the determination of the tax base, they expressed the view that the use of IFRS as a starting point can be tricky and influence the tax results. In this regard, they gave the example of leases. As every lease is treated as a financial lease under IFRS, the notional interest is not reflected in EBIT (earnings before interest and tax), which is calculated through the Profit & Loss Account. In addition, in relation to the adjustment for taxation of items of the Balance Sheet which are entitled for an accounting entry of longer than a year, there are discretionary choices which one can agree with auditors and this could leave room for circumvention.

They informed that more than 60% of their revenues come from non-EU customers and wondered how this would impact the allocation of income via the formulary apportionment. In addressing intangible assets in the formula, they identified the following assets as critical: the brand (marketing and promotional expenses), design and patents (high-quality and exclusive raw materials).

Key Takeaways from the BEFIT Building Blocks Interview 24/05/2022 #9

The interviewed MNE is an entertainment company. It provides B2C services and is present in the EU with local subsidiaries in many Member States.

They expressed positive feedback about BEFIT as long as double taxation is avoided. They however raised concerns about the system's potential interaction with Pillar 2, which would require further elaboration.

The discussion focused on the use of financial accounts as a starting point for computing the tax base and on transfer pricing. They also insisted on the need for maintaining tax incentives per sector; e.g., for production, job creation, that is if BEFIT is meant to tackle tax incentives that lack economic substance.

As a group with their Ultimate Parent entity outside EU, they would need to identify and designate one jurisdiction in the EU for their tax filing under BEFIT and also determine which accounting standard the group would have to use as a starting point for computing the tax base in the EU.
They explained that due to the distinct features of the various financial accounting standards, individual elements and differences between the standards are likely to have an impact on the outcome of the tax rules that will be used for adjusting the financial accounts. On this point, they stressed the need for elaborating Guidance on how to reconcile the differences between US GAAP and IFRS for both taxpayers and tax administrations in the EU. The interviewed MNE pointed out to four main areas where there are significant differences between US GAAP and IFRS:

- Impairment losses: the IFRS allow tangible assets to be revalued (except for goodwill) while the US GAAP prohibit taking impairment into account.
- Intangible assets accounting / R&D costs for intangibles: under IFRS, the costs can be capitalised (and thus depreciated over time) while under the US GAAP, development costs are immediately expensed.
- Fixed assets - Tangibles – value for depreciation purposes: under IFRS, the value is first recorded at cost and can be revaluated later on up to market value while under US GAAP, the property is valued and depreciated at historical cost.
- Fair value measurement: under IFRS rules, fair market value is taken into account while this is not allowed under US GAAP.

On the formulary apportionment, they were reticent about using the costs of R&D, marketing and advertising as a proxy for the value of intangible assets, as they find that businesses can still choose where they incur such costs.

Additionally, it was mentioned that if the aim is to go beyond the CCCTB, there will be a need for Guidance on how to use the arm's length principle (ALP) in the EU. Specifically, this would concern the question of whether the ALP is still an income allocation rule. On this point, it would also be necessary to look into the interaction with Pillar 2.

For transactions with related parties outside the BEFIT group, the interviewed MNE seemed to be in favour of the 'traffic light system', but mentioned that such a system should be linked to cooperative compliance initiatives (fast track - low risk to avoid auditing). They would also be in favour of developing an Amount B-style method for income allocation in the EU.

Key Takeaways from the BEFIT Building Blocks Interview 31-05-2022 #10

This is a financial institution with a large insurance business**.**

- **Scope :**
  The company raised the question of whether the insurance sector (same as banking) should be in scope of BEFIT, or excluded altogether (same as in Pillar 1), given: their activity is highly regulated and the presence of local capital /people/ premises in each jurisdiction. If it were finally decided to bring financial institutions into the scope of BEFIT, the formulary apportionment would need to be adjusted, in order to address the special nature of financial services.
  Also, IFRS allow the use of materiality thresholds in consolidation. So, entities are excluded from the consolidated financial accounts (threshold being agreed with external auditors). BEFIT should allow those exclusions as the group does not even collect the local financial accounts of excluded entities and this would create workload. The same issue exists however with the application of the Globe Rules.

- **Transactions with related parties outside the Group and EU**
  The company is in favour of a risk assessment mechanism. They have a rather a positive experience with something similar in UK. However, given the complexity of their business, which is divided in life and non-life insurance, it would be doubtful whether the insurance sector could ever qualify for low risk and benefit from simplified compliance.

- **Accounting standards:**
  It is necessary to choose one acceptable accounting standard in the EU (IFRS being the most natural one). However, as the application of IFRS 17 is extremely recent, its impact on the insurance industry is still unknown, so using it as a tax base could be pre-mature. The use of local GAAPs could result in material differences as local GAAPs can vary significantly.

- **Tax consolidation regimes:**
  They vary a lot between MS and cannot be harmonised or compared easily. It is then important to agree on key principles for the consolidation level of the BEFIT methodology, as the tax effects of such consolidation regimes are significant in terms of money for the group and/ or for the national budgets involved.

- **Allocation and formula:**
  Two activities to be distinguished: - insurance activity and asset management. Allocation formula will need to be tailored.
  <u>Insurance activity</u>: intangible assets are not a relevant factor to the insurance industry while financial assets are linked and proportionate to the premiums. The payroll factor is

complex as some very large contracts can be managed by very few employees and *a contrario*, a large number of small contracts will require a large number of employees for regulation purposes. Sales by destination could be used as a factor but adjusted, e.g., turnover should be net of reinsurance.

For this company, the risk of the reallocation is that the losses in their parent MS will have to be shared with the other MS. The current system prevents this outcome.

Asset management: management of assets for 3rd parties, for insurer with this company or real estate management. It should be explored how to address the fees received for this activity in the formula: fees received for such services (part of sales)

- **A dispute resolution system should be made available from the beginning**.
- **One stop shop** – not realistic (from their experience with a TP file having lasted 5-7 years).

Key Takeaways from the BEFIT Building Blocks Interview #11 10-06-2022

This is a financial institution.

As well as seeking input from this company on the main building blocks of the BEFIT proposal, this meeting also aimed to gather evidence on the case for the inclusion or exclusion of financial services from the BEFIT scope.

1. Scope: The company believes that a wide scope is best. They suggested that a staged approach could be worth considering and the proposal could begin with a narrow scope and then widen over time to include more companies. They did not suggest the exclusion of Financial Services, though some sectors with specific taxation rules could be excluded.

2. Tax Base: A common accounting standard would be a simplification. Every translation to another accounting standard is time lost. In relation to possible adjustments to reach the tax base, the company suggested that these should be kept to the minimum. MS should have freedom to implement specific national additional adjustments. Key common adjustments would be for dividends, depreciation, intangibles, tax loss carry forward/back. They suggested following and trying to build on Pillar 2 as regards adjustments.

3. Formulary Apportionment: the company believes that intangibles are an important element that should be included in any envisaged formula, though they are not a major aspect for banks. Sales and labour are important factors in the formula, and this should be reflected. The adjustments to the formula for financial services in the CCCTB proposal could be followed. The company noted the political difficulties involved in reaching agreement with EU MS if the formula was to lead to a significant redistribution.

4. Allocation of Profit with Related Entities outside the Group: The company did not see a major issue with continue to apply traditional transfer pricing rules with related entities outside the group. The simplification arising from the use of a formula within the EU is on its own a significant development.

5. Administration: The company suggested that the point of contact with the tax authority will be an important element of BEFIT. Courts with specific competency to deal with BEFIT could be needed. Multilateral audits and a One Stop Shop would be good ideas. Businesses may choose to move their Head Office within the EU to MS that have tax authorities perceived as being less aggressive. Therefore, a consistent approach to the rules and penalties is important.

Key Takeaways from the BEFIT Building Blocks Interview 24/06/2022 #12

Business sector: Healthcare, Life science

By way of general comment, they expressed strong support for BEFIT if this could do away with a third of their transfer pricing documentation.

Scope:
On the Scope, they made no special remark. This is a large group, which falls within the ambit of Pillar 1.

Calculation of tax base:
They consolidate their financial accounts in accordance with IFRS (listed ultimate parent company in a stock exchange in the EU).
They mentioned that their business involves very high R&D costs.

