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Book-Tax Conformity for BEFIT: Really the Eternal Return?

Andrés Báez (Universidad Carlos III de Madrid) · Wednesday, March 8th, 2023

The *eternal return* is an ancient philosophical concept acquiring beautiful poetic nuances in the work of Friedrich Nietzsche. Unfortunately, this fascinating circular conception of life's events becomes vulgar when it comes into contact with such a mundane reality as that of (Tax) Law. Here, the "*ewige Wiederkehr des Gleichen*" would sound anything like: "*Hey buddy, this is old news*!" This powerful sense of *déjà vu* is particularly evident when analysing the Commission's BEFIT initiative (Business in Europe: Framework for Income Taxation)[1]. While the entire proposal exudes a nostalgic look back to the C(C)CTB projects of 2011 and 2016[2], the author of this piece merely pretends to focus on one of the key building blocks of the initiative: the calculation of the tax base.

The proposal consists, at its core, of 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[3]. Concerning the definition of this common basis and four other core issues of the proposal, the Directorate-General for Taxation and Customs Union decided to launch, on 17 October 2022, a public consultation to collect the stakeholders' views on the initiative[4]. Regarding the tax base calculation, the document serving as a basis for the consultation[5] raises two possible technical options: the first would involve constructing the common base upon the financial statements prepared following the same accounting standard authorised for use in the EU and correct the accounting profit or loss per a (yet to be defined) series of tax adjustments; the second alternative would be to create a closed and exhaustive system of tax rules defining the tax base without any connection to the financial statements of under-scope groups[6]. The proposal is certainly underdeveloped, but perhaps for that reason, it is worth making a few basic comments.

1) From a purely technical perspective the description of the two options is absolutely insufficient. Although the consultation raises the two primary alternatives for calculating taxable business profits (i.e., limited book-tax conformity and comprehensive system of tax accounting rules) – well known at a theoretical level and used in comparative law – the document loses sight of book-tax conformity being a moving target[7]. Indeed, in the old times, discussions on book-tax conformity had limited referents: the accounting rules referring to the individual accounts of the jurisdiction concerned – in the EU, those resulting from the transposition of Directive 2013/34/EU[8]-; and, in jurisdictions already counting on a limited book-tax conformity system, the set of tax rules deviating from the accounting solution. However, here too, the world has turned highly cumbersome.

Regarding the accounting part of the equation, the expression enshrined in the Consultation –

(income reported) in ***the financial statements of the group entities*** *falling under BEFIT* – is certainly not helpful. Neither is the statement allegedly "clarifying" that groups under BEFIT would be required to use financial statements prepared in accordance ***with the same accounting standard authorised for use in the EU***. Although the starting point in domestic book-tax conformity systems have always been the individual accounts, there are good reasons to think that the taxable base of BEFIT could (or perhaps should) start from the consolidated profit of the group under scope. However, even if this could be the purpose at the heart of the consultation, it should be made clear that no such thing exists as *the same accounting standard authorised for use in the EU* referred to by the Commission. Whereas it is true that groups listed in the EU are required by Regulation (EC) No 1606/2002[9] to prepare their consolidated accounts in conformity with IAS/IFRS, it is by no means less true that consolidated accounts of private groups may or may not be prepared under those standards[10]. The Consultation would have done well to take this into account since, regardless of the final decision on the scope of BEFIT[11], it is very likely for it to capture also unlisted groups which either choose not to prepare their consolidated accounts in conformity with IAS/IFRS or are not even allowed to do so. Although the Commission might have found inspiration in the decision of the OECD/G20 Inclusive Framework on BEPS to allow the use of whatever generally accepted accounting principles (GAAP) of Member States of the EU to define the taxable base in the Pillars[12], the transplant of this decision merits a second thought. Indeed, this sort of "automatic equivalence" of selected local accounting standards has already drawn severe criticism[13], and rightly so, considering that the little ground offered as a technical basis for this equivalence is determined solely by mere accounting parallelisms[14] which may or may not result in comparability for tax purposes.

