



Unification of Direct Taxes in the EU and Worldwide – BEFIT and beyond

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Roadmap



Historic
al
Research



EU Corporate
Tax / BEFIT



Pillar 2

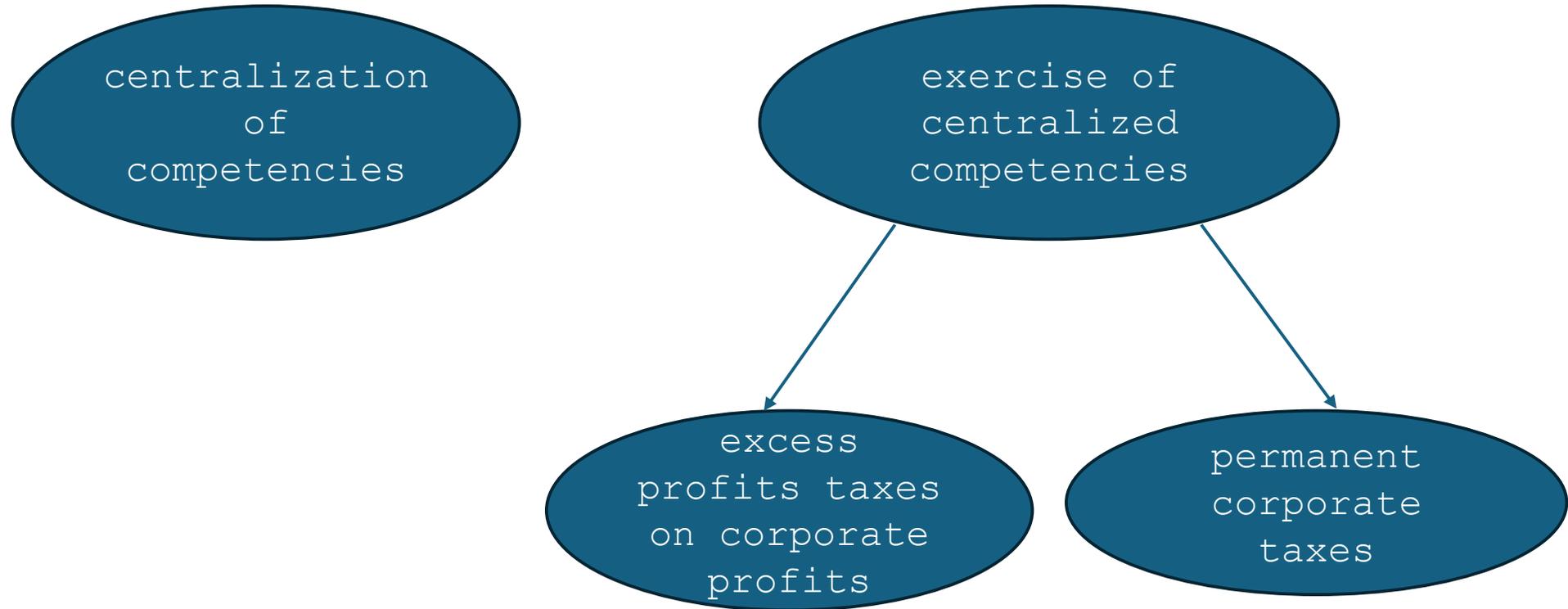


Global
Minimum
Wealth Tax?

1. Historical Research

1. Historical Research – Research Question

How have taxes in Germany and the South Slavic region been unified?



1. Historical Research – Overview

Germany	South-Slavic Region	European Union
		
<p>Federally organised at the latest since the founding of the German Empire (1871)</p>	<p>Kingdom of Serbia, Kingdom of Montenegro, South Slavic territories of the Habsburg Empire → 1918: Kingdom of Serbs, Croats and Slovenes (decentralized unitary state)</p>	<p>Principle of conferral („Staatenverbund“)</p>
<p>„coming-together federation“</p>	<p>„coming-together unitary state“</p>	<p>„coming together“ of MS</p>

1. Historical Research – Centralization

	Germany			South-Slavic Region		
	Transfer	Occasion	Competence	Transfer	Occasion	Competence
Legislation	Centralization	WW I	Concurrent	Centralization	Adoption of Vidovdan Constitution	Exclusive
Revenue	Centralization in principle; later decentralization in amount	WW I	Concurrent	Centralization	Adoption of Vidovdan Constitution	Exclusive
		Adoption			Adoption of	

1. Historical Research – Unification Purposes

German Reich	SHS-Kingdom	EU
Revenue generation		
Equality / ability to pay		
Share of direct taxes		
	Facilitation of enforcement	
		Solidarity?

