Swiss Taxes Newsletter – January 2022

Implementation of OECD Minimum Tax Rate in Switzerland[1]

The Swiss Federal Council decided on 12 January 2022 to implement in Switzerland the 15% minimum corporate tax rate program of the OECD and G20 for qualifying MNEs (commonly referred to as "Pillar 2" global tax measures) by means of an amendment of the Federal Constitution. As this process generally takes a considerable amount of time, the Federal Council will issue a temporary federal ordinance to ensure that the minimum tax rate rules will be enacted in Switzerland as of 1 January 2024. The temporary federal ordinance will later be substituted by ordinary legislation.

Pillar 2 will introduce minimum taxation rules providing for a minimum tax rate of 15% for multinational companies with annual turnover of at least EUR 750 million according to an internationally standardized assessment base, whereby the minimum tax rate of 15% must be reached in each jurisdiction. If the minimum taxation is not achieved in a given jurisdiction, a top-up tax is to be imposed on the difference between the effective tax burden and the required minimum in the jurisdiction in which the ultimate parent entity of the company concerned is located (primary rule, so-called Income Inclusion Rule, or IIR). If that jurisdiction has not introduced the primary rule, taxation is to be ensured on a subsidiary basis in the jurisdictions with subsidiaries of the company in question (subordinate rule, so-called Undertaxed Payment Rule, or UTPR).

According to the OECD, Pillars 1 and 2 should enter into force in 2023 in principle. Implementation of Pillar 1 (measures aiming to increase market jurisdictions' taxing rights on profits of large MNEs with global turnover above 20 billion Euros and profita-bility above 10%) will require a multilateral convention, which will need to be ratified by the participating jurisdictions. As regards Plillar 2, the OECD has already published draft model rules in December 2021 including a detailed timetable, which envisages application of the primary rule (IIR) from 1 January 2023 and application of the UTPR from 1 January 2024, respectively. Further guidance from the OECD on the coordinated implementation of Pillar 2 is expected by the end of 2022.

Swiss federal authorities have stressed again that the adaptation of Swiss law to the minimum taxation rules under Pillar 2 requires more time than envisaged by the OECD,

[1] Source: Factsheet of the Swiss Federal Finance Department (FDF), dated 13 January 2022

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especially since the OECD's technical specifications will not be available until later this year. A new constitutional basis will be created in order to adhere to the timetable - with the involvement of Federal Parliament, the cantons, and finally the people through a referendum. Based on that, the Federal Council intends to issue a temporary ordinance that will implement the minimum tax rate as of 1 January 2024. An ordinary legislative process will follow thereafter, to replace the temporary ordinance.

The Federal Council has clarified that *nothing shall change for purely domestically focused companies and SMEs*. As a matter of fact, corporate taxpayers currently benefit of a combined effective income tax rate (including federal, cantonal and communal income taxes) of less than 15% in 20 out of the 26 Swiss cantons. According to the Federal Council, Switzerland cannot prevent a higher tax burden in the future for qualifying MNEs that operate within its boundaries. However, Switzerland will protect its economic policy and fiscal interests by adapting its tax system. Thus, qualifying MNEs which currently do not reach the minimum tax rate will in future pay those additional taxes in Switzerland, rather than abroad. The Federal Council has also clarified that the additional tax receipts will be exclusively collected by, and benefiting the Swiss cantons, and will be subject to the existing rules on intercantonal equalization of fiscal revenues.

Moreover, the FDF has stressed that for MNEs affected by the Pillar 2 rules, international and intercantonal tax competition will be limited, but not eliminated. If a canton offers a tax burden that falls below the minimum level, the company's tax burden will be raised to the level of the minimum tax rate. The cantons will decide at their own discretion how they wish to use the additional tax receipts. Implementation of the minimum tax rate will provide them with fiscal policy leeway to counteract the impending loss of attractivity as a business location. They will decide whether to take locational measures and, if so, which ones. The factsheet of the FDF is not explicit on what such policy measures might entail; some rumors talk about tax incentives for international executives and further local subsidies. The cantons' plans are to be set out in the Federal Council dispatch on the constitutional amendment, which is expected to be published later this year.

Therefore: Stay tuned!