ZURICH
Brandschenkestrasse 24
CH-8027 Zurich

GENEVA
Route de Chêne 30
CH-1211 Geneva 6

LAUSANNE
Avenue de Rhodanie 40C
CH-1007 Lausanne

OECD Pillar II: Canton of Zug publishes proposal for a cantonal law on economic promotion

The Canton of Zug as one of the first Swiss Cantons is set to introduce a new legislative framework aimed at promoting economic development in response to the OECD/G20 project on a global minimum tax. The proposed law on economic promotion (Gesetz über Standortentwicklung) ("Draft LEP") seeks to leverage the additional tax revenues generated by the global minimum tax to sustain Zug's attractiveness as a business location. This newsflash provides an overview of the proposed law, highlighting its key aspects, the types of activities to be promoted, and the calculation of the benefits.

Publiziert: 22 Mai 2024

Autoren	Pascal Hinny Lukas Aebi	Partner, Head of Tax Associate
EXPERTISE	Tax	

Introduction

The Swiss Federal Council introduced per January 1, 2024 a domestic minimum top-up tax on the basis of the Global Anti-Base Erosion (GloBE) rules, that shall ensure that constituent entities of in-scope multinational enterprises (MNEs) are subject to a minimum effective tax rate of 15%.

The statutory corporate income tax rate on profit before taxes in the Canton of Zug which is one of the Swiss Cantons most affected by the minimum taxation is currently approx. 12%. Constituent entities of in-scope MNEs that are liable to tax in the Canton of Zug will thus likely see their corporate income tax liabilities increase as a consequence of the application of the GloBE rules (despite tax base differences between the domestic minimum top-up tax and the corporate income tax payable under existing Swiss domestic tax law).

To remain an attractive business location both nationally and internationally after the introduction of the GloBE rules, the Executive Council of the Canton of Zug intends to use the additional revenues from the OECD minimum tax – which it estimates to amount to approx. CHF 200m per annum in the years 2026-2028 – for appropriate location measures. Measures are planned in the three areas: (i) social measures, (ii) infrastructure and innovative projects and (iii) grants for companies.

Whereas social measures and infrastructure/innovative projects will be subject of different legislative proposals to come, the now presented Draft LEP focusses on grants for companies. The Executive Council of the Canton of Zug proposes that the Canton spends in the years 2026 – 2028 up to CHF 150m per year on grants to companies.

Who can benefit from the grants?

Eligible for grants are businesses that are subject to income or corporate income tax in the Canton of Zug. The eligibility is not restricted to constituent entities in scope of the GloBE rules.

In which form will the grants be made?

In its dispatch to the Draft LEP, the Executive Council makes it clear that in its view direct payments are more advantageous than tax credits both for taxpayers concerned and the Canton of Zug and that grants will thus be made primarily in form of direct payments. In order to react to future international developments, the Draft LEP also allows benefits to be granted to qualifying taxpayers in the form of tax credits.

In any case, the grants will be designed in compliance with Swiss constitutional law, EU subsidies regulation (including EU FSR), WTO agreements and the GloBE rules.

What activities shall benefit?

1. Sustainability grants

Sustainability grants of CHF 30 per reduced ton of CO2-equivalents are granted to businesses that:

- reduce their emissions intensity of the purchased goods and services;
- save as a result of this reduction in emissions intensity, at least 50,000 tons of CO2-equivalents (CO2eq) ; and
- do not use offsets or similar instruments for this purpose.

Taxpayers that seek to benefit from sustainability grants will be required to show the reduction of emissions intensity on the basis on industry-standard performance indicators within the framework of non-financial reporting (art. 964a – 964 Swiss Code of Obligations), which have been audited by an audit firm with recognized competence in environmental issues.

2. Innovation grants

The Draft LEP provides for both input- and output-based grants.

A taxpayer may benefit from input-based grants for:

- fundamental research;
- applied industrial research; and
- experimental development.

The benefit granted in connection with input-based grants amounts to 10% of personnel expenses (+ a 35% uplift) that a taxpayer incurs for such activities. Note that expenses benefitting from the R&D super deduction (§ 60a Zug Tax Act) are not taken into account to determine the grant amount.

Output-based grants are available for income from:

- patents;
- copyright-protected software, computer programs and algorithms; and
- marketing-related intangible assets, such as trademarks, brand rights, and image rights.

The benefit granted in connection with output-based grants amounts to up to 5% of the pre-tax income realized from income from qualifying intellectual property (as described above). It is worth noting that the output-based grants apply to a broader definition than the existing patent box rules permitting also income from software and marketing-related intellectual property rights (e.g. trademarks) to benefit.

3. Minimum and maximum grant amount

Sustainability grants and innovation grants can be combined. It is thus possible for a taxpayer to benefit both from sustainability grants and innovation grants in the same year.

The minimum grant amount is CHF 7,500 per year.

The maximum grant amount is 1.5% of the applicant's average taxable income of the last three years, after a permanent establishment allocation, offsetting against loss carry-forwards and credits for foreign source taxes and without taking into account net participation income.

Furthermore, the absolute annual amount of grants available in total is CHF 150m for the years 2026 – 2028. From 2029 onwards, the Draft LEP provides that the absolute amount of grants will be determined annually by the Cantonal Parliament upon proposal of the Executive Council, whereby it will target to use half of the additional net tax revenue annually raised from the OECD minimum tax for grants to business. In case the total amount of grants provided by the Canton of Zug exceeds the amount of financial resources available, all grants are reduced proportionally.

What does a taxpayer have to do in order to benefit?

A taxpayer wishing to obtain a grant will need to file a request through an electronic platform provided by the Canton of Zug. The Department of Finance of the Canton of Zug reviews the applications and issues the respective decisions. In case a taxpayer does not agree with the decision, it can file an objection and subsequently file an appeal against the decision.

How do the proposed grants interact with the GloBE rules?

For Swiss domestic tax purposes, direct payments typically qualify as taxable income.

Under the GlobE rules, the treatment of the grants will depend on their accounting treatment under the applicable accounting standard a respective taxpayer uses to determine its GloBE Income. Typically, it is expected that grants will be treated as income for purposes of the GloBE rules and should not be treated as a reduction of covered taxes.

What are the next steps?

The Cantonal Parliament of Zug will deliberate over the Draft LEP in autumn 2024 and spring 2025. If the deliberations proceed according to plan and barring a popular referendum, the LEP will enter into force on January 1, 2026.

The Canton of Zug is one of the first Swiss cantons reacting to the Swiss introduction of a domestic minimum top-up tax on the basis of the GloBE-rules with the proposal for introduction of economic promotion legislation. More cantons are likely to follow.

Taxpayers resident in Switzerland or considering relocation to Switzerland should closely monitor these developments. In particular also companies developing, holding and exploiting IP rights or strive to make their business more sustainable may benefit from such developments. It is though expected that the measures will be broader and also will not be limited to companies in scope of the GloBE rules.

Please do not hesitate to contact us if you have any further questions on this subject.

Pascal Hinny	Partner, Head of Tax, Zurich pascal.hinny@lenzstaehelin.com Tel: +41 58 450 80 00
Heini Rüdisühli	Deputy Managing Partner, Head of Private Clients, Zurich heini.ruedisuehli@lenzstaehelin.com Tel: +41 58 450 80 00
Stephan Brandner	Counsel, Zurich stephan.brandner@lenzstaehelin.com Tel: +41 58 450 80 00
Lukas Aebi	Associate, Zurich lukas.aebi@lenzstaehelin.com Tel: +41 58 450 80 00