Proposal for 'Business in Europe: Framework for Income Taxation' (BEFIT)

A wrong turn in the right direction

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Introduction

The BEFIT framework has the potential to end the era of rampant tax abuse, and deliver much fairer business taxation across the EU – but the current proposal would lock in that abuse and even see tax revenues fall further. Policymakers must make urgent changes to the BEFIT proposals. In this report, we set out the key changes and quantify the country-level revenue impacts.[1]

On 12 September 2013, the European Commission presented its heavily anticipated directive proposal on *Business in Europe: Framework for Income Taxation (BEFIT)*.[2] The BEFIT proposal spearheads the Commission's 2021 strategy on *Business Taxation for the 21st Century*, a long-term vision to provide a fair and sustainable business environment and EU tax system.[3] As part of this strategy, BEFIT sets out to create a single corporate tax rulebook for the EU, based on formulary apportionment and a harmonized tax base rules. Not only would BEFIT cut red tape, reduce tax avoidance and support jobs, growth and investment in the EU, the new regime would also ideally provide for a fairer allocation between Member States of taxing rights on the profits made by multinational enterprises active in the EU. In many ways, BEFIT picks up where the European Commission left off after the unsuccessful CCCTB proposal of 2011[4] and its re-launch in 2016.[5]

In this report, the Tax Justice Network analyses whether the BEFIT directive proposal of September 2023 delivers on the European Commission's own brief for *Business Taxation for the 21st Century*. After analysis of the main aspects of the proposal in light of the Tax Justice Network's views on unitary taxation with formulary apportionment, a

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[1] This report was prepared in response to the European Commission's public consultation on 'Business in Europe: Framework for Income Taxation' which ran from 19 September 2023 - 24 January 2024. *See*: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13463-Transfer-Pricing-Directive-Head-Office-Tax-system-for-SMEs-Business-in-Europe-Framework-for-Income-Taxation_en

[2] EU (2023), *Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT)*, European Commission, COM(2023) 532 final, 12 September 2023, ('BEFIT directive porposal') available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52023PC0532.

[3] EU (2021), *Communication on Business Taxation for the 21st Century*, European Commission, 18 May 2021, available at: https://taxation-customs.ec.europa.eu/system/files/2021-05/communication_on_business_taxation_for_the_21st_century.pdf.

[4] EU (2011), *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, European Commission, COM(2011)121 final, 16 March 2011, available at: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52011PC0121.

[5] EU (2016), *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, European Commission, COM(2016)683 final, available at: https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52016PC0683.

number of significant flaws in the BEFIT proposal are highlighted. Recommendations are made on how the proposal can be improved on these selected points.

In brief, the current BEFIT proposal would essentially move to a system of unitary taxation *without* formulary apportionment. As such, unlimited group loss consolidation – which is inherent to unitary taxation - is the proposal's only tangible contribution to the corporate tax rulebook in the EU. This generates a major tax cut. With no clear roadmap towards the introduction of formulary apportionment to replace the transitional allocation regime based on the anachronistic arm's length principle, the BEFIT proposal at is stands is entirely unfit for purpose.

We recommend three main changes to put BEFIT back on the right track. Most importantly, group loss consolidation should not be implemented without the simultaneous introduction of its corollary of formulary apportionment. A two-factor ('employees' and 'sales-by-destination') formula would provide for equitable and simple attribution of profits, with substantial revenue gains for many Member States.

Second, we recommend specific anti-avoidance provisions, limitations on loss carry-forwards and limitations to the administrative transfer pricing safe harbour rules, to make BEFIT more resistant to tax abuse. In addition, the European Commission's 2018 work on 'significant digital presence' provides the basis for a new rule to allocate a share of BEFIT group profits to EU member states with significant sales-by-destination or users, even if the multinational enterprise in question does not have taxable presence in the jurisdiction in the traditional sense.

Third, we propose the Commission enforces the current tax expenditure transparency requirements and adopts a general recommendation on the appropriate design and use of corporate tax incentives, in order to make sure that Member States policies contribute to the general purpose of sustainable and environmentally responsible development.

The Tax Justice Network strongly believes that changes to the proposal are needed to make BEFIT both politically acceptable as well as fit for purpose in light of the *Business Taxation in the 21st Century* strategy.

General observations

BEFIT: a proposal with enormous potential to do well

At the Tax Justice Network, we strongly support any discussions and legislative proposals for the reform of international corporate tax rules that are based on the recognition that there is a need to go beyond the arm's length pricing of intra-group transactions. We consider the introduction of formulary apportionment with unitary taxation of multinational enterprise profits as a crucial component of fair and equitable international tax landscape where companies' profits are aligned with the location of real economic activity.[6] Under a system of unitary taxation with formulary apportionment, the taxable profits of a multinational enterprise are assessed globally at the unit of the multinational, rather than any separate entity within the group, and then apportioned as tax base between countries of operation (including where companies make profits without having a physical presence), according to the share of the multinational's economic activity taking place in each.

As such, the Tax Justice Network was very encouraged to see the European Commission's '*Communication on Business Taxation for the 21st Century*' of 2021 which set out the Commission's plan to table a directive proposal ('the BEFIT proposal) to move towards a common tax rulebook and providing fairer allocation of taxing rights between EU Member States.[7] We are encouraged to see that the EU Commission shares our view that the current international corporate tax system is based on outdated principles of residence and source of income and on rules for the allocation of profits between related entities (*i.e.* 'transfer pricing') that are both prone to aggressive planning and extremely resource intensive to comply with by taxpayers and to administer by national tax authorities. Aggressive transfer pricing strategies by multinational enterprises lead to a massively skewed allocation of profits between countries that is far removed from economic reality. For this reason, at the level of the United Nations, aggressive transfer pricing – even if in line with the letter of the law – is considered a core component of 'illicit financial flows' between countries. We are strongly encouraged by the European Commission's recognition of the flaws of transfer pricing.

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[6] The Tax Justice Network's policy platform is summarised as the 'ABCDEFG of tax justice. The letter 'F' stands for 'formulary apportionment with unitary taxation'. *See* the Tax Justice Network's *Beyond20* mission statement, available at: https://taxjustice.net/wp-content/uploads/2023/05/Tax-Justice-Network-beyond20-Strategic-Framework-May-2023.pdf.
[7] EU (2021), European Commission, *Communication on Business Taxation for the 21st Century*, 18 May 2021, available at: https://taxation-customs.ec.europa.eu/system/files/2021-05/communication_on_business_taxation_for_the_21st_century.pdf.

For the Tax Justice Network, the move to unitary taxation with formulary apportionment within the EU under BEFIT comes with three important potential benefits, which also serve as the guideposts for the assessment of the BEFIT proposal and our recommendations to improve it:

1. **Fairness.** BEFIT has the potential to restore fairness in the European corporate tax system by eliminating corporate profit misalignment.[8] Harmonized tax base rules allow for the seamless determination of the BEFIT tax base. The application of the formula allows profits to be attributed on the basis of objective parameters that accurately capture economic activity in an EU Member State, like supply side factors (capital and labour) instead of being dependent on murky intra-group arrangements drawn up by the taxpayer involving hard-to-value intangibles, transactions without comparables and other transfer pricing gimmicks.

2. **Anti-avoidance/anti-abuse.** BEFIT can only be called successful if it shuts the door on aggressive corporate tax avoidance but does so without at the same time opening a window for new avoidance opportunities. All aspects of the BEFIT reform, ranging from the transitional regime and its compliance safe harbours to the impact of BEFIT group loss consolidation, should be considered in the light of the risk of avoidance, both across EU Member States as well as across the water's edge, namely at the interface of BEFIT groups and third countries in which the BEFIT group is present. Adequate anti-avoidance measures should be adopted, if necessary.

