Comment Letter from the Federal Association of German Leasing Companies on the European Commission's proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT)

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As Bundesverband Deutscher Leasing-Unternehmen (EU Transparency Register No. 84917875724-73) we represent the interests of the German leasing industry. Leasing companies invest more than €70 billion annually in vehicles, machinery, IT equipment, real estate and other durable real assets for their mostly small and medium-sized customers in Germany. With regard to movable assets, roughly a quarter of total domestic equipment spending is realized through leasing. More than one half of all externally financed investments are handled through leasing. Leasing thus makes a significant contribution to the aggregate supply of investment goods in Germany.

We would like to thank you for the opportunity to comment on the above-mentioned draft directive. From the perspective of the German leasing industry, the following should be noted:

1. General remarks

We generally acknowledge that a harmonised corporate tax system could bring certain advantages for large groups of companies with wide-ranging international activities. One of the reasons given by the European Commission is the current challenge for companies of having to comply with the provisions of up to 27 different national tax systems in the European Union when calculating tax bases, entailing correspondingly high compliance costs.

On the other hand, differences in the national tax systems reflect the diversity of the Member States in terms of their respective legal and economic structures. In Germany, for instance, this appears with regard to the SME structure of its corporate landscape or the significant role played by trade tax. It is of utmost importance for all companies that the method of determining taxable profit adequately reflects such domestic circumstances. This is why, in accordance with the subsidiarity principle, tax sovereignty in the field of direct taxation lies primarily with the Member States for good reason.

Unless this fundamental conflict can be resolved at all, it requires a balanced and targeted concept that is as lean as possible. The present draft directive shows gradual improvements in this respect compared to earlier proposals for a Common Consolidated Corporate Tax Base (CCCTB) as it renounces a stand-alone set of detailed rules on profit determination. However, we have reservations as to whether the advantages of the present draft outweigh its disadvantages in an overall assessment. In particular, we doubt whether the substantial infringement of the rights of the Member States entailed by stipulating a harmonised tax base can be justified.

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2. Scope

We welcome the fact that smaller companies or groups with annual combined revenues of less than EUR 750 million are not obliged to apply BEFIT. This is because for them the benefits associated with a system changeover would be minimal at best and would usually be clearly overshadowed by the considerable implementation costs. The proposed optional application for this group therefore seems appropriate.

Even with annual combined revenues exceeding the threshold of EUR 750 million, an individual company may feel that the disadvantages and implementation cost of BEFIT outweigh the benefits. We therefore believe that mandatory application is inappropriate also in this segment. To avoid penalising these companies in comparison to smaller ones, a right of choice should also be granted here.

In general, we would raise the question of how the parallel existence of two completely different concepts for the determination of the tax base is to be assessed in terms of administrability by the tax authorities and under the aspect of equal tax treatment. In our opinion, the proposed directive gives rise to considerable doubts also in this respect.

3. Determination of the tax base

Notwithstanding our general concerns about the project, we are generally supportive of renouncing the introduction of a comprehensive system of detailed rules for determining the tax base, which was originally envisaged in the CCCTB proposal. This is because detailed regulations prescribed at European level would further increase the overall complexity of taxation instead of helping to reduce it.

The now chosen approach based on the OECD concept for Pillar 2, which refers to IFRS and national GAAP as a starting point for the determination of the tax base, represents in our opinion a gradual improvement compared to the CCCTB. On the other hand, the predominant objective of IFRS is to provide capital markets with comprehensive information for investors, an aim that can hardly be reconciled with the requirements for determining an objective, fair, transparent and efficient tax base.

This conceptual contradiction is only mitigated, but by no means eliminated, through the proposed adjustments to reconcile IFRS income into the BEFIT tax base. To make things even more difficult, some of these adjustments deviate from the OECD rules for Pillar 2. Companies subject to global minimum taxation would therefore have to determine two separate tax bases according to different sets of rules and thus will face additional compliance costs and greater legal uncertainty.

4. Date of implementation

The proposed directive arrives at a time of great challenges for companies falling under the scope of application. This relates to both the economic environment in the ongoing transformation process with numerous global political crises as well as administrative burdens due to the introduction of the global minimum taxation.

We believe that implementing BEFIT at the intended date of inception in mid-2028 would impose significant additional burden on both the affected businesses and the tax administrations of the Member States. This is all the more detrimental in view of the conceptual shortcomings outlined above, which clearly overshadow the potential benefits of the project. All in all, we believe that BEFIT is still to be further worked out. We therefore recommend a revision of the proposal incorporating, in particular, the experience yet to be gained from the implementation and initial application of Pillar 2.