Council of the
European Union

**Brussels, 13 September 2023
(OR. en)**

12965/23

**Interinstitutional File:
2023/0321(CNS)**

**FISC 191
ECOFIN 870
IA 224**

PROPOSAL

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.:	COM(2023) 532 final
Subject:	Proposal for a COUNCIL DIRECTIVE on Business in Europe: Framework for Income Taxation (BEFIT)

Delegations will find attached document COM(2023) 532 final.

Encl.: COM(2023) 532 final

EUROPEAN
COMMISSION

Strasbourg, 12.9.2023
COM(2023) 532 final

2023/0321 (CNS)

Proposal for a

COUNCIL DIRECTIVE

on Business in Europe: Framework for Income Taxation (BEFIT)

{SWD(2023) 308 final} - {SWD(2023) 309 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The BEFIT proposal was announced in the Communication on Business Taxation for the 21st Century in May 2021[1]. The proposal is also included in the Commission Work Programme 2023[2] and it is also relevant from an own resource perspective, as set out in the 2021 Communication on the next generation of own resources for the Union budget[3].

The idea to develop a common corporate tax framework in support of the internal market has always been part of the Union's history and first appeared in policy documents of the European Economic Community as early as the 1960s. However, as we celebrate 30 years of the internal market, there are still no common rules to calculate the taxable income of businesses operating in the Union. Therefore, businesses have to comply with (up to) 27 different national tax systems, making it difficult and costly for companies to do business across the Union. The complexity of, and discrepancies in, the interaction of the different tax systems create an uneven playing field and increases tax uncertainty and tax compliance costs for businesses operating in more than one Member State. This has an adverse effect on the functioning of the internal market as it discourages cross-border investments and puts Union businesses at a competitive disadvantage compared to businesses operating in markets of a comparable size elsewhere in the world.

In addition, the arm's length principle in transfer pricing which is used to value transactions between associated enterprises does not only result in higher costs and long disputes but also relies on the availability of comparable transactions, which makes it less accurate especially for transactions related to intangible assets (patents, trademarks, goodwill etc.), as these are unique in nature. This makes the tax base of Member States less stable, and businesses risk arbitrary valuation of an important part of their activities.

To address the identified issues, valuable insights gained from many years of negotiations and related analyses of taxation files can now be used in the design of BEFIT. In particular, the 2011[4] and 2016[5] proposals for a common consolidated corporate tax base triggered a thorough exchange of views and Member States converged considerably in their technical approaches during those negotiations. This proposal replaces the Commission's Common Corporate Tax Base and Common Consolidated Corporate Tax Base proposals, which are withdrawn. BEFIT will reflect the insights gained and the changes in modern economy characterised by increasing globalisation and digitalisation.

The context for Union tax policy has changed significantly in the recent years. Key concepts of corporate tax initiatives and follow up discussions have been taken up in other and broader contexts than before. In 2020, the Council, Parliament and the Commission agreed that a

---

1 COM(2021) 251 final
2 COM(2022) 548 final
3 COM(2021) 566 final
4 COM(2011) 121/4 final.
5 COM(2016) 685 final; COM(2016) 683 final.

common corporate tax base could be the basis for a new own resource that the Commission will propose[6]. In 2021, as part of the OECD/G20 Inclusive Framework statement on a Two-Pillar Solution[7], over 135 countries agreed to calculate the effective tax rate of a large multinational group starting from the consolidated financial statements of the group (Pillar 2) and to use formulary apportionment to partially re-allocate taxable profits (Pillar 1). The agreement on Pillar 2 was endorsed by Member States which unanimously adopted the Directive on ensuring a global minimum level of taxation for multinational enterprise groups and domestic groups in the Union (Pillar 2 Directive) in December 2021[8]. Hence, Union policies can build on, not only own experiences, but also these developments in the field of corporate taxation taking place at international level.

Technological progress and enhanced administrative capacity of tax authorities in the Member States have also made the prospect for implementing and managing a Union-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 rules and stable public revenues are more important than ever. Nonetheless, the tax bases of Member States shift as a result of megatrends, such as globalisation, digitalisation, climate change, environmental degradation, an ageing population, and a transforming labour market. In particular, globalisation and digitalisation have paved the way for profit shifting through tax planning practises which previously have been addressed by the Union and Member States by adopting anti-tax evasion and avoidance measures. These measures have been successful in addressing specific issues, but also added complexity to the tax systems that businesses have to navigate. It has therefore become more pressing for the Union tax policy to ensure that Member State tax bases are robust, sustainable, and protected against abuse while reducing complexity in the internal market.

This proposal seeks a way forward that reconciliates all aspects by introducing a common framework for corporate income taxation in the Union. The common framework will simplify the tax environment in the internal market as it will replace the current 27 different ways for determining the taxable base for groups of companies which have annual combined revenues exceeding EUR 750 million. Consequently, the common framework will create a level playing field, enhance legal certainty, reduce compliance costs, encourage businesses to operate cross-border and stimulate investments and growth in the Union.

Together with this proposal, the Commission adopted a separate proposal on transfer pricing which is covered by the same impact assessment report.

---

6 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.

7 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.

8 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 (OJ L 328, 22.12.2022, p. 1)

- **Consistency with existing policy provisions in the policy area**

This Directive is in line with and complements a number of recent proposals made by the Commission, which were also announced in the Communication on Business Taxation for the 21st century. Notably, the "DEBRA" proposal which aims to promote growth and innovation by addressing the debt-equity bias in corporate taxation through an allowance system[9], and the "UNSHELL" proposal which aims to tackle the misuse of shell entities for tax purposes, through new anti-tax avoidance measures[10].

This initiative is also fully consistent with existing Union policies in the field of direct taxation. The Parent-Subsidiary Directive,[11] the Interest and Royalties Directive[12] and the Merger Directive[13] had the objective of tackling double taxation of companies. BEFIT further builds on this policy and aims to provide a more comprehensive solution. In addition, the Directive on Administrative Cooperation (DAC)[14] ensures cooperation and exchange of different types of information between the tax administrations of the Member States. In particular, since 2017, the DAC4 revision[15] requires the ultimate parent entities of MNE groups to file country-by-country reports containing information on revenue, profits, taxes, employees and tangible assets, and their constituent entities. This information is shared between Member States. The administration system of BEFIT will benefit from this existing cooperation and make it more efficient.

This proposal is also compatible with the Anti-Tax Avoidance Directive (ATAD)[16] that was adopted in 2016 to address tax avoidance practices. BEFIT does not contradict these rules. Businesses in scope of BEFIT may even benefit from more tax certainty in this regard. Their tax situation will be more transparent and clearer, compared to having to structure their operations in accordance with multiple national legal frameworks while also making sure that they respect the main purpose of each framework and avoid mismatches. The only provision where the BEFIT proposal needs to ensure consistency is the interest limitation rule (Article 4 of the ATAD). For this purpose, the proposal includes a specific provision to accommodate

---

9 Proposal for a COUNCIL DIRECTIVE on laying down rules on a debt-equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes, COM/2022/216 final.

10 Proposal for a COUNCIL DIRECTIVE laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU, COM/2021/565 final.

11 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) (OJ L 345, 29.12.2011, p. 8)

12 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 (OJ L 157, 26.6.2003, p. 49)

13 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.

14 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)

15 Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 146, 3.6.2016, p. 8).

16 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 (OJ L 193, 19.7.2016, p. 1)

this measure within the dimension of a cross-border group and not as a rule that will apply company-by-company (Article 13).

The proposal is also consistent with the implementation of the OECD/G20 Inclusive Framework Two-Pillar Solution. As an extension to the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project in 2015, and in particular the BEPS Action 1 Report on addressing the tax challenges of the digital economy, the OECD/G20 Inclusive Framework was set up to address tax challenges arising from digitalisation. The approach focused on two different, but related workstreams and in 2021, jurisdictions worldwide reached a historic agreement on a two-pillar solution. Pillar 1 encompasses a partial re-allocation of taxings rights to market jurisdictions (Amount A) and a simplification of the arm's length principle for certain activities (Amount B). Pillar 2 consists of the Global anti-Base Erosion (GloBE) rules, which are two interlocking domestic rules ensuring a minimum effective taxation of 15%, and the Subject to Tax Rule (STTR), which is a treaty-based rule allowing a minimum rate of 9% on certain payments. On 15 December 2022, the Union adopted the Pillar 2 Directive, with a view to implementing the GloBE rules in a uniform manner in the Union. The further work of the OECD/G20 Inclusive Framework to address the remaining elements of the Two- Pillar Solution was agreed by 138 countries and jurisdictions on 11 July 2023[17]. The proposal builds on the achievements of the two Pillars, in order to provide businesses in the Union with simplicity and certainty in a comprehensive manner.

- **Consistency with other Union policies**

Commission President Ursula von der Leyen announced in her 2022 State of the European Union address that the Commission will put forward an SME "Relief Package". The SME Relief Package should deliver much-needed support to secure cash flow, to simplify, and to invest and grow. This should make it easier for SMEs to do business in the internal market. In this regard, a related proposal for a Directive for SMEs with limited taxable presence abroad (only through permanent establishments in (an)other Member State(s)) is expected to complement the array of the Commission's initiatives for simplification in corporate taxation. This will ensure that SME groups are also encouraged to expand across borders and that high tax compliance costs do not hinder SMEs from fully taking advantage of the opportunities in the internal market.

BEFIT and the SME Relief Package are complementary. Both initiatives are aimed at enhancing simplification for businesses. In the field of taxation, the SME Relief Package aims to offer simplification for SMEs with limited presence abroad whilst BEFIT focuses on large corporate groups which already have extensive cross-border activity. However, BEFIT offers optional rules for SMEs which are part of a group that files consolidated financial statements. The optional scope will enable them to choose the simplest and most cost-efficient option based on their individual needs.

[17] OECD/G20 Base Erosion and Profit Shifting Project Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy of 11 July 2023

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

This proposal falls within the ambit of Article 115 of the Treaty on the Functioning of the European Union (TFEU). The rules of the proposal aim to approximate the laws, regulations or administrative practices of the Member States as directly affect the establishment or functioning of the internal market. It shall therefore be adopted under a special legislative procedure in accordance with this article and in the form of a Directive. The competence of the Union in this area is shared with the Member States.

- **Subsidiarity (for non-exclusive competence)**

Businesses in the Union increasingly operate across borders in the internal market, but the current tax framework in the Union consists of 27 different corporate tax systems. This multiplicity of rules results in fragmentation and presents a serious impediment to business activity in the internal market. Indeed, cross-border businesses face high tax compliance costs in the internal market, as they must comply with various legal frameworks. Moreover, the disparities between Member States create mismatches that can lead to double non-taxation and unintended tax benefits.

These problems are common to all Member States and cannot be effectively addressed by national actions. As they are the result of having different tax systems in the first place, national uncoordinated action would produce insufficient effects. Similarly, while better cooperation may also be beneficial, this approach has mainly been bilateral and is limited, especially for groups that operate in more than two Member States.

In this context, only a Union-wide initiative providing for a common set of rules can be effective. The complexity and its consequences would be significantly reduced if a single Union-wide set of corporate tax rules were in place for groups of companies. Mismatches can also only be eliminated, rather than corrected, when the problem is addressed by common rules.

If action is taken at Union level, it will have clear added value. For instance, the aggregation of group members' tax bases in a single pool, coupled with a straightforward method for allocating profits within the group, would set out a method for determining the tax liabilities of groups of companies in a more objective and less costly way. However, Member States cannot effectively use this method individually, because the risk of double taxation and disputes would remain, if the method for profit allocation is not uniform for the whole group and the allocable tax base of the group is not computed in accordance with a single set of rules.

Common substantive rules can also be administered by a common framework, which would have definitive advantages for businesses and tax administrations in the Union. Instead of filing in each Member State, a one-stop-shop could allow groups of companies to comply with requirements through one single entity. For tax administrations, which currently assess the tax liabilities of the same cross-border businesses separately but each only with their own resources, it would be possible to collectively use those resources in a more effective and targeted manner. In addition, cross-border issues may require agreement between different Member States and often result in lengthy disputes or procedures. A common administrative framework would thus also allow businesses in the Union to obtain a degree of early certainty on certain items.

This initiative is therefore in line with the principle of subsidiarity laid down in Article 5(3) TFEU, considering that the objectives cannot be sufficiently achieved by the Member States, and a common approach for all Member States would have the highest chances of achieving the intended objectives.

- **Proportionality**

The envisaged measures do not go beyond what is necessary to achieve their objectives and are therefore compliant with the principles of proportionality. The proposal does not prescribe full harmonisation of corporate tax systems but only sets out common rules to determine the taxable income of (large) groups of companies in the Union. This is required to be able to attain the objectives of the initiative and the rules are carefully limited to what is strictly necessary.

Tax rate and enforcement policies will fully remain with Member States. The scope of the proposed measures only concerns the tax base. More specifically, the proposal will only introduce rules where this is necessary to allow businesses in the Union to calculate their tax base across the Union based on a single set of rules. This means that the new BEFIT tax base will be primarily based on existing financial accounting rules, which are already accepted under Union law, i.e. either the national generally accepted accounting principles (GAAP) of the Member States, or the International Financial Reporting Standards (IFRS). The proposal does not harmonise tax base rules generally, but only where this is necessary and it allows for additional adjustments after allocating the BEFIT tax base, in consideration for national policy needs.

To ensure that the initiative does not go beyond what is needed, the rules will also be optional for most businesses, who may continue to apply the existing rules of Member States. The mandatory scope is limited to the Union sub-set of the large groups that are also within scope of the Pillar 2 Directive, unless a large group is headquartered outside the Union but has limited activity in the internal market (materiality threshold). This targeted approach is taken in order to ensure consistency and coherence in the Union and because the common rules under this Directive would benefit, in particular, these businesses. They are thus most likely to have a strong cross-border presence and the new rules are aligned as closely as possible with the Two-Pillar Approach.

Applying BEFIT rules in a uniform manner to these groups would ensure coherence with the Pillar 2 Directive. It will allow to leverage interactions and keep the costs of implementation at a minimum. Both the BEFIT tax base and the Pillar 2 minimum effective tax rate would be dealt with at the same level, i.e. the Union group level. Processes can also be aligned; for instance, they both rely on financial accounting statements as a starting point and companies must apply the Union-wide tax adjustments for both. Hence, this is a proportionate step forward to simplify our tax rules and enhance tax certainty in the Union.

Introducing a new tax framework for businesses in the Union would imply some initial adaptation costs and administrative burdens. However, these costs are estimated to be outweighed by compliance cost savings as well as simplified administrative procedures and in the long run, the improved allocation of resources by businesses and tax administrations.

Consequently, this initiative is also in line with the principle of proportionality laid down in Article 5(3) TFEU, as its content and form does not exceed what is necessary and commensurate with the intended objectives.

- **Choice of the instrument**

The proposal is for a Directive, which is the only permissible legal instrument under the legal basis (Article 115 TFEU).

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

The stakeholder consultation strategy for this initiative consisted of both public and targeted consultations. For the public consultation, a call for evidence[18] and an online survey were published on 13 October 2022, followed by a consultation period of 12 weeks that ran until 26 January 2023. This aimed to collect the views of stakeholders on the key principles that define the features of a common corporate tax base in the Union. Overall, the consultation received 123 contributions, consisting of 46 feedback contributions and 77 responses to the public consultation survey, of which 29 included written submissions that were either attached to feedback or sent by email. Fifty four out of the 123 contributions were submitted by businesses associations that represent general business interests, tax advisers, lawyers, or specific business sectors, such as insurance. Respondents also included citizens and both larger and smaller businesses, as well as academic and research institutions, non-governmental organisations, and trade unions. No input was received from national authorities.

All contributions received were considered in the impact assessment. A synopsis report can be found in annex to the impact assessment report, and the Commission published the stakeholder input and a factual summary report on the consultation page. The latter provides a detailed overview of the profiles of the respondents and the input received.

Targeted consultations and bilateral meetings with relevant stakeholders (corporate taxpayers likely falling under BEFIT, academics, Member States) have also taken place. A compilation of the interview reports from targeted consultations can be found in annex to the impact assessment report. Member States were also informed through meetings of the Commission Working Party IV (direct taxation) and the Council High-Level Working Party (HLWP).

Out of all these exchanges and input received from various stakeholders, it can be concluded that, while views differ, there is a broad consensus on the problems arising from the differences between national tax systems and on the need for action in the Union to tackle the fragmented and inefficient situation.

Views on the main features for a new system were more divided. However, the proposal includes the options that were most favoured by respondents to the public consultation, such as a hybrid scope, calculating the tax base by making as few as possible adjustments to financial accounts, allowing cross-border loss relief, and a simplification for filing obligations. In respect of transactions with associated enterprises outside the BEFIT group, transfer pricing rules will continue to apply, but the proposal puts forward benchmarks for a simplified risk assessment framework. The latter was favoured by most respondents.

---

[18] Call for evidence for an impact assessment - Ares(2022)7086603.

- **Collection and use of expertise**

The Commission has relied on the expertise of its Joint Research Centre, which used the CORTAX model to study the possible impacts of the initiative. The CORTAX model is a general equilibrium model designed to evaluate the effects of corporate tax reforms in 27 Member States, using detailed data from various sources.

The Commission did not rely on external expertise in preparing this proposal.

- **Impact assessment**

An impact assessment was carried out to prepare this initiative, as well as the proposal for a Directive on Transfer Pricing. The draft impact assessment report was submitted to the Commission's Regulatory Scrutiny Board (RSB) on 26 April and a meeting was held on 24 May 2023. The RSB delivered a positive opinion[19] with reservations on 26 May 2023, suggesting areas for further improvement. Main areas for improvement were: to draw a clearer link to previous proposals and ongoing international tax developments, a more detailed description of the compliance cost estimates, a better explanation of the costs and benefits and a clearer description of the monitoring arrangements.

A revised impact assessment report addressing these reservations was prepared. For example, the lessons learned from previous corporate tax initiatives have been clarified and the links with the OECD Two-Pillar Approach have been added. The estimates of compliance costs have also been amplified to the extent possible based on available data.

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, the said impact assessment report only assesses the impact of the proposals for a Council Directive on BEFIT and for a Council Directive on Transfer Pricing.

The impact assessment report to this proposal represents faithfully the analysis on BEFIT and Transfer Pricing contained in the scrutinised draft impact assessment and integrates the recommendations of the Regulatory Scrutiny Board in that regard.

