A CORE Proposal for Budget Caring — Will the EU Adopt a Progressive Corporate Tax?

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On 16 July 2025, the European Commission unveiled its proposed EU budget for the 2028–2034 period, representing a nearly EUR two trillion fiscal commitment for the bloc's taxpayers – both individual and corporate.[1] As leaked by some media outlets in the days leading up to the official announcement, the EU budget would introduce a new mechanism known as the 'Corporate Resource for Europe' (CORE). In the Commission's proposal, CORE is described as a 'financial contribution' from the corporate sector, intended to become part of the European Union's system of own resources. In practical terms, however, it would function as a levy on large corporations that operate and sell within the EU.[2]

This initiative is part of the European Commission's broader effort to establish new, independent revenue streams for the EU budget and requires unanimous approval from all Member States to be enacted, including the CORE mechanism. The levy would apply to all large companies that are tax-resident in the EU, as well as to permanent establishments (PEs) located in a Member State of third-country-based parent entities, provided they book annual turnover exceeding EUR 100 million after taking account of subsidies and taxes, what the EU defines as 'net turnover' – which is further elaborated upon in later section 4).

The Commission's proposal makes it explicit that the tax under the CORE mechanism would apply to EU PEs exceeding the EUR 100 million threshold 'irrespective of the net turnover of the entity resident for tax purposes in a third country that is not generated by the permanent establishment',[3] anticipating scenarios in which an EU PE could generate higher net turnover than its non-resident parent company. Still, while hypothetically possible, this remains unusual, given that a PE lacks legal personality and operates as an extension of its parent entity. Logically, and for accounting purposes, the PE's turnover should therefore be consolidated with (or 'added back to') that of the parent[4] – unless one assumes a scenario in which the parent company reports *negative* turnover that is offset by the PE's *positive* revenues, thereby resulting in the group's aggregate net turnover being *lower* than that of the PE in isolation.[5]

That being said, a 'bracket system' would impose higher contributions in the form of fixed lump-sum payments, with the amounts increasing according to the size of the group's net turnover, as outlined in the table below:

Annual Net-Turnover	*Annual CORE Contribution*
Not exceeding EUR 100 million	Excluded
Above EUR 100 million and below EUR 250 million	EUR 100,000

Notes

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1 European Commission, *Proposal for a Council Decision on the System of Own Resources of the European Union and Repealing Decision* (EU, Euratom) 2020/2053. COM(2025) 574 final, 2025/0574 (CNS), Brussels (16 Jul. 2025).

2 The news was first leaked in an article published by the *Financial Times* on 11 Jul. 2025, and subsequently echoed in an op-ed in *Tax Notes Today International* on 15 Jul. Both pieces correctly anticipated that the European Commission would seek to finance the upcoming EU budget partly through annual contributions from high-turnover companies, with just the difference being that both sources expected the threshold to be hit at EUR fifty million in annual turnover – whereas the official EU budget proposal ultimately set the threshold at EUR 100 million.
See Paola Tamma & Alice Hancock, *Brussels Plans New Tax on Big Companies to Boost EU Budget*, Financial Times (12 Jul. 2025), https://on.ft.com/4kyGVBa; also, Elodie Lamer, *New EU Revenue Push Targets Companies, Tobacco, and E-waste* Tax Notes Today International (15 Jul. 2025).

3 European Commission, 2025, *Proposal, supra* n. 1, recital 6.

4 Since, economically and legally, a permanent establishment (PE) is not an independent entity but operates as an extension of its parent, its turnover is typically part of the group's overall activity. Therefore, isolating it for CORE threshold purposes appears conceptually inconsistent with consolidation principles in financial accounting. This issue will be further elaborated in s. 4).

5 The case of a non-resident parent with negative turnover and a profitable foreign PE is rare, but hypothetically not inconceivable – particularly within multinational groups with fragmented structures, loss-making R&D arms, or entities experiencing temporary business shocks in other jurisdictions. For instance, a US-based tech company might report global negative turnover due to product recalls or asset write-downs, while its EU PE (e.g., a sales hub or licensing unit) continues to generate strong revenues.

Annual Net-Turnover	*Annual CORE Contribution*
Between EUR 250 million and below EUR 500 million	EUR 250,000
Between EUR 500 million and below EUR 750 million	EUR 500,000
EUR 750 million or more	EUR 750,000

It may be difficult to obtain unanimous approval from all twenty-seven EU Member States for such a proposal, but the EU definitely needs to raise more revenue to meet its increasing commitments, from common defence obligations to its green transition goals.[6] And this comes at a time when the US has recently increased taxes on large multinationals operating within it through the Corporate Alternative Minimum Tax (or CAMT) and the increased rates and broader base of GILTI and FDII included in the One Big Beautiful Bill Act (OBBBA).[7]

Is this a worthwhile proposal?