Allocation of tax base via a formulary apportionment
They focused on intangible assets and pointed out that, given the competition which is fostered by the existence of different tax rates, any allocation key needs to bring global tax balance and tax certainty.

Transactions with related parties outside the BEFIT group and in third countries
They provided positive feedback on the prospect for pre-setting benchmarks. They noted that if possible, the benchmarks should be pre-determined and published but clarified that different industries may call for different benchmarks (per Europe market), e.g., distribution, contract manufacturing, contract R&D.

The also explained that disputes are currently very lengthy and last many years, in particular when it comes to activities outside the EU.

Key Takeaways BEFIT Interview 28.06.2022 #13

This is a food company.

Tax Base
For building the tax base, the company argued that BEFIT should avoid multiple accounting GAAPs to coexist and it should be based on an audited reporting base which should be unified.
The company underlined that for a common EU tax base the key reference should be Pillar 2 rules and that any adjustments to the financial accounting statements should be kept as simple as possible and not require any new IT update within the group, as it would be difficult to cope with several new data collection and treatment systems at the same time. A major update has to be put in place for the purpose of applying Pillar 2 and there is no margin for setting up a new specific one for BEFIT.

Formulary apportionment

Formula
The company explored the possibility of designing **more formula models**, to achieve a greater degree of precision: possibly by sector, country, pre- and post-BEFIT.
The treatment of intangible assets in the formula should take place at their value, rather than through using a proxy, for instance based on R&D costs.

Effects of the apportionment
The company put forward some ideas to alleviate the impact of income allocation through the formula in the event that the outcome is not tax neutral for MS. More specifically, they suggested:
- either implementing a transition period (e.g., 3-5 years) whereby the tax liability of a group in a jurisdiction would also take into account the current corporate tax rules. So, if BEFIT leads to a lower tax liability, the difference of tax up to the current status quo would be due, in pro-rata, over a number of years; or
- agreeing compensatory payments of tax amongst MS concerned, if after the allocation – a MS challenged that its tax base is too low in comparison to previous years (for the same group) – by a certain (fixed) amount. Then, that MS would receive a budgetary compensation from the MS where the tax base increased by x% (amount).

Administration:

The company expressed support for OSS, joint/coordinated audits, provided that the parties (tax administrations involved) are obliged to come to a result.

Another idea was to make one single tax administration (i.e., the one of the headquarters) responsible for the payment of the entire tax liability of the MNE group.

Key Takeaways BEFIT Interview 10.10.22 #14

The company noted that they are a large company, based in NL. They gave a description of their business model and treatment of IP.

On the **formula** they explained that tangible assets are worth less in their industry. They indicated they would support the inclusion of intangible assets. If you acquire a trademark this is an intangible asset, however if it is self developed this is harder to identify. They were also interested in whether the formula would be industry specific, in particular as regards the weighting. They noted that the industry specific modifications would need to be limited to keep the system manageable. On the possible options for intangible assets they could see different issues arising depending on the approach taken. It can be difficult to decipher where costs were borne.

They explained that they do not consolidate their accounts just for Europe. Therefore BEFIT may create an additional exercise.

The company asked about what would happen to exit taxation under the BEFIT proposal.

As regards administration, the company noted that one tax return should provide more certainty. They also favour dealing with a lead tax authority in one MS. The company were interested in how the EU and non EU parts of the group will be dealt with.

The company also asked about the potential interaction with Pillar 1.

Key takeaways from BEFIT interview 10-11-2022 #15

General remarks:
The company is a financial services company with a significant European presence.

The broad BEFIT objective of providing simple rules is very welcome. Paying tax on consolidated accounts makes sense and it could make international business easier. Banks will however present particular difficulties that will need to be worked out. The company's main concerns are how the formula apportionment will work and its interaction with TP with third countries.

Scope
They have no definite view at this point on whether financial services should be within the scope. In the EU the company structure is a mix of branches and subsidiaries.

Transactions with related parties outside the Group and EU
They have a range of transfer pricing approaches (some will be as simple as cost plus). On the application of a benchmark analysis which could be published for businesses (whether as a safe harbour or a risk assessment of the rules), the company believes that for the easier transactions, a standard/benchmark would reduce the amount of work for them and tax administrations. Other, more complex, transactions would be hard to find benchmarks for, but if this simplification could narrow down the effort expended on this by companies and tax administrations then this would be of significant benefit.

Both a safe harbour or a risk assessment approach for the less complex transactions would be a good idea.

Tax Base
If we had to prepare a set of tax rules, there would be differences in MS tax treatment of the base. With the general move towards accounting standards these differences might have evolved.

The company are consolidated at US level but don't have a EU parent. The requirement to reconcile their individual financial statements with one single acceptable accounting standard would be an additional burden.

The company are keen for tax and regulation to go hand in hand. A coordination with the regulatory environment is very much needed, or there is a risk of conflict between tax and other policy objectives.

Formulary Apportionment

The company are in favour of consistency amongst MS and believe it is important that all MS use the same formula to calculate the apportionment. COM clarified that the formula would be set down in the proposed directive and would be the same for all MS. In relation to possible formula factors, for banks: capital is very important; regulators want banks to have capital available. Employees are very important too as well as customers. As for intangible assets, they do not know what drive banks' profits.

On the question of a sector-specific formula for banks and what could be part of the intangibles for the financial sector, the company will reflect and provide follow up.

ANNEX 3: WHO IS AFFECTED AND HOW?

1. PRACTICAL IMPLICATIONS OF THE INITIATIVE

The initiative will directly impact businesses with presence in other Member States and also national tax authorities. Citizens will indirectly benefit from the increase in GDP and tax revenues. The implications below relate to the preferred option, as described in Chapter 8 of the impact assessment report and summarise what is explained in section 6.3 (Impact of BEFIT).

The parent company of a BEFIT group will be required to aggregate the tax base of all BEFIT group members, apply the allocation method (to distribute the aggregated tax base among the group members), and finally to prepare the BEFIT Information Return and submit it to the Filing Authority. These companies will bear some initial adjustment costs for training the personnel to the new rules and acquiring customised IT software (necessary to adapt their Enterprise Resource Planning (ERP) system and to automatise the procedures). It is expected that these recurrent costs will become "business as usual" quite shortly and indeed replace the current way of dealing with tax compliance. Enhanced tax certainty for transfer pricing, as a result of the transitional risk criteria for intra-group transactions within the BEFIT group (and potentially elimination of the requirement to remain consistent with the arm's length principle, i.e., in the case of formulary apportionment) as well as the 'traffic light system' for transaction with related parties outside the BEFIT group, should also bring some cost savings for MNEs thanks to the expected decrease in the number of litigation cases.

Tax authorities will be impacted by the role as 'Filing Authority' and the BEFIT Teams. The burden (mainly on human resources) will depend on the number of BEFIT groups in scope and the role in the BEFIT Teams. However, apart from the initial cost for training, the additional human resources devoted to implementing BEFIT are expected to be limited, especially considering that BEFIT will replace national corporate income tax systems for the in-scope groups. In addition, tax authorities will enjoy a reduced burden linked to transfer pricing risk assessment, audits and disputes thanks to the fact that both BEFIT and the common EU approach to transfer pricing will include criteria that provide more predictability and harmonisation, and that can, as such, assist tax administrations in their efforts and reduce litigation costs.

As indicated for the initiative's objectives in Chapter 4, the below table provides an overview of the Sustainable Development Goals (SDGs)[71] that are at stake and the progress that is expected under the preferred option for BEFIT, as described in Chapter 8.

Overview of relevant Sustainable Development Goals – Preferred Option		
Relevant SDG	*Expected progress towards the Goal*	*Comments*
SDG no. 8 – Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all	*The initiative will reduce tax compliance costs, have a positive effect on cross-border investment and tackle distortions in the market, thereby stimulates economic growth and investment in the EU.*	*BEFIT is expected to lead – in the long term to a positive impact on GDP – see below*
SDG no. 9 - Build resilient infrastructure, promote inclusive and Sustainable industrialization and foster innovation	*Although not possible to quantify, the overall reduction in compliance costs may indirectly contribute if the freed resources are used by businesses to invest in innovation.* *The implementation will also require substantial investment in IT for taxpayers and tax administrations. Digitalising the tax compliance of cross-border large groups is likely to trigger innovation and*	

[71] See Resolution adopted by the UN General Assembly on 25 September 2015, A/RES/70/1, Transforming our world: the 2030 Agenda for Sustainable Development | Department of Economic and Social Affairs (un.org).

	encourage progress in IT and artificial intelligence, in order to tackle the challenges of this unprecedented structure.	