The report assesses the impact on the basis of several policy options. For the scope of BEFIT, the options cover mandatory, optional, and hybrid, i.e., mandatory for some groups while it remains optional for others. For the computation of the tax base, the options cover limited adjustments to the financial statements and a comprehensive set of tax rules. For the allocation of the tax base, the options cover a formula without intangible assets, a formula including intangible assets and a transition allocation method. For transactions with related parties outside the BEFIT group, the options cover keeping the status quo and introducing a 'traffic light system' as a risk assessment tool. For the administration, the options cover an advanced one-stop-shop, a limited one-stop-shop and a hybrid one-stop-shop.

To assess these options, the report examines three 'Versions' of BEFIT, i.e. three combinations of the various options. As the assessment of transfer pricing options will be contained in a separate proposal, it will not be summarised for the purposes of this Directive.

---

[19] Ares(2023)3669156, 26 May 2023.

Version 1 – BEFIT “Comprehensive”:

Scope	Tax Base Computation	Tax Base Allocation	Transfer Pricing Risk Assessment	Administration
Mandatory for all groups	Comprehensive set of rules	Formula including intangible assets	Traffic light system	Advanced one-stop-shop

This version would propose rules that are mandatory to all taxpayers, and it would involve the highest degree of harmonisation as well as immediate application. This combination of options would ensure the broadest scope possible and, as a result, the most extensive simplification for businesses in the Union and Member State tax authorities, considering that it would replace current national rules on group taxation in the Union.

Version 2 – BEFIT “Light”:

Scope	Tax Base Computation	Tax Base Allocation	Transfer Pricing Risk Assessment	Administration
Optional for all groups	Limited tax adjustments	Transitional allocation rule	Keep the current rules	Limited one-stop-shop

This version would propose rules that are mostly optional, with the least degree of harmonisation and planned for gradual application. This combination of options would bring along some changes to the status quo, but these would be narrower in scope, less comprehensive, and with provision for gradual application.

Version 3 – BEFIT “Composite”:

Scope	Tax Base Computation	Tax Base Allocation	Transfer Pricing Risk Assessment	Administration
Hybrid	Limited tax adjustments	Transitional allocation rule	Traffic light system	Hybrid one-stop-shop

This is a third ‘in-between version’ which is a compilation of elements of mandatory harmonisation and gradual application. BEFIT “Composite” provides for a hybrid approach regarding its application and scope. It would ensure common and mandatory rules targeted at large groups that are most likely to have cross-border structures and activities and could be expected to therefore benefit the most from the simplification that BEFIT offers.

The impact assessment concludes that Version 3 is the preferred policy package. 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 include solely those groups who can mostly benefit from the common rules and can afford the transition, and optional for those groups below the threshold.

The impact assessment includes a cost-benefit analysis of the initiative, which is expected to be positive. Among the **benefits** for businesses in the Union under this option, the simplifications that the initiative would introduce have the potential to reduce current tax compliance costs per firm and are expected to stimulate investment and growth and contribute to ensuring more sustainable tax revenues for Member States.

The **costs of the proposal** cannot be determined with any precision because the BEFIT proposal does not have a precedent and there is no dedicated data that can be used reliably for concrete estimates. Nonetheless, the report indicates that the following costs are expected for the implementation of the common rules under this proposal: ongoing operational costs of an administrative nature, short-term (possibly, one-off) adjustment costs, related to updating IT systems, and the training of company staff and tax administrations to adjust to the new system. These estimates can be found in Annex 3 to the impact assessment report.

- **Regulatory fitness and simplification**

The proposal is aimed at reducing regulatory burdens for both taxpayers and tax administrations. Tax compliance costs are a burden for businesses and their reduction will be a major advantage in the implementation of the initiative. The estimated reduction in compliance costs features in the impact assessment report.

To meet the objectives of simplifying tax rules, stimulating growth and investment, while also ensuring fair and sustainable tax revenues, in a proportionate manner, the preferred option of the initiative is a hybrid scope for cross-border businesses in the Union. Businesses in the Union, other than the Union sub-set of the largest groups, which are also in scope of the Pillar 2 Directive, are exempted from the mandatory scope of the initiative. For the largest groups, the BEFIT rules will be mandatory, in order to ensure consistency and coherence. Other groups below the threshold, including SME groups, will have the option to apply the BEFIT rules, depending on the structure of their business. This voluntary scope should ensure that the proposal effectively reduces regulatory burdens. Businesses are likely to opt in when they can benefit from the simplification that the rules offer. If this is not the case, they can continue to apply the existing rules. In this way, the scope of the proposal ensures that compliance costs for SMEs are kept low. Finally, as the proposal is primarily aimed to address the needs of cross-border businesses which have taxable presence in more than one Member States, many micro-enterprises will effectively be out of scope.

Tax administrations should also benefit from the expected decrease in transfer pricing issues, as the necessity of thorough assessments of consistency with the arm's length principle will be reduced for intra-group transactions under BEFIT rules. After the transition period, the need for pricing such intra-group transactions in consistency with the arm's length principle might even be made redundant for tax purposes. There should also be a reduced number of disputes to the extent that the establishment of BEFIT teams allow tax administrations to agree on a degree of early certainty and resolve arising problems in a more efficient manner through consultation and coordination.

- **Fundamental rights**

It is not expected that there would be a considerable effect on fundamental rights and the proposed measures are compatible with the rights, freedoms and principles in the Charter of fundamental rights of the European Union.[20] By levelling the playing field, removing cross-border barriers, and providing more tax certainty, the proposal will also contribute to preventing any discrimination or unjustified restrictions on the freedoms related to conducting a business.

Data protection rights covered by the Charter and the General Data Protection Regulation (GDPR)[21] are safeguarded. Personal data, e.g., information about ownership interests in a BEFIT group, might be processed by tax administrations but only for the purpose of applying Chapter IV as well as for the purpose of examining and reaching consensus on the content of the BEFIT information return and processing and assessing individual tax returns under Chapter V. Personal data may be transmitted only between tax administrations which are involved in the administration of a particular BEFIT group. The amount of personal data to be transmitted will be limited to what is necessary to ensure compliance and detect tax fraud, evasion, or avoidance in line with the GDPR requirements. Personal data will be retained only as long as necessary for this purpose but in any case, no longer than 10 years.

- **Other impacts**

There are no other significant impacts. The proposal concerns groups of companies in all sectors which are subject to corporate income tax in a Member State. The proposal does not, as such, affect the present way of doing business and is not expected to have a direct impact on the objectives of the European Green Deal or European environmental legislation. Indirectly, it may be considered that the resources freed from tax compliance costs could be used by companies to invest in more environmentally sustainable production methods if the companies wish to do so.

The proposal upholds the ‘digital by default’ principles and contributes to achieving the European way for a digital society and economy.

The relevant Sustainable Development Goals partially addressed by the proposal are number 8 (Decent work and economic growth) and 9 (Industry, innovation and infrastructure) as presented in Annex 3 of the impact assessment.

4. BUDGETARY IMPLICATIONS

The initiative will have budgetary implications for the Commission linked to the BEFIT collaborative tool. Tax administrations will need to coordinate closely and to use communication tools for BEFIT teams under this initiative. To facilitate the operation and communication of BEFIT teams, the Commission will adopt the necessary practical arrangements, including measures to standardise the communication of the information between the members of BEFIT teams through making use of a BEFIT collaborative tool. The Commission will be responsible for the development of this tool (one-off cost), as well as the hosting, content management, encryption, and its annual maintenance. The costs for such

[20] Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391.

[21] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance) (OJ L 119, 4.5.2016, p. 1)

BEFIT collaborative tool are estimated at around EUR 300 000 one-off (for the first year) and around EUR 600 000 on a yearly basis for running the BEFIT collaborative tool. These costs will be financed from within the foreseen envelope for the Fiscalis programme. Details can be found in the legislative financial statement to this proposal.

5. OTHER ELEMENTS

• Implementation plans and monitoring, evaluation and reporting arrangements

For the purpose of monitoring and evaluating the implementation of the Directive, it will initially be necessary to give Member States time and all necessary assistance, in order to properly implement the European Union rules. The Commission will evaluate the application of the Directive five years after its entry into force and report to Council on its operation. Member States should communicate to the Commission the text of the provisions of national law which they will adopt in the field covered by this Directive and should also provide any relevant information they have that the Commission may require for evaluation purposes.

In addition to an evaluation, the effectiveness and efficiency of the initiative will be regularly and continuously monitored using the following pre-defined indicators: implementation and initial BEFIT running costs; number of groups of companies in the mandatory scope of the proposal, as well as the number of companies that voluntarily opted in; evolution of the compliance costs; and the number of double taxation disputes. This is set out in more detail in the impact assessment report accompanying this proposal.

• Detailed explanation of the specific provisions of the proposal

The proposal establishes a common set of rules to determine the tax base of companies that are part of a group which prepare consolidated financial statements and which are subject to corporate income taxation in a Member State.

The main aspects of the proposals are as follows:

A hybrid scope for mandatory and optional application

Under the general provisions of Chapter I, the proposal defines a hybrid scope for the application of the rules under this Directive. The **mandatory scope** comprises the same groups as Pillar 2 (i.e., groups with annual combined revenues of at least EUR 750 million) but is limited to the Union sub-set of entities that meet the 75% ownership threshold (Articles 5-6). For groups headquartered in third countries, their Union sub-set will need to additionally raise at least EUR 50 million annual combined revenues in at least two of the four fiscal years immediately preceding the fiscal year in which the group started to apply this Directive and this will have to account for at least 5% of the total revenues of the group (Article 2, paragraph 4). This materiality threshold further ensures that the requirements of the proposal are proportionate to its benefits.

The choice to align the mandatory scope with Pillar 2 was made with the knowledge that these taxpayers already implement several relevant features as part of the Pillar 2 Directive, for example with regard to the computation of the taxable result. It thus strikes a balance between achieving necessary changes in a consistent manner on one hand, and keeping the system simple, on the other hand.

Other, smaller groups can opt in if they so wish, provided they prepare consolidated financial statements. This **voluntary scope** could be of particular interest to smaller groups that operate cross-border, as they have less resources to dedicate to compliance with multiple national corporate tax systems.

When a group applies or chooses to apply the rules of this Directive, the framework will apply to **the whole 'BEFIT group'**, i.e., the sub-set of all Union tax resident companies and Union-located permanent establishments of the group that meet the ownership threshold of 75%, called the 'BEFIT group members'. The scope is contained within these entities.

The proposal does not exclude any sectors from its scope. **Sector-specific characteristics** are reflected in relevant parts of the proposal. This is in particular the case for international transport and extractive activities. For example, shipping income is often subject to special tax regimes which are tailored to the realities in this sector. The proposal acknowledges this and carves out shipping income covered by a tonnage tax regime from the BEFIT tax base.

Calculation of the preliminary tax result of each BEFIT group member using a simplified method

Chapter II includes the rules for the determination of the preliminary tax result of each BEFIT group member. This is done by applying the adjustments of Section 2 and 3 and the rules of Section 4 on timing and quantification issues to the net income or loss as stated in the financial accounts.

Like in Pillar 2, the starting point is the accounting result from the financial accounts, which must be determined under one single accounting standard for the BEFIT group. To this aim, the financial accounts of each BEFIT group member must be reconciled with the accounting standard of the ultimate parent entity, or if the group is headquartered outside of the Union, the one of the filing entity. The accounting standard must be accepted under European Union law, which essentially means it must either be the national generally accepted accounting principles (GAAP) of one of the Member States or the international financing reporting standards (IFRS), as set out in Article 7.

In the interest of simplification, adjustments are kept to the minimum necessary, rather than putting together a detailed corporate tax framework. Therefore, BEFIT includes fewer tax adjustments than Pillar 2 which has a different purpose, namely to calculate the appropriate qualifying income for the level of tax due.

The BEFIT adjustments are listed under Section 2. **The following items are included**, i.e. added back in case they were deducted or not already recorded in the financial accounting statements: financial assets held for trading (Article 11), borrowing costs that are paid to parties outside the BEFIT group in excess of the interest limitation rule of the ATAD (Article 13), fair value adjustments and capital gains received by life insurance undertakings in the context of unit-linked/index-linked contracts (Article 14), fines, penalties and illegal payments such as bribes (Article 16), and corporate taxes that were already paid or top-up taxes in application of Pillar 2 (Article 17).

The following items are excluded, i.e. subtracted from the financial net income or loss if they were in the financial accounts: dividends and capital gains or losses on shares or ownership interests, in the case of significant ownership and unless they are held for trading or by a life insurance undertaking (Articles 8-11 and Article 14), the profit or losses from permanent establishments (Article 12), shipping income subject to a national tonnage tax regime (Article 15), rollover relief for gains on assets that are replaced (Article 18), acquisition, construction and improvement costs of depreciable assets, because these costs will already be part of the depreciation base, as well as subsidies directly linked to this, because subsidies should neither be in the depreciation nor tax base (Article 19), unrealised gains or losses from currency exchange fluctuations on fixed assets (Article 20). The rule in Article 21 also excludes any amount relating to the post-allocation adjustments listed in

Article 48 (explained below). Consequently, these items are not part of the preliminary tax result, which prevents a risk that they are accounted for twice.

In addition, Section 3 consists of a common set of **tax depreciation** rules. This is an important adjustment for tax purposes, but the proposal remains closer to financial accounting than national tax depreciation rules. Fixed tangible assets valued below EUR 5 000 will be immediately expensed. Other assets are always depreciated on a straight-line basis, i.e. distributed equally over the duration of the asset. In principle, the duration will correspond to the useful life in the financial accounts. For immovable property, including industrial buildings, the duration is, however, set at 28 years as a general rule. For fixed intangible assets, this will correspond to the period of legal protection, e.g. intellectual property rights, or if that is not the case, 5 years. Goodwill is also depreciated if it is acquired, and accordingly, present in the financial accounts.

Under Section 4, the proposal addresses **timing and quantification issues** which are needed for tax purposes in order to avoid abuses. Differences between the cost of stocks and work-in-progress should for instance be measured consistently using the first-in-first-out method or the weighted average cost method (Article 29). Provisions are excluded if they are not legally required or cannot be reliably estimated (Article 30). Bad debts can only be deducted if all reasonable steps to obtain payment from the debtor have been exhausted or if the amount that will be lost can be reliably estimated, never if the debtor is an associated enterprise (Article 31). Revenues and costs from long-term contracts only count for the year when they were accrued or incurred (Article 32). The treatment hedging instruments must follow the tax treatment of the hedged item (Article 33).

Finally, under Section 5, the proposal also includes rules that are necessary for entities **entering or leaving the BEFIT group**. For example, losses that were incurred before the new member entered the BEFIT group, should not be included at the expense of the tax base of other Member States where the BEFIT group has members. These losses should be set off against the allocated share, so after aggregation and allocation (Article 38 *in conjunction with* 48, paragraph 1, point (a)). The rules also deal with **business reorganisations**, to clarify for instance that the Merger Directive takes precedence (Article 40). There is also an anti-abuse rule to ensure that capital gains on assets are included in the preliminary tax result when the assets are moved within the group, without tax implications, to a group member which is then sold out of the group. This would normally benefit from a tax exemption for share disposals but should not be allowed, unless it can be justified from a commercial perspective (Article 41).

Aggregation of the preliminary tax results into a single tax base and allocation of this aggregated tax base to eligible BEFIT group members

Chapter III contains the rules for the aggregation and allocation of the tax base. First, the preliminary tax results of all members of the BEFIT group are aggregated into a single "pool" at Union group level, which will be **the 'BEFIT tax base'**. This is described in Articles 42-44 and features several important advantages:

- **Cross-border loss relief**: it will allow groups to set off losses across borders. Today, this is only rarely possible, which can result in over-taxation of the profits of the group and disincentivise businesses from operating across borders in the internal market, and;
- **Facilitation of transfer pricing compliance**: during the transition period, the outcome of intra-BEFIT group transactions will be a determining factor to how the (aggregated) BEFIT tax base will be allocated to the BEFIT group members. Given

this importance of the pricing of intra-BEFIT group transactions for tax purposes, the requirement for their consistency with the arm's length principle will be retained but at the same time, BEFIT group members will benefit from increased tax certainty (a comfort zone) if, as a result of their intra-BEFIT group transactions, their expenses or income remain within a limit of less than 10% increase compared to the average of the previous three fiscal years. This system allows a degree of certainty and paves the way for a possible elimination of the need for pricing the intra-BEFIT group transactions in consistency with the arm's length principle should a factor-based formula be agreed as a permanent way for allocating the BEFIT tax base.

- There will also be no **withholding taxes** on transactions such as interest and royalty payments within the BEFIT group, as long as the beneficial owner of the payment is a BEFIT group member. Within the BEFIT group, there is in principle no need to tax these transactions individually as they will be included in the aggregated BEFIT tax base but it is also critical to ensure that such payments are not used to shift profits out of the group at low tax. This is why national competent authorities will retain the right to review whether their recipient is a beneficial owner.

There are however **two exceptions** to the aggregation. Income and losses from extractive activities are separated from the BEFIT tax base, because they are always allocated to their jurisdiction of origin. The rationale, in line with the OECD/G20 Inclusive Framework Two-Pillar Approach, is that the taxation of these activities should be based on the origin, i.e. the place of extraction (Article 46). Revenues and expenses from shipping which is not covered by a tonnage tax regime or from air transport are also not allocated. In line with the approach in Article 8 of the OECD model tax convention, such activities are taxed only in the State where the company operating the ships or aircrafts is located (Article 47).

Next, the aggregated tax base will be allocated to the members of each BEFIT group based on a transition allocation rule, which uses each BEFIT group member's percentage of an aggregated tax base calculated as the average of the taxable results in the previous three fiscal years. This may pave the way for a permanent allocation method that could be based on a formulary apportionment. A proposal that lays down a transitional solution will have the advantage of using more recent County-by-Country Reporting (CbCR) data and the information gathered from the first years of the application of BEFIT in the design of a permanent allocation method. It will also allow for a more thorough assessment of the impact that the implementation of the OECD/G20 Inclusive Framework Two-Pillar Approach is expected to have on national and the BEFIT tax bases.

