New considerations on Pillar Two and Befit[1]

Executive summary

The Pillar Two Directive, adopted in December 2022, has entered into force across the European Union and is being implemented by all Member States. The initiative, designed to enforce a global minimum tax of 15% for large multinational enterprises (MNEs), has been embraced by 45 jurisdictions globally. However, major economies such as the United States, China, and India have opted not to participate.

In early 2025, the new U.S. administration announced a reversal of the previous government's commitments to the OECD's global minimum tax framework. President Trump's executive memorandum established a clear policy of opposition to what it termed "extraterritorial" or "discriminatory" foreign tax measures, threatening retaliatory action under Section 891 (and a new Section 899) of the U.S. Tax Code.

In June 2025, the G7 reached a "shared understanding" that envisions a "side-by-side" system exempting US-parented groups from the Under-Taxed Profits Rule (UTPR) and the Income Inclusion Rule (IIR) under Pillar Two. Also, a revision of creditable tax credits and simplifications of Pillar Two rules are envisioned. The new approach should preserve a level playing field and avoid base erosion and profit shifting. The G7 compromise has received a G20 endorsement and is under technical elaboration within the OECD Inclusive Framework, expected by late 2025.

For the European Union, this evolving international context raises serious challenges. The outcome of the side-by-side approach is uncertain in its contents and timewise. In the meantime, business is confronted with very substantial compliance costs while empirical evidence suggests that additional revenues may fall very short of expectations.

The business community has expressed increasing concern over the disproportionate costs and competitive disadvantages associated with Pillar Two and has called for its suspension and simplification. While politically complex, a temporary suspension could provide breathing space for global renegotiation at the OECD and allow the EU to reassess its tax coordination strategy.

[1] Vieri Ceriani, Silvia Giannini, Stefano Grilli, Daniele Majorana, Giuseppe Marino, and Raffaele Russo have actively contributed to the drafting of this document.

Parallel to participating in international developments, the EU should continue to pursue its own tax coordination agenda, through the BEFIT (Business in Europe: Framework for Income Taxation) proposal, which seeks to establish a EU common consolidated corporate tax base, replacing earlier initiatives such as the CCCTB. Nevertheless, in its current form, it is too complex.

This document proposes a revision of BEFIT to simplify the common tax base, bringing it as close as possible to the outcomes of Pillar Two, and thereby reducing *compliance* costs, in line with the decluttering strategy. The new common tax base would be built on income as calculated under Pilar Two, using the investments made so far by companies to implement the GMT rule (investments that would result redundant if Pillar Two is suspended).

A simplified and streamlined BEFIT, well-coordinated with Pillar Two, would drastically reduce administrative costs, create a level playing field, combat tax arbitrage, increase revenue, foster intra-EU integration, and improve the functioning of the internal market. Therefore, it would enhance the competitiveness of the European economy.

However, the coexistence of the BEFIT proposal with Pillar Two introduces conceptual and operational inconsistencies. While BEFIT consolidates profits at the EU level and allows cross-border loss offsetting, Pillar Two applies jurisdictional blending that treats each Member State separately. Without reconciliation, these differing methodologies risk triggering additional "top-up" taxes under Pillar Two, even where EU-wide effective tax rates exceed the 15% minimum set by Pillar Two.

There are two broad pathways: (1) align BEFIT's design to Pillar Two by applying it at the level of each MS (27 jurisdictions), thereby preserving jurisdictional blending; or (2) redefine the EU as a single jurisdiction for Pillar Two purposes ("regional blending"). The latter would allow cross-border loss offsetting and remove intra-EU transfer pricing. CFC rules and intragroup anti-hybrid rules would become superfluous.

This solution would also open the door to the creation of a genuine European corporate tax with a uniform minimum rate and optional national surcharges. BEFIT could also be a foundation for new EU "own resources."

The EU also faces long-term strategic decisions concerning its own fiscal autonomy and funding mechanisms. The declining feasibility of digital taxes and the limited revenue potential of the ETS and CBAM mechanisms highlight the need for new "own resources". The Commission's July 2025 proposal for new own resources, that includes the Corporate Resource for Europe (CORE), represents an effort to diversify EU financing beyond the GNP-based contribution. However, CORE, structured as a turnover-based tax, adds a new levy to existing business taxation and lacks integration with BEFIT and Pillar Two, increasing the complexity of the EU's tax framework. It represents a pragmatic but fragmented approach, lacking coherence with existing tax coordination efforts and adding further complexities to business taxation. A coordinated approach that uses BEFIT as a common base for corporate taxation and for EU funding would provide a more coherent solution.

Finally, the establishment of a European Tax Agency, inspired by the proposed EU Customs Authority, could significantly improve administrative coordination, enhance data sharing, ensure efficient information exchange and consistent application of rules, and resolve disputes. Hence it would ensure consistent enforcement across Member States. Such an agency would help streamline the implementation of both Pillar Two and BEFIT, supporting transparency, legal certainty, and administrative efficiency.

Table of Contents

Appendices

1. General considerations

The EU Pillar Two directive on the Global Minimum Tax (GMT), adopted in December 2022, is now in force and is being implemented by all EU member states. Pillar Two has also been adopted by some other important countries, like the UK, Japan, Canada, Brazil, South Africa, Korea, Australia, Turkey, Switzerland, Norway, New Zealand, Kenya, Malaysia, the United Arab Emirates, Singapore, Vietnam to name a few. Overall, 45 countries (including EU member states) have joined the project or announced the intention to join. But the major players, i.e. the US, China, and India, have not joined, alike many other countries.

The position of the new US administration

On 20 January 2025 the US Presidency published a Memorandum on "Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties". The intention of the new US administration is very clear. Not only the commitments of the Biden administration to the GloBE rules) have been rescinded; in addition, if foreign countries adopt "extraterritorial" tax rules (like the UTPR or a Digital Service Tax, DST) that would force US groups to pay taxes abroad that do not comply with the existing US tax treaties, this will be considered a sort of an 'act of aggression' against the US economy and would trigger retaliations. While the cancellation of the commitments of the previous administration was expected, it was less so for the vigorous menace of retaliations. President Trump's executive order mandated the US Treasury to investigate all cases of foreign "extraterritorial" taxes which "disproportionately" affect US companies and do not comply with US tax treaties, and make proposals for retaliatory measures[2].

The outcome of the investigation could lead to the application of Section 891 of the tax code, which allows the US president to double the tax rates on citizens and corporations of a foreign country if that country is found to impose "discriminatory or extraterritorial" taxes on US citizens or corporations. No president has ever applied Section 891, which was enacted in 1934.

Furthermore, a special provision was introduced in the One Big Beautiful Bill Act (OBBBA) during discussion in Congress, which would modify the tax code. The new Section 899 would require the Treasury Department to identify 'extraterritorial' and 'discriminatory' taxes enacted by foreign countries that target US businesses. Once identified, US tax rates on income earned by corporations and investors from those countries will increase by 5 percentage points annually for four years. After this period, the tax rates will remain at that higher level by 20 percentage points for as long as the foreign taxes remain in effect (House version). If a foreign country repeals the relevant tax, the reciprocal tax will no longer apply.

The main candidate for the retaliations against foreign "extraterritorial" taxes was the UTPR (Under Taxed Profit Rule). The UTPR is a fundamental feature of Pillar Two and forbidding its implementation by other countries might create problems for the functioning of the project[3].

[2] The Treasury was mandated to report within 60 days. Although the Treasury seems to have delivered the report, it has not been made public.

[3] According to some authors, the Income Inclusion Rule (IIR), under which foreign countries can tax the profits of US-resident subsidiaries of foreign multinationals, and the Qualified Domestic Minimum Top-up Tax (QDMTT), under which foreign countries can tax the profits of US subsidiaries resident in their jurisdiction,

However, a year ago the Inclusive Forum of the OECD had already agreed to postpone until 2026 the application of the UTPR, originally envisaged for 2025, as a temporary "safe harbor", under conditions that applied also to US multinationals [4]. This suspension has left room to find an agreement during 2025.

