# Factsheet

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# Implementation of the OECD minimum tax rate in Switzerland

**Content and status of the OECD/G20 project**

On 8 October 2021, the Organisation for Economic Co-operation and Development (OECD) published key parameters for the future taxation of large, multinational companies. These key parameters have been agreed to by 137 of the 141 member jurisdictions in the OECD's Inclusive Framework on Base Erosion and Profit Shifting (BEPS), including all OECD, G20 and EU member states. A two-pillar approach is envisaged:

- Pillar 1 aims to increase market jurisdictions' taxing rights on the profits of large, multinational companies. In-scope companies for this pillar are multinational enterprises (MNEs) with global annual turnover above EUR 20 billion and profitability above 10%. According to the OECD, this should apply to approximately 100 of the largest and most profitable companies in the world.
- Pillar 2 will introduce minimum taxation rules which provide for a minimum tax rate of 15% for multinational companies with annual turnover of at least EUR 750 million according to an internationally standardised 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, the two pillars should enter into force in 2023 in principle. However, the OECD work on detailing Pillar 2 is further advanced than that on Pillar 1. For example, a multilateral convention has to be drawn up for the implementation of Pillar 1, which will then have to be ratified by the participating jurisdictions. In contrast, the OECD has already drafted the model rules for Pillar 2 and published them in December 2021. The OECD's detailed timetable for Pillar 2 envisages that the primary rule is to be applied from 2023 and the subordinate rule from 2024. Aside from the already released model rules, further guidance will need to be adopted by the end of 2022 at the latest, in order to facilitate the coordinated implementation of the minimum taxation rules across the jurisdictions. Therefore, some implementation points will remain open until then.

## National implementation

The specific national implementation of Pillar 1 cannot yet be decided, as upstream adjustments to international law are required.

The adaptation of Swiss law to the minimum taxation rules under Pillar 2 requires more time than envisaged by the OECD, especially since the OECD's technical specifications will not be available until 2022. A new constitutional basis will be created in order to adhere to the timetable - with the involvement of Parliament, the cantons and the people. Based on that, the Federal Council will issue a temporary ordinance that implements the minimum tax rate as of 1 January 2024. Thereafter, the legal basis can be prepared in an ordinary legislative procedure without time pressure and the ordinance will be replaced.

Switzerland cannot prevent a higher tax burden in the future for certain companies operating within its boundaries. It can, however, protect its economic policy and fiscal interests by adapting its tax system. Therefore, companies in Switzerland that do not reach the minimum tax rate should pay those additional taxes in Switzerland. In this way, the additional tax receipts will be earned in Switzerland and not abroad.

The minimum tax should be collected in a targeted manner and with due regard for federalism. Nothing shall change for purely domestically focused companies and SMEs. The Federal Council has adopted the following content-related parameters:

- Ensure the minimum tax rate for multinational companies with annual turnover of at least EUR 750 million (see basic information).
- Collection of the additional taxes by the cantons. The additional tax receipts go to the cantons.
- The additional tax receipts are subject to the general rules for national fiscal equalization.

## Implications for Switzerland

Although national implementation in the area of Pillar 1 is still open, it can be assumed that large market jurisdictions will benefit over small ones.

Most companies are not directly affected by the new taxation rules under Pillar 2. For those affected by the new 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 is raised to the level of the minimum tax rate. Whether the tax falls below the minimum rate depends on the specific case. The new minimum tax rate of 15% cannot be compared with a tax burden of 15% under Swiss tax law. A company in a low-tax canton can reach the minimum rate in individual cases, and a company in a high-tax canton can fall below it in some cases.

Certain companies will face a heavier tax burden. The implementation will spare them additional tax proceedings abroad. 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 cantons' plans are to be set out in the Federal Council dispatch on the constitutional basis.

The implications for intercantonal tax competition will also depend on how the additional receipts are distributed among the cantons. As the additional tax receipts are to be taken into account in fiscal equalization, the existing fiscal equalization rules do not need to be adjusted.