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What Next for the Minimum Tax in Switzerland?

An Evaluation of the Options for Action

Study commissioned by the

Swiss-American Chamber of Commerce

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18 May 2026 – Official translation – in case of any ambiguities, please refer to the original German version.

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1. Executive Summary

- The Federal Council introduced the minimum tax voluntarily as of 1 January 2024 and 1 January 2025, respectively. It did so with the aim of preventing an **outflow of tax revenue** and preserving the **competitiveness** of Switzerland as a tax location. There was neither a legal nor a political obligation to do so.
- Since the popular vote of 18 June 2023, the **political and regulatory environment surrounding the minimum tax** has changed fundamentally. Of the more than 140 members of the Inclusive Framework, only around 33 states have fully implemented the project.
- The implementation of the minimum tax gives rise to serious **legal risks** in Switzerland – both for companies and for the treasury. Specifically, the state faces the threat of having to refund top-up taxes already collected, amounting to billions of francs.
- The **Side-by-Side Package in favour of the United States** creates additional instances of unequal treatment and illustrates Switzerland's structural dependence on the publications of the Inclusive Framework and the OECD.
- In fiscal terms, the minimum tax threatens to become a **loss-making project**.
- According to this study, there is a strong case for abolishing the minimum tax in the course of 2026.
- In parallel, the introduction of a **Domestic Minimum Top-Up Tax (DMTT)** merits serious consideration. Through a targeted adjustment of the ordinary corporate income tax, a tax burden could be achieved that is comparable to a Qualified Domestic Minimum Top-Up Tax (QDMTT) – with the decisive advantage that groups would be protected against additional taxation abroad without binding Switzerland, in regulatory terms, to the Inclusive Framework.

The introduction to the Federal Council's dispatch on the implementation of the minimum tax in Switzerland (i.e. on the new constitutional provision) states the following:

"This bill is intended to preserve Switzerland's competitiveness and to create the conditions for jobs and tax revenues to remain in Switzerland."[1]

Presumably, these reasons – preserving competitiveness and protecting jobs and tax revenues – were also decisive in explaining why the necessary constitutional amendment achieved approval of almost 80% in the 2023 popular vote. Since the popular vote, however, the situation has changed. There are serious reasons why maintaining the minimum tax may achieve the opposite of what was originally intended.

In the meantime, the global minimum tax has become an EU+ project, and only a minority of the member states of the Inclusive Framework have implemented the minimum tax; in addition, US groups will be exempted from the minimum tax under the Side-by-Side Package (in short: SBS or SBS Package) as of 2026 (or, in certain countries, as of 2027). At the same time, the US tax system has gained further attractiveness under the second Trump administration through the One Big Beautiful Bill Act (OBBBA). This is a dangerous combination, particularly in view of the importance of US groups for Swiss corporate income tax revenues. They pay approximately CHF 5 billion in corporate income taxes per year, which corresponds to around 18% of total corporate income tax revenues of approximately CHF 28 billion. According to the data available to us, US MNEs employ approximately 100,000 people in Switzerland. Under the SBS Package, US groups have less incentive to build up functions in Switzerland – and more incentive to repatriate existing structures. If only 25% of the corporate income tax revenues from US groups in Switzerland were lost through such relocations, the study shows that the revenue losses would exceed what the minimum tax was intended to protect in terms of tax revenue. In fiscal terms, the minimum tax would become a loss-making project.

Beyond this new regulatory environment and the geopolitical situation, the minimum tax also entails significant legal risks. In particular – in the assessment of the authors – the dynamic reference to an unknown number of accounting standards in the MindStV[2] and the Model Rules violates the principle of legality enshrined in Art. 127 para. 1 of the Federal Constitution (BV)[3]. The tax base of

[1] Dispatch on the Federal Decree on a Special Taxation of Large Corporate Groups (implementation of the OECD/G20 project on the taxation of the digital economy) of 22 June 2022, BBl 2022 1700, 2 (cit. Dispatch on the Federal Decree on a Special Taxation of Large Corporate Groups).

[2] Ordinance on the Minimum Taxation of Large Corporate Groups (Minimum Taxation Ordinance, MindStV) of 22 December 2023 (SR 642.161) (cit. MindStV).

[3] Federal Constitution of the Swiss Confederation of 18 April 1999 (SR 101) (cit. BV).

the top-up tax is not sufficiently defined, which can be challenged in court. Furthermore, in light of the new regulatory and geopolitical situation, the implementation is probably no longer covered by the competence provision in Art. 129*a* BV. Art. 129*a* BV requires that the Federal Council align itself substantively with international requirements and act in the interest of the Swiss economy as a whole. Both requirements appear questionable in view of the changed circumstances. In addition, there are conflicts with Switzerland's double taxation agreements (DTAs) arising from the levying of the IIR.

A final clarification of these questions by the Federal Supreme Court cannot be expected for at least two to five years. Until then, legal uncertainty prevails. Depending on the outcome, neither the IIR nor the QDMTT may be enforceable. The state faces the threat of having to refund top-up taxes already collected, amounting to billions of francs. These risks can only partially be eliminated by transposing the MindStV into formal legislation.

