

BEFIT as a Step Towards an Internal Market Without Tax Obstacles

An Analysis of the Benefits of BEFIT for Groups Operating in the Internal Market

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Abstract

In September 2023, the European Commission presented the BEFIT directive proposal (Business in Europe: Framework for Income Taxation) aimed at harmonising corporate tax bases in the European Union. This thesis examines the benefits it may bring to groups operating in the internal market. From the perspective of groups, BEFIT aims - through the harmonisation of corporate tax bases - to reduce compliance costs, encourage cross-border investment, create a more level playing field and improve legal certainty. The effects of BEFIT are assessed through these four main objectives.

The thesis analyses how these objectives are realised in practice and critically evaluates the suitability of BEFIT for achieving its stated goals. The methods used are the doctrinal legal method and the *de lege ferenda* method. Doctrinal legal method is used to assess the content of the directive proposal and its interpretative possibilities, while the *de lege ferenda* method is employed to identify areas in need of development and to make recommendations about them.

The key finding is that the harmonisation of corporate tax bases has the potential to generate significant benefits for groups operating in the internal market. However, BEFIT also contains certain issues that pose a real threat to the realisation of those benefits. Overall, BEFIT appears to offer groups the intended benefits, but the issues it entails are serious enough to prevent much of this potential from being fully realised. Therefore, the Commission should reconsider the initiative and introduce necessary amendments.

Key words: BEFIT, group, taxation.

Tiivistelmä

Euroopan komissio antoi syyskuussa 2023 BEFIT-direktiiviehdotuksen (Business in Europe: Framework for Income Taxation) yhteisöveropohjien harmonisoimiseksi Euroopan Unionissa. Tutkielmani tarkastelee sen tuottamia hyötyjä sisämarkkinoilla toimiville konserneille. BEFIT:n tavoitteena on konsernien näkökulmasta yhteisöveropohjien harmonisaation kautta pyrkiä vähentämään veronmaksun noudattamiskustannuksia, lisäämään rajatylittäviä investointeja, luomaan tasapuolisemmat kilpailuolosuhteet sekä parantamaan oikeusvarmuutta. BEFIT:n vaikutuksia tarkastellaan näiden neljän päätavoitteen kautta.

Tutkielmassa analysoidaan, miten tavoitteet konkretisoituvat, sekä arvioidaan kriittisesti BEFIT:n soveltuvuutta sen omien tavoitteiden saavuttamiseksi. Tutkielmassa käytän metodeina lainoppia sekä *de lege ferenda*-metodia. Lainoppia käytän arvioidakseni lakiehdotuksen sisältöä ja tulkintamahdollisuuksia. *De lege ferenda*-metodia käytän kehityskohteiden arviointiin ja suositusten tekemiseen.

Keskeisenä havaintona on, että yhteisöveropohjien harmonisaatiolla on potentiaalia tuottaa huomattavia hyötyjä sisämarkkinoilla toimiville konserneille. BEFIT sisältää kuitenkin eräitä ongelmia, jotka asettavat hyötyjen toteutumisen todelliseen vaaraan. Kokonaisuudessaan BEFIT vaikuttaa tuottavan konserneille tavoiteltuja hyötyjä. Ongelmat ovat kuitenkin siinä määrin vakavia, että merkittävä osa potentiaalista jää toteutumatta. Täten komission olisi syytä tarkastella aloitetta uudelleen ja tehdä siihen tarvittavia muutoksia.

Avainsanat: BEFIT, konserni, verotus.

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Abbreviations

CIT	Corporate Income Tax
EESC	European Economic and Social Committee
FDI	Foreign Direct Investment
GAAP	Generally Accepted Accounting Standards
IFRS	International Financial Reporting Standards

1 Introduction

The European Union's aim is to create an economic area without internal frontiers and regulatory burdens¹. Although the EU has succeeded in breaking down barriers to trade in the internal market, major taxation-based obstacles and distortions to trade still exist, which prevent businesses from reaching their full potential. The integration of tax legislation by the EU in recent years has considerably reduced businesses' leeway for international tax planning and at the same time increased the complexity of tax systems.² In light of recent regulatory developments, businesses in the internal market would benefit from a legislative proposal that eases rather than adds to the burden of cross-border business activity.

The European Commission launched a project towards a common corporate tax base in its communication “Towards an Internal Market without tax obstacles” in 2001³. Business in Europe: Framework for Income Taxation (BEFIT)⁴ is the latest of many attempts to introduce a common EU-wide system for the calculation of the corporate tax base for groups operating in the internal market⁵. It is largely based on the Commission’s earlier proposals, notably the 2011 CCCTB proposal and the 2016 CCTB and CCCTB proposals. Although there are considerable differences between the proposals, the same objective, that is, to overcome the taxation-based obstacles to trade faced by groups in numerous member states, remains. BEFIT’s aim is to help groups through harmonisation to operate in an internal market that still does not meet its stated goal of non-existent regulatory barriers. At this moment BEFIT is in the Council of the European Union, where the technical examination of the proposal is ongoing in the Working Party on Tax Questions⁶.

¹ European Commission, ‘Internal Market’ (EUR-Lex, 2024) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:internal_market accessed 13 May 2025

² European Parliament, Removal of Taxation-Based Obstacles and Distortions in the Single Market in Order to Encourage Cross-Border Investment (Study, Directorate-General for Internal Policies, Policy Department for Economic, Scientific and Quality of Life Policies, July 2022) PE 733.964

³ European Commission, Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee – Towards an Internal Market without Tax Obstacles COM(2001) 582 final

⁴ Council Directive on Business in Europe: Framework for Income Taxation (BEFIT), Strasbourg, 12 Sep. 2023 COM(2023) 532 final

⁵ European Parliamentary Research Service, BEFIT – Business in Europe: Framework for Income Taxation (EPRS_BRI(2023)754631, European Parliament, 2023)

[https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2023\)754631](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2023)754631) accessed 3 April 2025

⁶ European Parliament, Business in Europe: Framework for Income Taxation (BEFIT) (Legislative Train Schedule, 2024) <https://www.europarl.europa.eu/legislative-train/package-business-taxation/file-befit> accessed 3 April 2025

In this thesis, I apply the doctrinal legal method as I examine the content of the proposed legislation and make interpretative claims about it⁷. Using my source material, I seek to analyse its effects on groups in the internal market. I also use the *de lege ferenda* method to a small extent in relation to certain changes that could be made to the BEFIT proposal⁸.

