



EUROPEAN COMMISSION

DIRECTORATE-GENERAL

TAXATION AND CUSTOMS UNION

Direct Taxation, Tax coordination, Economic Analysis and Evaluation

Company Taxation initiatives

**SUMMARY RECORD
OF THE HYBRID MEETING
OF THE PLATFORM FOR
TAX GOOD GOVERNANCE,
AGGRESSIVE TAX PLANNING
& DOUBLE TAXATION**

held on

**01 MARCH 2022,
9H30 – 13H00**

at

**Conference Centre Albert Borschette (CCAB),
2B room**

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Welcome and introduction

The meeting was chaired by Mr Benjamin Angel, Director for Direct Taxation, Tax Coordination, Economic Analysis and Evaluation at the EU Commission Directorate General Taxation & Customs Union. The Chair opened the 8th meeting with a short update on the Commission initiatives, which were discussed during the 7th meeting of the Platform, such as Pillar 2¹ (i) and the Unshell proposals for a Directive² (ii).

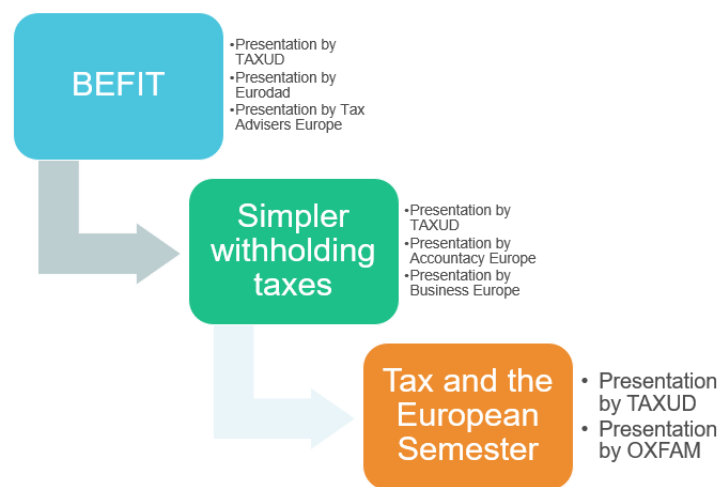


Figure 1 Visualisation of the agenda of the meeting

Towards a “Business in Europe: Framework for Income Taxation” (or BEFIT)” : the road ahead

A Commission representative briefly introduced the state of play of the BEFIT initiative (*Business in Europe: Framework for Income Taxation*)³. The Communication on Business Taxation in the 21st Century published on 18 May 2021 announced the Commission’s intention to table a proposal for a Directive on a

¹ https://ec.europa.eu/taxation_customs/system/files/2021-12/COM_2021_823_1_EN_ACT_part1_v11.pdf

² https://ec.europa.eu/taxation_customs/system/files/2021-12/COM_2021_565_1_EN_ACT_part1_v7.pdf

³ https://ec.europa.eu/taxation_customs/communication-business-taxation-21st-century_en

corporate tax system, to be referred to as BEFIT, in 2023. The initial stage of development for BEFIT consisted of a series of interviews in the context of a general brainstorming from June to the end of 2021. In short, this brief introduction took stock of the main issues, possible solutions and raised a few questions for all Members.

EuroDaD⁴ advocated for an ambitious BEFIT proposal. The EuroDaD representative first emphasised how, in spite of the fact that the CCCTB (Common Consolidated Corporate Tax Base)⁵ was never adopted, it has played a major role in influencing the global tax discussion (e.g. academia). The BEFIT discussion should be anchored in this context and address the risks of tax avoidance in particular, as these arise in the context of transfer pricing. In short, the CCCTB has not been a failure and its impact is relevant despite the fact that Member States did not agree to adopt it. In parallel, the complexity of the international tax system has increased. Against this background, EuroDaD highlighted that there is the risk of partial implementation in connection with both Pillars and that their implementation inside and outside the EU will not necessarily be positive. It was also underlined how the scope of both Pillars is underwhelming in relation to multinational corporations. This may create room for tax injustice and tax avoidance. The discussion of the Pillars kicked off thanks to a very healthy discussion on the problems linked to transfer pricing. Nonetheless, it was decided that current transfer pricing principles should remain the cornerstone of the international corporate tax system. The problems that the CCCTB aimed to address still exist, including corporate tax avoidance and harmful tax practice alongside complexity or inefficiencies. Against the backdrop of the recent COVID-19 pandemic, an ambitious BEFIT proposal could promote tax justice and ensure that governments can raise revenue from taxation of multinational corporations. The promotion of tax justice can be achieved by clamping down existing loopholes in the current corporate tax system and promoting progressive tax systems with a healthy balance between all relevant actors. Regarding the scope of the BEFIT proposal, it was suggested to replace the current transfer pricing system. It was also suggested increasing the minimum effective tax rate, in order to avoid a race to the bottom (e.g. 25%). The issue of the minimum effective tax rate was not part of the CCCTB, but EuroDaD observed that these two issues are intertwined. A fair and balanced formula should not only take into account intangibles but also employees by headcount. Other elements that might be included in a fair and balanced formula could be digital tax elements. The BEFIT proposal should also address loopholes that arise from harmful tax mechanisms (such as large-scale tax deductions or loss-transfers between different years). Lastly, within the global context, we should avoid introducing EU-wide

