



**2023/0321(CNS)**

21.11.2023

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## **DRAFT REPORT**

on the proposal for a Council directive on Business in Europe: Framework for  
Income Taxation (BEFIT)  
(COM(2023)0532 – C9-0341/2023 – 2023/0321(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Evelyn Regner

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council directive on Business in Europe: Framework for Income Taxation (BEFIT)  
(COM(2023)0532 – C9-0341/2023 – 2023/0321(CNS))**

**(Special legislative procedure – consultation)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2023)0532),
  - having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C9-0341/2023),
  - having regard to Rules 82 of its Rules of Procedure,
  - having regard to the letter from the Committee on Budgets,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0000/2023),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
  5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a directive Recital 5**

*Text proposed by the Commission*

(5) The environment for doing business in the internal market should be made more attractive with the aim to stimulate growth and investment in the Union. For this

*Amendment*

(5) The environment for doing business in the internal market should be made more attractive with the aim to stimulate growth and investment in the Union. For this

purpose, the enactment of a common framework of corporate tax rules should be prioritised, in order to make it easier for businesses to comply with such rules when they operate across borders and also to encourage those who wish to further expand abroad to do so. A single set of corporate tax rules for international activity is expected to result in enhanced tax certainty and less tax disputes, as it would tackle distortions and decrease the number of cases of double and over-taxation.

***Furthermore, as tax revenue sustainability is key to Member States' budgets, including to invest in infrastructure, research and development and to deliver public services, it would be critical to ensure for the future that the allocation of revenues is performed in accordance with a tool based on solid parameters that cannot be abused.***

purpose, the enactment of a common framework of corporate tax rules should be prioritised, in order to make it easier for businesses to comply with such rules when they operate across borders and also to encourage those who wish to further expand abroad to do so. A single set of corporate tax rules for international activity is expected to result in enhanced tax certainty and less tax disputes, as it would tackle distortions and decrease the number of cases of double and over-taxation.

***Harmonisation of rules also implies less opportunities to abuse some specific national tax provisions in a pan-European context. With an allocation of the taxable base, which is based on tangible factors such as labour, assets and sales, the common framework of corporate tax rules will mitigate tax avoidance and aggressive tax planning. Due to the critical importance of sustainable tax revenue for Member States' budgets, including investment in the digital, green and social transitions, in research and development and for the provision of public services, especially for the most vulnerable households, it is essential to ensure that the harmonisation of profit determination rules in the Union will not lead to lower effective tax rates and lower revenues for Member States. In addition, it would be critical to ensure for the future that the allocation of revenues is performed in accordance with a tool based on solid parameters that cannot be abused.***

Or. en

## **Amendment 2**

### **Proposal for a directive**

#### **Recital 6**

*Text proposed by the Commission*

(6) ***It is indeed critical to create a***

*Amendment*

(6) ***Creating a system that attains a***

*system that achieves* a degree of uniformity across the Union, at least amongst the taxpayers that it is chiefly addressed to. Accordingly, and considering the efforts that both tax administrations and businesses have made in order to implement the framework of a global minimum level of taxation, it would be important to capitalise on this achievement and design rules that remain as close as possible to the OECD/G20 Model Rules and Directive (EU) 2022/2523. On this basis, the common framework of rules should be mandatory for groups with a taxable presence in the Union provided that they have annual combined revenues of **more than** EUR 750 000 000 based on their consolidated financial statements. In this way, the scope would thus be targeted at businesses that are most likely to have cross-border activities and, thereby, can benefit from the simplification which a common legal framework would offer. The threshold would also provide alignment with Directive (EU) 2022/2523 for a consistent approach in the Union.

degree of uniformity across the Union, at least amongst the taxpayers that it is chiefly addressed to, **is of crucial importance**. Accordingly, and considering the efforts that both tax administrations and businesses have made **to** implement the framework of a global minimum level of taxation, it would be important to capitalise on this achievement and design rules that remain as close as possible to the OECD/G20 Model Rules and Directive (EU) 2022/2523. On this basis, the common framework of rules should be mandatory for groups with a taxable presence in the Union provided that they have annual combined revenues of EUR 750 000 000 **or more** based on their consolidated financial statements. **Once the transition period lapses, such threshold should be set at EUR 40 000 000 or more, in line with the definition of large groups within the meaning of Directive 2013/34/EU of the European Parliament and of the Council<sup>1a</sup>**. In this way, the scope would thus be targeted at businesses that are most likely to have cross-border activities and, thereby, can benefit from the simplification which a common legal framework would offer. The threshold would also provide alignment with Directive (EU) 2022/2523 for a consistent approach in the Union.

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<sup>1a</sup> **Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182 29.6.2013, p. 19).**

Or. en

### Amendment 3

#### Proposal for a directive Recital 7

*Text proposed by the Commission*

(7) Although the threshold would be determined on the basis of the combined revenues of the group on a global basis, the remit of the provisions should be limited to members of the group operating on the internal market as Union law only applies within the Union and does not bind non-Member States. Only the Union sub-set of such a group should therefore be captured. This would include companies which are resident for tax purposes in a Member State and their permanent establishments operating in a Member State as well as the permanent establishments in the Union of third country companies of the same group. Considering that the concept of a permanent establishment is dealt with within bilateral tax treaties and national law and although the definition features some common principles, there is still a degree of divergence worldwide.

***Consequently, it would be a pragmatic approach to rely on the existing double taxation treaties and national rules of the Member States, rather than attempt full harmonisation through secondary Union law.***

*Amendment*

(7) Although the threshold would be determined on the basis of the combined revenues of the group on a global basis, the remit of the provisions should be limited to members of the group operating on the internal market as Union law only applies within the Union and does not bind non-Member States. Only the Union sub-set of such a group should therefore be captured. This would include companies which are resident for tax purposes in a Member State and their permanent establishments operating in a Member State as well as the permanent establishments in the Union of third country companies of the same group. Considering that the concept of a permanent establishment is dealt with within bilateral tax treaties and national law and although the definition features some common principles, there is still a degree of divergence worldwide.

Or. en

### Amendment 4

#### Proposal for a directive Recital 10 a (new)

*Text proposed by the Commission*

*Amendment*

***(10a) A fair taxation of passive income such as interest is required. It is therefore appropriate to lay down an interest***



*limitation rule applicable to BEFIT group members in such a way as to reduce the debt-equity bias that can occur via an over-reliance to intra-group debt financing and to reduce the scope for base erosion and profit shifting through excessive interest payments.*

Or. en

## **Amendment 5**

### **Proposal for a directive Recital 10 b (new)**

*Text proposed by the Commission*

*Amendment*

***(10b) To guarantee a minimal level of taxation of royalties, a royalties limitation rule for BEFIT group members should be introduced in accordance with the Subject to Tax Rule<sup>1a</sup> as proposed by the OECD/G20 Inclusive Framework in Pillar II.***

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***<sup>1a</sup> OECD (2023). Tax Challenges Arising from the Digitalisation of the Economy – Subject to Tax Rule (Pillar Two): Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/9afd6856-en>.***

