SwissHoldings

# TAX DEPARTMENT

**Contact** **Martin Hess** Head Tax & member Executive Committee
*martin.hess@swissholdings.ch*
+41 (0)78 805 04 95

## International Tax Law

OECD/G20 Project on the Taxation of the Digitalized Economy

**Executive Summary**

***Switzerland implemented the OECD Minimum Tax in the form of a Swiss Supplementary Tax at the beginning of 2024. This places Switzerland at a significant and unwarranted disadvantage as a business location when compared to numerous non-implementing countries, including the USA, China, and India. Switzerland must vigilantly monitor international developments and strive to establish an internationally level playing field, placing increased emphasis on new instruments to enhance Switzerland's attractiveness as a business location.***

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The OECD project on the Taxation of the Digitalized Economy is structured around two pillars and aims to enhance the acceptance of International Corporate Taxation. The OECD Secretariat oversees this endeavor. The new tax regulations are formally endorsed by the "OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting" (hereinafter referred to as IF), which encompasses over 140 countries. In October 2021, the IF members endorsed the political guidelines for the two pillars. Subsequently, substantial efforts have been dedicated to formulating the technical implementation provisions. Under Pillar 1, a multilateral agreement is slated for submission to states for signature and subsequent ratification by the end of 2024. Conversely, Pillar 2 will not be implemented via a multilateral agreement but through a uniform adoption of rules collaboratively developed and individually embraced by the states (common approach).

**Stance**

The G20-initiated project aimed at taxing the digitalized economy faces an uncertain future. Initial enthusiasm among G20 member states has waned. Regarding Pillar 1, it is increasingly evident that the new regulations may not materialize, as the USA is unlikely to ratify the required multilateral agreement. Without US participation, the desired redistribution of tax revenues from host states like Switzerland to market states such as China or India cannot proceed. The project's second pillar, known as OECD Minimum Taxation, fares only marginally better. In early 2024, nearly all European countries began implementing Minimum Taxation, but economically significant nations like the USA, China, and India show no indication of embracing it. The potential election of Donald Trump as US President could bolster resistance to Minimum Taxation in the US and elsewhere. Specifically, the US might resist supplementary taxation of its tax base and the tax base of US companies abroad (e.g., in Switzerland) by threatening sanctions and insisting on significant adjustments to Minimum Taxation regulations. Consequently, Switzerland and its companies should prepare for a highly fragmented international tax landscape in the coming years. Given this context, the Federal Council should carefully evaluate future steps regarding Minimum Taxation implementation (e.g., introduction of the International Irrelevance Rule) and retain the flexibility to revisit decisions later to safeguard the Swiss economy. Past experiences indicate that Switzerland cannot prevail in tax disputes with major powers like the USA.

Towards the conclusion of 2023, the Federal Council resolved to implement the Swiss Supplementary Tax commencing from the onset of 2024. Concurrently, the Federal Council issued the conclusive ordinance pertaining to this matter. However, the determination regarding the implementation of the foreign supplementary taxes, namely the Income Inclusion Rule (IIR) and the Undertaxed Profits Rule (UTPR), is deferred to a later time. Anticipated deliberations on this matter are slated for the latter half of 2024. Given the significance of the US elections scheduled for November 2024, the Federal Council may opt to defer its decision until December 2024.

**Outlook**

Regarding the OECD Minimum Tax, current international developments cannot be reliably anticipated. Presently, there is substantial uncertainty surrounding the global establishment and adoption of this tax by major economic powers such as the USA, China, India, EU, Brazil, among others. Many nations are actively seeking to foster industrial growth, attract additional investments, and create employment opportunities, thereby enhancing tax revenues. Consequently, these countries are reluctant to impose additional tax burdens that might deter companies from investing. Consequently, much of the initial enthusiasm among many nations for the OECD Minimum Tax has dissipated.

The outcome of the upcoming US presidential and congressional elections holds significance for the global acceptance of the Minimum Tax. While Democrats advocate for general tax hikes (coupled with tax incentives for research, development, and domestic production relocation), Republicans oppose such increases and may retaliate against foreign countries accessing US tax bases via the Income Inclusion Rule (IIR) and Undertaxed Profits Rule (UTPR). Depending on the election results, adjustments to the Minimum Taxation regulations may vary in significance.

As a small state, Switzerland will not be able to significantly influence the Minimum Taxation Rules. Switzerland's aim must be to prevent objectively unjustifiable disadvantages for Switzerland or protectionist advantages for other countries in order to maintain a level playing field as far as possible. Should other countries wish to provide tax deductions for research, development, CO2 reductions and other activities, Switzerland should definitely support such efforts.

The Federal Council's decision to implement the Swiss Supplementary Tax raises several application issues for Swiss companies, along with significant concerns regarding Switzerland's appeal as a business destination. The enactment of the OECD Minimum Tax presents legislative and administrative challenges. Nevertheless, for many companies, the competitive disadvantages of the location outweigh the complexities associated with compliance.

**Position**

SwissHoldings acknowledges that to prevent financial losses, particularly diminished tax revenues. However, we firmly oppose the introduction of the international supplementary tax, UTPR, scheduled for 2025. We anticipate that many foreign countries, including the USA and China, may view the taxation of their tax base by affluent Switzerland as unacceptable and may retaliate accordingly. We also express reservations about the introduction of the international supplementary tax, IIR, for similar international considerations, which could provoke adverse reactions and negatively impact the Swiss economy. Therefore, we urge the Federal Council to thoroughly assess the repercussions of its decision in consultation with affected economic stakeholders. Additionally, it would be prudent to await the outcome of the US elections before proceeding. Should the implementation of the IIR prove detrimental to the Swiss economy in 2025 or 2026, we urge the Federal Council to reconsider its decision retrospectively.

In addition, the Confederation and cantons should ensure that locational disadvantages due to higher tax burdens on Swiss companies are compensated for in other ways. The following factors should be taken into account:

- International Implementation of the OECD Minimum Taxation
- Effects on the Attractiveness of Various Industries
- Financial and Economic Consequences (short, medium and long term) without Countermeasures
- Possibility of Creating Internationally Accepted and Targeted Location Measures
- Effects Under Transfer Pricing Law
- Domestic Policy Aspects

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*More information on the OECD/G20 project on the taxation of the digitalised economy can be found on our website.*