AMERICAN CHAMBER of COMMERCE IRELAND

Submission on Business in Europe: Framework for Income Taxation (BEFIT)

From the American Chamber of Commerce Ireland to the European Commission

January 2024

The American Chamber of Commerce Ireland (AmCham) welcomes the opportunity to provide feedback on Business in Europe: Framework for Income Taxation (BEFIT).

AmCham Ireland recognises that the introduction of the OECD Pillar Two rules represents a significant global effort to address the challenges of a complex international tax landscape. It is imperative that this framework be allowed sufficient time to conclude and be implemented in all participating jurisdictions before introducing another set of complex rules. Introducing additional regulations prematurely may hinder the effective implementation of the new Pillar Two rules, potentially leading to an increased administrative burden and creating more uncertainty for both governments and businesses.

AmCham Ireland is of the view that national legislators should maintain control over taxation, in line with EU principle of sovereignty. Granting member states the autonomy to determine their own direct tax policies ensures that tax measures are tailored to each country's specific economic and social context. This approach not only respects national sovereignty but also allows for flexibility in addressing unique challenges and opportunities within individual EU member states.

The potential administrative efficiencies suggested by the BEFIT proposal are unclear, particularly considering the likelihood of overlap with Pillar One and Pillar Two of the OECD framework. Implementing BEFIT alongside the existing rules and with future guidance still to be released by the OECD, may lead to duplication of efforts, increased complexity, and potential conflicts in interpretation. It is essential to carefully assess the practical implications before introducing BEFIT to ensure that it contributes positively to the global tax landscape without creating unnecessary complications.

BEFIT should not be advanced at this point, particularly in light of the significant international tax initiatives being implemented and at consultation stage. For example, Pillar Two rules have not yet come into effect in all EU Member States and the introduction of such initiatives impose a significant burden on the taxpayer and tax administrations, including compliance costs and time.

AmCham believes that profit should be taxed where value is created and therefore, the Arm’s Length Principle (“ALP”) enshrined in the OECD Transfer Pricing Guidelines should be retained. BEFIT however, applies taxable profit to member states based on arbitrary allocation factors. Departure from the ALP risks further destabilising the international tax system, potentially resulting in disputes and double taxation.

AmCham believes that the benefits of the BEFIT initiative regarding compliance costs are unclear. Indeed, AmCham believes that the measures would potentially cause additional complexity and disputes adding to compliance costs.

AmCham recommends:

- Time should be given to assess the impacts of Pillar Two and potential Pillar One changes before any further changes such as BEFIT are considered.
- Direct taxation should remain the responsibility of national legislators which is consistent with the EU principle of sovereignty.
- An impact assessment is undertaken after the implementation of Pillar Two.
- The European Commission should wait until Pillar One is ratified before considering any other such initiatives.