2. SUMMARY OF COSTS AND BENEFITS

As explained in section 6.3.4, it has not been possible to estimate costs with any precision because the envisaged proposals have no precedent that we can refer to. Also, stakeholders were not in the position to provide any quantitative estimations of such costs, not even at a qualitative level.

In addition, depending on the business model of the different groups, the cost of implementing BEFIT is expected to differ substantially. For instance, a group which is centrally organised would have less costs than a retail group which maintains a large number of subsidiaries with presence in most Member States.

Below, an attempt is made to describe some of the possible costs, noting that these are likely to be relatively very small when compared to the potentially large cost savings derived from simplification.

– I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
Direct benefits		
Reductions of CIT-related compliance costs for cross-border operating firms (large enterprises and SME groups included).	For all large MNE groups of companies: - Upper-bound estimation: EUR 80 million per year - Lower-bound estimation: EUR 42 million per year For only MNEs with turnover above EUR 750 million: - Upper-bound estimation: EUR 22 million per year - Lower-bound estimation: EUR 11 million per year	Chapter 6 provides explanation for estimates under different scenarios.
Cost savings in legal advice and litigation procedures concerning transfer pricing for MNEs.	Difficult to estimate. Litigation costs can range from several thousands to a few millions per firm per case. More tax certainty and common rules can lead to a substantial reduction of such	

	costs.	
Common rules for the tax base, will lead to higher company investment, and higher GDP.	In the long run, from cross-border loss relief: EU GDP could be higher by +0.1% relative to the status quo for MNEs with turnover above EUR 750 million. In the long run, from harmonised EU rules on tax depreciation: GDP could be higher by some +0.04% for all MNEs.	
Indirect benefits		
Administrative cost savings related to the 'one in, one out' approach(*)		
Reductions of CIT-related compliance costs for cross-border operating firms (large enterprises and SME groups included).	For all large MNE groups of companies: - Upper-bound estimation: EUR 80 million per year - Lower-bound estimation: EUR 42 million per year For only MNEs with turnover above EUR 750 million: - Upper-bound estimation: EUR 22 million per year - Lower-bound estimation: EUR 11 million per year	

(*) While it is difficult to identify the precise nature of the costs savings, one can assume that the great majority are related to administrative activities/reporting obligation, rather than adjustment costs.

• **II. Overview of costs – Preferred option**								
•			• **Citizens/Consumers**		• **Businesses**		• **Administrations**	
•			**One-off**	**Recurrent**	**One-off**	**Recurrent**	**One-off**	**Recurrent**
BEFIT	Direct adjustment costs	N/A	N/A		From EUR 15 million to EUR 29 million		EUR 297 million	
	Direct administrative costs		N/A	N/A	N/A	From EUR 5 million to EUR 9 million per year	N/A	Staff devoted to exchange of information among tax administrations in MS where each BEFIT group maintains taxable presence. There not necessarily additional to the current system, but resources

							will be used differently (reallocation of existing resources)
	Direct enforcement costs	N/A	N/A	N/A	N/A	N/A	Negligible (reallocation of existing resources)
Transfer Pricing	Direct adjustment costs	N/A	N/A	Cost of training to become familiar with the new rules	N/A	Cost of training to become familiar with the new rules	N/A
	Direct administrative costs	N/A	N/A	N/A	N/A	N/A	N/A
	Direct enforcement costs	N/A	N/A	N/A	N/A	N/A	N/A

As explained above, it has not been possible to estimate costs for stakeholders with any precision.

• ***Costs related to the 'one in, one out' approach***							
Total	Direct and indirect adjustment costs	N/A	N/A	From EUR 15 million to EUR 29 million	N/A		
	Administrative costs (for offsetting)	N/A	N/A	N/A	From EUR 5 million to EUR 9 million per year		

(1) *Estimates (gross values) to be provided with respect to the baseline; (2) costs are provided for each identifiable action/obligation of the preferred option otherwise for all retained options when no preferred option is specified; (3) If relevant and available, please present information on costs according to the standard typology of costs (adjustment costs, administrative costs, regulatory charges, enforcement costs, indirect costs;). (4) Administrative costs for offsetting as explained in Tool #58 and #59 of the 'better regulation' toolbox. They should be presented as "recurrent annual costs" and "one-off costs" (presented as net present value of costs over the whole period). The total adjustment costs should equal the sum of the adjustment costs presented in the upper part of the table (whenever they are quantifiable and/or can be monetised). Measures taken with a view to compensate adjustment costs to the greatest extent possible are presented as relevant in the section of the impact assessment report presenting the preferred option.*

ANNEX 4: ANALYTICAL METHODS

1. Assumptions for the survey-based projection of compliance cost reduction

A company survey for the European Commission on Tax Compliance Costs, conducted by VVA/KPMG and published in January 2022, is the major source of analysis.[72] It looks at firms' tax compliance costs caused by specific types of taxes. Apart from Corporate Income Tax (CIT), the survey also covers administrative burdens caused by Value Added Tax, wage-related taxes, property and real estate tax and local taxes. The sample covers around 2 400 firms, and the dataset also provides weights for each firm, needed to project the total firm population represented by the sample. Survey questions refer to the situation of the respective firm in the year 2019.

The Compliance Cost projections in Chapter 6 take into account both outsourced and internalised compliance activities. If internalised, the survey asks for frequency of data collection as well as the hours spent on data collection, preparation, review, submission and other related activities. It is thus possible to calculate total hours internally spent within the firm on the different CIT-related compliance activities. These hours were then multiplied by average hourly labour costs for administrative and support activities.[73] Total CIT Compliance Costs are then the sum of outsourced and internalised compliance costs.

The survey information also includes relevant firm characteristics:

- the size of the firm (turnover, number of employees);
- whether not the firm operates cross-border[74];
- whether or not the firm in subject to 'regular' CIT or to some kind of 'simplified tax regime'. For information see Box 1.

---

[72] VVA/KMPG for the European Commission (2022). See https://op.europa.eu/en/publication-detail/-/publication/70a486a9-b61d-11ec-b6f4-01aa75ed71a1/language-en

[73] Source: Eurostat, series Labour cost levels by NACE Rev. 2 activity [LC_LCI_LEV__custom_5553786].

[74] In the study, cross-border activities are defined as "all activities which involve the selling of goods, services or intangibles to a country other than the enterprise's home country" (European Commission, 2022, p. 11). In other words the definition is quite broad and not necessarily just about what we consider foreign direct investment.

Box 1: "Simplified Tax Regimes" as identified in the VVA/KPMG survey

The VVA/KPMG company survey includes one dedicated question on whether the respective enterprise is "subject to Corporate Income Taxation or a simplified tax regime on income". A simplified tax regime could be a lump-sum tax, the filing of simplified tax returns requirements, simplified accounting rules, balance sheet or income statement requirements, or other simplified documentation rules. Stakeholders interviewed for the study tend to have a positive view on Simplified Tax Systems, considering them as a solution for reducing administrative burdens.

2. What is the potential of reducing CIT related compliance costs through simplifying corporate taxation?

To approximate the potential decline of CIT-related compliance costs through reduced complexity of a tax system, a linear regression analysis was performed. The model explains total (logarithm of) CIT-related Compliance Costs, calculated as explained above, on a set of explanatory variables that include:

- the (log) number of employed workers (in quintiles),
- the (log) turnover (in quintiles),
- a binary dummy CROSS, informing about whether the firm operates cross-border,
- a binary dummy SIMPL informing whether the firm is subject to a 'simplified tax regime' or CIT,
- an interaction term CROSS x SIMPL informing whether the impact of operating cross-border is moderated by the availability of a simplified tax regime,
- fixed effects controlling for the sector and the jurisdiction in which the firm operates.