Concerning the role to be potentially played by tax rules in the definition of the tax base, the Consultation is even more puzzling. Regarding option 1 (Partial Book-Tax conformity), the consultation refers to a limited list of tax adjustments that would be drawn up of *elements responsible for a significant part of the corporate tax base (around 90%)*. This statement remains a riddle. Is it possible to identify elements responsible for 90% of the corporate tax base? There being no single item of the tax base accounting on its own for 90 percent of the taxable base, the statement becomes meaningless. However, even if it were possible to identify these items, the statement contained in the Consultation would not help to identify or anticipate the "limited tax adjustments" to be applied to the profit or loss reported according to the selected accounting standard. Logically enough, in an (ideal) Book-Tax Conformity Model, these adjustments should be based on something other than their materiality. Indeed, once accounting profits have been selected as a starting point for the computation of taxable business profits, the adjustments to be applied should ideally be based either on particular features of accounting rules that are hard to accept for tax law or on the intent by the (tax) legislator to promote or discourage particular behaviours. Summarizing these reflections with the motto proposed years ago by an eminent German scholar: *so much Book-Tax Conformity as requested by the purpose of Tax Accounting*[15]. In this context, the adjustments to accounting profits do not need to be "material" or "limited," as suggested by the Consultation in a mere bandwagon towards the OECD/G20 Pillar Two Model Rules. If the author may use the truism, the adjustments will be those which shall be in accordance with the selected accounting standard and the corresponding tax law requirements. Trying to figure out what the "limited tax adjustments" will be under option 1 is a mere practice of witchcraft in a context in which the Commission has not even decided on the accounting standard that will serve as a starting point for the taxable base. Option 2 (Comprehensive set of tax rules) is not very clear either. Since the 2011 and 2016 C(C)CTB proposals already incorporated "autonomous rules for computing the tax base of companies[16]", it might be thought that the

Commission is potentially seeking, under this option, to leverage the work already done. However, the clear trend in BEFIT documents to deny or at least to sideline the CC(C)TB proposals[17] and the availability of alternatives to the comprehensive set of tax rules of the proposals do not serve to rule out the possibility that the Commission may be considering other possibilities.

On balance, the options offered by the consultation recall those contests of the pre-digital era in which the suffering entrants were given a choice between a gift in cash or kind and a mysterious black box with unknown content; with the sole difference that the consultation calls the stakeholders to choose between two black boxes with unknown content!

2) Concerning the computation of taxable business profits, the consultation and the BEFIT project, in general, raise even more serious policy doubts. Both the BEFIT Communication and the consultation show an unveiled preference for a limited book-tax conformity model. Albeit not categorically, this preference becomes evident in the proposal. On the one hand, in the insistent appeals to build BEFIT on the Inclusive Framework two-pillar approach of the Organisation for Economic Co-operation and Development (OECD)[18], which, as is widely known, relies on a system of partial Book-Tax Conformity where the Consolidated Financial Statements of Groups in scope, prepared under Acceptable Financial Accounting Standards (first and foremost IAS/IFRS), form the starting point for the tax base determination corrected by a (limited) number of book-to-tax adjustments[19]. On the other hand, in a very partial approach, when describing the two alternatives outlined above. Indeed, the Consultation suggests that in order to meet the BEFIT aims simply and effectively, the taxable base should be determined through a limited book-tax conformity model (option 1)[20]; in the same vein, under a comprehensive set of tax rules (option 2), Member States would have to run two comprehensive sets of corporate tax rules in parallel, i.e. BEFIT and their national rules[21]. It is striking that an allegedly neutral question seeks to predetermine the answers so intensively, but more so considering that a book-tax conformity model marks a major shift in the computation of taxable business profits, at least in comparison to the rules designed at the time under the C(C)CTB proposals[22]. The Commission is likely to be denying C(C)CTB, looking for a fresh start or, as it has explicitly acknowledged, reflecting the significant changes in the economy and the international framework since March 2011, when the CCCTB was originally proposed[23]. However, if we were to be objective, concerning the models for the computation of taxable business profits, all that has changed since 2011 is the emergence of bodies of rules (the Pillars) betting on partial book-tax conformity based on (essentially) IAS/IFRS. It is humanly understandable for the Commission to leverage the work done by the OECD, particularly concerning such a complex problem, just as it is for the OECD to resort to IAS/IFRS like a gift from heaven when designing the Pillars. It is also clear to see that once the EU has decided to incorporate GloBE *en bloc* through a Directive, its credibility would be irremediably compromised if it were to impose an additional brand-new comprehensive set of corporate tax rules for BEFIT purposes[24]. Nevertheless, not everything humanly understandable proves to be technically well-founded. Unfortunately, the rushed preferences of BEFIT documents appear to have lost sight of more than a hundred years of discussions on the link between accounting and tax. Without aiming to settle a centenarian controversy in only a handful of paragraphs, here is a small token of what is missing in the available information on BEFIT.