⁴ Following their request, statements by representatives of the European Network on Debt and Development (EuroDaD) are explicitly attributed to EuroDaD.

⁵ https://ec.europa.eu/taxation_customs/common-consolidated-corporate-tax-base-ccctb_en

corporate tax loopholes (e.g. upcoming Debt Equity Bias Reduction Allowance (DEBRA)⁶). In conclusion, EuroDaD generally noted that EU proposals must be accompanied by thorough impact assessments, in order to have an informed and open public debate. In this regard, real public country-by-country reporting could be useful in assessing the impact of all future EU proposals.

The CFE President, alongside another speaker from CFE, gave the second presentation on the BEFIT proposal. The CFE President outlined a few elements in relation to the BEFIT architecture and fleshed out potential benefits of this envisaged initiative. Key suggestions were also put forward in the area of cooperative compliance as a corollary to the BEFIT reform. Careful consideration should also be given to the interaction of the potential proposals for a formula apportionment with the forthcoming DEBRA proposal. Companies might be highly leveraged due to reasons other than taxation, and, in some instances, some companies have no other alternative but financing through debt. CFE also raised tax certainty considerations and concerns about the implementation of the formula apportionment. Another concern has been the impact on national tax sovereignty and the consequent effect on the flexibility of EU Member States to react to future systemic issues. Several EU Member States are opposed to such solution and do not want to abandon the traditional rules of international tax law, including the arm's length principle. It might be argued that some countries have accepted the principle of formulary apportionment by signing up to Pillar 1, but accepting "CCCTB" under a different name is entirely another matter.

A second speaker from CFE gave further considerations. Concerning the formulary apportionment, a key principle must be that profits should be taxed where value is created. It would be important to avoid ending up with a two-tier system for Member States: one for companies that operate formulary system and another for those that do not. This would lead to an inevitable increase in the compliance burden. The system will not eliminate the arm's length principle and transfer pricing as we know it. Multinational enterprises will still be subject to traditional transfer pricing rules when dealing with entities outside the EU. Inclusion of sales introduces a destination-based element more advantageous for larger EU Member States. In this regard, intangibles should be considered as part of the formula. Given the importance of intangible assets in the modern business environment, ignoring the value that they generate would simply not be a realistic way of allocating profits. Furthermore, there are concerns about how a potential dispute resolution mechanism could apply to a corporate tax system where profits are distributed based on formulary apportionment. The primary concern is that the jurisprudence of domestic courts, developed over many years, will become void and leave a vacuum in relation to the legal certainty of key taxation

⁶ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12995-Debt-equity-bias-reduction-allowance-DEBRA-en>

concepts. The ECJ will then become the legal forum for dispute resolution and ultimate arbitrator. The speaker advocated instead for a separate forum for dispute resolution. Given that BEFIT intends to overhaul the corporate tax system in the EU, it would be crucial that a role is given to dispute resolution, to assure tax certainty.

The Chair opened the floor for questions. A business association representative pointed out that they have actively worked on the CCCTB and some of its key elements are still valid today. The CCCTB aimed at achieving transparent tax competition between EU Member States, focusing on economic efficiency, growths and jobs. Countries were allowed to decide on their tax rate and this approach should be preserved. The big challenge back then was how to define the tax base and whether to incorporate intangibles. The task at hand is even more complicated in light of the need to address the Pillars. Under Pillar 2, there is a claw back of incentives for investments. Some incentives for green investment will be captured and eroded by the minimum effective corporate tax rate. Resistance from third countries might be also expected in case of an EU corporate tax reform. The allocation key should be analysed also taking into account the features of small markets in smaller countries. The sales component for countries with a modest domestic market is a concern. BEFIT should also include anti-abuse measures while, in parallel, the ATAD rules should be reviewed in light of Pillar 2. The Commission adopted a Directive⁷ in 2017 on dispute resolution and this should be considered within the context of Pillar 2 in spite of EU Member States' different views. Clear rules (e.g. safe harbour rules) are also needed to be developed vis-à-vis Pillar 2 before its transposition in the EU.