The proposal also accommodates **distribution-based tax systems** and to this effect, provides for the necessary adjustment, which will allow their companies to participate in a BEFIT group. In this case, the taxation of corporate income is not on a yearly basis, but upon distribution of the profits. Accordingly, the allocated part of the aggregated tax base would be carried forward each year in proportion to the income that has not been distributed that year (Article 49).

Finally, upon allocation, each BEFIT group member will have a part. On this part, the group member will have to apply **additional adjustments** in its tax assessment (Article 48, paragraph 1). These mostly include technical corrections that are necessary for the coherence of the system. For example, several items should not be included in the preliminary tax result, in order to avoid that they are shared among all Member States, but these items should still be accounted for (e.g. pre-BEFIT losses). Other amounts, such as gifts, donations and pension provisions are very dependent on national law requirements and are therefore most appropriate on the allocated part.

Importantly, in order to ensure Member States' full competence over their tax rate policies, Member States will be free to further apply any deductions, tax incentives, or base increases to their allocated parts, without restrictions (Article 48, paragraph 2). The only requirement that Member States will need to respect in this regard, are the rules of the Pillar 2 Directive for a global minimum effective level of taxation.

'Traffic light system' to facilitate transfer pricing compliance with associated enterprises outside the BEFIT group

With regard to transactions with associated enterprises outside the BEFIT group, i.e. entities of the group that are not in the Union or that do not meet the 75% ownership threshold, Chapter IV aims to facilitate compliance by providing a risk assessment tool ('traffic light system') with benchmarks.

This feature of BEFIT focuses on simplifying compliance with transfer pricing and does not interfere with the substantive rules that determine whether a certain transaction has been priced at arm's length. In addition, its material scope is confined to low-risk activities, which normally do not involve extensive discretion in their pricing, as they do not give rise to high residual profits. This is a clear distinction from the Directive on transfer pricing, which relates to the substantive rules and has a broader scope, potentially covering the entire array of transfer pricing topics, and features a separate function. The Directive on transfer pricing thus endorses the OECD transfer pricing guidelines and constitutes a steppingstone for Member States to agree common approaches to specific transfer pricing themes, in particular those in which administrative practice has so far been disparate across the EU.

The traffic light system will apply to **low-risk activities** defined in Article 50: (i) distribution activities by low-risk distributors, and (ii) manufacturing activities by contract manufacturers. To qualify, the distributor or manufacturer must use a reliable, one-sided method based on the OECD Transfer Pricing Guidelines, and in any case, they cannot qualify if they hold the intellectual property rights or some of the risks related to the products. This is because intangible assets and risks often lack comparable transactions.

For these activities, the proposal suggests using **'Public Benchmarks'** which will be profit markers set at Union level with the help of an expert group (Article 53). Operationally, if the profit performance of a low-risk distributor or contract manufacturer is low compared to the average ranges in this benchmark, its transactions will be assessed as 'high-risk' and vice versa. In this way, the transactions can fall within **three risk zones (low/medium/high)**. Member State tax administrations would be expected to focus their efforts to the high-risk zones (Article 51). It is accordingly referred to as a 'traffic light system'.

As such, the tool will allow Member States to use their resources more efficiently and it will offer businesses a higher level of predictability regarding the acceptability of their transfer prices on the condition that they comply with pre-set margins.

Administration of the system: a 'One-Stop-Shop' and a 'BEFIT team'

The administration of the system is outlined in Chapter V. Common substantive rules also require a common administrative framework. This will allow additional simplification of the current systems and should gradually free up resources for administrations and businesses.

A one-stop-shop will allow businesses to deal with one single authority in the Union for filing obligations, whenever feasible. The 'filing entity', which is in principle the ultimate parent entity, will file one information return for the whole BEFIT group (the 'BEFIT Information Return') with only its own tax administration (the 'filing authority'), which will share this with the other Member States where the group operates (Article 57). Each BEFIT group member will also file an individual tax return to their local tax administration to be able to apply domestically set adjustments to their allocated part (Article 62). Taken together with the BEFIT Information Return, this will allow each tax administration to assess its BEFIT group members' tax liabilities as efficiently as possible (Article 64).

For each BEFIT group, there will also be a so-called **'BEFIT Team'** which will bring together representatives of each relevant tax administration from the Member States where the group operates (Article 60). Instead of each Member State separately dedicating human resources to assess the tax liabilities of the same cross-border group, the members of each BEFIT Team will be sharing information, coordinating, providing a degree of early certainty on specific topics and resolving issues through an online collaborative tool (Article 61).

Audits will remain at Member State level and it will be possible for Member States to request joint audits and create an obligation on the other side to accept it. Following the outcome of an audit, the BEFIT team will also facilitate rectifications (Article 65).

The proposal also ensures that **appeals** against the content of the BEFIT information return may be brought to an administrative body in the Member State of the 'filing authority'. Likewise, appeals against the individual tax assessments may be brought to an administrative body of the Member State in which the BEFIT group member is resident for tax purposes. When such appeal affects the BEFIT tax base, the necessary amendments can be made across the group through a coordinated process established by the 'BEFIT Teams' (Articles 66-70).

2023/0321 (CNS)

Proposal for a

COUNCIL DIRECTIVE

on Business in Europe: Framework for Income Taxation (BEFIT)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 115 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament[22],

Having regard to the opinion of the European Economic and Social Committee[23],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Within the Union there is currently no common approach to the computation of the taxable base for businesses. Therefore, Union businesses are obliged to comply with a different corporate tax system in each Member State in which they operate.

(2) The existence of 27 different corporate income tax systems in the Union gives rise to complexity in tax compliance and leads to unfair competition for businesses. That has become more evident as globalisation and digitalisation of the economy have significantly altered the perception of land borders and business models. As governments have tried to adapt to that new reality, a fragmented response among Member States has led to further distortions in the internal market. The various legal frameworks inevitably lead to different tax administration practices across the Member States as well. This often entails long procedures characterised by unpredictability and inconsistency along with high compliance costs.

(3) Albeit different in their design, the fundamental features of corporate income tax systems are similar as they lay down rules aiming towards the same objective, i.e., to arrive at a taxable base for businesses. In this vein, it would be important for businesses which operate on the internal market that Member States introduce a common legal framework to harmonise the fundamental features of corporate income tax systems with a view to simplifying tax rules and ensuring a fair competition.

(4) On 9 June 2023, 139 jurisdictions, which are members of the OECD/G20 Inclusive Framework, had joined the October 2021 Statement on a "Two Pillar Solution to

[22] OJ C , , p. .
[23] OJ C , , p. .

address the tax challenges arising from the digitalisation of the economy”[24]. With that Statement, Member States agreed (i) to a review exercise that calculates potential minimum tax liability of large multinational groups starting from financial accounting, as parts of Pillar 2 and (ii) to partially re-allocate taxable profits on the basis of a formulary apportionment as part of Pillar 1. The design of a common framework to address the tax challenges arising from digitalisation and globalisation should draw inspiration from the achievements of that exercise. As the implementation of Pillar 2 has unanimously been adopted by Member States via Council Directive (EU) 2022/2523[25], a common corporate tax framework in the Union should build upon concepts, such as the scope and computation of the tax base, which both businesses and Member States are already familiar with.

(5) The environment for doing business in the internal market should be made more attractive with the aim to stimulate growth and investment in the Union. For this purpose, the enactment of a common framework of corporate tax rules should be prioritised, in order to make it easier for businesses to comply with such rules when they operate across borders and also to encourage those who wish to further expand abroad to do so. A single set of corporate tax rules for international activity is expected to result in enhanced tax certainty and less tax disputes, as it would tackle distortions and decrease the number of cases of double and over-taxation. Furthermore, as tax revenue sustainability is key to Member States’ budgets, including to invest in infrastructure, research and development and to deliver public services, it would be critical to ensure for the future that the allocation of revenues is performed in accordance with a tool based on solid parameters that cannot be abused.

(6) It is indeed critical to create a system that achieves a degree of uniformity across the Union, at least amongst the taxpayers that it is chiefly addressed to. Accordingly, and considering the efforts that both tax administrations and businesses have made in order to implement the framework of a global minimum level of taxation, it would be important to capitalise on this achievement and design rules that remain as close as possible to the OECD/G20 Model Rules and Directive (EU) 2022/2523. On this basis, the common framework of rules should be mandatory for groups with a taxable presence in the Union provided that they have annual combined revenues of more than EUR 750 000 000 based on their consolidated financial statements. In this way, the scope would thus be targeted at businesses that are most likely to have cross-border activities and, thereby, can benefit from the simplification which a common legal framework would offer. The threshold would also provide alignment with Directive (EU) 2022/2523 for a consistent approach in the Union.

(7) Although the threshold would be determined on the basis of the combined revenues of the group on a global basis, the remit of the provisions should be limited to members of the group operating on the internal market as Union law only applies within the Union and does not bind non-Member States. Only the Union sub-set of such a group

---

[24] 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.

[25] 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 (OJ L 328, 22.12.2022, p. 1.)

should therefore be captured. This would include companies which are resident for tax purposes in a Member State and their permanent establishments operating in a Member State as well as the permanent establishments in the Union of third country companies of the same group. Considering that the concept of a permanent establishment is dealt with within bilateral tax treaties and national law and although the definition features some common principles, there is still a degree of divergence worldwide. Consequently, it would be a pragmatic approach to rely on the existing double taxation treaties and national rules of the Member States, rather than attempt full harmonisation through secondary Union law.

(8) To ensure proportionality and the well-functioning of the common framework, group members, including companies resident in a Member State, their permanent establishments and permanent establishments in the Union which are members of a group headquartered outside the Union, with limited activity in the internal market should be excluded from the scope through a materiality threshold.

(9) The objective of simplifying the current rules underscores the envisaged initiative. Therefore, the rules on the computation of the tax base should be built by applying a limited series of tax adjustments to the financial statements of each group member. These limited adjustments would represent common adjustments that are necessary to convert the financial accounting statements into a tax base. Considering the need for alignment with Directive (EU) 2022/2523, the adjustments should resonate with that framework, which should also facilitate implementation for Member States and businesses that would already be familiar with the general principles.

(10) Given that, with the aim to bring simplification, the financial accounts will be used as a starting point for computing the tax base of each group member, it is necessary to draft tax rules in such a way that they stay as close as possible to financial accounting. In the cases where this is possible, the financial accounting treatment of an asset or liability would not change for the purpose of taxation and consequently, no adjustments would be required. Accordingly, it is also necessary that in line with the rationale of taxation, other elements of the tax base be treated for tax purposes in a different way compared to how they are qualified under financial accounting.

(11) Accordingly, it is essential to address specific sectors of activity, notably international shipping, that require certain sector-specific adjustments. For group members in this sector, the financial accounts would have to be adjusted, in order to exclude an amount (profit or loss) covered by a tonnage tax regime. Special tax regimes for international shipping, often referred to as 'Tonnage tax regimes' would normally allow for taxation on the basis of the tonnage (i.e., the carrying capacity) of ships operated by a group member rather than the actual profits or losses incurred by the group member through activities eligible for tonnage tax. An exclusion of such an amount would, therefore, build on the different acknowledged approaches for the computation of the tax base and would ensure a suitable consistency with the different policy objectives of the internal market.

(12) To achieve the key objective of creating a simplified corporate tax framework, the preliminary tax results for each group member should be aggregated into one single common tax base, in order to subsequently allocate this base to eligible group members. The tax adjustments to the financial statements would produce preliminary tax results for each group member. These results would then be aggregated, which would allow for cross-border loss relief between BEFIT group members, and subsequently, the aggregated tax base would be allocated to group members based on

a transition allocation rule; this would pave the way towards a permanent mechanism. That permanent mechanism could be based on a formulary apportionment and would render the need for intra-BEFIT group transactions to be consistent with the arm's length principle redundant. It would have the advantage of using more recent country-by-country reporting ('CbCR') data and the information gathered during the transition period. This will also allow for a more thorough assessment of the impact that the implementation of the two-pillar approach is expected to have on national tax bases and the BEFIT group tax bases. In this way, it would still become possible to materialise the key objective of tax neutrality in the internal market, which would reduce instances of double and over-taxation and enhance tax certainty with the aim of reducing the number of tax disputes.

(13) The aggregation of the tax results amongst group members would not be a suitable measure for certain sectors, such as extractive activities as well as international shipping, inland waterways transport and air transport. It would therefore be important to exclude those from the aggregation as their characteristics do not fit in such context. Any amount of the profit or loss of companies that operate in the field of international traffic which is not covered by a tonnage tax regime (and thus excluded from the preliminary tax results), would have to be kept out of the aggregation while it would be computed by applying the common corporate tax rules.

(14) To provide space for growth and investment, Member States would also be allowed to individually apply additional post-allocation adjustments (e.g. tax treatment of pension contributions) in areas not covered by the common framework. Member States would also be free to further adjust their allocated share without a ceiling in order to ensure that Member States can make their national policy choices in this area. Most importantly, Directive (EU) 2022/2523 would effectively set a ceiling which would effectively ensure that the effective tax rate is at least 15%.

(15) Some Member States operate corporate tax systems which are built on principles that differ from the most common approach, such as distribution-based tax systems. It is therefore of prime importance to put in place the necessary adjustments, in order to ensure a workable interaction with those systems. The solution could be sought in certain post-allocation adjustments. These would entail that the part which would be allocated to a group member under a distribution-based system has to be modified in proportion to the distributions made during the fiscal year. The essence of a distribution-based tax system would be fully retained, considering that the distribution marks a timing point for taxing the allocated part and accordingly determine how much of this would need to be taxed. In this regard, it should be envisaged to operate a carry-forward mechanism, to ensure that the allocated part which is not taxed in the current year would be taxable in the following years.

(16) As relations within a group represent only part of the commercial activity of a group of companies, the transactions between members of a group and associated enterprises outside the group constitute another essential aspect to look at. To address this external aspect and as the number of transfer pricing disputes has lately risen considerably, especially with respect to the pricing considerations for routine activities, it would be very useful to provide for a simplified approach to transfer pricing compliance which would decrease compliance costs for the businesses and improve the efficiency of tax administrations in the use of human capital. To this aim, it would be important to enact a common risk assessment framework for transfer pricing based on a commonly accepted benchmark analysis. This assessment would investigate the margins of Earnings Before Interest and Tax for entities operating independently within the

internal market. The profit markers so obtained should then be published, to be used as a self-assessment risk tool, and enable groups operating in the internal market to know in advance the arm's length returns (market based) that they are expected to achieve in transactions with associated enterprises. Each transaction within the scope of the system should be assessed as being of low, medium or high risk, depending on how this compares to the profit markers, which will be set through an implementing act and published on the website of the Commission.

(17) A common framework for corporate taxation would necessarily feature an administration system, which should ideally provide for a degree of tax certainty and simplification. To promote uniformity, the administration system would have to build on the importance of operating a centralised point of reference for dealing with a number of common issues, such as an Information Return for the entire group, and ensuring an adequate degree of coordination and collaboration amongst national tax administrations. At the same time, the administration system should fully respect national tax sovereignty as local tax returns, audits and dispute settlement would have to remain primarily at the level of the Member States.

(18) To ensure that the rules of the common framework are implemented and enforced correctly, Member States should lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive. Such penalties should be effective, proportionate and dissuasive.

(19) To optimise the benefits of having a common legal framework for computing the corporate tax base in the internal market, the application of the rules should be optional for groups, including SME groups, who earn annual combined revenues of less than EUR 750 000 000 as long as they prepare consolidated financial statements and have a taxable presence in the Union. By keeping the application of the rules open to groups of a smaller size, more groups with cross-border structures and activities may benefit from the simplification that the common framework offers.

(20) In order to supplement or amend, as the case may be, certain non-essential elements of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of (i) amending Annexes I and II, as appropriate; and (ii) supplementing by laying down additional rules for insurance undertakings, in particular with regard to the new International Financial Reporting Standard (IFRS) 17 Insurance Contracts. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[26]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

[26] Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

(21) In order to ensure uniform conditions for the implementation and functioning of the so-called 'BEFIT teams' set up in this Directive to bring together representatives of each relevant tax administration from the Member States where the group operates as well as to set profit margins for certain routine transactions between BEFIT group members and their associated enterprises outside the BEFIT group, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[27].

(22) Any processing of personal data carried out within the framework of this Directive should comply with Regulation (EU) 2016/679 of the European Parliament and of the Council[28]. Member States may process personal data under this Directive solely for the purpose of applying Chapter IV as well as for the purpose of examining and reaching consensus on the content of the BEFIT information return and processing and assessing individual tax returns under Chapter V.

(23) The retention period of 10 years is justified in order to allow Member States to comply with most statute of limitations.

(24) To allow businesses to directly enjoy the benefits of the internal market without incurring an unnecessary additional administrative burden, information on the tax provisions set out in this Directive should be made accessible through the Single Digital Gateway ('SDG') in accordance with Regulation (EU) 2018/1724[29]. The SDG provides a one-stop-shop for cross-border users for the online provision of information, procedures and assistance services relevant to the functioning of the internal market.

(25) Since the objective of this Directive cannot sufficiently be achieved by the Member States but can rather, by reason of the existing challenges which are caused by the interaction between 27 different corporate tax systems, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(26) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered its informal opinion on 18 August 2023.

---

27 Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

28 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

29 Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1).

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I
GENERAL PROVISIONS

Article 1
Subject matter

1. This Directive lays down a common framework for corporate income taxation in the Union for certain groups.

2. For the purpose of paragraph 1, this Directive lays down rules:

   (a) on delineating a group for the purposes of this Directive ('BEFIT group');

   (b) for calculating an aggregated tax base for the companies and permanent establishments of the BEFIT group ('BEFIT group member' and 'BEFIT tax base');

   (c) for allocating the BEFIT tax base to eligible BEFIT group members;

   (d) simplifying transfer pricing risk assessments for transactions with associated enterprises outside the group;

   (e) for the administration of the common legal framework.

3. A company or a permanent establishment which is subject to this Directive shall cease to be subject to the national corporate tax law in all Member States where it is established in respect of all matters regulated by this Directive, unless otherwise stated in this Directive.