3. **Simplicity and transparency**. The EU should lead by example in times where international tax policy making is subject to an incredible inflation of complexity. The harmonized tax base rules should be simple and easy to administer. Duplication of regimes should be avoided, meaning that BEFIT should as much as possible follow be drawn up in coordination with the relevant rules in the EU Minimum Tax Directive.[9] Country-by-country reporting standards should be amended and tailored in function of the chosen formula for profit apportionment under BEFIT. Such streamlining of country-by-country reporting would, for example, imply that BEFIT group companies report on sales by destination (and not just on booked sales regardless of destination) or on payroll cost (and not just on number

[8] For more on corporate profit misalignment, applied to the case of German parent companies and their foreign affiliates, *see* Sarah Godar, '*Corporate profit misalignment: An analysis of German parent companies and their foreign affiliates*', Tax Justice Network, 18 November 2020, available at: https://taxjustice.net/2020/11/18/corporate-profit-misalignment-an-analysis-of-german-parent-companies-and-their-foreign-affiliates/.

[9] EU (2022), Council Directive 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 ('Minimum Tax Directive'), available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022L2523&amp%3Bqid=1682496237741.

of employees). Such data is necessary for a transparent and predictable application of BEFIT.

We believe that the general opinions on the merits of unitary taxation with formulary apportionment have positively changed in recent years. This is manifested by the fact that both pillars of the two-pillar solution encapsulate aspects of unitary taxation and/or formulary apportionment. However, rather than ditching separate entity accounting and inter-company pricing, they do so by superimposing formulary/unitary solutions on top of the current separate entity rules, which creates tremendous complexity.[10] Much more than on the occasions of the first CCCTB proposal in 2011 and the CCCTB relaunch in 2016, we believe there is political momentum across Member States for a clean break from the current system based on the unprincipled arm's length principle. BEFIT is the European Commission's opportunity to seize this moment.

BEFIT: a proposal with enormous risk to do harm

The Tax Justice Network believes that the BEFIT proposal fails to deliver on the European Commission's own brief on Business Taxation for the 21st Century. A BEFIT regime that implements group loss consolidation while failing to adopt a formula for the attribution of aggregate profits, and instead 'cements' profit allocation based on intra-group dealings and the arm's length principle, does not live up to the objectives of fairness, anti-avoidance/anti-abuse and simplicity/transparency described above. On the contrary, it is set to worsen the EU situation.

Instead of '*going beyond the OECD agreement*' and designing BEFIT as a new regime that would '*provide a simpler and fairer way to allocate taxing rights between Member States* '*ensuring fair and effective taxation*',[11] the BEFIT proposal omits all references to fairness and the reallocation of taxable profits across EU Member States. The proposal goes to great lengths to develop a transitional regime to implement one of the core features of unitary taxation with formulary apportionment, namely group loss consolidation. With regards to formula, the other core element and the one with the potential to instill fairness, the proposal merely provides that a transitional regime would then pave the way

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[10] Under the proposed rules of Pillar One (Amount A), a new taxing right is created for market jurisdictions over a portion of the residual profits of the largest multinationals. A unitary approach is taken to determine the amount of those profits and a formula is applied to determine how much of the profit is to be allocated to the market jurisdiction. Under Pillar Two, the substance-based income exclusion (SBIE) allows companies to get an exception for part of their undertaxed profits in a country in function of 'real economic activity'. The amount of the exception is determined on the basis of a formula that takes into account payroll and tangible assets.
[11] EU (2021), *Communication on Business Taxation for the 21st Century*, at section 3.

towards a permanent mechanism which "*could be based on formulary apportionment.*"[12]

The transitional regime is set to apply until 2035 and the Commission is tasked to prepare a study by the end of 2031 on possible composition and weight of selected formula factors. If the Commission "*deems it appropriate*" it may then adopt a legislative proposal to introduce FA as the permanent method for the allocation of the BEFIT tax base.[13] In effect, this approach delivers multinationals with the tax cut of loss consolidation, with no prospect of fairer or more effective taxation for more than a decade.

We gather that this extremely cautious language regarding the introduction of formulary apportionment is informed by the fear for a lack of (unanimous) political support amongst Member States for the introduction of formulary apportionment. Based on the prior experiences with the CCCTB proposals of 2011 and 2016, this lack of support would be caused by the volatile 'losers v winners' impact on states' corporate tax receipts by the introduction of a FA based allocation under BEFIT.

We believe this fear is misguided and counterproductive. First of all, our own calculations (*see* below) show that the use of a two-factor formula under BEFIT would not result in unacceptable shocks in corporate tax receipts across Member States, especially when the impact of the Global Minimum Tax is also taken into account. Secondly, the aspect of cross-border loss consolidation equally has the potential to disrupt individual states' corporate tax receipts under BEFIT. Yet, unlike in the case of the formula, the impact of loss consolidation is not tested at the individual country level by the Commission, nor is it considered politically lethal for the proposal, which seems inconsistent with the caution for the introduction of the formula. Thirdly, the proposing of a transitional regime which 'cements' separate entity accounting without providing a clear track towards formulary apportionment might draw strategic support from those EU Member States that benefit most from misalignment (that is, corporate tax havens). For countries adverse to formulary apportionment, there is no better strategy than to support proposals that streamline the current transfer pricing principles. For these reasons, both the BEFIT directive proposal and the recent transfer pricing directive proposal[14] risk the Commission falling in with the wrong crowd, namely the crowd of aggressive corporate tax planners.

BEFIT: fix it or forget it

Without a clear plan of direction towards formulary apportionment in the current proposal, there is a grave risk that the transitional regime would

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[12] BEFIT directive proposal, at preamble 12.
[13] BEFIT directive proposal, at article 45(1) and (9).
[14] EU (2023), *Proposal for a Council Directive on Transfer Pricing*, European Commission, COM(2023)529 final, 12 September 2023, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0529.

de facto turn into the permanent mechanism for the attribution of taxable profits. This would not only represent a failure to seize the political moment to deploy a region-wide harmonized system for a simpler and fairer way of dividing the taxable profits of multinationals that has been building up since the first CCCTB proposal in 2011. Worse, EU Member States would instead commit to nothing more than ‘common consolidated corporate tax misalignment’: a system which locks in the many flaws of transfer pricing under the separate entity approach for the sake of savings in compliance costs, but which fails to address– now and mostly likely also in the future - the fundamental issues of MNE (multinational enterprise) taxation in the Internal Market.

For this reason (and because of the many shortcomings of the transitional regime detailed below) the Tax Justice Network strongly urges the EU Commission to either change the BEFIT proposal or to abandon it. Besides the abolition of the transitional regime and the adoption of a two factor (‘employees’ and ‘sales’) based formula for the apportionment of BEFIT profits, the changes we envision concern the introduction of limitations on group loss consolidation, the extension of taxable presence in the form of a significant economic presence rule, the adoption of anti-abuse rules and the introduction of rules on the transparency of national tax incentives that apply to BEFIT groups. These changes are discussed in detail below.

Specific observations

Losses under BEFIT

BEFIT proposal

Cross-border loss relief

Under the new rules, BEFIT groups will benefit from unlimited cross-border consolidation of losses. Year-on-year, the tax bases of all group members of a BEFIT group are aggregated into one single tax base, with losses automatically set off against cross-border profits.