The G7 agreement

In fact, in June the G7 agreed on a "shared understanding" *"… that a side-by-side system could preserve important gains made by jurisdictions in the Inclusive Framework in tackling base erosion and profit shifting and provide greater stability and certainty in the international tax system moving forward.*"

"This understanding, which builds on our continued commitment to collaborate jointly through the Inclusive Framework to address the potential risks of base erosion and profit shifting, is based on the following accepted principles:

- *A side-by-side system would fully exclude U.S. parented groups from the UTPR and the IIR in respect of both their domestic and foreign profits.*
- *A side-by-side system would include a commitment to ensure any substantial risks that may be identified with respect to the level playing field, or risks of base erosion and profit shifting, are addressed to preserve the common policy objectives of the side-by-side system.*
- *Work to deliver a side-by-side system would be undertaken alongside material simplifications being delivered to the overall Pillar 2 administration and compliance framework.*
- *Work to deliver a side-by-side system would be undertaken alongside considering changes to the Pillar 2 treatment of substance-based non-refundable tax credits that would ensure greater alignment with the treatment of refundable tax credits."*

In light of this understanding reached by the G7, particularly the disapplication of GloBE Rules (UTPR and IIR) in respect of US parented companies, Section 899 has been removed from the One Big Beautiful Bill[5]. The G7 agreement appears to leave QDMTTs unaffected: countries may continue to impose QDMTTs on the operations of US parented groups in their jurisdictions.

The G7 understanding was in certain respects accommodated by the G20; the communique of July 18 states that:

"*We will continue engaging constructively to address concerns regarding Pillar Two global minimum taxes, with the shared goal of finding a balanced and practical solution that is acceptable for all. Delivery of a solution will need to include a commitment to ensure any*

should not be considered as "extraterritorial" or "discriminatory" taxes (although the QDMTT could have a material impact on US tax revenues through the foreign tax credit). See Mindy Herzfeld, *Trump Executive Orders Bring U.S. Course Change on International Tax*, International Tax Notes, Jan. 27, 2025.

[4] According to this transitional safe harbor, the UTPR top-up tax calculated for the UPE jurisdiction shall be deemed to be zero if the jurisdiction where the UPE is resident applies a statutory tax rate of the corporate income tax of at least 20%. The US-parented companies benefit of this transitional safe harbor because the US statutory rate is 21%. This transitional safe harbor only provides relief for the UPE jurisdiction; constituent entities located in other jurisdictions are excluded.

[5] However, the US Assistant Secretary for Tax Policy has already announced to Congress that Treasury would support reintroducing it in the US tax system should the solution on the side-by-side system not to be found. See *Treasury Would Back 'Revenge Tax' if OECD Doesn't Fulfill Promise,* Tax Notes International, 15 Sep 2025.

substantial risks that may be identified with respect to the level playing field, including a discussion of the fair treatment of substance-based tax incentives, and risks of base erosion and profit shifting, are addressed and will facilitate further progress to stabilise the international tax system, including a constructive dialogue on the tax challenges arising from the digitalisation of the economy. These efforts will be advanced in close cooperation across the membership of the OECD/G20 Inclusive Framework (IF), preserving the tax sovereignty of all countries."

These issues must be discussed and further developed by the Inclusive Framework of the OECD, which comprises over 145 countries and jurisdictions. The timeframe is unclear, but a definitive solution should be achieved by the end of 2025.

The Inclusive Framework must define the technical aspects of the side-by-side system. As for the UTPR and IRR, the solution could be to create a special safe harbor dedicated to US-parented groups (i.e., those with ultimate parent entity located in the USA). The existing UTPR transitional safe harbor has exempted US-parented groups from the application of the UTPR only for CEs located in the US, not for those located in other countries. The new safe harbor should be extended to all entities of a US-parented group, wherever they are located. Furthermore, the exclusion should cover not only the UTPR but also the IIR. But would a special solution designed just for the US be acceptable by other non-G7 countries (in particular, big players like China and India)? Would it fit with the G20 mandate to pursue a comprehensive side-by-side approach?

As an alternative, a new safe harbor could be defined on the basis of features of the US system that are common also to other countries. After all, the current transitional UTPR safe harbor has been designed as a general rule, that covers also, but not exclusively, US-parented groups. On top of the UTPR, also the IRR should be covered by the new safe harbor. If the new safe harbor is designed to cover only US-parented groups, the "preferentiality" of the US regime would be enhanced. On the contrary, if the new safe harbor is designed to benefit also other countries, Pillar Two will be significantly weakened. The IF will have a hard task in finding a side-by-side solution.

As mentioned, the "greater alignment" between the treatment of substance-based non-refundable tax credits and refundable tax credits will be achieved through changes to Pillar Two rules. This would avoid the risk that non-US parented groups incur in Pillar Two top-up taxes on their US activities. Since these activities remain in scope of Pillar Two, their effective tax rate might fall below 15% due to the current treatment of some US tax credit. Notably, some tax credits provided by the Biden-era IRA (Inflation Reduction Act) reduce the effective tax rate under current Pillar Two rules and, interacting with the statutory corporate income tax rate at 21% (as decided by the OBBBA), may push the effective tax rates on U.S. operations to below 15%, thus requiring a top-up-tax. Removing the risk of such top-ups would benefit potentially exposed non-US parented groups. From a US perspective, this will ensure that Pillar Two does not undermine the effectiveness of domestic tax incentives in attracting foreign investment. Anyway, non-US parented groups might avoid these top-up taxes if they move their parent company into the US. But attracting in the US the parent companies of foreign groups would be disadvantageous for the countries where these parent companies are now located.

According to the third principle of the shared understanding, material simplifications to the overall Pillar Two administration and compliance framework are part of the side-by-side approach.

In practice, any technical solution should be set out in additional Administrative Guidance and then incorporated into the Commentary on the Model Rules; a change to the Model Rules themselves seems unlikely.

For the EU, any solution that requires amendments of the Pillar Two directive would be extremely difficult. The Directive contains a dynamic adaptation to OECD regulations. In particular, Article 32 provides for the implementation of "*qualifying international agreement[s] on safe harbours*". But for tax credits, as for other administrative and compliance aspects, the wording of the directive is more precise, and it is doubtful that it can be overcome by different provisions introduced in the Commentary of the Model Rules. Employing Art. 32 to implement a politically negotiated side-by-side regime may exceed the textual and teleological boundaries of the Directive, transforming Art. 32 from a technical device for implementing internationally agreed specific administrative rules into a "constitutional Trojan horse"[6]. The European Court of Justice would eventually clarify this issue.

What about the Digital Service Tax?

The menace of retaliations was not limited to the UTPR but regarded also the existing (or planned) web taxes (Digital Service Taxes). The presidential Memorandum of 20 January 2025 mandated the Secretary of the Treasury, the Secretary of Commerce, and the United States Trade Representative to identify trade and other regulatory practices by other countries, including DSTs, that discriminate against, disproportionately affect, or otherwise undermine the global competitiveness or intended operation of United States companies in the digital economy, and recommend appropriate actions.

Such actions might take the form of additional tariffs, as already threatened in the past. Alternatively, Section 891 of the tax code might be implemented.

The G7 agreement does not mention the DSTs. It seems that the US administration intends to address this issue, which is highly contentious, not only in respect of European countries, on a bilateral basis. Canada announced on 29 June 2025 that the collection of the DST would be halted and that legislation would soon be brought forward to suppress the Digital Services Tax Act. The European Commission on 16 July 2025 presented a new proposal for own resources which, contrary to past announcements, does not mention the DST as a possible new source of revenues (see para 4).

2. Possible ways forward for the EU

[6] See Weber, D.: *A full carve-out for U.S. groups for Pillar 2: an EU Constitutional Trojan Horse?* (avaiable at https://legalblogs.wolterskluwer.com/international-tax-law-blog/a-full-carve-out-for-us-groups-for-pillar-2-an-eu-constitutional-trojan-horse/#); see also "*EU Tax Debate on Pillar 2 Sparks Rule of Law Concerns*, Tax Notes, 10 October 2025.

The new scenario opened by the G7 agreement presents many uncertainties both on the substance of the side-by-side solution and on the timing of the negotiations at the Inclusive Framework. The EU is confronted with different possible ways forward.

The EU has been at the forefront of the adoption of the global minimum tax. Pillar Two rules have been enforced with a Directive and extended to purely domestic groups to ensure compatibility with EU law. The objectives of contrasting tax arbitrage and tax competition and of raising additional revenues (aimed partly to new own resources of the Union) were at the core of this adoption. But even before the confrontation with the new US administration and the G7 agreement it was not granted that the results would have met the expectations.

It has been pointed out that tax competition among states (and the possibility of tax arbitrage) would not disappear but take new forms[7].