Despite some immediate criticisms that the EU budget doesn't add up,[8] and while acknowledging that the CORE mechanism needs further refinement (as discussed later in this piece), the answer is definitely yes, as CORE would also be consistent with previous academic work on this subject.[9]

When the United States enacted its first corporate income tax (CIT) in 1909, the main purpose was to regulate corporate power, especially that of the major monopolies such as J.P. Morgan's US Steel and John D. Rockefeller's Standard Oil.[10] The corporate tax was part of the same antitrust campaign that culminated in 1911 with the Supreme Court ordering the break-up of Standard Oil.[11] Because the purpose of the tax was to regulate rather than to raise revenue or redistribute income, the initial corporate tax rate was a flat 1%. The point was to force corporations to disclose their business activity and therefore be easier to regulate through antitrust enforcement. In addition, corporate tax returns were to be public, to expose their immense profitability to the voters.

Corporate lobbying soon eliminated the publicity of corporate tax returns, but the corporate tax itself proved more resilient. During World War I, income tax rates were raised dramatically to finance the war effort, and this included the corporate tax rate, which was raised to 12%. In addition, from 1917 onward an excess profits tax was imposed on corporations that profited from the war. The excess profits tax was levied on corporate profits above a three-year pre-war average, and its top rate could be as high as 80%.

Similar excess profit or windfall profit taxes were enacted in other belligerent countries like the United Kingdom, France, and Germany. The same type of excess profits tax was used by the United States during World War II with rates as high as 95% (but the overall combined regular corporate tax and excess profits tax could not be higher than 80%), and this tax was retained until the Korean War in the 1950s.

During the 1930s, the Roosevelt administration decided to use the corporate tax to curb the power of corporations permanently. In addition to other reforms (e.g., breaking up 'pyramidal', multi-tier structures that enabled the ultra-rich to control public corporations like utilities, partly by restricting full exemptions for intercorporate dividends),[12] the administration proposed a permanent 'surtax' on retained earnings and a reduced tax on dividends (to encourage distributions that would reduce the power of corporate management).[13] This proposal was defeated, but Congress adopted a progressive corporate tax up to 53%. This relatively high rate was only reduced slightly in the following decades to 46%. In the tax reform of 1986, the corporate tax rate was cut to 35%, but the base of the tax was broadened so corporations actually paid more tax.

The corporate rate structure remained progressive until 2017. However, the brackets were not adjusted for inflation, so that by 1986 the top rate of 35% was reached at USD 100,000 – a large sum in the 1930s, but a pittance for

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6 According to a Commission Staff Working Document, the CORE mechanism is estimated to generate an average of EUR 6.8 billion per year over the 2028–2034 period. *See* European Commission, *Commission Staff Working Document Accompanying the Document Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: A Dynamic EU Budget for the Priorities of the Future – the Multiannual Financial Framework 2028–2034*, SWD(2025) 570 final, Brussels (16 Jul. 2025).

7 On the reasons why the US increased taxes on multinationals in 2017, 2022, and 2025 *see* Reuven Avi-Yonah, OBBBA column.

8 Elodie Lamer, *EU Commission Proposals Face Competitiveness Criticism*, Tax Notes Today International (18 Jul. 2025).

9 *See* Kimberly Clausing, *Capital Taxation and Market Power*, Tax Law Review (2024). Full Text; Reuven Avi-Yonah, *A New Corporate Tax*, Tax Notes 653 (27 Jul. 2020); Reuven Avi-Yonah, Niko Lusiani & Emily DiVito, *Fifty Years of 'Cut To Grow': How Changing Narratives Around Corporate Tax Policy Have Undermined Child and Family Well-Being*, https://rooseveltinstitute.org/publications/fifty-years-of-cut-to-grow/.

10 *See* Reuven Avi-Yonah, *Corporations, Society and the State: A Defense of the Corporate Tax*, 90 Va. L. Rev. 1193 (2004), doi: 10.2307/3202379; Reuven Avi-Yonah, *Corporate Tax Act of 1909*, in *Major Acts of Congress* vol. 1, 190 (Brian K. Landsberg ed. 2004); Reuven Avi-Yonah, *The Story of the Separate Corporate Income Tax: A Vehicle for Regulating Corporate Managers*, in *Business Tax Stories* 11 (Steven Bank & Kirk Stark eds, Foundation Press 2005); Reuven Avi-Yonah, *Why Was The U.S. Corporate Tax Enacted in 1909?*, in *Studies in the History of Tax Law* vol. 2, 377 (John Tiley ed. 2007).