The status quo is also highly risky for companies, since it is unclear whether both the IIR and the QDMTT can actually be enforced in Switzerland in light of the risks mentioned above (violation of the principle of legality, exceeding of the competence in Art. 129*a* BV and possible DTA conflicts). The consequences would be as follows: Swiss groups face the threat of an application of the UTPR and thus the taxation of their domestic and foreign profits abroad, insofar as these are undertaxed. The domestic profits of other non-US groups would also potentially be subject to additional taxation abroad. This undermines a central argument for the introduction of the minimum tax, namely that it creates legal certainty for groups. Until a final decision by the highest court, there is no legal certainty.

The Side-by-Side Package aggravates the situation. It violates the constitutional principle of equal treatment in illegality (*Gleichbehandlung im Unrecht*, Art. 8 BV). Under this principle, a person seeking protection can demand an unlawful advantage if they can demonstrate that other persons also benefit from such an unlawful advantage. According to a recently published practice statement by the Swiss Federal Tax Administration (ESTV)[4], US groups are exempted from the IIR even though this is not provided for in the MindStV or the Model Rules. Non-US groups could demand equal treatment in illegality.

[4] See Communication-031-E-2026-d of 7 April 2026 - Top-up tax: temporal application and exercise of elections under the administrative guideline of 5 January 2026 on the Side-by-Side Package (cit. Communication-031-E-2026-d).

The Side-by-Side Package also exemplifies a structural dependence of Swiss tax law on the Inclusive Framework. Particularly concerning in this regard is the lack of transparency of the decision-making process within the Inclusive Framework. In addition, states participate in decision-making within the Inclusive Framework even though they have not implemented the minimum tax. Past practice suggests that individual states pursue their power interests under the guise of multilateral coordination. Through the minimum tax, Switzerland has made itself dependent on these decisions. This is accompanied by a loss of tax policy sovereignty.

The longer action is delayed, the greater the potential risk for the state. Both the potential refund claims in the event of successful enforcement before the Federal Supreme Court and the structural dependence on publications of the Inclusive Framework increase. There is therefore a need for action in any event.

In light of this uncertain situation, the study has analysed various options for action. Based on a weighing of legal risks and economic consequences, this study concludes that there is a strong case for abolishing the minimum tax in Switzerland in the course of 2026. This would lead to greater legal certainty, tax policy sovereignty and competitiveness. At the same time, serious consideration should be given to introducing a Domestic Minimum Top-Up Tax (DMTT) – a domestic solution in which the corporate income tax is adjusted so that the tax burden would be similar to that of a QDMTT. Such a solution would protect groups against additional taxation abroad without binding Switzerland, in regulatory terms, to the Inclusive Framework. This path is challenging, but it would be supported by the will of the people, according to which the minimum tax was meant to serve the purpose of preserving competitiveness and protecting tax revenues and jobs. A DMTT requires amendments to the DBG[5] and the StHG[6] and thus a political process spanning several years.

In addition to the option of a deliberate loss of the Q-status of the QDMTT (particularly disadvantageous, since the QDMTT Safe Harbour would cease to apply and the negative economic consequences would not be eliminated), the study also examined whether Switzerland could likewise introduce a "Qualified SBS regime", i.e. whether Swiss groups could also be exempted from the minimum tax, similar to US groups under the Side-by-Side Package. This latter solution appears

5 Federal Act on Direct Federal Taxation (DBG) of 14 December 1990 (SR 642.11) (cit. DBG).

6 Federal Act on the Harmonisation of the Direct Taxes of the Cantons and Municipalities (Tax Harmonisation Act, StHG) of 14 December 1990 (SR 642.14) (cit. StHG).

politically unattainable. In our assessment, the Inclusive Framework would hardly ever recognise the Swiss tax system as qualified – even if the requirements were met.

2. Overview / Study Design

The study aims to set out Switzerland's options for action with regard to the implementation of the SBS Package and the global minimum tax as a whole, and to present both the legal risks and the economic effects of the various options. The study is structured as follows:

- Chapter 3 presents the legal framework and explains how the minimum tax was implemented in Switzerland.

- Chapter 4 contains fundamental economic considerations and lays the groundwork for a subsequent assessment of which option is associated with which economic advantages and disadvantages.

- Chapter 5 presents the essential content of the SBS Package and explains the significance of the US tax system.

- Chapter 6, finally, discusses four options, analysing in each case both the legal risks and the economic consequences. Specifically, the following four options are addressed:

    - Implementation of the SBS Package / abolition of the minimum tax

    - Loss of the Q-status

    - Introduction of a DMTT

    - Qualification of the Swiss tax regime as a Qualified SBS regime

Some of the following considerations have been drawn from existing publications.[7]

3. Implementation of the Minimum Tax in Switzerland

3.1. Legislative History

3.1.1. Adoption and Content of the Model Rules

The GloBE Model Rules were developed for the implementation of the minimum tax.[8] These constitute a *common approach*.[9] Accordingly, domestic rules should conform to the minimum standards agreed by the Inclusive Framework and be consistent with the accompanying *Administrative Guidance*. The *common approach* further implies that members of the Inclusive Framework accept the application of the GloBE rules by other members, including agreement on the order in which the rules are applied and on the application of any agreed safe harbours.[10] However, countries transpose the minimum tax into domestic law voluntarily. There is no obligation under international law.

