AmCham EU
SPEAKING FOR AMERICAN BUSINESS IN EUROPE

Consultation response

Business in Europe: Framework for Income Taxation (BEFIT)

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.4 trillion in 2021, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

American Chamber of Commerce to the European Union
Speaking for American business in Europe

Avenue des Arts/Kunstlaan 53, 1000 Brussels, Belgium • **T** +32 2 513 68 92
info@amchameu.eu • amchameu.eu • European Transparency Register: 5265780509-97

Introduction

The American Chamber of Commerce to the EU (AmCham EU) has consistently supported measures to strengthen the Single Market, including administrative simplification, greater incentives for innovative activity and better dispute resolution, in conjunction with the elimination of opportunities for aggressive tax planning. We have raised concerns in the past on the Common Consolidated Corporate Tax Base (CCCTB) (and Common Corporate Tax Base (CCTB)) and will repeat some of those which are equally applicable on the BEFIT project.

On 18 May 2021, the Commission published the Communication on Business Taxation for the 21st Century and announced that BEFIT would be a single corporate tax rulebook for the EU, based on the key features of a common tax base and the allocation of profits between Member States by using a formula (also called 'formulary apportionment').

The first key goal of BEFIT is simplification. Any BEFIT type of project should be developed while considering their potential impact on growth, business investment decisions and job creation in the EU. The rules should be designed to support the achievement of tax certainty for taxpayers and tax administrations and not be too complex or too onerous in compliance to discourage investment. Otherwise, the approach under consideration may lead to disincentives for investment in Europe. Departure from the use of the long-standing, globally recognised and well understood 'arms-length standard' in favour of a 'to-be-determined' formulary apportionment is likely to lead to controversy and double taxation and makes the proposal overly complex.

BEFIT is being considered at a time when the international tax system is undergoing significant change. Global initiatives have been agreed upon by the OECD's Inclusive Framework to change the international tax landscape and introduce minimum taxation for large companies in the EU. Further changes to the global tax rules should at least await the assessment of the effectiveness of Pillar 2 implementation. Contemplating additional changes of taxation rules, before Pillar 2 has gained some stability and proven administrability, could be destabilising the international tax environment

Recommendations

- No fundamental changes of the tax system should be contemplated prior to assessing the efficiency and administrability of the OECD Pillar 2 and Pillar 1 rules. Any current consideration should include clarification on how BEFIT, Pillar 2 and Pillar 1 will interact.
- The BEFIT should not be mandatory, but optional at the company level. While offering advantages to some businesses, the BEFIT also brings additional cost to all businesses in the short term (which the Commission recognises in its impact assessment) and to many businesses in the longer term. Mandatory inclusion of certain large multinational entities in the consolidation scheme imposes an improper 'one-size-fits-all' regime.
- Tax should be paid where value is created. As such, the allocation rules should make use of and be based on the long-standing, globally recognised and well understood 'arms-length standard'. The Base Erosion Profit Shifting (BEPS) measures and EU initiatives (eg the Anti-Tax Avoidance Directives (ATAD) and Directives on Administrative Cooperation (DAC)) apply to protect tax revenues within the EU.
- Departure from this 'arm's-length-standard' in favour of a 'to-be-determined' formulary apportionment is likely to lead to controversy, is making the proposal overly complex and should be reconsidered as it increases the risk of mismatches between EU and non-EU jurisdictions and leads to double taxation. The current experience with OECD's Pillar 1 - Amount A negotiations

should inform the EU Commission on the difficulties to align on approaches that depart from the arm's-length-principle (ALP).

- Any allocation approach must include consideration of intangible assets, which are increasingly a key value driver in many global businesses. Failure to recognise intangible assets in the allocation formula will decrease the attractiveness of the EU when compared to non-EU locations as a destination for investment in research and development and manufacturing.
- To achieve real efficiencies and savings for both Member States and taxpayers, the administration of the BEFIT must be centralised and simplified, ideally through a 'one-stop-shop' approach (ie dealing primarily with one Member State's tax administration).
- Inclusion of consolidation and full automatic cross-border loss relief would aid the objectives of the single market.
- Any new system determining tax base should avoid mismatches in tax law interpretation that presents risks of double taxation; we recommend clarity and commitments to relief from double taxation.