In the BEFIT Impact Assessment, the EU Commission estimates that the cost of cross-border loss relief under BEFIT (simulated for MNEs with global revenue over 750 million euro) is 1.7% of current corporate tax revenues in the EU. The Commission states that the existing lack of cross-border loss relief can therefore result in over-taxation.

Unlimited carry-forward of group level losses

In addition to the unlimited consolidation of losses within a BEFIT group during the same tax year, the proposal also provides for an indefinite carry-forward at group level of unused losses.[15] It is noted in the impact assessment that as a result of cross-border loss offsetting, there would be lower loss carry-forward, as more losses will be offset in the year they are made by the group.[16]

No possibility of loss carry-backwards is provided.

Our recommendations

Cross-border loss consolidation is an inherent consequence of the implementation of a corporate tax system that is based on tax base aggregation and unitary taxation. Under the traditional separate entity accounting rules, only domestic losses can be set off against the tax base in a state. In most states loss utilization rules apply to limit further the impact of loss offsetting on corporate tax revenue.

As predicted by the European Commission, a move to EU-wide loss consolidation will reduce the aggregate corporate tax base of MNEs active in the EU. Scholars agree however that this effect of the shrinking base is more than offset by the introduction of formula base apportionment, the other inherent aspect of unitary taxation, alongside cross-border loss consolidation.

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[15] *See* Article 42(2) of the BEFIT directive proposal.
[16] BEFIT impact assessment, at section 6.3.3.1.

In the BEFIT proposal as it stands, however, there is no formula-based apportionment of the tax aggregate base foreseen that would offset the negative effect of a shrinking tax base because of loss consolidation. The Commission's arguments in favour of loss-consolidation as a self-standing policy are unconvincing. The meagre long term growth prediction does not outweigh the fact that in the medium term (at least) EU member states face rising expenditure costs, be it to address climate change, increase military budgets or cover rising social security costs. It seems therefore ill-advised to adopt a harmonized system for corporate tax in the EU that essentially boils down to a tax cut for MNEs while not even pretending to address the lack of fairness in the current system of cross-border corporate taxation.

Furthermore, the ease with which the Commission brushes off the individual country impact of loss consolidation under BEFIT is in remarkable contrast with the worry expressed for the individual impact of a factor tax base allocation formula.[17] It also dramatically contrasts with the Commission's previous stance on the issue in 2015 when it called loss consolidation – and not formulary apportionment – one of the most controversial aspects of the CCCTB (2016) proposal. For that reason, the earlier proposal planned only to introduce full loss consolidation gradually.[18]

Finally, with regard to BEFIT's proposal for indefinite carry-forward of losses, we note that this is a policy choice that is neither inherent to a move to unitary taxation, nor appropriate. First of all, indefinite carry-forward of losses is not in line with EU Member States' country practice. As shown in the Tax Justice Network's Corporate Tax Haven Index (CTHI) of 2021, most Member States apply restrictions on carry-forwards, either in the form of a time restriction or in the form of a minimum level of taxation in future periods (e.g. by allowing only a certain percentage of the current profits to be offset against past losses). Secondly, the European Commission itself notes that as a result of cross-border loss offsetting, there will be fewer losses carried forward, as more losses will be offset in the year they are made by the group. The highly unusual situation of a BEFIT group consistently generating losses that go beyond year-on-year consolidation and a carry forward that is limited in time, is exactly the reason why limits to the carry-forward of group level losses are absolutely necessary.

We note that in general, the Commission seems to assume that the generation of losses by MNEs is merely an unplanned and sometimes unavoidable consequence of entrepreneurship. In reality, losses also tend to be used by MNE in artificial ways to reduce tax exposure, especially by

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[17] Compare sections 6.3.3.1. and 6.3.4. of the BEFIT Impact Analysis. The former only refers to the effect of loss consolidation on the aggregate tax base and remains silent on individual country impact of loss consolidation, whereas the latter emphasis the individual country impact of the introduction of a three-factor formula for tax base apportionment.

[18] *See*: European Commission (2015), Questions and Answers on the CCCTB re-launch, 17 June 2015, available at: https://ec.europa.eu/commission/presscorner/detail/et/MEMO_15_5174.

large multinational enterprises that are in-scope of BEFIT. The strategic use of losses is made much less appealing by restrictions on loss-offsetting. In the case of BEFIT, there are no restrictions foreseen on the use of losses. For smaller groups for which BEFIT will be optional and which are able to structurally generate losses in parts of the group, the BEFIT regime will be of appeal because it allows these groups to opt-out of national loss restrictions and instead opt-in to a zero tax bill under BEFIT.

We therefore urge the European Commission to revise the BEFIT proposal as follows:

- Both cross-border loss consolidation and three-factor based tax base apportionment are not without controversy. BEFIT is flawed in the same sense as the CCCTB (2016) by intending to introduce one component without the other. BEFIT should be revised so that unrestricted loss consolidation is only granted if and to the extent that tax base allocation is based on a permanent allocation mechanism based on the two-factor formula. We discuss the formula below;
- If deemed appropriate to keep the transitional regime, loss consolidation should be restricted during the transition, for instance by only allowing parent companies to absorb losses of subsidiaries within a BEFIT group;
- Both in the transition regime and in the subsequent permanent regime, the carry-over of group losses should be limited, either in time or in offset percentage, or by a combination of both.

Unlike loss consolidation within a single tax year which is an inherent byproduct of a move to unitary taxation, the added facility of granting a unlimited carry-forward of unused consolidated losses is an additional and entirely unnecessary benefit granted to BEFIT groups, at the pure expense of Member State revenues.

Absence of an apportionment formula

BEFIT proposal

The BEFIT proposal does not come with an apportionment formula to apportion the aggregated BEFIT tax base of EU wide groups across EU Member States. Instead, each Member State where the multinational group is present is allocated a percentage of the aggregated tax base, calculated on the basis of the average of the taxable results in the previous three fiscal years. In other words, no external, objective, input and output factors determine where profits are taxable. Rather, it is the multinational's decision in which entity profits are booked, which determines the allocation.

The BEFIT impact assessment sheds more light on the European Commission's decision making process in this regard. Assessments of the apportionment on the basis of a CCCTB-style three-factor formula is believed to increase the overall tax base, yet negative revenue impacts on certain individual EU Member States and general uncertainties and data limitations are deemed sufficient to discard formulary apportionment – for now at least.[19] It is therefore suggested in the BEFIT directive proposal that the Commission will prepare a study on the possible composition and weight of selected formula factors, and that if deemed appropriate by the European Commission, a legislative proposal may be suggested during the transition period to amend the Directive by introducing a method for allocating the BEFIT tax base using formulary apportionment.[20] In the absence of such further legislative changes, the transitional allocation rules above will remain applicable indefinitely.

Our recommendations

As mentioned above, the Tax Justice Network believes that the introduction of a unitary tax system without formulaic apportionment falls dramatically short of reaching the reform's potential of introducing a fair and equitable corporate tax system in the EU. We would argue that the time to contemplate the introduction and composition of the appropriate formula is now, and should in no circumstance be attached to a second political voting round. It is highly unlikely that any of the objections to introducing the formula will be resolved in the short term: data uncertainties for modelling will remain, and so will the negative revenue expectations for certain EU Member States, states that benefitting currently from the misalignment of corporate profits. Creating a separate political decision stage almost guarantees that the process will be held hostage by a small number of Member States that wish to continue to attract profit shifting at the expense of all of their neighbours.