The table below shows to what extent the CIT-related compliance costs would decline, relative to the respective reference category. For Model 2, which contains the interaction term, the reference category are purely *domestic* firms *not* subject to simplified tax rules. All coefficients are highly statistically significant ($p<.001$).

Table A4.2: Explaining CIT related CC, regression analysis, selected coefficients

Variable	% change relative to reference		
	Model 1	Model 2	Model 3

CROSS	+2%	+10%	+29%
SIMPL	+30%	+35%	+24%
CROSS x SIMPL		-25%	-54%
Control for firm size	yes	yes	no

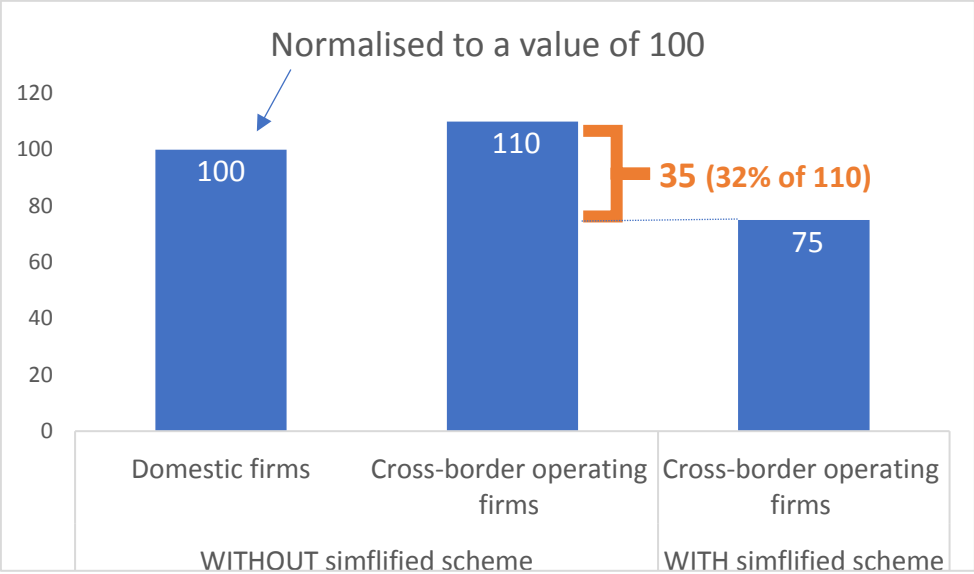
Source: Commission services, based on data from VVA/KMPG (2022).

All models control for country- and sector specificities. Only Models 1 and 2 control for firm size (the number of employees, the firm's turnover) The simple model without interaction term (Model 1) reveals that operating cross-border increases CIT-related compliance costs overall. However, if the interaction term is included in the model (Model 2), it becomes clear **that the availability of simpler tax rules matters a lot for the level of compliance costs**. If a simplified tax regime is *not* available, cross-border operating firms have, on average, 10% *higher* CIT compliance costs than domestic firms not subject to a simplified tax regime (the reference group). By contrast, if there are simplified tax rules, cross-border operating firms have 25% *lower* compliance costs than the reference group. Therefore, the regression analysis suggests that the **simplification of tax rules** has a very positive effect on cross-border operating firms in the sense that they are able to **reduce compliance costs very substantially: by 32%, relative to cross-border operating firms with *no* access to simplified rules**.[75]

The chart illustrates these regression results, normalising the CIT compliance costs of domestic firms without simplified tax regime to a value of 100. This is the reference situation. The CC for cross-border operating firms *without* simplified regime would be 110 (+10% higher than in the reference situation), while *with* simplified regime they would amount to 75 (25% lower than in the reference). For cross-border operating firms, simplified schemes would then make a difference of 35, corresponding to 32% of 110.

Chart A4.1: Illustration of the regression results: CIT compliance costs by firm type

[75] That is: (100%-25%)/(100%+10%)=(100%-32%).



Source: Commission services, based on data from VVA/KMPG (2022).

The findings strongly support the introduction of a new, simpler Corporate Tax System in the EU. Model 3 above does not control for the number of employees and turnover, both representing firm size. The interaction effect of operating cross border and dispose of simplified tax system is then much stronger. This implies that the interaction effect is stronger for big firms. Big multinationals find it easier to exploit simplified tax systems for tax compliance.

3. The estimated scope of BEFIT based on the EuroGroups register and CbCR

Estimating the number of MNEs in scope is not straightforward. Aggregate CbCR data can assist insofar as it covers MNEs with a consolidated yearly revenue exceeding EUR 750 million. For the most recently published reporting year (2018), CbCR data suggests that 4,082 MNEs fall in this category. By contrast, in the firm-level database *Orbis*, 3,647 MNEs with consolidated revenue exceeding EUR 750 million can be identified. From these two data sources one could thus derive a selection bias of around 11% (i.e., 3,647/4,082=89%). When it comes to MNEs whose annual combined revenues are up to EUR 750 million and who prepare consolidated accounts, their number in *Orbis* is 14,000. With a selection bias of at least 11% this would imply an additional at least 15,700 MNEs in scope.

An alternative source of data, the ECB's EuroGroups Register (EGR) reports some 213,000 MNE groups for the year 2018. Subtracting 4,082 groups with a consolidated

yearly revenue exceeding EUR 750 million would yield some 209,000 groups below that threshold. Of those, one can estimate that around 7.5% (15,700/213,000) groups) prepare consolidated financial statements.

4. The potential impact of more productivity-enhancing investment: a simulation with Labour Market Model (LMM)

LMM is a general equilibrium model jointly used by DGs EMPL and TAXUD. It incorporates a very explicit description of labour market institutions.[76] It therefore allows modelling of structural reforms in the labour market, such as investment in human capital. It distinguishes eight age- and three qualification-groups. LMM is run at state level.

LMM is used to demonstrate the impact of a potential boost in investment as firms save on compliance cost and gain more legal transparency and certainty as they operate cross-border. In other words, the concept of compliance costs used for this simulation is a wider as it does not only include the direct reduction of pecuniary costs today's MNEs could benefit from. It is assumed that the (re-invested) cost reduction will be -0.1% of GDP. The exact reduction is unknown. The interesting information to extract from the analysis is the **multiplier effect** of a given investment on GDP.

A simulation will be performed for all 15 Member States currently supported by LMM. Investing 0.1% of GDP in productivity-enhancing training for workers would result in the following changes:

Model simulation: estimated effect on selected variables of a reduction of CIT compliance cost, reinvested in firm-sponsored training (15 Member States)

	min (15 cntr)	max (15 cntr)
GDP	+0.1%	+0.3%
Investment	+0.1%	+0.3%
Employment	+0.1%	+0.2%
Wages	+0.2%	+0.3%

Source: TAXUD calculations with LMM

[76] Berger, J., Keuschnigg, C., Keuschnigg, M., Miess, M., Strohner, L. and Winter-Ebmer, R. (2009), *Modelling of Labour Markets in the European Union* - Final Report to the European Commission (Parts I to IV).

Due to technical limitations of LMM in the context of simulation CIT-related policy measures, the changes are to be interpreted as lower-bound estimates.[77] The training will directly translate in higher labour productivity, fuelling demand for workers (hence pushing wages) and physical investment. The simulation shows that productivity-enhancing investment could results in GDP-increases up to three times the initial investment.

5. On Country-By-Country Reporting data

One of the data bases of Chapter 6 is the OECD's Country-By-Country Report (CbCR) data. CbCRs are typically filed by large MNEs (consolidated turnover at least EUR 750 million) to the tax administration of the country where the ultimate parent entity is located. As a next step, tax administrations compile the different reports into a single dataset and share it with the OECD who will produce the anonymised dataset.

CbCR data includes a number of variables such as revenues, Profit/Loss Before Tax, taxes paid, sales, production etc. at firm level. It also includes information on employees and on related and unrelated party revenues. CbCR includes all global activities of MNEs and allows for the domestic and foreign activities of MNEs to be separately identified.