The Chair asked all participants to provide their views on the scope of the BEFIT proposal (e.g. large multinational enterprises, all non-SMEs companies or all companies in general). EU law prevents the introduction of conditions that are more favourable only to certain companies. This was the conclusion of technical work in relation to the transposition of Pillar 2 and all Members' views are welcome.

A representative from Oxfam⁸ enquired about the timing of the BEFIT proposal and expressed the view that the BEFIT proposal can integrate more coherently the Pillars. Concerning the own resources' package, the Commission announced a plan to have a second basket of resources useful for repaying the Next Generation EU funds by 2023. It is a strong incentive for finding an agreement for all EU Member States. The speaker asked whether discussions are already taking place on BEFIT with DG BUDG.

The Chair replied that the Commission must address issues in the right order. First, we should design an ambitious proposal, which is a good fit for purpose. Second, the Commission will explore whether to use part of the additional resources, which will be collected via BEFIT for the purpose of financing the EU

⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L1852&from=EN>

⁸ Following their request, statements by representatives of Oxfam are explicitly attributed to Oxfam.

budget (“own resources”). The Commission attaches great importance to the own resources component of BEFIT.

An academic association speaker pointed out that the BEFIT proposal needs to build on the Pillar 2 approach (e.g. no capital gains on intra-group transactions). Its scope should also be extended in order to mitigate the challenge of operating two parallel tax regimes. Regular KPMG surveys show that corporate taxation is not the main determinant of location and investment decisions in the EU. It was pointed out that, in Pillar 2, there is a considerable divergence between taxable and financial profits, which means that the effective tax rate calculated using CbCR will be very different from that under Pillar 2 effective tax rate. The association also mentioned that they welcomed the envisaged decision that the Pillar 2 effective tax rate be published. It was finally suggested to have a mechanism under the BEFIT proposal that would allow tax authorities to reach to each other and coordinate on examining the information that they receive from companies. On intangibles, the issue of their values is not completely resolved.

A business association representative highlighted that more insight on the impact of Pillars 1 and 2 is necessary. Current rules do not provide sufficient simplification. It would be interesting to know how the BEFIT proposal would help reducing the administrative burden and compliance costs for businesses. Tax certainty remains essential. A robust dispute resolution mechanism is needed under the BEFIT proposal.

Another business association representative pointed out that a common system of corporate income tax is necessary. The status quo does not work, especially in the case of cross-border projects. Compliance costs, particularly for SMEs, are unacceptably high and all stakeholders should acknowledge that action is needed here.

The Chair confirmed that plenty of exchanges will take place on the BEFIT proposal in preparing the proposal over the coming months. Another Commission representative added that a few of the raised issues are already on the Commission radar. One element concerns the international dimension of the BEFIT proposal. The Commission wrestled with this. Globalisation and digitalisation make this issue not only pertinent but also pressing. Another point is how BEFIT impacts on competition, especially between EU Member States and third countries. On DEBRA, the Commission has drawn important lessons from good and bad experiences of EU Member States on similar incentives. At this stage, the tax treatment of equity is secondary to the tax treatment of debt. Opinions may diverge but the Commission believes that this problem is worth tackling. On the reduction of administrative burden, shortcuts exist (e.g. one stop shop, one single declaration per group). Tax certainty and a dispute resolution mechanism should be addressed by the BEFIT proposal. Lastly, the process is still ongoing and any input is welcome in order to seize the opportunity of a new international environment.

Building a EU system for simpler withholding taxes

The Chair briefly took stock of the initiatives undertaken by the EU in the past (e.g. soft law, Code of Conduct). Within this context, the Commission decided to relaunch this specific work stream last year.

A Commission speaker delivered a presentation on the withholding tax (WHT) procedures for cross-border payments. The Action Plan for fair and simple taxation supporting the recovery strategy (Action 8)⁹ and the New Action Plan for a capital markets union for people and businesses¹⁰ aim to address this problem by proposing to explore both legislative and non-legislative initiatives to lower compliance costs for cross-border investors and prevent tax abuse. In September 2021, an impact assessment was published and different policy options were outlined. The next step will be a public consultation, planned for the end of Q1 2022. A final EU proposal should be presented by the end of 2022 or at the beginning of 2023.