We therefore urge the Commission to recast the BEFIT proposal by eliminating the transitional allocation regime, and recognizing the necessity of formulary apportionment. Business is generally in favour of loss consolidation, and it should be clear that this policy cannot sensibly be adopted if not in conjunction with formulary apportionment. EU Member States with genuine economic activity should not be exposed to shrinking corporate tax bases due to loss consolidation if this effect is not offset by higher profit allocation based on formulary apportionment. EU Member States that are believed to be on the 'losing' end, through reduced ability to attract profit shifting, should be made aware that the effects will be minimal (*see* our own estimates below) – but also that an equitable international tax system is a prerequisite of a well-functioning and stable Internal Market.

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[19] BEFIT Impact Assessment at section 6.3.4.)
[20] BEFIT Directive Proposal, at article 45(9).

Designing the best formula

With regard to the composition of the formula, we believe the following five primary considerations are key and could be used by the Commission to look for (or to defend) the ‘perfect formula’:

1. **Accuracy in capturing economic activity**: The formula should encompass economic activity from both the supply side (i.e. labour and capital) and demand side (i.e. sales) as precisely as possible.

2. **Resilience to manipulation and other unintended consequences**: Care should be taken to ensure the formula does not inadvertently affect employment and wages, or lead to other unforeseen negative outcomes. The formula should rely on components that are difficult to alter or manipulate. (For this reason, intangible assets, which are so frequently a vector of profit shifting, should not be part of any formula.)

3. **Simplicity**: The more straightforward the formula, the easier it will be for multinational enterprises to understand and comply with, and for authorities to administer and enforce. From the perspective of administrability, a formula with fewer factors is preferable over one with more.

4. **Sectoral fairness**: The formula should ensure equity, meaning it should not disproportionately favour or penalize companies from specific industries or sectors that typically rely more heavily on one of the factors. Industry-specific adaptations might be considered if fairness cannot be achieved under a single formula. For example, in the case of the natural resources industry, it is appropriate to allocate profits to the country of extraction. This might not be achievable under a general formula.

5. **Information availability:** Sufficient information on the use of the factors by multinational groups and their individual member companies should be publicly available through taxpayer reporting. Country-by-Country reporting standards should be amended in function of the chosen formula factors, if needed.

Our proposal: a two-factor formula based on ‘employees’ and ‘sales’

Based on the criteria above, the Tax Justice Network believes the recasting of BEFIT should implement profit attribution on the basis of a **two-factor formula** that combines in equal proportion the weighted share of ‘employees’ and of ‘sales’.

- **‘Employees’** refers to the relative headcount of BEFIT group employees that are employed by the group company. The ‘payroll’ component which was part of the ‘labour’ factor in the CCCTB formula should be omitted. Using payroll would unreasonably benefit high-wage Member States. It is furthermore easier to shift payroll in the form of the relocation of high-wage employees than it is to shift a large number of employees with average wages. Finally, unlike employee numbers, payroll cost is not part of the information shared under the current country-by-country reporting standards.[21]

'Sales' refers only to unrelated party sales, meaning, the relative share of revenue derived from the external sales of goods and services by the BEFIT group. In principle, sales of goods and services are to be allocated to the destination jurisdiction. In light of the growth of remotely provided services and distance selling of goods, more refined nexus are necessary on how to allocate sales. In this regard, inspiration should be drawn from the nexus rules developed under Pillar One – Amount A.[22]
Like in the case of Amount A and in line with the principle of sectoral fairness mentioned above, we believe formulary apportionment under BEFIT should apply to all business models and industry without exception. This 'comprehensive scoping' and the development of tailored nexus rules for the sale of specific goods or services, like primary products and raw materials, digital services like online advertising, or international air and maritime shipping services, should prevent the use of industry exceptions.

Compared to the CCCTB formula, we propose to eliminate the third factor of 'tangible assets' altogether. The growth of services and the increased importance of skilled and intellectual work in many sectors has reduced the relevance of tangible assets as an input factor. Furthermore, even high value tangible assets can be mobile which causes temporal allocation problems. Tangible assets are altogether difficult to value, and that increases the scope for abuse.[23]

Eliminating assets would greatly improve simplicity and administrability in general. At the same time, it would also require exceptions for those industries that are still highly invested in physical assets, like international transport or construction, or for which demand side

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[21] Both under the EU framework for administrative assistance in tax and the OECD BEPS Action 13 standards, country-by-country reports only require information on local employee numbers but not on payroll cost. (*see*: Article 8aa(3) of EU Directive on Administrative Cooperation in Tax (EU)2011/16, as amended by Directive (EU) 2016/881; and OECD (2022), Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13, at p. 11. Under the country-by-country reporting standards set by the Global Reporting Initiative (GRI), information on employee numbers is required, information on payroll cost is recommended but not required. (*See*: GRI (2023), GRI 207: Tax 2019, Disclosure 207-4 Country-by-country reporting, at p. 12.)
[22] *See* Article 7 (Sourcing Principles for Categories of Adjusted Revenues) of the draft Multilateral Convention to Implement Amount A of Pillar One, available at: https://www.oecd.org/tax/beps/multilateral-convention-to-implement-amount-a-of-pillar-one.pdf.
[23] For more on the introduction of a unitary corporate tax system with formulary apportionment on the basis of a two-factor (employees and sales) formula, *see*: Sol Picciotto, Muhammad Ashfaq Ahmed, Alex Cobham, Rasmi Ranjan Das, Emmanuel Eze and Bob Michel, "*Beyond the Two Pillar Proposals A Simplified Approach for Taxing Multinationals*", South Centre – Tax Cooperation Policy Brief No. 36, 26 October 2023, available at: https://www.southcentre.int/wp-content/uploads/2023/10/TCPB36_Beyond-the-Two-Pillar-Proposals_EN.pdf.

attribution based on sales is less appropriate, like for the natural resources industry.

The effective implementation and monitoring of the application of the sales-by-destination factor would require aligning the country-by-country reporting standards with the sales factor nexus rules under BEFIT. Under the current reporting standards, the relevant sales are reported as 'unrelated party revenues'.[24] For the purpose of applying the formula, the sales should be reported per jurisdiction by destination of sales.

Impact of the proposed formula

According to the Tax Justice Network's recent impact assessments, it is clear that the two-factor formula prevails as the preferable option over other options including the double-weighted sales formula and the three-factor formula proposed in the CCCTB. All formulas have a negative revenue impact on EU 'investment hub' countries like Luxembourg, the Netherlands, Malta and Ireland. This is unsurprising, given that these countries have actively tailored their corporate tax policies to facilitate corporate tax misalignment within the EU and beyond. For this reason, these EU countries rank high on the Tax Justice Network's Corporate Tax Haven Index.[25] The reduction in revenue in those countries is the correction of corporate profit misalignment that BEFIT is intended to achieve. Our estimates show that implementation of the two-factor formula will reduce revenues in the four mentioned EU corporate tax havens by three to four per cent of their total tax revenue, based on data from 2018. Revenues in the other 23 Member States remain either close to the status quo or increase, with total gains in excess of U$36 billion.[26]

Significantly, our assessments show that the negative impacts of the formula in the four 'tax havens' is strongly reduced if consideration is also given to the impact of the Minimum Tax Directive.[27] We estimate that the combination of the two measures results in a sharp reduction of the negative revenue impacts, with the highest country loss now just two per cent.[28]

The small reductions in these countries' tax revenues that would result under a two-factor formula, and in combination with the Minimum Tax

[24] *See* Section III(A) of EU Directive on Administrative Cooperation in Tax (EU)2011/16. The same applies under the OECD BEPS 13 standards and the GRI 207 standards.
[25] *See* the 2021 ranking of the Corporate Tax Haven Index, available at *https://cthi.taxjustice.net/en/*.
[26] *See* Annex, Figure 1 and Table 1. For more estimates and analysis of the impact of formulary apportionment under BEFIT, *see*: Tax Justice Network (2024), 'Formulary Apportionment in BEFIT: A Path to Fair Corporate Taxation', available at: available at: https://taxjustice.net/?post_type=reports&p=17682.
[27] EU (2022), Council Directive 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 ('Minimum Tax Directive').
[28] *See* Annex, Figure 1 and Table 1. For more estimates and analysis of the impact of formulary apportionment under BEFIT, *see*: Tax Justice Network (2024), 'Formulary Apportionment in BEFIT: A Path to Fair Corporate Taxation', available at: available at: https://taxjustice.net/?post_type=reports&p=17682.