Or. en

## **Amendment 6**

### **Proposal for a directive Recital 10 c (new)**

*Text proposed by the Commission*

*Amendment*

***(10c) A fairer taxation of passive income also requires robust Controlled Foreign***

***Company (CFC) rules for BEFIT group members in order to make them more resilient against profit shifting.***

Or. en

## Amendment 7

### Proposal for a directive

#### Recital 12

##### *Text proposed by the Commission*

(12) To achieve the key objective of creating a simplified corporate tax framework, the preliminary tax results for each group member should be aggregated into one single common tax base, in order to subsequently allocate this base to eligible group members. The tax adjustments to the financial statements would produce preliminary tax results for each group member. These results would then be aggregated, which would allow for cross-border loss relief between BEFIT group members, and subsequently, the aggregated tax base would be allocated to group members based on a transition allocation rule; this would pave the way towards a permanent mechanism. That permanent mechanism *could* be based on a formulary apportionment *and would* render the need for intra-BEFIT group transactions to be consistent with the arm's length principle redundant. ***It would have the advantage of using more recent country-by-country reporting ('CbCR') data and the information gathered during the transition period. This will also allow for a more thorough assessment of the impact that the implementation of the two-pillar approach is expected to have on national tax bases and the BEFIT group tax bases. In this way, it would still become possible to materialise the key objective of tax neutrality in the internal market, which would reduce instances of***

##### *Amendment*

(12) To achieve the key objective of creating a simplified corporate tax framework, the preliminary tax results for each group member should be aggregated into one single common tax base, to subsequently allocate this base to eligible group members. The tax adjustments to the financial statements would produce preliminary tax results for each group member. These results would then be aggregated, which would allow for cross-border loss relief between BEFIT group members, and subsequently, the aggregated tax base would be allocated to group members based on a transition allocation rule; this would pave the way towards a permanent mechanism. That permanent mechanism ***should*** be based on a formulary apportionment ***including three sets of tangible factors: labour, assets, and sales.*** It will render the need for intra-BEFIT group transactions to be consistent with the arm's length principle redundant.

*double and over-taxation and enhance tax certainty with the aim of reducing the number of tax disputes.*

Or. en

## Amendment 8

### Proposal for a directive

#### Recital 14

##### *Text proposed by the Commission*

(14) To provide space for growth and investment, Member States would also be allowed to individually apply additional post-allocation adjustments (e.g. tax treatment of pension contributions) in areas not covered by the common framework. Member States would also be free to further adjust their allocated share without a ceiling *in order* to ensure *that Member States can make their* national policy choices in this area. Most importantly, Directive (EU) 2022/2523 would effectively set a ceiling which would effectively ensure that the effective tax rate is at least 15%.

##### *Amendment*

(14) To provide space for growth and investment, Member States would also be allowed to individually apply additional post-allocation adjustments (e.g. tax treatment of pension contributions) in areas not covered by the common framework. Member States would also be free to further adjust their allocated share without a ceiling to ensure national policy choices in this area. *The post-allocation adjustment, however, should focus on input-based tax incentives. Member States should refrain from offering output-based tax incentives such as patent boxes and other intellectual property regimes.* Most importantly, Directive (EU) 2022/2523 would effectively set a ceiling which would effectively ensure that the effective tax rate is at least 15%.

Or. en

## Amendment 9

### Proposal for a directive

#### Recital 15

##### *Text proposed by the Commission*

(15) Some Member States operate corporate tax systems which are built on principles that differ from the most

##### *Amendment*

(15) Some Member States operate corporate tax systems which are built on principles that differ from the most

common approach, such as distribution-based tax systems. It is therefore of prime importance to put in place the necessary adjustments, in order to ensure a workable interaction with those systems. The solution could be sought in certain post-allocation adjustments. These would entail that the part which would be allocated to a group member under a distribution-based system has to be modified in proportion to the distributions made during the fiscal year. The essence of a distribution-based tax system would be fully retained, considering that the distribution marks a timing point for taxing the allocated part and accordingly determine how much of this would need to be taxed. In this regard, it should be envisaged to operate a carry-forward mechanism, to ensure that the allocated part which is not taxed in the current year would be taxable in the following years.

common approach, such as distribution-based tax systems. It is therefore of prime importance to put in place the necessary adjustments, in order to ensure a workable interaction with those systems. The solution could be sought in certain post-allocation adjustments. These would entail that the part which would be allocated to a group member under a distribution-based system has to be modified in proportion to the distributions made during the fiscal year. The essence of a distribution-based tax system would be fully retained, considering that the distribution marks a timing point for taxing the allocated part and accordingly determine how much of this would need to be taxed. In this regard, it should be envisaged to operate a carry-forward mechanism, to ensure that the allocated part which is not taxed in the current year would be taxable in the following years. ***The inclusion of distribution-based tax systems within the scope of this Directive should be assessed after five years.***

Or. en

## Amendment 10

### Proposal for a directive

#### Recital 17

##### *Text proposed by the Commission*

(17) A common framework for corporate taxation would necessarily feature an administration system, which should ideally provide for a degree of tax certainty and simplification. To promote uniformity, the administration system would have to build on the importance of operating a centralised point of reference for dealing with a number of common issues, such as an Information Return for the entire group, and ensuring an adequate degree of coordination and collaboration

##### *Amendment*

(17) A common framework for corporate taxation would necessarily feature an administration system, which should ideally provide for a degree of tax certainty and simplification. To promote uniformity, the administration system would have to build on the importance of operating a centralised point of reference for dealing with a number of common issues, such as an Information Return for the entire group, and ensuring an adequate degree of ***confidentiality, security,***

amongst national tax administrations. At the same time, the administration system should fully respect national tax sovereignty as local tax returns, audits and dispute settlement would have to remain primarily at the level of the Member States.

coordination and collaboration amongst national tax administrations. At the same time, **and during the transition period**, the administration system should fully respect national tax sovereignty as local tax returns, audits and dispute settlement would have to remain primarily at the level of the Member States.

Or. en

## Amendment 11

### Proposal for a directive

#### Recital 18

##### *Text proposed by the Commission*

(18) To ensure that the rules of the common framework are implemented and enforced correctly, Member States should lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive. Such penalties should be effective, proportionate and dissuasive.

##### *Amendment*

(18) To ensure that the rules of the common framework are implemented and enforced correctly, Member States should lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive. Such penalties should be effective, proportionate and dissuasive. ***Those penalties should be set at a minimum rate of 0,1 % of the turnover of the BEFIT group in case of failure to file the BEFIT information return accordingly and in case of confirmed intentional misreporting of filing information return.***

Or. en

## Amendment 12

### Proposal for a directive

#### Recital 19

##### *Text proposed by the Commission*

(19) To optimise the benefits of having a common legal framework for computing the corporate tax base in the internal

##### *Amendment*

(19) To optimise the benefits of having a common legal framework for computing the corporate tax base in the internal

market, the application of the rules should be optional for groups, including SME groups, who earn annual combined revenues of less than EUR 750 000 000 as long as they prepare consolidated financial statements and have a taxable presence in the Union. By keeping the application of the rules open to groups of a smaller size, more groups with cross-border structures and activities may benefit from the simplification that the common framework offers.

market, the application of the rules should be optional for groups, including SME groups, who earn annual combined revenues of less than EUR 750 000 000 **and, as of 1 July 2035, of less than EUR 40 000 000**, as long as they prepare consolidated financial statements and have a taxable presence in the Union. By keeping the application of the rules open to groups of a smaller size, more groups with cross-border structures and activities may benefit from the simplification that the common framework offers.