11 *See* Reuven Avi-Yonah & Lior Frank, *Antitrust and the Corporate Tax: Why We Need Progressive Corporate Tax Rates*, 167 Tax Notes 1199 (18 May 2020); Reuven Avi-Yonah, *Antitrust and the Corporate Tax, 1909–1928*, in *Antimonopoly and American Democracy* (Daniel A. Crane & William J. Novak eds 2023); Reuven Avi-Yonah & Tamir Shanan, *Rethinking Taxing Excess Profits*, 77 Tax Law. 269 (2024), doi: 10.2139/ssrn.4792580; Reuven Avi-Yonah, *Should Large Corporate Mergers Be Subsidized?*, 115 Tax Notes Int`l 209 (8 Jul. 2024), doi: 10.2139/ssrn.4914763; Reuven Avi-Yonah, *Corporate Tax: Best Tool for Taxation's Regulation Goal*, 118 Tax Notes Int`l 1751 (16 Jun. 2025), doi: 10.2139/ssrn.5101984.

12 *See* Domenico Imparato, *The 'Hidden Sides' in the Taxation of Dividends and Interest for Corporate Europe Versus Corporate America.* Forthcoming (2026), in *Blueprint for Taxing Corporates: 2025 and Beyond* (IBFD Academic Tax Conference Series, IBFD, Amsterdam 2025).

13 *See* Steven Bank, *From Sword to Shield: The Transformation of the Corporate Income Tax, 1861 to Present* (Oxford University Press 2010).

corporations in the 1990s. Moreover, most small corporations were not subject to the corporate tax (any tax on their income was paid by the shareholders), and so in effect the tax rate on taxable corporations was a flat 35%. In the 2017 tax reform, progressive rates were abandoned, and the corporate tax became a flat 21%, where it remains today.

There is, however, a strong case to be made for reviving progressive corporate taxation. If the main reason to have a corporate tax is to tax rents and limit monopolies, then the effective tax rate on normal corporate profits should be zero. But on monopolistic returns, the tax should be progressive, with a very high tax rate (e.g., 80%) for profits above a very high threshold (e.g., USD ten billion).

1 Normal returns *vis-à-vis* monopoly rents

There is no reason to tax corporations on normal returns. Without delving into the broader debate on tax-induced biases in corporate financing decisions,[14] normal returns are the risk-free rate of return compensating for the time value of money and the opportunity cost of capital, which implies a payoff (premium) for deferring consumption in favour of investment (and therefore typically includes embedded inflation expectations). As a result, normal returns can be deemed economically equivalent to the yield from investing in long-term government securities like US Treasuries, plus a return for bearing risk.[15] In recent years, these returns have been quite low, but they have historically been higher.

However, from the point of view of only applying the corporate tax to monopoly rents, these normal returns should be exempt. In addition, while some uncertainty remains about the precise incidence of the corporate tax, studies clearly indicate that it can adversely affect productivity and investment,[16] with a large share of the tax cost ultimately falling on labour[17] – suggesting that a business levy on normal returns is less likely to contribute to the progressivity of the overall tax system. Finally, any inefficiency from the corporate tax arises from the tax on normal returns since a tax on pure rents does not generate 'deadweight loss'. Deadweight loss is a term economists use for the difference between the revenue a tax raises and the decline in the taxpayer's welfare caused by a change in taxpayer behaviour due to the tax.[18] A tax on monopoly rents does not change taxpayer behaviour since taxpayers not subject to any competition would still derive net profit from rents even if, for example, 99% of those rents were taxed away.

Since from a political perspective a zero-tax rate on normal returns is unlikely to pass, and since it is hard to determine what normal returns are,[19] we would suggest allowing permanent expensing (i.e., immediate deduction) of corporate capital expenditures (such as building a new factory). Such expensing is equivalent to an exemption for the normal return to capital, and permanent expensing is part of the OBBBA.

2 Super-normal returns and pure rents

Economists are almost unanimous in supporting a tax on rents – at least to the extent that these take the form of 'pure rents'. This is because, rather than treating all returns above the normal rate as a monolithic category of super-normal returns, some distinguish between 'supernormal returns to entrepreneurship' or 'quasi-rents', which arise from *temporary* market power linked to technological or process innovation, and those that are 'pure rents' like gains from land appreciation due solely to scarcity (without any productive input) or profits derived from *enduring* monopoly power in a specific good or service market.[20]

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14 *See* Domenico Imparato, *DEBRA: When Unstoppable Aspirations for Debt-equity Parity Meet Immovable Tax Systems*, 53(2) Intertax (2025), doi: 10.54648/taxi2025009.

15 *See* Rachel Griffith, James Hines & Peter Birch Sorensen, *International Capital Taxation*, in *Dimensions of Tax Design: The Mirrlees Review* (T. J. Besley ed., Oxford University Press 2010).