Directive, goes to show how highly wasteful the facilitation of corporate tax misalignment is. The Tax Justice Network's analysis of 2016 and 2017 country by country data from US companies operating in the EU found that Luxembourg's facilitation of corporate profit misalignment (measured by applying the CCCTB formula) combined with undertaxation of allocated profits cost EU members over $12 billion in lost corporate tax revenue a year from these US companies. At the same time, Luxembourg collected just $0.4 billion in additional corporate tax revenue a year off the back of these misaligned profits. For each additional $1 in tax revenue Luxembourg collected from these US firms shifting profit to it, the EU lost $32.[29]

For these reasons, we strongly urge the European Commission to reassess the impact of BEFIT with formulary apportionment based on the two-factor formula. This time, consideration should also be given to the concurrent impact of the EU Minimum Tax Directive. We believe the results of the modelling will show reduced negative revenue impacts on individual countries. This, in turn, will strongly support the abolition of the transitional allocation regime and pave the way for unitary taxation with formulary apportionment in the EU.

If the abolishment of the transitional allocation regime is deemed politically difficult, the Commission could consider introducing a 'test' phase in the first three years of BEFIT. In this period, profit attribution would take place on a preliminary agreed formula, which can be the three-factor formula of the CCCTB formula if needed, but the Commission should at the same time undertake a more comprehensive review of the composition and weight of the factors in the formula in view of proposing the final formula – which we think should be the two-factor formula – by the end of the third year.

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[29] Tax Justice Network (2020), 'The axis of tax avoidance - Time for the EU to close Europe's tax havens', 28 April 2020, available at: https://www.taxjustice.net/wp-content/uploads/2020/04/The-axis-of-tax-avoidance_Tax-Justice-Network_April-2020-1.pdf.

Additional considerations: Abuse and avoidance in the transitional regime and beyond

BEFIT proposal

In the proposal, the European Commission indicates that it believes the BEFIT regime it proposes is compatible with the Anti-Tax Avoidance Directive (ATAD) of 2016, except for ATAD's interest limitation rule.[30] A specific BEFIT interest limitation rule is provided that applies on BEFIT group basis, instead of ATAD limitation rule which applies company-by-company.[31]

No additional anti-avoidance provisions are included in the proposal.

Our analysis

The Tax Justice Network does not share the EU Commission's confidence as to whether the large array of existing anti-avoidance measures under secondary EU legislation are sufficient to tackle new types of avoidance that will inevitably occur in the dimension of a cross-border fully consolidated group, rather than on the company-by-company basis for which the existing measures were designed.

It is also not exactly clear from the BEFIT proposal whether the current anti-avoidance measures in the ATAD framework and in the Parent Subsidiary Directive are applicable to the determination of the taxable result of each of the BEFIT group members, or whether these rules are simply switched off for BEFIT purposes. This should be clarified, and if they are switched off, then dedicated BEFIT anti-avoidance rules should be designed to avoid profit shifting under the transitional allocation regime.

Additionally, besides measures to tackle profit shifting between BEFIT group entities, there is also a clear need for measures to avoid the use of base eroding payments to shift profits out of the BEFIT group to group companies in third countries with low effective tax rates.

For these reasons, we suggest that the European Commission clarifies the application of existing anti-avoidance measures in the context of BEFIT and contemplates the adoption of BEFIT specific measures, if needed. Such measures could for example take the form of:

- A dedicated BEFIT group interest limitation rule which limits the overall deduction of excess borrowing costs to 10% of the group's

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[30] *See* EU (2016), *Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market*, at article 4.
[31] *See* BEFIT Directive proposal, at article 13.

EBITDA, applied in addition to the individual company interest deduction limitations under the ATAD;

- A dedicated BEFIT royalty deduction limit for the payment on royalties to group companies outside the BEFIT group;

- A dedicated BEFIT CFC rule that includes into the taxable profits of BEFIT group members the non-distributed income of controlled legal entities or permanent establishments outside the BEFIT group that are without economic substance, if the CFC income is derived from passive income or is income from the sale of goods or services to BEFIT group members.

Finally, we question the appropriateness of the administrative safe harbor provided to BEFIT groups during the transitional regime in the form of the assumption that intra-BEFIT group transactions are presumed to be in accordance with the arm's length principle if the income/expenses arising from these transactions at individual group member level do not exceed 10% of the average of its intra-BEFIT transactions in the previous three fiscal years.[32] We note that under the current formulation of the safe harbour rule, the continuous use of the maximum allowance allows group companies to shift 25% of their profits in the form of intra group transactions within 4 years, and without the need to provide any justification on how this shifting is in line with the transfer pricing standards. We suggest that additional refinements are taken to eliminate abuse of the safe harbor rule, for instance by reducing the maximum percentage or by capping the subsequent year in year out use of the presumption.

[32] *See* Article 45(3) of the BEFIT directive proposal.

Tax challenges of the digitalized economy

BEFIT proposal

In the Explanatory Memorandum of the BEFIT proposal, the Commission notes that the BEFIT proposal reflects the insights gained and the changes in modern economy characterized by increasing globalization and digitalization.[33]

In reality, the BEFIT proposal does not deal with any of the tax challenges of the digitalized economy. Instead, the proposal is drafted in full deference to the outcome of the global negotiations under Pillar One. This is understandable, given that all EU Member States have expressed their individual commitments to the Two-Pillar Solution of the OECD/G20 Inclusive Framework, as presented in the Statement of 8 October 2021. The principal outcome under Pillar One is the inception of a new taxing right ('Amount A') which allocates a fraction of the residual profits of the biggest and most profitable MNEs to market jurisdictions if these satisfy the new nexus rules.

It remains to be seen whether the Amount A multilateral convention will effectively be adopted. But even in the scenario in which Amount A applies, its reach will be limited while its application to only the biggest and most profitable MNEs is fundamentally unprincipled. MNEs providing digital services within the Internal Market do not need to reach a 20 billion global turnover to disrupt local markets and distort the allocation of corporate taxes among EU Member States.

Our analysis

It should be noted that in its 2018 directive proposal for the introduction of a significant digital presence (SDP), the Commission writes that: "*the CCCTB with its current scope would not offer a structure solution to some of the important challenges in taxing businesses of the digital economy. This is because* [...] *the definition of a permanent establishment in the CCCTB follows the one currently applied internationally. Moreover, the profit allocation rules (the formula apportionment) in the CCCTB may not sufficiently capture the digital activities of a company. The rules on a taxable nexus for digital activities should be included in the CCCTB. Furthermore, with respect to allocating the profits of large multinational groups, the formula apportionment approach in the CCCTB should be adapted in order to effectively capturing digital activities.*"[34]

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[33] BEFIT directive proposal, at section 1.
[34] EU (2018), *Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence*, COM(2018)147 final, 21 March 2018, at pp. 3-4.