Or. en

### Amendment 13

#### Proposal for a directive Recital 21 a (new)

*Text proposed by the Commission*

*Amendment*

***(21a) Each BEFIT group should have a filing entity, which should determine the country of the filing authority and the competent tax authority which will lead the BEFIT team. As a matter of principle, the filing authority should be based in the Member State where the parent company of the BEFIT group is resident for tax purposes. When the BEFIT group is owned by a firm headquartered in a third country, the filing entity should be the European intermediate parent undertaking, where there is one.***

Or. en

## Amendment 14

### Proposal for a directive Recital 21 b (new)

*Text proposed by the Commission*

*Amendment*

***(21b) By 31 December 2026, the Commission should, where appropriate, submit a legislative proposal for a harmonised, common European taxpayer identification number. This will in turn not only facilitate the communication between the representatives of Member States and the BEFIT team, but also increase the efficiency of tax information exchange within the Union.***

Or. en

## Amendment 15

### Proposal for a directive Recital 23

*Text proposed by the Commission*

*Amendment*

(23) The retention period of 10 years is justified in order to allow Member States to comply with most statute of limitations.

(23) The retention period of ***at least*** 10 years is justified to allow Member States to comply with most statute of limitations.

Or. en

## Amendment 16

### Proposal for a directive Article 1 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. A company or a permanent establishment which is subject to this Directive shall cease to be subject to the national corporate tax law in all Member States where it is established in respect of

3. A company or a permanent establishment which is subject to this Directive shall cease to be subject to the national corporate tax law ***establishing a corporate income tax base*** in all Member

all matters regulated by this Directive,  
unless otherwise stated in this Directive.

States where it is established in respect of  
all matters regulated by this Directive,  
unless otherwise stated in this Directive.

***Provisions regarding the corporate  
income tax rate remain at the discretion  
of the Member States within the  
framework of Directive (EU) 2022/2523.***

Or. en

## Amendment 17

### Proposal for a directive

#### Article 2 – paragraph 1 – point a

*Text proposed by the Commission*

(a) they belong to a domestic group or to a multinational enterprise group ('MNE group) which prepares consolidated financial statements and had annual combined revenues of EUR 750 000 000 or more in at least two of the last four fiscal years;

*Amendment*

(a) they belong to a domestic group or to a multinational enterprise group ('MNE group) which prepares consolidated financial statements and:

***(i) during a transition period from 1 July 2028 to 30 June 2035, had annual combined revenues of EUR 750 000 000 or more in at least two of the last four fiscal years;***

***(ii) from 1 July 2035, had annual combined revenues of EUR 40 000 000 or more in at least two of the last four fiscal years;***

Or. en

## Amendment 18

### Proposal for a directive

#### Article 2 – paragraph 2

*Text proposed by the Commission*

2. By way of derogation from

*Amendment*

2. By way of derogation from



paragraph 1, this Directive shall not apply to companies or permanent establishments with an ultimate parent entity outside the Union where the combined revenues of the group in the Union either do not exceed **5%** of the total revenues for the group based on its consolidated financial statements or the amount of EUR **50** million in at least two of the last four fiscal years. This shall be without prejudice to the right of opting in under paragraph 7.

paragraph 1, this Directive shall not apply to companies or permanent establishments with an ultimate parent entity outside the Union where the combined revenues of the group in the Union either do not exceed **3%** of the total revenues for the group based on its consolidated financial statements or the amount of EUR **40** million in at least two of the last four fiscal years. This shall be without prejudice to the right of opting in under paragraph 7.

Or. en

## Amendment 19

### Proposal for a directive Article 2 – paragraph 3

#### *Text proposed by the Commission*

3. Where two or more groups merge to form a single group, the threshold of EUR 750 000 000 referred to in paragraph 1 shall be deemed to be met for any fiscal year prior to the merger if the sum of the combined revenues of the merging groups for that fiscal year, as included in each of their consolidated financial statements, is EUR 750 000 000 or more. The companies and permanent establishments members of that newly formed group shall become subject to this Directive if that threshold was met in at least two of the last four fiscal years.

#### *Amendment*

3. Where two or more groups merge to form a single group, the threshold of EUR 750 000 000 referred to in paragraph 1, **point (a)(i)** shall be deemed to be met for any fiscal year prior to the merger if the sum of the combined revenues of the merging groups for that fiscal year, as included in each of their consolidated financial statements, is EUR 750 000 000 or more. The companies and permanent establishments members of that newly formed group shall become subject to this Directive if that threshold was met in at least two of the last four fiscal years. **From 1 July 2035, the threshold of reference is EUR 40 000 000 as referred to in paragraph 1, point (a)(ii).**

Or. en

## Amendment 20

### Proposal for a directive Article 2 – paragraph 4

*Text proposed by the Commission*

4. Where a company that is not a member of a group (the ‘target’) is acquired by another company or a group (the ‘acquiring entity’) and either the target or the acquiring entity did not have consolidated financial statements in any of the four fiscal years immediately preceding the fiscal year of the acquisition, the threshold of annual combined revenues of EUR 750 000 000 referred to in paragraph 1 shall be deemed to be met for that year if the sum of the revenues included in the financial statements or consolidated financial statements of the target and the acquiring entity for that fiscal year is EUR 750 000 000 or more. The acquiring entity shall become subject to this Directive if that threshold was met in at least two of the four fiscal years immediately preceding the fiscal year in which this Directive started to apply to the acquiring entity

*Amendment*

4. Where a company that is not a member of a group (the ‘target’) is acquired by another company or a group (the ‘acquiring entity’) and either the target or the acquiring entity did not have consolidated financial statements in any of the four fiscal years immediately preceding the fiscal year of the acquisition, the threshold of annual combined revenues of EUR 750 000 000 referred to in paragraph 1 shall be deemed to be met for that year if the sum of the revenues included in the financial statements or consolidated financial statements of the target and the acquiring entity for that fiscal year is EUR 750 000 000 or more. The acquiring entity shall become subject to this Directive if that threshold was met in at least two of the four fiscal years immediately preceding the fiscal year in which this Directive started to apply to the acquiring entity. ***From 1 July 2035, the threshold of reference is EUR 40 000 000 as referred to in paragraph 1, point (a)(ii).***

Or. en

## Amendment 21

### Proposal for a directive Article 2 – paragraph 5 – introductory part

*Text proposed by the Commission*

5. Where there is a demerger of a group into two or more groups (the ‘demerged groups’), the threshold of EUR 750 000 000 referred to in paragraph 1 shall be deemed to be met by each of the demerged groups where:

*Amendment*

5. Where there is a demerger of a group into two or more groups (the ‘demerged groups’), the threshold of EUR 750 000 000 referred to in paragraph 1, ***point (a)(i)*** shall be deemed to be met by each of the demerged groups where:

## Amendment 22

### Proposal for a directive

#### Article 2 – paragraph 5 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***From 1 July 2035, the threshold of reference is EUR 40 000 000 as referred to in paragraph 1, point (a)(ii).***

Or. en

## Amendment 23

### Proposal for a directive

#### Article 2 – paragraph 7

*Text proposed by the Commission*

*Amendment*

7. Member States shall ensure that companies which are resident for tax purposes in a Member State and fulfil the conditions laid down in paragraph 1, point (b), including their permanent establishments located in other Member States, as well as permanent establishments, located in Member States, of third-country entities which fulfil the conditions of paragraph 1, point (c), may choose to be covered by this Directive if they belong to an MNE group or domestic group which prepares consolidated financial statements but does not fulfil the conditions laid down in paragraph 1, point (a) regarding the threshold of EUR 750 000 000.