16 Åsa Johansson, Chistopher Heady, J. Matthias Arnold, Bert Brys & Laura Vartia, *Taxation and Economic Growth*, OECD Economics Department Working Papers No. 620. Paris: OECD Publishing (2008), doi: https://dx.doi.org/10.1787/241216205486.

17 Stephen Entin, *Labor Bears Much of the Cost of the Corporate Tax,* Tax Foundation (24 Oct. 2017), https://taxfoundation.org/research/all/federal/labor-bears-corporate-tax/.
Drawing on this article and the empirical literature it builds upon, it can be noted that in an economy open to free trade and capital mobility, capital is a 'highly mobile and sensitive input', able to move relatively easily across borders in response to tax differentials. By contrast, labour is far less mobile: workers generally cannot relocate freely if they wish to maintain their income.
The key takeaway is that capital can flee high-tax jurisdictions in search of higher after-tax returns elsewhere, leaving labour behind to work with a reduced capital stock. Over time, this decline in capital stock hampers investment, thereby slowing productivity growth, which in turn suppresses wage growth. As a result, labour would tend to disproportionately bear the economic cost of capital mobility in open economies.

18 For example, if a tax is based on the number of windows in the taxpayer's house (an old proxy for wealth i.e., easy for the tax collector to count from the outside) at ten dollars per window and a given taxpayer reduces the number of windows from 11 to 10 to lower the tax burden, the government would collect 100 dollars in tax revenue (ten dollars x ten windows) but the taxpayer's welfare would be reduced by 110 dollars (the 100 paid in tax plus the ten in welfare that the extra window would generate if there were no tax). The extra ten is deadweight loss.

19 Hayley Reynolds & Thomas Neubig, *Distinguishing Between 'Normal' and 'Excess' Returns for Tax Policy*, OECD Taxation Working Papers No. 28, Paris: OECD Publishing (2016), doi: https://dx.doi.org/10.1787/5jln6jct58vd-en.

20 Quasi-rents or entrepreneurial supernormal returns can therefore be seen as rewards for particularly productive human capital or 'sweat equity'. It would indeed be difficult to imagine risky venture investments (such as those in early-stage biotechnology firms) if they did not offer the potential for substantial (higher) returns. These are typically generated through temporary pricing power, usually in the form of some technological or process innovation that are often protected by intellectual property rights (such as patents), which eventually expire and restore competition; *see* Garrett Watson & Ales Muresianu, *Supernormal Returns: An Overlooked Foundation of Tax Policy Debates*, Washington, D.C.: Tax Foundation (Sep. 2024), https://taxfoundation.org/research/all/federal/supernormal-returns-tax-policy-debates/.

Thus, a levy on pure rents is widely seen as both *economically efficient*, since it does not distort corporate behaviour, and *progressive*, because it does not fall on capital or labour, but rather on unearned income.

Above the exemption resulting from expensing, the corporate tax should be sharply progressive. The reason to have a progressive tax on pure rents is that in addition to targeting rents, we also want to discourage 'bigness', which is equivalent to monopoly or quasi-monopoly status. The *less* competition a business firm faces, the *more* profitable it is likely to be, because competition generally drives down prices. That is why the most monopolistic firms are also the most profitable, and why they engage in behaviours like 'killer acquisitions' designed to eliminate competition.[21]

At the top, the corporate tax rate should be 80% for income above – for example – USD ten billion, like the highest rate of the excess profit taxes during the two world wars. Based on 2024 net revenue, this rate would apply inter alia to Alphabet (USD one hundred ten billion), Apple (USD ninety-seven billion), Microsoft (USD ninety-six billion), Nvidia (USD seventy-six billion), Meta (USD sixty-six billion), Amazon (USD sixty-five billion), and JP Morgan (USD fifty-eight billion). All of those enjoy some degree of monopolistic or quasi-monopolistic status. There are 89 multinationals with net revenue over USD ten billion for 2024.[22]

Such a high tax rate may persuade the corporations subject to it to split up. Splitting up corporations to reduce their profits and therefore escape the 80% tax rate is a feature of the proposal and not a bug. As former FTC Commissioner Lina Khan and others have proposed, we should ideally want to induce Big Tech to divest their anti-competitive acquisitions (e.g., Facebook's acquisitions of Instagram and WhatsApp). And if the tax structure also motivates an actual break-up of the core business (e.g., along geographic or business segment lines), any loss in efficiency would be more than compensated by the removal of the threat to democracy posed by Big Tech.[23]

A return to a progressive corporate tax, one that sharply distinguishes between normal profits and extraordinary (pure) 'rents', could better address the outsized influence of monopoly power. Under such a structure, the rationale is twofold: ordinary earnings, comparable to the safe returns of government bonds, would be exempt or minimally taxed, while monopoly profits – the spoils of market dominance – would face steep, escalating rates.

