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Client Alert

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Switzerland: Statement on OECD Administrative Guidance January 2025

In brief

On 7 April 2026, the Swiss Federal Tax Administration (SFTA) issued two Official Statements, Communication-030 titled "Top-up Tax: Application of the Administrative Guidance on Article 9.1 of the Global Anti-Base Erosion Model Rules Adopted on 13 January 2025" as well as Communication-031 titled "Top-up tax: temporal application and exercise of elections of the administrative guidance of 5 January 2026 on the Side-by-Side Package".

The following addresses essentially the content and unresolved points of Communication-030.

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In more detail

Communication-030 is of importance to Swiss-based constituent entities of large multinational enterprise (MNE) groups that have benefitted from targeted government arrangements and retroactive elections introduced after 30 November 2021 (the "cut-off date" established by the Global Anti-Base Erosion (GloBE) Model Rules).

Communication-030 addresses the tension between, on the one hand, the OECD's January 2025 Administrative Guidance ("**January 2025 AG**"), which contains integrity measures targeting certain tax attributes and arrangements granted after 30 November 2021, and, on the other, a Swiss parliamentary instruction to the Federal Council to limit application of the January 2025 AG prospectively from 1 January 2025.

It establishes an interim filing regime pending an amendment to the Swiss Ordinance on the Global Minimum Tax (OMinT) according to which Swiss constituent entities must file their Top-up Tax returns applying the January 2025 AG. The cantonal tax authorities will not issue final assessments until the Federal Council has acted.

Impacted Swiss constituent entities must, however, monitor a series of unresolved issues. It remains to be clarified how the Federal Council will amend the OMinT — whether it adopts a narrow approach limited to fiscal year 2024 or a broader one covering all Deferred Tax Asset (DTA) benefits granted since 1 December 2021 and their reversal in fiscal years 2025 onwards — and how that approach will affect Switzerland's transitional Qualified Domestic Minimum Top-Up Tax (DMTT) status under the Inclusive Framework's (IF) forthcoming full legislative peer review process. The scope of the amendment of the OMinT should also determine whether, and when, the Switch-Off Rule introduced by the January 2025 AG is triggered at Swiss constituent entity level, with direct consequences for the articulation of the Swiss QDMTT with non-Swiss Income Inclusion Rule (IIR) or UTPR regimes.

Communication-031 addresses temporal application and exercise of elections provided by the Side-by-Side (SBS) Package adopted by the IF on 5 January 2026. In connection with the January 2025 AG, the SBS Package introduces additional variables – including a Side-by-Side Safe Harbour applicable from 1 January 2026 in Switzerland, which, while it deems IIR and Undertaxed Payments Rule (UTPR) Top-up Tax to be zero for US-parented groups from 2026, leaves the Swiss QDMTT computation and the Switch-Off Rule mechanics wholly unaffected.

Background

OECD Administrative Guidance of 13 January 2025 and integrity rule

Article 9.1 of the GloBE Model Rules contains transitional provisions that govern the treatment of DTAs arising at the time Pillar Two comes into force. The January 2025 AG, which forms part of the consolidated Commentary, addresses DTAs arising from certain tax benefits (credits, elections or choices) provided by General Government arrangements or new corporate income tax regimes (i.e., targeted Related Benefit arrangements) that were introduced after the cut-off date of 30 November 2021.

Under the integrity principle as interpreted in the January 2025 AG, the deferred tax expense arising from the reversal of such targeted governmental arrangement DTAs shall be excluded from the calculation of the GloBE effective tax rate (ETR).

For instance, where a Swiss canton granted a targeted tax credit (or similar tax benefit) after 30 November 2021, the DTA reflecting this credit is, upon reversal, excluded from Covered Taxes for GloBE purposes. This has the effect of neutralizing the ETR benefit that would otherwise arise from such credit, with retroactive effect tracing back to the introduction of the credit.

The January 2025 AG permits however a time- and amount-limited exception, known respectively as the “Grace Period” and the “Grace Period Limitation,” providing some transitional relief.