The technical details of the minimum tax and the content of the Model Rules are addressed in the respective chapters. At the outset, it is important to note that the minimum tax follows the approach of so-called *jurisdictional blending*, under which the effective tax burden is determined at the level of the individual jurisdictions – and not on a global basis (*global blending*) – in order to establish whether the minimum tax rate of 15% is reached.[11] It is understood, however, that Switzerland advocated *global blending* during the negotiations. In the end,

7 See in particular HONGLER PETER, Kursorische Gedanken zur Umsetzung von Side-by-Side in der Schweiz, ILE Working Paper 2026-28, 4 f. (cit. HONGLER, Kursorische Gedanken); HONGLER PETER/DOMKE CHRISTOPH, Methodisches zur Mindeststeuer, FStR 2/2025, 89 ff. (cit. HONGLER/DOMKE, Methodisches); HONGLER PETER, Treaty Compatibility of the IIR and the UTPR, Belt and Road Initiative Journal 2024, 91 ff. (cit. HONGLER, Treaty Compatibility); BERNDT THOMAS *et al*., Umsetzung der globalen Mindeststeuer (Pillar 2) in der Schweiz, IFF-HSG Working Paper No. 2022-13, draft 2022, 7 ff.

8 OECD/G20, Steuerliche Herausforderungen der Digitalisierung der Wirtschaft – GloBE-Mustervorschriften (Säule 2), Inclusive Framework on BEPS, 2023 (cit. GloBE Model Rules).

9 OECD/G20, Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, 8 October 2021, 1 ff. (cit. OECD/G20, Statement on a Two-Pillar Solution).

10 OECD/G20, Statement on a Two-Pillar Solution (fn. 9), 3.

11 The determination of the effective tax rate is itself already based on the principle of *jurisdictional blending*, see Art. 5.1.1 GloBE Model Rules.

only the United States was able to secure such *global blending* for US groups, namely through the Side-by-Side Package. This will also be addressed below.

3.1.2. Popular Vote

Switzerland is among the jurisdictions that decided to implement the minimum tax at the national level. The implementation of the minimum tax took place by way of a constitutional amendment, which gave rise to the popular vote on the "Implementation of the OECD/G20 project on the taxation of large corporate groups". On 18 June 2023, the people and the cantons clearly approved the constitutional amendment required for this purpose: 78.5% of voters and all cantons endorsed the proposal.[12]

An important argument during the referendum campaign was the threat of losing tax revenue. Had Switzerland not implemented the minimum tax, so this position went, other states would have been able to collect the difference between the lower tax burden in Switzerland and the minimum taxation of 15%.[13] This will be revisited below. In addition, the provision is discretionary in nature, i.e. the Confederation has no constitutional obligation to introduce a minimum tax.

3.2. Legal Basis in Switzerland

3.2.1. Overview

Before the popular vote, Art. 128 para. 1 lit. b BV provided that the Confederation may levy a direct tax of at most 8.5% on the net profit of legal entities. For the top-up tax to have been covered by this competence provision, four requirements would have had to be met cumulatively:

(1) It would have to be a direct tax;

(2) The tax object would have to be "net profit";

(3) The taxable persons would have to be legal entities; and

[12] For the voting results, see <https://www.bk.admin.ch/ch/d/pore/va/20230618/index.html> (last visited on 17.02.2026).

[13] See the Q&A on the implementation of the OECD/G20 minimum taxation in Switzerland of April 2023, available at: <https://www.efd.admin.ch/dam/de/sd-web/xv-80bgDwrK6/faq-oecd-mindessteuer-de.pdf> (last visited on 17.02.2026).

(4) The tax rate could not exceed 8.5%.

In the following, we address only (1) and (4).

Direct taxes (1) are those taxes in which the tax object and the underlying economic substance to be taxed coincide.[14] In the case of the corporate income tax, net profit constitutes both the tax object and the underlying economic substance. All types of top-up tax (IIR, UTPR, QDMTT) likewise constitute direct taxes within the meaning of this requirement, since the relevant GloBE income constitutes both the tax object and the underlying economic substance. The GloBE Rules also rely, for both the QDMTT and the IIR, on an accounting-based net figure (the annual net income or loss determined for the constituent entity, i.e. the *Financial Accounting Net Income or Loss*).[15]

Finally, (4) the tax rate of 8.5% must not be exceeded. The Confederation has already fully exhausted its competence to levy the tax on net profit by levying a corporate income tax of 8.5%.[16] Against this background, it appears appropriate that the top-up tax was introduced by way of a new constitutional provision. As will be shown, however, it is decisive for Switzerland's options for action to clearly delineate the Confederation's corporate income tax competence in Art. 128 BV.

Based on the adopted constitutional provision of Art. 129*a* BV, the Federal Council enacted the Ordinance on the Minimum Taxation of Large Corporate Groups (MindStV), which entered into force on 1 January 2024. The Ordinance governs the top-up tax to be levied on the profits of constituent entities of large corporate groups depending on their connection to Switzerland.[17] The provisions on the international top-up tax (IIR), by contrast, entered into force on 1 January 2025.[18] The provisions on the UTPR have not yet entered into force, and – as we understand it – this is not intended either.

At various points below, we will examine whether the implementation of the minimum tax is constitutional. In this regard, it must be borne in mind that, as a matter of principle, an implementation is constitutional if it remains within the

14 BSK BV-SIMONEK, Art. 128 N 9, in: Waldmann Bernhard/Besler Eva Maria/Epiney Astrid (eds.), Bundesverfassung, Basler Kommentar, 2nd ed., Basel 2025 (cit. BSK BV-AUTHOR). Other criteria of demarcation are also conceivable.