In this thesis I will assess how harmonisation of corporate taxation through BEFIT helps groups operating in the internal market. In addition to this, I will examine the issues included in the proposal and what kinds of changes should be made to address them. The intention is not to go through the tax technicalities in too much detail, but to look at the proposal from a broader view.

It is important to emphasise that BEFIT is still just a proposal. As it is still in preparation, its final content may change even substantially. The initiative will be evaluated in the form in which it has been adopted by the Commission.

Chapter 2 begins with an explanation of the legal basis of BEFIT. Then I will turn to the four main objectives of BEFIT, in other words, how it aims to support groups operating in the internal market. I will then identify the most important articles for achieving the objectives and briefly explain their content.

Chapter 3 includes an analysis on the four objectives: reduction of tax compliance costs, encouraging cross-border investment, creating a more level playing field, and increasing legal certainty. Each objective will be examined individually, each time beginning with an assessment of BEFIT's strengths in advancing the goal, followed by a discussion on its weaknesses.

In chapter 4, I will look at certain issues within BEFIT that call its suitability into question. In addition, I will assess what kinds of changes should be made regarding them.

Chapter 5 concludes the thesis.

⁷ Ari Hirvonen, *Mitkä metodit?: opas oikeustieteen metodologiaan* (Yleisen oikeustieteen julkaisu 17 2011)

⁸ The *de lege ferenda* is a future-oriented method, whose purpose is to propose how a law should be changed or developed. It does not have a universally accepted definition. See for example Minni Leskinen, 'De lege ferenda -tutkimuksesta metodina ja tieteenä' (2022) 7–8 *Lakimies* 1158

2 Business in Europe: Framework for Income Taxation

2.1 Legal Basis

Direct taxation is not explicitly mentioned as one of the areas of legislative competence in the Treaty on the Functioning of the European Union (TFEU)⁹. It therefore falls within the shared competence of the EU and the member states. This means that article 115 of TFEU remains as the only way to harmonize direct taxation including business taxation¹⁰. Article 115 TFEU gives the Council the power to issue directives that directly affect the establishment or functioning of the internal market. In practice all harmonization in the field of direct taxation has been issued under article 115 TFEU. Article 115 TFEU, however, requires unanimity between member states, which has been the main political issue in harmonizing direct taxation.

Issuing a directive under article 115 TFEU requires that the directive directly affects the establishment or functioning of the internal market. This in turn means that the Commission must justify the need to regulate the matter at the Union level. The Commission justifies it by stating that the different tax systems of the 27 member states cause fragmentation in the internal market and hinders cross-border business activity. BEFIT aims to remove taxation-based obstacles to trade through harmonisation as these issues cannot be effectively solved nationally.¹¹

2.2 Objectives

BEFIT sets numerous goals to help groups operate in the internal market more effectively. The broad objective, in the Commission's words key objective of BEFIT, is to create a simplified corporate tax framework¹². Businesses that conduct cross-border activities within the Union must apply up to 27 different corporate tax regimes as there are 27 member states. This makes it more difficult and costly to operate across borders, less attractive to expand business activities to another member state, and places companies in an unequal competitive position. The difference in tax systems between member states is seen as one of the major barriers that businesses operating in the internal market face¹³. To promote groups, these

⁹ European Parliament, Direct taxation: Personal and company taxation (Fact Sheets on the European Union, 2024) <https://www.europarl.europa.eu/factsheets/en/sheet/80/direct-taxation-personal-and-company-taxation> accessed 4 April 2025

¹⁰ Marjaana Helminen, *EU-vero-oikeus* (Alma Talent Oy 2021)

¹¹ BEFIT Proposal, Explanatory Memorandum

¹² BEFIT Proposal, Explanatory Memorandum

¹³ Enrico Letta, *Much More Than a Market – Speed, Security, Solidarity* (Report to the European Council, April 2024)

barriers to cross-border activities need to be removed¹⁴. Differences in tax systems lead to competitive disadvantages for EU businesses compared to businesses operating in similar sized markets with one set of tax rules¹⁵.

BEFIT aims to reduce compliance costs which is also a broader EU policy objective. The Commission has taken a position on the costs of tax compliance and how to significantly reduce them in recent years¹⁶. Compliance costs that arise from operating in several member states are seen as a major burden for businesses. High costs of tax compliance are keeping businesses from making the most of opportunities present in the internal market¹⁷. While recent EU¹⁸ and national¹⁹ legislation on business taxation has battled against important causes, for example aggressive tax planning, it has created even more complexity for businesses to comply with their tax obligations. BEFIT aims to address this problem and take business taxation towards the EU's policy of reducing compliance costs all around. The Commission states that BEFIT could reduce the costs of tax compliance of businesses by 65%²⁰.

Increasing cross-border investments is an important objective of BEFIT. The Commission considers the differences in the tax systems of member states to discourage cross-border investments²¹. This in turn harms the functioning of the internal market. Harmonizing the tax systems is seen as a major facilitator of growth and private investment²². A common rulebook for businesses to calculate their tax expenses reduces the urgency to make cross-border investment decisions on the grounds of tax optimisation instead of other business factors²³. Expanding business across borders would become easier without the need to adapt to a new tax environment.

BEFIT aims to create a more level playing field for businesses operating at the Union level. The 27 different tax systems place businesses to unequal positions in the market. In the

¹⁴ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – The Single Market at 30 COM(2023) 162 final

¹⁵ BEFIT Proposal, Explanatory Memorandum

¹⁶ Single Market at 30 (n14) and European Commission, Communication from the Commission to the European Parliament and the Council – Business Taxation for the 21st Century COM(2021) 251 final

¹⁷ European Commission, The Future of European Competitiveness: A Competitiveness Strategy for Europe (Report by Mario Draghi, 9 September 2024)

¹⁸ Georg Kofler, 'Editorial: The "Decluttering" of EU Direct Tax Law' (2025) 34(1) *EC Tax Review* 1

¹⁹ Business Taxation for the 21st Century (n16)

²⁰ European Commission, 'Business in Europe: Framework for Income Taxation (BEFIT)' (European Commission, 12 September 2023) https://commission.europa.eu/business-europe-framework-income-taxation-befit_en accessed 9 April 2025

²¹ BEFIT Proposal, Explanatory Memorandum and Business Taxation for the 21st Century (n16)

²² Letta report (n13)