7. Member States shall ensure that companies which are resident for tax purposes in a Member State and fulfil the conditions laid down in paragraph 1, point (b), including their permanent establishments located in other Member States, as well as permanent establishments, located in Member States, of third-country entities which fulfil the conditions of paragraph 1, point (c), may choose to be covered by this Directive if they belong to an MNE group or domestic group which prepares consolidated financial statements but does not fulfil the conditions laid down in paragraph 1, point a, ***point i*** regarding the threshold of EUR 750 000 000 ***or paragraph 1, point (a)(ii) regarding the threshold of EUR 40 000 000.***

Or. en

## Amendment 24

### Proposal for a directive

#### Article 3 – paragraph 1 – point 10 – point b

##### *Text proposed by the Commission*

(b) if the ultimate parent entity is not located in a Member State, the entity located in a Member State, that has been appointed by the BEFIT group to fulfil the obligations in relation to the BEFIT group information return set out in Article 57 on behalf of the BEFIT group.

##### *Amendment*

(b) if the ultimate parent entity is not located in a Member State, the **intermediate parent** entity located in a Member State, **or, in absence of such, the entity located in a Member State and** that has been appointed by the BEFIT group to fulfil the obligations in relation to the BEFIT group information return set out in Article 57 on behalf of the BEFIT group.

Or. en

## Amendment 25

### Proposal for a directive

#### Article 3 – paragraph 15

##### *Text proposed by the Commission*

(15) ‘economic owner’ means the person who receives substantially **all the** benefits and bears **all the** risks attached to a fixed asset, regardless of whether that person is the legal owner. A taxpayer who has the right to possess, use and dispose of a fixed asset and bears the risk of its loss or destruction shall in any event be considered the economic owner;

##### *Amendment*

(15) ‘economic owner’ means the person who receives substantially **most** benefits and bears **most** risks attached to a fixed asset, regardless of whether that person is the legal owner. A taxpayer who has the right to possess, use and dispose of a fixed asset and bears the risk of its loss or destruction shall in any event be considered the economic owner;

Or. en

## Amendment 26

### Proposal for a directive

#### Article 5 – paragraph 1 – point a

*Text proposed by the Commission*

(a) the company is either the ultimate parent entity of the group or any other company of the group in which the ultimate parent entity holds, directly or indirectly, at least **75%** of the ownership rights or of the rights giving entitlement to profit;

*Amendment*

(a) the company is either the ultimate parent entity of the group, ***the intermediate parent company of the group located in a Member State*** or any other company of the group, in which the ultimate parent entity holds, directly or indirectly, at least **50 %** of the ownership rights or of the rights giving entitlement to profit;

Or. en

## Amendment 27

### Proposal for a directive

#### Article 5 – paragraph 1 – point b

*Text proposed by the Commission*

(b) the head office of the permanent establishment is either the ultimate parent entity of the group or any other member (company or entity) of the group in which the ultimate parent entity holds, directly or indirectly, at least **75%** of the ownership rights or of the rights giving entitlement to profit.

*Amendment*

(b) the head office of the permanent establishment is either the ultimate parent entity of the group, ***the intermediate parent of the group located in a Member State*** or any other member (company or entity) of the group in which the ultimate parent entity holds, directly or indirectly, at least **50 %** of the ownership rights or of the rights giving entitlement to profit.

Or. en

## Amendment 28

### Proposal for a directive

#### Article 13 – paragraph 1

*Text proposed by the Commission*

1. A BEFIT group member shall

*Amendment*

1. A BEFIT group member shall

adjust its financial accounting net income or loss to include the amount of exceeding borrowing costs, *as referred to in Article 2 of 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*<sup>32</sup>, which is not deductible for tax purposes in accordance with *the interest limitation rules laid down in the national corporate tax law of the Member State where it is resident for tax purposes.*

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<sup>32</sup> *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 (OJ L 193, 19.7.2016, p. 1)*

adjust its financial accounting net income or loss to include the amount of exceeding borrowing costs, which is not deductible for tax purposes in accordance with *paragraph 1a.*

Or. en

## Amendment 29

### Proposal for a directive

#### Article 13 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

**1a.** *For the purpose of this article, ‘exceeding borrowing costs’ means the amount by which the deductible borrowing costs of a taxpayer exceed taxable interest revenues and other economically equivalent taxable revenues that the taxpayer receives according to national law.*

*Exceeding borrowing costs shall be deductible up to 75 % in the tax period in which they are incurred. If such amount is higher than 20 % of the taxpayer's earnings before interest, tax, depreciation, and amortisation (EBITDA), the taxpayer is entitled to deduct only the lower of the two amounts in the tax period.*

*Article 4 paragraphs 2, 3, 4, point (b), 5,*

**7, 8 of Article 4 of Council Directive (EU) 2016/1164<sup>1a</sup> apply to a BEFIT group.**

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**<sup>1a</sup> 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 (OJ L 193, 19.7.2016, p. 1).**

Or. en

### **Amendment 30**

#### **Proposal for a directive Article 13 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 13a**

##### **Royalties limitation rule**

***A BEFIT group member shall adjust its financial accounting net income or loss to include the amount of royalty costs for which the corresponding income of the recipient of the royalty or licence fee payment by the BEFIT group is subject to an effective tax rate below 9 %.***

Or. en

### **Amendment 31**

#### **Proposal for a directive Article 16 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 16a**

##### **Entertainment costs**

***The financial accounting net income or loss of a BEFIT group member shall be adjusted to include 50 % of the amount of***

*expenses accrued for entertainment costs.*

Or. en

## **Amendment 32**

### **Proposal for a directive Article 21 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 21a**

##### **Controlled Foreign Companies**

**1. The financial accounting net income or loss of a BEFIT group member shall be adjusted to include the non-distributed income of an entity or permanent establishment, which is treated as a controlled foreign company as referred to Article 7(1) of Directive (EU) 2016/1164, which is derived from the following categories:**

- (i) interest or any other income generated by financial assets;**
- (ii) royalties or any other income generated from intellectual property;**
- (iii) dividends and income from the disposal of shares;**
- (iv) income from financial leasing;**
- (v) income from insurance, banking, and other financial activities;**
- (vi) income from invoicing companies that earn sales and services income from goods and services purchased from and sold to associated enterprises, and add no or little economic value;**

**The first subparagraph shall not apply where the controlled foreign company carries out a substantive economic activity supported by staff, equipment, assets, and premises, as evidenced by relevant facts and circumstances.**



***Where the controlled foreign company is resident or situated in a third country that is not party to the EEA Agreement, Member States may decide to refrain from applying the first subparagraph.***

***2. The income to be included in the tax base shall be calculated according to Article 8 of Directive (EU) 2016/1164.***

Or. en

### **Amendment 33**

#### **Proposal for a directive Article 22 – paragraph 1**

*Text proposed by the Commission*

1. The financial accounting net income or loss of a BEFIT group member shall be adjusted to exclude in the fiscal year of acquisition any fixed tangible asset that has a book value before depreciation which is below EUR **5000**.