Importantly, the January 2025 AG also introduced a Switch-Off Rule intended to preserve the integrity of GloBE rules when a jurisdiction granted targeted governmental benefits but does not apply the January 2025 AG limitations. Under this exceptional derogation, if a QDMTT jurisdiction does not apply said limitations, the jurisdiction as a whole would not disqualify for the QDMTT status. Instead, the Switch-Off Rule would prevent the use of the QDMTT Safe-Harbour for the relevant constituent entities and requires the relevant MNE group to “switch” from the exemption to a credit method: the QDMTT paid in that jurisdiction by the relevant constituent entities is credited against foreign IIR (or UTPR) liabilities and any residual Top-Up Tax amounts due are collected in the IIR (or UTPR) jurisdiction(s).

For a detailed analysis of the targeted tax credits and benefits in Switzerland, you may refer to our prior Alert dated 22 January 2025 and titled “International: Fifth round of OECD publications on Pi lar Two – Implications in Switzerland”.

Swiss implementation framework of the GloBE rules

Switzerland introduced a QDMTT with effect from 1 January 2024, and a QIIR from 1 January 2025, pursuant to the OMinT. The Federal Council opted not to implement UTPR for now. According to the OMinT, the GloBE Model Rules apply directly to the Swiss IIR and by analogy to the Swiss QDMTT. GloBE rules are to be interpreted in accordance with the associated Commentaries and related OECD Inclusive Framework guidance.

Under this architecture, once the IF adopts Administrative Guidance and incorporates it into the consolidated Commentary, that guidance, in principle, becomes binding in Switzerland pursuant to the OMinT. There is no domestic legislative step required for the guidance to take effect. The January 2025 AG thus became applicable in Switzerland upon adoption, absent an OMinT amendment to the contrary.

Swiss Parliamentary Motions dated December 2025

The retroactive interference of the January 2025 AG, effectively reaching back to cover tax benefits granted from 1 December 2021 onwards, provoked political and legal concerns in Switzerland. At the Winter Session 2025, both Chambers of the Federal Assembly adopted identical Motions 25.4392 and 25.4399 of the Economic Affairs and Taxation Committees.

The Motions instruct the Federal Council to amend the OMinT so that the January 2025 AG applies in Switzerland only to targeted tax benefits granted on or after 1 January 2025, thereby shielding tax benefits granted between 1 December 2021 and 31 December 2024 from the January 2025 AG’s exclusionary effect in Switzerland.

Proponents of the Motions argued that applying the guidance to earlier periods amounted to an impermissible retroactive interference with legitimate expectations and Swiss constitutional principles in Switzerland. From a Swiss constitutional law perspective, however, it may be argued that the January 2025 AG does not result in **true retroactivity**, given that the Top-Up Tax itself only applies from the entry into force of the Swiss Pillar Two regime, but rather in a form of **pseudo-retroactivity**, in that it alters the tax treatment of pre-existing facts and tax attributes for the purposes of a tax levied in later periods. While pseudo-retroactivity is not prohibited per se under Swiss constitutional law, it remains subject to a proportionality assessment, particularly where significant reliance interests are affected.

The Motions were adopted against the recommendation of the Federal Council, which warned that limiting the application of the January 2025 AG risked Switzerland’s Qualified-DMTT status - a status that, if lost, would allow other jurisdictions to collect Top-up Tax on Swiss constituent entities under their IIR or UTPR regime.

Content of SFTA Communication-030

The Communication states that the January 2025 AG is to be considered as "current law" in Switzerland and acknowledges that the OMinT amendment requested by Parliament cannot be enacted before the Top-up Tax return filing deadlines begin to fall due (i.e., 30 June 2026 with respect to fiscal year ending 31 December 2024 regarding Swiss QDMTT).

The SFTA has therefore established a transitional interim practice with four key elements:

- Mandatory compliance with current law: Until the Federal Council amends OMinT, the January 2025 AG, including the Grace Period and related Limitations, must be applied. No filing extension is available under current law.
- Obligation to flag ETR impact: Constituent entities must indicate in the remarks section of their Top-up Tax return that their GloBE ETR is reduced by virtue of the application of the Grace Period and commensurate to the cap provided for in the Grace Period Limitations.
- Suspension of final assessment: Cantonal tax authorities will not issue final tax assessments for the affected cases until the Federal Council has announced amendments to the OMinT.
- Coordination with cantons: The Communication was discussed with the Swiss Tax Conference, ensuring cantonal administrative alignment.

