EUROPEAN
COMMISSION

Strasbourg, 12.9.2023
SWD(2023) 309 final

COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the documents

[…]

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

{COM(2023) 532 final} - {SWD(2023) 308 final}

Executive Summary
Impact assessment report accompanying the Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) and the Proposal for a Council Directive on Transfer Pricing
A. Need for action
What is the problem and why is it a problem at EU level?
As the EU celebrates 30 years of the internal market, businesses are still faced with different national corporate income tax systems. Beyond corporate tax rates and incentives, each national system has divergent features. Businesses operating across the EU face disparate tax rules, practices, interpretations and administrative requirements as well as interactions between the different systems and a bilateral approach to allocating taxing rights and income between the Member States. It follows that tax liability computations and the required resources to comply with tax obligations tend to vary from one Member State to another. This gives rise to high complexity and an uneven playing field for businesses operating in the internal market. It results in high tax compliance burdens for EU businesses, and it acts as a barrier to expanding across borders. The differences in tax treatment can distort investment decisions and can lead to tax uncertainty and disputes, while this may not be necessary. These issues are particularly important at EU level because the EU has a highly integrated internal market. While in many other areas, there is significant progress in EU law to ensure that businesses can operate in the internal market under common standards, disparate corporate tax requirements remain an obstacle. In an increasingly digitalised and integrated European economy, where many businesses are active across borders, the internal market cannot achieve its full potential without addressing these problems at EU level.
What should be achieved?
The general objectives of the initiative are: (i) to simplify tax rules for businesses in the EU; (ii) to stimulate growth and investment in the EU; (iii) to ensure fair and sustainable tax revenues for Member States. To achieve such general objectives, the following specific objectives should be attained: (i) to reduce compliance costs for EU businesses; (ii) to encourage cross-border expansion; (iii) to contribute to reducing distortions that influence business decisions and thereby ensure a level playing field; (iv) to reduce the risk of double and over taxation and tax disputes; and (v) to increase tax certainty and fairness for business.
What is the value added of action at the EU level (subsidiarity)?
The problems that the initiative will address are common to all Member States and cannot be effectively addressed by disparate actions at national level. As the problems result from the fragmentation and diversity of national systems, national uncoordinated measures might have undesirable implications, by adding further complexity. Bilateral approaches will also be limited, especially for groups that operate in more than two Member States. In this context, only an EU-wide initiative providing for a common set of rules would be effective. Since the problems are primarily of a cross-border nature, they can only be tackled by laying down legislation at EU level. The expected decrease in compliance costs and tax uncertainty will in turn foster investment as well as cross-border expansion in the EU. Businesses operating in different Member States will be able to fully maximize the freedom of establishment and the free movement of capital without being hindered by unnecessary tax related obstacles. This initiative, when undertaken through EU law, therefore includes elements which add value in line with the subsidiarity principle. A common approach for all Member States would have the highest chances of achieving the intended objectives.
B. Solutions
What are the various options to achieve the objectives? Is there a preferred option or not? If not, why?
The objectives can be achieved through an initiative consisting of two legal acts addressing

the current challenges related to corporate taxation of groups of companies in the internal market. The first act will lay down a common set of rules for computing the tax base of large groups of companies in the EU, while the second will put forward a common approach to transfer pricing for Member States. This initiative is analysed in the impact assessment report:

In brief, a new set of simplified tax rules, closely aligned with the principles of Pillar 2, for computing the tax base of companies in large groups will replace 27 disparate corporate tax systems for the taxpayers that will fall within its scope. Financial accounting statements will be used as a starting point for computing the corporate tax base of the group in the EU and then allocating such aggregated base to its members across Member States.

A common approach to transfer pricing will ensure consistency in the way Member States treat transactions between associated enterprises, thereby reducing profit shifting and increasing tax certainty and transparency.

The report identifies different policy options and assesses specifically three combinations of these options.

Version 1 - "Comprehensive": 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 EU businesses and Member State tax authorities, considering that it would replace current national rules on group taxation in the EU.