By implicitly favouring a partial book-tax conformity model, the Consultation seems to slide towards one of the most universally recognized advantages of this model: tax simplification in reducing compliance costs for taxpayers. Nevertheless, it does so oddly when stating that, in case of choosing the other alternative (i.e., a comprehensive set of tax rules under option 2), Member States would have to run two comprehensive sets of corporate tax rules in parallel. Will this not

also be the case if the scope of BEFIT is set at EUR 750 million of consolidated global revenues? Is this not already the case regarding the GloBE Directive? The Consultation would be right to fear strong resistance and disrepute if the Council adopts a rulebook for GloBE purposes based on accounting standards and a limited number of tax adjustments and, in just a few short months, the Commission proposes to identify the taxable base for BEFIT purposes with a (radically different) comprehensive set of tax rules. However, this is but a logical consequence of being a "first mover" and performing the "first movement" using a legal device so rigid as a Directive. Concerning the taxable base of BEFIT the project is somehow slaved by the decisions made in the GloBE Directive; and this is, in fact, the case even if a BEFIT based on partial book (IAS/IFRS)-tax conformity may not be the best choice.

Even if not accurately conveyed in the Consultation, a book-tax conformity model promotes indeed simplification, reducing compliance costs for taxpayers and saving efforts for the legislator. Put in very rudimentary terms, it is always easier to submit and design a single set of accounts for commercial and tax purposes than two complete and independent ones to meet corporate and regulatory obligations on the one hand and tax obligations on the other. However, even this truism allows nuances. Apart from anything else, a well-founded criticism of the alleged simplification effects that Book-Tax Conformity conveys for the taxpayer is gaining ground. Indeed, in countries with partial Book-Tax Conformity, there is a great deal of litigation, the fundamental point of contention being whether a particular aspect of qualification, valuation, or timing of revenue or expense should be decided following the accounting rule (to which the system refers as a general rule) or the tax rule (which imposes a deviation in respect of a particular issue)[25]. These difficulties would be all the more severe under BEFIT – as they threaten to be under GloBE – because, whatever the (limited) tax adjustments may finally be, they shall necessarily differ, in most cases, from those already existing in those Member States counting currently on Book-Tax Conformity Models.

However, even if this is not reflected in the Consultation, there are significant advantages (and disadvantages) of using the financial statements (and eventually those prepared under IAS/IFRS) as a starting point for calculating taxable business profits under BEFIT. We briefly refer below to some of these pros and cons:

1. The harshest critics of Book-Tax Conformity Models usually place reliance on the different purposes of financial statements and (income) tax when arguing the merits of exhaustive systems of tax rules defining the taxable base[26]. It is true that the mere aim of raising revenue commonly attributed to tax law does not say a great deal about the optimal legal design of taxable business profits (unless we wrongly identify the optimal with the highest profit). But it is also true that the excesses of conservative accounting rules essentially intended for creditors' protection through capital maintenance do not fit into basic (constitutional) Tax Law requirements, particularly those derived from the ability to pay principle. Many jurisdictions already counting on partial book-tax conformity models have tackled the most severe aspects of this problem by either amending their accounting rules to hinder or seriously hamper the creation of "hidden reserves" or through the introduction of new tax adjustments to block the tax effects of this "arbitrary prudence." If, as expected, the Commission entertains the idea of a partial book-tax conformity model based on consolidated financial statements (probably using IAS/IFRS), the experiences described above will be of little help. First, because IAS/IFRS have as a primary purpose to provide financial information to existing and potential investors, lenders and other creditors[27], with prudence playing a secondary role and never allowing the creation of "hidden reserves.[28]" And second, because in the absence of a description of the (limited) tax

