



Questions and Answers on BEFIT and transfer pricing

Strasbourg, 12 September 2023

Why was BEFIT needed?

Simplification is crucial to growth and competitiveness in the EU. However, dealing with 27 different national tax systems makes tax compliance difficult and costly for companies. This discourages cross-border investment in the EU, putting European businesses at a competitive disadvantage compared to companies elsewhere in the world.

What is the Commission proposing?

The Commission is proposing a new, single set of rules to determine the tax base of groups of companies.

Business in Europe: Framework for Income Taxation (or BEFIT) will reduce tax compliance costs for large businesses, primarily those who operate in more than one Member State, and make it easier for national authorities to determine which taxes are rightly due.

The proposal, which is about simplification and builds on the OECD/G20 international tax agreement on a global minimum level of taxation and the Pillar Two EU Directive, will include:

1. Common rules to compute the tax base at entity level

All companies that are members of the same group will calculate their tax base in accordance with a common set of tax adjustments to their financial accounting statements.

2. Aggregation of the tax base at EU group level

The tax bases of all members of the group will be aggregated into one single tax base. This will entail cross-border loss relief, as losses will automatically be set off against profits across borders, as well as increased tax certainty in transfer pricing compliance.

3. Allocation of the aggregated tax base

By using a transitional allocation rule, each member of the BEFIT group will have a percentage of the aggregated tax base calculated on the basis of the average of the taxable results in the previous three fiscal years.

Which companies does this apply to?

The new rules will be mandatory for groups operating in the EU with an annual combined revenue of at least €750 million, and where the ultimate parent entity holds, directly or indirectly, at least 75% of the ownership rights or of the rights giving entitlement to profit. For groups headquartered in third countries, their EU group members would need to have raised at least €50 million of annual combined revenues in at least two of the last four fiscal years or at least 5% of the total revenues of the group. This ensures that the requirements of the proposal are proportionate to its benefits.

In addition, the rules will be optional for smaller groups which may choose to opt in as long as they prepare consolidated financial statements. This optional scope could be of particular interest to SME groups that operate cross-border, as they may have less resources to dedicate to compliance with multiple national corporate tax systems.

For certain sectors, sector-specific characteristics are reflected in relevant parts of the proposal. This is, in particular, the case for international transport, shipping activities and extractive industries.

What will the transitional allocation rule lead to?

The transitional allocation rule will pave the way for a permanent allocation method that can be based on a formulary apportionment using substantive factors. In designing a permanent allocation method, the transitional solution will make it possible to take into account more recent Country-by-Country Reporting (CbCR) data and information gathered from the first years of the application of

BEFIT. It will also allow for a more thorough assessment of the impact that the implementation of the OECD/G20 Inclusive Framework Two-Pillar Approach is expected to have on national and BEFIT tax bases. If appropriate, the Commission may propose a Directive whereby the aggregated tax base will be allocated based on a factor-based formula.

What about companies that are part of a group, but do not operate in the EU?

The profits and losses of related parties which are not members of the BEFIT group (e.g. because they are not in the EU) will not be aggregated in the group tax base. This means that their losses would not be relieved across borders and transfer pricing would still apply in the transactions between these entities and BEFIT group members. In these cases, the so-called 'traffic light system' in BEFIT will simplify transfer pricing compliance.

How will the BEFIT rules be administered in practice?

A One-Stop-Shop will allow one group member to fill in the group's information returns with the tax administration of one Member State.

Tax audits and dispute settlement will remain at the level of each Member State. In some cases, audits may need to be carried out jointly under the existing legislative framework.

How much will BEFIT save businesses in tax compliance costs?

According to the OECD, large groups with a consolidated turnover of at least €750 million pay around €132 billion, or 1% of GDP, in taxes. The new, simpler rules of BEFIT could reduce businesses' current tax compliance costs up to 65%.

How does the BEFIT proposal relate to the HOT proposal (Establishing a Head Office Tax System for SMEs)?

The BEFIT proposal is primarily aimed at large groups operating across the EU. The HOT proposal simplifies rules for SMEs during their early stages of expansion. If SMEs successfully expand and grow, they may outgrow the scope of the HOT rules, but then they will be able to opt into BEFIT. In this way, the two proposals are complementary. Smaller businesses will be able to choose the best option for their own needs throughout their lifecycle.

TRANSFER PRICING

What is transfer pricing?

Transfer pricing is a mechanism to determine the pricing of transactions between companies that are part of the same group. A significant volume of global trade consists of international transfers of goods and services, capital and intangibles, such as intellectual property, within a multinational group. These are called intra-group transactions. According to the current international standards - the OECD's arm's length principle - transactions between related entities of a multinational group must be priced on the same basis as transactions between third parties under comparable circumstances. This arm's length principle is further elaborated in the OECD's Transfer Pricing Guidelines.

In order to apply the arm's length principle, it is necessary to identify the commercial or financial relations between the associated enterprises and to compare the conditions and economically relevant circumstances of transactions between associated enterprises, called *controlled transactions*, with those of comparable transactions between independent enterprises, which are called *comparable uncontrolled transactions*.

What are the problems related to current transfer pricing practices?

At European Union level, transfer pricing rules are currently not harmonised through legislative acts. While all Member States have in place domestic legislation that provides for some degree of a common approach by following the arm's length principle, even if its application is not identical across Member States, the definition of *associated enterprises* and the notion of *control*, which are pre-conditions to applying transfer pricing, differ between Member States. Certain Member States apply a threshold of 25% while others apply a threshold of 50% shareholding when it comes to determining whether the control criterion is met.

The complexity of the transfer pricing rules also causes a number of other problems, such as:

- **Profit shifting and tax avoidance**, as transfer prices can be easily manipulated to shift profit and be used in the context of aggressive tax planning schemes.
- **Litigation and double-taxation**, as transfer pricing is more subjective than other areas of taxation and, for this reason, is sensitive to disputes, with tax administrations not always

sharing a common interpretation.

- **High compliance costs**, resulting from businesses having to determine what prices could be regarded as arm's length, conducting studies, as well as compiling, maintaining and updating the related documentation.

What is the Commission proposing?

The Commission's proposal aims at harmonising transfer pricing rules within the EU and ensuring a common approach to transfer pricing problems. It incorporates the arm's length principle and key transfer pricing rules into EU law, clarifies the role and status of the OECD Transfer Pricing Guidelines and creates the possibility to establish common binding rules on specific aspects of the rules within the Union.

The proposal will increase tax certainty and mitigate the risk of litigation and double taxation. Moreover, it will also reduce the opportunities for companies to use transfer pricing for aggressive tax planning purposes.

When will the new rules start being applied?

Member States should implement the transfer pricing rules by 1 January 2026.

For more information

[Press release](#)

[BEFIT legal proposal](#)

[Transfer Pricing](#)

[BEFIT Factsheet](#)

QANDA/23/4407

Press contacts:

[Daniel FERRIE](#) (+32 2 298 65 00)

[Francesca DALBONI](#) (+32 2 298 81 70)

General public inquiries: [Europe Direct](#) by phone [00 800 67 89 10 11](#) or by [email](#)