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Tax Alert Switzerland

Implementation of OECD minimum tax concept / Pillar Two into domestic tax law

Mid January 2022 the Swiss Federal Council decided on the basic implementation procedures that will ensure a minimum tax rate of 15% for Swiss based companies that are part of a large multinational enterprise. In essence, first a temporary tax ordinance will be issued, followed by a regular legislation process. The approach with a temporary tax ordinance is seemed to be necessary as legislative processes may take considerable time that stands in contrast with the ambitious timetable as set by OECD on the entry into force of Pillar Two. Even though a temporary tax ordinance is the anticipated way of implementation, an amendment of Switzerland's constitution, and as such a public vote, will be necessary. The public vote, under the current timetable, is set for June 2023. Current goal is an implementation of the minimum tax for in-scope companies by January 1, 2024.

According the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting / BEPS, Pillar Two consists primarily of the 15% minimum tax on the earnings of multinational groups with revenues of Euro 750m and more. The mechanism to ensure such 15% minimum tax are an income inclusion rule, as such a top-up / hive-up on level of the parent company jurisdiction for a subsidiary's income being taxed below the 15% taxation threshold (to be effective internationally from 2023). As an other mechanism the undertaxed payment rule would deny deductions of certain expenses where the recipient of such payments is a group company in a jurisdiction that does not comply with the 15% minimum tax requirement (to be effective internationally from 2024). Very powerful mechanism as foreseen by the BEPS provisions. See details on Grant Thornton's view as per the article here.

Combined Swiss Federal income and cantonal/communal income tax rates have decreased recently and are currently typically in the range of 11%–13%. This holds true for most cantons attractive for international business, while some cantons continue to have higher than a combined 15% tax rate, such as the canton of Zurich, the canton with the highest economic power. From confirmed analysis of involved parties, around 500 Swiss TopCos and around 2'000 Swiss based subsidiaries are in-scope of the Euro 750m threshold. The plan for Switzerland is to implement a split of tax rates to apply a lower than 15% combined tax rate at the discretion of cantonal legislation for corporate tax payers that are not part of a multinational group and to enforce a minimum tax rate of 15% for Swiss based companies that belong to a multinational group with revenues of Euro 750m or more. Consequenty, the vast majority of corporate tax payers in Switzerland will not be affected by such a minimum tax but may continue to be taxed at a reasonable say 11%–13% rate. Cantons that will be required to increase its tax revenue for in-scope tax payers may in general use that additional tax revenue at its own discretion, with the limitation as set by the national fiscal equalization mechanism and under the reservation that state-aid to minimum tax in-scope entities will not be an international accepted procedure. Plans on the use of such excess tax revenue are still vague and undefined. What can be stated is the fact that such additional tax revenue is foreseen to be used to strengthen the attractiveness of Switzerland for corporate investors.

Whilst the BEPS measures on minimum taxation stand in contrast to recent efforts in Switzerland to offer a corporate entity friendly tax environment, it offers planning opportunities. Companies with less than Euro 750m are generally not in-scope for the 15% minimum taxation; Switzerland has no explicit controlled foreign company rules / cfc's and is highly economically competitive. This shelters the unique positioning of Switzerland as an attractive business hub.

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