²³ Business Taxation for the 21st Century (n16)

absence of EU legislation member states have adopted differentiating rules to try to meet the challenges of for example globalisation and digitalisation. Different rules lead to different interpretations by national tax authorities. This has led to distortions in the internal market.²⁴ Reducing legal uncertainty is one of the objectives of BEFIT. The differences in rules increase legal uncertainty for companies operating in several member states, and especially for those who have recently expanded or are expanding their operations to new countries. Legal uncertainty leads to tax disputes, which in turn increase tax compliance costs. BEFIT is expected to improve tax certainty and decrease the number of tax disputes that stem from the differences in tax rules. The proposal includes the creation of an administration system aimed at increasing legal certainty within the new common tax system.²⁵

2.3 Key articles

BEFIT is deeply inspired by OECD's Two-Pillar Solution, which is mentioned numerous times in the proposal. While the key objective of BEFIT is to create a simplified corporate tax framework²⁶, it would be problematic if it deviated significantly from Pillar Two²⁷ which has already been implemented in the EU with a directive²⁸. The Commission sees BEFIT as a step forward from the agreements made by OECD²⁹ and even explicitly states in the proposal that BEFIT is built on the achievements of the Two Pillars³⁰.

BEFIT's scope is defined in article 2. The scope of application is divided into two: it is mandatory for certain groups while its application is optional for other groups. It is mandatory for groups with annual consolidated turnover of over EUR 750 million in at least two of the last four fiscal years. However, it only applies to entities that the ultimate parent entity (UPE) directly or indirectly has over 75% of ownership or profit rights and thus is part of the BEFIT group. In addition, only companies and permanent establishments that reside in the EU can be part of a BEFIT group. If the UPE of the group resides in a non-EU country, BEFIT will only apply if the consolidated revenue of the entities that reside in the EU combine for over 5% of the overall revenue of the group, and the revenue exceeds EUR 50 million in at least two of

²⁴ BEFIT Proposal, preamble, point 2

²⁵ BEFIT Proposal, preamble, point 5

²⁶ BEFIT Proposal, preamble, point 3

²⁷ Pillar Two is part of OECD's Base Erosion and Profit Shifting project. It introduces a global minimum corporate tax rate of 15% for multinational enterprises regardless of where they are headquartered. Its objective is to tackle profit shifting and tax base erosion. Pillar Two was formally adopted by the OECD in 2021.

²⁸ 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 [2022] OJ L328/1

²⁹ Business Taxation for the 21st Century (n16)

³⁰ BEFIT Proposal, Explanatory Memorandum

the last four fiscal years. Application is optional for groups that prepare consolidated accounts but do not meet the requirement of EUR 750 million.³¹

Rules for the determination of the preliminary tax result are found in Chapter 2 of BEFIT. In other words, it contains rules on how each member, regardless of which country it is in, calculates its own annual profit or loss before it is aggregated with other members' results. The preliminary tax result of a BEFIT group member is based on its net income or loss determined by financial accounting that is prepared with a GAAP of an EU member state or IFRS. Articles 8-41 contain adjustments that are made to the net income or loss before aggregating every member's tax results. There are rules on depreciation, timing and entering and leaving a BEFIT group.³²

Chapter 3 sets rules on the calculation of the BEFIT tax base and how it is allocated between the group members. BEFIT deploys a formulary apportionment regime. Under formulary apportionment profits and losses of every group member are summed together and then allocated to the members, according to a formula, which can be based on different factors such as labour, sales, intangibles, and assets.³³ According to article 42, the BEFIT tax base is calculated by aggregating the preliminary tax results of each group member. If the tax base is positive, it is allocated in accordance with article 45. If it is negative, the loss is carried forward and set off against the next positive tax base. There is no time limit set for loss carry forward.³⁴

BEFIT includes only a transition allocation rule, article 45, which is valid until 2035 at the latest. By then it must be replaced by a permanent allocation method. The transition allocation rule is based on group members' average of the taxable results in the three previous fiscal years. For years in which BEFIT has not been in force, the taxable result is based on national rules. For a group member whose taxable result is negative, the baseline allocation percentage is zero, which means that no-profit is allocated to that entity.³⁵

In addition to the adjustments defined in articles 8-41, article 48 (1) includes adjustments that are made to the already allocated part. Furthermore, article 48 (2) gives member states the power to add national adjustments in addition to those mentioned above. This deviates from

³¹ BEFIT proposal, art 2

³² BEFIT proposal, art 8-41

³³ Sebastian Eichfelder, Frank Hechtner and Jochen Hundsdorfer, 'Formula Apportionment: Factor Allocation and Tax Avoidance' (2018) 27(4) *European Accounting Review* 649

³⁴ BEFIT proposal, art 42

³⁵ BEFIT proposal, art 45

the premise of the legislative proposal, which aims to establish a single set of rules under which group members calculate their corporate tax base regardless of the member state they are located in. However, article 48 (2) allows member states to introduce their own national adjustments, which may not be applied elsewhere.³⁶

Chapter 5 contains rules on administration and procedures. According to article 57 the filing entity files the BEFIT information return of the BEFIT group with the filing authority. The filing entity is defined in article 3 to be the UPE when it is located in a member state, or in the case when the UPE is not located in a member state the entity residing in a member state that has been appointed by the BEFIT group to fulfil the obligations set in article 57.³⁷ Although the BEFIT proposal refers to a one-stop-shop³⁸, filing of the BEFIT information does not replace national tax returns but each group member still needs to file a tax return in their jurisdiction as stated in article 62.³⁹

The rules on BEFIT teams' establishment and role are found in articles 60 and 61. BEFIT teams include representatives from all of the tax authorities from countries where a member of a BEFIT group is located. Their purpose is to review the BEFIT information return and find a consensus on its content.⁴⁰ They are established to provide consultation and coordination in order to reduce disputes and to efficiently resolve problems. The role of BEFIT teams is to handle groups' tax returns more efficiently, as instead of each member state tax authority dealing with the tax obligations of a cross-border group individually, they assess them together as a single entity.⁴¹

³⁶ BEFIT proposal, art 48

³⁷ BEFIT proposal, art 57

³⁸ Groups can handle their tax matters centrally with a single tax authority. See BEFIT Proposal, Explanatory Memorandum

³⁹ BEFIT proposal, art 62

⁴⁰ BEFIT proposal, art 60 and 61

⁴¹ BEFIT Proposal, Explanatory Memorandum

3 What does BEFIT bring to the table?

3.1 Reduction of tax compliance costs

Tax compliance costs can be defined as costs deriving from complying with requirements of a tax system⁴². For businesses these include for example filing of tax returns and record keeping for tax purposes but also ex post activities such as tax audits. These costs can be seen as wasted resources for businesses as they raise expenditure but do not add any value.⁴³ Therefore, from the point of view of businesses and the overall productivity of an economy, the costs should be as low as possible as then the resources could be allocated to more productive uses.