Most relevant, in various countries the anecdotical evidence from the business sector shows that the initial tax revenues will likely be much lower than expected[8], and in certain instances lower than the compliance costs incurred by business to comply with the rules[9]. Some commentators hold that the overall administrative costs, even after the initial adoption, will

[7] Tax competition may well move to other obligatory contributions different from the corporate income tax (CIT), such as energy taxes, property taxes, other indirect taxes, payroll contributions and other non-tax factors. Furthermore, jurisdictions that adopt the Pillar Two rules can still compete on the CIT for entities that are not in scope of Pillar Two. In other words, some jurisdictions may collect the top-up tax on large multinational companies that fall under Pillar Two rules (using a QDMTT) while keeping a lower (even zero) general level of domestic corporate taxation and attracting companies that do not qualify for the application of Pillar Two. This might be the case for tax-haven jurisdictions. Governments are also exploiting some possibilities offered by the rules of Pillar Two: some tax incentives that now reduce the corporate tax due and therefore reduce the numerator of the effective tax rate (ETR) might be transformed into 'qualified refundable tax credits' or 'marketable transferable tax credits. These tax credits are considered as government grants and according to Pillar Two rules are excluded from the covered taxes (the numerator of the ETR): therefore, they do not affect (do not reduce) the ETR. This effect is only partially mitigated by the fact that 'refundable' and 'marketable' tax credits are included in the Globe income, i.e. in the denominator of the ETR. In conclusion, by transforming existing tax benefits that reduce the tax base (and the amount of covered taxes) into these types of credits a jurisdiction will offer a higher ETR and hence a lower top-up tax due for Pillar Two, while leaving the financial benefits of the incentives substantially unchanged for the companies involved. In fact, the benefits of the 'refundable' or 'marketable' tax credits might be higher than the benefits of the tax allowances that reduce the tax base, in so far as the exploitation of the latter find limits in exhausted tax losses. Simmetrically, governments might incur higher revenue losses. For some references on tax competition effects, see: Devereux M., Vella J. and Wardell-Burrus H. (2022), *Pillar 2: rule order, incentive, and tax competition*, Oxford University Centre for Business Taxation Policy Brief, 14 January; CEPS-ECMI (2023), *EU corporate taxation in the digital era: the road to a new international order*, Centre for European Policy Studies; Devereux MP. and Vella J. (2023), *The Impact of the Global Minimum Tax on Tax Competition*, World Tax Journal, Amsterdam, Vol. 15 (2023), n. 3, pp. 323-378; Haufler A. and Kato H. (2024), *A Global Minimum Tax for Large Firms Only: Implications for Tax Competition*, CESIFO Working Papers n. 11087, April 2024.

[8] The global additional revenues from the application of Pillar Two have been estimated in USD 155-192 billion per year (Hugger F. (et al.) (2024), *The Global Minimum Tax and the taxation of MNE profit*, OECD Taxation Working Papers, n. 68). It is appropriate to highlight that such estimates are made without considering, among other things, the impact of transitional safe harbors.

[9] Initially the one-off administrative costs for the setting-up of the new procedures will be quite high. However, continuous adjustments will be needed in the future, to take on board the modifications and clarifications of the administrative guidance issued by the OECD Inclusive Framework (such as in the case of abandonment of the provisional safe harbors and the adoption of the definitive ones). Business will also have to factor in their own changes (M&A, dismissals, changes of the business model, etc.) which occur on a regular basis in any large group. Finally, the administrative costs for tax administrations should also be considered, given the complexity of the rules and the issues that will likely arise.

remain close to (or even higher than) the additional tax revenue generated[10]. The initial low level of revenues, much lower than expected, will become apparent in the next future. This evidence and the cumbersome administrative accomplishments, with the related loss of competitiveness, will trigger discussions among politicians and the public opinion at large.

After the Memorandum of President Trump, the European Commission reiterated the commitment to the decisions already taken, while remaining "open to a meaningful dialogue". But the new G7 agreement opens the floor to substantial changes and makes more urgent the search for answers to a very complex environment, that requires a change in gear.

Suspending Pillar Two directive

The requests of a suspension (or an abandonment?) of Pillar Two are growing. The business sector claims that the administrative complexities and costs are disproportionate and undermine the competitiveness of European businesses, for very little revenues. The German business association (BDI) calls for a suspension of the Pillar Two directive; if politically impossible, at least a strong simplification of Pillar Two rules is requested, with a confirmation of transitional safe harbor rules. German Chancellor Friedrich Merz recently supported the proposal of a suspension of Pillar Two directive; but then, after a question was raised in the European Parliament, the German government apparently backtracked. BDI also signaled strong worries for the severe consequences of the threat of possible additional US taxes on the US income of German companies, that have heavily invested in the US, as well as on interest and license payments. According to BDI, the consequences of US countermeasures "must be urgently prevented".

A suspension of Pillar Two directive would avoid the uncertainties, for businesses and tax administrations, of a situation in which the existing rules are in force, but changes are being discussed and worked out. It would also ensure that EU-based MNEs are not at a disadvantage compared to their peers from other jurisdictions.

Given the clear and aggressive stance of the US, the uncertainties on the ultimate positions of other large countries such as China and India, the time needed and the difficulties to develop sound technical solutions for the side-by-side system, for the EU a wait and see approach has some merit.

A suspension might lead to a permanent "freezing" of the Pillar Two directive. But it might also buy time for a revision of the minimum tax rules at the OECD Inclusive Framework and for improving the co-ordination of Pillar Two with the project of a common European corporate income tax, that should become the focus of the current discussions at EU level.

Moving ahead towards an EU corporate income tax

[10] As an example, preliminary and unofficial estimates for Germany indicate additional revenues fromPillar Two around 20 million euros, compared to an official forecast of 200 million. Business would incur 600 million euro for one-off administrative costs related to the initial set up of the system, which would then stabilize at around 130 million per year after the initial investment (Spengel C., Schulz I. and Winter S. (2023), *Steuerplanung unter der globalen Mindeststeuer*, Der Betrieb, 2023.

In a recent paper the authors (Maarten de Wilde and Ciska Wisman) highlight a possible fundamental flaw of the Pillar Two directive, and propose a correction. The flaw is in the approach chosen under the GloBE Rules: top-up taxation is determined on a per-country basis (jurisdictional blending). The authors show that this feature of the directive leads to differences in tax treatment between domestic and cross-border business operations within the internal market. These differences may result in unjustified de facto restrictions of the freedoms of movement. According to the authors, sooner or later the European Court of Justice will sanction the jurisdictional blending of Pillar Two. They propose, as a solution, the adoption of an EU regional blending[11], i.e., considering the EU a single jurisdiction for Pillar Two purposes. This solution would require adjustments to the GloBE rules[12], to make it accepted by third countries, and to the Pillar Two directive.

As an alternative, the authors propose to abolish the Pillar Two directive and start projecting a brand-new European corporate income tax. It is not clear how this new European tax will stand against other current proposals[13].

A European corporate income tax has been under discussion for decades. The previous Commission in 2023 proposed the Befit directive, which replaces CCCTB.

Recently, in the framework of the Competitiveness Compass the Commission has announced a proposal for a 28th legal regime that will simplify applicable rules, including relevant aspects of corporate law, insolvency, labour, and tax law, in order to allow innovative companies to benefit from one single set of rules in the Single Market.

The fundamental objective of setting a common European corporate tax and streamlining other legislations is to fully exploit the potentialities of the internal market and improve the competitiveness of the European economy.

3. Streamlining Pillar Two, simplifying BEFIT and improving their coordination

In a more restricted perspective and limiting the scope to corporate taxation, an appropriate reaction could be to push forward to the adoption of a revised and simplified BEFIT, streamline Pillar Two, and improve their coordination.

Setting a common consolidated tax base at EU level and an improved co-ordination with Pillar Two (particularly as regards jurisdictional blending and the treatment of losses and deferred assets and liabilities) open the door to potentially very important simplifications (e.g., under certain conditions, the non-application of the transfer pricing, CFC and anti-hybrid rules between CEs located in the EU), contribute significantly to tax decluttering and might overcome the comparative disadvantage raised by Pillar Two. A simplified and streamlined BEFIT, well-coordinated with GMT (Pillar Two), would drastically cut administrative costs, create a level playing field contrasting tax arbitrage and raising additional revenues, foster

[11] Or even a global blending.

[12] Today the EU is not considered as a single jurisdiction: each MS is treated as a single jurisdiction. Under the GloBE rules (see Commentary to art. 10.2, par. 177) a jurisdiction is to be intended as *"[..] a State as well as a non-State jurisdiction which has fiscal autonomy.*"

[13] Probably along the lines of the European Corporate Tax 2,0 proposed by Marteen de Wilde. It would be an income tax at consolidated group level, with an ACE (allowance for capital equity) that equalizes the tax treatment of equity and debt, and would be apportioned on the basis of sales.

intra-EU integration, and improve the functioning of the internal market. Hence, would improve the competitiveness of the European economy.

Furthermore, repealing the Pillar Two directive altogether would have the effect of making redundant the investments made so far by companies to implement the Global minimum tax. These huge investments (see the estimates regarding the German case in footnote 9) were required not only for multinational groups, but also for purely "domestic" groups (i.e. groups resident in an EU member state without foreign affiliated companies). Many groups have heavily invested in implementing Pillar Two; many of these, if not all, would also be affected by the introduction of a corporate tax at the level of the EU as a jurisdiction.

