

To: Taxation WG
 From: Personal & general insurance department
 Date: 03-10-2023
 Reference: ECO-TAX-23-103

Subject: Analysis of BEFIT proposal

Summary

On **12 September** the European Commission (EC) published a proposal for a “Business in Europe: Framework for Income Taxation” (BEFIT) Directive and a Transfer Pricing (TP) Directive (see [FLASH-23-101](#)):

- Proposal for a Council Directive on [BEFIT](#);
- Proposal for a Council Directive on [TP](#).

The EC also published a [Q&A](#) about the newly released proposals and a [press release](#).

On **15 September**, the secretariat shared a brief summary of the two proposals and invited members ([ECO-TAX-23-101](#)) to provide feedback on the consultation (see [here](#)) launched by the EC on the texts of the two proposals.

To assist members in the elaboration of their feedback, the secretariat prepared an analysis of the BEFIT proposal, focused on the priorities identified in the Insurance Europe’s letter addressed to DG TAXUD ([ECO-TAX-23-094](#)):

Topic	Proposed provisions	Article
Equalisation provisions/ Special reserve	<ul style="list-style-type: none"> ■ The BEFIT directive disallows the deduction of provisions for tax purposes, except where the following conditions are met: <ul style="list-style-type: none"> ■ The BEFIT group member has a legal or reasonably expected legal obligation. ■ The obligation arises from activities or transactions carried out in that fiscal year or in previous fiscal years. ■ The amount of provision arising from such an obligation can be reliably estimated. ■ The amount will result, when settled, in an expense which is deductible under the directive. ■ Contingent losses and future cost increases are never deductible under the BEFIT directive. ■ If an obligation will continue over future fiscal years, the amount of the provision must be spread proportionately over the estimated duration of the activity or transaction. ■ Provisions must be reviewed and adjusted at the end of every fiscal year. ■ When calculating the preliminary tax result in future fiscal years, account must be taken of amounts that have already been deducted pursuant to the BEFIT directive. 	Article 30

Treatment of technical provisions	<ul style="list-style-type: none"> Insurance undertakings in the EU which are members of a BEFIT group must review and adjust the amount of technical provisions that were deducted in the financial accounting net income or loss, at the end of every fiscal year. BEFIT group members cannot deduct the same technical provisions from their taxable income multiple times. 	Article 14
Taxability of capital gains	<ul style="list-style-type: none"> The amount of gain or loss arising from the disposition of an ownership interest cannot be deducted from the net income or loss of a BEFIT member when the investments are made for the benefit of life insurance policyholders bearing the investment risk in the context of a unit-linked/index-linked life insurance policy. 	Article 9
Taxability of dividends	<ul style="list-style-type: none"> The amount of dividends or other distributions received or accrued during the fiscal year cannot be deducted from the net income or loss of a BEFIT member when the investments are made for the benefit of life insurance policyholders bearing the investment risk in the context of a unit-linked/index-linked life insurance policy. 	Article 8
Taxability of fair value changes	<ul style="list-style-type: none"> The amount of gain or loss arising from changes in the fair value of an ownership interest cannot be deducted from the net income or loss of a BEFIT member when the investments are made for the benefit of life insurance policyholders bearing the investment risk in the context of a unit-linked/index-linked life insurance policy. 	Article 10
Amendments relative to IFRS 17	<ul style="list-style-type: none"> The European Commission may adopt delegated acts to supplement the BEFIT proposal on adaptation of the preliminary tax result for insurance undertakings, in order to lay down more detailed rules on how to adapt the preliminary tax result in the context of the impact of the new International Financial Reporting Standard (IFRS) 17 on insurance contracts. 	Article 14
Factors for formula apportionment	<ul style="list-style-type: none"> No provisions on a formula apportionment for distributing the tax revenues between Member States are included in the BEFIT proposal. If the EC deems it appropriate, it may adopt a legislative proposal to amend the BEFIT Directive by introducing a method for the allocation of the BEFIT tax base using formula apportionment and based on factors. 	Article 45
National taxes - Deductibility as operating expenditures	<ul style="list-style-type: none"> The financial accounting net income or loss of a BEFIT group member must be adjusted to include the amount of any corporate tax, similar taxes on profits, and deferred taxes accrued for the fiscal year, as well as any amount recorded as current taxes in the financial accounts in relation to the payment of top-up tax due in accordance with Directive (EU) 2022/2523 or in application of a Qualified Domestic Top-up Tax as referred to in Article 11 of that Directive. 	Article 17

Next steps

- **9 October**, deadline for first round of contribution on Insurance Europe's response to BEFIT and TP.
- **25 November** (being extended every day until this adopted proposal is available in all EU languages), deadline for transmitting feedback on the BEFIT and TP proposals to the EC.