Article 2
Scope

1. This Directive applies to companies resident for tax purposes in a Member State, including their permanent establishments located in other Member States, and to permanent establishments located in Member States of entities resident for tax purposes in a third country ('third-country entities'), which comply with the following criteria:

   (a) they belong to a domestic group or to a multinational enterprise group ('MNE group) which prepares consolidated financial statements and had annual combined revenues of EUR 750 000 000 or more in at least two of the last four fiscal years;

   (b) in respect of companies, in addition:

      (i) they take one of the forms listed in Annex I;

      (ii) they are subject to one of the corporate taxes listed in Annex II, or to a similar tax subsequently introduced;

      (iii) they are the ultimate parent entity ('UPE') or their assets, liabilities, income, expenses, and cash flows shall be consolidated on a line-by-line basis by the ultimate parent entity;

   (c) in respect of permanent establishments, in addition:

(i) they are subject to one of the corporate taxes listed in Annex II or to a similar tax subsequently introduced;

(ii) they are a permanent establishment of the ultimate parent entity or of an entity whose assets, liabilities, income, expenses and cash flows shall be consolidated on a line-by-line basis by the ultimate parent entity.

2. By way of derogation from paragraph 1, this Directive shall not apply to companies or permanent establishments with an ultimate parent entity outside the Union where the combined revenues of the group in the Union either do not exceed 5% of the total revenues for the group based on its consolidated financial statements or the amount of EUR 50 million in at least two of the last four fiscal years. This shall be without prejudice to the right of opting in under paragraph 7.

3. Where two or more groups merge to form a single group, the threshold of EUR 750 000 000 referred to in paragraph 1 shall be deemed to be met for any fiscal year prior to the merger if the sum of the combined revenues of the merging groups for that fiscal year, as included in each of their consolidated financial statements, is EUR 750 000 000 or more. The companies and permanent establishments members of that newly formed group shall become subject to this Directive if that threshold was met in at least two of the last four fiscal years.

4. Where a company that is not a member of a group (the ‘target’) is acquired by another company or a group (the ‘acquiring entity’) and either the target or the acquiring entity did not have consolidated financial statements in any of the four fiscal years immediately preceding the fiscal year of the acquisition, the threshold of annual combined revenues of EUR 750 000 000 referred to in paragraph 1 shall be deemed to be met for that year if the sum of the revenues included in the financial statements or consolidated financial statements of the target and the acquiring entity for that fiscal year is EUR 750 000 000 or more. The acquiring entity shall become subject to this Directive if that threshold was met in at least two of the four fiscal years immediately preceding the fiscal year in which this Directive started to apply to the acquiring entity.

5. Where there is a demerger of a group into two or more groups (the ‘demerged groups’), the threshold of EUR 750 000 000 referred to in paragraph 1 shall be deemed to be met by each of the demerged groups where:

(a) in the first fiscal year ending after the demerger, each of the demerged groups has annual combined revenues of EUR 750 000 000 or more in that fiscal year;

(b) in the second to fourth fiscal years ending after the demerger, each of the demerged groups has annual combined revenues of EUR 750 000 000 or more in at least two of those fiscal years.

6. Where one or more of the four fiscal years referred to in this Article is longer or shorter than 12 months, the revenue thresholds referred to shall be adjusted proportionally for each of those fiscal years.

7. Member States shall ensure that companies which are resident for tax purposes in a Member State and fulfil the conditions laid down in paragraph 1, point (b), including their permanent establishments located in other Member States, as well as permanent establishments, located in Member States, of third-country entities which fulfil the conditions of paragraph 1, point (c), may choose to be covered by this Directive if they belong to an MNE group or domestic group which prepares consolidated

financial statements but does not fulfil the conditions laid down in paragraph 1, point (a) regarding the threshold of EUR 750 000 000.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 74 to amend Annexes I and II to take account of changes to the laws of the Member States concerning company forms and corporate taxes.

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

(1) ‘group’ means:

(a) a collection of entities which are related through ownership or control as defined by the acceptable financial accounting standard for the preparation of consolidated financial statements by the ultimate parent entity, including any entity that may have been excluded from the consolidated financial statements of the ultimate parent entity solely based on its small size, on materiality grounds or on the grounds that it is held for sale; or

(b) an entity that includes the net income or loss of one or more permanent establishment in its financial statements (‘head office’), provided that it is not part of another group as defined in point (a);

(2) ‘domestic group’ means any group of which all entities are located in the same Member State;

(3) ‘MNE group’ means any multinational group that includes at least one entity or permanent establishment which is not located in the jurisdiction of the ultimate parent entity (‘UPE’);

(4) ‘fiscal year’ means the accounting period with respect to which the ultimate parent entity prepares its consolidated financial statements.

(5) ‘consolidated financial statements’ means the financial statements where the assets, liabilities, income, expenses and cash flows of an entity and those of its subsidiaries, which are controlled by the former, are presented as those of a single economic unit;

(6) ‘entity’ means any legal arrangement that prepares separate financial accounts or any legal person;

(7) ‘ultimate parent entity’ means:

(a) an entity that owns, directly or indirectly, a controlling interest in any other entity and that is not owned, directly or indirectly, by another entity with a controlling interest in it; or

(b) the head office of a group as defined in point (1)(b);

(8) ‘ownership interest’ means any equity interest that carries rights to the profits, capital or reserves of an entity or of a permanent establishment;

(9) ‘controlling interest’ means an ownership interest in an entity whereby the interest holder is required to consolidate the assets, liabilities, income, expenses and cash flows of the entity on a line-by-line basis;

(10) ‘filing entity’ means one of the following:

(a) the ultimate parent entity, when located in a Member State; or

(b) if the ultimate parent entity is not located in a Member State, the entity located in a Member State, that has been appointed by the BEFIT group to fulfil the obligations in relation to the BEFIT group information return set out in Article 57 on behalf of the BEFIT group.

(11) ‘acceptable accounting standard in the Union’ means the International Financial Reporting Standards as adopted by the Union pursuant to Regulation (EC) No 1606/2002 of the European Parliament and of the Council[30] and the generally accepted accounting principles of the Member States;

(12) ‘financial accounting net income or loss’ means the net profit or loss determined for a BEFIT group member, under a single common acceptable accounting standard in the Union before any consolidation adjustments for eliminating intra-BEFIT group transactions, in accordance with Article 7.

(13) ‘Insurance undertaking’ means an insurance undertaking as defined in Article 13, point (1), of Directive 2009/138/EC of the European Parliament and of the Council[31];

(14) ‘Unit-linked/index-linked life insurance’ means life insurance policies where the investment gains and losses or interests/dividends accruing on the underlying investments of the insurance undertaking are fully allocated to policyholders over time;

(15) ‘economic owner’ means the person who receives substantially all the benefits and bears all the risks attached to a fixed asset, regardless of whether that person is the legal owner. A taxpayer who has the right to possess, use and dispose of a fixed asset and bears the risk of its loss or destruction shall in any event be considered the economic owner;

(16) ‘baseline allocation’ means the method for sharing the BEFIT tax base among BEFIT group members in each fiscal year of the transition period in accordance with Article 45.

(17) ‘filing authority’ means the competent authority of the Member State in which the filing entity is resident for tax purposes or, where it concerns a permanent establishment of a non-resident taxpayer, the Member State in which that permanent establishment is situated.

---

30 Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1)

31 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

CHAPTER II
DETERMINATION OF THE PRELIMINARY TAX RESULT

SECTION 1
GENERAL PROVISIONS

Article 4
General principles

1. The preliminary tax result of each BEFIT group member shall be determined, for each fiscal year, based on its financial accounting net income or loss as adjusted in accordance with Article 8 to 41 of this Directive.

2. Expenses that are included in the financial accounting net income or loss of a BEFIT group member shall be deductible from its preliminary tax result only to the extent that they are incurred in its direct business interest.

Article 5
Structure of a BEFIT group

1. A BEFIT group shall be formed where two or more companies or permanent establishments which fall within the scope of this Directive meet the following conditions:

   (a) the company is either the ultimate parent entity of the group or any other company of the group in which the ultimate parent entity holds, directly or indirectly, at least 75% of the ownership rights or of the rights giving entitlement to profit;

   (b) the head office of the permanent establishment is either the ultimate parent entity of the group or any other member (company or entity) of the group in which the ultimate parent entity holds, directly or indirectly, at least 75% of the ownership rights or of the rights giving entitlement to profit.

2. For the purpose of calculating the threshold referred to in paragraph 1, points (a) and (b), the ownership rights and the rights giving entitlement to profit in a company that belongs to a group shall be calculated by multiplying the interests held, directly and indirectly, at each tier.

Article 6
Holding period requirements

1. A BEFIT group member shall meet the thresholds referred to in Article 5(1) without interruption, throughout the fiscal year.

2. A company or a permanent establishment shall become a BEFIT group member on the date that the thresholds referred to in Article 5(1) are reached. The thresholds shall be met for at least nine consecutive months. If a company or, as applicable, a permanent establishment fails to meet the thresholds for the required period, it shall be treated as if it has never been a BEFIT group member.

3. A company or a permanent establishment ceases to be a BEFIT group member on the day that follows the one on which it no longer meets the thresholds referred to in Article 5(1).

Article 7

Financial accounts as a basis for computing the preliminary tax result

1. The preliminary tax result of a BEFIT group member shall be computed by making the adjustments set out in Articles 8 to 41 to its financial accounting net income or loss for the fiscal year, as determined under a single common acceptable accounting standard in the Union before any consolidation adjustments for eliminating intra-BEFIT group transactions.

2. The acceptable accounting standard in the Union to be used by the BEFIT group members for the purpose of paragraph 1 shall be the acceptable accounting standard in the Union which is used in the preparation of the consolidated financial statements of the ultimate parent entity where the latter is resident for tax purposes in a Member State.

   Where the ultimate parent entity is not resident for tax purposes in a Member State, the acceptable accounting standard in the Union shall be the standard in force in the Member State where the filing entity is resident for tax purposes.

3. Where a BEFIT group member is a permanent establishment, its financial accounting net income or loss shall be either:

   (a) the net income or loss reflected in its own separate financial accounts, as determined in accordance with paragraphs 1 and 2; or

   (b) in the absence of separate financial accounts, the net income or loss that would have been reflected in its separate financial accounts if they had been prepared on a standalone basis and in accordance with the acceptable standard in the Union determined in accordance with paragraphs 1 and 2.

4. By way of derogation from paragraph 1, where a Member State applies national law which allows groups to prepare, audit and publish financial statements on a jurisdictional basis, the preliminary tax result and the allocation of the BEFIT tax base of the BEFIT group members that are resident for tax purposes in that Member State may also be computed on a jurisdictional basis, provided that the group can identify separately, for each BEFIT group member, the data necessary to calculate such preliminary tax result and post-allocation adjustments in accordance with this Directive.

SECTION 2

ADJUSTMENTS TO THE FINANCIAL ACCOUNTING NET INCOME OR LOSS

Article 8

Dividends and other distributions

With the exception of financial assets held for trading, as referred to in Article 11(1), and investments made for the benefit of life insurance policyholders bearing the investment risk in the context of a unit-linked/index-linked life insurance policy, as referred to in Article 14, the financial accounting net income or loss of a BEFIT group member shall be adjusted to exclude 95% of the amount of dividends or other distributions received or accrued during the fiscal year, provided that at the date of distribution, the ownership interest is held by the BEFIT group member for more than one year and this interest carries right to more than 10% of the profits, capital, reserves or voting rights.

Article 9

Gains or losses from the disposition of shares

With the exception of financial assets held for trading, as referred to in Article 11(1), and investments made for the benefit of life insurance policyholders bearing the investment risk in the context of a unit-linked/index-linked life insurance policy, as referred to in Article 14, the financial accounting net income or loss of a BEFIT group member shall be adjusted to exclude 95% of the amount of gain or loss arising from the disposition of an ownership interest, provided that at the date of disposition, the ownership interest is held by the BEFIT group member for more than one year and this interest carries a right to more than 10% of the profits, capital, reserves or voting rights.

Article 10

Changes in fair value

With the exception of financial assets held for trading, as referred to in Article 11(1), and investments made for the benefit of life insurance policyholders bearing the investment risk in the context of a unit-linked/index-linked life insurance policy, as referred to in Article 14, the financial accounting net income or loss of a BEFIT group member shall be adjusted to exclude the amount of gain or loss arising from changes in the fair value of an ownership interest, provided that at the date of disposition, the ownership interest is held by the BEFIT group member for more than one year and this interest carries right to more than 10% of the profits, capital, reserves or voting rights.

Article 11

Financial assets held for trading

1. A financial asset or liability shall be treated as being held for trading by a BEFIT group member where it meets any of the following conditions:

   (a) it is acquired or incurred mainly for the purpose of selling it or repurchasing it in the short term;

   (b) it is part of a portfolio of identified financial instruments, including derivatives, that are managed together and for which there is evidence of a recent actual pattern of short-term profit taking.

2. Where a financial asset or liability which is held by a BEFIT group member transitions to become an asset or liability held for trading or vice versa, the financial accounting net income or loss shall be adjusted to include any difference between the fair value calculated at the beginning of the fiscal year or at the date of purchase if later, and its fair value calculated at the end of the same fiscal year.

   The fair value of a financial asset or liability at the end of the fiscal year during which it transitioned to become an asset or liability held for trading or vice versa shall also be its fair value at the beginning of the fiscal year following the transition.

3. The holding period referred to in Article 9 shall begin or be interrupted when the financial asset or liability is no longer held for trading or is transitioned to become an asset or liability held for trading respectively.

Article 12
Income or loss of a permanent establishment

The financial accounting net income or loss of a BEFIT group member shall be adjusted to exclude the amount of income or loss that is attributable to its permanent establishments.

Article 13
Interest limitation rule

1. A BEFIT group member shall adjust its financial accounting net income or loss to include the amount of exceeding borrowing costs, as referred to in Article 2 of 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[32], which is not deductible for tax purposes in accordance with the interest limitation rules laid down in the national corporate tax law of the Member State where it is resident for tax purposes.
2. Paragraph 1 shall not apply to exceeding borrowing costs arising from a transaction between BEFIT group members.

Article 14
Insurance undertakings

1. Where a BEFIT group member is an insurance undertaking which is authorised to operate in a Member State in accordance with Directive 2009/138/EC, the rules laid down in paragraphs 2 to 4 shall apply.
2. The amount of technical provisions of insurance undertakings established in compliance with Council Directive 91/674/EEC[33] that were deducted in the financial accounting net income or loss of a BEFIT group member shall be reviewed and adjusted at the end of every fiscal year. In calculating the preliminary tax result in future years, account shall be taken of amounts already deducted.
3. The Commission may adopt delegated acts in accordance with Article 74 to supplement this Directive laying down more detailed rules on the adaptation of the preliminary tax result for insurance undertakings, in the context of the impact of the new International Financial Reporting Standard (IFRS) 17 on insurance contracts.
4. Life insurers in the context of unit-linked/index-linked life insurance policy shall evaluate the assets at market value and set up the reserve in accordance with the evaluation of the underlying assets.

---

[32] 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 (OJ L 193, 19.7.2016, p. 1)

[33] Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374, 31.12.1991, p. 7)

Article 15

Shipping activities covered by a tonnage tax regime

The financial accounting net income or loss of a BEFIT group member carrying out shipping activities shall be adjusted to exclude the amount of revenues, expenses and other deductible items derived from such activities covered by a tonnage tax regime.

Article 16

Fines, penalties and illegal payments

The financial accounting net income or loss of a BEFIT group member shall be adjusted to include the amount of expenses accrued for payments found illegal as a result of an audit or investigation by the competent authority as well as fines and penalties, including charges for late payment, that are due to a public authority for breach of any legislation.

Article 17

Corporate tax

The financial accounting net income or loss of a BEFIT group member shall be adjusted to include the amount of any corporate tax, similar taxes on profits and deferred taxes accrued for the fiscal year as well as any amount recorded as current taxes in the financial accounts in relation to the payment of top-up tax due in accordance with Directive (EU) 2022/2523 or in application of a Qualified Domestic Top-up Tax as referred to in Article 11 of that Directive.

Article 18

Rollover relief for replacement assets

1. Where the proceeds from the disposition, including compensation for damage, of a fixed depreciable asset or land, are to be re-invested in a similar asset used for the same or a similar business purpose before the end of the second fiscal year after the fiscal year in which the disposition took place, the amount by which those proceeds exceed the value for tax purposes of the asset may be deducted in the year of the disposition. An asset which is disposed of voluntarily needs to be owned for a minimum period of three years prior to the disposition.

2. The replacement asset referred to in paragraph 1 may be purchased in the fiscal year prior to the disposition. Where the replacement asset is not purchased before the end of the second fiscal year after the year in which the disposition of the asset took place, and except in cases of force majeure, the amount deducted in the year of disposition, increased by 10 %, shall be added to the preliminary tax result in the second fiscal year after the disposition took place.

Article 19

Revenues and expense in relation to fixed assets subject to depreciation

1. The financial accounting net income or loss of a BEFIT group member shall be adjusted to exclude the following amounts:

   (a) acquisition or construction costs as well as costs connected with the improvement of fixed assets which are depreciable in accordance with the rules laid down in Section 3; and

(b) subsidies directly linked to the acquisition, construction or improvement of such assets.

2. The financial accounting net income or loss of a BEFIT group member shall be adjusted to only include the amount of deduction in respect of the depreciation of fixed assets as determined in Articles 22 to 28.

Article 20

Currency exchange gain or loss

The financial accounting net income or loss of a BEFIT group member shall be adjusted to exclude the following:

(a) the amount of any unrealised foreign currency exchange gain or loss in relation to fixed assets and liabilities;

(b) the amount of any provision recorded for unrealised foreign currency exchange loss.

Article 21

Adjustments in relation to certain items (items left to Member States after allocation)

The financial accounting net income or loss of a BEFIT group member shall be adjusted to exclude from the preliminary tax result any amount relating to items listed in Article 48(1), points (a) to (j).

SECTION 3
DEPRECIATION

Article 22

Depreciation method and duration

1. The financial accounting net income or loss of a BEFIT group member shall be adjusted to exclude in the fiscal year of acquisition any fixed tangible asset that has a book value before depreciation which is below EUR 5000.

2. Where paragraph 1 does not apply, fixed assets shall be depreciated individually over their useful life on a straight-line basis. The useful life of a fixed asset shall be determined as follows:

   (a) all buildings as well as any other type of immovable property and structure in use for the business: 28 years;

   (b) all other fixed tangible assets: their useful life as assessed in accordance with the acceptable accounting standard in the Union referred to in Article 7;

   (c) fixed intangible assets, including acquired goodwill: the period for which the asset enjoys legal protection or for which the right has been granted and, where that period cannot be determined, 5 years.

