



Tax Department

October 2023

OECD/G20 Project on Taxation of the Digitalized Economy

Current Status

The project on the taxation of the digitalized economy is based on two pillars and is intended to improve the acceptance of international corporate taxation. The work is being carried out by the OECD Secretariat on behalf of the G7 and G20. The administrative representatives of the countries involved are, of course, participating in the development of the new rules. The new tax rules will be formally adopted (currently) by the 143-state "OECD/G20 Inclusive Framework on BEPS" (IF).

On October 7-8, 2021, 136 of (then) 140 IF countries adopted a statement with policy parameters on the two pillars (IF Statement). These were officially endorsed by the G20 Finance Ministers on October 14, 2021. We have reported on the exact parameters in past updates ([link past updates](#)).

Pillar 1 (taxation in the market states)

Pillar 1 provides for the very largest international corporations (100-200 corporations) to pay a higher proportion of their profits in the countries where they sell their products. The focus is particularly on digital groups such as Google, Facebook and Apple, some of which pay hardly any tax on profits in their home countries. However, a large number of traditional industrial companies are also affected, as they already pay high taxes in their home countries and have corporate tax rates of 25 to 30 percent.

In 2023, intensive work was carried out on Pillar 1, so that a completed Pillar 1 implementation package, including a multilateral convention, should be presented to the member states before the end of the year. At present, a number of technical points still need to be clarified for Pillar 1 to be implemented globally at all. However, a critical mass of countries must ratify the multilateral convention. The decisive factor will be whether the USA must ratify the convention. Half of the companies affected by Pillar 1 have their headquarters in the USA. Without US ratification, the planned redistribution from headquarters to market states cannot be implemented. Ratification requires a 2/3 majority in the US Senate. However, there is strong opposition from both Republicans and Democrats. Therefore, experts believe that Pillar 1 will never find a political majority in the USA. If Pillar 1 is not implemented, this is likely to boost the UN's efforts.

Pillar 2 (OECD minimum tax)

Project Pillar 2 requires large companies (with minimum sales of EUR 750 million) to pay at least 15 percent tax on their profits per country in each country where they operate. The determination of profits is not based on the widely diverging tax regulations of the individual countries but on international accounting standards (e.g. IFRS, US GAAP, etc.), which are authoritative for published consolidated financial statements. This approach results in much smaller differences in profit determination from one country to another, thanks to the so-called "true and fair view principle". Additionally,





the new international set of rules, known as the GloBE rules, includes various corrections, such as those related to participations or deferred taxes.

The minimum tax levied in accordance with the international standard for the country's own territory is now referred to as Qualified Domestic Minimum Tax (QDMTT), or in Switzerland, the Swiss Supplementary Tax. If a state does not implement the new minimum taxation rules, the state of the parent company (referred to as the Income Inclusion Rule or IIR) or of the subsidiaries (referred to as the Undertaxed Profits Rule or UTPR) will tax the difference between the effective tax rate (e.g. 13%) and the minimum tax rate (15%) reported by the company for a particular state.

For global implementation of minimum taxation, the IIR and the UTPR must apply universally. If all subsidiaries can be covered by the IIR and all parent companies of a group structure can be covered by the UTPR, it becomes financially disadvantageous for states to refrain from implementing the minimum taxation. Not implementing minimum taxation would, at most, result in the aforementioned tax difference being collected by another state. To minimize the financial damage, a state must at least implement a QDMTT. However, if the IIR and the UTPR only apply to a limited extent, states and companies can selectively limit the territorial scope of the minimum taxation. This approach allows states that do not implement minimum taxation to enhance their attractiveness as a location, and companies can reduce their tax burden.

In December 2021, the Pillar 2 Model Rules were published ([Link Model Rules](#)). Then, in mid-March 2022, the Commentary to the GloBE Model Rules was published ([Link Commentary GloBE Rules](#)). Since then, a significant number of application questions have arisen. As a result, the so-called Implementation Framework regularly issues new detailed technical specifications, such as Administrative Guidance. However, these detailed specifications sometimes introduce adaptations to the commentary, and in some cases, they even contradict the model rules that were published in December 2021. With such constantly changing rules, correct implementation becomes extremely challenging, if not impossible, for the companies involved and for the countries participating.