Although EU's aim has been to reduce tax compliance costs, they have risen significantly in recent times, by 114% between 2014 to 2019⁴⁴. As a result, businesses operating in the internal market face sizable tax compliance costs as they are estimated to be 1,9% of businesses turnover. However, the relative costs for large and medium sized enterprises are significantly lower compared to smaller ones, 0,1% for LSE and 0,3% for medium sized, as they can take advantage of economies of scale. For large enterprises, 17% of these costs land on CIT.⁴⁵ In addition to the size of the company, a determining factor for tax compliance costs is whether a company conducts business only domestically or cross-borders⁴⁶.

BEFIT's impact on reducing compliance costs are not easy to estimate accurately.

Compliance costs are usually researched by surveys that involve methodological challenges and cost measurement problems⁴⁷. This problem has been identified for example in a study analysis on tax compliance costs by the European Parliament⁴⁸. Due to similarities between CCCTB and BEFIT, the results of studies on CCCTB can be used to help to evaluate the impact of BEFIT⁴⁹. Despite these problems, it seems clear that the costs faced by businesses

⁴² John Hudson and J.M. Teera, 'Taxation' in Kimberly Kempf-Leonard (eds), *Encyclopedia of Social Measurement* (Amsterdam : Elsevier ; Miamisburg, OH : ScienceDirect online distributor, 2005)

⁴³ Sebastian Eichfelder; Francois Vaillancourt (2014) : 'Tax compliance costs: A review of cost burdens and cost structures', arqus Discussion Paper, No. 178, *Arbeitskreis Quantitative Steuerlehre (arqus)* 1

⁴⁴ European Commission, Commission Staff Working Document: Impact Assessment Accompanying the Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT), SWD(2023) 571 final

⁴⁵ European Commission, Tax Compliance Costs for SMEs: An Update and a Complement – Final Report (December 2022)

⁴⁶ Joann Martens-Weiner, *Company tax reform in the EU. Guidance from the United States and Canada on implementing formulary apportionment in the EU* (Springer 2006)

⁴⁷ Sebastian Eichfelder and Frank Hechtner, 'Tax Compliance Costs: Cost Burden and Cost Reliability' (2018) 46(5) *Public Finance Review* 764

⁴⁸ Tax Compliance Costs for SMEs (n45)

⁴⁹ As has been done in Tax Compliance Costs for SMEs (n45)

decrease significantly because of the proposal⁵⁰. According to the Impact Assessment the Commission estimates the CIT compliance costs to reduce by either 32% or 65%⁵¹.

The main drivers of tax compliance costs are complexity of tax law, tax administration, tax accounting, and international tax issues, with complexity of tax law being the most significant one⁵². BEFIT will address especially the first and last. Complexity of tax law is a sum of many different factors, but in terms of business taxation many deductible items, exceptions, and special tax rates are major factors⁵³. BEFIT tackles this problem by using financial statements as a starting point and limiting the number of adjustments to those set in articles 8 to 33⁵⁴. Reducing the amount of adjustments made to the tax base in national tax systems makes its calculation easier and thus reduces the resources required for it. BEFIT also reduces tax compliance costs relating to international tax issues as groups must apply only one set of rules to calculate members' tax bases.

One significant factor contributing to the complexity of tax law is anti-tax avoidance rules such as transfer pricing rules.⁵⁵ They include strict requirements for documentation, which have proven to be an important issue for companies in the internal market. As a result of formulary apportionment, groups would not have an incentive to shift profits across borders inside the internal market.⁵⁶ This would in turn mean that the burdensome transfer pricing rules would not be needed and therefore groups would not have to apply them⁵⁷. However, this only applies to transactions between members of the BEFIT group, in other words, between intra-union affiliates that meet the 75% ownership threshold. For transactions with affiliates that do not meet those requirements, transfer pricing rules still apply. Therefore, the burdensome transfer pricing rules would still be applied, but to a significantly smaller extent, reducing tax compliance costs.

One important aspect of assessing tax compliance cost reduction is how tax administration is implemented. Research shows that tax authority behaviour can have substantial impact on the

⁵⁰ Salvador Barrios, Diego d'Andria and Maria Gesualdo, 'Reducing Tax Compliance Costs through Corporate Tax Base Harmonization in the European Union' (2020) 41 *Journal of International Accounting, Auditing and Taxation* 1

⁵¹ Depending on if the costs are adjusted for enterprise size (32%) or not (65%). BEFIT Impact Assessment (n44)

⁵² Eichfelder and Vaillancourt (n43)

⁵³ European Parliament, Overview on the Tax Compliance Costs Faced by European Enterprises – With a Focus on SMEs (Study, Directorate-General for Internal Policies, Policy Department for Economic, Scientific and Quality of Life Policies, February 2023) PE 642.353

⁵⁴ BEFIT Proposal, articles 8-33

⁵⁵ Eichfelder and Vaillancourt (n43)

⁵⁶ European Communities, European Tax Survey, Working Paper 3/2004 (Luxembourg, 2004)

⁵⁷ Removal of Taxation-Based Obstacles and Distortions in the Single Market (n2)

overall tax compliance costs faced by companies⁵⁸. This has not been evaluated in the Impact Assessment. BEFIT teams, that include tax inspectors from all relevant tax authorities, need to reach agreements on several elements and to provide consultation to BEFIT groups. This brings with it the potential for increased costs. BEFIT teams should be organised to be efficient and consumer-friendly to keep costs as low as possible.

BEFIT includes a few major flaws when it comes to reducing tax compliance costs. Firstly, as stated much of the benefit that BEFIT brings has to do with the simplification of the tax systems. Enterprises would have to apply only 1 system instead of 27 different ones. However, article 48 (2) that allows member states to add adjustments at the national level to the allocated part goes against this objective. The article does not contain any restrictions on the given national leeway. In the proposal's explanations, it is stated that member states are free to apply these adjustments without restrictions. The only requirement set to this leeway is that the adjustments must be made in respect of the Pillar 2 directive.⁵⁹ In other words, the adjustments cannot lead to a situation where an enterprise's effective tax rate is under 15%. Since there are considerable differences in the economic structure of member states, they will add different adjustments according to their national needs, as is the situation without BEFIT. In practice this means that the BEFIT groups must still apply 27 tax systems instead of 1. EESC drew attention to this in its opinion, stating that the leeway left to member states could conflict with tax compliance cost reduction⁶⁰.