*Amendment*

1. The financial accounting net income or loss of a BEFIT group member shall be adjusted to exclude in the fiscal year of acquisition any fixed tangible asset that has a book value before depreciation which is below EUR **1000**.

Or. en

### **Amendment 34**

#### **Proposal for a directive Article 22 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) all buildings as well as any other type of immovable property and structure in use for the business: **28** years;

*Amendment*

(a) all buildings as well as any other type of immovable property and structure in use for the business, ***apart from industrial buildings and structures: 40*** years;

Or. en

## Amendment 35

### Proposal for a directive

#### Article 22 – paragraph 2 – point a (new)

*Text proposed by the Commission*

*Amendment*

**(aa) industrial buildings and structures: 25 years;**

Or. en

## Amendment 36

### Proposal for a directive

#### Article 22 – paragraph 2 – point b

*Text proposed by the Commission*

*Amendment*

(b) all other fixed tangible assets: their useful life as assessed in accordance with the acceptable accounting standard in the Union referred to in Article 7;

(b) all other fixed tangible assets: their useful life as assessed in accordance with the acceptable accounting standard in the Union referred to in Article 7, **but not less than 10 years;**

Or. en

## Amendment 37

### Proposal for a directive

#### Article 22 – paragraph 2 – point c

*Text proposed by the Commission*

*Amendment*

(c) fixed intangible assets, including acquired goodwill: the period for which the asset enjoys legal protection or for which the right has been granted and, where that period cannot be determined, 5 years.

(c) fixed intangible assets, including acquired goodwill: the period for which the asset enjoys legal protection or for which the right has been granted and, where that period cannot be determined, **15 years.**

Or. en

## Amendment 38

### Proposal for a directive Article 23 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

**5a. Member States are not allowed to grant further entitlement to depreciate to a BEFIT group member other than those specified in this Section.**

Or. en

## Amendment 39

### Proposal for a directive Article 25 – paragraph 3 – introductory part

*Text proposed by the Commission*

*Amendment*

3. The fixed asset register shall be kept in a manner that provides sufficient information, including depreciation data, to calculate the preliminary tax result **and** shall include at least the following information:

3. The fixed asset register shall be kept in a manner that provides sufficient information, including depreciation data, to calculate the preliminary tax result. ***A copy of the fixed asset register shall be kept by the BEFIT group five years after the depreciation of such asset ceased. The fixed asset register*** shall include at least the following information:

Or. en

## Amendment 40

### Proposal for a directive Article 42 – paragraph 2 - point b

*Text proposed by the Commission*

*Amendment*

(b) a negative amount, the loss shall be carried forward and shall be set off against the next positive BEFIT tax base.

(b) a negative amount, the loss shall be carried forward ***for a maximum of five years*** and shall be set off against the next positive BEFIT tax base.

## **Amendment 41**

### **Proposal for a directive**

#### **Article 45 – paragraph 3 – point a**

*Text proposed by the Commission*

(a) low-risk zone: where the expense incurred, or the income earned, by a BEFIT group member from intra-BEFIT group transactions increase in a fiscal year by less than **10%** compared to the average expense or income of the previous three fiscal years from intra-BEFIT group transactions;

*Amendment*

(a) low-risk zone: where the expense incurred, or the income earned, by a BEFIT group member from intra-BEFIT group transactions increase in a fiscal year by less than **5 %** compared to the average expense or income of the previous three fiscal years from intra-BEFIT group transactions;

Or. en

## **Amendment 42**

### **Proposal for a directive**

#### **Article 45 – paragraph 3 – point b**

*Text proposed by the Commission*

(b) high-risk zone: where the expense incurred, or the income earned, by a BEFIT group member from intra-BEFIT group transactions increase in a fiscal year by **10%** or more compared to the average expense or income of the previous three fiscal years from intra-BEFIT group transactions.

*Amendment*

(b) high-risk zone: where the expense incurred, or the income earned, by a BEFIT group member from intra-BEFIT group transactions increase in a fiscal year by **5 %** or more compared to the average expense or income of the previous three fiscal years from intra-BEFIT group transactions.

Or. en

## Amendment 43

### Proposal for a directive Article 45 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a.** *The 5 % benchmark set out in paragraph 3 is raised to 10 % for fiscal years during which the indices of consumer prices increase by 4 % or more in the Member State of a BEFIT group member.*

Or. en

## Amendment 44

### Proposal for a directive Article 45 – paragraph 4 – point b

*Text proposed by the Commission*

*Amendment*

(b) high-risk zone: the competent authorities of the Member States concerned shall presume that the pricing of intra-BEFIT group transactions of a specific BEFIT group member does not comply with the arm's length principle and the part of the increase which goes beyond **10%** shall not be recognized for the purpose of computing the baseline allocation percentage of that BEFIT group member.

(b) high-risk zone: the competent authorities of the Member States concerned shall presume that the pricing of intra-BEFIT group transactions of a specific BEFIT group member does not comply with the arm's length principle and the part of the increase which goes beyond **5 %, as referred to in paragraph 3, or 10 %, as referred to in paragraph 3a**, shall not be recognized for the purpose of computing the baseline allocation percentage of that BEFIT group member.

Or. en

## Amendment 45

### Proposal for a directive Article 45 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 45a*

##### *Allocation rule based on tangible factors*

**1. As of 1 July 2035, the BEFIT tax base shall be allocated to the BEFIT group members in each tax year on the basis of a formula that gives equal weight to the factors of sales, labour, and assets according to Articles 45b to 45i:**

$$\text{Share A} = \left( \frac{1 \text{ Sales}^A}{3 \text{Sales}^{\text{Group}}} + \frac{1}{3} \left( \frac{1 \text{ Payroll}^A}{2 \text{Payroll}^{\text{Group}}} + \frac{1 \text{ No. employees}^A}{2 \text{No. employees}^{\text{Group}}} \right) + \frac{1 \text{ Assets}^A}{3 \text{Assets}^{\text{Group}}} \right)$$

\* *Con'd Tax Base*

**2. The consolidated tax base of a BEFIT group shall be shared only where it is positive.**

**3. The calculations for sharing the consolidated tax base shall be done at the end of the tax year of the BEFIT group.**

**4. A period of 15 days or more in a calendar month shall be considered as a whole month.**

**5. When determining the apportioned share of a BEFIT group member, equal weight shall be given to the factors of sales, labour, and assets.**