15 See Art. 3.1.2 GloBE Model Rules.

16 See Art. 128 para. 1 lit. b BV and Art. 68 DBG.

17 Art. 1 MindStV.

18 See Art. 40 para. 2 MindStV.

competence provision. In the present case, for example, the MindStV does not per se violate the principle of legality in Art. 127 para. 1 BV, since the constitutional article explicitly provides that the Federal Council has the corresponding competence to legislate during the first six years. In the course of implementation, however, violations of the Constitution can certainly occur, which can also be enforced before the Federal Supreme Court.[19] It must also be taken into account that the Federal Council must, in particular, adhere to the framework laid down in Art. 129*a* and Art. 197 no. 15 BV; otherwise it acts outside its competence and in breach of the Constitution.

The individual paragraphs of the newly created competence provision in Art. 129*a* BV are addressed separately below. It should be emphasised once again at this point that the Confederation has so far introduced only the QDMTT and the IIR. It has neither a constitutional obligation to introduce the UTPR nor the IIR or QDMTT. The provision is discretionary in nature.

3.2.2. Paragraph 1: Competence

3.2.2.1. Overview

With the introduction of Art. 129*a* BV, the Confederation is authorised to enact provisions for large corporate groups on market-state taxation and on minimum taxation. The implementation of the OECD minimum taxation undisputedly falls under the second part of this provision.

Art. 129*a* para. 1 BV is formulated as a discretionary provision:

^1^ The Confederation may enact provisions on taxation in the market state and on minimum taxation for large corporate groups.

The optional character of the norm concerns only the fundamental decision of whether to make use of the competence. With the introduction of the minimum taxation through the MindStV, this decision has been made; the competence has since been effectively exercised. The minimum tax could be repealed at any time. The constitutional provision permits this as well.

[19] On the principle of legality, see below section 6.1.2.3.

With competence norms, the question is always whether a body has jurisdiction at all, not the extent to which the competence is exercised.[20]

Questions of tax competence at the constitutional level always concern encroachments on the fiscal sovereignty of the cantons. For this reason, it is sometimes argued that such competence norms should be interpreted narrowly.[21] It should be countered, however, that a certain restraint is warranted in the interpretation of such competence norms in order to ensure a workable and as seamless as possible allocation of competences. Otherwise, conflicts of competence would regularly arise – precisely what a constitutional order of competences is meant to prevent.

In connection with Art. 129*a* BV, it must be clarified where the boundary of the allocation of competence lies, i.e. from what design of the minimum taxation onwards the Confederation would exceed its jurisdiction. That such a boundary exists is inherent in every allocation of competence: beyond a certain point, a body no longer acts within, but outside, the competence conferred upon it. It must also be possible to describe this boundary. We address this below in section 3.2.2.2.

Finally, corresponding transitional provisions are set out in Art. 197 no. 15 BV. These provide the Federal Council with the necessary guidelines. Within six years, the Federal Council must submit a bill to Parliament (Art. 197 no. 15 para. 8 BV).

[20] See HONGLER PETER/DOMKE CHRISTOPH, Verfassungsvorgaben an die Ausgestaltung der Gewinnsteuer, in: Hongler Peter/Vogelsang Marc (eds.), Panoptikum des Steuerrechts, Festschrift für Madeleine Simonek, Schriftenreihe Finanzwissenschaft und Finanzrecht vol. 126, Bern 2024, 53 ff., 58 f. (cit. HONGLER/DOMKE, Verfassungsvorgaben).

[21] See KOCHER MARTIN, Die bundesgerichtliche Kontrolle von Steuernormen, Bern 2018, N 1372 f.

3.2.2.2. Where Does the Boundary of the Allocation of Competence Lie?

In our reading, the Confederation would have no taxing competence if there were no longer any threat of a loss of tax revenue or jobs to other countries.[22] This is based in particular on a historical interpretation. In the introduction to the dispatch on the new federal competence in the Constitution, the following is prominently stated:

"This bill is intended to preserve Switzerland's competitiveness and to create the conditions for jobs and tax revenues to remain in Switzerland."[23]

In other words, for all new measures an evaluation must be carried out as to whether an outflow of tax revenue or jobs is imminent and whether Switzerland's competitiveness is being preserved. The Federal Council would, for example, not have the competence to tax corporate groups solely because of a fiscal need. The minimum tax was never intended to generate tax revenues, but to protect tax revenues – that is a significant difference.

As mentioned, the minimum tax is a *common approach* or, in the words of the dispatch: *"Even if a state does not implement the rules, the agreement on a common approach means that it accepts the application of the rules by other states with regard to affected constituent entities operating in its country."*[24]

From the outset, it was unclear whether certain instruments of US tax law would also be attributed to this *common approach* – in particular GILTI (Global Intangible Low-Taxed Income – a type of CFC rule[25]). The dispatch notes that it was still unclear whether GILTI is comparable to the mechanism of the minimum tax: *"The US government is planning adjustments to GILTI. Among other things, a switch to*

22 See, for example, the very clear words of the Councillor of States Ettlin in the parliamentary deliberations: *"It is therefore not only about the additional tax revenues. A company will not leave Switzerland tomorrow. But if a company relocates from Switzerland because of the lost advantage, then we lose not only the additional tax revenues but the taxes of this company altogether. One really has to bear in mind where our revenues come from: in 2020, the Confederation received 12.1 billion francs in taxes from legal entities. In 2007, it was 6.8 billion. In thirteen years, it went from 6.8 to 12.1 billion francs! You know our finances, we have readily spent 4 billion, and we need them. If tax revenue relocates away from here, we lose not only the additional tax revenues, but we lose the taxes of these companies altogether"* (Official Bulletin of the Federal Assembly, Council of States, autumn session 2022, Federal Decree on a Special Taxation of Large Corporate Groups (implementation of the OECD/G20 project on the taxation of the digital economy), S 963).