Secondly, although BEFIT is largely based on Pillar Two, there are certain differences between them. Since their scope is the same, in terms of mandatory application, in other words if BEFIT applies Pillar Two applies as well, it would be important in terms of tax compliance costs for their content to match each other. There are differences on three levels: some adjustments are the same in terms of content but the wording is different, some adjustments but the content is different and then there are adjustments that are only found in BEFIT or Pillar Two⁶¹. It is understandable that BEFIT has less adjustments than Pillar Two⁶² as BEFIT is intended to contain just a limited number of adjustments but it is not clear why

⁵⁸ Sebastian Eichfelder and Chantal Kegels, 'Compliance Costs Caused by Agency Action? Empirical Evidence and Implications for Tax Compliance' (2014) 40 *Journal of Economic Psychology* 200

⁵⁹ BEFIT Proposal, Explanatory Memorandum

⁶⁰ European Economic and Social Committee, Opinion on Business in Europe: Framework for Income Taxation (BEFIT) (ECO/629-EESC-2023-04143, 24 April 2024)

⁶¹ Jasper Korving, 'BEFIT and HOT: FASTER and SAFE! EU Law or Slogan for Slimming Pills?' (2023) 63(12) *European Taxation* 513

⁶² Stijn Blaakman and Jasper Korving, 'The Tax Base in BEFIT and Pillar Two: Harmony, Dissonance, or Off-Key?' (2024) 52(5) *Intertax*, 361

there are direct content conflicts with Pillar Two. Given not only the possible and probable national level differences but also the differences between BEFIT and Pillar Two, it seems that groups may need to apply 29 systems instead of one. This certainly goes against tax compliance cost reduction.

From a tax compliance cost reduction perspective, it is also necessary to point out some other, rather interesting, choices made in the BEFIT proposal. The 75% ownership threshold for companies to be a part of a BEFIT group allows for a situation where some group companies apply BEFIT while others apply national rules. BEFIT does not include an option for these companies that do not meet the threshold to apply it⁶³. Groups cannot reach their full potential in terms of tax compliance cost reduction if different rules are applied to some of the group members. Another interesting choice is the fact that while one-stop-shop is mentioned in the proposal, BEFIT would, in reality, mean a greater number of contacts with tax administrations as the BEFIT information return does not replace national tax returns of the group members. This is not compatible with cost reduction, as the submission of tax returns itself constitutes a significant part of the costs⁶⁴.

To conclude on the reduction of tax compliance costs. It is impossible to know in advance how significant the negative effects of the problems will be. They raise concerns about the extent to which the benefits will materialise, but it is nevertheless expected that BEFIT will reduce costs. All the saved costs can be put into productive use within the companies. As compliance costs act as a burden to companies, reducing them would increase the productivity of the workforce as they would be freed from activities that do not produce any economic gains. Reduction also leads to reducing wage costs, because less inside and outside assistance is needed to comply with different tax systems, and overall, the cost of production.⁶⁵

Compliance costs are also shown to distort economic decision making, leading to economically wrong decisions.⁶⁶

⁶³ Blaakman and Korving (n62)

⁶⁴ Eichfelder and Vaillancourt (n43)

⁶⁵ European Commission: Directorate-General for Taxation and Customs Union, Modelling corporate tax reform in the EU – New calibration and simulations with the CORTAX model, Publications Office, 2016, 21 and Barrios, d’Andria and Gesualdo (n50)

⁶⁶ Timothy J Rupert, Louise E Single and Arnold M Wright, ‘The Impact of Floors and Phase-Outs on Taxpayers’ Decisions and Understanding of Marginal Tax Rate’ (2003) 25(1) *Journal of the American Taxation Association* 72

3.2 Encouraging cross-border investment

BEFIT increases cross-border trade by reducing tax complexity and allowing multinational groups to offset losses across borders. Complexity and not allowing to offset losses across borders serve as both a barrier to business expansion and FDI into another member state. Businesses in the internal market face a so-called cliff effect⁶⁷ when expanding operations across borders⁶⁸. This discourages businesses from doing so.

Simplifying the tax system eases the cliff effect. As BEFIT creates a common set of rules to determine the tax base, groups do not have to find out all the details of tax legislation, but the rules are the same as for affiliates already operating on the internal market.

Tax complexity also has a major impact on the outflows of FDI as it, for example, creates uncertainty⁶⁹ and costs, therefore reducing the return on investment⁷⁰. The importance of tax complexity is greater than the effective tax rates of countries on investment decisions⁷¹. BEFIT reduces legal uncertainty⁷² and tax compliance costs making it more attractive to invest in companies located in the EU. Reducing tax complexity would benefit both businesses that are active as well as businesses that are planning to be active across borders⁷³.

High tax compliance burden because of tax complexity is a major hindrance for cross-border trade in the internal market. It acts as a barrier to expanding business across borders⁷⁴ as well as for FDI⁷⁵. As outlined above, BEFIT will reduce compliance costs. As the reduction concerns cross-border activity, it means that the cost of foreign investment falls relative to domestic investment. This will induce both domestic companies to make cross-border investments as well as multinationals to invest more into their foreign subsidiaries.⁷⁶

Cross-border loss offset has been discussed for decades in the EU⁷⁷, however no significant progress has been made. It is very much sought after by businesses operating in the single

⁶⁷ Compliance and other burdens faced by companies increase significantly the moment they expand across borders as the companies must comply with the obligations of multiple jurisdictions instead of one.

⁶⁸ BEFIT Impact Assessment (n44)

⁶⁹ Kelly Edmiston, Shannon Mudd and Neven Valev, 'Tax Structures and FDI: The Deterrent Effects of Complexity and Uncertainty' (2003) 24(3) *Fiscal Studies* 341

⁷⁰ Explained in Chapter 3.1

⁷¹ Alejandro Esteller-Moré, Leonzio Rizzo and Riccardo Secomandi, 'The Role of Tax System Complexity on Foreign Direct Investment' (2021) 53(45) *Applied Economics* 5208

⁷² Explained in chapter 3.4

⁷³ Removal of Taxation-Based Obstacles (n 2)

⁷⁴ BEFIT Impact Assessment (n44)

⁷⁵ Esteller-Moré, Rizzo and Secomandi (n71)

⁷⁶ Barrios, d'Andria and Gesualdo (n50)

⁷⁷ Removal of Taxation-Based Obstacles (n2)

market as shown by BEFIT's public consultation, where 90% of respondents were in favour of it⁷⁸. The rules laid out in Chapter 3 of BEFIT allow for automatic cross-border loss offset between group members. This means that losses incurred by a group member in a member state can be deducted from the taxable profits of group members located in other member states. This happens automatically by aggregating the preliminary tax results of group members. The limited use⁷⁹ of cross-border loss offset in member states leads to double or overtaxation in many cases⁸⁰, which is against businesses real ability to pay. This inherently makes cross-border business less attractive. The risk of double and overtaxation creates uncertainty for cross-border business which discourages businesses from expanding across borders.