In essence, the Communication requires companies to file their Top-up Tax returns under current law while preserving the ability to give effect to future legislative changes in Switzerland, by deferring final assessments pending an amendment of the OMinT. This interim approach provides procedural clarity on filing obligations, while leaving unresolved the ultimate allocation and quantum of Top-up Tax liabilities.

Open questions: Scope of the OMinT amendment and non-retroactivity principle

Broad versus narrow approach to OMinT amendment

The Federal Council's response to the adopted Motions involves two possible approaches to address a prohibited retroactive interference of the January 2025 AG with Swiss rule-of-law principles:

- Narrow approach: The OMinT is amended to exclude the application of the January 2025 AG to fiscal year 2024 only, consistent with the approach of certain jurisdictions like the UK. Under this approach, Swiss constituent entities targeted tax credits received in 2024 or earlier will be respected in Switzerland for fiscal year 2024, but the January 2025 AG would apply in Switzerland prospectively from 2025 onwards.
- Broad approach: The OMinT is amendment to exclude the application of the January 2025 AG to fiscal year 2024 onwards, provided that the targeted tax benefit had been granted between 1 December 2021 and 31 December 2024 in Switzerland. This would typically trigger the application of the Switch-Off Rule and carries a higher risk of QDMTT qualification challenges at the OECD level and potential credibility costs in ongoing international negotiations, including those with the EU.

The Federal Council has not yet publicly communicated which approach would prevail. Given the Federal Council's stated opposition to the Motions as well as political and business concerns about QDMTT qualification risks, a narrow amendment may prevail.

Impact on Swiss QDMTT qualification

A critical risk of any approach that departs materially from any OECD's Administrative Guidance and the January 2025 AG is the potential loss of Switzerland's QDMTT qualifying status. If Switzerland's DMTT regime ceases to qualify as a QDMTT, other IIR or UTPR jurisdictions could impose Top-up Taxes on Swiss constituent entities' income that is not being adequately taxed under Swiss rules. The OECD's Commentary on QDMTT qualifying status conditions requires non-discriminatory application of the minimum tax rules. Any OMinT amendment must navigate this constraint carefully.

That said, despite targeted governmental arrangements being viewed as Related Benefits, the January 2025 AG provides for an exceptional integrity-based mechanism that should allow QDMTT jurisdictions that granted such governmental arrangements not to be disqualified for the transitional QDMTT status and the QDMTT Safe Harbour. This is based notably on the understanding that, where a jurisdiction does not apply the January 2025 AG limitations, the Switch-Off Rule would be expected to apply, so that other jurisdictions can neutralize the targeted tax benefit and thereby preserve the integrity of the GloBE Rules. One may nevertheless question whether this understanding will be sufficient to confirm permanent Qualified DMTT status following the IF peer review process.

One may also question whether this understanding holds true to preserve the integrity of the GloBE rules under a Side-by-Side Safe Harbour. From fiscal year 2026, the SBS Safe Harbour deems IIR and UTPR Top-up Tax to be zero for US-parented groups. Where the Switch-Off Rule is triggered for such a MNE group (e.g., if Switzerland does not apply the January 2025 AG limitations in 2026 under a broad approach to the implementation of the Motions), there may, in practice, be no foreign IIR or UTPR jurisdiction able to collect the residual Top-up Tax amounts.

That said, the conceptual premise of the SBS system is that the Ultimate Parent Entity (UPE) jurisdiction operates a qualifying eligible domestic and worldwide minimum tax system that is functionally equivalent to the GloBE rules, thereby justifying access to the SBS Safe Harbour. Whether this premise will be sufficient, in combination with the Switch-Off Rule, to maintain the intended level playing field will be assessed as part of the Stocktake to be undertaken by the IF.

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