What makes it particular is that it shows this data in a matrix format: For each headquarter of the MNE by subsidiaries in partnering jurisdiction. It informs about those variables by subsidiary, allowing to analyse how they are distributed across the countries in which the respective MNE is present. Public CbCR data[78] is provided at group level, aggregated by jurisdiction. Explanatory reports about CbCR data are available.[79]

CbCR data comes with an array of caveats and limits. There seems to be limited reporting in some EU countries. There may also be differences in accounting rules across jurisdictions. There may be some double counting, as MNEs may have included intra-country dividends in their profits. Another problem is timing. The latest published aggregated CbCR data in the OECD website relates to 2018. According to the OECD,

---

[77] Declining compliance costs cannot be modelled with LMM. The exact measure simulated here is a state subsidy granted to firms for offering firm-sponsored training to workers, funded via lump-sum taxes from households. The above interpretation, i.e., declining compliance costs generating additional resources for firms to sponsor training, is not perfectly accurate in that context. Higher taxes on households would cet. par. dampen economic activity somewhat.

[78] OECD.stat website: Table I - Aggregate totals by jurisdiction (oecd.org).

[79] OECD, Corporate Tax Statistics, 4th Edition, 2022. Available at: Corporate Tax Statistics: Fourth Edition (oecd.org)

2019 and 2020 CbCR data is due to be published only mid-2023. An overview of potential limitations is given by the OECD.[80]

[80] OECD, Important disclaimer regarding the limitations of the Country-by-Country report statistics, 2022. Available at: Important disclaimer regarding the limitations of the Country-by-Country report statistics (oecd.org)

ANNEX 5: COMPETITIVENESS CHECK AND SME TEST

1. OVERVIEW OF IMPACTS ON COMPETITIVENESS

Dimensions of Competitiveness	Impact of the initiative (++ / + / 0 / - / -- / n.a.)	References to sub-sections of the main report or annexes
Cost and price competitiveness	++	Chapters 3.2, 4, 6, 7
International competitiveness	+	Chapters 3.2, 4, 6, 7
Capacity to innovate	+	Chapters 3.2, 4, 6, 7
SME competitiveness	+	Chapters 3.2, 4, 6, 7

Synthetic assessment

By introducing a common approach and common rules, the initiative is expected to have a positive impact on cost and price competitiveness. The initiative pivots on simplifications of the current corporate tax rules which will reduce compliance costs for business operating in all sectors in the internal market. For example, for BEFIT, the calculation and aggregation of the tax base based on EU-wide common rules will do away with complex and costly practices.

The rules are also expected to establish a level playing field, break down barriers to cross-border expansion and trade and, as such, improve the international competitiveness of EU businesses vis-à-vis non-EU businesses, particularly those operating in other big markets. For BEFIT, the alignment with GloBE Rules under Pillar 2 and the aggregation and allocation of a common tax base may, further, contribute to creating a competitive and forward-looking business environment in the EU. The common approach to transfer pricing norms is also expected to add to this outcome.

BEFIT does not directly touch upon businesses' capacity to innovate as such. Although the overall reduction in compliance costs may, indirectly, have an impact as it will release an amount that can be used on a number of activities, including investing in innovation. For BEFIT, the calculation of the tax base allows for additional adjustments to the allocated part of the aggregated tax base in areas not covered by BEFIT, which may provide space for stimulating growth and investment, also in targeted areas, such as research and development.

2. THE SME TEST

Identification of SMEs: The initiative is not specifically addressed to SMEs. However, BEFIT offers optional rules for SMEs which are part of a group that will enable them to choose the simplest and most cost-efficient option based on their individual needs. All SME groups that file

consolidated financial statements are eligible under BEFIT. In addition, the common approach to transfer pricing will apply to SMEs which are part of a group.

Consultation of SME stakeholders: See Annex 2.

Impacts: BEFIT, with all the simplifications that it offers for groups of companies, is open to all SME groups provided that they file consolidated financial statements. Considering that the system is optional for SMEs, we do not estimate adverse effects. SMEs which are part of a group would already have to comply with transfer pricing rules. The introduction of the common approach may entail limited transition costs but, over time, it is expected to decrease compliance costs, enhance legal certainty and reduce disputes.

Consultation of alternative options: It was considered to make BEFIT mandatory for smaller groups which file consolidated financial statements. The administrative burden and compliance costs were, however, found to potentially outweigh the benefits of a common system for smaller businesses.

Minimising negative impact on SMEs. Policy options in this proposal have considered an optional or mandatory scope for SMEs group and under the preferred policy option, SMEs are free to opt-in. The initiative will thus not impose any requirements on SMEs if you do not opt in.

ANNEX 6: THE OECD TWO-PILLAR APPROACH

Background

Mandated by the G20, the OECD/G20 Inclusive Framework is currently working on the implementation of a global, consensus solution to reform the international corporate tax framework. The reform is based on two main work streams: Pillar 1 (re-allocation of taxing rights) and Pillar 2 (minimum effective taxation). The two Pillars aim to address different but related issues linked to the increasing globalisation and digitalisation of the economy.

Pillar 1 aims to better link taxing rights to the market jurisdiction where the final customers are. It is noteworthy that the scope of Pillar 1 will be limited to a relatively low number of the largest and most profitable multinationals only, while Pillar 2 will apply to multinational groups with annual combined revenues that exceed the EUR 750 million threshold, thus leaving all companies below this threshold out of the scope. Pillar 2 is expected to put an end to the race to the bottom in tax competition among jurisdictions and to tackle aggressive corporate tax planning. The implementation of Pillar 2 is quite advanced, and the Pillar 2 Directive[81] requires Member States to enact national transposition measures by 31 December 2023. It is expected that the majority of global partners will follow the same (or similar) timeline for their implementation of minimum effective taxation of multinationals' profits.

For such a global agreement to function effectively, it needs to be administrable for, and among, more than 140 jurisdictions, with diverse economic profiles and levels of administrative capacity. In addition, extensive global reforms may lead to an increase in the compliance burden for taxpayers and tax administrations.

Interaction between the initiatives and the Pillars

Pillars 1 and 2 will co-exist with the national corporate tax rules of each jurisdiction. Although the Pillars address related issues, their focus and objectives do not necessarily coincide with those of general corporate tax systems. Pillar 1 thus deals with re-allocating the taxable income of the most profitable groups of companies worldwide, in order to better adapt the corporate tax systems to the new ways that businesses organise themselves in. Pillar 2 aims to ensure that the corporate income tax liability of a group of companies does not fall below a level of 15% per jurisdiction.

Pillar 1

Pillar 1 uses a formula based on sales by destination to re-allocate part of the tax base of certain very highly profitable MNE groups towards the market jurisdictions where the group meets the

[81] Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.

‘new nexus’ requirement; this is based on a revenue threshold regardless of the physical presence of the group in the jurisdiction. As a result, some jurisdictions increase their tax base whereas others have it diminished. The aim is to bring more fairness in the distribution of the tax base within large multinational groups by allocating higher amounts to the jurisdictions of the customers’ location. The Pillar 1 framework is expected to include parameters for determining which jurisdiction is a net receiver and which a net contributor within the structure of an in-scope group. Many elements of Pillar 1 are currently still under discussion and on this basis, it is difficult to reach definitive conclusions on all aspects.

Instead of Pillar 1 interacting with the domestic corporate income tax systems, it will have to interact with BEFIT for large groups, as this common system will replace the national corporate tax rules for the groups in scope. Member States will consequently need to adjust the tax base granted under BEFIT with either additional tax base allocated under Pillar 1 or offset an amount for eliminating double taxation. In this way, the outcome of the re-allocation of the Amount A under Pillar 1 would be fully respected in a manner integrated within the BEFIT rules. Another synergy will be the ongoing work on Amount B under Pillar 1, which also aims to provide more certainty to businesses on transfer pricing compliance. The ‘traffic light system’ under BEFIT should aim to achieve the same purpose for the risk assessment benchmarks, taking inspiration from Amount B, and the initiative on Transfer Pricing will integrate the OECD arm’s length principle into EU law. In this way, these initiatives are closely related and complementary.

Pillar 2

Pillar 2 aims to ensure that corporate tax was charged at a minimum tax rate of 15% per jurisdiction, while BEFIT essentially concern the tax base. Unlike Pillar 1, which also deals with the tax base, Pillar 2 and BEFIT concern different substantive areas.