Various parts of the Administrative Guidance were published in December 2022, February and July 2023. Particularly important were the requirements for the Transitional CbCR Safe Harbour, which aims to somewhat reduce the administrative burden on the companies concerned in the initial years (2024 - 2026). In mid-July 2023, the Implementation Framework published further crucial detailed specifications, including the GloBE Information Return ([GIR](#)) and various Administrative Guidances, along with two new safe harbors, (QDMTT Safe Harbour and Transitional UTPR Safe Harbour). The Transitional UTPR Safe Harbour is of particular significance, having been adopted, in part, due to pressure from the USA. It provides a temporary exception from the scope of application of the UTPR.

However, many specifications crucial for correct implementation are still pending. Optimists hope that the implementation rules will be complete by the end of 2023. Given ongoing disagreements among various states on politically sensitive issues, further delays must be expected.

Minimum Tax Developments in the USA

Not only Project Pillar 1, but also Project Pillar 2, is encountering significant resistance in the USA and is unlikely to be implemented in the foreseeable future. While the Biden Administration continues to influence the rules, the





US Congress vehemently opposes the introduction of the OECD minimum taxation.

Following the publication of the Supplementary Guidance to the OECD Model Rules in February 2023 and the shift to a Republican majority in the U.S. House of Representatives after the midterm elections in the fall of 2022, negative rhetoric against Pillar 2 has intensified in the United States. In particular, concerns about UTPR have become a major point of criticism. Members of the Republican House and Senate have issued several letters and opinion pieces calling for a comprehensive overhaul of the UTPR mechanism and threatening retaliatory action if these changes are not made. In May 2023, all Republicans on the House Tax Committee introduced a bill that would impose additional taxes on individuals and businesses located in countries that apply the UTPR. Republicans in the House of Representatives have also proposed to completely eliminate funding for the OECD due to its involvement in drafting the problematic Pillar 2 rules as part of their fiscal year 2023-2024 government spending bill. It is unlikely that this retaliation bill or the full elimination of OECD funding will pass in this Congress, but it foreshadows what could happen if Republicans win a majority in both chambers of Congress and the presidency in the 2024 U.S. elections. Currently, there are clear tensions with the Democratic administration negotiating in the OECD talks.

In addition to these tensions over the UTPR, the Congressional Joint Committee on Taxation has calculated the impact of Pillar 2 under various scenarios. These calculations predict that if all remaining countries in the Inclusive Framework enacted Pillar 2 rules in 2024, while the U.S. enacted them in 2025 (the most likely time frame for U.S. action), the U.S. would lose nearly \$60 billion in revenue over a 10-year period. The Joint Committee has also made clear that these revenue losses could be more than double if the U.S. does not enact all elements of Pillar 2 or if the U.S. seeks to replace existing elements of its tax code, such as the corporate alternative minimum tax (CAMT) or the base erosion tax (BEAT), with the overlapping Pillar 2 measures. Republicans, and possibly even some Democrats in Congress, have taken this official revenue estimate from the Joint Committee as another sign that the U.S. Treasury negotiated poorly on Pillar 2 at the OECD and, as a result, gave away a significant portion of the U.S. tax base on these measures. This loss of revenue could encourage Congress to seek further changes or delays to Pillar 2 rules.

In the meantime, it can be said that the U.S. can point to initial successes in this regard with the Transitional UTPR Safe Harbour adopted in mid-July.

Minimum tax developments in the EU and other countries

In December 2022, the directive on the implementation of the OECD minimum taxation was adopted at EU level. The 27 EU member states have committed themselves to implementing the OECD minimum taxation at the beginning of 2024. Consultations on the national implementation proposals are currently underway in various EU countries. It is now unclear whether all or at least the vast majority of EU member states will actually implement the minimum taxation by 2024.

Outside Europe, the enthusiasm surrounding the introduction of the minimum tax seems to have largely faded. With the exception of Canada, Japan, Korea and Australia, many countries are largely holding back on announcements or consultation procedures. At any rate, it must currently be assumed that only around a quarter of the members of the Inclusive Framework will implement the minimum tax at the beginning of 2024. These include economic heavyweights such as China and India. There are likely





various reasons for this. One important reason is likely to be the Transitional UTPR Safe Harbour adopted under pressure from the USA. The result of this is that countries introducing the minimum taxation in 2024 will put their own groups at a tax disadvantage (temporarily, until the end of 2026) compared with groups from countries not introducing the minimum taxation (e.g. USA, China, India, Brazil, etc.).