3. Second-hand fixed assets shall be depreciated in accordance with paragraph 2, unless the BEFIT group member demonstrates that the estimated remaining useful life of the asset is shorter, in which case it shall be depreciated over that shorter period.

   By way of derogation from the first subparagraph, second hand fixed intangible assets shall be depreciated over 5 years, unless the remaining period for which the asset enjoys legal protection or for which the right has been granted can be determined, in which case it shall be depreciated over that other period.

4. Depreciation shall be deducted on a monthly basis as from the month of entry into use of the fixed asset. No depreciation shall be deducted in the month of disposition of the asset.

5. The value for tax purposes of a fixed asset that is disposed of, or damaged to an extent that it can no longer be used for the business, and the value for tax purposes of any improvement costs incurred in relation to that asset shall be deducted from the preliminary tax result in the month of the disposition or damage.

Article 23

Entitlement to depreciate

1. Subject to paragraph 3, depreciation shall be deducted by the economic owner.

2. In the case of contracts in which the economic and legal ownership do not coincide, the economic owner shall be entitled to deduct the interest element of the payments from its preliminary tax result, unless that element is not included in the preliminary tax result or tax base of the legal owner, as the case may be, depending on whether the legal owner is another BEFIT group member or not.

3. If the economic owner of an asset cannot be identified, the legal owner shall be entitled to deduct depreciation. In the case of leasing contracts both the interest and capital element of the lease payments shall be included in the preliminary tax result of the legal owner and if the lessee is a BEFIT group member, these payments shall be excluded from its preliminary tax result.

4. A fixed asset may not be depreciated by more than one taxpayer within a fiscal year, unless either the legal or the economic ownership is shared between more taxpayers, or the economic or legal owner of the asset has changed.

5. A BEFIT group member may not disclaim depreciation.

Article 24

Depreciation base

1. The depreciation base shall comprise costs directly connected with the acquisition, construction, or improvement of a fixed asset. Those costs shall not include deductible value added tax, interests, or the result of any revaluation or impairment exercise.

2. The depreciation base of an asset received as a gift shall be its market value as included in the financial accounts of the BEFIT group member.

3. The depreciation base of a fixed asset subject to depreciation shall be reduced by deducting the amount of any public subsidy directly linked to the acquisition, construction, or improvement of the asset, as referred to in Article 19(1) point (b).

4. The depreciation of fixed assets that are not available for use, or that have not been used for more than 12 months for reasons that are not outside the control of the BEFIT group member, shall not be taken into account.

   Depreciation shall cease from the month that follows the one in which the period referred to in the first subparagraph ended and shall be resumed as of the month that follows the one in which the asset started being used again.

5. Where a depreciable fixed asset has been disposed of and replaced in accordance with the rules in Article 18, the depreciation base of the replacement asset shall be reduced by the same amount as the amount that was deducted in the year of the disposition.

Article 25
Fixed asset register

1. Acquisition costs, construction costs or improvement costs, together with the date of entry into use after acquisition, construction or improvement, shall be recorded in a fixed asset register for each fixed asset separately.

2. When a fixed asset is disposed of, details of the disposition, including the date thereof, and any proceeds or compensation received as a result of such disposition, shall be recorded in the fixed asset register.

3. The fixed asset register shall be kept in a manner that provides sufficient information, including depreciation data, to calculate the preliminary tax result and shall include at least the following information:

   (a) identification of the asset;

   (b) month of entry into use;

   (c) depreciation base;

   (d) useful life in accordance with Article 22;

   (e) depreciation accumulated during the current tax period;

   (f) total accumulated depreciation;

   (g) depreciation base net of total accumulated depreciation and net of exceptional decreases in value;

   (h) month of discontinuation or resumption of the charging of tax depreciation;

   (i) month of disposition.

Article 26
Depreciation of improvement costs

1. Improvement costs shall be depreciated in accordance with the rules applicable to the fixed asset which has been improved as if they related to a newly acquired fixed asset, including its useful life in accordance with Article 22(2).

   Notwithstanding the first subparagraph, improvement costs relating to fixed assets that are rented shall be depreciated in accordance with Article 22(3) and 23.

2. Where the taxpayer demonstrates that the estimated remaining useful life of a depreciable fixed asset is shorter than the useful life of the asset specified in Article 22(2), improvement costs for that asset shall be depreciated over that shorter period.

Article 27
Assets not subject to depreciation

The following assets shall not be subject to depreciation:

(a) fixed tangible assets not subject to wear and tear and obsolescence such as land, fine art, antiques, or jewellery;

(b) financial assets.

Article 28
Exceptional decrease in value

1. A BEFIT group member who demonstrates that a fixed tangible asset not subject to depreciation, as referred to in Article 27, point (a), has decreased in value at the end of a fiscal year due to force majeure or criminal activities by third parties may deduct from the preliminary tax result an amount equal to that decrease in value.

2. Where the value of an asset that, in a preceding fiscal year has been subject to depreciation as referred to in paragraph 1 subsequently increases, an amount equivalent to that increase shall be added to the preliminary tax result in the year in which that increase takes place.

   However, any such additions, taken together, shall not exceed the amount of the deduction originally granted.

SECTION 4
TIMING AND QUANTIFICATION RULES

Article 29
Stocks and work-in-progress

1. The financial accounting net income or loss of a BEFIT group member shall be adjusted by the difference between the value of stocks and work-in-progress at the beginning and the end of the fiscal year, with the exception of stocks and work-in-progress relating to long term contracts as defined in Article 32.

2. The costs of stocks and work-in-progress shall be measured consistently by using the first-in first-out method or the weighted-average cost method.

3. The cost of stocks and work-in-progress involving items that ordinarily are not interchangeable and goods or services which are produced or supplied respectively and segregated for specific projects shall be measured individually.

4. A BEFIT group member shall use the same method for the valuation of stocks and work-in-progress that have a similar nature and use.

5. The cost of stocks and work-in-progress shall comprise all costs of purchase, direct costs of conversion and other direct costs incurred in bringing them to the location and condition in which they are found in the relevant fiscal year. Costs shall be net of deductible value added tax.

6. Stocks and work-in-progress shall be valued on the last day of the fiscal year at the lower of cost and net realisable value. The net realisable value is the estimated selling price in the ordinary course of business, less the estimated costs of completion and the estimated costs necessary to make the sale.

Article 30
Provisions

1. The financial accounting net income or loss of a BEFIT group member shall be adjusted to disallow the amount of any provision.

2. By way of derogation from the paragraph 1, the amount of a provision shall be allowed where, at the end of the fiscal year, the following conditions are met:

   (a) the BEFIT group member has a legal or reasonably expected legal obligation;

   (b) such an obligation arises from activities or transactions carried out in that fiscal year or in previous fiscal years;

   (c) the amount of provision arising from such an obligation can be reliably estimated;

   (d) the amount will result, when settled, in an expense which is deductible under this directive.

   Notwithstanding the first subparagraph, the financial accounting net income or loss of a BEFIT group member shall always be adjusted to disallow the amount of any provision that was recorded regarding contingent losses or future cost increases.

3. Where the obligation referred to in paragraph 1, second subparagraph, point (a), relates to an activity or transaction which will continue over future fiscal years, the amount of the provision shall be spread proportionately over the estimated duration of the activity or transaction.

   Provisions under this Article shall be reviewed and adjusted at the end of every fiscal year. In calculating the preliminary tax result in future fiscal years, account shall be taken of amounts that have already been deducted pursuant to this Article.

Article 31
Bad debts

1. The financial accounting net income or loss of a BEFIT group member shall be adjusted to disallow the amount of any deduction recorded with respect to a bad debt unless, at the end of the year, the BEFIT group member has not claimed a deduction in accordance with Article 28 and one of the following requirements are met:

   (a) the group member has taken all reasonable steps as referred to in paragraph 2 to pursue payment and it is probable that the debt will not be satisfied wholly or partially; or

   (b) the group member has a large number of homogeneous receivables which all derive from the same sector of business activity and is able to reliably estimate the amount of the bad debt receivable on a percentage basis, provided that the value of each homogeneous receivable is lower than 0,1% of the value of all homogeneous receivables. In order to arrive at a reliable estimate, the BEFIT group member shall take into account all relevant factors, including past experience.

2. In determining whether all reasonable steps to pursue payment have been made, any of the following elements shall be taken into account by the BEFIT group member, on the condition that they are based on objective evidence:

   (a) whether the costs of collection are disproportionate to the debt;

(b) whether there is any prospect of successful collection, including cases where the debtor has been declared insolvent, legal action has been initiated or a debt collector has been engaged;

(c) whether it is reasonable, in the circumstances, to expect the taxpayer to pursue collection.

3. Where the bad debt relates to a trade receivable, in addition to the conditions set out in paragraph 1, an amount corresponding to the debt shall be included in the preliminary tax result as revenue.

4. Notwithstanding paragraph 1, the financial accounting net income or loss of a BEFIT group member shall be adjusted to disallow the amount of any bad debt where the debtor is another BEFIT group member, any other associated enterprise or, when the debtor is an individual, where the debtor, his spouse or lineal ascendant or descendant participates in the management or control of the BEFIT group member or, directly or indirectly, owns capital of the BEFIT group member.

5. Where a BEFIT group member has previously deducted a bad debt which is settled in a following fiscal year, its financial accounting net income or loss for the fiscal year of settlement shall be increased by the amount recovered.

Article 32
Long term contracts

1. For the purpose of this Article, a long-term contract means a contract which complies with the following conditions:

(a) it is concluded for the purpose of manufacturing, installing or constructing, or for performing services;

(b) its term exceeds, or is expected to exceed, 12 months.

2. The financial accounting net income or loss of a BEFIT group member shall be adjusted to only include revenues relating to a long-term contract that have been accrued for the amount that corresponds to the part of the long-term contract that has been completed in the relevant fiscal year.

For that purpose, the percentage of completion of a long-term contract shall be determined by reference to the ratio of costs of that fiscal year to the overall estimated costs of the long-term contract.

3. The financial accounting net income or loss of a BEFIT group member shall be adjusted to allow all costs relating to long-term contracts that were incurred during a fiscal year.

Article 33
Hedging

1. Gains and losses on a hedging instrument, which result from a valuation or acts of disposition, shall be treated by a BEFIT group member in the same manner as the corresponding gains and losses on the hedged item.

There is a hedging relationship where the following conditions are met:

(a) the hedging relationship is formally designed and documented in advance;

(b) the hedge is expected to be highly effective and the effectiveness can reliably be measured.

2. Where the hedging relationship is interrupted or a financial instrument already held is subsequently treated as a hedging instrument, leading to its transition into a different tax regime, any difference between the new market value of the hedging instrument at the end of the fiscal year and the market value at the beginning of the same tax period shall be included in the preliminary tax result of the BEFIT group member.

The market value of the hedging instrument at the end of the fiscal year during which that instrument transitioned to a different tax regime shall coincide with its market value at the beginning of the year following that transition.

SECTION 5
ENTERING AND LEAVING A BEFIT GROUP AND CORPORATE RESTRUCTURING

Article 34

Recognition, valuation and timing for depreciation of assets and liabilities when entering or leaving a BEFIT group

1. All assets and liabilities shall be recognised at their value, as calculated in accordance with the acceptable accounting standard in the Union referred to in Article 7, immediately prior to the date on which this Directive becomes applicable to the BEFIT group member.

2. The assets and liabilities of a company or a permanent establishment to whom this Directive no longer applies shall be recognised at their value as calculated in accordance with this Directive.

3. The depreciation of the assets of a company or a permanent establishment that enters or leaves a BEFIT group in the course of a fiscal year shall be computed in proportion to the number of calendar months during which the company or permanent establishment belonged to the BEFIT group in that fiscal year.

Article 35

Qualification of fixed assets when entering a BEFIT group

Notwithstanding the rules laid out in Chapter II, Section 3, where a company or a permanent establishment transitions from a Member State's corporate income tax system to enter a BEFIT group, the following rules shall apply:

(a) Where a fixed asset with an accounting value below EUR 5 000 has not been, in part or in full, depreciated at the date of entry in the BEFIT group, the BEFIT group member shall adjust its financial accounting net income or loss to exclude the amount corresponding to the remaining net value of the fixed asset which appears in the individual financial accounts at the date of entry.;

(b) Where, at the date of entry in the BEFIT group, one or more fixed assets have a net value in the individual financial accounts which differs from the net tax value, the total amount corresponding to such difference for all fixed assets concerned shall be pooled for each BEFIT group member in the fiscal year of entry in the BEFIT group and be spread over a period of 5 years in the preliminary tax result. The financial accounting net income or loss of each BEFIT group member shall be adjusted accordingly.

Article 36

Long-term contracts when entering a BEFIT group

1. A company or a permanent establishment that enters a BEFIT group shall adjust to include, in accordance with the timing rules of national law, in its share of the BEFIT tax base as determined in accordance with the rules of Chapter III, the amount of revenues and costs which, pursuant to Article 32, are considered to have accrued or been incurred before this Directive became applicable but were not yet included in its tax base under the previously applicable national corporate tax law.

2. A company or a permanent establishment that enters a BEFIT group shall deduct in the first fiscal year from its share of the BEFIT tax base, as determined in accordance with the rules of Chapter III, the revenues of a long-term contract which have previously been subject to tax under national corporate tax law at an amount higher than the amount that would have been included in its preliminary tax result pursuant to Article 32.

3. Where the share of the BEFIT tax base of a BEFIT group member in a fiscal year is lower than the deductible amounts as determined under paragraphs 1 and 2, any unrelieved amount shall be carried forward and offset by the BEFIT group member against its share of the BEFIT tax base in the following fiscal years.

Article 37

Provisions, revenues and deductions when entering a BEFIT group

1. Provisions and bad-debt deductions as referred to in Articles 30 and 31 shall be deductible only to the extent that they arise from activities or transactions that were carried out after this Directive became applicable to the BEFIT group member.

2. Revenues which pursuant to the applicable acceptable accounting standard in the Union used in accordance with Article 7 are considered to have accrued before this Directive became applicable to a BEFIT group member, but were not included in its tax base under the previously applicable national corporate tax law, shall be added to its allocated part in accordance with the timing rules of the relevant national corporate tax law.

3. Expenses incurred after this Directive became applicable to a BEFIT group member, but in relation to activities or transactions that were carried out earlier and for which no deduction was made under the applicable national corporate tax law shall be deducted against its allocated part.

   Where expenses as referred to in the first subparagraph are incurred more than five years after a company or a permanent establishment enters a BEFIT group, those expenses shall be deducted from its preliminary tax result before aggregation and profit allocation.

   Expenses incurred under national corporate tax law that had not yet been deducted when this Directive became applicable to a BEFIT group member shall be deductible only against its allocated part of the BEFIT tax base, as computed in accordance with Chapter III, in equal amounts and spread over five fiscal years. Expenses that involve borrowing costs shall be deductible in accordance with Article 13.

Where the share of the BEFIT tax base that has been allocated to a BEFIT group member in a fiscal year is not sufficient to fully deduct the amounts referred to in the first and third subparagraphs, the unrelieved amounts shall be carried forward and offset by the BEFIT group member against its share of the BEFIT tax base in the following fiscal years.

4. Any amount deducted before this Directive became applicable to a BEFIT group member shall not be deducted again.

Article 38

Pre-entry losses

Where a company or a permanent establishment enters a BEFIT group, any unrelieved losses incurred before the entry date, in accordance with the corporate tax law of the Member State of its tax residence or location respectively, shall be deducted from its share of the BEFIT tax base as determined in accordance with Chapter III.

Article 39

Termination of a group

1. Where a BEFIT group is terminated, the fiscal year shall be ended and the BEFIT tax base of that fiscal year shall be allocated to each BEFIT group member in accordance with the rules laid down in Chapter III.

2. The depreciation of the assets of the BEFIT group members in the fiscal year of termination of a BEFIT group shall be computed in proportion to the number of calendar months that the BEFIT group operated in that fiscal year.

Article 40

Business reorganisations

1. Without prejudice to Article 9, a BEFIT group member that disposes of assets and liabilities during a fiscal year shall include the gain or loss arising from such disposition in the computation of its preliminary tax result.

A BEFIT group member that acquires assets and liabilities shall determine its income or loss at the time of disposition based on the market value of the acquired assets and liabilities as it stands at the time of acquisition.

2. Notwithstanding paragraph 1, where a transfer of assets and liabilities takes place in the context of a reorganisation as defined in Article 2 of Council Directive 2009/133/EC[34]:

---

[34] 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 (OJ L 310, 25.11.2009, p. 34)

(a) the BEFIT group member that disposes of the assets and liabilities shall exclude any resulting gain or loss from the computation of its preliminary tax result;

(b) the BEFIT group member that acquires the assets and liabilities shall determine its preliminary tax result, in that fiscal year and the following fiscal years, by using the value for tax purposes, as it stands at the time of the transfer and as it is defined under Article 4 of Directive 2009/133/EC.

Article 41

Disallowance of exempt share dispositions

1. Notwithstanding Article 9, where, as a result of a disposition of shares, a BEFIT group member leaves the BEFIT group and during that or the previous fiscal year, this BEFIT group member acquired, in an intra-BEFIT group transaction, one or more fixed assets, an amount corresponding to the gain or loss arising from the intra-BEFIT group disposition of these fixed assets shall be included in the financial accounting net income or loss of the BEFIT group member which owned the assets prior to the intra-BEFIT group disposition.

The first subparagraph shall not apply if the BEFIT group member demonstrates that the intra-BEFIT group transaction was carried out for valid commercial reasons.

2. The amount corresponding to the gain or loss arising from the intra-BEFIT group disposition referred to in paragraph 1 shall be the market value of the fixed assets at the time when the BEFIT group member leaves the group less the value for tax purposes of the fixed assets or the costs referred to in Article 29.

3. The gain or loss arising from the intra-BEFIT group disposition shall be deemed to have been received by the BEFIT group member that held the asset(s) prior to the intra-BEFIT group transaction referred to in paragraph 1.

CHAPTER III
AGGREGATION OF THE PRELIMINARY TAX RESULTS and ALLOCATION OF THE BEFIT TAX BASE

SECTION 1
BEFIT TAX BASE

Article 42

Computation of the BEFIT tax base

1. The preliminary tax results of all BEFIT group members, as determined in accordance with the rules laid down in Chapter II, shall be aggregated to obtain a BEFIT tax base.

