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European Commission

Transfer Pricing Directive – Head Office Tax System for SMEs – Business in Europe: Framework for Income Taxation

FORTUM'S COMMENTS ON THE PROPOSAL FOR A COUNCIL DIRECTIVE ON BUSINESS IN EUROPE: FRAMEWORK FOR INCOME TAXATION (BEFIT) {SWD(2023) 308 FINAL} - {SWD(2023) 309 FINAL}

Fortum Oyj (EU Transparency register ID 03501997362-71)

Fortum appreciates the opportunity to comment on the Commission's proposal directive on BEFIT. One of the prerequisites for responsible legislation is to hear the views of the various stakeholders, including business. Fortum wants to contribute to predictability and clarity of tax regulations.

Fortum has committed to B Team's responsible tax management principles¹; we have publicly reported our tax footprint² by country for more than 10 years. Fortum has been awarded with Fair Tax Mark³ accreditation. We aim to create value for our shareholders and societies where we operate.

Harmonisation and simplification in tax regulations contribute to increased predictability, clarity and certainty, as well as a reduction of the administrative burden and costs within the EU. Well-designed regulation support these objectives. We strongly welcome objectives of BEFIT. Our comments are about the impacts of the BEFIT proposal on the EU internal market and especially on the green transition.

The proposal creates new financial borders by applying different tax treatment for businesses and creating different compliance burdens.

The functioning of the internal market is crucial for the EU and equally important for the businesses operating within the internal market. Any barriers or non-justified limitations affect businesses and weaken the EU's internal market. A functioning internal market is crucial also for Fortum and other operators investing in clean energy and decarbonisation of industries.

Income taxes, as all taxes, are a consequence of business. In normal circumstances, a national tax system does not directly impact the functioning of the internal market, but unequal treatment of businesses does. Harmonisation of taxation has a positive impact on the functioning of the internal market by equalising the playing field, providing simplicity and creating certainty in cross-border operations. Taxation should not create different treatment between business actors. The BEFIT proposal unfortunately **fragments the internal market**, at least for companies active in clean energy and decarbonisation of industries, as some investors are subject to BEFIT and/or Pillar 2 rules and some are not, **resulting in totally different tax treatment and compliance burden competing on the same investments**. We often compete with different kinds of equity investors when investing, we buy and sell projects to and from equity investors that are or are not subject to BEFIT.

¹ <https://bteam.org/assets/reports/A-New-Bar-for-Responsible-Tax.pdf>

² <https://www.fortum.com/files/fortum-tax-footprint-2022/download?attachmen#:~:text=Fortum's%20total%20tax%20contribution%20in,674%20million%20in%20taxes%20collected.>

³ <https://fairtaxmark.net/>

The proposals would create new borders by different tax treatment – not only due to nationality, but also to size and ownership structure. Our conclusion is that this proposal does not meet the key objectives stated in the proposal. Accordingly, we question whether BEFIT, as currently drafted, is within the EU’s mandate.

Unclarity and administrative burden is not in line with harmonisation and simplification.

The idea of a common tax base in the EU Member States is positive if it contributes to the functioning of the internal market. Harmonisation and simplification in tax regulations contribute to a reduction in complexity and administrative burden by increasing predictability and clarity. Although the current proposal contains positive components, we are sceptical about the realities of the proposal.

The volume of new regulations adopted recently is significant. Compliance with legislation has become disproportionately difficult due to the complexity of the regulations. New regulations have multiplied our compliance costs and have slowed investment processes by diverting attention to new rules. For example, the implementation of the Minimum Tax Directive that is currently in progress creates an enormous administrative burden. The **high volume of complex regulations** makes it **impossible to reliably assess** the harmonisation objective of Article 115 of the EU Treaty.

We are concerned that a directive like BEFIT could potentially be challenging from a national constitutional and legislative processes point of view. In particular, the **impact assessment** for a reform of this magnitude should be performed adequately to ensure an **understanding of the impacts to business, the green transition** and the functioning of the internal market as a whole.

Tax certainty amid complexity of rules

The proposed rules are not aligned with any other existing reporting or compliance standard, they are overlapping and complex. The proposal is supposed to partially replace national corporate income tax regulations to determine the tax base for groups of companies and to simplify it. The proposal contains many provisions without sufficient explanatory notes, guidance for interpretations or undefined criteria. The proposal as presented may raise many uncertainties.

The proposal will significantly increase the administrative burden on businesses in the short and medium term. A reduction in the administrative burden may only be visible in the longer term. The question also arises whether some recent EU directives could be replaced as a result of the BEFIT proposal. This would support certainty. We recommend considering which rules, such as the Minimum tax, could be replaced by BEFIT. Tax rules have evolved significantly over the last ten years. The nature and structure of taxation has changed, but the **legal protection of the taxpayer** under the rule of law has not been developed to the level of the new rules. This aspect **should be considered** in the spirit of the constitutional state.

Conclusions

We want to encourage the EU Commission to continue the analysis of the proposal. The BEFIT proposal is not "just" a tax directive, but a fundamental change in the tax system and internal market. To ensure rule of law and competitiveness of EU and Member States as a domicile for businesses, the proposal should be clear, predictable and simplify the existing tax system. This would create predictability, be an example of responsible legislative process and true promotion of the EU internal market.

We are happy to explain our views further and to engage in a dialogue about the new rules to ensure a balanced, well-functioning proposal.

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