Such an approach not only promises greater efficiency, as taxes on pure rents do not distort corporate incentives, but also stands to foster *fairness* by targeting the very firms whose dominance undermines competitive markets. Progressive taxation thus emerges not merely as a fiscal tool, but as a potential remedy for bigness itself, incentivizing the dismantling of monopolistic empires and restoring a measure of balance to the marketplace.[24]

It seems unlikely that such a progressive corporate levy could be enacted in the US soon. But there might be a chance it will be adopted as a Directive in the EU. And importantly, it will apply to all large companies operating in Europe, as well as to all large PEs selling in the Single Market – regardless of where they parent entities are headquartered.

No doubt such a tax will infuriate US multinationals (MNEs) as well as the Trump administration. Of course, US multinationals could still choose to leave the EU. But that seems unlikely given (1) that it remains the largest market in the world by purchasing power and (2) that, according to the European Central Bank (ECB), Euro area affiliates of US multinationals account for over 5% of euro area purchases of goods and services and gross operating surplus, and for almost 90% of the euro area deficit in services trade with the US, edging over EUR 170bn just in the first quarter of 2025.[25] To put it bluntly, this means that a withdrawal of US MNEs' operations from the Single Market – or even just from the Eurozone – would eat into the large payments in the form of profits that EU-based affiliates and PEs make to their US parent companies, which constitute a major component of the current US trade surplus in services with the EU.

As for the Trump administration and Congress, they could try to retaliate by imposing higher taxes on EU multinationals operating in the US, along the lines of proposed section 899 (the 'revenge tax') that was dropped from the OBBBA at the last minute, or to invoke section 891, which can double the rates on EU multinationals operating in the US and on EU citizens.[26] However, as one of the authors of this piece has previously written elsewhere, neither section 891 nor section 899 are very effective, primarily because they mostly only apply to branches and to individuals residing in the

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21 *See* Reuven Avi-Yonah, Large Corporate Mergers, *supra* n. 11.

22 https://www.financecharts.com/screener/most-profitable.

23 Marietje Schaake, *The Tech Coup: How to Save Democracy from Silicon Valley* (Princeton: Princeton University Press 2024).

24 From that perspective, it is also worth noting that the FT article cited in footnote no. 3 reports JPMorgan Chase chief executive Jamie Dimon warning European business leaders on 10 Jul. 2025, that their companies are 'losing' against US and Chinese rivals; *ibid.*

25 Lorenz Emter, Michael Fidora, Fausto Pastoris, Martin Schmitz & Tobias Schuler, *US Trade Policies and the Activity of US Multinational Enterprises in the Euro Area* (4) ECB Econ. Bull. (Frankfurt: European Central Bank 2025), https://www.ecb.europa.eu/press/economic-bulletin/html/eb202504.en.html.

26 On these provisions *see* Reuven Avi-Yonah, OBBBA column.

US.[27] The exception is the 'super-BEAT' included in proposed section 899, since it applied to US subsidiaries, but it too could in many cases be avoided by not making payments subject to it until the business can restructure.

In addition, it is hard to argue that the proposed EU progressive corporate tax is 'discriminatory' or 'extraterritorial', which are the conditions for triggering current section 891 and proposed section 899.[28] The CORE mechanism is not discriminatory because it applies to all multinationals operating in the EU, and in fact will fall more heavily on EU multinationals on the assumption that it will apply to their global income (any other method would just result in profit shifting).

Moreover, the CORE mechanism is clearly not extraterritorial as applied to US multinationals, given that only EU source profits will be affected, and it has been well established since 1923 and even before that source jurisdictions have the right to tax corporate profits generated within their borders.[29]

3 The mother of EU corporate tax troubles: Defining (and agreeing on) a common tax base

Discussions on seeking an agreement on a common tax base, aimed at achieving neutrality in the structure of Member States' tax systems and reducing distortions to corporate competition, have been ongoing in the Union since the publication of the *Neumark Report* in 1962.[30] Then, as now, that goal remains central. In fact, if the EU does go ahead with the progressive corporate tax rate, the key issue is how to define the base, both for multinationals headquartered elsewhere (since they can shift profits out of the EU and thereby avoid the tax) and for EU multinationals, which could try to shift their headquarters to avoid the tax.[31]

A recent proposal on this matter is another draft scheme by the EU Commission, namely 'Business in Europe: Framework for Income Taxation (BEFIT)', which like its predecessor the Common Consolidated Corporate Tax Base (CCCTB) proposal sought initially to apply formulary apportionment based on the three traditional factors (assets, payroll and number of employees, and sales) to determine what profits should be allocated to the EU.[32] Hence, this represents the most recent step in the EU's ongoing efforts to harmonize corporate taxation within the single market. But BEFIT should be changed to fit with the proposed progressive corporate levy.[33]

Like the CCCTB, BEFIT proposes a single tax base for group members, drawing from their financial statements, which are then aggregated and allocated among the group entities. Losses are transferable within the group, and there is no withholding on payments between group members. The parent entity will file an information return with its home jurisdiction, and group entities will file tax returns in their respective jurisdictions. These rules apply to EU groups with annual revenues exceeding EUR 750 million, aligning with the Pillar 2 threshold.

