Business in Europe: Framework for Business Taxation (BEFIT) and compliance costs

Marlies de Ruiter, 25 January 2024

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Sources of administrative costs relating to taxation in the internal market

27 Member States in the European Union (EU) –

27 tax systems

Tax impact of cross-border operations in the internal market:

- Border issues resulting in e.g., transfer pricing and withholding tax obligations
- No cross-border loss compensation
- Limited scalability of measures to promote investments

Design features of EU Directives

- Interaction with the national tax systems of Member States
- Design is targeted to the policy aim
- Design balances complexity and effectiveness
- Understanding business models and practices to prevent economic distortions and unnecessary costs

Transposition and administration of EU Directives

- Timely transposition, avoiding retrospective effect
- Gold plating and other deviations (significantly) raise the administrative burden
- Coherence through coordinated interpretation and dispute resolution mechanisms

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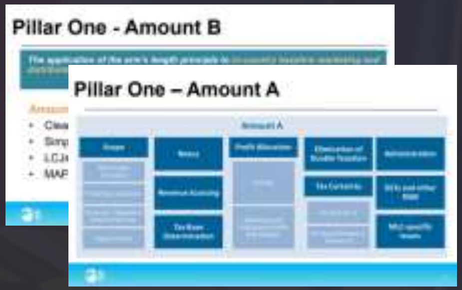
The complexities of BEFIT

Sovereign Member States
and
The EU Internal Market

International agreements



The rest of the world

An illustration of administrative challenges (1)
Public Country-by-Country Reporting and differences in timing of entry into effect

Adopted legislation – 16

- Croatia — *1 Jan 2024*
- Denmark — *22 Jun 2024*
- France — *22 Jun 2024*
- Germany — *22 Jun 2024*
- Greece — *22 Jun 2024*
- Hungary — *22 Jun 2024*
- Ireland — *22 Jun 2024*
- Latvia — *22 Jun 2024*
- Lithuania — *22 Jun 2024*
- Luxembourg — *22 Jun 2024*
- Netherlands — *22 Jun 2024*
- Portugal — *22 Jun 2024*
- Romania — *1 Jan 2023*
- Spain — *22 Jun 2024*
- Sweden — *31 May 2024*
- Slovakia — *22 Jun 2024*

Draft legislation – 6

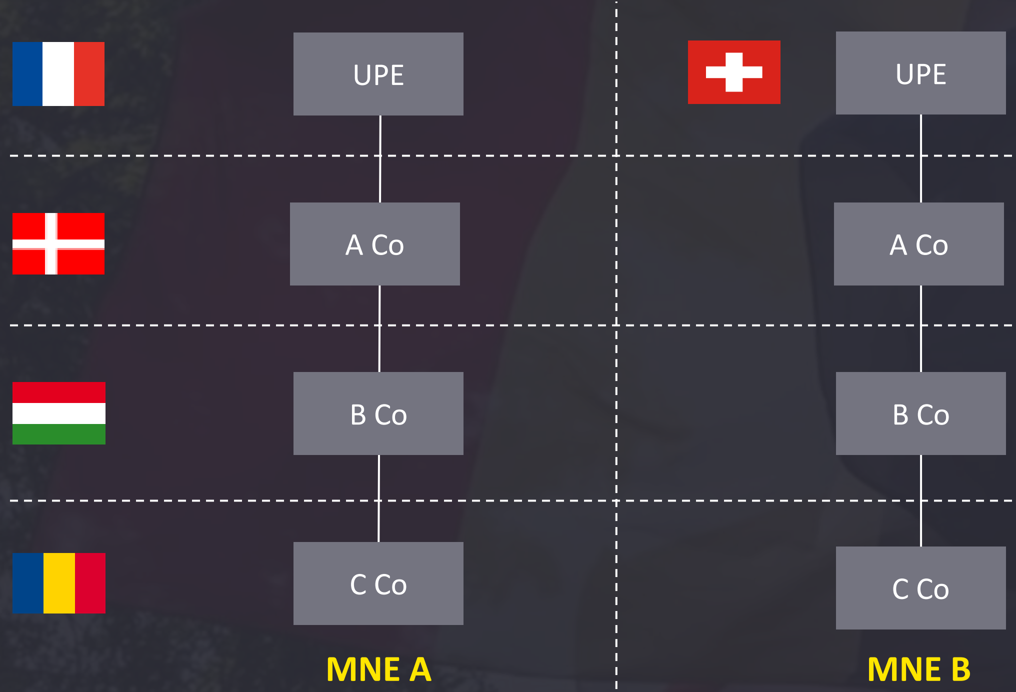
- Belgium — *22 Jun 2024*
- Bulgaria — 1 Jan 2025
- Czech Republic — *22 Jun 2024*
- Estonia — *1 Jun 2024*
- Liechtenstein — *22 Jun 2024*
- Poland — *22 Jun 2024*

No activity to date – 8

- Austria
- Cyprus
- Finland
- Iceland
- Italy
- Malta
- Norway
- Slovenia

Updated at 15 January 2024

An illustration of administrative challenges (2)
Public Country-by-Country Reporting deviations in transposition to date



- UPE location determines complexity of Public CbCR obligations
- MNE B will need to assess which group entities are medium-sized or large
- Hungary did not implement a size threshold for group entities
- Hungary did not elect the safeguard clause (partial deferral of publication)
- Hungary and Spain require reporting in 5 and 6 months, instead of 12
- Romania adopted the rules early – MNE B needs to report in 2023 if it has a medium-sized or large enterprise in Romania

To note

- A European Economic Area headquartered group can typically focus on the rules of the Ultimate Parent Entity (UPE) state
- Groups like MNE B will have legal obligations in multiple Member States and will need to initiate a timely assessment of the reporting requirements as Member States legislate the local rules
- Groups in scope of Public CbCR are typically also in scope of the Minimum Tax Directive (Pillar Two), the Corporate Sustainability Reporting Directive (CSRD) and other transparency and public reporting obligations which may be relevant for certain situations or industries. They will have to navigate the complexity of interactions and the pressure on available resources triggered by the similar timing of introduction.

How does this relate to BEFIT?

Issues

27 Member States – 27 tax systems

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BEFIT

Additional (administrative) burden due to

- Increased reporting obligations resulting from reporting at a national, EU (BEFIT) and Global (Pillar Two) level
- Cross-border loss compensation may trigger Pillar Two top-up taxes
- Deviations per national legislation are part of the design
- Member States' discretionary power to apply additional inclusions and deductions in their domestic tax base

Key features bringing opportunities if addressed

- Tax incentives are excluded at BEFIT level and are applied at a national level, not bringing additional scalability
- Transfer pricing obligations will remain due to Pillar Two obligations being applied at a jurisdictional level (Minimum Tax Directive)
- Mandatory nature for large businesses

Considerations

- The design does not appear to effectively reduce administrative costs due to the above issues
- If the aim is to reduce the administrative costs of businesses in the EU, a wider assessment beyond BEFIT may be worthwhile
- It is not clear why BEFIT should be mandatory for big companies, if one of the policy aims is to create a beneficial business climate

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Stay in touch

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Thank you