23 Emphasis added. See Dispatch on the Federal Decree on a Special Taxation of Large Corporate Groups (fn. 1), 2.

24 Dispatch on the Federal Decree on a Special Taxation of Large Corporate Groups (fn. 1), 9.

25 On this, see below section 5.3.3.

country-by-country blending is envisaged. The USA regards its GILTI rules as equivalent to the new OECD/G20 rules. This question is still pending in the OECD/G20."[26]

This must be taken into account when interpreting the competence provision. In concrete terms, this means that Art. 129*a* BV not only confers on the Federal Council the competence to implement the minimum tax in full or not at all, but also grants it a certain flexibility. After all, at the time Art. 129*a* BV was adopted and during the parliamentary deliberations, it was not yet clear how the minimum tax would ultimately be designed at the global level. Nevertheless, certain limits of the competence norm can be derived from the legislative history:[27]

It was repeatedly pointed out that implementation was necessary because Switzerland would otherwise risk losing tax revenue to other countries.[28] Furthermore, it was central for the Federal Council to create legal certainty.[29] At the same time, it was emphasised that the intention was to align with an international standard.[30]

Accordingly, the introduction of the QDMTT in particular was justified. In the case of the IIR (and potentially also the UTPR), the introduction is primarily shaped by the idea of an international standard, i.e. Switzerland aligns itself with a uniform regulatory approach that was initially supported by a majority of countries. At present, however, fewer than a quarter of all member states of the Inclusive Framework have fully implemented the minimum tax. The Federal Council's competence must be assessed all the more critically.

3.2.2.3. What Does This Mean for the Implementation of the SBS Safe Harbour?

It is established that the SBS Safe Harbour will result in US groups not being affected by additional taxation through a UTPR or an IIR as of 1 January 2026 (or, depending on implementation in the individual countries, as of 1 January 2027),

26 Dispatch on the Federal Decree on a Special Taxation of Large Corporate Groups (fn. 1), 18.

27 See on this also already IFF-HSG, Stellungnahme zur Vernehmlassung zur Umsetzung der OECD/G20-Mindestbesteuerung, 20 April 2022, 2 ff.

28 See, for example, the remarks of the Councillor of States Germann: *"Our companies simply have to transfer and pay abroad the delta, i.e. 15 percent of the OECD minimum tax minus the tax rate they effectively pay today."* (Official Bulletin 2022 (fn. 22), S 964).

29 See, for example, the introductory remarks at the press conference of Federal Councillor Karin Keller-Sutter of 18 June 2023, available at: <https://www.youtube.com/watch?v=8ZOs3KChDNI> (last visited on 17.02.2026).

30 See also immediately below section 3.2.3. See in detail SUTTER/SONDEREGGER, Das «Side-by-Side-System» unter Pillar 2, StR 2026, 298 ff., 317 f.

because the SBS Safe Harbour exempts them from it. If Switzerland were thus to abolish the IIR and the QDMTT, US groups would not face additional taxation through a UTPR or an IIR.

Moreover, US groups are not subject to any minimum tax requiring *jurisdictional blending*, and thus taxation in the United States (by means of *global blending* under US rules) would not occur in the same way as under an IIR (by means of jurisdictional blending under OECD rules).

The risk that Swiss tax revenue would be taxed abroad if profits were actually undertaxed is therefore lower. After all, Swiss income of US groups (taxed at less than 15%) would, because of the SBS Safe Harbour, not be subject to the IIR or UTPR, but at most to the CAMT (Corporate Alternative Minimum Tax) or NCTI (Net CFC Tested Income).[31] Their requirements, however, are less strict. In addition, individual cantons have already increased their ordinary corporate income taxes, so that the risk of taxation abroad is also lower compared to the situation at the time of the popular vote.[32]

An analysis is therefore required as to whether the protection of domestic tax revenue achieved by maintaining the QDMTT and the IIR outweighs the potential protection of tax revenue achieved by abolishing the QDMTT and the IIR. If the loss of locational attractiveness resulting from maintaining the minimum tax is greater than in the event of its abolition, the Federal Council presumably no longer has the competence to legislate in this area. After all, preserving locational attractiveness was a central reason why Art. 129*a* BV was approved.[33] The aim was to ensure that no companies would relocate, or in the words of Councillor of States Würth:

"The goal, I believe, is relatively simple. We simply have to be compatible as of 1 January 2024, no more and no less. We do not want to lose companies to competing locations. We want to remain attractive in comparative terms."[34]

31 On these instruments, see below section 5.3.

32 See, for example, Art. 75 of the Act on the Direct Taxes of the Canton of Schaffhausen of 20 March 2000 (SHR 641.100) (cit. StG-SH).

33 For example, it was never the idea behind the minimum tax that the Confederation could suddenly tax foreign profits through the IIR; rather, the sole aim was to prevent these profits from being taxed through a UTPR (or possibly also an IIR). Switzerland thus did not want to introduce a kind of CFC rule; the intention was to prevent additional taxation abroad. These are different regulatory objectives.