2. Where the BEFIT tax base in a given year is:

(a) a positive amount, the profit shall be allocated in accordance with Article 45;

(b) a negative amount, the loss shall be carried forward and shall be set off against the next positive BEFIT tax base.

3. For the purpose of paragraph 1, the preliminary tax result of each BEFIT group member shall be converted to Euro (EUR) at the exchange rate issued by the

European Central Bank as it stood on the last day of the calendar year or, if the fiscal year does not coincide with the calendar year, on the last day of the fiscal year.

By way of derogation from the first subparagraph, where the filing entity is resident for tax purposes in a Member State that has not adopted the EUR, the preliminary tax result of each BEFIT group member shall be converted into the currency that is legal tender in that Member State.

Article 43

Withholding taxes and other source taxation

1. Member States shall not impose withholding taxes or any other source taxation on intra-BEFIT group transactions unless the beneficial owner of the payment is not a BEFIT group member.

2. Where a withholding tax is applied by a Member State in relation to a payment of royalties or interests by a BEFIT group member to a recipient that is not a member of the same BEFIT group or in application of paragraph 1, in accordance with the applicable rules of national law and double taxation conventions, the withholding tax shall be shared, for the fiscal year in which it is charged, amongst Member States using the allocation method referred to in Article 45.

Article 44

Tax credits on income taxed at source

1. Where a BEFIT group member derives income that has been taxed in another Member State or in a third country, a tax credit shall be granted in line with the applicable double taxation convention or its national law and shared amongst the BEFIT group members using the baseline allocation method referred to in Article 45.

2. By way of derogation from the first subparagraph, no tax credit shall be granted where the income derived by a BEFIT group member is not included in its financial accounting net income or loss in accordance with Articles 8, 9 or 12.

3. The tax credit referred to in paragraph 1 shall be calculated separately for each Member State or third country as well as for each type of income. It shall not exceed the amount which results from subjecting the income attributed to a BEFIT group member to the corporate tax rate of the Member State where this BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment.

In calculating the tax credit referred to in paragraph 1, the amount of income shall be reduced by the amount of related deductible expenses.

SECTION 2
ALLOCATION OF THE BEFIT TAX BASE

Article 45

Transition allocation rule

1. For each fiscal year between 1 July 2028 and 30 June 2035 at the latest (the ‘transition period’), the BEFIT tax base shall be allocated to the BEFIT group members in accordance with the baseline allocation percentage.

For groups that become subject to this Directive after the end of the first fiscal year when this Directive starts to apply, the transition period referred to in the first subparagraph shall be terminated by 30 June 2035 at the latest.

2. The baseline allocation percentage for each BEFIT group member shall be the result of the following computation:

$$\text{Baseline allocation} = \frac{Taxable\ result\ of\ a\ BEFIT\ group\ member}{Total\ taxable\ result\ of\ the\ BEFIT\ group} * 100$$

Where:

(a) the taxable result of a BEFIT group member shall be the average of the taxable results in the three previous fiscal years.

In the first fiscal year in which a BEFIT group is subject to this Directive, those taxable results shall be determined in accordance with the national corporate tax rules of the Member State in which the BEFIT group member is resident for tax purposes or is situated in the form of a permanent establishment.

In the second fiscal year in which a BEFIT group is subject to this Directive, those taxable results shall be determined, for the first fiscal year in which a BEFIT group is subject to this Directive, in accordance with Chapter II of this Directive and for the two preceding fiscal years, in accordance with the national rules of the respective Member State.

In the third fiscal year in which a BEFIT group is subject to this Directive, those taxable results shall be determined, for the first two fiscal years in which a BEFIT group is subject to this Directive, in accordance with Chapter II of this Directive and for the fiscal year that immediately precedes, in accordance with the national rules of the respective Member State.

As from the fourth fiscal year in which a BEFIT group is subject to this Directive, those taxable results shall be determined in accordance with Chapter II of this Directive.

(b) the total taxable result of the BEFIT group shall be the addition of the average of the taxable results, as referred to in point (a), of all BEFIT group members in the three previous fiscal years.

For the purpose of this paragraph, a BEFIT group member with a taxable result that is negative shall have a baseline allocation percentage set at zero.

3. For the purpose of paragraph 2, Member States shall structure their risk assessment framework for the pricing of intra-BEFIT group transactions as follows:

(a) low-risk zone: where the expense incurred, or the income earned, by a BEFIT group member from intra-BEFIT group transactions increase in a fiscal year by less than 10% compared to the average expense or income of the previous three fiscal years from intra-BEFIT group transactions;

(b) high-risk zone: where the expense incurred, or the income earned, by a BEFIT group member from intra-BEFIT group transactions increase in a fiscal year by 10% or more compared to the average expense or income of the previous three fiscal years from intra-BEFIT group transactions.

4. Member States shall take the appropriate measures in order to structure their approach to risk compliance in accordance with the following principles:

(a) low-risk zone: the competent authorities of the Member States concerned shall presume that the pricing of intra-BEFIT group transactions of a specific BEFIT group member is consistent with the arm's length principle;

(b) high-risk zone: the competent authorities of the Member States concerned shall presume that the pricing of intra-BEFIT group transactions of a specific BEFIT group member does not comply with the arm's length principle and the part of the increase which goes beyond 10% shall not be recognized for the purpose of computing the baseline allocation percentage of that BEFIT group member.

Notwithstanding the rule set out in the first sub-paragraph of point (b), a BEFIT group member shall be entitled to provide evidence to the competent authority of the Member State in which it is resident for tax purposes or situated in the form of a permanent establishment that the pricing of the relevant intra-BEFIT group transactions is set in accordance with the arm's length principle. In such case, the full amount of expense from the intra-BEFIT group transactions in question, as evidenced, shall be recognized for the purpose of computing the baseline allocation percentage of that BEFIT group member.

5. Notwithstanding Article 13(2), the exceeding borrowing costs as referred to in Article 2 of Council Directive (EU) 2016/1164 which arise from a transaction between BEFIT group members shall not be recognized for the purpose of computing the baseline allocation percentage of the BEFIT group member which incurs such costs.

6. If the structure of the BEFIT group changes during the transition period referred to in paragraph 1 due to new members joining the group or members leaving the group, the baseline allocation percentage shall be re-computed in accordance with paragraph 2. For each BEFIT group member, the BEFIT tax base shall be allocated in accordance with the new baseline allocation percentage for the time that remains until the end of this period, unless subsequent changes in the structure of the BEFIT group require a new re-computation of the baseline allocation percentage.

7. If the structure of the BEFIT group changes during the transition period referred to in paragraph 1 due to the creation of one or more new companies which qualify as BEFIT group members, the rules for allocating the BEFIT tax base, as laid down in paragraph 2, shall not apply to the new BEFIT group members in the first fiscal year. For subsequent fiscal years until the end of that transition period, the baseline allocation percentage of the new BEFIT group members shall be computed in accordance with paragraph 2.

8. If a group becomes subject to the rules of this Directive later than 1 July 2028, the baseline allocation shall be computed in accordance with paragraph 2. By way of derogation from paragraphs 1 and 2, the BEFIT tax base shall be allocated to the BEFIT group members over the remaining part of the transition period referred to in paragraph 1.

9. The Commission shall carry out a comprehensive review of the transition rule as part of which it shall prepare a study on the possible composition and weight of selected formula factors and submit a report to the Council by the end of the third fiscal year during the transition period referred to in paragraph 1. If the Commission deems it appropriate, taking into account the conclusions of this report, it may adopt a legislative proposal during the transition period, to amend this Directive by

introducing a method for the allocation of the BEFIT tax base using formulary apportionment and based on factors.

10. The rules laid down in paragraphs 1 to 8 shall continue to apply until any amendment thereof has come into effect.

Article 46
Upstream activities

1. By way of derogation from Articles 42 to 45, where a BEFIT group member conducts its principal business in the field of extractive activities, its revenues, expenses and other deductible items which stem from such activities shall be attributed to the BEFIT group member located in the Member State where the extraction takes place.

Where there is more than one BEFIT group member that is tax resident in the Member State where the extraction takes place, the revenues, expenses and other deductible items which stem from such activities shall be attributed to each such BEFIT group member, in proportion to their baseline allocation percentage.

2. By way of derogation from Article 42 to 45, where there is no BEFIT group member in the Member State of extraction, or where the extraction takes place in a third country jurisdiction, the revenues, expenses and other deductible items which stem from such activities shall be attributed to the BEFIT group member to which they accrued.

Article 47
Exception for shipping not covered by a tonnage tax regime, inland waterways transport and air transport

1. By way of derogation from Article 42 to 45 and without prejudice to Article 15, the revenues, expenses and other deductible items which stem from the following activities shall be excluded from the BEFIT tax base in any of the following cases:

(a) the operation of ships in international traffic where the taxable result is not covered by a tonnage tax regime;

(b) the operation of aircraft in international traffic;

(c) the operation of boats engaged in inland waterways transport.

The revenues, expenses and other deductible items as referred to in the first subparagraph shall be attributed to that BEFIT group member on a transaction-by-transaction basis and be subject to adjustments for pricing in accordance with the arm’s length principle.

2. Any participation in and by the BEFIT group member as referred to in paragraph 1 shall be taken into account for the purpose of Article 5.

Article 48
Items deductible from the allocated part

1. A BEFIT group member shall increase or decrease its allocated part by the following items:

(a) unrelieved losses incurred before becoming subject to the rules of this Directive, in accordance with Article 38;

(b) revenues and costs accrued or incurred before this Directive became applicable to the BEFIT group member but which were not yet included in its tax base under the previously applicable national corporate tax law, in accordance with Article 36(1);

(c) revenues of a long-term contract which have previously been subject to tax under national corporate tax law at an amount higher than the amount that would have been included in its preliminary tax result pursuant to Article 32, in accordance with Article 36(2);

(d) revenues accrued before this Directive became applicable to a BEFIT group member but that were not included in its tax base under the previously applicable national corporate tax law, in accordance with Article 37(2);

(e) expenses incurred after the rules of this Directive became applicable to a BEFIT group member, but in relation to activities or transactions that were carried out earlier and for which no deduction was made under the applicable national corporate tax law, in accordance with the first subparagraph of Article 37(3);

(f) expenses incurred under national corporate tax law that had not yet been deducted when this Directive became applicable to the BEFIT group member, in accordance with Article 37(3), third subparagraph;

(g) any unrelieved amount carried forward in accordance with Article 36(3) and subparagraph 4 of Article 37(3);

(h) gifts and donations to charitable bodies to the extent that they are deductible under the corporate tax law of the Member State in which the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment;

(i) pension provisions to the extent that they are deductible under the corporate tax law of the Member State in which the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment;

(j) local taxes to the extent that they are deductible under the corporate tax law of the Member State in which the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment.

2. In addition to the adjustments listed in paragraph 1, a Member State may allow for increasing or decreasing, through additional items, the allocated part of BEFIT group members that are resident for tax purposes or situated in the form of a permanent establishment in that Member State.

Article 49

Distribution based tax systems

1. Where a BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment in a Member State that applies a corporate income tax system which imposes income tax on profits only when those profits are distributed or deemed to be distributed to shareholders, or when the company incurs certain expenses that are taxable under domestic law (‘distribution based tax system’), the

part allocated to that BEFIT group member in accordance with Article 45 shall be adjusted by the distributions made during the fiscal year.

2. The adjustment of the allocated part shall be calculated as follows::

$$Adjusted\ Allocated\ Part\ = Allocated\ Part\ x\ \left(\frac{Distributions}{Financial\ Income}\right)$$

Where:

(a) the Financial Income refers to the income available for distributions under a distribution based tax system, including reserves, for the fiscal year.

(b) the Allocated Part refers to the share allocated to the BEFIT group member for the fiscal year in accordance with Article 45, including any residual share from previous fiscal years calculated for the BEFIT group member in accordance with paragraph 4.

(c) the Distributions refer to distributions and other expenses that are made by the BEFIT group member during the fiscal year and that are taxable under a distribution based tax system.

3. Where the adjusted allocated part of a BEFIT group member computed in accordance with paragraph 2 is lower than its allocated part, the balance between the two amounts shall be carried forward to the following fiscal year and added to the part allocated to the BEFIT group member in that following fiscal year in accordance with this Article.

4. The adjusted allocated part computed in accordance with paragraph 2 shall be increased by non-deductible expenses immediately subject to tax during the fiscal year under a distribution tax system in the Member State in which the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment.

CHAPTER IV
Simplified Approach to Transfer Pricing Compliance

Article 50
Scoping criteria

1. Member States shall subject the following activities, where these are performed through transactions between a BEFIT group member and an associated enterprise outside the BEFIT group, to a simplified approach to transfer pricing compliance:

(a) distribution activity where it is performed through a low-risk distributor, as described in paragraph 2, who is resident for tax purposes or situated in the form of a permanent establishment in a Member State.

(b) manufacturing activity where it is performed through a contract manufacturer, as described in paragraph 3, who is resident for tax purposes or situated in the form of a permanent establishment in a Member State.

2. For the purpose of applying paragraph 1, point (a), a low-risk distributor shall be an entity that performs distribution of goods purchased from associated enterprises. The activity of distribution shall display the following features:

(a) it shall result from the accurate delineation of the transaction and exhibit economically relevant characteristics that can be reliably priced using a one-sided transfer pricing method, with the distributor being the tested party;

(b) the distributor shall not hold the legal or economic co-ownership of the intellectual property contained in the products and/or services which are distributed;

(c) the distribution activity shall be the predominant function performed by the distributor;

(d) the distributor shall bear no or limited risks regarding market, inventory and bad credits.

3. For the purpose of applying point (b) of paragraph 1, a contract manufacturer shall be an associated enterprise which performs a manufacturing activity under the control of a principal and displays the following features:

(a) the manufacturing activity, as resulting from the accurate delineation of the transaction, shall exhibit economically relevant characteristics that can be reliably priced using a one-sided transfer pricing method, with the manufacturing entity being the tested party;

(b) the manufacturer shall not hold the legal or economic co-ownership of the intellectual property contained in the manufactured products;

(c) the manufacturing activity shall be the predominant function performed by the manufacturer;

(d) the manufacture shall bear no or limited risks regarding price, market, inventory, capacity utilization and bad credits.

4. Where an associated enterprise is engaged in more than one economic activity, it shall remain within the scope of the simplified approach, provided that any of the following conditions are met:

(a) the economic activities other than distribution or manufacturing can be adequately segregated and separately priced;

(b) the economic activities other than distribution or manufacturing can be considered ancillary and are either immaterial or do not add major value to distribution or manufacturing.

Article 51

Compliance framework

1. Member States shall structure their risk assessment framework for the activities mentioned in Article 50 in such a way as to consist of three transfer pricing risk zones.

2. The risk zones shall be determined using the interquartile range of the profit performance resulting from the Union public benchmarks referred to in Article 53.

3. The activities mentioned in Article 50 shall be risk assessed as being of low, medium or high risk, depending on how their profit performance in a given year, determined under Article 52, compares to the interquartile range of the most recent set of public benchmarks prepared before the end of that year.

4. Member States shall apply the following risk framework:

Risk zone	Profit performance of the tested party relative to the EU profit markers
low	above 60^{TH} percentile of the results of the public benchmark
medium	below 60^{TH} percentile but above the 40^{TH} percentile of the results of the public benchmark
high	below the 40^{TH} percentile of the results of the public benchmark

5. Member States shall take the appropriate measures, in order to structure their approach to risk compliance in accordance with the following principles:

   (a) Low-risk zone: the competent authorities of the Member States may not dedicate additional compliance resources to further review the transfer pricing results. Notwithstanding this, the competent authorities of the Member States shall retain the right to perform transfer pricing adjustments of the profit margins of the taxpayer that falls within the low-risk zone.

   (b) Medium-risk zone: the competent authorities of the Member States may monitor the results, using available data, and contact the taxpayer, to seek a better understanding of its circumstances before deciding whether to allocate compliance resources to carrying out risk assessments and audits.

   (c) High-risk zone: the competent authorities of the Member States may recommend that the taxpayer reviews its transfer pricing policies and may decide to initiate a review or audit.

Article 52
Measure of the performance

1. Member States shall lay down the appropriate legal framework, so that their competent authorities measure the profitability of the distribution activity mentioned in Article 50(2) using Earnings Before Interest and Tax relative to sales as a profit level indicator.

2. Member States shall lay down the appropriate legal framework, so that their competent authorities measure the profitability of the manufacturing activity mentioned in Article 50(3) using Earnings before Interest and Tax relative to total costs as profit level indicator.

Article 53
Public Benchmarks

1. The risk zone for the activities referred to in Article 50 shall be determined respectively via public benchmarks for distribution and manufacturing activities.

2. The public benchmarks for distribution activity shall be representative of the profit performance of independent entities operating in the internal market and performing predominantly distribution activity with similar characteristics to the activity described in Article 50(2).

3. The public benchmark for manufacturing activity shall be representative of the profit performance of independent entities operating in the internal market and performing

predominantly manufacturing activity with similar characteristics to the activity described in Article 50(3).

4. The risk zone shall be determined using the interquartile range of the 5-year average profit performance of independent entities resulting from the public benchmarks.

5. The Commission shall, by means of implementing act laying down the necessary practical arrangements, set the search criteria to identify comparables for establishing the appropriate benchmarks for low-risk distribution and contract manufacturing activities. The results of the benchmarks shall be published on the Commission website, for the purpose of allowing taxpayers to determine the risk zone of their activities. The benchmarks shall be updated every 3 years. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 73.

CHAPTER V
ADMINISTRATION AND PROCEDURES

SECTION 1
GENERAL PROVISIONS

Article 54
Creation and termination of the BEFIT group

1. A BEFIT group shall be covered by this Directive for a period of five years and its effect shall automatically be renewed at the end of the fifth year, unless there is a notice of termination on the grounds that the group no longer fulfils, the conditions of Article 2(1).

2. Groups that have chosen to be covered by this Directive in accordance with Article 2(7) shall be bound for a period of five years. At the end of the five-year period, the rules shall cease to apply, unless the filing entity notifies the choice to renew the option to be covered by this Directive to the filing authority. To this effect, the filing entity shall provide evidence to the filing authority that the eligibility requirements set out in Article 2(7) are met and that there is no reason for exclusion from the renewal.

