Q&A on the implementation of the OECD/G20 minimum tax rate in Switzerland

1. Why has the Federal Council set 1 January 2024 as the date for the entry into force of the OECD/G20 minimum tax rate?

In particular because the vast majority of EU states and other major industrialised nations intend to implement the minimum tax rate as of 1 January 2024. From that date, large multinational enterprises from these countries can be taxed at a higher rate if their Swiss subsidiaries do not reach the minimum tax rate of 15%. By introducing its own supplementary tax, Switzerland can secure the Swiss tax base and prevent base erosion in favour of other countries. This was one of the main reasons why the Federal Council and Parliament decided to amend the Constitution in order to introduce the minimum tax rate, and recommended that the electorate approve it on 18 June 2023.

The available data suggests that up to 50% of the profit tax base covered by the supplementary tax would have been eroded in favour of foreign countries in 2024 if Switzerland had not introduced this tax. By contrast, the receipts from the supplementary tax can be used by the federal government and the cantons for locational measures. The federal government is obliged to do so because of the transitional provision in the Constitution. Most cantons are also considering locational measures.

2. Why did the Federal Council wait until just before the end of the year to decide?

The Federal Council and Parliament have always emphasised that the location policy disadvantages of introducing the OECD/G20 minimum tax rate can be accepted only if other countries that are economically important for Switzerland also implement it. It was thus crucial to monitor international developments on an ongoing basis. It was to be expected that the EU would implement minimum taxation with effect from 2024, as it had already brought a corresponding directive into force in 2022. However, many countries did not approve the reform until shortly before the end of the year.

3. Which jurisdictions intend to implement the minimum tax rate and which do not?

Various jurisdictions intend to introduce minimum taxation (QDMTT, IIR) as early as 2024. In the EU, a directive requires member states to implement the minimum tax rate by 31 December 2023. EU member states that are home to no more than twelve ultimate parent entities of groups covered by the directive are exempt; they can postpone the introduction for six years. Based on the information currently available, Estonia, Latvia, Lithuania, Malta and Slovakia will invoke this exemption.

In most other EU member states, namely Germany, France, Italy, Austria, the Netherlands and Ireland, legislative projects are now at an advanced stage or have already been completed. As of 20 December 2023, it is expected that the minimum tax rate will come into force in these EU member states as of 2024. However, there will be delays in certain EU member states (probably Greece, Poland, Spain, Portugal and Cyprus). It is conceivable that it will be introduced retroactively in these EU member states, as they would otherwise face infringement proceedings.

Outside the EU, countries such as the United Kingdom, Australia, Canada, Japan and South Korea are also planning to implement the minimum tax rate with effect from 2024. In the United Kingdom and South Korea, the legislative process has already been completed and the minimum tax rate is due to come into force on 31 December 2023.

Singapore and Hong Kong, by contrast, have announced that they do not intend to introduce minimum taxation rules until 2025. The United States has its own set of minimum taxation rules (GILTI) and is still not planning to adopt the OECD/G20 requirements. Countries such as China, Brazil and India currently have no plans to implement the minimum tax rate either.

4. Why is the Federal Council introducing the Swiss supplementary tax (QDMTT), but not the international supplementary taxes (IIR and UTPR)?

Unlike the QDMTT, the IIR is not suitable for preventing base erosion because the IIR would generally lead to a tax increase as long as the UTPR is not applied, without the threat of such an increase from abroad. Under these circumstances, however, the levying of taxes abroad was not an aim of the proposal's authors.

By not introducing the IIR, Switzerland can largely maintain its appeal as a location for holding companies in 2024, as subsidiaries of Swiss corporate groups abroad can continue to benefit from lower taxation for the time being, provided they are located in jurisdictions that do not (yet) implement minimum taxation. The same applies to Swiss intermediate holding companies of corporate groups from jurisdictions without the IIR.

However, not ensuring minimum taxation abroad creates an incentive for Swiss corporate groups to shift profits and activities to low-taxed foreign subsidiaries. But it is worth noting here, too, that the quicker minimum taxation is implemented internationally, the less likely such behavioural adjustments will be.

The UTPR is unlikely to be applied by any jurisdiction in 2024, including the EU member states. Here, too, parallels should be maintained with other countries, namely the EU member states.

If at least the EU member states introduce the UTPR with effect from 2025, Switzerland should also apply all measures including the UTPR from 2025 in order to protect its economic and fiscal interests in the best possible way.

5. What does the QDMTT mean for the different types of corporate group?

For corporate groups from jurisdictions that have introduced the IIR, the QDMTT does not represent an additional tax burden, as the jurisdiction in which the company's registered office is located would apply the IIR and would enforce the minimum tax rate of 15% anyway. At a rough estimate, this affects 1,000 corporate groups, including the Swiss arms of European corporate groups. For these companies, the QDMTT also provides increased legal certainty and reduces the administrative burden, primarily because of the QDMTT safe harbour, from which these corporate groups may benefit and which is intended to protect them from additional assessment procedures abroad.

By contrast, for other corporate groups affected by the reform, namely Swiss and US groups, the QDMTT will result in higher taxes if their profits are currently taxed at less than 15% in Switzerland. If Switzerland had chosen not to introduce the QDMTT, they would have been affected by minimum taxation (through the UTPR) from 2025 at the earliest. The available data indicates that probably more than half the potential receipts from the QDMTT will be levied on these corporate groups.