However, the tax base in the current BEFIT proposal is too complex, would add new largely unnecessary compliance costs for taxpayers and tax administrations, in contrast with the strategy of "decluttering". The renewed BEFIT tax base should be drastically simplified: the denominator of the ETR calculated for Pillar Two should be considered as the starting point for the new EU tax base and further adjustments should be drastically minimized (see section 3.1).

Also, some inconsistency between Pillar Two and BEFIT rules should be streamlined (see section 3.2). For groups subject to Pillar Two the benefits of a streamlined BEFIT and an improved coordination with Pillar Two (and subsequent tax decluttering) could largely compensate the compliance costs of Pillar Two and avoid throwing away the investments already made.

Furthermore, the application of Pillar Two and BEFIT would greatly benefit from a European Tax Agency in charge of setting common administrative rules and guidelines and solve controversies (see para. 5). This would be a great step forward for tax certainty and homogeneity of application within the EU.

Starting a discussion on this type of proposals would be useful *per se* but becomes more urgent and necessary in the current situation.

3.1. The EU common corporate tax base: a simplified BEFIT

The definition of the common tax base has always been one of the most critical issues in the EC proposals on corporate income taxation. Initially, the CCCTB tax base was defined independently from financial accounts: all the elements that formed the base, i.e. all taxed and exempt revenues and deductible and non-deductible expenses were defined. The main reason was the impossibility of identifying uniform accounting principles for the financial statements of individual companies.

The OECD Pillar Two project adopts a different approach. In order to calculate the denominator of the effective tax rate, it was decided to derive the Globe Income or Loss (i.e., the tax base) from the financial statements. The Globe Income or Loss is calculated, in accordance with Chapter 3 of the Globe Model rules and Chapter III of the Directive, starting from the Financial Accounting Net Income or Loss (FANIL) as determined under the applicable financial accounting standard used by the UPE to prepare consolidated financial statements of the Group. The FANIL is then adjusted to conform the accounting result to a typical corporate income tax (CIT) taxable base by mandatory upwards or downwards (to

eliminate income that should not be taxed or expenses that should not be deducted) and elective adjustments. It is worth noting, with a view to the European context, that most companies adopt the IFRS.

The idea to consider the Globe Income or Loss as the starting point for a European common corporate tax base is in line with Recital 6 of the BEFIT Directive proposal: "*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.*"

Indeed, under many respects the tax base of BEFIT (Arts. 8-41 of the Directive proposal) is similar to the one provided by GloBE model rules: e.g. there is a participation exemption for dividends and capital gains on shares; illegal payments are not deductible; corporate taxes are added back in the tax base, etc.

Nevertheless, it has been underlined that "*the BEFIT corporate tax base ultimately presents itself as a half-baked mix of Pillar Two and CCTB ingredients*."[14] In fact, on many other important aspects the proposed BEFIT tax base remains very different from that provided for under the Globe model rules. The main differences regard the depreciation of fixed assets (that under BEFIT should follow specific straight-line criteria) and provisions (that should not be deducted unless some conditions are met, e.g. because of a legal obligation). Notably, these rules produce only temporary differences between the Globe Income or Loss and the Befit tax base, i.e. they only lead to a different time allocation of income. They seem good candidates for simplification. And streamlining BEFIT tax base would also be in tune with the current strategy of tax decluttering (more details are provided in Appendix 1).

3.2. Inconsistencies between BEFIT and Pillar Two rules

BEFIT is designed as a local CIT to be charged before the application of Pillar Two top-up tax. Its tax base is computed at consolidated group level, with cross-border set-off of losses. A formulary apportionment distributes the consolidated tax base between EU member states, that maintain sovereignty in setting the tax rate. This design seems not (always and fully) compatible with Pillar Two rules.

As extensively shown in Appendix 2, there is the risk of a clash between BEFIT and Pillar Two rules, with the triggering of a top-up-tax in specific EU member states although at consolidated EU level the ETR is well above 15%.

This inconsistency is mainly due to the jurisdictional blending applied for Pillar Two purposes, which mandates to compute separate positions for CEs located in each single EU MS and does not permit the cross jurisdictional set-off of losses at EU level, as opposed to the

[14] Daniela Hohenwarter and Gunter Mayr, *Pillar Two and BEFIT: Shocks and Opportunities for the EU Internal Market*, European Taxation, October 2024.

unitary taxation and apportionment approach at EU level under BEFIT, where each CE separate position is "dissolved" into the EU group and cross-border set off of losses at EU level is possible.

There are two possible solutions. The first one is to design BEFIT as an EU common tax base to be applied only at the level of each single MS to the CE located in its territory. This solution would be in compliance with the jurisdictional blending and the CE-by-CE approach adopted by Pillar Two. But there would be 27 national taxes, not a European corporate tax, no EU group consolidation, no EU cross-border set-off of tax losses; transfer pricing (ALP rules), CFC, and anti-hybrid rules would be applied on intra-EU transactions. Each EU member state would fix its nominal corporate tax rate.

The second solution is to design an EU corporate tax that treats the EU as a single jurisdiction and consider the EU as a single jurisdiction for Pillar Two purposes, with unitary regional blending for all the CEs located in the EU. Hence, EU losses would be naturally offset and, in general, the EU "domestic" transfer pricing, CFC rules and intragroup anti-hybrid rules would become superfluous and should not apply. EU-parented groups would face one single European CIT system.

The BEFIT as a single EU CIT could streamline other issues in the coexistence with Pillar Two rules, e.g. differences in the treatment of deferred taxes (See Appendix 2). Most importantly, BEFIT as a single EU CIT offers the advantages of cross-border compensation of losses, no need for ("redundancy" of) transfer pricing, CFC, and anti-hybrid rules, reduction of administrative costs and, overall, improved competitiveness. It might also open the way toward the adoption of a single tax rate, to raise much needed Own Resources for the EU (see para 4). In order to leave taxing rights to the MSs, the single EU rate fixed to finance the European budget could be supplemented by national surcharges, applicable by each MS on its share of common tax base as determined according to the apportionment formula.

4. European corporate income taxation and EU own resources

The enlargement of the Own Resources (OR) is a long-standing issue. It is strictly connected with and preliminary to the enlargement of the competences of the EU and is also traditionally linked to the harmonization of taxation.

According to the EU Treaties, the European Union (EU) has no fiscal competence, i.e. it cannot autonomously establish taxes by exercising its own powers. Understood in this sense, the competence of taxation lies exclusively with the national authorities. The Union collects own resources only following specific decisions taken by the competent institutions, in compliance with the Treaties.

Background

There is an obligation to balance the EU budget: annual expenditure and revenue must coincide. Loans are not permitted. However, exceptionally and temporarily, after the crisis resulting from the COVID-19 pandemic, it was decided to borrow up to €750 billion on the capital markets to finance the Recovery and Resilience Facility (RRF) under the NextGenerationEU (NGEU).

In 2020, with the approval of the NGEU and the implementation of the RRF, the OR have been increased, relying on the GNP-based resource, but with a mandate to the Commission to find new OR.

In the interinstitutional agreement of 16 December 2020, the Commission committed to "put forward proposals on a **Carbon Border Adjustment Mechanism** (CBAM) and on a **digital levy**" as well as an accompanying proposal to introduce new own resources on that basis by June 2021, with a view to their introduction at the latest by 1 January 2023. In addition, the Commission committed to reviewing the EU **Emissions Trading System** (ETS) and to propose an own resource based on the ETS. These new own resources should contribute to the repayment of the principal and the interest of the funds borrowed under the RRF.

In the current institutional setting, the issue of OR has been linked to the issue of tax harmonization. According to this approach, the strengthening of the fiscal capacity of the Union and the consequent strengthening of its OR pass through the harmonization of national taxes. Just as in the past, at the birth of the European Communities, the harmonized VAT was, together with custom duties, an own resource, so today other national taxes should be harmonized, and part of the revenues should be assigned to the budget of the Union: the main candidate is the corporate income taxation.

On one hand, this traditional approach is the (appreciable) expression of a coherently federalist evolutionary vision. But, on the other hand, today prevailing political orientations and trends go in other directions.

In the tax field, recent years have seen the approval of European legislation aimed at strengthening administrative cooperation and revising anti-evasion and anti-avoidance regimes, in coherence with larger projects promoted by the OECD and the G20. These are the issues on which it was possible to overcome the stumbling block of unanimity. On the other hand, no progress has been made on issues of genuine harmonization, such as the corporate income tax: the directive on the CCCTB (Common Consolidated Corporate Tax Base) has been under discussion for a decade, and recently replaced by BEFIT, approved as a draft directive by the previous Commission. But insofar BEFIT has also failed to find consensus and support by the MS. Perhaps it is no coincidence that the political agreement on the establishment of new own resources concerned the ETS and the CBAM, non-tax levies, therefore not subject to unanimity.