Currently, the lack of cross-border loss offset in almost all member states favours domestic subsidiaries over foreign subsidiaries. Domestic subsidiaries are allowed to pool their profits and losses while subsidiaries located in different countries are not allowed to do so. This kind of different tax treatment stimulates domestic investment over foreign investment⁸¹. Different tax treatment leads to businesses making investment decisions on tax reasons instead of economic reason. The risk of domestic investment is lower; the losses it may generate can at least be deducted from the rest of the group's profits. Distorted decision-making leads to resources not being allocated optimally. Cross-border loss offset would allow businesses to make decisions on economic basis and therefore produce efficiency gains. In addition to this, the transfer of losses raises the expected return on foreign investment, which in turn raises investments to foreign subsidiaries⁸².

In the Impact Assessment of BEFIT, the Commission estimated that cross-border loss offset would reduce group members' CIT payments as groups' tax bases decline. A reduction in CIT payments leads to lower cost of capital, which results in greater investment. The Commission estimates a CIT payment decline of 1.7% and investment growth of 0.2%.⁸³ While this is true, it is expected that member states would react to the reform by changing their corporate tax

⁷⁸ BEFIT Impact Assessment (n44)

⁷⁹ As of 2016 only four EU countries allowed for cross-border loss offset according to Žarko Y Kalamov and Marco Runkel, 'On the Implications of Introducing Cross-Border Loss-Offset in the European Union' (2016) 144 *Journal of Public Economics* 78

⁸⁰ Violeta Ruiz Almendral, 'An Ever Distant Union: The Cross-Border Loss Relief Conundrum in EU Law' (2010) 38(10) *Intertax* 476

⁸¹ Kalamov and Runkel (n79)

⁸² Kalamov and Runkel (n79)

⁸³ BEFIT Impact Assessment (n44)

rates to avoid a reduction in corporate tax revenues⁸⁴. If, however, governments do not raise CIT rates because of BEFIT, the decline of CIT payments will in themselves promote investments.

BEFIT seemingly includes an indefinite loss carry forward as there are no rules specifying it⁸⁵. The loss carryforward is also quantitatively unlimited, i.e. all losses are carried forward. Article 42 2 (b) BEFIT only states that the loss shall be carried forward and shall be set off against the next positive BEFIT tax base. This means that a loss accrued by a group is carried forward against a positive BEFIT tax base in later years without limitations. Limiting the time of loss carryforward has been shown to have a significant negative impact on investments of foreign subsidiaries, especially in the case of business with a high loss probability⁸⁶. By allowing companies to take advantage of losses indefinitely, BEFIT encourages investments, as profit does not have to be achieved in the short term to take advantage of it. Indefinite and unlimited loss carry forward combined with cross-border loss offset makes foreign investments noticeably more attractive by making it easier for groups to absorb losses as well as raising the expected return of the investment.

Since domestic investment is already in principle more attractive, it is necessary to ensure that there are no legal barriers to cross-border investment to support it. The current system favours domestic investment in the internal market. As a result, companies do not make decisions on economic grounds that could, in many situations, lead to foreign investment, preferring less risky domestic investment. BEFIT removes distortions to businesses decision making that stem from taxation, therefore supporting cross-border investment. Companies can invest abroad with lower costs and more easily, reaching larger markets to take advantage of economies of scale and achieve efficiency gains.

3.3 Levelling the playing field

Level playing field in the context of international trade means that regulatory burdens are distributed evenly between economic operators in different jurisdictions⁸⁷. This means that companies have equal opportunities to succeed from a regulatory perspective. In the internal

⁸⁴ Barrios, d'Andria and Gesualdo (n50)

⁸⁵ Korving (n61)

⁸⁶ Daniel Dreßler and Michael Overesch, 'Investment Impact of Tax Loss Treatment – Empirical Insights from a Panel of Multinationals' (2013) 20(3) *International Tax and Public Finance* 513

⁸⁷ Marios Tokas, 'The Concept of the Level Playing Field in International Economic Law' (2024) 27(3) *Journal of International Economic Law* 558

market there are 27 different tax systems that have their own definitions of taxable income, adjustments, rules on depreciation and so on. In addition, the practices and interpretations of the tax administrations of the member states differ from each other. This puts companies operating in a combination of different member states in very different competitive positions in terms of regulation as they are competing under different rules. BEFIT aims to level the playing field by eliminating these distortions between the member states⁸⁸.

Since BEFIT establishes a unified corporate tax system with the same rules throughout the internal market, the location of group members in different countries becomes irrelevant for CIT purposes, eliminating any advantages or disadvantages tied to their geographic residence⁸⁹. Therefore, groups operating in certain regions of the internal market do not gain a competitive edge over others solely due to tax regulation but are instead required to compete based on genuine economic factors. BEFIT also levels the playing field by making the markets of different member states more easily accessible as groups would be able to apply the same rules as they already do instead of having to learn a new system.

There are significant differences in the complexity of tax systems between member states⁹⁰, which results in significantly higher tax compliance costs in certain member states compared to others. With BEFIT, the differences in CIT related tax compliance costs will be reduced as groups apply the same set of rules⁹¹, further levelling the playing field.

BEFIT also levels the playing field in relation to markets outside the EU. The Commission highlights in the Impact Assessment that the large number of tax systems within the internal market weakens the competitive position of businesses operating in the EU compared to those in other markets of similar size⁹². A simplified system enables groups within the internal market to better compete with groups outside the EU.

Once again article 48(2) causes problems because national legislative measures may lead to highly divergent tax systems across member states, placing groups in very different competitive positions in the internal market. It may also reduce the benefits that are to be achieved in relation to companies outside the EU.

⁸⁸ BEFIT Proposal, Explanatory Memorandum

⁸⁹ Without considering the different tax rates of member states.

⁹⁰ Overview on the Tax Compliance Costs (n53)

⁹¹ Certain differences still exist, for example, due to tax authority behaviour.