Implementation in Switzerland:

At the beginning of 2022, the Federal Council decided on its approach to implement the OECD digital taxation rules. The proposal was to amend the Federal Constitution to establish a competence standard for both Pillar 1 and Pillar 2 of the OECD project. To facilitate the shift implementation of OECD minimum taxation (Pillar 2) in the interests of the treasury and companies, transitional provisions are to be included in the Constitution. Based on these provisions, the Federal Council will adopt a directly applicable transitional ordinance. If the Federal Council follows the EU's implementation plan, the transitional ordinance could come into effect as early as January 2024. Later, this ordinance is to be replaced by a Federal Law as part of the ordinary legislative procedure.

In December 2022, the Federal Councils approved the implementation proposed by the Federal Council. The mandatory referendum was held on June 18, 2023. More than three-quarters of Swiss voters approved the implementation decided by the Federal Council and Parliament. The decision specified that 75 percent of the additional revenue from the Swiss (QDMTT) and the international supplementary tax (IIR, UTPR) should go to the cantons from which the additional taxes originate. According to the transitional provisions, 25 percent of the revenue is to be allocated to the Federal Government. How the cantons will use any additional revenues from the supplementary tax will be determined at a later date, depending on the expected revenues levels and cantonal objectives. Clarity on the actual revenues will probably not be available until one to two years after its introduction.

In parallel with the amendment of the Constitution, the Federal Council is moving forward with the enactment of the Federal Council Ordinance on the Implementation of the OECD Minimum Tax. Since important procedural and implementation regulations are yet to be determined by the Implementation Framework, the consultation on the ordinance will be conducted in stages.

In August 2022, the Federal Council presented the first draft ordinance, which is limited to two areas. To eliminate discrepancies in the Swiss implementation of the GloBE rules, the ordinance contains a direct reference to the OECD's Pillar 2 model rules, encompassing commentary and administrative guidance. Additionally, the draft ordinance governs the source-based distribution of the supplementary tax revenues among the cantons. The tax revenues from the Swiss supplementary tax are to be allocated to those cantons whose companies or business units have paid the supplementary tax.

On May 24, 2023, the Federal Council presented the second part of the draft ordinance ([VO draft 2](#)). The consultation draft addresses procedural matters, such as the one-stop shop by lead canton, normal mixed assessment procedure, including tax declaration, the purely digital assessment procedure, appeals, penalty provisions, and procedures). The consultation period extended until September 14 (see statement of SwissHoldings).





Outlook

At the beginning of July, SwissHoldings was still firmly convinced that the majority of the 143-state Inclusive Framework would introduce the minimum tax at the beginning of 2024 or, at the very latest, at the beginning of 2025. This assessment needs to be comprehensively revised. Of the Inclusive Framework members, fewer than a quarter are likely to introduce the minimum tax by the beginning of 2024. No country is likely to implement the UTPR at all in 2024. Among the 27 EU member states, only about fourteen countries have currently announced plans or draft legislation, conducted consultations or adopted regulations. The implementation of the OECD minimum taxation is demanding in terms of legislation and administration. Therefore, many EU member states are seriously behind schedule with their preparatory work with regard to the EU-wide mandatory introduction year of 2024 (UTPR 2025). At the same time, Europe is still a "pioneer" in global terms. Many economic powers (e.g. USA, China, India, South American and African states) have made no more or only vague statements known. Important economic powers such as the USA are unlikely to implement minimum taxation at all. Investment hubs like Singapore and Dubai, which are important competitors of Switzerland, plan to introduce minimum taxation in 2025 at the earliest. Singapore wants to introduce a QDMTT only.

A major reason for the reluctance of many countries is the Transitional UTPR Safe Harbour adopted by the OECD in mid-July. While groups headquartered in countries that have introduced minimum taxation must comply with the 15% taxation rule globally from 2024 (i.e. also in all countries with subsidiaries), groups from countries that have not introduced minimum taxation in 2024 can benefit from substantial tax advantages thanks to the UTPR Safe Harbour, depending on the corporate structure. The same applies to intermediate holding companies of groups headquartered in states without minimum taxation. In view of these changed framework conditions, the Federal Council should also examine whether Switzerland should actually introduce the minimum tax at the beginning of 2024. In doing so, the Federal Council should consider the following factors:

- International implementation - (critical mass of countries)
- Financial and economic consequences (short, medium and long term)
- Effects on location attractiveness
- Discrimination against Swiss corporations
- Domestic aspects
- Administrative effort for affected companies
- Flexibility to respond to international developments
- Reputation of Switzerland
- Status development of new site measures