Nonetheless, there can be interactions to the extent that Pillar 2 and BEFIT have the same scope. For BEFIT, the preferred option is to align the mandatory scope with the Pillar 2 Directive, which means BEFIT would apply to the same groups, but limited to their EU sub-set. In this way, BEFIT would build on the existing policy, which remains clearly delineated and consistent. Groups that would voluntarily apply BEFIT are not concerned by Pillar 2.

Introducing a common approach to transfer pricing would in principle also apply to the groups in scope of Pillar 2. There is no direct interaction or conflict between the minimum tax rate of Pillar 2 and the integration of the OECD arm’s length principle and Transfer Pricing Guidelines in EU law, or at least not more than with any other corporate tax rule that is used to determine the tax liability of a group. Additionally, the fact that both Pillar 2 and the transfer pricing initiative follow an international approach that is discussed at the same organisation, the OECD, will ensure the highest level of compatibility.

BEFIT will replace national corporate tax systems for the groups of companies in scope of Pillar 2, which means the rules of Pillar 2 will naturally come into play after the group has been charged corporate tax, in order to confirm whether the actual level of corporate tax liability corresponds to a

rate of at least 15%. It follows that the sequencing between BEFIT and Pillar 2 is quite straightforward.

It is also worth recalling that the design of a new system like BEFIT will be able to align with features of Pillar 2, contrary to national corporate tax rules which are already in place and which differ between Member States. For instance, the preferred option under BEFIT is to apply limited tax adjustments to the financial accounting statements. This can, and it is envisaged that it will, closely follow the rules of Pillar 2, which is currently not the case for the national corporate tax accounting rules to calculate the tax base. On the assumption that BEFIT will indeed take the financial accounting statements as a starting point, the room for discrepancies between BEFIT and Pillar 2 is thus expected to be limited.

Nonetheless, a few issues have been identified and will be resolved in the legal design or in practice in the context of regular communication and coordination between the Commission services and the OECD Secretariat. This will also be a more efficient way to address any mismatches, rather than having to address varying mismatches with national rules at the same time.

In a nutshell, the initiative interacts in a more complex way with Pillar 2, compared to the currently applicable national corporate tax systems. In fact, BEFIT contributes a degree of simplification to the extent that it is closely based on the Pillar 2 rules.

ANNEX 7: TRANSFER PRICING

1. What is Transfer Pricing about?

Transfer pricing refers to the setting of prices for transactions between associated enterprises (i.e., members of the same Multinational Enterprise - MNE) involving the transfer of property or services.

A significant volume of global trade[82] consists of international transfers of goods and services, capital and intangibles (such as intellectual property) within an MNE; such transfers are called "intragroup transactions".

The "intragroup transactions" are not necessarily governed by market forces but may largely be driven by the common interests of the group as a whole.

Since tax calculations are generally based on entity-level accounts, the prices or other conditions at which these intragroup transactions take place will affect the relevant entities' income and/or expenses in relation to those transactions, and as a consequence, will impact on the amount of profit each group entity records for tax purposes.

A higher price increases the seller's income and decreases the buyer's income. A lower price decreases the seller's income and increases the buyer's income. The transfer price therefore influences the tax base of both the country of the seller and the country of the buyer involved in a cross-border transaction.

It is therefore important to establish the appropriate price, called the "transfer price", for intragroup transfers. "Transfer pricing" is the general term for the pricing of transactions between related parties.

2. What is the key principle of transfer pricing?

Transfer pricing rules are based on the so-called **arm's length principle** (ALP). This principle was developed by the League of Nations in the 1920s and is embedded in the tax treaties (usually article 9[83]) since then.

---

[82] A study of the World Trade Organization (Nordas, 2003) estimates intra-firm trade at 1/3 of world trade flows in 2003.

[83] For example, art. 9 par. 1 of the OECD Tax Model Convention provides that "Where

In simple terms, the arm's length principle prescribes that individual group members of a MNE must transact with each other as if they were independent third parties. In other words, the transactions between two related parties should reflect the outcome that would have been achieved if the parties were not related, i.e., if the parties were independent of each other and the outcome (price or margins) was determined by (open) market forces.

Under the arm's length principle, transactions within a group are compared to transactions between unrelated entities under comparable circumstances to determine acceptable transfer prices. Thus, the market place comprising independent entities is the measure or benchmark for verifying the transfer prices for intragroup transactions and their acceptability for tax purposes.

Under the arm's length principle, intragroup transactions are tested and may be adjusted if the transfer prices or other terms of the transactions are found to deviate from those of comparable uncontrolled transactions.

The arm's length principle is recognised as international standard for allocating profit between associated enterprises in both the OECD and UN Model Conventions.

3. What is the relevant legislative framework for transfer pricing?

As said above, transfer pricing rules are based on and implement the provisions of the Associated Enterprises Article (generally Article 9) of most bilateral tax treaties.

Both **article 9 of the OECD Model** and **article 9 of the UN Model** contain similar provision which allow for profit adjustments if the actual price or the conditions of transactions between associated enterprises differ from the price or conditions that would be charged by independent enterprises under normal market commercial terms, i.e., an arm's length basis.

In order to avoid double taxation, both provisions also require that, under certain conditions, an appropriate "corresponding adjustment" be made by the other Contracting State. In other words, if one country increases the profit attributed to one side of the transaction, the other country should

---

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,
and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly."

reduce, under certain conditions, the profit attributed to the other side of the transaction otherwise the same profit will be taxed twice. The competent authorities of the Contracting States are, if necessary, to consult with each other in determining the adjustment.

Over time the OECD has developed the **OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations** which provide guidance on the meaning of the arm's length principle, primarily for OECD member countries to use in resolving transfer pricing disputes under tax treaties. Those guidelines have been developed as a non-binding instrument with the aim to assist MNEs and tax authorities in finding solutions to transfer pricing cases that minimise conflicts and limit litigation. The OECD guidelines were first published in 1995 and are regularly updated.

For its part, the UN has elaborated the **United Nations Practical Manual on Transfer Pricing** whose aim is to contribute to a common understanding of how the arm's length principle is to be applied under article 9 of the UN Model Convention in order to avoid double taxation and prevent or resolve transfer pricing disputes.

Article 9 (Associated Enterprises) of the UN and OECD Models sets out the basic conditions for transfer pricing adjustments and for corresponding adjustments where economic double taxation arises. Although article 9 endorses the application of the arm's length principle it does not set out detailed transfer pricing rules. The article is not considered to create a domestic transfer pricing regime if this does not already exist in a particular country. In fact, it is generally understood that article 9 is not "self-executing" as to domestic application—it does not create a transfer pricing regime in a country where such a regime does not already exist.

Thus, jurisdictions normally have in place **domestic legislation** that ensures some harmonisation on basic principles, in accordance with the arm's length standard, even if the application is not identical around the globe. Further, jurisdictions may have in place their own administrative guidance and/or regulations to better explain the national provisions and provide guidance on their interpretation.

In practice, domestic legislations and tax treaty principles co-exist. While domestic provisions grant tax administrations the power to tax, bilateral tax treaties (which usually include provisions regarding the arm's length principle) limit the jurisdictions' right to tax, in order to prevent or solve situations of double taxation vis-à-vis other jurisdictions.

4. What are the issues related to the application of the transfer pricing rules?

While it is relatively easy to describe the arm's length principle, the practical application of the principle is a complex task.

The current transfer pricing rules are inherently complex and highly subjective. The OECD guidelines themselves caution that "transfer pricing is not an exact science" and "that the choice of

methodology for establishing the arm's length transfer pricing will often not be unambiguously clear".

The complexity of the transfer pricing rules gives rise to a number of problems:

A) **Profit shifting** and **tax avoidance**[84]: transfer prices are easily manipulated to shift profit and be used in the context of aggressive tax planning schemes.
B) **Litigation**[85] and **double taxation**: transfer pricing is more subjective than other areas of direct and indirect taxation and, for this reason, sensitive to disputes. In addition, it should be recognised that tax administrations do not always share a common interest. This is because, to prevent double taxation, a well-founded primary (upward) adjustment by one tax administration should be followed by a corresponding (downward) adjustment by the other. This implies that the second tax administration would have to reduce its tax base accordingly, which is most probably an option that a tax administration would preferably avoid taking, especially when the interpretation of the transfer pricing rules differs.