The CCCTB was based on a three-factor formula – tangible assets, payroll/number of employees, and sales – and the commission considered a similar formula for BEFIT but did not reach consensus. Instead, a 'transitional rule' was proposed utilizing each BEFIT group member's percentage of an aggregated tax base, calculated as the average of taxable results over the previous three fiscal years. The Commission indicated that a formulary system might be incorporated in the future.

There are several issues identified with this approach.[34]

First, BEFIT, like the CCCTB, applies solely within the EU, while multinational enterprises operate globally and thus may be subject to different systems: BEFIT within the EU and arm's length transfer pricing externally. Non-EU multinationals operating a single EU subsidiary could avoid BEFIT, as it applies only to groups with more than one EU entity, whereas EU-based multinationals typically would have multiple entities and fall under BEFIT. This difference could result in variations in transfer pricing strategies between EU and non-EU multinationals.

Second, the decision not to adopt a formula means that complexities related to arm's length transfer pricing

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27 *See* Reuven Avi-Yonah, *Retaliatory Taxation: What Should the EU Do?*, 53 Intertax 494 (2025), doi: 10.54648/taxi2025045.

28 The same FT article also notes that the Commission rejected a proposal for an EU wide DST, presumably to avoid further exacerbating relations with the US, since the UTPR issue has been defused for the time being. *See* Reuven Avi-Yonah, OBBBA columns.

29 *See* Reuven Avi-Yonah, *Nothing New under the Sun? The Historical Origins of the Benefit Principle*, 51(8–9) Intertax (2023), doi: 10.54648/taxi2023050.

30 Commission of the European Economic Community, *The ECC Report on Tax Harmonization – the Report of the Fiscal and Financial Committee and The Reports of the Sub-Groups A, B and C (Neumark Report),* Brussels (1962).

31 The same issue arises if Pillar 2 (setting the corporate tax rate) is adopted without Pillar 1 (defining the base), because it is then unclear what is the base for the QDMTT, which turns off the IIR and UTPR. *See* Reuven Avi-Yonah & Ajitesh Kir, *Building the Gateway: Why the Two Pillars Need Each Other*, 52 Intertax 591 (2024), doi: 10.54648/taxi2024070.

32 European Commission, *Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT),* COM(2023) 532 final, 2023/0321 (CNS), Strasbourg (12 Sep. 2023).

33 *See* Reuven Avi-Yonah, *Do Intangibles Fit BEFIT?* 51(8–9) Intertax (2023), doi: 10.54648/taxi2023051.

34 For a broader critical review questioning the need to adopt the BEFIT proposal, along with its legal basis under the principles of subsidiarity and proportionality, *see* Oliver Hoor, *A Critical Analysis of the European Commission's BEFIT Proposal,* Tax Notes International (27 Nov. 2023).

remain embedded within BEFIT.[35] The aggregated taxable results are based on existing transfer pricing guidelines, which can permit profit shifting among EU Member States. This is especially relevant for intangible income, which constitutes a significant portion of income for large multinationals.

The allocation of intangibles has been a central issue during discussions. In an October 2022 consultation request, the EU Commission solicited feedback on options for allocating taxable profits across Member States where a BEFIT group maintains a taxable presence. The guiding principle is to select factors that reflect sources of income generation.

– Option 1: Formula without incorporating intangible assets:

This option considers the commonly used factors: tangible assets (excluding financial assets unless sector-specific), labour (potentially shared between personnel and salaries), and sales by destination. These are regarded as reflecting income generation accurately and being less open to misuse.

– Option 2: Formula incorporating intangible assets:

Alternatively, intangible assets could be included via a proxy value, such as research and development expenses and marketing costs, to better represent economic realities.

The prevailing view is that including intangibles directly may increase the risk of manipulation, given the challenges seen in transfer pricing disputes involving intangibles. Intangible assets lack a fixed physical location and can be registered in various jurisdictions, potentially influencing how allocations are made under consolidated systems. Attempts to use proxy values, such as R&D or marketing expenditures, may incentivize relocating these activities to lower-tax jurisdictions, impacting the overall allocation.[36]

Intangibles often derive value from factors like the facilities developing them, the individuals involved, and the consumers purchasing end products. These elements are generally captured in the traditional three-factor formula. There are cases, such as the *Coca Cola* case,[37] where intangible value may stem from relationships between entities rather than specific locations, complicating the allocation further.