34 Official Bulletin 2022 (fn. 22), 968.

The stated goal of the constitutional amendment and the new federal competence was *"to ensure that the corporate groups concerned pay the additional tax, which would be incurred in any event, in Switzerland ...]"*.[35] If, therefore, more tax revenue flows out as a result of the introduction of the minimum tax than would otherwise have been paid elsewhere, the Federal Council no longer appears to have the competence to implement a minimum tax (this applies both to the QDMTT and to the IIR).

The SBS Safe Harbour may result in Switzerland losing companies to competing locations. If the Federal Council fails to demonstrate that the minimum tax is actually needed to protect tax revenue, the competence to introduce one is lacking. Section 4.2.1.2 therefore examines how much corporate income tax revenue from US groups would be shifted out of Switzerland to other countries (in particular the United States).

The situation could become even more acute if the UTPR were unenforceable abroad. Such a case would arise, in particular, if the CJEU were to find the UTPR incompatible with EU law.[36] In that event, many groups would no longer face additional taxation, since the UTPR has so far been implemented almost exclusively by member states of the European Union.[37] In this case, there would be strong grounds for denying the Federal Council the competence to levy top-up taxes. The CJEU's decision can thus potentially further restrict or redefine the Federal Council's competence. The same applies if additional countries were to qualify as a "Qualified SBS regime". At present, it is above all Brazil that is asserting such a claim.[38]

3.2.3. Paragraph 2: Adherence to International Standards and Model Provisions

Art. 129*a* para. 2 BV obliges the Federal Council to align itself with international standards and model provisions in designing the minimum taxation:

^2^ In doing so, it i.e. the Confederation] shall align itself with international standards and model provisions.

35 MATTEOTTI RENÉ, Steuerrechtliche Fragen/Folgen im Zusammenhang mit dem Entscheid der OECD-Mindestbesteuerung in der Schweiz, expert opinion commissioned by the Swiss Confederation, represented by the General Secretariat of the FDF, 13 December 2023, 4 ff., 33 (cit. MATTEOTTI, Kurzgutachten).

36 See the pending case American Free Enterprise Chamber of Commerce vs. Belgium, C-519/25, before the CJEU.

37 Outside the EU, for example, fewer than ten states have implemented the UTPR: see, for instance, PwC, Pillar Two Country Tracker, available at <https://www.pwc.com/gx/en/services/tax/pillar-two-readiness/country-tracker.html> (last visited on 18.02.2026).

38 See <https://news.bloombergtax.com/daily-tax-report-international/brazil-seeks-oecd-approval-for-global-minimum-tax-exemptions> (last visited on 21.04.2026). It is likely that other states will also want to assert such a claim.

The wording is imperative. It constitutes a substantive limit on competence which restricts the Federal Council's room for manoeuvre.

The Federal Council is not authorised to introduce a minimum taxation whose content does not align with the relevant international standards. By adopting a rule deviating from them, the Federal Council would exceed its competence and the implementation would be unconstitutional.

The term "international standards" requires closer definition. First, however, the question arises as to what function this provision has at all. Two readings are conceivable:

1. If there are no international standards, the Federal Council cannot legislate under reading 1, i.e. para. 2 restricts the Federal Council's competence. This would mean that the Federal Council can introduce a minimum tax only if an international standard on the matter exists. If no such standard exists, the Federal Council has no competence.

2. The second reading holds that the Federal Council must, within the scope of its competence under para. 1, align itself with international standards, but only if such standards actually exist. If no international standards exist, it can still implement a minimum tax. If, however, an international standard does exist, the Federal Council must necessarily align itself with it.

The following speaks in favour of reading 2: The Federal Council's competence is limited to introducing a minimum tax in order to prevent an outflow of tax revenue. This implies that the Federal Council can introduce a minimum tax whenever such an outflow is imminent, even if no international standard exists. In favour of reading 1, by contrast, is the choice of an imperative formulation ("It shall align itself"). This very narrow wording and the resulting restriction of the Confederation's competence were also pointed out during the consultation procedure.[39]

In any event, it is questionable whether such an international standard exists. After all, the global minimum tax has become an EU+ project. According to our understanding, 33 states have introduced the UTPR and 48 states the IIR[40], which

39 See IFF-HSG (fn. 27), 2.

40 See PwC (fn. 37). See also the data in OECD, Central Record for purposes of the Global Minimum Tax (at least for the IIR implementation), available at: <<https://www.oecd.org/en/topics/sub-issues/global-minimum-tax/central-record-of-legislation-with-transitional-qualified-status.html>> (last visited on 04.05.2026) (cit. OECD, Central Record).

corresponds to less than a quarter and a third, respectively, of all Inclusive Framework member states (148 states in total). In addition, very large economies in particular, such as China, India or indeed the United States, are not participating in the project. These countries take part in the discussions but do not implement the project. Nevertheless, an "international" standard presumably exists, since several states continue to align themselves with the Model Rules. The fewer countries participate, the greater the risk that an international standard is lacking and thus – at least under reading 1 – that the Federal Council lacks the competence to implement both the QDMTT and the IIR.