A speaker from Accountancy Europe provided a presentation on the modernisation of the EU withholding tax procedures that builds on previous initiatives that his association has undertaken. Most, but not all, double tax treaties contain provisions for relief or refund of WHT (some only partial relief or only partial refund). For the tax authorities, it is necessary to present proof of eligibility. This is normally a manual system and involves furnishing the relevant tax authority with specific evidence such as nature, identity, Beneficial Ownership, etc. Collective investment funds & pension funds are often unable to obtain tax relief, as they are not covered by the scope of tax treaties (no “persons” for treaty purposes). Pension funds also suffer from a lack of harmonised EU rules in light of their tax-exempt status. Such vehicles are thus denied relief on these grounds. Therefore, this process is not only complicated but also highly fragmented at national level. The process is slow, paper-based and prone to fraud and legal uncertainty. There is a potential risk for double taxation of the same source of income. Many countries allow the offset of WHT against other paid taxes. The issue mainly affects non-tax payers but this does not only affect small investors. In a paper of Pensions Europe, entitled “[WHT refund barriers](#)”, it was estimated that the cost of a refund action could range from €10.000 to €100.000 per country and for each fund. In this instance, refunds can take up to 10 years. Consequently, this paper argues that many pension funds do not press for refunds to which they are entitled. In a broader economic context, this leads to opportunity costs for the wider EU economy with unclaimed and delayed refunds that reduce the capital available for investments. Some years ago, the Tax Barrier Business Advisory Group identified the WHT issue as one of the biggest barriers of the free movement of capital in the EU and as a general hindrance to the EU capital market union.

⁹ https://ec.europa.eu/taxation_customs/system/files/2020-07/2020_tax_package_tax_action_plan_en.pdf

¹⁰ https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union/capital-markets-union-2020-action-plan_en

In terms of potential recommendations, Accountancy Europe provided three possible areas of action. First, it is necessary to harmonise, simplify and improve existing systems. They suggested the creation of a pan-EU legal framework committing EU Member States to harmonise documentation, processes and information requests by tax authorities, compatible with the OECD Treaty Relief and Compliance Enhancement (TRACE)¹¹. EU Member States should be granted a six-month time limit to make repayments after receiving a valid claim accompanied with all supporting documentation. Second, a standardised categorisation and definitions of investor type should be introduced, for instance private investor, collective investment fund or pension fund. Such entities should have access to harmonised and simple documentation to give evidence of entitlement to treaty relief. This could be the first step of a single EU tax register that would list all eligible collective investment vehicles and pension funds. Third, it is important to promote the development of a harmonised system for automated relief at source. In 2017, a Danish study proposed replacing existing manual repayment systems with a distributed ledger ('blockchain') system. A similar proposal, 'Tax Grid', has undergone successful multi-party proof of concept testing. It was tested with three tax authorities and six financial intermediaries. A technical explanation on the "Tax Grid" project was provided.

A speaker from Business Europe gave the third and last presentation on WHT. It was highlighted that WHT are difficult to apply and cases of fraud against EU Member States testify to this. For businesses, an absolute priority is the efficient design of WHT within the EU. In a [2015 paper](#), Business Europe argued that the practice of withholding taxes on dividends on cross-border portfolio investments should be abolished with the result that the tax is paid in the EU Member State of residence / domicile. As beginning, it is worth looking into an impact assessment that could analyse a scenario where WHT on dividends would be abolished within the EU. The paper put forward three possible actions. First, the Commission should take steps towards the abolition of all withholding tax on dividend payments between EU Member States. Second, the Commission should conduct an impact assessment of the proposal, including the net effects on the tax revenues of each EU Member State. Third, this impact assessment should also explore the option of only abolishing tax on dividends paid to collective investment vehicles (CIVs). It was clarified that the main goal is not the removal of taxes but rather a simpler system. Exceptions that justify the existence of WHT may apply to payments towards third countries but this should not be the case within the EU. In relation to the EU initiative, a few comments were made concerning the discussions points raised in the Commission working document: (i) improving/harmonising the functioning of current WHT refund procedures to make them more efficient and swifter; (ii) establishing a new fully-fledged common EU relief at source for a proper and fraud-proof

¹¹ <https://www.oecd.org/ctp/exchange-of-tax-information/treaty-relief-and-compliance-enhancement-trace.htm>

access to tax treaty benefits; and (iii) enhancing the existing administrative cooperation framework to exchange relevant information. It was made clear that businesses would favour an EU initiative over individual initiatives of single EU Member States. It was the view that introducing a digital/automated solutions in the WHT procedures area (such as a digital tax residence certificate) can contribute to a more effective system less prone to fraud procedure for taxpayers. Categorising the risk profiles of taxpayers as part of the process could be helpful for tax administrations and achieving a more efficient system. In relation to risk factors, it was suggested to seek inspiration in the work of the countries' tax administrations and, in addition, in the banking sector's control of money laundering regulation.

