

Federal Tax Administration  
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## **Comment letter on the Federal decree on a special taxation of MNE Groups (Implementation of the OECD/G20 Project on the Taxation of the Digital Economy)**

Dear Ms Krenger,

We would like to thank you for the opportunity to comment on the amendment of the Federal Constitution concerning the implementation of the OECD/G20 project on the taxation of the digital economy.

### **1. Brief overview of our positions**

SwissHoldings supports the implementation proposed by the Federal Council. It represents an excellent foundation to assist the cantons in maintaining their economic attractiveness. Despite Switzerland having high taxes in comparison to international standards, the proposal enables the Confederation and the cantons to secure tax revenues from large international companies. Whereby greatly contributing to the overall economy in both the medium and long term.

For further improvement, SwissHoldings proposes the following adjustments to the bill:

- Binding allocation of the supplementary tax revenue to the cantons: For various reasons of legal certainty and general planning, the provision states that the revenue from the supplementary tax is to be allocated in full to the cantons. While the tax is to be levied according to the polluter-pays principle, which should be anchored in Article 129a of the Federal Constitution.
- No excess federal competences: The Federal Council proposed a formulation of future federal competences in the area of taxation that aims to take into account not only the current but also future OECD tax reforms. As a result, important constitutional barriers particularly for the cantons will be removed within the framework of Article 129a para. 3 of the Federal Constitution. SwissHoldings advocates for an extension of competence to be as limited as possible and should focus on the current OECD tax reform.

### **2. Assessment of the consultation draft**

The implementation proposed by the Federal Council represents an excellent foundation needed to respond to the changed conditions in location competition. In addition, it would enable Switzerland to establish the prerequisites required to maintain its attractiveness amongst international companies. As a result, it is not an option to forego implementation of the new OECD rules. Although the rules are unfavourable for Switzerland, a refusal would do Switzerland more harm than good. The consequence would be that Switzerland would not only retain the current locational disadvantages, but would also lose the tax substrate from the minimum taxation (supplementary tax) abroad.

Attractive profit taxes are one of the most important reasons why international companies carry out



activities with high value and high profits in Switzerland. This attractiveness partly compensates for the very high Swiss wages in comparison to international standards. In order to secure the aforementioned high tax revenues and jobs for the long term, it is imperative that the framework conditions for the Swiss implementation of minimum taxation are defined. However, it should be defined in such a way that the success factors of the local economic system are not impaired but rather preserved. Whereby enabling the cantons to react to significant changes within international competition between locations.

Above all, the federal element for this implementation is essential because the revenues from the OECD minimum taxation remain in the cantons whose companies have paid into them. Cantons that offer their companies good economic conditions are financially rewarded and receive incentives, as well as the financial leeway to ensure that companies continue to benefit from good economic conditions in the future. Lastly, the federal government and other cantons (e.g. Bern) also benefit from the economic success of the cantons that will prevail in the international competition between locations via the revenue from direct federal tax.

On the other hand, if the revenues from the supplementary tax were allocated to the federal government, it might no longer be financially worthwhile for the cantons whose companies pay supplementary tax to continue offering low tax rates. Instead, it would suddenly become more attractive for cantons to significantly increase profit tax rates for all companies and provide other benefits to their most important companies (e.g. the best taxpayers). An increase in cantonal tax rates would also have a negative impact on SMEs, which are not subject to minimum taxation but play an important role in the economic success of the cantons. The consequence of this would be that the Confederation would no longer receive any supplementary taxes within a few years.

In addition to implementing the new OECD rules, it is important to keep the attractiveness of Switzerland as a business location high, even after the tax advantage has ceased. Switzerland will lose an important locational advantage if other countries succeed in reaching the OECD minimum tax rate of 15 percent with tax concessions (e.g. patent box). Moreover, if other countries also have lower wage and other costs in addition to granting non-fiscal incentives as a common practice in many countries, then Switzerland will probably have a difficult time competing internationally as a business location. Consequently, the Confederation would risk losing particularly lucrative value-added activities (research, management and other so-called headmaster functions). These activities are important for Switzerland not only in terms of profit tax revenues but also for the preservation of attractive jobs and the subsequent income taxes collected from taxation of employees.

As mentioned, Switzerland is already a very expensive location by international standards, with high wage and other costs. The situation is further aggravated due to the continuously strengthening Swiss franc. Against this backdrop, policymakers should primarily consider how the revenues from the supplementary tax can be used to maintain Switzerland's attractiveness as a location for value-added-intensive activities even after the introduction of the OECD minimum taxation. Other locations in Europe, Asia and the USA also offer companies attractive conditions for value-creating activities. Therefore, ignoring the realities of international competition between locations and using the expected additional fiscal revenues for other projects is likely to do Switzerland more financial harm than good in both the medium to long term.

### 3. Key concerns and suggestions for improvement

#### a. Allocation of supplementary tax between the Confederation and the cantons:

At various points, the consultation participants are invited to express their views on the distribution of the supplementary tax between the Confederation and the cantons. SwissHoldings and the large industrial and service companies we represent support the full allocation to the cantons that is proposed by the Federal Council (Art. 197 No. 14 para. 6 BV). Furthermore, we also support the allocation among the affected cantons according to the polluter-pays principle, as well as the Federal Council's proposal to allocate the revenues of the IIR supplementary tax to the head office canton (Art. 197 para. 14 subpara. 2 letter i BV).

