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Implementation of BEPS 2.0 and 15% Minimum Tax in Switzerland

1. What is BEPS 2.0?

The existing international tax rules have been challenged by the emergence of digital economy. Digitalisation and globalisation of businesses have created opportunities for base erosion and profit shifting (BEPS). To address these challenges, the OECD and G20 countries have developed an Action Plan on fighting BEPS and ensuring that profits are taxed where economic activities take place and value is created. The G20/OECD framework for reforming the international tax law has become known as BEPS 2.0.

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One of the main components of BEPS 2.0 are the so-called global anti-base erosion rules (GloBE rules) also referred to as global minimum tax rules. Their principal aim is to ensure that large multi-national enterprises (MNE) pay tax at a minimum effective rate of at **least 15%** on profits in **every jurisdiction** where they operate. In countries where an MNE is taxed below this minimum rate, a **top-up tax** would be imposed.

The effective tax rate is calculated for each jurisdiction by dividing the taxes paid by the group entities in this jurisdiction by their net income calculated based on the GloBE rules. If the effective rate in a particular jurisdiction is below 15%, the MNE would need to pay a top-up tax to bring the effective rate in this jurisdiction to the required minimum. The calculations will be made by the ultimate parent company of the MNE unless the group appoints another entity responsible for this. The top-up tax may be due either locally in the country where the lower-tax subsidiaries operate or at the level of the ultimate parent company.

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2. Which countries will apply BEPS 2.0?

To date, 137 countries have already signed up to BEPS 2.0. This number includes all developed countries and popular financial centres and holding locations, including offshore jurisdictions. They are not required to adopt the rules, but if they choose to do so, they will have to implement and administer the rules in a way that is consistent with the agreed common approach. In practice, the rules work in such a way that MNE with subsidiaries operating in jurisdictions which do not apply BEPS 2.0 will still be effectively subject to tax at the agreed 15% minimum rate.

3. How will these rules be implemented in Switzerland?

The proposed GloBE rules in Switzerland would have the following mechanisms:

1. Swiss cantons where the **ultimate parent entity** of a Swiss-headquartered group is tax resident would assess and collect an additional federal tax on profits of **foreign subsidiaries** of the group, if those are taxed at an effective rate below 15%; and
2. Swiss cantons would assess and collect an additional federal tax on **Swiss profits** of the **group entities**, if such profits are taxed at an effective rate below 15%. This would prevent additional taxation of these profits abroad.

4. Who may be affected by global minimum tax rules?

Generally, the GloBE rules apply only if all of the following conditions are met:

- 1) There is a group of entities;
- 2) The group is multi-national; and
- 3) The consolidated revenue of the group is EUR 750 million or more per annum.



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The definition of “entity” covers both legal persons and legal arrangements such as partnerships and trusts. A group exists if there are at least two entities related through ownership or control. Multi-national means that a group should have at least one foreign subsidiary or branch. In Switzerland, the minimum tax rules may affect certain MNEs with headquarters in Switzerland and Swiss subsidiaries and branches of foreign groups. How much each group will be affected, depends on several factors, including group structure and financial results in the last years. Small- and medium companies and groups with only national operations will not be affected. Below we briefly consider how certain types of entities in Switzerland may be affected.

5. Holding companies

Holding companies of multinational groups subject to the GloBE rules may benefit from the special provisions for excluded dividends and excluded capital gains. Such excluded dividends and gains are not taken into account in calculations of the taxable base for the minimum tax. Dividends are excluded if they are received from shareholdings of 10% or more held for an interrupted period of at least 12 months. Gains are excluded if they result from disposal of shareholdings of 10% or more.

Because the GloBE rules for exclusion of dividends and gains may be different from the Swiss domestic participation exemption rules, there could be additional tax based on the GloBE rules. For example, in Switzerland dividends qualify for participation exemption if they are received from participations of minimum 10% and/or from participations with a market value of minimum CHF 1 million, and there is no minimum holding period. Therefore, there may be a top-up tax of 15% on dividends exempt under the Swiss tax rules when they are received on participations of less than 10% or held for less than 12 months. On the other hand, there could also be a favourable outcome because the GloBE rules exemption applies to gross dividends and Swiss participation exemption applies to the net dividends after the deduction of financing and administrative costs.

6. Investment funds

Investment funds and real estate investment vehicles meeting certain conditions are excluded from the minimum tax rules in order to protect their tax neutral status. However, the revenues earned by such excluded investment funds counts towards the aggregate revenue of the group. To be excluded, an investment fund must be an ultimate parent company and meet, inter alia, the following conditions:

- ✓ to pool assets from a number of investors some of whom are not connected;
- ✓ invest based on a defined investment policy;
- ✓ be subject to a regulatory regime in the jurisdiction where it is established or managed;
- ✓ be managed by investment fund management professionals on behalf of the investors.

The exemption also covers asset holding entities held by investment funds (if over 85% is owned by the fund and some additional conditions are met).

7. Family offices

Family investment entities are not likely to benefit from the exemptions for investment funds if they pool assets only from related investors and are not regulated.



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8. When will the new rules come into force in Switzerland?

On 11 March 2022 the Swiss Federal Council published a draft constitutional amendment and submitted it for public consultation which closed on 20 April 2022. The popular vote is expected to take place in June 2023, and the new rules would come into force on 1 January 2024.

9. What you need to do

Taking into account the extreme technical complexity of the GloBE rules, their global reach and fast implementation (in some countries they will apply already in 2023), it is crucial to start preparing for their application as soon as possible. The following initial steps would help to understand if your business or private wealth structure may be affected by the new rules:

- 1) Review the structure to assess if a consolidated group exists with entities in more than one country.
- 2) Calculate the consolidated annual revenue for the past four financial years to determine if the threshold of EUR 750 million is reached in any two of them.
- 3) Check if the jurisdictions where the group entities are located have already implemented the minimum tax rules and other components of BEPS 2.0.

If the above steps indicate that there is a multinational group subject to the minimum tax rules, you will need to prepare to do the following calculations:

- 1) Calculate effective tax rate for entities in each jurisdiction where the group operates;
- 2) Compare the effective tax rate in Step 1 with the 15% minimum rate. If the effective rate is below 15%, the difference is the rate of the top-up tax;
- 3) Calculate the amount of the top-up tax;
- 4) Pay the top-up tax (either domestically or at the level of the ultimate parent).

MNEs affected by the GloBE rules would have rather limited restructuring opportunities, since moving operations to lower-tax jurisdictions would have no or little tax advantage. In certain cases, a de-merger, or a sale of a part of the group may be considered, if it is commercially justified. In other cases, it is recommended that the group should be reviewed carefully to identify any excluded entities that are not subject to the calculations and administrative formalities of the GloBE rules. For entities which may not be excluded from the GloBE rules, one should further analyse if any of the income or gains could be excluded from the GloBE income calculations.

Please feel free to contact us for more information, we are happy to help.