Given these considerations, one alternative would be for the Commission to adopt the Pillar 1 formula and apply it on a global basis to large multinationals active in the EU.[38]

Critics of formulary apportionment note the challenge of achieving consensus on a standardized formula, warning that divergent approaches across jurisdictions could lead to double- or over-taxation. Some experts have advocated for sales-based formulas due to their unilateral adoption in US states, though such approaches may lack balance.[39]

Currently, over 140 countries have agreed in principle to the formula embodied in Pillar 1 and reflected in a proposed multilateral convention. Under Pillar 1, 'Amount A' – 25% of above-normal profits of large multinationals – is allocated to destination countries based on sales; the remaining 75% is allocated according to payroll and tangible asset location. While alternative allocations are possible, this formula reflects a broad international consensus that can be built upon despite the collapse of the OECD's Pillar 1.

The three-factor 'Massachusetts formula' has been widely utilized historically in the US, UK, and Japan, and through proposals such as the CCCTB and India's pre-Pillar 1 approach. Variations exist – such as using number of employees instead of or in addition to payroll to accommodate low wage countries – but the underlying principle remains consistent.

The continued relevance of the three-factor formula is grounded in the notion that income, even in highly digitized economies, typically arises from a combination of human capital, physical capital, and sales. Each component contributes to the total, and together they offer a comprehensive basis for allocation. Building on collective experience and recent international agreements, the EU should consider adopting a balanced, worldwide formula for taxing large business groups within the Single Market, and apply it for purposes of its progressive corporate tax.

4 Key takeaways and work still ahead

Based on the above considerations, it follows that, overall, corporate taxation should be primarily *source* based, because corporations do not have a meaningful

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35 The difficulty of adopting any definitive formula for allocating taxable profits is clearly reflected in para. 10 of Art. 45 of the BEFIT proposal for a Directive. According to this provision, if no agreement is reached by the proposed deadline of Jun. 2035 – and thus no implementing proposal is adopted – the 'transitional rule' will continue to apply. *De facto*, this means the transitional rule could effectively become the default regime.
Hence, it comes as no surprise that some scholarly work has emphasized that 'the political bottleneck, in the end, always appeared to be the allocation formula'; *see* J. Jasper Korving, *'BEFIT and HOT: FASTER and SAFE!' EU Law or Slogan for Slimming Pills?,* European Taxation (Dec. 2023), doi: https://doi.org/10.59403/2jy6hxp.

36 European Commission, *Proposed Directive for Business in Europe: Framework for Income Taxation for Corporate Income Taxation of Large Groups* COM(2023) 532 final (12 Sep. 2023).

37 Ryan Finley, *Coca-Cola Gets Creative and Combative in Transfer Pricing Appeal*, Tax Notes International (10 Mar. 2025).

38 For a similar proposal in India *see* Avi-Yonah & Ajitesh Kir, *India's New Profit Attribution Proposal and the Arm's-Length Standard*, 93 Tax Notes Int'l 1183 (17 Jun. 2019), doi: 10.2139/ssrn.3414266.

39 *See* Reuven Avi-Yonah, Kimberly Clausing & Michael Durst, *Allocating Business Profits for Tax Purposes: A Proposal to Adopt a Formulary Profit Split*, 9 Fla. Tax Rev. 497 (2009), doi: 10.5744/ftr.2009.1052.

residence.[40] The problem is that in the absence of an adequate definition of 'source', pure source taxation invites profit shifting, which is not eliminated by the OECD's Pillar 2 because of the low uniform rate.

The same holds true for the CORE mechanism. As the newly proposed levy would apply to the net turnover of those selling in Europe, it reflects the EU's long-standing ambition to move toward a more *market*-based system of taxation – that is, one based on sales actually occurring within the bloc, regardless of where they are booked. From this perspective, CORE may be seen as a shift (or strategic evolution) from a digital services tax (DST) previously aimed at tech giants (e.g., Amazon, Apple, Facebook, Google, Netflix), toward a broader levy on all large multinational groups (including domestic champions like Volkswagen, Ferrero, LVMH) selling to EU customers.

However, unlike a DST, under the CORE mechanism, EU-based MNEs could find themselves at a competitive disadvantage. As noted in section 2) above, this is because it may be more difficult for EU-headquartered groups to shift their global revenues out of Europe than it is for the EU PE of a non-resident multinational to shift only its EU-source earnings – thereby reducing its turnover enough to fall into a lower bracket (or even drop below the EUR 100 million threshold) to cut (or avoid) CORE payments. Once again, as anticipated in the Introduction, this problem derives from the design of the CORE threshold mechanism: economically, it does appear inconsistent to trigger a levy on the basis of isolated PE turnover while ignoring the group's global position, as this can open the door to distortions, particularly if it incentivizes cross-border restructuring to avoid reaching the threshold at the EU PE level.