In the European Union, the problems related to transfer pricing described above are exacerbated because although there is an internal market, **national tax systems are not harmonised**. In addition, the **status and role of the OECD Guidelines differ from Member State to Member State** creating different interpretations of the arm's length.

5. What is the state of play of transfer pricing rules in the EU?

---

[84] At the beginning of the BEPS project in 2013, OECD estimates that the scale of global corporate income tax revenue losses due to BEPS practices could be between USD 100 to 240 billion annually (see https://www.oecd.org/tax/beps-project-explanatory-statement-9789264263437-en.htm); Transfer Pricing manipulation was identified as one of the major BEPS practices.

[85] The OECD official statistics show that at the end of 2021 the number the pending Mutual agreement procedures (MAPs) activated to resolve double taxation arising from Transfer Pricing cases has increased by 33% compared to the 2016 (the MAP inventory at the end 2021 results to be 6000 against the 4500 pending MAP cases at the end of 2016). OECD MAP statistics are available at: https://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics-2021-inventory-trends.htm#tpcases

Also the EU official statics on MAPs under the Arbitration Convention show an increase of transfer pricing disputes between Member States of 17% compared to the previous year (tot MAP inventory of Member States at the end of 2020 is equal to 2213 while tot MAP inventory of the Member States at the end of 2019 is equal to 1889). EU MAP statistics are available here: https://taxation-customs.ec.europa.eu/taxation-1/statistics-apas-and-maps-eu_en

The table below provides a detailed overview of the state of play of transfer pricing rules in the EU Member States. The situation can be summarised as follows:

a) **EU law:** Transfer pricing rules are not harmonised at EU level through legislative acts.
The Commission has currently no policy initiative[86] in place in the area of transfer pricing which would allow for reaching a common approach.
In the past, the Commission dealt with transfer pricing issues through the work of the Joint Transfer Pricing Forum (JTPF), an expert group set up by the Commission in 2002 whose mandate expired in March 2019 and was not renewed.

b) **Domestic legislation**: all Member States have implemented the arm's length principle into their domestic legislation. The overwhelming majority of Member States have in place a "short provision" that merely reflects art. 9 of the OECD model tax convention. Still, domestic legislation of Member States shows relevant differences in the definition of associated enterprises and in particular, in the notion of "control" which is normally the pre-condition to apply transfer pricing. For example, the German transfer pricing rule applies to intercompany transactions where there is a substantial shareholder > 25% while in France or Belgium, the transfer pricing rule only applies where there is a substantial shareholder > 50%. There are also differences in domestic legislation regarding the exclusions from the scope of the rule. For example, the newly adopted transfer pricing legislation in Malta excludes in any case from the scope of the rule the SMEs as defined by the EU State Aid Regulations while such exclusion is not provided in the Italian legislation and many others.

c) **OECD guidelines**: Only 23 out of 27 EU Member States are also OECD members (Bulgaria, Romania, Malta and Cyprus are not OECD members) and therefore are committed to follow the OECD principles and the OECD guidelines to interpret the arm's length principle. Still the status and role of the OECD guidelines differ from Member State to Member State even among those who are OECD members. For example, one group of Member States (Spain, Italy and Germany) makes direct reference to the OECD guidelines in their national provisions recognising the OECD guidelines as a source of interpretation not only for article 9 of the tax treaties but also for domestic legislation as long as the guidelines do not conflict with specific domestic regulations. Another group of Member States (France, The Netherlands, Croatia and others) has not explicitly implemented the

[86] An ongoing EU soft-law initiative related to TP is ETACA (European Trust and Cooperation approach). ETACA is an EU program that aims to increase tax certainty by bringing together, on a voluntary basis, Member State tax administrations to perform a multilateral risk assessment of the transfer pricing policy of MNEs operating within the internal market.

OECD guidelines into their internal legislation; they report to follow the guidelines in practice, but the legal status of the Guidelines is unclear. Another group (Estonia, Hungary) explicitly reports that the OECD guidelines are not recognised as legally binding but that their administrative regulations are based on the same principles contained in the OECD Transfer Pricing Guidelines. Another element that remains unclear is whether Member States adopt a dynamic (which seems the case for Austria and Denmark) or a static (which seems the case for Germany) approach to the OECD guidelines, i.e., whether they make reference to the last version or rather a specific version of the OECD guidelines (taking in consideration that the OECD guidelines were first published in 1995 and then updated several times ever since).

The **table below** summarises the state of play of the implementation of the arm's length principle and OECD guidelines in domestic legislation of EU Member States.

The information has been collected from the public OECD TP country profile and has been cross-checked with the information contained in the EU TP country profile elaborated by the Joint Transfer Pricing Forum.

Member State	Is the arm's length principle implemented in the domestic legislation?	What is the role of the OECD Guidelines?
Austria	YES Section 6 paragraph 6 of the Austrian Income Tax Act ("ITA")	The OECD Guidelines serve as a tool for interpretation of Austrian tax treaties (see Article 31 paragraph 3 sub-paragraph b of the Vienna Convention on the Law of Treaties). The role of the OECD Transfer Pricing Guidelines is explicitly mentioned and explained in the Austrian Transfer Pricing Guidelines 2021 ("Austrian TPG 2021"; the official regulation of the Austrian tax administration regarding the application of the ALP under Austrian tax treaties).

Belgium	YES Art. 185, §2, BITC	Belgium legislation incorporates specific guidance for the interpretation of the mentioned articles with reference to the OECD Transfer Pricing Guidelines. The 2020 circular letter comments on Chapters I, II, III, VI, VII, VIII and IX of the 2017 OECD Transfer Pricing Guidelines. It also includes guidance on financial transactions. Finally, the application of the Authorised OECD Approach (AOA) on the attribution of profits to Permanent Establishments is also described. Where useful and appropriate, the administration's preference is set out.
Bulgaria	YES Corporate Income Tax Act, Chapter 4, Art. 15	Although there is no specific reference to the TPG in the Bulgarian TP legislation, Bulgaria generally follows them. However, there are certain differences (e.g. there is a hierarchy of the methods under the Bulgarian legislation)
Cyprus	YES Income Tax Law (Art. 33 Law No.118(I)/2002)	Altough there is no specific legal provision, in practice OECD Transfer Pricing Guidelines are followed.
Croatia	YES Profit Tax Act, art13	Even if there is no direct reference in Croatian legislation (in Profit Tax Act and Profit Tax Ordinance), the Croatian Tax Administration uses the OECD Transfer Pricing Guidelines in practice

Czech Republic	YES The Czech Income Tax Act 586/1992 Coll., Section 23 para 7	The OECD TP Guidelines are not implemented into the Czech tax legislation directly, but in the Guideline GFD D-22 (which provides for a uniform procedure for the application of certain provisions of the Czech Income Tax Act) there is the recommendation to use TPG.
Denmark	YES The arm's length principle is governed by the Tax Assessment Act (Ligningsloven), Section 2.	The Danish Tax Assessment Act, Section 2, includes a direct reference to the TPG in the explanatory memoranda. In Denmark the arm's length provision is interpreted according to the arm's length principle contained and described in the OECD TPG.
Estonia	YES Subsection 50 (4) of the Income Tax Act	The TPG have no legal status within the Estonian tax system. However, they have been translated into Estonian and, according to Article 20 of the Regulation no. 53 (Transfer Pricing Regulation) drafted by MoF (in force since 1.01.2007), taxpayers and tax administrations are encouraged to use the TPG for those situations not covered by the Transfer Pricing Regulation, as far as the guidance in the TPG is not in contradiction with it.
Finland	YES Session 31 of the Assessment Procedure Act	The OECD Transfer Pricing Guidelines are a source of interpretation as far as the tax treaties and domestic legislation are concerned. The OECD TPG have been referred to in the Government Bill (107/2006 vp.) updating transfer pricing legislation and introducing transfer pricing documentation requirements as an interpretation guidance in applying the domestic legislation (Act

