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BRIEFING DECEMBER 2023

SWITZERLAND TO IMPLEMENT OECD MINIMUM TAX (PILLAR 2) ON 1 JANUARY 2024

In its today's session, the Swiss Federal Council has decided to implement certain aspects of the OECD Minimum Tax as of 1 January 2024. The tax aims at creating a level playing field on a global level by creating a minimum corporate tax rate of 15% for international groups with a turnover of more than EUR 750 million. The Federal Council's decision puts an end to the uncertainty as to whether Switzerland would adhere to its initial plan to implement the rules in 2024.

In June 2023, the Swiss people voted with overwhelming majority (78.5% of votes) in favour of implementing the OECD Minimum Tax in Switzerland, with a view to introducing the main aspects of the package in 2024. Over the last months, however, it became known that many large economies would either postpone the implementation (e.g. China, Mexico, Brazil, Singapore) or not adopt the rules at all (United States), while only the EU member states and a handful other mature economies maintained their willingness to implement as of 2024.

These postponements led large Swiss industry bodies to lobbying for a deferral of the introduction also in Switzerland, due to fear of Swiss-headquartered multinational companies suffering a competitive disadvantage.

In a nutshell, the Federal Council has decided the following:

- Firstly, Switzerland will introduce the so-called "Qualified Domestic Minimum Top-Up Tax" or "QDMTT", according to which Swiss entities and branches of Multinational Companies which are in scope of the OECD Minimum Taxation (i.e., having a turnover of more than EUR 750 million) will pay a top-up tax in Switzerland if their effective tax rate across Switzerland is below 15%. This tax will be levied as a federal tax for the first time for fiscal years starting in 2024.
- Secondly, the so-called "Income Inclusion Rule" or "IIR", according to which Swiss headquartered companies would have to pay a top-up tax in Switzerland on all foreign subsidiaries with an effective tax rate of less than 15%, will not yet be introduced. Its introduction will be decided at a later stage in line with international developments; it is likely that it will be implemented in 2025. Since this rule was to impose additional Swiss taxes on the foreign operations of Swiss multinationals, it was feared that it would make the Swiss corporate tax landscape less attractive in comparison to other jurisdictions which do not yet implement this rule.
- Thirdly, the so-called "Undertaxed Payments Rule" or "UTPR" will be implemented at a later, still undetermined, point in time. This is in line with prior developments among the OECD countries (including the EU member states) which plan to implement this rule only in 2025 or later.

The decision by the Federal Council provides a balanced outcome as it addresses the concerns of competitive disadvantage of Swiss-headquartered multinational companies by not implementing the Income Inclusion Rule as of 2024 (as it would have required Swiss headquartered multinational companies to levy an additional tax on their foreign operations which are taxed at a rate below 15%), while at the same time introducing the legal basis for levying a Qualified Domestic Minimum Top-Up Tax, thereby ensuring that the additional tax that is levied on Swiss entities or branches under the OECD Minimum Tax remains in Switzerland, avoiding that profits of Swiss entities in scope of Pillar 2 would be taxed by foreign jurisdictions.

Please get in touch with the tax team at Bär & Karrer AG for further information.

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