1. Historical Research – Framework

	Weimar Republic Research Period: 1918–1920	Kingdom of Serbs, Croats and Slovenes (SHS) Research Period: 1918–1928
Economic situation	High war and post-war expenditures Rising national debt Rising inflation	
Political obstacles	Dual system of government	
	Political instability	
	Resistance of the Länder	Resistance of population and experts
		High discrepancies between former tax systems

1. Historical Research – Unified Corporate Taxes

	Germany	South Slavic region
Excess profits taxes	War profits taxes in 1916, 1918 and 1919	War profits tax in 1920/1922
Permanent corporate taxes	“Corporate tax code” in 1920	“Law on direct taxes” in 1928

1. Historical Research – Criteria for Unified Taxes

Legislation	Revenue	Administration
tax liability	in principle (share / surtaxes)	enforcement in individual cases
taxable base	in amount	procedural law
consolidation / aggregation		establishment of authorities
tax rate		supervision

2. EU Corporate Tax / BEFIT proposal

2. EU Corporate Tax

Legislative
power:
Art. 115 TFEU

Revenue power:
Art. 311 para.
2 TFEU

Administrative
power:
Art. 291 para.
2 TFEU,
Art. 17 para. 1
sentences 2, 3
TEU

2. BEFIT Proposal: Overview

- European Commission issued the BEFIT proposal on 12 September 2023
- Based on **Art. 115 TFEU**
- Continuity to **CC(C)TB** proposals 2011 and 2016
- **Harmonised calculation** of taxable base
- **Aggregation** and **allocation** of taxable bases
- Personal scope:
 - Companies **tax resident in a MS** and PEs of third state companies located in EU
 - **Consolidated financial statements** + annual combined revenues of min. **EUR 750 million**
 - BEFIT group: at least **75 %** of the ownership rights or of the profit rights

2. BEFIT Proposal: Overview

- Starting point: **annual financial statements** → adjustments
- **Aggregation** and **loss carry-forward**
- Generally **no withholding taxes** on transactions within BEFIT group
- Allocation:
 - Transitory rule: linked to average distribution of profits in the **foregoing 3 years**
 - **After 7 years: formula?** → transfer pricing could become superfluous
- Authorisation for **adjustments to the allocated portion** of the tax base:
 - E.g. deduction of contributions and donations to

2. BEFIT Proposal: Overview

- Administrative procedure:
 - group tax return (so-called '**BEFIT return**')
 - '**BEFIT team**' for each BEFIT group consisting of members of the competent tax administrations of the MS concerned
 - individual tax returns and tax assessments
 - **tax audits**
 - **appeals** procedure

2. BEFIT – Unified Tax?

Legislation	Revenue	Administration
tax liability	in principle (share / surtaxes)	enforcement in individual cases
taxable base	in amount	procedural law
consolidation / aggregation		establishment of authorities
tax rate		supervision

3. Pillar 2

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- Global Anti-Base Erosion (**GloBE**) Rules = Pillar Two
- Part of the **OECD/G20 BEPS** Inclusive Framework
- → **EU**: Council **Directive** (EU) 2022/2523 of 14 December 2022
- Minimum level of taxation: **15 %**
- Income Inclusion Rule (**IIR**) and Undertaxed Payments Rule (**UTPR**)
- Qualified Domestic Top-Up Tax (**QDMTT**)
- Harmonization of taxable base only for the purpose of IIR and UTPR:
 - Starting point: **financial accounting** net income/loss

3. Pillar 2 – Unified Tax?

Legislation	Revenue	Administration
tax liability	in principle (share / surtaxes)	enforcement in individual cases
taxable base (subsidiarily)	in amount	procedural law (little)
consolidation / aggregation		establishment of authorities
tax rate (minimum)		supervision

4. Global Minimum Wealth Tax?

4. Global Minimum Wealth Tax?

- Gabriel Zucman: blueprint for minimum taxation of **ultra-high-net-worth individuals** (UHNWI)
- 2024's Brazilian G20 presidency: push towards greater tax fairness
- Effective individual income taxation in the Netherlands/France/USA is only progressive up to the 95th / 99.9th / 99.99th percentile, afterwards **regressivity**
- UHNWIs can
 - **prevent dividend distributions** to themselves
 - **refrain from selling** their shareholdings
 - hold their investments in **holding companies**
- UHNWIs generate almost all of their income from

4. Global Minimum Wealth Tax?

- Proposal: minimum tax of **2 %** on the **wealth** of **dollar billionaires** (app. 3,000 worldwide)
- Estimation: additional annual tax revenues of 200 to 250 billion dollars
- Technical implementation:
 - 1) **Presumptive income tax**
 - 2) Income tax on a **broad notion of income**
 - 3) **Wealth tax**
- Reference to **existing valuation rules** (e.g. for inheritance or estate taxes) – **harmonization?**

4. Global Minimum Wealth Tax – Unified Tax?

Legislation	Revenue	Administration
tax liability	in principle (share / surtaxes)	enforcement in individual cases
taxable base (?)	in amount	procedural law
consolidation / aggregation		establishment of authorities
tax rate (burden)		supervision

Conclusion



Thank you for your
attention!

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Sources

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2. BEFIT: Outlook: Tax Rate?