Version 2 - "Light": this version would propose rules that are 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 - "Composite" – the preferred option: this is a compilation of features of mandatory harmonisation and gradual application. It provides for a hybrid approach which would involve common and mandatory rules targeted at large groups that are most likely to have cross-border structures and could be expected to benefit the most from the simplification that the system offers. Transfer pricing rules are harmonised in the form of principles-based legislation and set the framework for future coordination among Member States in the field. Version 3 demonstrates efficiency, as its limited mandatory scope is delineated to include solely those groups who can mostly benefit from the common rules. Furthermore, it envisages a transition rule for allocating the tax base of the group that builds on the average of the taxable results in the previous three fiscal years and, in this way, it ensures stability in tax revenues at the national level. It also includes a review mechanism which could pave the way towards a permanent allocation method, possibly based on formulary apportionment.

C. Impacts of the preferred option

What are the benefits of the preferred option?

The impact assessment sets out the positive effects for businesses and the economy in the EU as a result of potential reductions of current tax compliance costs for cross-border operating firms, cross-border loss offsetting, harmonised tax base rules, such as depreciation rates, and allocation of a common tax base. The impact assessment includes the macro-economic impact of the preferred option on GDP and tax revenues in the EU.

What are the costs of the preferred option?

Costs cannot be estimated with any precision because the initiative does not have a precedent that we can refer to. Furthermore, there is no dedicated data that one can reliably use to produce very concrete estimates. The impact assessment report attempts to describe some of the possible costs.

For large groups, the following costs are expected when implementing the common framework for calculating their taxable results: short-term (one-off) adjustment costs, related to updating IT systems, and the training of company staff and tax administrations to adjust to

the new system; and ongoing operational costs of an administrative nature, such as staff devoted to exchange of information among tax administrations. When it comes to transfer pricing, there will not be any additional costs for taxpayers or national authorities, as there are currently large numbers of staff dealing with transfer pricing within large groups and tax administrations. There would be an initial adjustment cost for training, to become familiar with the new rules, but the enhanced clarity and EU-wide application of the new rules will eventually result in reduced compliance/administrative costs.
What are the impacts on SMEs and competitiveness?
SMEs: SME groups that file consolidated financial accounting statements will be eligible to opt in and thereby apply the common rules for computing the tax base. Considering that the rules will remain optional for SMEs, we do not estimate adverse effects. Rather, SMEs will enjoy the benefit of choosing the simplest and most cost-efficient solution based on their individual needs. **Competitiveness**: the initiative is expected to have a positive impact on cost and price competitiveness by introducing common rules and a common approach. All elements are based on simplifications of the current corporate tax rules which will reduce compliance costs for business operating in all sectors of the internal market. The common rules are also expected to establish a level playing field, break down barriers to cross-border expansion and improve the international competitiveness of EU businesses vis-à-vis non-EU businesses, particularly those operating in other big markets.
Will there be other significant impacts?
The impact assessment also considered whether the initiative may have environmental or social impacts, or an impact on fundamental rights. No particular and direct environmental impact is expected. It is also not expected that there would be a significant social impact. However, freed resources may positively influence various areas, such as sustainable investments and employment decisions. The initiative should also not have an effect on fundamental rights, which are guaranteed, and personal data will be protected.
Proportionality?
The preferred option does not go beyond what is necessary to achieve the objectives and focuses on elements where the added value of EU action goes beyond what can be achieved by Member States alone.
D. Follow-up
When will the policy be reviewed?
The evaluation of the initiative should assess the extent to which the outlined objectives have been met and will take place **five years after the Directives starts to apply**. It will also analyse the extent to which the expected simplifications for the targeted stakeholders have materialised and assess the related administrative and regulatory burden. The Commission will present the evaluation results in the form of a report. In addition, for BEFIT, it is foreseen that the evaluation will include a review of the transition allocation rule. If the Commission deems it appropriate based on the review, it may adopt a legislative proposal to amend the allocation method, possibly by introducing a formula.