Article 55
Fiscal year

1. All BEFIT group members shall have the same fiscal year, which shall be a period of 12 months. In the year in which a BEFIT group member joins a BEFIT group, it shall bring its fiscal year in line with the fiscal year of the BEFIT group.

2. The allocated part of a BEFIT group member for the year in which it joins a BEFIT group, shall be calculated in proportion to the number of calendar months during which the BEFIT group member belonged to the BEFIT group.

3. The allocated part of a BEFIT group member for the year in which it leaves a BEFIT group, shall be calculated in proportion to the number of calendar months during which the BEFIT group member belonged to the BEFIT group.

Article 56

Change of the filing entity

The filing entity may not be changed, unless it ceases to meet the conditions as referred to in Article 3(10). A new filing entity shall then be designated by the group in accordance with the conditions of Article 3(10). If the group fails to designate a filing entity within two months after the previous filing entity ceased to meet the conditions, the BEFIT team as referred to in Article 60 shall then designate a filing entity for the BEFIT group.

SECTION 2
BEFIT INFORMATION RETURN

Article 57

Filing the BEFIT information return

1. The filing entity shall file the BEFIT information return of the BEFIT group with the filing authority, except where the BEFIT group is a domestic group.

2. The BEFIT information return shall be submitted to the filing authority no later than four months after the end of the fiscal year.

3. The BEFIT information return shall comprise the following information:

   (a) identification of the filing entity and other BEFIT group members, including their tax identification numbers, if any, and the Member State in which the BEFIT group members are resident for tax purposes or situated in the form of a permanent establishment;

   (b) information on the overall corporate structure of the BEFIT group, including the ownership interest in the BEFIT group members held by other BEFIT group members.

   (c) the fiscal year to which the BEFIT information return relates;

   (d) information and computation of the following:

      (i) the outcome of the preliminary tax result of each BEFIT group member;

      (ii) the BEFIT tax base;

      (iii) the allocated part of each BEFIT group member;

      (iv) information about the ‘baseline allocation percentage’, as computed in accordance with Article 45.

4. The filing authority shall transmit the BEFIT information return immediately to the competent authorities of all Member States in which the BEFIT group members are resident for tax purposes or situated in the form of a permanent establishment.

Article 58

Notification of errors in the BEFIT information return

1. The filing entity shall notify the filing authority of errors in the BEFIT information return within two months of the timely submission of such return.

2. The filing authority shall transmit a revised BEFIT information return immediately to the competent authorities of all Member States in which BEFIT group members are resident for tax purposes or situated in the form of a permanent establishment.

Article 59

Failure to file a BEFIT information return

Where the filing entity fails to file a BEFIT information return, the filing authority, in consultation with the competent authorities of all Member States in which BEFIT group members are resident for tax purposes or situated in the form of a permanent establishment, shall issue a BEFIT information return based on an estimate, taking into account the available information. In addition, the filing authority shall apply the legal framework on penalties in accordance with Article 72. The filing entity may appeal against that BEFIT information return.

SECTION 3
BEFIT TEAM

Article 60

Establishment of the BEFIT team

1. A BEFIT team shall be convened within one month after filing the BEFIT information return, as referred to in Article 57, in order to perform the tasks set out in Article 61. In addition, the BEFIT team shall provide a framework for communication and consultation amongst the competent authorities of the Member States where members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment. When a member of a BEFIT team consults other members, it shall receive a response within a reasonable time.

2. The BEFIT team shall be composed of one or more representatives of each relevant tax administration, who will act as delegates, per Member State where there are BEFIT group members. The BEFIT team shall be chaired by the delegate of the filing authority.

3. Information communicated between the members of a BEFIT team, shall be provided by electronic means to the extent possible, through making use of a BEFIT collaborative tool.

4. To facilitate the operation and communication of the BEFIT team, the Commission shall, by means of implementing acts, standardise the communication of the information between the members of a BEFIT team through making use of a BEFIT collaborative tool. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 73.

Article 61

Role of the BEFIT team in the BEFIT information return

1. The BEFIT team shall examine the completeness and accuracy of the information filled in the BEFIT information return as required by Article 57, except for the outcome of the computation of the preliminary tax result of each BEFIT group member under point (d)(i) of Article 57(3).

2. The BEFIT team shall endeavour to achieve consensus on the content of the BEFIT information return, within four months of the date when all information required under Article 57 was reported. Without prejudice to Article 65, in connection with Article 57(3), points (a), (b), (c) and (d)(iv), the consensus of the BEFIT team shall mean that these points cannot be subject to any future challenge. The final decision

on the information referred to in Article 57(3), point (d)(i), d(ii) and d(iii) shall remain within the exclusive competence of the Member State where the group member is resident for tax purposes or situated in the form of a permanent establishment.

3. If the BEFIT team achieves consensus on a BEFIT information return, the filing authority to which the initial BEFIT information return was submitted shall notify the BEFIT information return to the filing entity.

4. If the BEFIT team is unable to achieve consensus pursuant to paragraph 2 within four months of the date when all information required under Article 57 was reported, such consensus shall be deemed to be achieved if the members of the BEFIT team give their consent, by the simple majority of the present members in accordance with paragraph 5, to the BEFIT information return at the end of the fifth month from the date when the information was reported. The filing authority to which the BEFIT information return has been submitted shall notify the BEFIT information return to the filing entity.

5. For the purpose of reaching a simple majority under paragraph 4, the voting rights shall be allocated to each competent authority in the BEFIT team in proportion to the revenues earned in the relevant fiscal year by the BEFIT group members that are resident for tax purposes or situated in the form of a permanent establishment in their territory. Where the vote is equally split, the filing authority shall have a casting vote. The quorum shall require the presence of at least two thirds of the BEFIT team members. If the quorum is not reached, the initially filed BEFIT information return shall form the basis for the individual tax returns as referred to in Article 62 and for individual tax assessments as referred to in Article 64. The filing authority to which the BEFIT information return has been submitted shall notify the filing entity if the quorum is not reached.

SECTION 4
INDIVIDUAL TAX RETURNS AND ASSESSSMENTS

Article 62
Filing the individual tax returns

1. Each BEFIT group member shall file its individual tax return with the competent authority of the Member State in which that BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment no later than three months after receipt of the notice from the filing authority pursuant to Article 61(3), (4) or (5), or in case of a domestic group, no later than eight months from the end of the fiscal year.

2. The individual tax return shall comprise information on the following elements:

(a) the computation of the preliminary tax result of the BEFIT group member;

(b) the part allocated to the BEFIT group member in accordance with Article 45;

(c) the items that shall adjust the allocated part in accordance with Article 48 in the Member State in which the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment;

(d) credits that apply, to relieve foreign tax, in the Member State in which the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment.

3. Notwithstanding the provisions in paragraph 1, members of the same BEFIT group which are resident for tax purposes or situated in the form of a permanent establishment in the same Member State may choose to file one combined individual tax return in that Member State.

Article 63

Notification of errors in the individual tax return

1. A BEFIT group member shall notify the competent authority of the Member State in which it is resident for tax purposes or situated in the form of a permanent establishment of errors in the individual tax return within two months of the timely submission of such return.

2. If the errors require adjustments that affect the BEFIT tax base of the BEFIT group, the competent authority of the Member State in which the BEFIT group member has filed its individual tax return shall immediately notify, via the BEFIT team, the filing authority and the competent authorities of the other Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment.

3. The filing authority shall issue a revised BEFIT information return within a month and transmit this return immediately, via the BEFIT team, to the competent authorities of all Member States in which the BEFIT group members are resident for tax purposes or situated in the form of a permanent establishment. The filing authority and the competent authorities of all Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment shall issue amended tax assessments in accordance with Article 64 where appropriate.

4. Notwithstanding paragraph 3, no amended tax assessment shall be issued in order to adjust the BEFIT tax base, where the difference between the initially declared BEFIT tax base and the revised BEFIT tax base does not exceed the lower of EUR 10 000 or 1% of the BEFIT tax base.

Article 64

Individual tax assessments

1. The competent authority of the Member State in which a BEFIT group member filed its individual tax return shall issue an individual tax assessment in accordance with the individual tax return. The enforcement of the tax liability shall be governed by the law of that Member State.

2. Where required, the competent authority of the Member State in which the BEFIT group member filed its individual tax return shall issue an amended tax assessment. Where the adjustments affect the BEFIT tax base, the competent authority of the Member State in which the BEFIT group member has filed its individual tax return shall immediately notify, via the BEFIT team, the filing authority and the competent authorities of all other Member States in which the other members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment.

3. Following receipt of an amended tax assessment in accordance with paragraph 2, the filing authority shall issue a revised BEFIT information return within a month and transmit this return immediately, via the BEFIT team, to the competent authorities of

all Member States in which the BEFIT group members are resident for tax purposes or situated in the form of a permanent establishment. The filing authority and the competent authorities of the other Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment shall issue amended tax assessments in accordance with paragraph 2, where appropriate.

4. Notwithstanding paragraph 3, no amended tax assessment shall be issued in order to adjust the BEFIT tax base, where the difference between the initially declared BEFIT tax base and the revised BEFIT tax base does not exceed the lower of EUR 10,000 or 1% of the BEFIT tax base.

SECTION 5
AUDITS

Article 65
Audits

1. The competent authority of a Member State may initiate and coordinate audits of BEFIT group members that are resident for tax purposes or situated in the form of a permanent establishment in that Member State.

2. The competent authority of a Member State in which a BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment may be requested by the competent authority of another Member State in which there is at least one member of the same BEFIT group to engage in a joint audit with the latter authority. Joint audits shall be conducted in accordance with Article 12 of Council Directive 2011/16/EU[35] on administrative cooperation in the field of taxation. Notwithstanding this rule, the requested competent authority shall accept such request and inform the BEFIT team.

3. An audit (including joint audit) shall be conducted in accordance with the national legislation of the Member State in which it is carried out, subject to such adjustments as are necessary to ensure the proper implementation of this Directive. Those audits may include inquiries, inspections or examinations of any kind for the purpose of verifying the compliance of a taxpayer with this Directive.

4. The competent authority of the Member State in which the audit or joint audit is carried out shall inform the BEFIT team of the results of an audit or joint audit which affects the outcome of the allocation of the BEFIT tax base for the fiscal year that it refers to. The other members of the BEFIT team shall express their views within three months.

5. Following an audit or joint audit which affects the outcome of the allocation of the BEFIT tax base in paragraph 4, the filing authority shall issue a revised BEFIT information return within a month and transmit this return immediately, via the BEFIT team, to the competent authorities of all Member States in which the BEFIT

[35] 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)

group members are resident for tax purposes or situated in the form of a permanent establishment. The filing authority and the competent authorities of the other Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment shall issue amended tax assessments in accordance with Article 64, where appropriate.

6. Notwithstanding paragraph 5, no amended tax assessment shall be issued, in order to adjust the BEFIT tax base, where the difference between the initially declared BEFIT tax base and the revised BEFIT tax base does not exceed the lower of EUR 10 000 or 1% of the BEFIT tax base.

SECTION 6
APPEALS

Article 66

Administrative appeals in relation to the BEFIT information return

1. The filing entity may appeal against the content of the BEFIT information return, in accordance with Article 59, within two months after the return was issued or notified. The appeal shall be heard by an administrative body that, in accordance with the law of the Member State of the filing authority, is competent to hear appeals at first instance. The administrative appeal shall be governed by the law of the Member State of the filing authority. Where there is no such administrative body in the Member State of the filing authority, the BEFIT group member may lodge a judicial appeal directly.

2. In making submissions to the administrative body, the filing authority, as the case may be, shall consult, via the BEFIT team, the other competent authorities of Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment.

3. The administrative body referred to in paragraph 1 shall decide on the appeal within two months. If the decision varies from the initial BEFIT information return, the varied decision shall replace the original BEFIT information return. If no decision is received by the filing entity within that period, the BEFIT information return shall be deemed to have been confirmed.

4. Notwithstanding Article 62(1), the time period for filing an individual tax return shall be initiated when the decision on the appeal is taken or the BEFIT information return is deemed to have been confirmed pursuant to paragraph 3.

Article 67

Administrative appeals in relation to individual tax assessments

1. A BEFIT group member may appeal against the content of the individual tax assesment made pursuant to Article 64 before the competent authority of the Member State where that BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment within two months after the assessment was notified to it. The administrative appeal shall be heard by an administrative body that, in accordance with the law of the Member State of the BEFIT group member, is competent to hear appeals at first instance. The administrative appeal shall be governed by the law of the Member State in which the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment. Where there is no such administrative body in the Member State where the BEFIT group

member is resident for tax purposes or situated in the form of a permanent establishment, the BEFIT group member may lodge a judicial appeal directly.

2. In making submissions to the administrative body, the competent authority of a BEFIT group member, as the case may be, shall consult, via the BEFIT team, the other competent authorities of Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment.

3. Where a decision taken pursuant to paragraph 1 affects the BEFIT tax base, the competent authority of the Member State in which the BEFIT group member filed its appeal shall notify, via the BEFIT team, the filing authority and the competent authorities of the other Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment. The filing authority and the other competent authorities in Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment, shall issue amended tax assessments in accordance with Article 64, where appropriate.

4. Notwithstanding paragraph 3, no amended tax assessment shall be issued in order to adjust the BEFIT tax base, where the difference between the initially declared BEFIT tax base and the revised BEFIT tax base does not exceed the lower of EUR 10,000 or 1% of the BEFIT tax base.

Article 68

Judicial appeals in relation to the BEFIT information return

1. Where the decision pursuant to Article 66 has been confirmed or varied, the filing entity shall have the right to appeal directly to the courts of the Member State where it is resident for tax purposes or situated in the form of a permanent establishment within two months of the receipt of the decision of the administrative appeals body. A judicial appeal shall be governed by the law of the Member State where the filing entity is resident for tax purposes or situated in the form of a permanent establishment.

2. In making submissions to the court, the filing authority, as the case may be, shall consult, via the BEFIT team, the other competent authorities of Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment.

3. Where a decision is taken pursuant to paragraph 1, the filing authority shall immediately transmit, via the BEFIT team, an amended BEFIT information return to the competent authorities of all Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment. The filing authority and the other competent authorities in Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment, shall issue amended tax assessments in accordance with Article 64, where appropriate.

4. Notwithstanding paragraph 3, no amended tax assessment shall be issued in order to adjust the BEFIT tax base, where the difference between the initially declared BEFIT tax base and the revised BEFIT tax base does not exceed the lower of EUR 10,000 or 1% of the BEFIT tax base.

Article 69

Judicial appeals in relation to individual tax assessments

1. Where the decision pursuant to Article 67 has been confirmed or varied, a BEFIT group member shall have the right to appeal to the courts of the Member State where it is resident for tax purposes or situated in the form of a permanent establishment within two months after the decision of the administrative appeals body referred to in Article 67 was notified to it. The judicial appeal shall be governed by the law of the Member State in which the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment.

2. In making submissions to the court, the competent authority of a BEFIT group member, as the case may be, shall consult, via the BEFIT team, the other competent authorities of Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment.

3. Where a decision taken pursuant to paragraph 1 affects the BEFIT tax base, the competent authority of the Member State in which the BEFIT group member filed its appeal shall notify, via the BEFIT team, the filing authority and the competent authorities of the other Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment. The filing authority and the other competent authorities in Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment, shall issue amended tax assessments in accordance with Article 64, where appropriate.

4. Notwithstanding paragraph 3, no amended tax assessment shall be issued in order to adjust the BEFIT tax base, where the difference between the initially declared BEFIT tax base and the revised BEFIT tax base does not exceed the lower of EUR 10,000 or 1% of the BEFIT tax base.

Article 70

Statute of Limitation

Where the outcome of an administrative or judicial appeal requires amendments to the individual tax assessment of one or more member of a BEFIT group, Member States shall take the appropriate measures to ensure that such amendments remain possible, notwithstanding any time limits in the domestic laws of Member States.

SECTION 7
FINAL PROVISIONS

Article 71

Disclosure of information and documents

1. Information communicated between Member States in any form pursuant to this Directive shall be covered by the obligation of official secrecy as laid down in the national law of the Member State(s) which received such information. This information may be used for the administration and enforcement of the laws of the Member States concerning the taxes under this Directive.

2. Such information may also be used in connection with judicial and administrative proceedings that may involve penalties, initiated as a result of infringements of tax

law, without prejudice to the general rules and provisions governing the rights of defendants and witnesses in such proceedings.

Article 72

Penalties

Member States shall lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all necessary measures to ensure that they are implemented and enforced. Penalties and compliance measures provided for shall be effective, proportionate and dissuasive.

CHAPTER VI
FINAL PROVISIONS

Article 73

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011[36].
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 74

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 2(8) and 14(3) shall be conferred on the Commission for an indeterminate period starting on [the date of entry into force of this Directive].
3. The delegation of power may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it to the Council.

---

[36] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13)

6. A delegated act shall enter into force only if no objection has been expressed by the Council within a period of two months of notification of that act to the Council or if, before the expiry of that period, the Council has informed the Commission that it will not object. That period shall be extended by two months at the initiative of the Council.

Article 75

Informing the European Parliament

The European Parliament shall be informed by the Commission of the adoption of delegated acts, of any objection formulated to them, and of the revocation of the delegation of powers by the Council.

Article 76

Data Protection

1. Member States may process personal data under this Directive solely for the purpose of applying Chapter IV as well as for the purpose of examining and reaching consensus on the content of the BEFIT information return and processing and assessing individual tax returns under Chapter V. When processing personal data for the purposes of this Directive, the competent authorities of Member States shall be considered as controllers, within the meaning of Article 4(7) of Regulation (EU) 2016/679, within the scope of their respective activities under this Directive.

2. Information, including personal data, processed in accordance with this Directive shall be retained only for as long as necessary to achieve the purposes of this Directive, in accordance with each data controller’s national law on the statute of limitations, but in any case, no longer than 10 years.

Article 7

Review by the Commission of the operation of BEFIT

1. Five years after this Directive starts to apply, the Commission shall examine and evaluate its functioning and report to the European Parliament and the Council to that effect. The report shall, where appropriate, be accompanied by a proposal to amend this Directive.