In the context of the NGEU and the RRF, the new financial needs of the Union budget, necessary to meet the financing of the new European debt, are in any case ensured by the fourth resource (the one based on the GNP). However, this agreement was also reached on the basis of a consensus on the attempt to find new own resources, using new revenues raised mainly from foreign operators. In other words, the Commission was given a mandate to seek solutions aimed to "export" the levies, avoiding as far as possible transfers of revenues from the national budgets to the Union budget.

In 2021 important developments emerged on the co-ordination of the international taxation of MNEs' profits. The G20 (Venice 9-10 July 2021) endorsed an historical political agreement, to be defined at technical level by the OECD Inclusive Framework, on a new international tax system, based on the reallocation of taxing rights among jurisdictions (Pillar 1) and a global minimum level of effective corporate taxation (Pillar 2).

The Commission expressed the intention to translate into Directives (and thus enforce for all 27 member States) the provisions of the two Pillars, when defined and agreed at international level. Part of the expected additional revenues stemming from Pillars 1 and 2 could become new OR.

In conclusion, the strategy of the UE and the mandate to the Commission for strengthening the OR was based on **CBAM**, **ETS**, the two **Pillars** and (possibly) the **digital levy**.

Recent developments

As well known, **Pillar 1** is virtually dead: without the US the level of participation to the multilateral agreement will never reach the "critical" threshold necessary to its actual implementation. **Pillar 2** (i.e. the GMT and the subject to tax rules, STTR) has been enacted in the EU by the Pillar Two directive but is now under discussion and revision in the OECD Inclusive Framework (as described in para 1). The effectiveness of Pillar Two in raising revenues is doubtful. Even before the last developments, there was (non-systemic) evidence that (at least in the short run) the effective revenues will be much lower than officially estimated.

The **CBAM** and the **ETS**, part of the whole package of "green" measures proposed by the Commission in mid-July 2021, have been approved in 2023. However, both measures cannot be viewed as permanent sources of finance, because their revenues will tend to decline over time. The CBAM is intended to induce third countries to implement forms of ETS at home: as they will do so, the revenues will shrink. Also, ETS is a behavioral levy, intended to induce reductions of carbon emissions produced in the EU: its very success implies a decrease of its revenues. Furthermore, in the framework of Fit-for-55 it has been decided to earmark the bulk of the revenues from ETS to compensatory schemes and the promotion of research and innovation, leaving little room for OR. Notwithstanding their formal approval, delays in the effective implementation of ETS and CBAM are likely.

As for the **digital levy**, the decision taken in 2021 to postpone a proposal from the Commission, for not interfering with the developments on Pillar 1 at OECD-G20 level, had to be reviewed in the light of the failure of Pillar 1. The Commission was formally committed to propose a digital levy that "will be consistent with the international agreement on Pillars 1 and 2, and consistent with the WTO rules". But this was probably wishful thinking. If the EU launches a new common initiative on the digital tax, a stiff confrontation with the US administration will follow. Taxation of the digital economy, the very definition of digital economy for tax purposes, has been one of the most contentious points of discussion and negotiation of the Pillars. It must be remembered that under the Biden administration the US Secretary of State for Trade, the same day (10 July 2021) of the G20 agreement on international taxation, has suspended retaliatory tariffs against some countries (Austria, India, Italy, Spain, Turkey, United Kingdom) that have introduced national digital levies. The Memorandum of the new US administration (see para 1) considers these taxes as discriminatory or disproportionate and threatens to implement heavy retaliatory measures (additional tariffs or application of Section 891 of the tax code). The new proposal for own resources presented by the European Commission on 16 July 2025, contrary to past announcements, does not mention the DST.

In conclusion, Pillar 1 is virtually dead, Pillar Two has entered troubled waters (and in any case is expected to deliver little revenues), CBAM and ETS are behavioral levies whose revenues will tend to shrink (and the timing of their effective implementation is uncertain). The digital levy would be highly contentious and so far has been *de facto* set aside by the Commission. The scope for enlarging OR is dramatically shrinking.

The necessity of new Own Resources

But the EU budget needs additional revenues. The time for the repayment of the debt issued under the RRF is approaching. There are other exceptional and urgent tasks, that imply strong financial commitment also at Union level, like the common defense, the reconstruction of Ukraine, green transition, energy transition.

In this context, a solution like the one adopted for financing the RRF is possible. The EU might decide to issue common debt and cover the related costs (interests and repayment) through additional OR. If the political commitment is strong, the fourth OR (based on GNP) may be a viable solution, as it has been for the RRF.

Issuing common debt is also a building block for the implementation of a fully-fledged internal capital market.

If the EU decides to finance the expansion of its budget issuing common debt, enhanced OR may help in fostering the sustainability of the debt, the perception of its riskiness, and in the end will also lower its cost.

After all, traditionally the valuation of the sustainability of the debt is based on the capacity of raising levies by the constituency that issues the debt. Revenue sharing may be a reasonable alternative for the Union, as far as it implements a certain and durable source of inflows to the EU budget. The GNP resource is more linked to the political agreement on the size of the EU budget, which is negotiated every seven years. A reduction in the size of the GNP resource and the related increase in the share of other levy-based OR may improve the perception of sustainability of the EU debt.

It is therefore necessary to enlarge the basket of possible candidates for new OR, based on sharing the revenues of compulsory levies. The new candidates must rely on European tax bases and revenues. This is also inevitable, due to the declining feasibility of "exporting" the burden of the new OR through other candidates, like CBAM and the digital tax. The "natural" candidate for a new OR would be the corporate income tax, i.e., BEFIT.

The new Commission's proposal on own resources

On July 16, 2025, the European Commission proposed a new system of OR to raise new revenues aimed to fund EU priorities and repay the NGEU debt. The proposal includes adjusting existing resources, namely the ETS and the CBAM, and introducing new resources from non-collected e-waste, the tobacco excise duty, and a Corporate Resource for Europe (CORE).

CORE would be an annual lump-sum contribution based on the net turnover[15] of large companies (exceeding 50.000-euro net turnover) and permanent establishments of third country entities resident in the Union. Governmental entities, international organizations, and nonprofits would be excluded. Higher net turnovers would be subject to larger contributions, as per a 'bracket system'. In other words, the CORE would be progressive in respect of the turnover, but not through the application of a rate: the contribution will be expressed in euros, in fixed amounts, and will raise according to turnover's brackets. The CORE should be applied at entity level and levied by member states.

As mentioned in para 1, the new proposals do not mention the digital service tax. Apparently, it has been dropped, although in the past, and even recently, it had been repeatedly included in

[15] 'Net turnover' means the amounts derived from the sale of products and the provision of services after deducting sales rebates and value added tax and other taxes directly linked to turnover.

the list of possible new OR. Renouncing the DST (at least for the time being) is clearly inspired by the threat of retaliatory measures from the US administration.

CORE versus BEFIT

CORE is a novelty, but is not very convincing. From an economic point of view, it might have a rationale in imposing a fee on businesses that enjoy the benefits of the internal market. But, leaving aside the technical peculiarities of its system of progressivity, the main issue is that it is totally a-systematic in devising business taxation in Europe. It is an entirely new levy, which adds to the existing national taxes and levies, renouncing any form of coordination, not to speak of harmonization. It is worth noting that the new proposal on OR does not mention BEFIT as a potential source of new revenues for the EU budget. In proposing CORE and not mentioning BEFIT, the Commission implicitly admits that there is no way ahead for BEFIT (at least as it reads now), no willingness to discuss it in the Council. Also, and more importantly, the current Commission has no intention to review the BEFIT project prepared by the previous Commission. In other words, there is no intention to address the issue of EU competitiveness in business taxation: just a patchwork of "defensive" back-steps (on GMT Pillar Two, DST, ATAD, etc.) and an ad-hoc proposal to raise some revenues from large businesses through CORE.

On the contrary, the need for new OR should reinforce the need for coordinating the CIT in the EU, which is also strongly needed *per se*, for removing obstacles to the proper functioning of the internal market, to create a level playing field for business, simplify rules and reduce administrative costs, increase the efficiency and competitiveness of the European economy. The need for more OR may well be a "trojan horse" to foster tax coordination in the EU. The outcome would be in tune with a more "federal" institutional setting, in respect of both the taxation of the business sector in the internal market and the financing of the EU budget.

