

# Switzerland introduces OECD Pillar II minimum taxation as per January 1, 2024

In June 2023, the Swiss public voted in favor 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. The Swiss Federal Council enacted the new legislation as per January 1, 2024 introducing a domestic minimum top-up tax (QDMTT) only; the income inclusion rule (IIR) and the undertaxed profits rule (UTPR) are currently not introduced.

Published: 22 December 2023

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## General context

The OECD tax rules subjecting large multinational enterprises (the "**MNE**") 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 (the "**IIR**")) or at

the subsidiary level (through the Undertaxed Profits Rule (the "**UTPR**")).

## Introduction of the GloBE Rules in Switzerland

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

As a result, the Swiss voters 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. The Federal Council was thus mandated to implement the OECD/G20 minimum tax rate temporarily by means of an ordinance.

The Federal Council now enacted on December 22, 2023 an ordinance detailing the application modalities of the GloBE Rules in Switzerland introducing a Swiss national qualifying domestic minimum top-up tax (the "**QDMTT**") only. Other measures of the GloBE Rules, in particular the so-called IIR and the UTPR are currently not introduced and further international developments will be observed.

In reaching its decision, the Federal Council took into account the fact that the vast majority of EU member states and other Western industrialized countries, such as the UK and South Korea, have chosen to implement the regulations on the same date.

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 determined based on the GloBE Rules. This may in some 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.

## 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 and whose business year begins on or after January 1, 2024 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.

Last but not least, the delayed entry into force of IIR and UTPR needs to be monitored.

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

**Legal Note:** The information contained in this Smart Insight newsletter is of general nature and does not constitute legal advice.

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