adjustments to be applied under BEFIT, it is impossible to make any accurate determination on whether the system properly reacts to the particular features of accounting not matching with Tax Law requirements. If the Commission wants to take this complex issue seriously, it will do well to analyse whether the symmetric approach to assets/income and liabilities/expenses characterizing IAS/IFRS[29] (in opposition to the asymmetric approach of traditional conservative accounting) is appropriate for the calculation of taxable business profits. At first glance, accounting symmetry seems very well aligned with the classic postulates of Tax Law[30]; however, being evil in the details, a careful analysis of all the relevant rules under IAS/IFRS would be required. Under the present (political) circumstances, this comprehensive analysis could prove excessive[31]. Nevertheless, it would make sense for the Commission to analyze some relevant problematic rules of IAS/IFRS and the corresponding tax adjustments to be eventually applied under BEFIT, particularly those already framed under the GloBE Directive, which will be perhaps incorporated into BEFIT, given the insistence by the Commission to use the rules developed for pillars one and two as a source of inspiration for the design of the BEFIT. To name only one spectacular example: it would be desirable for the Commission to adopt a stance on whether the option granted under article 16.6 of the GloBE Directive[32] to determine, on the basis of the realisation principle, gains and losses in respect of assets and liabilities that are subject to fair value or impairment accounting wards off all the legal concerns associated to taxation of non-realised income[33].

2. In the aftermath of some corporate scandals in the early 2000s, a new argument was added to the list of alleged advantages of book-tax conformity. A strong link between financial statements and corporate tax profits would deter executives from overstating profits resulting in high taxes, whereas the desire to report significant profits to shareholders and investors will keep profit minimization strategies at bay. Therefore, so the argument goes, book-tax conformity would entail a sort of self-enforcing mechanism providing cross-benefits for both financial reporting and tax[34]. The argument holds the seduction power inherent to simplicity; however, reality might sometimes ruin the most beautiful academic constructions. Some failures of this "elegant intuition" come hand in hand with another demerit frequently attributed to Book-Tax Conformity: the strong ties between accounting and tax make it difficult for financial statements to reach their purpose, whatever these may be. In the context of book-tax conformity, tax considerations will irretrievably contaminate the preparation of commercial accounts. This pollution is not essentially originating from the pressure of (tax) lobbyists on accounting standard setters or from the fact that certain jurisdictions make the acceptance of tax benefits conditional upon their record in commercial accounts[35]. The primary origin of the problem is that, for various reasons, book-tax conformity affects the information available to investors by mainly promoting conservatism in the commercial accounts[36]. Being this cross-contamination very troubling in the context of Book-Tax conformity models based on traditional individual accounts, it will be far more where, like for BEFIT, the computation of taxable business profits will allegedly be built on the Consolidated Financial Statements of Groups in scope, prepared under Acceptable Financial Accounting Standards (first and foremost IAS/IFRS). The discretion granted to the preparers by the accounting rules is usually at the origin of the profit-minimizing manoeuvres contaminating commercial accounts. In that regard, IAS/IFRS, even if counting on less explicit options, are riddled with predictions, margins of discretion, and, more in general, undetermined legal concepts greatly facilitating those manoeuvres [37]. On the other hand, it is evident that the degradation of the financial information contained in financial statements essentially aimed -like consolidated accounts under IAS/IFRS- precisely at providing information to investors, lenders, and creditors is all the more severe as compared with that experienced by (annual) accounts aimed at calculating distributable profits and protecting creditors. All this

brings us back to the alleged corporate governance gain deriving from book-tax conformity. The contamination of (consolidated) accounts will cost them to lose the trust of information addresses regarding their ability to measure performance, which, in its turn, will give preparers free rein to further curtail profits with an eye on corporate tax[38]. Therefore, what was presented as a "book-tax trade-off" is at risk of becoming a vicious circle in which book-tax conformity generates contamination of commercial accounts, provoking new conservatism excesses, eventually feeding, in its turn, the cycle again.

Many may consider this brief piece a plea (in the context of BEFIT) for radical separation of financial statements and taxable business profits. It is not. It is just a call for convenience – *IAS/IFRS are a (tax) gift fallen from the sky* – and determinism – *the decisions made in the GloBE Directive remain untouchable* – not to become the only engines of European tax harmonization. To finish this barren piece with a bit of poetry. In the book-tax conformity debate, something similar happens to what is described in the wonderful verse (wrongly) attributed to Mario Benedetti: *Once we had all the answers, they went on to change all the questions*. The stakeholders in BEFIT and, in general, all European citizens deserve to know all these new questions. In the end, it will fall to them to suffer (or enjoy) the conventional, convenient, and determinist answers offered so far by the Commission.

[1] EUROPEAN Commission, COMMUNICATION FROM THE COMMISSON TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Business Taxation for the 21st Century, COM(2021) 251 final, (BEFIT initiative) pp. 11-13.

[2] Which it aims to replace (BEFIT initiative, *supra* n. 1 p. 12).

[3] BEFIT initiative, *supra* n. 1 pp. 11-12.