5. The need for a European tax agency

After a pause following Directive 77/799/EC, on mutual assistance in the field of direct taxation[16], and Directive 76/308/EEC, concerning mutual assistance in the field of recovery[17], the evolution of the legislative framework for European tax cooperation has been rapid and far-reaching: in the 2000s a system of administrative cooperation with its specificities has begun to develop, with Directive 2003/48 known as the "Savings Directive" and the sectoral regulations on VAT and Excise Duties.

This movement has accelerated with the adoption of Directive 2011/16 on administrative cooperation, known as DAC 1, by which the Member States of the European Union agreed to automatically exchange information relating to, in addition to savings interest (already covered by Directive 2003/48), other categories of capital income. In few years, DAC 1 has been amended seven times, sometimes very substantially, by means of the following new DAC Directives, until Directive No. 2021/514 (DAC7) which regulated also joint audits between tax administrations, and Directive No. 2023/2226 (DAC 8) which imposes exchange of information on crypto-assets and electronic money. On 28 October 2024 the Commission has

[16] Council Directive 77/799/EEC of 19 December 1977 originally concerned mutual assistance by the competent authorities of the Member States in the field of direct taxation.

[17] Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures.

adopted a new proposal, DAC (9), which will facilitate the administrative obligations of Pillar Two, providing a common format for filing, and will set up a system of exchange of information among national tax authorities.

This rapid evolution of administrative cooperation in the field of taxation is the result of a strong political consensus on combating tax fraud and avoidance and was made possible by the partial removal of the unanimity rule, using as legal bases Articles 6 and 197(1) of TFEU, instead of Articles 113 and 115. This legal basis was also used to establish the "Fiscalis" program[18] (Regulation 2021/847) and the "Customs" program (Regulation 2021/444), essential tools for cooperation between Member States' tax administrations, in particular in terms of training and IT capacity building, funded by the Union.

More recently, on 5 November 2024, the Council has approved the proposal of the VIDA Directive (VAT in the Digital Age), endorsed by the Parliament on 12 February 2025. VIDA will mark an important step forward in simplification, reduction of administrative burdens for business (particularly SMEs), and fight to tax fraud, through new provisions for electronic invoicing, digital reporting requirements, single VAT registration, automatic transmission of data.

Over time, administrative cooperation has acquired an additional and distinct dimension from tax harmonisation in the proper sense, in a relationship of complementarity with it, contributing to achieving the Union's own objectives, in particular the proper functioning of the internal market.

The rapid and very important progress in administrative cooperation and exchange of information presents significant challenges. These are underlined by the European institutions themselves, starting with the EU Commission which, in a report to the European Parliament and the Council of 18 December 2017[19] underlined that the implementation of the automatic exchange of information has had the effect of considerably increasing the amount of data that tax administrations manage, while on average, their ability to treat them has not increased in the same proportions. More recently, the European Court of Auditors has also expressed concerns[20], lamenting that the information exchanged lacks quality, completeness and accuracy, that it is not widely used and that Member States do not exercise a high degree of vigilance with regard to the information exchanged. In addition, Member States do not sufficiently monitor the effectiveness of the system, resulting in a significant loss of tax revenue for both national and EU budgets.

In the same vein, the European Parliament in a 2021 resolution[21] recognised the added value of sharing best practices and the Commission's continued support for strengthening the powers of national tax administrations, while taking note of the findings of the European Court of Auditors that more can be done in terms of monitoring, ensure the quality of the data and use the information received to make the exchange of tax information more efficient and effective. The image that seems to emerge is that of a lack of technical and political coordination of these new mechanisms in terms of administrative cooperation. Moreover, despite long-standing

[18] Regulation of 20 May 2021, OJ, 28 May 2021, L 188, p. 1.
[19] COM (2017) 781 final.
[20] Court of Auditors, *Exchanging tax information in the EU: solid foundation, cracks in the implementation, Special Report*, 03/2021, available at https://op.europa.eu/webpub/eca/special-reports/tax-03-2021/en/
[21] European Parliament resolution of 16 September 2021 on the *Application of EU requirements for exchange of tax information: progress, lessons learned and obstacles to overcome* (2021/C 117/13).

bilateral and multilateral cooperation between different national tax authorities, the coordination of cross-border tax audits still appears to be limited in the absence of a fully operational framework at the EU level.

In parallel, the administration of the domestic legislation that implements EU Directive in the field of corporate taxation (e.g. ATAD, but this will be true also for the Pillar Two directive) is left to the multiple (27) local tax authorities of the MS that could interpret and administer the same topic differently, with a very negative impact in terms of compliance and administration costs and also negative impact on efficiency and tax certainty.The uniform interpretation is vested, as the only and last resort, in the ECJ.

However, it does not appear possible to resolve all these problems without considering institutional developments such as the creation of a body specifically responsible at the European level for coordinating the action of the tax administrations of the Member States in a cross-border context and, when appropriate, issue interpretations.

In 2023, the Commission submitted a proposal for an EU regulation fully rewriting the Union Customs Code[22]. Of the 265 articles of the future code, 33 (articles 205 to 237) aim to create a "Customs Authority of the European Union". It would be the EU's 38th "executive agency" and the first ever in the field of taxation, the latest being the European Anti-Money Laundering and Countering the Financing of Terrorism Authority (AMLA) approved by Parliament on 24 April 2024 and by the Council on 19 June 2024.

The agencies are an institutional mechanism to achieve the objective of joint administrative action without changing the balance of powers between the European Union and its Member States. In addition, they allow for the creation of networks of national and supranational entities.

The proposal for a new EU Customs Code is based on the recognition that the current cooperation between Member States' customs administrations has proved insufficient. National practices for the implementation of the EU Customs Code still differ between the 27 Member States, there is no centralised analysis of customs fraud risks or uniform classification of these risks, nor is there any coordination of controls. These shortcomings have led many economic operators to engage in "border shopping", i.e. to choose the least controlled part of the EU's external border to illegally introduce products into the EU's internal market, and then move them freely within the EU borders.

The future EU Customs Authority would be endowed with 15 competences (Article 208), three of which are the most important and the most "operational". First of all, precisely in order to combat border shopping, the Authority will be responsible for developing customs fraud risk management at European level in order to identify the products and economic operators on which to focus controls. It will have the power to notify national customs "control recommendations" which they will be required to implement. The Authority will also be responsible for coordinating and monitoring the management by the customs administrations of the Member States of crises at the Union's external borders that have an impact on customs procedures, through the activation of a "(European) crisis cell". Finally, the Authority will have the function of organising and coordinating “joint inspections”.

[22] European Commission, Proposal for a Regulation of 17 May 2023 laying down the *Union Customs Code and the Customs Authority of the European Union*, and repealing Regulation (EU) No 952/2013, COM/2023/258 final.

The proposal of a European Customs Authority raises the issue of the establishment of a strictly fiscal counterpart. It is in this spirit that 131 professors of tax law from 17 EU Member States sent an open letter to the Commissioner for Taxation in January 2024 calling for the creation of a European Tax Cooperation Agency[23]. The open letter was accompanied by a draft European regulation, inspired, in addition to the proposal for a European customs authority, by the regulations governing other previous European authorities, namely the European Labour Authority (ELA) and the three European Authorities operating in the field of financial markets and institutions (ESMA, EBA and EIOPA).

According to the draft, the tasks of the future European Agency for Tax Cooperation would initially consist of supporting the action of national tax administrations and facilitating cooperation between them. The Agency would therefore be primarily responsible for facilitating the exchange of information between national tax administrations and supporting their effective compliance with the cooperation obligations imposed on them by the EU directives and regulations currently in force, such as Regulation 904/2010 and the EUROFISC network for VAT, Directive 2011/16/EU (CRS, cross-border rulings, CBC Reporting) for direct taxes and Directive 2010/24/EU on mutual assistance for the recovery of debts. The Agency should thus strengthen cooperation and streamline the exchange of information between Member States, helping them to comply with obligations under Union law, as well as facilitate the follow-up of requests and exchanges of information, by providing logistical and technical support.

A second task of the future Agency would be to coordinate and support (but not perform) simultaneous audits and joint investigations, as already provided for in EU regulations and directives in the areas under the Agency's competence, or even propose concerted or joint inspections to the tax administrations of the Member States.

The Agency could also be entrusted with tasks related to the operational management of certain European IT platforms or common communication systems containing data on taxpayers or taxable transactions that have been put in place by EU legislation in the field of harmonised taxes, in particular in the area of VAT and excise duties and in the areas covered by DAC directives. It would coordinate, develop and apply frameworks to ensure a seamless exchange of information between Member States and with the Agency, based on the European Interoperability Framework and the European Interoperability Reference Architecture.

Furthermore, the European tax cooperation agency could effectively complement the action of EU bodies whose mission is to protect the EU's financial interests by combating tax fraud and corruption. It would aim to ensure cooperation, avoid overlaps and promote synergies with other EU agencies and specialised bodies, such as the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO). It could also conclude cooperation agreements with agencies such as Europol and Eurojust.

