



January 25, 2023

**Re: Comment Letter on the Business in Europe: Framework for Income Taxation**

The National Foreign Trade Council (the “NFTC”) is pleased to provide written comments on the European Commission’s (the “EC”) impact assessment for the Business in Europe: Framework for Income Taxation (“BEFIT”) published on October 13, 2022 (the “Consultation Document”).

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. Our members value the work of the European Commission to foster a fair and sustainable business environment and tax system as set out in its Communication on Business Taxation for the 21st Century. The NFTC welcomes the opportunity to provide written comments on the Consultation Document.

We understand that the EC seeks to streamline tax compliance across the EU while reducing compliance costs and supporting investment. However, as we set out below, we believe the proposal is inconsistent with the OECD’s Inclusive Framework (“IF”) and the “arms-length principle” (“ALP”); and, therefore, should not be implemented. Should the EC pursue this proposal, the Consultation Document should be significantly modified to remove any formulary apportionment and ensure consistency with each member country’s current obligations under Pillar One and Pillar Two and be aligned, to the extent possible, with international tax rules.

**General Comments**

NFTC welcomes the opportunity to comment regarding the proposed BEFIT initiative. We support efforts to create an efficient, well-functioning Single Market, including administrative simplification, greater incentives for innovative activity, and better dispute resolution, which are all essential to attracting investment and driving economic recovery. However, given the EU’s extensive Anti-Tax Avoidance Directive complemented by the IF, we do not believe that anti-avoidance remains a convincing argument to support the need for BEFIT.

**Specific Comments**

*Double Taxation*

Our primary concern with any new system determining tax base is that it should avoid mismatches in tax law interpretation that present risks of double taxation. Accordingly, it is essential that there is both clarity and commitment to relief from double taxation.

However, we are concerned that the Consultation Document may replace the long-standing, globally and well understood ALP in favor of formulary apportionment. Allowing any departure from the use of the ALP increases the risk of mismatches between EU and non-EU jurisdictions and ultimately leads to double taxation.

This concern is amplified due to EU Member States having different tax treaties with third countries (i.e., non-EU countries, such as the U.S.), despite BEFIT. Thus, companies may have to apply the ALP within the EU to ensure appropriate profit is recorded in each jurisdiction, eroding the possible benefits of simplicity gained from BEFIT.

### *Allocation*

In designing an allocation formula, it is imperative that the resulting allocation of profit within the EU that is reflective of the economic reality of a company's business model. This includes consideration of intangible assets, which are increasingly key value drivers in many global businesses. Local incentives (e.g., for R&D, green transition, etc.) must be considered in the design. Failure to include intangible assets and the value of incentives will decrease the competitiveness and attractiveness of the EU, especially as a destination for investment in research and development and manufacturing- the opposite outcome of the intended effect.

### *Integration with Existing Rules & Draft Proposals*

BEFIT is wholly unnecessary now that the EU is moving forward with the Directive on Pillar Two, and it would add to an already significant and increasing tax compliance burden. Large businesses in the scope of Pillars One and Two will be required to prepare national tax returns, information returns, and tax filings for Pillar One, together with new obligations for Pillar Two. If additional returns are required under BEFIT, this would create an additional layer of administrative burden for both tax administrations and taxpayers. Additional clarity is needed as to how the BEFIT would co-exist with Pillar One, which will reallocate taxable profit between member states on a formulary apportionment basis. Additional clarity is also needed as to how the BEFIT proposal would interact with the rules resulting from other EU tax initiatives, e.g., DEBRA.

NFTC stresses that if BEFIT were to be implemented, it should not be mandatory but optional, at the company level. This is of particular concern for companies below the threshold for Pillar Two. Mandatory inclusion would impose an improper "one-size-fits-all" regime. BEFIT must be structured to avoid adding new reporting requirements that expand upon country-by-country reporting (CbCR). Additionally, taxpayers electing into BEFIT should not be required to prepare an additional set of financial statements drawn up in line with an accounting standard under which they ordinarily do not report. Furthermore, to achieve real efficiencies and savings for both Member States and taxpayers, the administration of the BEFIT must be centralized and simplified, ideally through a "one-stop-shop" approach (i.e., dealing primarily with one Member State's tax administration).

Finally, we support the Commission's continued abstention from tax rate harmonization. Allowing EU members to determine their respective tax rate is key for maintaining and developing investment and employment in the eligible Member States. It also serves to foster the competitiveness of the EU as compared to other jurisdictions.

### **Conclusion**

The NFTC appreciates the opportunity to comment on the BEFIT proposal. We do not believe that the EC should proceed with implementing this directive. However, should the EC decide to implement BEFIT, the Consultation Document needs to be significantly altered to (i) focus on simplification, modernization, and alignment with international tax rules; (ii) remove any formulary apportionment, allow optionality for MNCs, and (iii) ensure that it is integrated with the IF and other existing schemes in order to decrease complexity and reduce the compliance burden.