[4] https://taxation-customs.ec.europa.eu/news/commission-launches-public-consultation-befit-new-framework-eu-corporate-taxation-2022-10-17_en (last accessed 11 December 2022).

[5] EUROPEAN Commission, CALL FOR EVIDENCE FOR AN IMPACT ASSESMENT, Ref. Ares(2022)7086603 – 13/10/2022 (The Consultation hereinafter).

[6] The Consultation, *supra* n. 5, at 5.

[7] Wolfgang Schön, *The David R. Tillinghast Lecture The Odd Couple: A Common Future for Financial and Tax Accounting?* 58 Tax Law Review, 111, 112 (2005).

[8] DIRECTIVE 2013/34/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.[9] Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards. Official Journal L 243, 11/09/2002 P. 0001 – 0004.

[10] Article 5 of Regulation (EC) No 1606/2002 allows Member States to require or permit the use

of IAS/IFRS to prepare annual and consolidated accounts of any companies or groups. The exercise of these options in the different Member States has been uneven, although most have opted to allow the use of IAS/IFRS for the preparation of consolidated financial statements of unlisted undertakings (see https://www.efrag.org/Assets/Download?assetUrl=%2Fsites%2Fwebpublishing%2FMeeting%20Documents%2F1907221354563005%2F08-02%20-IAS%20regulation%20-%20use%20of%20options%20overview%20-%20TEG%2020-05-06.pdf&AspxAutoDetectCookieSupport=1 (last accessed January 16th 2023).

[11] Which, according to the consultation, may also include groups with consolidated global revenues below EUR 750 million (The Consultation, p. 4).

[12] OECD/G20 Base Erosion and Profit Shifting Project, *Progress Report on Amount A of Pillar One*. Paris: OECD, 2022, Title 7.7 (Progress Report Amount A from now on) and OECD Secretariat, *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rulles (Pillar Two).* Paris: OECD, 2021, Article 10.1.1 (GloBE Model Rules from now on).

[13] Eva Eberhartinger & Georg Winkler, *Pillar Two and the Accounting Standards,* 51 Intertax 2, 134, 136 (2023).

[14] According to the Blueprints, such equivalence can be inferred from the International Accounting Standards Board's statements – sometimes expressly stating the closeness between local accounting principles in certain jurisdictions and IFRS (OECD, *Report on Pillar Two Blueprint.* Paris: OECD Publishing, 2020, par. 170 [[hereinafter "Pillar Two Blueprint"]) and from securities regulators in Inclusive Framework jurisdictions authorizing foreign issuers of securities to use accounting principles different from (but equivalent to) those that local issuers are required to use (Pillar Two Blueprint, par. 171).

[15] Joachim Hennrichs, *Der steuerrechtliche sog. Ma?geblichkeitsgrundsatz gem. § 5 EStG -Stand und Perspektive-,* Steuer und Wirtschaft 2, 138, 143 (1999).

[16] Proposal for a COUNCIL DIRECTIVE on a Common Consolidated Corporate Tax Base (CCCTB) Brussels, 16.3.2011 COM(2011) 121 final 2011/0058 (CNS), articles 9 to 43 and Proposal for a COUNCIL DIRECTIVE on a Common Corporate Tax Base Strasbourg, 25.10.2016 COM(2016) 685 final 2016/0337 (CNS), articles 6 to 42.

[17] The BEFIT initiative only mentions the C(C)CTB proposals to underline the significant changes in the economy and the international framework since March 2011 (BEFIT initiative, *supra* n. 1 p. 13) and announce that the new initiative will replace the pending proposals for a Common Consolidated Corporate Tax Base, which will be withdrawn (BEFIT initiative, *supra* n. 1 p. 12).

[18] BEFIT initiative, *supra* n. 1 pp. 12; 13. The Consultation, *supra* n. 5, p. 1.

[19] OECD, *Progress Report on Amount A of Pillar One.* Paris: OECD Publishing, 2022 (Progress Report Amount A), article 5. OECD, *Tax Challenges Arising from Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two).* Paris: OECD Publishing 2021 (Model Rules GloBE), article 3. COUNCIL DIRECTIVE (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic

groups in the Union, L 328/1 (GloBE Directive), articles 15-16.

[20] The Consultation, *supra* n. 5, p. 5.

[21] *Ibid.*

[22] The Draft Directives of 2011 and 2016 designed a closed and comprehensive system of purely tax rules for the computation of the proposed common base without any reference to local or international accounting rules.