Or. en

## Amendment 46

### Proposal for a directive Article 45 b (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 45b*

##### *Composition of the labour factor*

- 1. The labour factor shall consist, as to one half, of the total amount of the payroll of a BEFIT group member as its numerator and the total amount of the payroll of the BEFIT group as its denominator, and as to the other half, of the number of employees of a BEFIT group member as its numerator and the number of employees of the BEFIT group as its denominator. Where an individual employee is included in the labour factor of a BEFIT group member, the payroll relating to that employee shall be allocated to the labour factor of the same BEFIT group member.*
- 2. The number of employees shall be measured at the end of the tax year.*
- 3. The definition of an employee shall be determined by the national law of the Member State where the employment is exercised.*

Or. en

## **Amendment 47**

### **Proposal for a directive Article 45 c (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 45c*

##### *Allocation of employees and payroll*

- 1. Employees shall be included in the labour factor of the group member from which they receive remuneration.*
- 2. By way of derogation from paragraph 1, where employees physically exercise their employment under the control and responsibility of an entity other than that from which they receive remuneration, those employees as well as the amount of payroll related to them shall be included in the labour factor of*

*the former entity.*

*This rule shall only apply where all of the following conditions are met:*

*(a) the employment lasts for an uninterrupted period of at least three months;*

*(b) those employees represent at least 5 % of the overall number of employees of the group member from which they receive remuneration.*

*3. Employees shall include persons who, although not employed directly by a BEFIT group member, perform tasks similar to those performed by employees.*

*4. Payroll shall include all costs of salaries, wages, bonuses and all other employee compensation, including related pension and social security costs borne by the employer as well as expenses of the employer corresponding to the cost of persons as referred to in paragraph 3.*

*5. Payroll costs shall be valued at the amount of expenses that are treated as deductible by the employer in a tax year.*

Or. en

## **Amendment 48**

### **Proposal for a directive Article 45 d (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 45d*

##### *Composition of the asset factor*

*1. The asset factor shall consist of the average value of all fixed tangible assets owned, rented or leased by a BEFIT group member as its numerator and the average value of all fixed tangible assets owned, rented or leased by the group as its denominator.*



**2. In the five years that follow a taxpayer joining an existing or new BEFIT group, its asset factor shall also include the total amount of costs incurred for research, development, marketing, and advertising by the taxpayer over the six years that preceded its joining the group.**

Or. en

## **Amendment 49**

### **Proposal for a directive Article 45 e (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 45e*

##### *Allocation of assets*

**1. Without prejudice to Article 22(2) and (3), an asset shall be included in the asset factor of its economic owner. Where the economic owner cannot be identified, the asset shall be included in the asset factor of the legal owner.**

**However, an asset that is not effectively used by its economic owner shall be included in the factor of the BEFIT group member that effectively uses that asset, provided that the asset represents more than 5 % of the value for tax purposes of all fixed tangible assets of the BEFIT group member that effectively uses it.**

**2. Except in the case of leases between BEFIT group members, leased assets shall be included in the asset factor of the BEFIT group member that is the lessor or the lessee of the asset. The same shall apply to rented assets.**

Or. en

## Amendment 50

### Proposal for a directive Article 45 f (new)

*Text proposed by the Commission*

*Amendment*

*Article 45f*

*Valuation*

- 1. Land and other non-depreciable fixed tangible assets shall be valued at their original cost.*
- 2. An individually depreciable fixed tangible asset shall be valued at the average of its value for tax purposes at the beginning and at the end of a tax year.*

*Where, as a result of one or more intra-group transactions, an individually depreciable fixed tangible asset is included in the asset factor of a BEFIT group member for less than a tax year, the value to be taken into account shall be calculated having regard to the number of months that the asset was included in the asset factor of that BEFIT group member.*

- 3. The renter or lessee of an asset of which it is not the economic owner shall value that rented or leased asset at eight times the net annual rental or lease payment due, less any amounts receivable from sub-rentals or sub-leases.*

*A BEFIT group member renting out or leasing an asset of which it is not its economic owner shall value that rented or leased asset at eight times the net annual rental or lease payment due.*

- 4. An asset sold by a BEFIT group member to a person outside the BEFIT group following an intra-group transfer in the same or the previous tax year shall be included in the asset factor of the transferring BEFIT group member for the period between the intra-group transfer and the sale to the person outside the BEFIT group, except where the BEFIT group members concerned*

*demonstrate that the intra-group transfer was made for genuine commercial reasons.*

Or. en

## **Amendment 51**

### **Proposal for a directive Article 45 g (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 45g**

##### **Composition of the sales factor**

**1. The sales factor shall consist of the total sales allocated to a BEFIT group member as its numerator and the total sales of the BEFIT group as its denominator.**

Or. en

## **Amendment 52**

### **Proposal for a directive Article 45 h (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 45h**

##### **Sales by destination**

**1. Sales of goods shall be included in the sales factor of the BEFIT group member located in the Member State where the dispatch or transport of the goods to the person acquiring them ends. Where that place cannot be determined, the sales of goods shall be attributed to the BEFIT group member located in the Member State of the last identifiable location of the goods.**

**2. Supplies of services shall be**

*included in the sales factor of the BEFIT group member located in the Member State where the services are physically carried out or actually supplied.*

*3. Where there is no BEFIT group member in the Member State where the goods are delivered or the services are supplied, or where goods are delivered or services are supplied in a third country, the sales of goods and supplies of services shall be included in the sales factor of all BEFIT group members in proportion to their labour and asset factors.*

*4. Where there is more than one BEFIT group member in the Member State where the goods are delivered or the services are supplied, the sales shall be included in the sales factor of all BEFIT group members located in that Member State in proportion to their labour and asset factors.*

Or. en

## **Amendment 53**

### **Proposal for a directive Article 45 i (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 45i*

#### *Detailed rules on the calculation of factors*

*The Commission is empowered to adopt delegated acts in accordance with Article 74 to supplement this Directive by laying down detailed rules on the calculation of the labour, asset and sales factors, the allocation of employees and payroll, assets and sales to the respective factor and the valuation of assets.*

Or. en

## Amendment 54

### Proposal for a directive Article 46 – paragraph 1

#### *Text proposed by the Commission*

1. By way of derogation from Articles 42 to **45**, where a BEFIT group member conducts its principal business in the field of extractive activities, its revenues, expenses and other deductible items which stem from such activities shall be attributed to the BEFIT group member located in the Member State where the extraction takes place.

#### *Amendment*

1. By way of derogation from Articles 42 to **45a**, where a BEFIT group member conducts its principal business in the field of extractive activities, its revenues, expenses and other deductible items which stem from such activities shall be attributed to the BEFIT group member located in the Member State where the extraction takes place.

Or. en

## Amendment 55

### Proposal for a directive Article 46 – paragraph 2

#### *Text proposed by the Commission*

2. By way of derogation from Article 42 to **45**, where there is no BEFIT group member in the Member State of extraction, or where the extraction takes place in a third country jurisdiction, the revenues, expenses and other deductible items which stem from such activities shall be attributed to the BEFIT group member to which they accrued.

#### *Amendment*

2. By way of derogation from Article 42 to **45a**, where there is no BEFIT group member in the Member State of extraction, or where the extraction takes place in a third country jurisdiction, the revenues, expenses and other deductible items which stem from such activities shall be attributed to the BEFIT group member to which they accrued.