This observation equally applies to the BEFIT proposal. It is assumed that BEFIT profit allocation rules will eventually transition to permanent formulary apportionment based on a formula including a sales-by-destination factor. However, the rise of the remote provision of digital services in local markets without physical or legal MNE presence make it so that the traditional application of the sales factor will not lead to a satisfactory apportionment of profits. Under the CCCTB (2016), profits from the sale of goods or services in Member States without MNE presence were to be included in the sales factor of all group members in proportion to their respective share in the 'labour' and 'asset' factors.[35] This so-called 'throwback rule' completely ignores the realities of the digitalized economy. As hinted at by the Commission in 2018, this issue can only be resolved by creating a taxable nexus rule like the SEP (significant economic presence) rule which allows for the adequate allocation of MNE profits from remote sales to markets without physical or legal MNE presence.

Granted, the proposal for a significant digital presence rule was abandoned at the EU Council level due to lack of unanimous support by EU Member States. At the same time, at the level of the OECD/Inclusive Framework, the significant digital presence road was formally (and controversially) closed in October 2019 in favour of the push for a new taxing right that - unlike the significant digital presence rule - entailed the (re)allocation of only residual/non-routine profits of all digital businesses. In a subsequent (and equally controversial) move in 2021, the scope of this new taxing rights was further limited to apply to only the biggest digital, but also non-digital, MNEs.

It worth noting that in the Amount A Draft Convention – which was released in October 2023 after the release of the BEFIT proposal – the admission is made that Amount A might not be a sacrosanct solution to deal with the tax challenges of the digitalized economy. The draft convention expressly provides that countries can, in addition to Amount A, adopt a significant economic presence rule that instates a taxable presence for remote service providers (digital and otherwise) on market-based criteria like local sales or the number of users. The only condition is that the SEP rule should not violate the existing tax treaties.[36] Given the primacy of EU law over domestic law of EU member states (which includes intra-EU bilateral tax treaties), a directive introducing such a rule to apply between EU countries, satisfies the tax treaty compatibility condition in the Amount A Convention.

The Commission notes in the BEFIT proposal that plans for a harmonized corporate tax base in the Internal Market are nearly as old as the Internal Market itself. The digitalization of the economy is arguably the most crucial development since the inception of the EU. The proposed rules under BEFIT are perfectly apt to harmonize the corporate tax base rules

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[35] CCCTB (2016) proposal, at article 38(4).
[36] OECD/Inclusive Forum on BEPS (2023), The Multilateral Convention to Implement Amount A of Pillar One, draft convention of 11 October 2023, at article 39 and 40.

of last century. However, without properly taking into account the effects of digitalization on business and remote sales, BEFIT can hardly be called a cornerstone for 'Business Taxation for the 21st Century'.[37]

We urge the EU Commission to revisit its significant digital presence proposal of 2018 and extend the BEFIT tax base rules by adding a taxable nexus in the form of a general significant economic presence rule.

- As to the definition of the SEP threshold, additional assessment is needed by the Commission to ascertain whether factors proposed in 2018 (*i.e.* the turnover threshold, user threshold and contract threshold) are still pertinent.

- As to the attribution of profits to the SEP, the 2018 proposal suggested that profits are to be attributed to a significant digital presence on the basis of a modified version of the OECD's Authorized OECD Approach for profit attribution to PEs. The modification consisted in the fact that functions, assets and risks (FAR) that relate to data or users in the SDP state were to be attributed to the SDP even if the relevant activities under the FAR analysis were not performed in the SDP state. This 'separate entity' approach to SEP profit attribution is compatible with the traditional arms' length allocation of profits to related entities that underlies BEFIT group profit attribution in the transitional regime.

  As with BEFIT profit attribution between group companies in general, we strongly recommend the use of formulary apportionment of profits to a SEP, once identified based on the threshold criteria. Logically, the attribution would be based on the SEP's share in the multinational enterprises 'sales by destination' (*see* above).

[37] https://taxation-customs.ec.europa.eu/system/files/2021-05/communication_on_business_taxation_for_the_21st_century.pdf

Tax incentives under BEFIT

BEFIT proposal

The BEFIT proposal provides that in order to ensure full competence over their tax rate policies, EU Member States will be free to further apply any deductions, tax incentives or base increased to their allocated parts of the BEFIT tax base.[38]

The Commission notes in this regard that the only requirement that Member States will need to respect is the adherence to the rules of the Minimum Tax Directive which require a minimum level of effective taxation on in-scope profits.

Our analysis

In the European Commissions' communication on Business Taxation for the 21st Century, it is argued that BEFIT is part of a new EU tax policy agenda that answers the European Union's need for "*a robust, efficient and fair tax framework that meets public financing needs, while also supporting the recovery and the green and digital transition by creating an environment conducive to fair, sustainable and job rich growth and investment.*"[39] The fight against climate change and for global sustainable development are all-encompassing policy objectives for all countries, and especially the EU Member States. Corporate tax policy and, more specifically, the use of corporate tax incentives are key instruments to further these important goals. For this reason, we think it is undesirable for the EU to draw up plans for a harmonized corporate tax in the 21st century that emphasizes the free hand EU Member States have in adopting incentives. Instead, guardrails and standards should be developed for the use of corporate tax incentives that affect the national BEFIT tax base. The setting of such standards does not interfere with EU Member States' national sovereignty. The standards help Member States to best exercise this sovereignty in line with universal objective of socially and environmentally sustainable development.

For these reasons, we suggest that the BEFIT proposal should be complemented with the following measures regarding the adoption of corporate tax incentives:

- **Expenditure transparency.** In line with the rules currently in place under the Member State Budgetary Framework Directive,[40] the BEFIT Directive should reiterate that Member States are obliged

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[38] *See* Article 48(2) of the BEFIT directive proposal.
[39] EU (2021), Business Taxation for the 21st Century, at p.2
[40] *See* Article 14(2) of Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States, available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:306:0041:0047:en:PDF

to publish detailed information on the impact of tax expenditures on revenues, including expenditures that result from incentives applied to post-attribution BEFIT profits. The reporting on tax incentives should be expanded to include reporting on how the measures further ESG-appropriate taxpayer behaviour or the adherence to the Sustainable Development Goals.[41]

- **Standard setting**. The BEFIT directive should be accompanied by a European Commission recommendation on the best practices for the use of corporate tax incentives. In the recommendation, Member States should be advised to focus on input-based tax incentives, and refrain from offering output-based tax incentives such as patent boxes and other intellectual property regimes.[42] To spur investments to achieve the UN Sustainable Development Goals and to respond to the climate emergency, Member States should be advised to adopt targeted accelerated depreciation rules at the national level. At the same time, measures that encourage future investments in fixed assets in fossil-fuel related activities and those fixed assets with a high carbon content, both in their production and use, should be abolished.

It is worth noting that other regional organisations have been successful in establishing comprehensive tax expenditure transparency frameworks.[43] The EU has some catching up to do, certainly if it aims to lead by example, and wishes to promote public accountability, fiscal discipline and evidence-based tax policy making. BEFIT - a crucial part of Business Taxation for the 21st Century - is the perfect opportunity to put these objectives into practice. Information on the availability and size of tax expenditures in all EU countries is essential to put EU policy-makers, investors, and the general public on a level playing field while promoting sustainable public spending.