3.2.4. Paragraph 3: Deviation from Constitutional Principles

3.2.4.1. Overview

Art. 129*a* para. 3 BV permits the Federal Council to deviate from certain constitutional requirements in order to safeguard the interests of the Swiss economy as a whole. Specifically, from the following principles (together hereinafter the *"constitutional principles"*):

a. the principles of universality and uniformity of taxation and the principle of taxation according to economic capacity pursuant to Article 127 paragraph 2;

b. the maximum tax rates pursuant to Article 128 paragraph 1;

c. the rules on enforcement pursuant to Article 128 paragraph 4, first sentence;

d. the exceptions to tax harmonisation pursuant to Article 129 paragraph 2, second sentence.

The provision has, in part, the character of an exception to fundamental rights, i.e. it is not a question of competence, but rather that the Federal Council, if it has the competence to introduce a minimum tax, need not adhere to the principles mentioned – always subject to the proviso that it acts in the interest of the economy as a whole. It is therefore central to understand what "in the interest of the economy as a whole" means.

3.2.4.2. In the Interest of the Economy as a Whole

The term "economy as a whole" derives from Art. 94 para. 2 BV and is intended to ensure that economic policy does not pursue particular interests.[41]

It is important to understand that this is not a question of competence (i.e. whether the Federal Council would no longer be competent if the implementation were no longer conducive to the overall interest), but rather whether, in the case at hand, the principles mentioned must be applied or not. In other words: if the Federal Council does not act in the interest of the economy as a whole, the implementation must be measured against the principles mentioned (as long as no federal act is yet in place). The Federal Council may, however, still be acting within its competence. It goes without saying that it is hardly possible for the Federal Council to implement a minimum tax that is not in the interest of the economy as a whole but that nevertheless complies with the principles mentioned.

Thus, with regard to the SBS implementation, there would (only) theoretically be two possibilities:

1. The Federal Council must demonstrate that an SBS implementation of the minimum tax is in the interest of the economy as a whole.

2. The Federal Council takes the position that the constitutional principles are complied with and that the question of whether the implementation is in the interest of the economy as a whole can remain open.

The second option, however, is a dead end, since the SBS conflicts with several of the constitutional principles listed in Art. 129*a* para. 3 BV. Specifically, the Confederation exceeds its corporate income tax competence and the maximum tax rates in Art. 128 BV. For a constitutionally compliant implementation, it therefore remains to be demonstrated that the implementation is in the overall interest of Switzerland.

[41] See, with further references, SGK BV-Vallender Klaus/Hettich Peter, Art. 94 N 14, in: Ehrenzeller Bernhard/Egli Patricia/Hettich Peter/Hongler Peter/Schindler Benjamin/Schmid Stefan G./Schweizer Rainer J., Die schweizerische Bundesverfassung, St.Galler Kommentar, 4th ed., St.Gallen 2023 (cit. SGK BV-author); see also already Matteotti René, Steuerrechtliche Fragestellungen im Zusammenhang mit der Einführung der internationalen Ergänzungssteuer UTPR im Rahmen der GloBE-Mindestbesteuerung in der Schweiz, expert opinion commissioned by the Swiss Confederation, represented by the General Secretariat of the FDF, 23 August 2024, 17 f. (cit. Matteotti, Gutachten).

4. Fundamental Economic Considerations

4.1. Overview

In order to better understand the economic effects of the various options for action, we refer below to four data sources:

- CbCR data
- Withholding tax data
- Corporate income tax data
- Financial data of individual companies

In essence, the aim is to better understand the effects of the individual options for action, in particular with regard to tax revenues in Switzerland and locational attractiveness overall.

4.2. Reference to CbCR Data Declared in Switzerland

To date, the CbCR data for Switzerland have not yet been comprehensively analysed.[42] The following analysis serves to better understand the significance of US MNEs (i) for the economy and (ii) for corporate income tax revenues and tax revenues overall. Caution is, however, warranted in basing political decisions on CbCR data, for three non-exhaustive reasons:

- The data are self-declarations that are not verified by the authorities.
- There is considerable room for interpretation in the application of CbCR.
- Only companies with revenues of more than EUR 750 million or CHF 900 million are covered.

[42] But see PILLEP FELIX, Switzerland's Position in Global Value Chains: A systematic analysis of OECD's aggregated CbCR dataset, ILE Working Paper 2026-30, 1 ff.

Nevertheless, the data can at least provide a rough orientation as to what global value chains look like and what significance Switzerland has as a location.

4.2.1. Number of Employees and Profitability

The following chart illustrates the significance of US MNEs and non-US MNEs. Unsurprisingly, Swiss MNEs are the largest employers of this cohort in Switzerland (difference between the middle and right-hand columns in Figure 1). According to this chart, US MNEs employ approximately 100,000 employees in Switzerland, with a slightly increasing trend (see Figure 2).