Or. en

## Amendment 56

### Proposal for a directive

#### Article 47 – paragraph 1 – introductory part

*Text proposed by the Commission*

1. By way of derogation from Article 42 to **45** and without prejudice to Article 15, the revenues, expenses and other deductible items which stem from the following activities shall be excluded from the BEFIT tax base in any of the following cases:

*Amendment*

1. By way of derogation from Article 42 to **45a** and without prejudice to Article 15, the revenues, expenses and other deductible items which stem from the following activities shall be excluded from the BEFIT tax base in any of the following cases:

Or. en

## Amendment 57

### Proposal for a directive

#### Article 48 – paragraph 2

*Text proposed by the Commission*

2. In addition to the adjustments listed in paragraph 1, a Member State may allow for increasing or decreasing, through additional items, the allocated part of BEFIT group members that are resident for tax purposes or situated in the form of a permanent establishment in that Member State.

*Amendment*

2. In addition to the adjustments listed in paragraph 1, a Member State may allow for increasing or decreasing, through additional items, the allocated part of BEFIT group members that are resident for tax purposes or situated in the form of a permanent establishment in that Member State. ***Such adjustments shall be subject to the provisions of Directive (EU) 2022/2523.***

Or. en

## Amendment 58

### Proposal for a directive

#### Article 48 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. A Member State providing***

*incentives for research and development shall refrain from offering output-based incentives, such as patent boxes, which would decrease the allocated part of BEFIT group members that are resident for tax purposes or situated in the form of a permanent establishment in that Member State.*

Or. en

## **Amendment 59**

### **Proposal for a directive Article 57 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a.** *All supporting documentation that was used to build the BEFIT tax base referred to in paragraph 3, point (d)(ii) shall be kept for ten years to be made available to the competent authorities of all Member States in which the BEFIT group members are resident for tax purposes or situated in the form of a permanent establishment.*

Or. en

## **Amendment 60**

### **Proposal for a directive Article 60 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a.** *The Member States shall ensure adequate human resources to the BEFIT team, including by providing content and language training to the BEFIT team representatives.*

Or. en

## Amendment 61

### Proposal for a directive Article 60 – paragraph 3

*Text proposed by the Commission*

3. Information communicated between the members of a BEFIT team, shall be provided by electronic means to the extent possible, through making use of a BEFIT collaborative tool.

*Amendment*

3. Information communicated between the members of a BEFIT team, shall be provided by electronic means to the extent possible, **via a secure connection or a secure network**, through making use of a BEFIT collaborative tool.

Or. en

## Amendment 62

### Proposal for a directive Article 60 – paragraph 4

*Text proposed by the Commission*

4. To facilitate the operation and communication of the BEFIT team, the Commission shall, by means of implementing acts, standardise the communication of the information between the members of a BEFIT team through making use of a BEFIT collaborative tool. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 73.

*Amendment*

4. To facilitate the operation and communication of the BEFIT team, the Commission shall, by means of implementing acts, standardise the communication of the information between the members of a BEFIT team through making use of a BEFIT collaborative tool **and support the secure transmission of information**. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 73.

Or. en



## Amendment 63

### Proposal for a directive Article 62 – paragraph 1

*Text proposed by the Commission*

1. Each BEFIT group member shall file its individual tax return with the competent authority of the Member State in which that BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment no later than three months after receipt of the notice from the filing authority pursuant to Article 61(3), (4) or (5), or in case of a domestic group, no later than eight months from the end of the fiscal year.

*Amendment*

1. ***Until 30 June 2035***, each BEFIT group member shall file its individual tax return with the competent authority of the Member State in which that BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment no later than three months after receipt of the notice from the filing authority pursuant to Article 61(3), (4) or (5), or in case of a domestic group, no later than eight months from the end of the fiscal year.

Or. en

## Amendment 64

### Proposal for a directive Article 63 – paragraph 1

*Text proposed by the Commission*

1. A BEFIT group member shall notify the competent authority of the Member State in which it is resident for tax purposes or situated in the form of a permanent establishment of errors in the individual tax return within two months of the timely submission of such return.

*Amendment*

1. ***Until 30 June 2035***, a BEFIT group member shall notify the competent authority of the Member State in which it is resident for tax purposes or situated in the form of a permanent establishment of errors in the individual tax return within two months of the timely submission of such return.

Or. en

## Amendment 65

### Proposal for a directive Article 64 – paragraph 1

*Text proposed by the Commission*

1. The competent authority of the Member State in which a BEFIT group member filed its individual tax return shall issue an individual tax assessment in accordance with the individual tax return. The enforcement of the tax liability shall be governed by the law of that Member State.

*Amendment*

1. ***Until 30 June 2035***, the competent authority of the Member State in which a BEFIT group member filed its individual tax return shall issue an individual tax assessment in accordance with the individual tax return. The enforcement of the tax liability shall be governed by the law of that Member State.

Or. en

## Amendment 66

### Proposal for a directive Article 65 – paragraph 1

*Text proposed by the Commission*

1. The competent authority of a Member State may initiate and coordinate audits of BEFIT group members that are resident for tax purposes or situated in the form of a permanent establishment in that Member State.

*Amendment*

1. The competent authority of a Member State may initiate and coordinate audits of BEFIT group members that are resident for tax purposes or situated in the form of a permanent establishment in that Member State. ***The competent authority shall notify the other BEFIT team members within a month of the initiation of such an audit.***

Or. en

## Amendment 67

### Proposal for a directive Article 67 – paragraph 1

*Text proposed by the Commission*

1. A BEFIT group member may

*Amendment*

1. ***Until 30 June 2035***, a BEFIT group

appeal against the content of the individual tax assessment made pursuant to Article 64 before the competent authority of the Member State where that BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment within two months after the assessment was notified to it. The administrative appeal shall be heard by an administrative body that, in accordance with the law of the Member State of the BEFIT group member, is competent to hear appeals at first instance. The administrative appeal shall be governed by the law of the Member State in which the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment. Where there is no such administrative body in the Member State where the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment, the BEFIT group member may lodge a judicial appeal directly.

member may appeal against the content of the individual tax assessment made pursuant to Article 64 before the competent authority of the Member State where that BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment within two months after the assessment was notified to it. The administrative appeal shall be heard by an administrative body that, in accordance with the law of the Member State of the BEFIT group member, is competent to hear appeals at first instance. The administrative appeal shall be governed by the law of the Member State in which the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment. Where there is no such administrative body in the Member State where the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment, the BEFIT group member may lodge a judicial appeal directly.

Or. en

## **Amendment 68**

### **Proposal for a directive Article 69 – paragraph 1**

#### *Text proposed by the Commission*

1. Where the decision pursuant to Article 67 has been confirmed or varied, a BEFIT group member shall have the right to appeal to the courts of the Member State where it is resident for tax purposes or situated in the form of a permanent establishment within two months after the decision of the administrative appeals body referred to in Article 67 was notified to it. The judicial appeal shall be governed by the law of the Member State in which the BEFIT group member is resident for tax purposes or situated in the form of a

#### *Amendment*

1. ***Until 30 June 2035***, where the decision pursuant to Article 67 has been confirmed or varied, a BEFIT group member shall have the right to appeal to the courts of the Member State where it is resident for tax purposes or situated in the form of a permanent establishment within two months after the decision of the administrative appeals body referred to in Article 67 was notified to it. The judicial appeal shall be governed by the law of the Member State in which the BEFIT group member is resident for tax purposes or

permanent establishment.

situated in the form of a permanent establishment.