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[41] For the purpose of achieving expenditure transparency on tax incentives, Article 48(2) of the Directive Proposal which allows Member States to apply tax incentives on BEFIT profits should be amended by adding the following sentence: "*Adjustments that effectively result in revenue forgone must be made public annually as set forth in Directive 2011/85 in the form of a tax expenditure report, following the guidelines published by the European Commission within 6 months of the entry into force of this Directive*."
[42] For the Tax Justice Network's view on the responsible use of sectoral tax exemptions, tax holidays and economic zones, and patent boxes, *see*, respectively, Indicators 5, 6 and 7 of the Corporate Tax Haven Index, available at: https://cthi.taxjustice.net/cthi2021/HI-5.pdf; https://cthi.taxjustice.net/cthi2021/HI-6.pdf; and https://cthi.taxjustice.net/cthi2021/HI-7.pdf.
[43] *See* WEAMU/UEMOA (2015), *Décision n°08/2015/CM/UEMOA du 02 juillet 2015 instituant les modalités d'évaluation des dépenses fiscales dans les États membres de l'UEMOA*, available at: https://budget.gouv.ci/doc/loi/Annexe%2012%20-%20PROJET%20DE%20RAPPORT%20D_EVALUATION%20DES%20DEPENSES%20FISCALES%202020.pdf#page=100.

Concluding remarks

The EU needs a robust, efficient and fair corporate tax framework that creates an environment conducive to sustainable and environmentally responsible growth and provides for a fairer allocation of taxing rights between Member States. In this report, we show how the European Commission's BEFIT proposal offers a major step in the right direction but in its current version is fundamentally flawed.

The Tax Justice Network has long advocated for unitary taxation with formulary apportionment as the ultimate solution to tackle corporate profit misalignment. Profit misalignment comes to exist due to the flaws of transfer pricing based on the arm's length principle. As in the case of CCCTB (2011) and the CCCTB (2016) relaunch, we fully support efforts by the Commission to create a system to tax multinational enterprises in which these flaws are corrected.

However, with the BEFIT proposal, the European Commission essentially proposes to move to a system of unitary taxation without formulary apportionment. As such, unlimited group loss consolidation – which is inherent to unitary taxation - is the proposal's only tangible contribution to the corporate tax rulebook in the EU. As all estimates show, group loss consolidation essentially implies a tax cut for multinational enterprises active in the EU. This tax cut, combined with lack of a clear roadmap towards the introduction of formulary apportionment to replace the transitional allocation regime based on the arm's length principle, makes the BEFIT proposal, as is, unfit for purpose.

In this report, we recommend a number of changes to the proposal that would put BEFIT back on the right track. Most importantly, group loss consolidation should not be implemented without the *simultaneous* introduction of its corollary of formulary apportionment. We propose a two-factor ('employees' and 'sales-by-destination') formula and explain how this formula meets the requirements for equitable and simple attribution of profits. Estimates are provided to demonstrate that the impact of the formula on individual country revenues should not deter political consensus, especially if consideration is also given to the mitigating impact of the Minimum Tax Directive.

We further set out additional changes to the proposal in the form of BEFIT specific anti-avoidance provisions, limitations on loss carry-forwards and limitations to the administrative transfer pricing safe harbour rules. These changes should make BEFIT more resistant to the inevitable attempts by certain taxpayers to abuse the new system and artificially to shift profits in and out BEFIT groups.

To make the BEFIT regime capable to deal with the realities of remote sales in the digitalized economy, we suggest that the European Commission revisits its 2018 work on 'significant digital presence' and adds a rule on 'significant economic presence' to the BEFIT proposal. This new rule would allow to allocate a share of BEFIT group profits to EU member states with significant sales-by-destination or users, even if the multinational enterprise in question does not have taxable presence in the jurisdiction in the traditional sense.

Finally, we provide recommendations on how the EU can make sure the Member States are using their national sovereignty to apply tax incentives on the allocated BEFIT tax base in a way that serves the general purpose of sustainable and environmentally responsible development. In this regard, we propose the Commission enforces the current tax expenditure transparency requirements and adopts a general recommendation on the appropriate design and use of corporate tax incentives.

With these changes adopted, we believe BEFIT will truly be fit for purpose to serve as the EU's cornerstone for *Business Taxation in the 21st Century.*

Annex

Figure 1: Effects of BEFIT with formulary apportionment: In isolation and combined with a minimum tax of 15% (in billion USD)

This figure illustrates the changes in annual tax revenue that EU Member States would experience if BEFIT was implemented with formulary apportionment, using data from 2018. The data is categorized to differentiate between the four EU tax havens (Ireland, Luxembourg, Malta, and the Netherlands) and the other 23 EU Member States. The left panel of the figure depicts the changes in tax revenues assuming the isolated implementation of BEFIT with formulary apportionment. Conversely, the right panel displays the tax revenue changes if BEFIT with formulary apportionment was implemented alongside the forthcoming 15% minimum corporate tax in the EU. The calculations utilize three widely discussed formulas: 'Sales & Employees', which calculates the share of taxable profits based on a country's share of unrelated party revenue (50%) and a country's share of employees (50%); 'CCCTB', which determines the share of taxable profits according to a country's share of unrelated party revenue (1/3), intangible assets (1/3), employees (1/6), and the company's payroll (1/6); and 'Double-weighted sales', which calculates taxable profits based on a country's share of unrelated party revenues (50%), intangible assets (25%), and the company's payroll (25%). These estimates are derived from country-by-country reporting data as published by the OECD, adjusted for double counting and other data concerns as detailed in Tax Justice Network (2024). All figures are expressed in billions of US dollars.

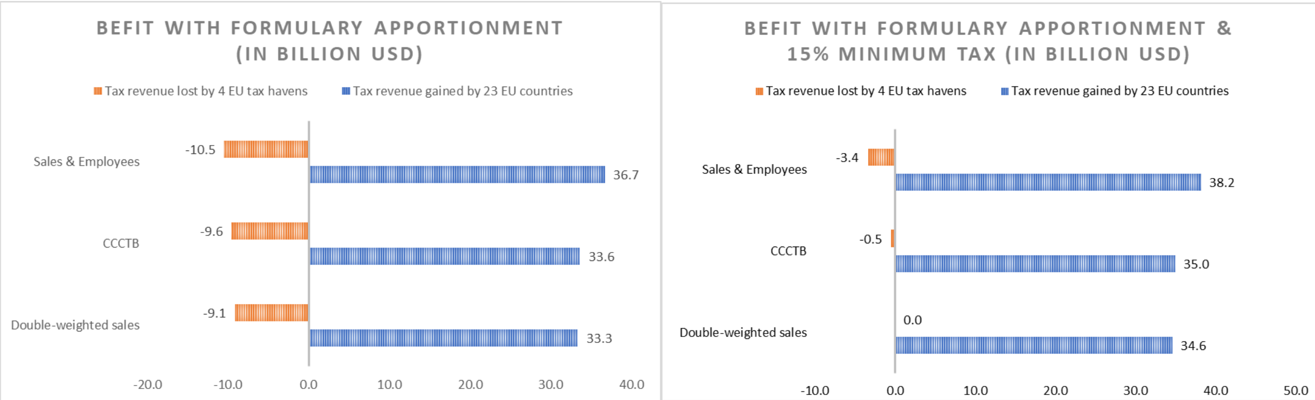

Table 1: Effects of BEFIT under a formula based on sales and employment, in million USD

This table provides estimates of the changes in annual taxable profits and tax revenue that would have resulted EU Member States would experience if BEFIT was implemented with formulary apportionment, using data from 2018. The calculations are based on a formula that determines a country's share of taxable profits, considering equally the country's share of unrelated party revenue (50%) and the country's share of employees (50%). These estimates are derived from country-by-country reporting results as published by the OECD, adjusted for double counting and other data concerns, as elaborated in Tax Justice Network (2024). Unless stated otherwise, all numbers are in millions of US dollars.