Nevertheless, tax burdens of less than 15% are still possible if the company can apply the substance carve-out. The substance carve-out allows companies with considerable assets in the form of tangible fixed assets and payroll costs to continue to have a portion of their profits taxed at a rate lower than 15%. In the first year, the substance carve-out amounts to 10% of the payroll costs plus 8% of the tangible fixed assets. After the transition period, profits amounting to 5% of the payroll costs and tangible fixed assets can benefit from the substance carve-out. Locations with many high-substance corporate groups are therefore less affected by the minimum tax rate than locations where many low-substance activities are carried out.

6. How substantial will the receipts from the supplementary tax be?

It is difficult to gauge either the short- or long-term financial impact of the supplementary tax. Some reasons for this are as follows:

- **The limited pool of data:** it is not possible, for example, to determine the corporate groups affected, as the available statistics are based on individual companies rather than on corporate groups.
- **Different assessment bases:** the rules established by the OECD/G20 for the determination of profits differ from those applicable in Switzerland. These differences may lead to higher or lower receipts from the supplementary tax.
- **Possible behavioural adjustments:** since there are no historical empirical values, it is unclear whether other jurisdictions will adjust their tax and subsidy systems, or whether companies will adjust their structures and investments. Moreover, the cantons have autonomy in setting profit tax scales.

It is estimated that the receipts from the supplementary tax will amount to roughly CHF 1 to 2.5 billion in the first year. These tax receipts may be counteracted by opposing effects: the OECD/G20 minimum tax rate will make Switzerland less appealing from a tax perspective. This could cause large corporate groups to invest less in Switzerland, for example, or to decide not to establish a base in Switzerland. This would affect not only receipts from profit and supplementary tax, but also receipts from other kinds of tax (principally income tax) and social security.

Finally, some cantons have decided to adjust their profit tax scales. Receipts from the supplementary tax will therefore be lower, but this will be offset by a rise in receipts from cantonal profit tax due to the adjustments in cantonal tax scales. As regards the various levels of government, the cantons should generate more receipts overall; conversely, federal receipts are likely to be lower than they would be without the cantons' tax policy decisions.

7. How will the additional receipts be utilised by the federal government and the cantons?

The constitutional provision stipulates that 75% of the additional receipts from the supplementary tax go to the cantons and 25% to the Confederation. Cantons which currently levy tax of less than 15% and which host many corporate groups affected by the minimum tax rate will also earn more revenue from the supplementary tax than other cantons. At the same time, these are the cantons most affected by the additional tax burden and the loss of locational attractiveness. The profit tax scale in the cantons is not the only deciding factor. The tax burden may also be lower than 15% in cantons where the profit tax scale is higher than 15% – for instance if a company is able to claim tax relief for research and development.

The Constitution stipulates that the federal government must use its additional receipts to promote Switzerland as a business location (less its additional expenditure for fiscal

equalization and cost compensation resulting from the supplementary tax). The Federal Council will decide in 2024 on the specific utilisation of the funds, which should benefit the economy as a whole. Most cantons are also planning measures to promote locational appeal, as shown by an initial survey: OECD minimum tax. Effects on the disparity between the cantons and forms of cantonal implementation/FDF report, first report on postulate 22.3893, Council of States Economic Affairs and Taxation Committee.

The additional receipts from the supplementary tax will be taken into account in the existing fiscal equalization system, i.e. there will be a redistribution via fiscal equalization, from which the financially weaker cantons will benefit. In this way, those cantons which do not directly earn revenue from the supplementary tax can also achieve additional receipts.

In the medium term, the federal government will allocate around a third of its receipts from the supplementary tax to offset its additional fiscal equalization burden. The remaining funds are to be used for measures to foster the locational appeal of Switzerland. The Federal Council will decide on this next year.

8. How exactly does the OECD/G20 minimum tax rate work?

The OECD/G20 minimum tax rate applies to corporate groups with global annual turnover of at least EUR 750 million. The minimum taxation mechanism is based on three measures:

1. **QDMTT (also: national supplementary tax)**: with the qualified domestic minimum top-up tax (QDMTT), a jurisdiction covers the companies domiciled there that are taxed at less than 15%. It applies to domestic and foreign corporate groups. In Switzerland, the QDMTT will be ensured in the form of a national supplementary tax.
   Example: the QDMTT covers the profits of Swiss companies and those of Swiss-domiciled companies of foreign groups. If these companies currently pay less than 15% tax in Switzerland, they will be taxed more heavily in the future as a result of the QDMTT.
2. **IIR**: with the income inclusion rule (IIR), a jurisdiction includes the (excessively) low-taxed foreign subsidiaries of companies domiciled in its territory. The IIR applies to domestic corporate groups with subsidiaries abroad that are taxed at less than 15%, as well as to foreign corporate groups with an intermediate holding company in Switzerland and whose foreign subsidiaries are (excessively) low-taxed.
   Example: the IIR covers the profits of subsidiaries of Swiss corporate groups or intermediate holding companies if these are taxed at less than 15% in their country of domicile.
3. **UTPR**: with the undertaxed payments rule (UTPR), a jurisdiction covers any other (excessively) low-taxed foreign group companies of companies domiciled in its territory.
   Example: the UTPR covers the profits of subsidiaries of a foreign corporate group that also has an arm in Switzerland.

Priorities:

- As a first priority, a jurisdiction can itself ensure minimum taxation on its territory by means of a QDMTT.

- If it does not make use of this option, the jurisdiction of the ultimate parent entity can levy tax by means of the IIR, and subsidiarily the jurisdiction of the intermediate holding company.
- If no jurisdiction levies the QDMTT or applies the IIR, the other jurisdictions in which any group company is located can levy tax under the UTPR.