⁹² BEFIT Impact Assessment (n44)

3.4 Increasing legal certainty

Predictability is one key aspect of legal certainty. Legal judgements must be foreseeable to those whom it applies to.⁹³ In the sense of corporate taxation, this means that the system should be simple enough for groups to be able to understand its content and to be able to predict the outcome of taxation in advance. Legal certainty is the key for business as it reduces risks and costs, making it easier to plan ahead.

The existence of 27 different tax systems in the internal market creates uncertainty for businesses as the content and interpretations of tax regulations may be unclear. Another driver of uncertainty is frequent changes to tax law, which is especially important in the internal market as businesses must keep up with the tax law changes of 27 different countries.⁹⁴ BEFIT reduces the overall uncertainty by providing common rules and interpretations. It will bring significant benefits in terms of tax law changes. After the adoption of BEFIT under article 115 TFEU, the subject becomes EU competence⁹⁵, which means that changes can be made at the Union level. Therefore, businesses must adapt their operations only to the tax law changes from a single source.

The risk of double and overtaxation is a source of uncertainty for businesses operating across borders.⁹⁶ That is because groups are unable to predict how much profit they will make, as some of their income might be taxed more than once. The aggregation of the group members' preliminary tax bases and then allocating the profits under a fixed formula leads to fewer litigations over double taxation. There is also less transfer pricing related litigation as the aggregation of the group members tax bases eliminates transfer pricing issues within the internal market. As a result, groups save resources used for litigation and improve the predictability of business operations.

BEFIT includes certain problems in relation to improving legal certainty. Firstly, the national leeway provided by article 48 (2) can significantly impede the simplification that BEFIT provides, depending on how member states make use of it. How much individual member

⁹³ Juha Raitio, *The principle of legal certainty in EC law* (Kluwer Academic Publishers, cop. 2003)

⁹⁴ Charles E McLure and James M Poterba, 'Harmonizing Corporate Income Taxes in the European Community: Rationale and Implications' (2008) 22 *Tax Policy and the Economy* 151

⁹⁵ Korving (n61)

⁹⁶ BEFIT Impact Assessment (n44)

states will add their own national adjustments will determine how much simplification will be achieved which in turn will determine how much greater legal certainty will be.

Another problem relates to article 45, which includes the allocation rule of the aggregated tax base. As mentioned before, the allocation rule is only transitional and is to be changed by 2035. BEFIT is meant to be applied from 1 July 2028. This means that businesses in scope of BEFIT must react first to the transitional rule and by 2035 at the latest to the permanent allocation formula. This means that the rules according to which the groups' profits are divided into different states change two times within seven years, possibly even within a shorter period of time. This makes it very difficult for groups to assess their longer-term tax liabilities and thus plan their business, especially when there is uncertainty as to what factors are included in the formula.

The previously expressed problems related to the differences between BEFIT and Pillar Two also constitute problems from the point of view of legal certainty. The application of two different, parallel tax systems at the same time creates uncertainty for groups. In addition, when two reforms of such significance to the corporate tax system are to be made within such a short period of time, companies must seek to adapt to two systems with evolving interpretations at the same time. This creates uncertainty at least in the short term as groups must see if the differently worded adjustments will be interpreted in an aligned way or not⁹⁷.

⁹⁷ Blaakman and Korving (n62)

4 Concerns within BEFIT

BEFIT promises a lot of good for groups: lower tax compliance costs, easier and cheaper cross-border operations, more legal certainty, and a more level playing field. In theory if these were to be achieved, groups would certainly be satisfied⁹⁸. With recent reforms relating to direct taxation, groups have been given nothing but stick, so a carrot would do good for a change⁹⁹. However, certain elements of BEFIT rise significant concerns regarding its suitability to provide these benefits to the groups. Firstly, it should be mentioned that a common corporate tax base, which is the basis for BEFIT's entire existence, is not downright what groups in the internal market want.¹⁰⁰ It is, and always has been the Commissions dream¹⁰¹.

It is quite evident that the Commission is trying to ride the wave of Pillar Two. This is understandable as Pillar Two completely changed the landscape of international corporate taxation. The Commission itself recognizes that political momentum is needed to push through reforms in direct taxation¹⁰² leading to Pillar Two being mentioned several times in the BEFIT proposal. The Commission even states that BEFIT builds upon the successes of Pillar Two. However, based on the current proposal including unfinished and contradictory issues, it is not clear, whether the Commission was prepared to give a new, well considered proposal on a common corporate tax base, or simply taking the opportunity that was too good to miss.

There is no reason to make legislation containing significant problems. This is especially true in situations where legislation is made under article 115 TFEU. The amendment and repeal of a directive enacted pursuant to article 115 shall require the same unanimity as the enactment thereof. Therefore, if the law contains problems that need to be changed when their consequences prove significant, there must be a consensus between the member states. This may and probably will prove very difficult, as the member states have shown how challenging it is for them to reach agreement on direct taxation matters¹⁰³. A precarious¹⁰⁴ law that cannot be changed due to political disputes is worse than no law at all. There is no reason to leave

⁹⁸ As presented by the Position Papers of BEFIT's Impact Assessment (n44)

⁹⁹ Removal of Taxation-Based Obstacles (n2)

¹⁰⁰ Korving (n61)

¹⁰¹ The Commission wants to extend the Union's powers in the field of tax policy. See European Commission, Communication from the Commission to the European Parliament, the European Council and the Council: Towards a More Efficient and Democratic Decision Making in EU Tax Policy COM (2019) 8 final

¹⁰² Towards a More Efficient and Democratic Decision Making in EU Tax Policy (n101)

¹⁰³ With the exception of curbing international tax planning

¹⁰⁴ Although the precise challenges posed by BEFIT remain uncertain, the proposal entails substantial risks.

groups hostage to a precarious law, which may well happen, because member states tend to use important tax initiatives as pawns in other decision-making¹⁰⁵.

As noted above, BEFIT contains a few notable problems. Firstly, let's look at article 48 (2), the real problem child of the proposal. It is the embodiment of a lowest common denominator: easier for member states to accept as they are given flexibility, but less harmonisation and therefore benefits for groups. As the overall aim of the proposal is simplification, which brings about all the mentioned benefits, national parliaments should not be left with so much discretion. Article 48 (2) puts the realisation of the benefits at real jeopardy as member states are given the opportunity, which they certainly will use, to add adjustments at the national level. It is impossible to predict in advance to what extent the leeway will be used, but there is indeed a risk that it will be used in abundance. The European Parliament has deplored the fact that member states have implemented and applied tax directives divergently¹⁰⁶ and there is no reason to think that it would be different with BEFIT. In order to minimise tax compliance costs for groups as much as possible, such national discretion should be left out of the proposal.