In the longer term and subject to EU and possibly MS constitutional changes, the European Agency for Tax Cooperation might assume the powers of investigation and control, and even taxation, of large cross-border groups, currently involved in the European approach for trust

[23] Available at https://www.politico.eu/wp-content/uploads/2024/01/25/EATC.UE-OpenLetter-5.12.23.docx .On the same vein, see also: Traversa E., Marino G., *"Un'Agenzia tributaria europea. Una proposta accademica per la prossima Commissione",* Giustizia Insieme, Diritto Tributario, 25 Ott. 2024.

and cooperation (ETACA)[24], a pilot project to establish a framework to foster preventive dialogue between administrations and taxpayers in the assessment of transfer pricing risks.

Last but not least, the Agency could contribute to the European implementation of the Pillar Two on global minimum taxation, addressing consistency of administrative guidelines, ex-ante clarifications, and disputes resolution.

[24] European Commission, Guidelines European Trust and Cooperation Approach (ETACA), 11 October 2021, available at https://taxation-customs.ec.europa.eu/eu-cooperative-compliance-programme/european-trust-and-cooperation-approach-etaca-pilot-project-mnes_en

Appendix 1

Pillar Two Directive denominator (i.e. GloBE Income or Loss) as a Corporate Tax Base

In the design of a European corporation tax, the identification of the tax base has always been one of the most critical issues. In the CCCTB directive proposals the method of calculating the tax base did not start from the balance sheet results arriving at the tax base with a series of upward or downward variations, but defined all the elements that formed part of the base, identifying taxed and exempt revenues and deductible and non-deductible expenses. The reason for this was also, if not primarily, the impossibility of identifying uniform accounting principles applied throughout Europe to the financial statements of individual companies.

With the OECD Pillar 2 project, the approach changes. In order to calculate the denominator of the effective tax rate for Pillar Two purposes, it was decided to leverage on the group consolidation process and accounting principles and to start from the aggregated (i.e. consolidated before elimination of intragroup transaction) accounting data and then make adjustments. Although this value is calculated in order to identify the effective tax rate, it can also be viewed as an appropriate tax base for the purposes of a traditional corporate tax that has as its rate the effective tax rate (which cannot be less than 15%) and as revenue the sum of the covered taxes.

The tax base is the Globe Income (or Loss), calculated in accordance with Chapter 3 of Globe Model rules and Chapter III of the GMT Directive. The Globe Income or Loss) is determined by taking the Financial Accounting Net Income or Loss (FANIL) before any consolidation adjustments for intra-group transactions, as determined under the applicable financial accounting standard used by the UPE to prepare the CFSs; it is worth noting that, with a view to a European tax, most companies adopt the IFRS.

Then the FANIL is adjusted taking into account required adjustments (to eliminate income that should not be taxed or expenses that should not be deducted) and elective adjustments.

Most important required adjustments are:

- net taxes expenses, as, for example, covered taxes accrued as an expense and any current and deferred covered taxes included in the income tax expense, in order to arrive to a gross profit;
- excluded dividends and equity gains or losses, in order to give a participation exemption that avoids double counting of previously taxed income;
- asymmetric foreign currency gains or losses, due to the use of different currencies for accounting and tax purposes;
- policy disallowed expenses, for example illegal payments;
- prior period errors and changes in accounting principles;
- accrued pension expenses, i.e. the difference between the amount of pension liability expense included in the FANIL and the amount contributed to a pension fund for the fiscal year;
- cross border transactions between companies belonging to the same group, in order to be booked for the same amount consistent with the arm length's principle;
- qualified tax credits, to be treated as income.

As regards elective adjustments, most important are:

- Stock-based compensations, allowing companies to choose between the accounting of these costs according to local income tax rules rather than financial accounting principles;
- assets and liabilities subject to fair value or impairment accounting, allowing to apply the realisation principle.

The tax base computation rules provided by BEFIT (art. 8-41 of the Directive proposal) are similar to the ones provided by Globe Model Rules: there is a participation exemption on dividends and capital gains on share; illegal payments are not deductible; corporate taxes should be included in the tax base, etc. Main differences regard depreciation method of fixed assets and provisions: the depreciation of fixed assets should generally be made on a straight-line basis; provisions should generally be not deducted unless some conditions are met (e.g., in case of a legal obligation). In any case, these issues determine only temporary differences between the Globe tax base and the BEFIT one; hence, adopting the Globe tax base could just lead to a different time allocation of revenue.

More precisely, to convert the GMT(P2) tax base to a corporate tax base that could be used in a BEFIT approach, some Pillar Two directive adjustments to FANIL should be avoided. Others could be modified.

Firstly, net taxes expenses should be considered for the amount accounted for in the P&L, without the recasting provided for by the Globe Rules.

Then, it has to be decided to compute or not prior period errors and changes in the accounting principles: it could be better to avoid this adjustment in order to simplify the tax base computation, as these are usually only temporary differences.

As regards cross border transactions between EU located companies belonging to the same group, as far as the new CIT tax base would be apportioned via an apportionment formula, this adjustment is not necessary.

It has to be discussed if qualified refundable tax credits should not be added to FANIL: as the reason of these adjustments is to prevent the shift of the CIT competition from tax base and rates to tax credit, this could be not the case as regards the computation of a European tax base. Even if a common tax base is defined and a minimum statutory tax base is fixed, every Member State could decide to lose some of the revenue allocated via formula giving tax credit to companies established in his jurisdiction. This is a controversial issue that must be decided together with the scope that the new European corporate tax should have: as far as the reduction of competition would be not one of these goals, qualified refundable tax credits should be not be added to FANIL.

As regards elective adjustments, they should be avoided and the application of financial accounting principles should be preferred: it would level off the level playing field and, at the same time, would reduce the cost of compliance, avoiding a double track system.

Appendix 2

The impact (and constraints) of the GloBe rules (Pillar Two) on the design of BEFIT

As background assumptions we assume that the design of GMT(P2), and mainly the jurisdictional blending, will be maintained. This assumption is key: if confirmed, it implies that BEFIT (i.e. a corporate tax base to be adopted by each MS or by the EU as a single jurisdiction) needs to be designed so not to clash with (i.e. not to systematically give rise to outcomes that trigger TuT under) GMT(P2). Additionally, we consider a long term, and not interim, BEFIT (without entering the details of the last EU Commission proposal).

GMT(P2) provides for a (current and additional) Top-up Tax (TuT) whose current design:

- is based on the jurisdictional blending;
- attributes relevance to deferred tax accounting to deal with temporary differences and tax loss (and tax credit) carry forward;
- does not permit the cross jurisdictional set-off of losses;
- is based on the application of the arm's length principle (ALP) to intragroup cross border transactions.

BEFIT, as a common consolidated local CIT to be charged before the application of GMT(P2) Top-up Tax (TuT), with a tax base computed at consolidated group level, with cross-border set-off of losses and a formula with defined factors to apportion the consolidated tax base between EU MS and where each EU MS remains sovereign in setting the applicable tax rate, seems not (always and fully) compatible with GMT(P2).

In particular, BEFIT could reduce compliance burdens through the definition of a single (common and consolidated EU) tax base and the abolishment of the ALP (CFC and anti-hybrid rules) at intra EU level, solve the longstanding issue related to cross EU jurisdictional set-off of tax losses but at the same time could create a clash with the jurisdictional blending of Pillar Two.

To expose this clash, we illustrate below a simplified example to explore the interaction between BEFIT (with consolidation and apportionment) and GMT (Pillar Two) based on jurisdictional blending.

Consider an EU group operating with a UPE in Italy and all other CEs in Italy, France, Germany, Spain, the Netherlands, and Ireland [i.e. the EU group operates in six MSs].

BEFIT (consolidation and apportionment)

Assume that the consolidated tax base (e.g. euro 1 billion) of the EU group for BEFIT purposes [computed under rules aligned with GMT(P2) rules in terms of financial accounting starting point and (upward and downward) adjustment to be made (and with no temporary differences)] to be apportioned (and locally taxed) based on the formula] is the following:

Table 1 - Simplified example - BEFIT with apportionment, no ALP (unitary taxation) and set-off of cross border losses (EU as 27 jurisdictions) - (amounts in eur/000)

EU MS where CEs of the EU group are located	share of the tax base under BEFIT	tax rate of each MS	current BEFIT (also reported as income tax expense in the FANIL of each CEs)
Italy	200.000	27,8%	55.600
France	200.000	25%	50.000
Germany	200.000	29,9%	59.800
Spain	150.000	25%	37.500
Netherlands	150.000	25,8%	38.700
Ireland	100.000	12,5%	12.500
Total (EU Group consolidated)	**1000.000**	**25,41%**	**254.100**
The table is based on the assumption that the BEFIT tax base at EU level is determined starting from consolidated accounting figures (with off set of losses and upward and downward adjustments in line with the GloBE Rules, where appropriate), then apportioned between MSs based on a formula and each MS sets and applies its domestic tax rate on the apportioned tax base.			

