

# itm

## IRISH TAX MONITOR

## The Roundtable December 2022

### EU Corporation Tax Consultation

**T**he European Commission launched a public consultation on Business in Europe: Framework for Income Taxation (BEFIT). What are the similarities between this and previous initiatives in the area, such as CCCTB?

**Michelle Adams, Tax Manager, Financial Services Tax, BDO:** The European Commission launched a public consultation on Business in Europe: Framework for Income Taxation (BEFIT) which is aimed at introducing a single corporate tax rulebook for the EU based on the key features of a common tax base and the allocation of profits between Member States by using a formula apportionment. The European Commission have confirmed that BEFIT replaces the existing Common Consolidated Corporate Tax Base (CCCTB) proposal with BEFIT reflecting on significant changes that have occurred, in the meantime, in the economy and the international framework.



**Michelle Adams**

There are several similarities between BEFIT and CCCTB with the key objective of both initiatives being the introduction of a single set of rules for EU companies to calculate their taxable profits.

According to the call for evidence, BEFIT aims at boosting the competitiveness of the single market, reducing compliance costs and

supporting investment in the EU. BEFIT also aims at complementing other EU policies on direct taxation such as the Anti-Tax Avoidance Directive. Some of these objectives may sound familiar as they are similar to those set out in the CCCTB proposal which also aimed at cutting compliance costs, combating tax avoidance, and supporting growth, jobs, and investment in the EU.

CCCTB was designed to be mandatory for all groups with global consolidated revenues of more than €750 million with an opt-in option for smaller groups. The call for evidence for BEFIT sets out two options for the scope of the initiative with the first option being that groups with consolidated global revenues of more than €750 million, which is similar to that of the CCCTB, and the second option being the revenue threshold is lowered making the framework more inclusive with an opt-in option included for SMEs. The call for evidence also sets out the tax base calculation options, formula for allocating taxable profits and allocation of profits related to entities outside the group.

The feedback period is open until 26 January 2023.

## Remote work across borders

**T**here are a number of challenges the rise of cross-border remote working poses to the international taxation system, particularly around income tax (with such employees faced with double taxation on their income) and corporation tax. Amongst its suggestions on combatting the challenges in this area the European Economic and Social Committee (<https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/taxation-cross-border-teleworkers-and-their-employers>) suggested the creation of ‘a one-stop shop’ similar to the EU’s system in the area of VAT. Can you comment of the EESC’s suggestions to improve this area of taxation and how the ‘one-stop shop’ solution could work to improve the tax outcomes of cross-border remote work in the EU?

**Pat O’Brien, Senior Consultant, Employment Taxes, BDO:** In the post Covid world, the opportunity to work from home has become an expectation for many workers, and employers have responded with flexible arrangements to facilitate it.

While many national tax authorities, including the Irish Revenue Commissioners have provided guidance on the domestic tax implications of remote working, the issues which arise when an employee is working from home in a different country from the employer’s place of business, present additional and often complex challenges for all concerned, including the worker, the employer and the national tax authorities of both jurisdictions. These include payroll tax obligations, social insurance liability, double taxation and permanent establishment risks. Significant problems arising from the creation of such ‘accidental permanent establishments’ due to the presence



**Pat O'Brien**

of employees have long been an issue, even before the pandemic. The recent publication of proposals to address the issue in an Opinion published by the Economic and Social Committee of the European Commission (‘Taxation of cross Border Teleworkers and their employers, ECO/585’) is therefore welcome.

The OECD’s document ‘Guidance on tax treaties and the impact of Covid-19 pandemic’ (updated January 2021) addressed many of these issues on a temporary basis, however the guidance applied only to circumstances arising during the pandemic ‘when public health measures were in place’. As such, it is clear that this guidance cannot be relied upon outside of those circumstances. It is equally clear however that given the growth in cross border remote working, a consistent framework for dealing with these issues needs to be put in place going forward.

The EESC Opinion builds on a previous report from the Commission in 2010 on eliminating tax obstacles to cross border mobility within the EU. In a sense, the issues presented by cross border remote working are simply an iteration of the issues previously identified.

The EESC recognises that while a global framework based on the OECD/

G20 Inclusive Framework Tax Package is desirable, given the inherent mobility within the EU, there are reasons to address the issue at EU level before a global solution is found. While noting that the issues are already addressed - to a degree - by existing tax treaties, the EESC Opinion concludes that ‘it is warranted to have ambitious rules allowing for cross-border teleworking’. This would entail having an overarching mechanism that would go beyond the present bilateral case-by-case approach, and which would be easy to understand and operate.

The EESC recommends two key actions. The first is the adoption on a multilateral basis of a de minimis period of 96 days, during which countries would disregard periods spent working within their territory. The second is the establishment of a ‘one stop shop’ to deal with the more complex cases where there is an ongoing presence in two or more states and dual liabilities arise. Employers would report employee data to the ‘one stop shop’, which would in turn allocate tax and social insurance payments to the appropriate states. As the EESC points out, such a body already exists for VAT purposes.

While these are just proposals, there is much to recommend them. The 96 days de minimis approach would facilitate occasional remote working in a very straightforward way. A somewhat similar approach is already being used by some employers based on existing DTA frameworks, and could be introduced relatively easily. The one stop shop proposal is ambitious, however PAYE Modernisation and similar projects in other EU countries have shown that the availability of employee tax data almost in real time, together with the systems to process it, can readily facilitate large scale projects (e.g. the Covid employment support schemes) that would not have been contemplated just a few years ago. We should hope therefore that these proposals translate into concrete actions within the foreseeable future.