Also, that the CORE mechanism is actually a tax on business sales receipts to EU customers, and not a tax on income, is confirmed by its application to a 'net turnover' that is technically defined, with reference to EU Directive 2013/34, as 'the amounts derived from the sale of products and the provision of services after deducting sales rebates, value added tax, and other taxes directly linked to turnover'.[41] This raises at least three further concerns pertaining to the tax base and its related implications.

First, despite the concept of 'turnover' not being consistently defined across tax jurisdictions, it is generally understood to mean revenue from core business activities – i.e., sales of goods and services, net of rebates and turnover-related taxes. By contrast, 'gross income' usually refers to total revenue from both core and non-core activities before any deductions, while 'net income' reflects the balance after subtracting all expenses (e.g., cost of goods sold, salaries, depreciation, taxes) from total revenue. As a result, 'net turnover' may be *lower* than 'gross income' when the latter captures all sources of revenue before deductions, but it is typically *higher* than 'net income', unless the business incurs very low (or nearly no) costs. This means that, even though the CORE is levied on net (rather than gross) turnover, it may still apply to firms operating at a loss[42] or with low profit margins, at least under the Commission's current proposal.

Second, since any corporate levy is ultimately paid out of profits (i.e., net income), despite the CORE mechanism being a tax on turnover, when applied to an EU PE it will effectively be funded from the PE's profits, which are already subject to local income taxation and also form part of the non-resident parent company's taxable income. Thus, insofar as the EU PE's CORE liability is a turnover-based payment not covered by bilateral tax treaties, the potential inability to credit it against the non-resident parent company's income tax bill could result in double taxation, representing a tax treaty override.

Third, as large MNEs often engage in corporate tax manoeuvers to lower their tax bills, individual Member States – seeking to attract relocations or corporate restructurings – might opt to make CORE payments deductible from domestic CIT base or creditable against domestic CIT liability. This would further distort competition in an already uneven tax playing field across the bloc. Moreover, insofar as the CORE liability is lower than the domestic CIT liability, allowing CORE payments to offset CIT would undermine the progressivity CORE is designed to achieve. This is because CORE payments would effectively be 'absorbed into' a CIT base or liability that is subject to 'flat' rates.

Other critiques instead, such as those arguing the EU lacks the legal basis or competence to levy a business tax to finance the Union's budget,[43] appear less technically grounded. Long ago, the EU set sail for a higher degree of harmonization between tax policy and budgetary reforms.[44] Since at least 2020, the Council, Parliament, and Commission have agreed that a common corporate tax base could form the foundation for a new own resource that the Commission would seek to implement,[45] also as part of a broader plan aimed at

Notes

40 *See* Daniel Shaviro, *The Rising Tax-Electivity of U.S. Corporate Residence*, 64 Tax L. Rev. 377 (2011), doi: 10.1007/978-3-540-77276-7_17.

41 Directive 2013/34/EU of the European Parliament and of the Council, *On the Annual Financial Statements, Consolidated Financial Statements and Related Reports of Certain Types of Undertakings*, amending Directive 2006/43/EC and repealing Council Directives 78/660/EEC and 83/349/EEC (26 Jun. 2013), Art. 2(5).

42 Richard Pomp, *Resisting the Siren Song of Gross Receipts Taxes: From the Middle Ages to Maryland's Tax on Digital Advertising,* Tax Notes State 105 (15 Aug. 2022), doi: https://dx.doi.org/10.2139/ssrn.4087707.

43 Elodie Lamer, *EU Countries Give Cold Reception to Proposed New Levies,* Tax Notes Today International (21 Jul. 2025).

44 Axel Cordewener, *EU Budgetary Reform and Tax Harmonization: Becoming Brothers in Arms*, 31(2) EC Tax Rev. (2022), doi: 10.54648/ecta2022009.

45 European Council, *Conclusions of the European Council Meeting 17–21 July 2020* (21 Jul. 2020). Also, European Parliament, Council of the European Union, and European Commission, *Interinstitutional Agreement on Budgetary Matters for the Multiannual Financial Framework 2021–2027* (2020).

achieving greater 'strategic autonomy' in trade and industrial policy.[46] It is important to note that the Council is not an independent EU institution like the Commission or the ECB; rather, it represents the Member States. Its participation in the 2020 agreement therefore signifies that the Member States themselves have agreed in principle to a future EU corporate levy.

Hence, it becomes clear once again that if the EU is serious about adopting a progressive corporate tax for multinationals operating within it, it must do a better job defining the tax base.

Notes

46 Luuk Schmitz & Timo Seidl, *As Open as Possible, as Autonomous as Necessary: Understanding the Rise of Open Strategic Autonomy in EU Trade Policy*, 61(3) J. Common Mkt. Stud. (2023), doi: 10.1111/jcms.13428.