- **Full harmonisation** would **not** be **appropriate** - **leeway** needed:
 - different levels of public goods and services
 - economic policy
 - regional and local taxes
- Milder measure: **tax rate corridor**

2. BEFIT: Outlook: Additional Temporary War Profits Taxation?

- Only necessary if **one MS** has **already** introduced a war profits tax
- Purposes: **internal market, solidarity** (Art. 2 sentence 2 TEU)
- Prohibition of war profits tax would not foster solidarity
- Tax should be restricted to sectors with a **high probability** of excess profits **due to war**
- Reference: average profit of the past **4 or 5 peace years**
- **Unequal treatment** can be justified by

2. BEFIT: Outlook: Revenue Power?

- Revenue could be (partly) attributed to the EU by **own resources decision**
- Purpose: **sufficient** and **solidarity-based** source of revenue
- Non-tax-based financial contributions: not equally suitable due to the ***juste retour*** principle
- E.g. application of a **call rate** to the harmonised tax base
- Proportionate if **only part** of the tax revenue is allocated to the EU

2. BEFIT: Test Against EU Law

Competencies?

- In principle, the proposal fulfils the prerequisites of Art. 115 TFEU
- However, the **administrative provisions** could only be based on **Art. 291 para. 2 TFEU**

2. BEFIT: Principle of Subsidiarity

	The objectives of the proposed action cannot be sufficiently achieved by the Member States (negative criterion), but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level (positive criterion)
Legislative power	<ul style="list-style-type: none"> ✓ Appreciable distortions of competition ✓ Restriction of fundamental freedoms 	<ul style="list-style-type: none"> ✓ Level playing field and greater neutrality of taxation ✓ Cross-border loss recognition, future replacement of transfer pricing rules? ■
Administrative power	<ul style="list-style-type: none"> ✓ National regulation not sufficient for cross-border administrative cooperation ✓ Single MS could be overchallenged with cooperation obligations 	<ul style="list-style-type: none"> ✓ More effective cross-border administrative cooperation ✓ EU tax authority could support with cooperation

2. BEFIT: Proportionality (Art. 5 para. 4 TEU) and Equality (Art. 20 CFR)

Personal Scope

- A purely optional applicability would not be as effective
- Pillar 2 does not contain a **75 %-threshold**, but this **prevents abusive arrangements**
- Groups with revenue over 750 mio. EUR are **likely to operate across borders**
- Principle of equality: groups above and below the revenue threshold are not

2. BEFIT: Proportionality (Art. 5 para. 4 TEU) and Equality (Art. 20 CFR)

Taxable Base

- Full harmonisation – partial harmonisation – minimum harmonisation
- Possible adjustments after allocation and non-regulation of tax rate ensure **enough leeway** for the MS
- However: **threat to neutrality of competition** → not suitable
- Moreover: rules for calculation of taxable base are **incoherent to Pillar 2** rules → not necessary

2. Incoherence of BEFIT and Pillar 2

- Both refer to **annual financial statements** – BUT: differences in the recognition of accounting standards
- **Different adjustments** to thereby determined profits, e.g.:
 - Dividends and capital gains shall be exempted to the amount of 95 % (BEFIT) or 100 % (Pillar 2)
- The BEFIT proposal does not consider the **triggering of an IIR or UTPR** due to its cross-border loss recognition or due to a decrease of the taxable base by the MS after allocation

2. Incoherence of BEFIT and Pillar 2

→ Application of (1) **national rules**, (2) **Pillar 2 rules** and (3) **BEFIT rules** for profit determination

• Milder measures:

- **Alignment** of BEFIT rules and Pillar 2 rules insofar as their purposes allow it
- Triggering of IIR and UTPR by **loss compensation** could e.g. be avoided by:
 - 1) a „**BEFIT safe harbour**“: no IIR or UTPR if the ETR on *jurisdictional* level is at least 15 %
 - 2) an application of the Pillar 2 Directive on the **aggregated taxable base**
 - 3) a **profit transfer option**: groups decide the amount of profits they actually transfer

2. BEFIT: Proportionality (Art. 5 para. 4 TEU)

Aggregation and Allocation

- Transitory allocation rule is proportionate (no milder measure)
- Changes in the MS' tax revenue would not be striking
- Transitory period: Commission could **monitor** the effect of Pillar 2 on MS' tax revenue

2. BEFIT: Proportionality (Art. 5 para. 4 TEU)

Administrative Power

- Implementing *regulation*: not necessary
- **Implementing *directive***: equally suitable as a milder measure
- A less important role of the BEFIT teams would not be as effective
- No particular increase in staff expenses
- One-off costs for implementing (IT) infrastructure and training staff
- Permanent costs for BEFIT return, coordination and joint audits
- But: **more efficient enforcement/compliance,**

4. Global Minimum Wealth Tax: Enforceability

- Valuation of unlisted companies
- **Declaration** obligation (model of country-by-country reporting?)
- Extension of the **Common Reporting Standard**
- **Country-by-country reporting** of MNEs:
 - inclusion of most important beneficial owners?
 - decrease of current turnover threshold of EUR 750 million?
- National **exit taxation** rules
- **IIRs and UTPRs**: incentives for countries to participate in a coordinated implementation (cfr. Pillar 2)