Or. en

## Amendment 69

### Proposal for a directive Article 70 – paragraph 1

#### *Text proposed by the Commission*

Where the outcome of an administrative or judicial appeal requires amendments to the individual tax assessment of one or more member of a BEFIT group, Member States shall take the appropriate measures to ensure that such amendments remain possible, ***notwithstanding any time limits in the domestic laws of Member States.***

#### *Amendment*

Where the outcome of an administrative or judicial appeal requires amendments to the ***tax assessment of the BEFIT group or to the*** individual tax assessment of one or more members of a BEFIT group, Member States shall take the appropriate measures to ensure that such amendments remain possible ***in a time frame of 10 years.***

Or. en

## Amendment 70

### Proposal for a directive Article 72 – paragraph 1

#### *Text proposed by the Commission*

Member States shall lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all necessary measures to ensure that they are implemented and enforced. Penalties and compliance measures provided for shall be effective, proportionate and dissuasive.

#### *Amendment*

Member States shall lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all necessary measures to ensure that they are implemented and enforced. Penalties and compliance measures provided for shall be effective, proportionate and dissuasive. ***Penalties shall be set at a minimum of 0,1 % of the turnover of the BEFIT group in case of failure to file the BEFIT information return in accordance with Article 59 and in case of confirmed intentional misreporting when filing the information return.***

## **Amendment 71**

### **Proposal for a directive Article 74 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. The power to adopt delegated acts referred to in Article 45(i) shall be conferred on the Commission for an indeterminate period starting on 1 July 2035.**

Or. en

## **Amendment 72**

### **Proposal for a directive Article 77 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. The Commission shall include in its report an evaluation of the co-existence of distribution-based tax systems, as referred to in Article 49, with traditional corporate tax systems relying on annual taxes on corporate profits.**

Or. en

## EXPLANATORY STATEMENT

The ‘Business in Europe: Framework for Income Taxation’ (BEFIT), proposal introduces a common system for calculating the tax base of large cross-border groups of companies across the EU and for the allocation of such tax bases to each member of these BEFIT groups.

### *Context*

The BEFIT proposal - to further coordinate and harmonise the corporate tax framework - is pivotal in facilitating cross-border business and investment in the EU. The proposal will reduce the costs and complexity of administrative and tax compliance for both businesses and tax authorities on the one hand, and minimise the leeway for corporate tax avoidance on the other. The BEFIT proposal draws on two directives proposed by the Commission in 2016. Namely, the Common Corporate Tax Base (CCTB) and the Common Consolidated Corporate Tax Base (CCCTB). These two directives contained a comprehensive package of new corporate tax rules for the calculation of a CCCTB base and the apportionment of this base according to a formula based on substance factors. Despite broad support from the European Parliament, civil society and businesses, the proposals received little discussion in the Council due to the varied impact the proposals could have had on the 27 Member States, and a certain lack of flexibility.

Nevertheless, the global tax discourse has evolved since 2016 and various reforms in corporate taxation have been introduced since then. In particular, the international negotiations on the OECD/G20 Inclusive Framework on BEPS for Pillars I and II, i.e. redistributing taxing rights and setting an effective minimum level of corporate tax, have outlined what a harmonised tax base might look like.

### *The proposal*

With its BEFIT proposal, the Commission aims to integrate these advances into a new set of rules designed to create a common corporate tax base in the EU. The main difference with the CCCTB proposal - which proposed common rules to calculate the tax base based on taxable profits - is that the calculation of the BEFIT tax base starts from consolidated accounting, where adjustments are made to obtain a tax base. Important to note, is that the BEFIT proposal leaves greater room for manoeuvre for Member States to apply tax incentives and other tax adjustments to the BEFIT proposal, regarding the tax base allocated to them. However, such incentives are linked to the minimum effective tax rate of 15% set out in Directive (EU) 2022/2523.

BEFIT applies to large companies with an annual turnover of EUR 750 million or more, which form the so-called BEFIT groups. Smaller groups can join if they wish and prepare consolidated accounts. Adjustments are then made to determine the provisional tax results of the BEFIT group. These include the addition or deduction of items such as dividends, fines, excess interest payments, corporation tax already paid, etc., to bring the BEFIT tax base more in line with taxable profits. Furthermore, the draft directive provides for common rules on amortisation, timing and quantification. In particular, the BEFIT proposal includes an apportionment rule for the calculation of the BEFIT base. However, this is proposed as a transitional rule until 2035. The subsequent allocation to Member States will be based on the average share of the BEFIT base of each national BEFIT group member in the last three tax

years, thus moving away from an allocation key based on the place of economic substance.

The proposal also contains innovative transfer pricing rules, which are to be maintained until the end of the transitional period:

- For intra-group transactions, a risk assessment framework that defines low and high risk zones,
- For intra-group transactions outside the EU, a "traffic light system" with zones for low, medium and high risk, as far as low-risk distribution and contract manufacturing activities are concerned.

Finally, the BEFIT proposal outlines the administration of the BEFIT system, including the establishment of joint BEFIT teams for each BEFIT group, comprising representatives of the tax administrations of the Member States where the BEFIT group operates.

### ***The main adjustments proposed by the rapporteur***

The rapporteur supports the objectives of the proposal and is convinced that further harmonisation of the corporate tax base is beneficial for the stability of the internal market, while safeguarding sustainable tax revenues for Member States. In addition, the proposal will make a significant contribution to reducing compliance costs and administrative burdens for BEFIT companies and will also be an effective instrument for reducing opportunities for tax evasion and avoidance.

To reinforce these objectives, the rapporteur proposes to:

- Lower the annual revenue threshold of multinational enterprise groups after the transitional period currently outlined in the proposal, so that all large groups, as defined in the Accounting Directive (Directive 2013/34/EU), fall within the scope of the BEFIT proposal.
- Slightly revise the interest limitation rules for BEFIT groups to reduce the distortion of the debt/equity ratio that can arise from over-reliance on intra-group debt financing and to reduce the scope for tax base erosion and profit shifting through excessive interest payments.
- Introduce more robust Controlled Foreign Company rules, the so-called CFC rules for BEFIT groups to make them more resilient to profit shifting.
- Define the rules on depreciation in more detail, as the current proposal could lead to a reduction in the tax base of around EUR 31 billion, according to the Commission's impact assessment.
- Limit tax incentives, despite giving Member States greater flexibility in granting them. In particular, the Rapporteur would like to favour input-based incentives for R&D.
- The main change proposed by the rapporteur is the introduction of an allocation formula based on material factors at the end of the transition period. Such a formula provides for an equally weighted allocation between the factors of labour, wealth and sales. Only a formula based on factors can fully exploit the potential for harmonisation of the tax base by eliminating the need to rely on transfer pricing for transactions within a BEFIT group (reduced compliance burden, better protection against base erosion and profit shifting).