Formulary apportionment was the main problem with the CCCTB initiative, as it became apparent that member states cannot agree on it. Postponing agreement on a permanent model of formulary apportionment in BEFIT does not remove its difficulty. It simply moves it further in the future. It appears that the Commission anticipates that when the rest of the system is in place, there would be pressure on the member states to adopt a new formula¹⁰⁷. For businesses, however, this means that they would be stuck with a temporary formula without knowing when and how it will change, which increases uncertainty and makes long-term business planning harder. The absence of a permanent distribution formula supports the idea that the Commission sought to have the proposal submitted without it being completed. From the perspective of legal certainty, it is essential that a permanent formula would be agreed upon from the outset.

¹⁰⁵ Towards a More Efficient and Democratic Decision Making in EU Tax Policy (n101)

¹⁰⁶ European Parliament, Draft Report on further reform of corporate taxation rules (2022/2146(INI), Committee on Economic and Monetary Affairs, 2022)

¹⁰⁷ The Commission adopted a similar approach in 2016 by dividing the CCCTB proposal into two separate proposals hoping that the once the less controversial one was adopted, the more difficult one would follow. The formula triggered substantial political opposition and partly caused derailing the initiative. It is likely that BEFIT would be more easily adopted without a permanent formula.

The problems mentioned above are not easily solved. However, there are some easy improvements to BEFIT's content, such as reducing the differences between BEFIT and Pillar Two. BEFIT was supposed to be built on Pillar Two, which is why it is strange that there are several anomalies between them. It is understandable that BEFIT has overall fewer adjustments, as intended, but there is no sound basis for different wording of certain adjustments and different content on some adjustments. The differences only lead to the tax base having to be calculated on different grounds for different frameworks, reducing the benefits of BEFIT. If BEFIT is to reap real benefits, these differences must be straightened.

The timing in relation to Pillar Two is also not ideal. Although the Commission argues that it is easier for groups to adapt to two different frameworks at the same time, it can be argued that the opposite is the case. Adapting to a reform like Pillar Two requires a lot of resources from groups, especially as the legal framework is still evolving. If groups were to be required to adapt to BEFIT simultaneously, the overall burden would become too heavy. The European Parliament has also raised concerns that groups should be given breathing space and time to prepare to BEFIT after the adaptation to Pillar Two¹⁰⁸.

As the above shows, BEFIT contains too many significant issues to be ignored. These issues are largely risk factors whose significance is difficult to assess in advance. It is not possible to predict how the member states will use their national leeway, what kind of apportionment formula they will be able to agree on and when, or to what extent interpretative divergences will emerge between BEFIT and Pillar Two. Nonetheless, these represent substantial risks that place a heavy burden on groups. After years of burdening tax legislation, groups deserve a well-designed proposal that brings about real and most importantly reliable benefits, without forcing them to once again face challenges created by new tax legislation. This would be possible by making changes to the initiative. Of course, it should be noted that any kind of change is not easy or even possible for political reasons. But if the Commission wants to produce the best possible proposal from the point of view of the groups, changes must be made.

¹⁰⁸ European Parliament, Draft Report (n106)

5 Conclusions

This thesis set out to examine how the harmonisation of corporate income tax base through BEFIT benefits groups operating in the internal market, as well as to examine the issues included in the proposal and what should be done about them. The Commission's idea behind BEFIT is excellent, as – if implemented correctly – the harmonisation of corporate tax bases would significantly simplify the tax framework for groups, and, considering research data, definitely one worth pursuing. The harmonization of tax bases can have significant efficiency effects for groups, and it is also a great fit for the EU's objective for the future of the internal market. However, as with legislation in general, much of the above depends on how it is comprised. In this BEFIT is both successful and unsuccessful.

It seems clear that BEFIT eases groups' tax compliance burden. The effects of BEFIT hit exactly where the costs are incurred as it reduces the complexity associated with the 27 tax systems of member states. It offers a limited package of adjustments that are the same to all group members making it easier on a group level to calculate the tax bases. International tax issues are expected to decrease, therefore reducing tax compliance costs. BEFIT also provides relief in relation to the burdensome transfer pricing obligations. There is, however, problems with BEFIT in relation to cost reduction. The national leeway left to member states pursuant to article 48(2), differences between BEFIT and Pillar Two, 75% ownership threshold, and the number of tax returns a group must file put the benefits of simplification into jeopardy. All in all, BEFIT is expected to reduce tax compliance costs, allowing groups to allocate these wasted resources toward productive uses that generate economic value.

Cross-border investment, the cornerstone of economic integration in the internal market, is expected to rise under BEFIT as it encourages groups to do so. Domestic investments are generally more attractive than foreign ones for many reasons, to which BEFIT contributes to bring about change. Simplification, cross-border loss offset, and indefinite loss carry forward make expansion across borders and FDI more attractive by reducing risks and costs associated with them. This allows groups to reach larger markets and achieve efficiency gains.

As a result of BEFIT, the internal market moves towards a more level playing field in terms of corporate income taxation, both internally and externally. Groups will be able to compete more fairly on economic performance, as differences between member states corporate tax systems are not there to distort competition. A simplified system under BEFIT also enables

groups to better compete with extra-EU groups. However, it must be noted that article 48 (2) may have effects that undermine this.

BEFIT will bring about legal certainty. Groups will be able to predict the outcome of their taxation under a common, simplified system. There would also be fewer legislative changes as the EU alone would have competence to regulate matters within its scope. Groups would also be in a better position to evaluate their profit in advance as the risk of double and overtaxation would be substantially diminished. Article 48 (2), once again, the lack of a permanent allocation formula, and differences with Pillar Two raise concerns on the reduction of legal uncertainty.

Although BEFIT brings about benefits, it also contains significant shortcomings, which may prevent it from being the appropriate instrument for delivering the aforementioned benefits. These shortcomings, however, are not inherent to the idea of a common corporate tax base, but rather reflect choices made by the legislator, which can be revised. BEFIT is still in the preparatory stage, and if the necessary changes are made to the proposal, BEFIT would bring considerable benefits for groups operating in the internal market. A common consolidated corporate tax base has major potential to improve business opportunities in the internal market. The political reality seems to be that BEFIT or its potential successor will not be accepted for a while. The Commission should return to the drawing board and find solutions to create a better proposal.