2. Member States shall communicate to the Commission relevant information for the evaluation of the Directive in accordance with paragraph 3, including aggregated data on BEFIT group members which are resident for tax purposes in their jurisdiction and permanent establishments thereof operating in their jurisdiction, in order to properly assess the impact of the transition allocation rule and of Directive (EU) 2022/2523 as well as assessing the situation regarding Pillar One of the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy agreed by the OECD/G20 Inclusive Framework on BEPS on 8 October 2021.

3. The Commission shall, by means of implementing acts, specify the information to be provided by Member States for the purpose of evaluating the functioning of this Directive, as referred to in paragraph 2, as well as the format and the conditions for the communication of such information.

4. Information communicated to the Commission under paragraph 2 shall be kept confidential by the Commission in accordance with the provisions applicable to Union institutions and Article 76 of this Directive.

5. Information communicated to the Commission by a Member State in accordance with paragraph 2, as well as any report or document produced by the Commission using such information, may be transmitted to other Member States. The transmitted information shall be covered by the obligation of official secrecy, as laid down regarding similar information in the national law of the Member State(s) which received it.

Article 78
Transposition

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2028. They shall forthwith communicate to the Commission the text of those provisions.

2. They shall apply those provisions from 1 July 2028.

3. When Member States adopt those provisions, they shall include a reference to this Directive or accompany them with such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

4. As soon as this Directive has entered into force, Member States shall ensure that the Commission is informed, in sufficient time for it to submit its comments on any draft laws, regulations or administrative provisions which they intend to adopt in the field covered by this Directive.

Article 79
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 80
Addressees

This Directive is addressed to the Member States.

Done at Strasbourg,

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Council Directive (EU) 2023/XXX of XX September 2023 on Business in Europe: Framework for Income Taxation (BEFIT)

1.2. Policy area(s) concerned

Tax policy 1.3. The proposal/initiative relates to:

☒ **a new action**

☐ **a new action following a pilot project/preparatory action**[37]

☐ **the extension of an existing action**

☐ **a merger or redirection of one or more actions towards another/a new action**

1.4. Objective(s)

1.4.1. General objective(s)

The Proposal aims to develop a common corporate tax framework in support of the internal market. There is currently no common corporate tax system for computing the taxable income of EU businesses, but 27 different national systems, making it difficult and costly for companies to do business across the internal market. The Proposal accommodates the need for, and provides a degree of tax certainty and easier tax compliance with, larger businesses that have taxable presence in multiple Member States. For this, the proposal notably builds on the internationally agreed achievements of the OECD/G20 Inclusive Framework Two Pillar Approach.

1.4.2. Specific objective(s)

Specific objective No 1) The first specific objective of the BEFIT proposal is **to reduce compliance costs** for EU businesses. As the proposal will provide the EU businesses with a simplified set of tax rules, compared to the current environment, it should take less resources for businesses to comply. 2) Secondly, the BEFIT proposal aims to **encourage cross-border expansion**, in particular, of SMEs. 3) Furthermore, the BEFIT proposal will contribute to **reducing distortions** that influence business decisions and mitigate fragmentation in the internal market. Several aspects of the BEFIT proposal could help to achieve this objective. Element 1 will provide a fair competition for groups of companies within its scope by establishing a uniform set of corporate tax rules for businesses operating in the internal market.

[37] As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

4) Finally, the BEFIT proposal also aims **to reduce the risk of double and over-taxation and tax disputes**. The proposal will include several aspects fulfilling this objective.

1.4.3. *Expected result(s) and impact*

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The Proposal introduces a common framework of corporate tax rules that will replace the current national corporate tax systems for the businesses in scope. It will chiefly aim to bring simplification for taxpayers and encourage growth and investment in the internal market while levelling the playing field in which businesses operate.

1.4.4. *Indicators of performance*

Specify the indicators for monitoring progress and achievements.

Specific Objectives	**Indicators**	**Measurement Tools**
To reduce compliance costs for EU businesses	Implementation and first BEFIT running costs for groups under Element 1, relative to turnover Training costs for human resources in business and tax administrations	Survey/questionnaire for large groups, by DG TAXUD, possibly with external assistance, in cooperation with Member State tax authorities
	Number of groups that opted in Element 1	Data received by DG TAXUD from Member State tax authorities, which would have this information available as 'Filing Authorities'
	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	Data collected by DG TAXUD on new MAPs and numbers of cases under the Arbitration Convention and Directive on tax dispute resolution mechanisms
	Compliance costs for SMEs under Element 2, relative to their turnover and to comparable SMEs that do not apply HOT rules	Survey/questionnaire for SMEs, by the European Commission, possibly with external assistance, in cooperation with Member State tax authorities

To encourage cross-border expansion, in particular for SMEs	Number of SMEs eligible to opt in Element 2 Number of SMEs that opted in Element 2 Number of SMEs that expanded cross-border by setting up a permanent establishment Number of SMEs leaving the scope of Element 2 by setting up a subsidiary Number of large groups that fall under the mandatory scope of Element 1	Survey on aggregated data by DG TAXUD for Member State tax authorities, which would have this information available Survey/questionnaire for SMEs, by the European Commission, 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'
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

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

After the BEFIT Information Return is filed, and it is known which entities are included in the BEFIT Group, the representatives of the Filing Authority would form together with the representatives of the other relevant local tax authorities a BEFIT team for the respective BEFIT Group. This means that for each BEFIT Group there would be such a BEFIT team.

To facilitate the operation and communication of the officials within each BEFIT team, the Commission will have to adopt the necessary practical arrangements, including measures to standardise the communication of the information between the members of BEFIT teams through making use of a BEFIT collaborative tool. In terms of timing for setting up the BEFIT collaborative tool, Member States and the Commission would require a period of time after adoption of the Proposal to be able to put the systems in place, to allow the operation and communication of BEFIT teams.

1.5.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention, which is additional to the value that would have been otherwise created by Member States alone.*

Individual actions by Member States would not provide any efficient and effective solution to ensuring a feasible common corporate tax framework. Instead of each Member State separately dedicating human resources to assessing the tax liabilities of the same cross-border groups, these available resources will now be used collectively in a more effective and targeted manner through the BEFIT teams. An EU approach appears preferable, as it can facilitate the operation and communication of these BEFIT teams and have more coherence and a reduction of administrative burden for taxpayers and tax authorities.

1.5.3. *Lessons learned from similar experiences in the past*

The initiative is a new mechanism. The preferred option in the Impact Assessment is the Hybrid One Stop Shop. This option means that the BEFIT Information Return would be dealt with centrally via the Filing Authority whereas individual tax returns, audits and dispute settlement would remain primarily local in conformity with national tax sovereignty. This option prioritises simplicity and maintains the administrative burden for tax administrations to a reasonable low whereas also creates the best possible balance between the simplicity of an One Stop Shop 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 key items of the BEFIT Information Return and provide a degree of tax certainty, which should decrease compliance costs, at least gradually, and foster the Internal market as an environment of growth and investment.

1.5.4. *Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

In the Commission Communication on Business Taxation in the 21st Century the Commission committed to table a legislative proposal setting out union rules for Business in Europe: Framework for Income Taxation (BEFIT). Where possible, the Proposal will make use the procedures, arrangements and IT tools already established or under development under the DAC.

1.5.5. *Assessment of the different available financing options, including scope for redeployment*

Implementation costs for the initiative will be financed by the EU budget concerning only the central components for the BEFIT collaborative tool. This will be financed through redeployments from within the Fiscalis envelope. Otherwise, it will be for Member States to implement the measures envisaged.

1.6. Duration and financial impact of the proposal/initiative

☐ **limited duration**

– ☐ in effect from [DD/MM]YYYY to [DD/MM]YYYY

1. ☐ Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

☒ **unlimited duration**

– Implementation with a start-up period from YYYY to YYYY,

1. followed by full-scale operation.

1.7. Method(s) of budget implementation planned[38]

☒ **Direct management** by the Commission

– ☒ by its departments, including by its staff in the Union delegations;

2. ☐ by the executive agencies

☐ **Shared management** with the Member States

☐ **Indirect management** by entrusting budget implementation tasks to:

– ☐ third countries or the bodies they have designated;

3. ☐ international organisations and their agencies (to be specified);

– ☐ the EIB and the European Investment Fund;

4. ☐ bodies referred to in Articles 64 and 65 of the Financial Regulation;

– ☐ public law bodies;

5. ☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;

– ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

6. ☐ bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

– *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

As regards the BEFIT collaborative tool which will facilitate the operation and communication of BEFIT teams, the Commission is responsible for the development and operation of such a tool. Member States will undertake to create the appropriate domestic infrastructure that will enable the communication of the information between members of BEFIT teams through the BEFIT collaborative tool.

38 Details of budget implementation methods and references to the Financial Regulation may be found on the BUDGpedia site: https://myintracomm.ec.europa.eu/corp/budget/financial-rules/budget-implementation/Pages/implementation-methods.aspx

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

The Commission will continuously monitor the effectiveness and efficiency of the Proposal, using the following pre-defined indicators: implementation and first BEFIT running costs; number of groups of companies in the mandatory scope of the proposal, as well as the number of companies that voluntarily opted in; evolution of the compliance costs of both large groups and SMEs in the EU; and the number of double taxation disputes.

In addition, 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.

An evaluation will take place five years after the implementation of the Proposal which will allow the Commission to review the results of the policy with respect to its objectives as well as the overall impacts in terms of tax revenue, businesses and the internal market.

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

The implementation of the Proposal will rely on the competent authorities (tax administrations) of the Member States. They will be responsible for financing their own national systems and adaptations necessary to enable the communication of the information between members of BEFIT teams through the BEFIT collaborative tool.

The Commission will set up the infrastructure, the BEFIT collaborative tool, that will facilitate the operation and communication of BEFIT teams. The BEFIT collaborative tool will thus be implemented in direct management mode given the nature of the infrastructure required for the BEFIT teams, explained above. The Commission is best placed to provide this. There is no need for indirect management. Under shared management, each Member would develop its own tool, which would not be practical, especially because there would be many BEFIT teams connecting many different combinations of Member States. At Commission level, IT systems have been set up which will be used for this Proposal. The Commission will be financing the development of this BEFIT collaborative tool, as well as the hosting, content management, encryption, and annual maintenance of the tool.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

No risks have been identified as the BEFIT collaborative tool will be a new infrastructure and therefore has no precedent. The internal control system will rely on the systems in place for existing funding programmes under the direct management of DG TAXUD (e.g. Fiscalis). As such this should not result in additional risks.

The overall internal control system in place at DG TAXUD for procurements (based upon thorough ex-ante verification of 100% of the related transactions), allowed keeping the error rates for previous funding programmes (e.g. Fiscalis) well below the materiality threshold (i.e. at an estimated level of 0,5%). This control system will also be used and applied for the BEFIT collaborative tool thus ensuring error rates well below the materiality threshold.

The main elements of the control strategy are:

Procurement contracts

The control procedures for procurement defined in the Financial Regulation: any procurement contract is established following the established procedure of verification by the services of the Commission for payment, taking into account contractual obligations and sound financial and general management. Anti-fraud measures (controls, reports, etc.) are foreseen in all contracts concluded between the Commission and the beneficiaries. Detailed terms of reference are drafted and form the basis of each specific contract. The acceptance process follows strictly the TAXUD TEMPO methodology: deliverables are reviewed, amended if necessary and finally explicitly accepted (or rejected). No invoice can be paid without an "acceptance letter".

Technical verification of procurement

DG TAXUD performs controls of deliverables and supervises operations and services carried out by contractors. It also conducts quality and security audits of their contractors on a regular basis. Quality audits verify the compliance of the contractors' actual processes against the rules and procedures defined in their quality plans. Security audits focus on the specific processes, procedures and set-up.

In addition to the above controls, DG TAXUD performs the traditional financial controls:

Ex-ante verification of commitments

All commitments in DG TAXUD are verified by the Head of the Finances and the HR business correspondent Unit. Consequently, 100% of the committed amounts are covered by the ex-ante verification. This procedure gives a high level of assurance as to the legality and regularity of transactions.

Ex-ante verification of payments

100% of payments are verified ex-ante. Moreover, at least one payment (from all categories of expenditures) per week is randomly selected for additional ex-ante verification performed by the head of the Finances and HR business correspondent Unit. There is no target concerning the coverage, as the purpose of this verification is to check payments "randomly" in order to verify that all payments were prepared in line with the requirements. The remaining payments are processed according to the rules in force on a daily basis.

Declarations of the Authorising Officers by Sub-Delegations (AOSD)

All the AOSD sign declarations supporting the Annual Activity Report for the year concerned. These declarations cover the operations under the programme. The AOSD declare that the operations connected with the implementation of the budget have been executed in accordance with the principles of the sound financial management, that the management and control systems in place provided satisfactory assurance concerning the legality and regularity of the transactions and that the risks associated to these operations have been properly identified, reported and that mitigating actions have been implemented.

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

The controls established enable DG TAXUD to have sufficient assurance of the quality and regularity of the expenditure and to reduce the risk of non-compliance. The above control strategy measures reduce the potential risks below the target of 2% and reach all beneficiaries. Any additional measures for further risk reduction would result in disproportionately high costs and are therefore not envisaged. The overall costs linked to implementing the above control strategy – for all expenditures under Fiscalis programme – are limited to 1.6% of the total payments made. It is expected to remain at the same ratio for this initiative. The programme control strategy limits the risk of non-compliance to virtually zero and remains proportionate to the risks entailed.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

The European Anti-fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom, EC) No 2185/964 with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or decision or a contract funded under this Regulation.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

(1) Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
		Diff./Non-diff.[39]	from EFTA countries[40]	from candidate countries and potential candidates[41]	fromother third countries	other assigned revenue
1 - Single Market, Innovation and Digital	03 04 01 Cooperation in the field of taxation (Fiscalis)	Diff	NO	NO	NO	NO

[39] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
[40] EFTA: European Free Trade Association.
[41] Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

– ☐ The proposal/initiative does not require the use of operational appropriations

2. ☒ The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

Heading of multiannual financial framework	Number 1	Single Market, Innovation and Digital

DG: TAXUD			2025[42]	2026	2027							**TOTAL**
○ Operational appropriations												
03 04 01 Cooperation in the field of taxation (Fiscalis)	Commitments	(1a)		0,6	0,6				.	.	.	
	Payments	(2a)	0,3									
Appropriations of an administrative nature financed from the envelope of specific programmes[43]												

42 The year in which implementation of the proposal/initiative starts is unknown. As such the year 2025 is taken as an assumption.

43 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

TOTAL appropriations for DG TAXUD	Commitments	=1a+1b +3		0,6	0,6					
	Payments	=2a+2 b +3	0,3							
○ TOTAL operational appropriations	Commitments	(4)		0,6	0,6	0,6				
	Payments	(5)	0,3							
○ TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADING <….> of the multiannual financial framework	Commitments	=4+ 6		0,6	0,6	0,6				
	Payments	=5+ 6	0,3							

Heading of multiannual financial framework	**7**	'Administrative expenditure'

This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the Annex to the Legislative Financial Statement (Annex 5 to the Commission decision on the internal rules for the implementation of the Commission section of the general budget of the European Union), which is uploaded to DECIDE for interservice consultation purposes.

EUR million (to three decimal places)

	Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		**TOTAL**
DG: <…….>							
○ Human resources							
○ Other administrative expenditure							

TOTAL DG <…….>	Appropriations								

TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)								

EUR million (to three decimal places)

		Year **N**[44]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	Commitments								
	Payments								

3.2.2. Estimated output funded with operational appropriations

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs			2025	2026	2027		Enter as many years as necessary to show the duration of the impact (see point 1.6)	**TOTAL**
	OUTPUTS							

44 Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

⇩	Type[45]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[46]…																		
- Hosting and support						0,6		0,6										0,6
- Output																		
- Output																		
Subtotal for specific objective No 1						0,6		0,6										0,6
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
TOTALS						0,6		0,6										0,6

45 Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

46 As described in point 1.4.2. 'Specific objective(s)…'

3.2.3. *Summary of estimated impact on administrative appropriations*

– ☒ The proposal/initiative does not require the use of appropriations of an administrative nature

– ☐ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year **N** [47]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
HEADING 7 of the multiannual financial framework								
Human resources								
Other administrative expenditure								
Subtotal HEADING 7 of the multiannual financial framework								
Outside HEADING 7[48] of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature								
Subtotal outside HEADING 7 of the multiannual financial framework								
TOTAL								

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

47 Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

48 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

3.2.3.1. Estimated requirements of human resources

– ☐ The proposal/initiative does not require the use of human resources.

3. ☒ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

	2025	2026	2027				
○ Establishment plan posts (officials and temporary staff)							
20 01 02 01 (Headquarters and Commission's Representation Offices)	0,2	0,1	0,1				
20 01 02 03 (Delegations)							
01 01 01 01 Indirect research)							
01 01 01 11 (Direct research)							
Other budget lines (specify)							
○ External staff (in Full Time Equivalent unit: FTE)[49]							
20 02 01 (AC, END, INT from the 'global envelope')							
20 02 03 (AC, AL, END, INT and JPD in the delegations)							
XX 01 xx **yy zz**[50] - at Headquarters							
XX 01 xx **yy zz**[50] - in Delegations							
01 01 01 02 (AC, END, INT - Indirect research)							
01 01 01 12 (AC, END, INT - Direct research)							
Other budget lines (specify)							
TOTAL	**0,2**	**0,1**	**0,1**				

XX is the policy area or budget title concerned

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	Business Manager for the BEFIT Collaborative Tool
External staff	

49 AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

50 Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

3.2.4. *Compatibility with the current multiannual financial framework*

The proposal/initiative:

– ☒ can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

The operational expenditure will be financed from within the foreseen envelope for the Fiscalis programme, under MFF Heading 1.

– ☐ requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

– ☐ requires a revision of the MFF.

3.2.5. *Third-party contributions*

The proposal/initiative:

– ☒ does not provide for co-financing by third parties

4. ☐ provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year **N**[51]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

51 Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

3.3. Estimated impact on revenue

– ☒ The proposal/initiative has no financial impact on revenue.

5. ☐ The proposal/initiative has the following financial impact:

(a) ☐ on own resources

a. ☐ on other revenue

(b) please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[52]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article ………….								

For assigned revenue, specify the budget expenditure line(s) affected.

[…]

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

[…]

52 As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.