Should the cantons propose a solution slightly modified from the distribution of the supplementary taxes according to the polluter-pays principle, we could also support such a solution. For us, the focus is on solutions that are geared towards the attractiveness of the location, which allow for the use of funds across several cantons (e.g. Zurich and Central Switzerland). We believe it is unnecessary (but not impossible) for the Federal Government to be involved in such solutions. For example, in business practice it is often the case that an attractive overall location must provide not only research and management but also production sites. The latter are often not located in the same canton in which the research and management activities are also carried out. This would lead to considerable additional taxes, which the canton in question considers worthy of support (research promotion). In other words, the cantons should create a framework that allows for such division of functions to ensure the interest of Switzerland as a whole in being considered.

One disadvantage of the Federal Council's proposal is that the Confederation may have to pay additional funds into the fiscal equalization scheme. However, this will only be the case if the cantons succeed in maintaining their attractiveness as business locations, as well as if they are able to collect supplementary taxes in addition to the existing profit taxes. Whether this will actually happen is currently highly uncertain. It could also just as well be the case that the cantons will observe a decrease in profit taxes to the extent that they collect supplementary taxes. Moreover, various cantons could reinvest the additional supplementary tax revenues to secure their economic attractiveness. Therefore, if the possible disadvantage for the Confederation is compensated and investments promoting the cantons as an attractive location are not taken into account; the result will be a disadvantage for the cantons compared to the Confederation.

According to estimates by affected companies, there could also be an increase in direct federal tax revenue in connection with the new OECD rules. In future, the companies concerned are likely to forego certain depreciation and value adjustments permitted under Swiss tax law (e.g. on intangible assets and participations) due to the disadvantages of the OECD minimum taxation. This would result in additional tax revenue for the Confederation. At the same time, the cantons' supplementary tax revenues would decrease. We therefore believe that the negative effects on federal revenue described in the explanatory report are overestimated. Furthermore, based on state and corporate reactions to the new tax environment, we assume that the amount of supplementary tax revenue will not be clear for several years. For example, the corresponding supplementary tax return for the year 2024 will probably not reach the cantonal tax administration until 2026 and thus clarity will prevail. Should adjustments between the Confederation and the cantons become necessary due to the actual figures than these can still be implemented through a slight modification of the fiscal equalization system. The fixed allocation of a share of the supplementary tax revenues to the Confederation (e.g. 10%) is unnecessary for this. In view of the described circumstances, we see no reason why the Federal Government should receive a share of the revenues from the supplementary tax.

#### b. Binding allocation of supplementary tax revenues to the cantons in Article 129a BV:

The consultation draft (Art. 197 No. 14 Para. 6 BV) provides that the funds from the supplementary tax are to be allocated to the cantons. This regulation must be approved by the Federal Assembly in the autumn and winter sessions of 2022. Soon after the referendum in June 2023, the Federal Councils will once again be able to deal with this issue. This will be within the framework for the adoption of the legal provision within the implementation of the OECD minimum taxation. Therefo-

re, the councils can provide for a different distribution than in 2022. Theoretically, the federal councils can even provide for different distributions between the Federal Government and the cantons on an ongoing basis. From the point of view of the economy, this is an untenable situation. In particular, there is a danger that the cantons will refrain from providing for location measures due to a lack of legal certainty. Even the longer-term financing of social measures like supplementary crèche financing envisaged by a canton would be difficult to implement with such an uncertain legal basis. Consequently, we are of the opinion that the distribution of funds from the supplementary tax should not be regulated in the transitional provisions (Art. 197 No. 14 BV) but in Article 129a BV. Only with a regulation in Article 129a of the Federal Constitution can the cantons receive the necessary legal and planning security that allows them to make decisions that are valid in the longer term.

c. No excess federal competences:

The consultation draft provides for a significant expansion of federal competences in the area of taxation in Article 129a para. 3 of the Federal Constitution. However, the extension is at the expense of the cantons and communes. In the area of direct taxes, it gives the federal legislature the opportunity to unhinge all important constitutional principles for the protection of cantons, communes and the economy. The only prerequisite is that the adjustment of the principles is made on the basis of international developments and to protect the interests of the Swiss economy as a whole. The envisaged new federal competences go beyond the scope of the OECD/G20 project on the taxation of the digital economy. They are intended to make it possible to implement future OECD/G20 projects without a new constitutional amendment (mandatory referendum), whereby greatly expediting the process time.

In principle, internationally active Swiss companies welcome the fact that Switzerland could rapidly implement future OECD and G20 requirements. At the same time, we have doubts as to whether new international taxation rules could actually be implemented more quickly in practice thanks to the amended constitutional provisions. Thus, we assume that in the vast majority of cases an optional referendum would be held against these new taxation requirements, which is why a referendum would still be held. In such cases, an optional as opposed to a mandatory constitutional referendum would even result in more time elapsing before the new international requirements are implemented. If new foreign requirements demand an adjustment of important principles for the protection of cantons, municipalities and the economy, we believe that in a direct democracy such as Switzerland, the voters should always have the final say. Against this backdrop, we propose that Article 129a para. 3 of the Federal Constitution only be worded to the extent that the rules of the OECD/G20 project on the taxation of the digital economy can be implemented.

d. Practical procedure:

The main canton should play an important procedural role (lead function). In contrast, the federal government's supervision of the supplementary tax should be as lean as possible. Supervision should be limited to what is necessary (international acceptance) and should not stand in the way of administratively reasonable solutions by the cantons. This is especially the case for groups with numerous subsidiaries and permanent establishments in different cantons, as practicable guidelines from the Federal Government and the cantons are indispensable, otherwise the minimum taxation can hardly be implemented at all.

We thank you very much for taking our concerns into account.

With kind regards

**SwissHoldings**  
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