Swiss voters approve the introduction of Pillar II

On Sunday June 18, 2023, the Swiss public voted in favour of the constitutional basis allowing for the Swiss Federal Council to introduce a transitional legislation implementing the 15% minimal statutory tax rate foreseen by OECD's Pillar II as from January 1, 2024.

Published: 19 June 2023
Updated: 24 July 2023

AUTHORS	Jean-Blaise Eckert	Partner, Head of Tax
	Daniel Schafer	Partner
	Frédéric Neukomm	Partner
	Floran Ponce	Partner
	Pascal Hinny	Partner, Head of Tax
	Heini Rüdisühli	Deputy Managing Partner, Head of Private Clients
	Stephan Brandner	Counsel
	Lukas Aebi	Associate
EXPERTISE	Tax	

General context

The OECD tax rules subjecting large multinational enterprises ("MNEs") to a minimum tax rate of 15% (the "GloBE Rules") will become a new international tax standard as from 2024. It has been politically agreed by over 130 jurisdictions, including Switzerland.

As a result, the profits of entities which are part of an MNE achieving consolidated revenues of over EUR 750 million in a given year are to be subject to an effective tax rate of at least 15%.

In case of undertaxed income in foreign jurisdictions a top-up tax would be levied by another jurisdiction, either at the parent company level (through the Income Inclusion Rule) or at the subsidiary level (through the Undertaxed Profits Rule).

Introduction of the GloBE Rules in Switzerland

Introducing the OECD minimum tax rate required a change to the Swiss Federal Constitution, which had to be put to a popular vote. This change has been approved on June 18, 2023.

As a result, the Swiss voters have now validated that the GloBE Rules will be applied to qualifying Swiss in-scope entities. This will avoid for these entities to be subject to foreign top-up taxes.

Therefore, from January 1, 2024 onwards, the aggregate profits of companies doing business in Switzerland and which are part of an in-scope MNE will be subject to an aggregate tax burden of at least 15%, as determine based on the GloBE Rules. This may in many cases increase the corporate income tax burden of the entities concerned, since the tax rate in many cantons is currently set below 15%.

Nothing will change for companies which are not part of an in-scope MNE as defined above.

The Swiss Federal Counsel will thus enact an ordinance detailing the application modalities of the GloBE Rules in Switzerland in the coming months. This ordinance will be replaced by a law to be approved by the Swiss Parliament in the upcoming years.

Compensatory measures

The canton will be in charge of using their fiscal policy leeway to decide on local measures to ensure Switzerland's continued attractiveness as a business location.

Most cantons have however not yet announced which measures they intend to put in place in this context. It is however expected for such announcements to occur in the coming months.

Practical implications

All Swiss based entities which are part of an MNE will need to assess whether they are subject to Pillar II.

In fact, the GloBE Rules will increase the compliance and reporting requirements applicable to qualifying entities.

It will namely be necessary for in-scope entities to (i) define the accounting standard for the application of the GloBE Rules, (ii) determine the relevant data points necessary to apply the GloBE Rules and (iii) update their IT systems in order to be in a position to make the Pillar II filings.

Please do not hesitate to contact us in case of any questions.

CONTACTS		
	Jean-Blaise Eckert	Partner, Head of Tax, Geneva jean-blaise.eckert@lenzstaehelin.com Tel: +41 58 450 70 00
	Daniel Schafer	Partner, Geneva daniel.schafer@lenzstaehelin.com Tel: +41 58 450 70 00
	Frédéric Neukomm	Partner, Geneva frederic.neukomm@lenzstaehelin.com Tel: +41 58 450 70 00
	Floran Ponce	Partner, Geneva floran.ponce@lenzstaehelin.com Tel: +41 58 450 70 00
	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