The Chair pointed out that EU Member States should be able to manage to tax information that they receive (e.g. DAC) but this remains work in progress and potential fraud cannot be excluded in this area.

A speaker from EuroDaD specified that a pan-European solution, which would bring simplification and fight against fraud, could receive broad support in light of recent scandals. The COVID-19 pandemic has demonstrated Member States' need for operating large public resources. On the source residence, poorer countries find themselves as source countries and the perspective should take into account developing countries. In relation to AML and beneficial ownership transparency, the speaker suggested introducing public registers of trust owners and extending the registers to jurisdictions outside the EU borders. Digitalisation is indeed part of the solution but efficiency of tax administrators is accordingly crucial to keeping the system intact (e.g. the EFI failure in DK).

A speaker from Oxfam raised the issue of minimum WHT in the EU and of enhancing of the exchange of information between tax authorities (e.g. public transparency of beneficial ownership). The Commission should analyse the pros and cons of relief at source. Any payment generated within the EU should be taxed at least once before it leaves the EU. All EU Member States should review their bilateral tax treaties with developing countries in order to ensure compliance with strong anti-abuse international standards.

The Chair confirmed that the Commission has no official stance on the presence or absence of WHT within the EU. However, the Commission has a firm stance on WHT outbound payments leaving the EU and asked all EU Member States to introduce a WHT in these circumstances. The Council voted recommendations against aggressive tax planning (ATP) in this regard. A Commission speaker thanked the Members for the different input received on the EU WHT project (e.g. CIVs, digital pilot projects, link with AML or capital market union, etc.).

Tax and the European Semester

A Commission speaker presented the European Semester and its relaunch amidst the COVID-19 pandemic. The speaker explained the link between the European Semester and the Recovery and Resilience Facility (RRF), RRFs as driver of EU's competitive sustainability, the general cycle of the 2022 European Semester (e.g. Country Specific Recommendations (CSRs), the Spring & Autumn Package) and DG TAXUD's priorities in the area of taxation & customs within the 2022 Semester cycle.

A representative from Oxfam spoke on the European Semester and aggressive tax planning (ATP). The representative gave an overview of the past reports concerning ATP practices and EU Member States and also of the commitments made by the Economy Commissioner vis-à-vis the RRF. Considering that six EU Member States have been targeted for ATP practices, the speaker went through 2020 economic indicators such as foreign direct investments, interest, dividends and intellectual property. In terms of recommendations, it was suggested that the Commission brings back and strengthens the explicit assessment on aggressive tax planning and ensures a strong follow-up and counter-measures. The Commission should also check and publicly report on a potential alignment between CSRs (aggressive tax planning) and recovery funds alongside a finalization of the EU tax scoreboard.

The Chair responded that the RRF helped the Commission in fighting aggressive tax planning in the EU. Out of the six EU Member States targeted in relation to ATP, three introduced WHT in the meantime (e.g. CY, IE and NL). Concerning the EU tax scoreboard, the Economy Commissioner commented it before the EU Parliament. Nonetheless, the process is still ongoing and a first exercise covering all EU Member States could be envisaged for 2023. A business association representative emphasised the positive link between the European Semester and other EU reports, such as the 2022 Annual Sustainable Growth Survey¹². The four dimensions of competitive sustainability are clearly singled out and presented in a balanced way. The Chair highlighted that a former EU Member State, i.e. the UK, is currently beefing up its tax avoidance rules. The Commission has in its pipeline a second initiative dealing with tax avoidance rules after Unshell and, on ATP data, it will publish soon the 2022 Annual Report on Taxation.

Closing remarks

The Chair confirmed that other three meetings are planned for this year (the next one on 14 June 2022). The Commission is eager to receive input on upcoming topics and increase the interactivity of this forum. To this effect, the Commission will address a survey to the Platform members, in order to gather their ideas for future agenda topics.

¹² https://ec.europa.eu/info/publications/2022-european-semester-annual-sustainable-growth-survey_en