Country	BEFIT					Combined with EU minimum tax		
	Change in taxable profits			Change in tax revenue		Additional revenue through minimum tax	Total change in revenue	% of tax revenues
	Gains	Losses	Net	million USD	% of tax revenues			
Austria	2,620	2,949	-329	-35	0.0%	1,044	1,010	0.9%
Belgium	43,414	8,254	35,160	7,040	5.4%	0	7,040	5.4%
Bulgaria	1,486	370	1,116	70	0.5%	221	291	2.2%
Croatia	461	201	260	31	0.0%	55	86	0.1%
Cyprus	1,003	457	546	20	0.3%	40	60	1.0%
Czech Republic	3,278	1,477	1,801	287	0.8%	0	287	0.8%
Denmark	570	8,534	-7,963	-1,248	-1.1%	0	-1,248	-1.1%
Estonia	303	0	303	45	0.7%	1	46	0.7%
Finland	947	1,991	-1,044	-156	-0.3%	14	-142	-0.2%
France	44,956	2,707	42,249	9,872	1.5%	0	9,872	1.5%
Germany	61,109	3,100	58,010	10,998	2.4%	0	10,998	2.4%
Greece	404	398	6	2	0.0%	0	2	0.0%
Hungary	3,895	293	3,603	570	1.6%	0	570	1.6%
Ireland	1,571	19,662	-18,091	-2,092	-3.0%	783	-1,310	-1.9%
Italy	25,157	1,631	23,527	5,594	1.1%	0	5,594	1.1%
Latvia	257	63	194	11	0.1%	70	81	1.0%
Lithuania	419	49	370	50	0.6%	17	66	0.7%
Luxemburg	5,646	30,166	-24,521	-806	-4.3%	1,043	237	1.3%
Malta	252	2,846	-2,594	-141	-3.7%	64	-77	-2.0%
Netherlands	5,620	140,223	-134,603	-7,447	-3.5%	5,210	-2,237	-1.1%
Poland	14,765	2,903	11,862	1,938	1.9%	0	1,938	1.9%
Portugal	2,339	3,855	-1,516	-238	-0.4%	0	-238	-0.4%
Romania	6,656	98	6,558	968	2.8%	30	998	2.9%
Slovak Republic	2,417	979	1,438	331	1.7%	0	331	1.7%
Slovenia	455	58	397	58	0.6%	6	64	0.6%
Spain	12,058	8,310	3,748	568	0.3%	0	568	0.3%
Sweden	2,923	3,409	-486	-86	-0.1%	0	-86	-0.1%
Total	**244,982**	**244,982**	**0**	**26,204**	**0.8%**	**8,597**	**34,801**	**1.1%**

Bibliography

EU (2023), *Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT)*, European Commission, COM(2023) 532 final, 12 September 2023, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52023PC0532.

EU (2023), *Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) – Impact Assessment Report*, European Commission, SWD(2023) 308 final, 12 September 2023, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52023PC0532.

EU (2023), *Proposal for a Council Directive on Transfer Pricing*, European Commission, COM(2023)529 final, 12 September 2023, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0529.

EU (2022), Council Directive 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 ('Minimum Tax Directive'), available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022L2523&amp%3Bqid=1682496237741

EU (2021), *Communication on Business Taxation for the 21st Century*, European Commission, 18 May 2021, available at: https://taxation-customs.ec.europa.eu/system/files/2021-05/communication_on_business_taxation_for_the_21st_century.pdf.

EU (2018), *Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence*, COM(2018)147 final, 21 March 2018, available at: https://taxation-customs.ec.europa.eu/system/files/2018-03/proposal_significant_digital_presence_21032018_en.pdf.

EU (2016), *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, European Commission, COM(2016)683 final, available at: https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52016PC0683.

EU (2016), *Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market,* available at: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32016L1164.

EU (2016), *Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation*, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016L0881.

EU (2015), *Questions and Answers on the CCCTB re-launch*, European Commission, 17 June 2015, available at: https://ec.europa.eu/commission/presscorner/detail/et/MEMO_15_5174

EU (2011), *Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States*, available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:306:0041:0047:en:PDF.

EU (2011), *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, European Commission, COM(2011)121 final, 16 March

2011, available at: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52011PC0121.

OECD/Inclusive Forum on BEPS (2023), *The Multilateral Convention to Implement Amount A of Pillar One*, draft convention of 11 October 2023, available at: https://www.oecd.org/tax/beps/multilateral-convention-to-implement-amount-a-of-pillar-one.pdf.

OECD (2022), Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13, available at: https://www.oecd.org/ctp/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf.

WEAMU/UEMOA (2015), *Décision n°08/2015/CM/UEMOA du 02 juillet 2015 instituant les modalités d'évaluation des dépenses fiscales dans les États membres de l'UEMOA*, available at: https://budget.gouv.ci/doc/loi/Annexe%2012%20-%20PROJET%20DE%20RAPPORT%20D_EVALUATION%20DES%20DEPENSES%20FISCALES%202020.pdf.

GRI (2023), *GRI 207: Tax 2019, Disclosure 207-4 Country-by-country reporting*, available at: https://www.globalreporting.org/how-to-use-the-gri-standards/gri-standards-english-language/.

Sarah Godar, *Corporate profit misalignment: An analysis of German parent companies and their foreign affiliates*, Tax Justice Network Blog, 18 November 2020, available at: https://taxjustice.net/2020/11/18/corporate-profit-misalignment-an-analysis-of-german-parent-companies-and-their-foreign-affiliates/

Sol Picciotto, Muhammad Ashfaq Ahmed, Alex Cobham, Rasmi Ranjan Das, Emmanuel Eze and Bob Michel, "*Beyond the Two Pillar Proposals - A Simplified Approach for Taxing Multinationals*", South Centre – Tax Cooperation Policy Brief No. 36, 26 October 2023, available at: https://www.southcentre.int/wp-content/uploads/2023/10/TCPB36_Beyond-the-Two-Pillar-Proposals_EN.pdf.

Tax Justice Network (2024), 'Formulary Apportionment in BEFIT: A Path to Fair Corporate Taxation', available at: available at: https://taxjustice.net/?post_type=reports&p=17682

Tax Justice Network (2023), *Beyond20*, May 2023, available at: https://taxjustice.net/wp-content/uploads/2023/05/Tax-Justice-Network-beyond20-Strategic-Framework-May-2023.pdf.

Tax Justice Network (2021), *Corporate Tax Haven Index*, available at https://cthi.taxjustice.net/en/.

Tax Justice Network (2021), *Corporate Tax Haven Index – Haven Indicator 5: Sectoral exemptions*, available at: https://cthi.taxjustice.net/cthi2021/HI-5.pdf.

Tax Justice Network (2021), *Corporate Tax Haven Index – Haven Indicator 6: Tax holidays and economic zones*, available at: https://cthi.taxjustice.net/cthi2021/HI-6.pdf.

Tax Justice Network (2021), *Corporate Tax Haven Index – Haven Indicator 7: Patent boxes*, available at: https://cthi.taxjustice.net/cthi2021/HI-7.pdf.

Tax Justice Network (2020), 'The axis of tax avoidance - Time for the EU to close Europe's tax havens', 28 April 2020, available at: https://www.taxjustice.net/wp-content/uploads/2020/04/The-axis-of-tax-avoidance_Tax-Justice-Network_April-2020-1.pdf