		on Assessment Procedure § 31). The reference has been made also in the Government Bill (142/2016 vp.) updating transfer pricing documentation requirements and in the Government Bill (188/2021 vp.) updating transfer pricing legislation. In addition, the Supreme Administrative Court has referred to OECD TPG as an interpretation source in several decisions (e.g. KHO 2013:36).
France	YES Article 57 of the General Tax Code (Code général des Impôts) is the equivalent in domestic law of Article 9 of the OECD Model Tax Convention.	Although the OECD Transfer Pricing Guidelines are not prescriptive under French domestic law or regulation, French administrative doctrine makes express references to them. French domestic administrative doctrine refers to the OECD Transfer Pricing Guidelines for the arm's length principle and for the methods used for determining the transaction price between related parties under this principle
Germany	YES Section 1 External Tax Relations Act (Außensteuergesetz)	The External Tax Relations Act aims at allowing to apply the OECD Transfer Pricing Guidelines under German law. Furthermore, the German Federal Ministry of Finance's circular on transfer pricing not only refers to the OECD Transfer Pricing Guidelines but includes them as an annex
Greece	YES Income Tax Code (L.4172/2013, Article 50)	The provisions of Income Tax Code with regards to Transfer Pricing are applied and interpreted consistently with OECD general principles and the OECD Transfer Pricing Guidelines. The OECD TPG are also followed during MAPs and

		APAs procedures
Hungary	YES Section 18 of the Act LXXXI of 1996 on Corporate Tax and Dividend Tax.	The OECD TP Guidelines are not legally binding in Hungary, however the Hungarian TP regulations are based on the OECD Transfer Pricing Guidelines. Section 31, paragraph 2, subparagraph b of the Act LXXXI of 1996 on Corporate Tax and Dividend Tax contains reference to the OECD TPG.
Ireland	YES Section 835C of the Taxes Consolidation Act 1997 (as substituted by section 27 of the Finance Act 2019). [SMEs are out the scope]	Ireland's transfer pricing rules are construed in accordance with the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published by the OECD on 10 July 2017 ("TPG") supplemented by - - the Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles, - the Revised Guidance on the Application of the Transactional Profit Split Method, and - Any additional guidance published by the OECD on or after the date of the passing of the Finance Act 2019 (i.e., 22 December 2019) as the Minister for Finance may designate by order.

Italy	YES Income Tax Code (approved by Presidential Decree No. 917 of 22 December 1986): Art. 110 para. 7 as recently updated in June 2017.	The Ministerial Decree dated 14 May 2018, in setting out the general guidance for the proper application of the arm's length principle established by law in Article 110, paragraph 7, of the Income Tax Code, makes explicit reference to the OECD Transfer Pricing Guidelines and to the OECD Final Report on BEPS Actions 8-10 as well. See Preamble of the Ministerial Decree.
Latvia	YES Corporate income tax law, Section 4 Paragraph 2 Subparagraph 2-e	The OECD Transfer Pricing Guidelines are used as best practices and recommendations on dealing with the following transfer pricing issues: - How to apply transfer pricing methods; - How to make a functional analysis and comparable benchmark; - To promote the cooperation between taxpayers and tax administrations and to avoid double taxation; - To justify certain controlled transactions or commercial relations.
Lithuania	YES Clause 3 of the Rules for Implementation of paragraph 2 of Article 40 of the Republic of Lithuania Law on Corporate Income Tax and paragraph 2 of Article 15 of the Republic of Lithuania Law on Personal Income Tax approved by the Minister of Finance of the Republic of Lithuania (the TP Rules)	The Lithuanian TP rules are mainly in-line with the OECD Transfer Pricing Guidelines ('OECD TPG'). Moreover, Lithuanian TP Rules recommend the use of the OECD TPG insofar as the provisions do not contradict the provisions of the TP Rules.
Luxembourg	YES Art. 56 and 56bis of the modified law as of 4th	The OECD TPG are the base reference in domestic legislation. They constitute the framework for any TP analysis.

	December 1967 concerning income tax (“LITL”).	
Malta	YES Article 5(6) of the Income Tax Management	In the absence of specific domestic legislation regarding transfer pricing, reference is made to the OECD Transfer Pricing Guidelines. These, however, are not binding
The Netherlands	YES Art. 8b CIT act	The OECD Transfer Pricing Guidelines (“TPG”) are not incorporated in Dutch legislation, however based on the Dutch Transfer Pricing Decree, the TPG are considered as internationally accepted guidance providing explanation and clarification of the (application of the) arm’s length principle.
Poland	YES Article 11c para. 1, 11j para. 1 of the Corporate Income Tax act (CIT act) Article 23o para. 1, 23v para. 1 of the Personal Income Tax act (PIT act)	The OECD Transfer Pricing Guidelines are not part of the Polish law, however they are used as an explanatory instrument. Also in accordance with regulations contained in the PIT and CIT act, the Minister of Finance act on TP assessments procedure and Minister of Finance act on TP documentation take into account mainly the OECD Transfer Pricing Guidelines

Portugal	YES Article 63 of the Corporate Income Tax Code	The OECD Transfer Pricing Guidelines are referred in the Portuguese legislation as a source of guidance in the application of the arm's length principle. The preamble of the Ministerial Order (Portaria) n.º 268/2021, of the 26th of November, refers that the OECD Transfer Pricing Guidelines should be taken in consideration in the application of the transfer pricing legal framework and of the arm's length principle, given the complexity of the issue, and the need to avoid double taxation and litigation.
Romania	YES Tax Act, Section 11, para 4 (art 11 alin. 4 cod fiscal) Ord 442/2016- TP File	Romanian legislation incorporates guidance for the interpretation of the articles in the Tax Act concerning transfer pricing with reference to the OECD Transfer Pricing Guidelines (TPG). Also, in applying the Arm's Length Principle Romanian legislation has direct reference to the OECD TPG
Slovak Republic	YES Income Tax Act, Article 17, para 5 and Article 18, para 1	The OECD Transfer Pricing Guidelines (TPG) are not legally binding, but acceptable as an explanatory instrument.
Slovenia	YES The Corporate Income Tax Act and the Rules on Transfer Prices (Translation Updated until 2016)	The TPG is used as a practical tool by the taxpayer and by the tax administration (Financial Administration) to determine the arm's length remuneration based on the relevant law in the field of transfer pricing, that is the Corporate Income Tax Act and the Rules on Transfer Prices. The OECD Transfer Pricing Guidelines (2010) were translated into Slovene language and published on the website of the Ministry of Finance and

		Financial Administration.
Spain	YES Corporate Income Tax Act, Art.18.1 (Ley 27/2014, 27 November 2014)	The OECD TPG are recognised by the Preamble of the Corporate Income Tax Act as a source of interpretation of the internal legislation and as far as the Guidelines do not conflict with the domestic regulations
Sweden	YES Section 14 para 19 of the Swedish Income Tax Act (1999:1229).	There is a reference to the OECD TPG in decisions by the Supreme Court (RÅ 1991 ref. 107 and HFD 2016 ref. 45). Also, in the preparatory work to the transfer pricing documentation legislation a reference is made to the transfer pricing methods described in the OECD TPG.

ANNEX 8: TERRITORIAL IMPACT ASSESSMENT – NECESSITY CHECK

Background

Territorial impact assessments (TIA) are recommended by the Regulatory Scrutiny Board to be conducted for any policy on the EU level that is likely to have relevant territorially differentiated impacts on the regions. Deciding whether or not that is the case for a given policy or legislative proposal however is not always easy as no policy will affect all regions throughout the European Union exactly to the same extent. It is thus necessary to determine, if there are relevant respectively significant variations in impacts.

Necessity Check

A meeting was held between DG REGIO, DG AGRI, and DG TAXUD on 14 December 2022 to discuss possible territorially differentiated impacts on the regions of the BEFIT proposal. Following this discussion TAXUD undertook to carry out a Territorial Impact Assessment Necessity Check.

DG TAXUD carried out the online Territorial Impact Assessment Necessity Check on 3 March 2023 and the result of that check was that the initiative does not require a TIA.

The problem and its consequences that this initiative aims to address (complexity and high compliance costs) are spread across the Union evenly, indeed they are a product of the existing of many systems. The initiative itself will not impact regions differently.