The ETR of the EU Group at consolidated level[25] is 25,41% (that is above the 15% minimum rate) with (ideally) no TuT due.

Pillar Two (jurisdictional blending)

Now assume that, based on the figures of Table 1 and GMT (Pillar Two) rules, where each EU MS is considered as a separate jurisdiction and income and taxes are computed on a CE by CE basis, the GloBE Income or Loss and Adjusted Covered Taxes (i.e. the BEFIT as current tax expense), determined based on the accounting data (FANIL) of each CE located in each EU MS, are the following:

Table 2 – Pillar Two rules based on jurisdictional blending (EU is composed by 27 jurisdiction, i.e. each MS is a separate jurisdiction for P2 purposes) - (amounts in eur/000)

EU MS	GloBE Income or Losses	Adjusted Covered Taxes	ETR	TuT due under the jurisdictional blending at EU MS level
Italy	1000.000	55.600	5,56%	94.400
France	-500.000	50.000	N/R	-
Germany	-300.000	59.800	N/R	-
Spain	300.000	37.500	12,50%	7.50
Netherlands	50.000	38.700	77,40%	-

[25] At the level of the EU as a whole, assuming the EU as a single jurisdiction for Pillar Two purposes.

Ireland	450.000	12.500	2,78%	55.000
Total (EU Group aggregated)	**1000.000**	**254.100**	**41,10%**	**156.900**
The table is based on the assumption that each CE located in each MS prepares accounts where the BEFIT tax is accounted for as apportioned under the BEFIT formula.				

As can be seen, without a proper design of the BEFIT, there is the risk of a clash between the BEFIT [apportionment at EU level] and GMT(Pillar Two) [with jurisdictional blending and 27 EU MSs] with the triggering of a TuT in specific EU MSs and with a final EU effective tax rate due to the overlap/clash of BEFIT and GMT (Pillar Two) rules close to 41%, although at EU consolidated level the ETR is well above 15%.

Preliminary comments

The above depicted clash is mainly due to:

- the jurisdictional blending, also computed based on each CEs separate position, relevant for GMT(P2) purposes, as opposed to
- the unitary taxation and apportionment approach under BEFIT, where each EU CEs separate position is "dissolved" in the group and cross border set off of losses is available at EU level.

In order to cure the above depicted clash between BEFIT and GMT(P2), and assuming that the design of the latter (i.e. GMT(P2)) is an input based on the design of the GloBE Model rules as established in 2021 and implemented by the EU Directive, in general there are different possible design alternatives for BEFIT that can be contained in a range with two opposite approaches and different variations in the middle.

In the table below, please find the identification and illustration of the two different extreme scenarios [and related main features (i.e. number of jurisdictions, cross border loss set off, ALP, nominal tax rate)]:

- Column A - BEFIT applied by each (of the 27) EU MS at single CE level, and
- Column B - BEFIT at consolidated level with the EU as one (1) single jurisdiction.

Table 3 - BEFIT: extremes of the range scenarios for the design of the BEFIT (to be designed) in order not to clash with P2 (already designed)

	A	B
	BEFIT at single CE level (bottom up)	BEFIT at EU consolidated level (top down)
EU jurisdictions	27	1
cross bored set-off of losses	no	yes
intra EU ALP	yes	no
nominal tax rate	27 domestic tax rate (1 for each MSs)	only 1 tax rate at EU level

The first scenario (Column A) provides for a BEFIT that is designed in compliance with the i) jurisdictional blending (i.e. the EU as 27 MSs) and the ii) CE by CE approach adopted by P2. The main negative spillover, prima facie, is that the BEFIT's main benefits, i.e. cross border set off of tax losses and the looking forward "retirement" of the ALP (and intragroup EU CFC and anti-hybrid rules), should be set aside.

The second scenario (Column B) is to design the BEFIT based on the EU as a single (1) jurisdiction where a single blending for all CEs located in the EU is viable and hence EU losses are naturally offset and, in general, the EU "domestic" ALPs (CFC and anti-hybrids rules) are not to be applied.

In between the two extreme alternatives, it can be explored whether different technical solutions could be identified.

BEFIT under Scenario A (EU as 27 jurisdiction)

The first scenario (Column A) is to design the BEFIT as (only) an EU common tax base to be applied at the level of each single CE located in the EU, based on:

- 27 EU jurisdictions;
- no cross border set off of tax losses;
- the application of the ALP (CFC and anti-hybrid rules) at intra EU group level;
- each EU MS retaining its (nominal) corporate tax rate (that can be above or below the GMT(P2) minimum rate).

In case the starting point is Scenario A (under the assumption that MSs are reluctant to abandon the EU 27 jurisdictions background), taking into account the GMT(P2) jurisdictional blending, it is hard to imagine solutions apt to reach an outcome where it is feasible the cross border set off of tax losses and/or to depart from the cross border ALP (CFC and anti-hybrid rules). In particular, the election under art 3.2.8 of the GloBE Model rules, as currently designed and as interpreted by the Commentary, is only applicable with respect to a single jurisdiction (and not with respect to different jurisdictions).

BEFIT under Scenario B (EU as a single jurisdiction).

In case the starting point is Scenario B (the EU as a single jurisdiction with BEFIT as an EU corporate tax), it is key that the scope of BEFIT matches the scope of GMT(P2) (all and every of the CEs that are in the scope of GMT(P2) are in the scope of BEFIT and there is no CE that is in the scope of the former but not in the scope of the latter, and vice versa).

As is well known the GMT(P2) jurisdictional blending is, in general, i.e. except the case where the election under art 3.2.8 is viable and elected, based on a CE by CE approach where it is necessary to start from the FANIL of each single CE when it comes to the numerator (Adjusted Covered Taxes and the sum of current and deferred tax expenses, including DTA underpinned by a tax loss to be carried back or forward, as adjusted under the GloBE Rules) and the denominator (GloBE Income or Loss), the push down of cross border taxes and so on.

In general GMT(P2) relies on deferred tax accounting (i.e. DTA on tax losses, recast at the lower of the minimum rate or the applicable tax rate) in order to ensure that Top up Tax is not triggered due to the use of local tax loss carry forward (or back).

Under the CE by CE and jurisdictional blending approach the assumption for GMT(P2) purposes is that each CE will accrue in its own FANIL its own DTAs on tax losses (subject to the probability test).

Under the BEFIT consolidated approach a DTA for tax loss carry forward (or back) should only arise at EU Group level (i.e. after the set off)[26]. Being aware that in case of tax losses an upward (up to 15%) recasting is admitted, one option is to set a mandatory minimum BEFIT tax rate at 15% with each MS retaining to establish a local additional tax rate on the attributed BEFIT formula.

This option could be coupled with BEFIT as an OR.

In addition, it could be considered to explicitly provide rules for the attribution of tax loss to CE that leave or join a Group in a FY. Similarly for temporary differences (i.e. DTL and DTA).

Interim conclusion

In order to avoid the clash with Pillar 2 (and hence obtain the benefit of cross border tax losses set off and the reduction in scope of the ALP) a possible direction is illustrated in Table 4.

Table 4 - Retaining the benefits of BEFIT through a single EU jurisdiction with a minimum tax rate of 15%

	B
	BEFIT at EU consolidated level (top down)
EU jurisdictions	1
cross border set-off of losses	yes
intra EU ALP (CFC rules, anti-hybrid rules)	no
nominal tax rate	only 1 at EU level (with a minimum 15% applicable tax rate; with the possibility of MSs to adopt a surcharge

[26] Find here below a simplified example to illustrate the topic related to tax losses DTA under PILLAR TWO.
Assume that A Co and B Co are the only Group CEs entities located in the EU in different MSs.
A Co is located in a MS with a 12,5% nominal tax rate.
B Co is located in a MS with a 24% nominal tax rate.
Assume that the formula under BEFIT gives rise to a 50%/50% apportionment of the BEFIT taxable base.
In FY 1 Group AB has a BEFIT loss of 100 (A Co has a profit of 200 and B Co has a loss of 300) that can be carried forward.
In FY 2 alternatively:

- Group AB has a BEFIT profit of 100 (A Co has no profit and B Co has a profit of 100), or
- Group AB has a BEFIT profit of 100 (A Co has a profit of 100 and B Co has no profit)

At the end of FY1 it is difficult to exactly predict the applicable tax rate to be used for the recognition of the DTA.