[23] BEFIT initiative, *supra* n. 1, p. 13. The Consultation, *supra* n. 5, p. 1.

[24] In fact, almost all stakeholders providing feedback to the consultation have warmly welcome the (implicit) choice for a partial book-tax conformity based on IAS/IFRS (see this feedback in https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13463-Business-in-Europe-Framework-for-Income-Taxation-BEFIT-/feedback_en?p_id=31544996 last accessed March 2nd 2023).

[25] Prof. Freedman has been particularly critical of that phenomenon: Judith Freedman, *Financial and Tax Accounting: Transparency and "Truth",* in *Tax and Corporate Governance* 83-89 (Wolfgang Schön ed., Springer 2008). Judith Freedman, Alligning *Taxable Profits and Accounting Profits: Accounting standards, legislators and judges*. 2(1) eJournal of Tax Research, at III-IV (2004).

[26] For an up-to-date view of these critics: Heinrich, Weber-Grellet, "*§ 5. Gewinn bei Kaufleuten",* in *Einkommensteuergesetz Kommentar*. 41 Auflage (Ludwig Schmidt begr., hrsg. Heinrich, Weber-Grellet, C.H. Beck 2022), § 5 Rz 1-5.

[27] IASB, Conceptual Framework for Financial Reporting (Conceptual Framework), par. 1.2.

[28] Conceptual Framework, par. 2.16.

[29] Conceptual Framework, par. 2.17.

[30] Wolfgang Schön, *Eine Zukunft für das Ma?geblichkeitsprinzip,* in *Steuerliche Ma?geblichkeit in Deutschland und Europa* p. 12 (W. Schön ed, Verlag Dr Otto Schmidt, 2005). Although this statement is substantially nuanced in subsequent passages of this essay (pp. 45-46; 48 and 52-54).

[31] Besides this analysis has already been carried out. Exhaustive, though outdated: Norbert Herzig, *IAS/IFRS und steuerliche Gewinnermittlung. Eigenständige Steuerbilanz und modifizierte Überschussrechnung – Gutachten für das Bundesfinanzministerium,* pp. 3-333 (IDW Verlag, 2004).

[32] Also article 3.2.5 of the GloBE Model Rules.

[33] Moderately positive on this option: Eberhartinger & Winkler, *supra* n. 13, at 148. Even if the purpose of the option seems laudable, the author believes many of its features need further legal analysis, such as the very existence of an option to solve the problem, the inclusion of impairments under the option, or the possibility of limiting the election to tangible assets.

[34] A good critical review of the literature supporting this alleged advantage in: Michelle Hanlon & Terry Shevlin, *Book-Tax Conformity for Corporate Income: An Introduction to the Issues,* 19 Tax Policy and the Economy, 101-134 (2005).

[35] This phenomenon -frequently labelled reversed book-tax conformity – may also occur in a context of strict separation of financial statements and taxable business profits and, in any event, is in full retreat worldwide.

[36] There is abundant theoretical and experimental evidence for this phenomenon on both sides of the Ocean: Schön, *supra* n. 30, at 57. Michelle Hanlon, Stacie Kelley Laplante & Terry Shevlin, *Evidence for the Possible Information Loss of Conforming Book Income and Taxable Income,* 48 Journal of Law and Economics 2, 407-442 (2005).

[37] In this regard, making an excellent comparison between German explicit options and IAS/IFRS "*hidden options*": Hanno Kirsch, *Gestaltungspotenzial durch verdeckte Bilanzierungswahlrechte nach IAS/IFRS,* 58 Betriebs-Berater 21, p. 1111-1116.

[38] Hanlon & Shevlin, *supra* n. 34, at 104.

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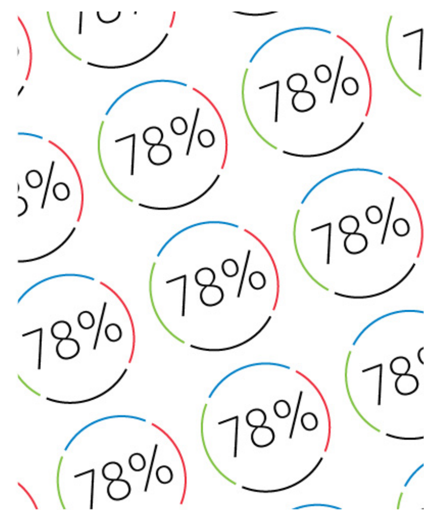

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