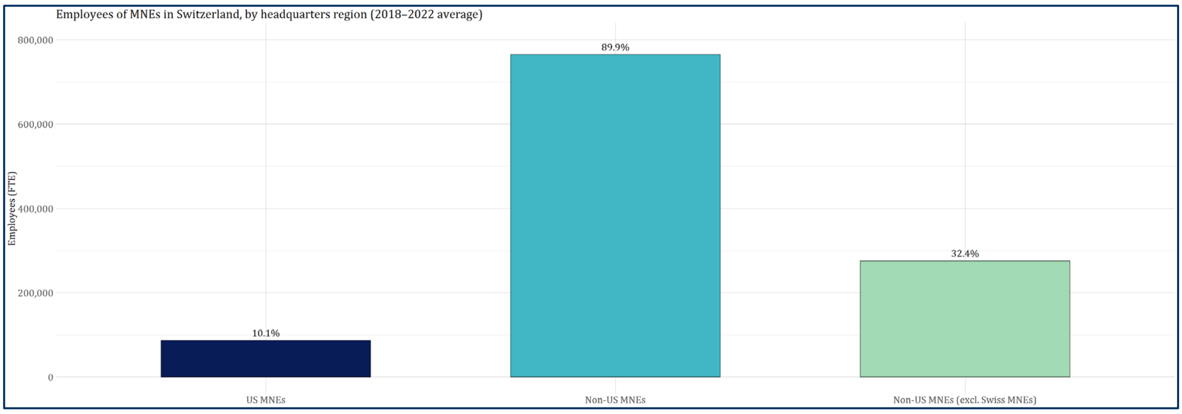

Figure 1: Employees of MNEs in Switzerland by jurisdiction (average 2018–2022).

Source: Own calculation based on CbCR data.

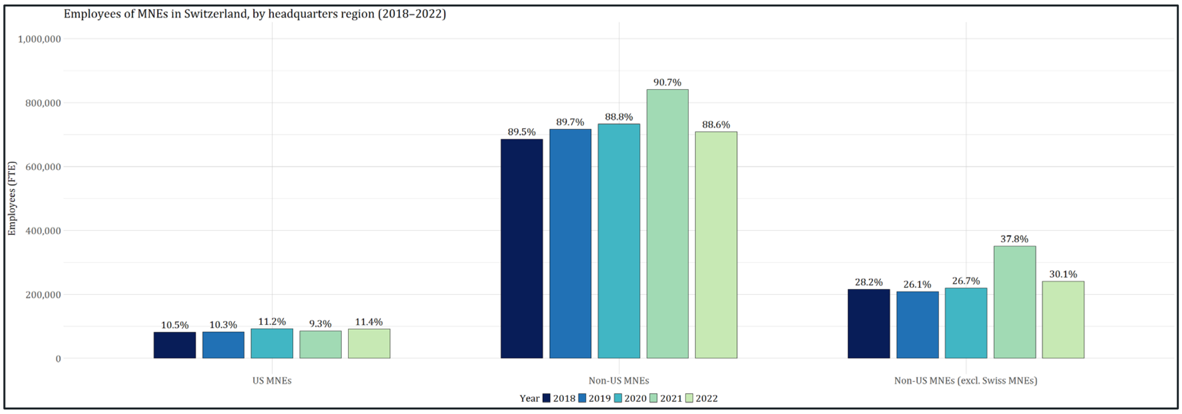

Figure 1: Employees of MNEs in Switzerland by jurisdiction of headquarters (2018–2022).

Source: Own calculation based on CbCR data..

The differences in profitability are considerable, as the following chart shows. US MNEs have a significantly higher profitability per employee. This refers to profit (according to CbCR) relative to the number of employees. This can be explained by various reasons, notably the following two:

1. The persons working in Switzerland perform activities that are, relatively speaking, more revenue-intensive. These include, for example, sales and management activities.

2. Intellectual property rights are located in Switzerland, generating additional income.

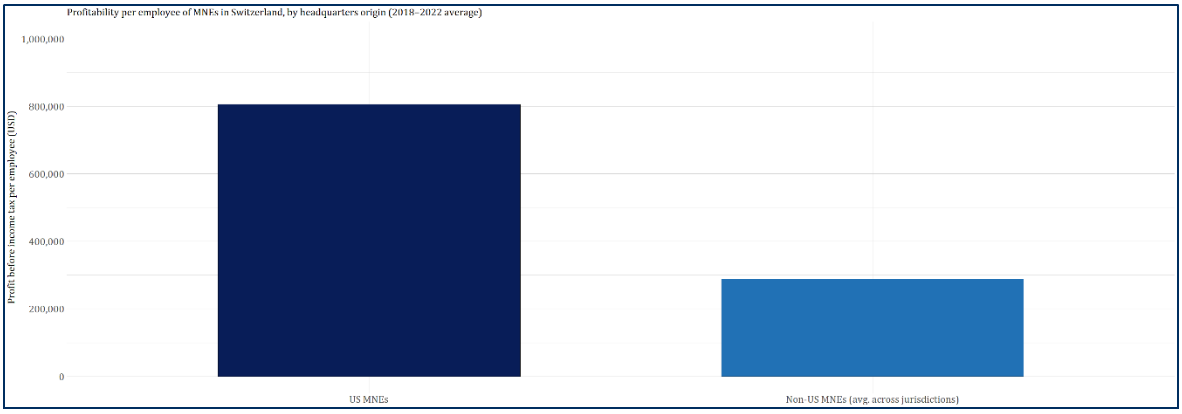

Figure 2: Profitability per employee in Switzerland – US MNEs vs non-US MNEs (average 2018–2022).

Source: Own calculation based on CbCR data.

4.2.1.1. Activities of US MNEs in Switzerland

The CbCR declaration also discloses which activities an entity performs (see Figure 4). Again, neither is the categorisation entirely clear, nor are the declarations systematically verified by the authorities. The results must therefore be interpreted with caution. The data show that US MNEs have various business areas in Switzerland. These include, in particular, sales and holding activities. This helps to explain the higher profitability mentioned above.

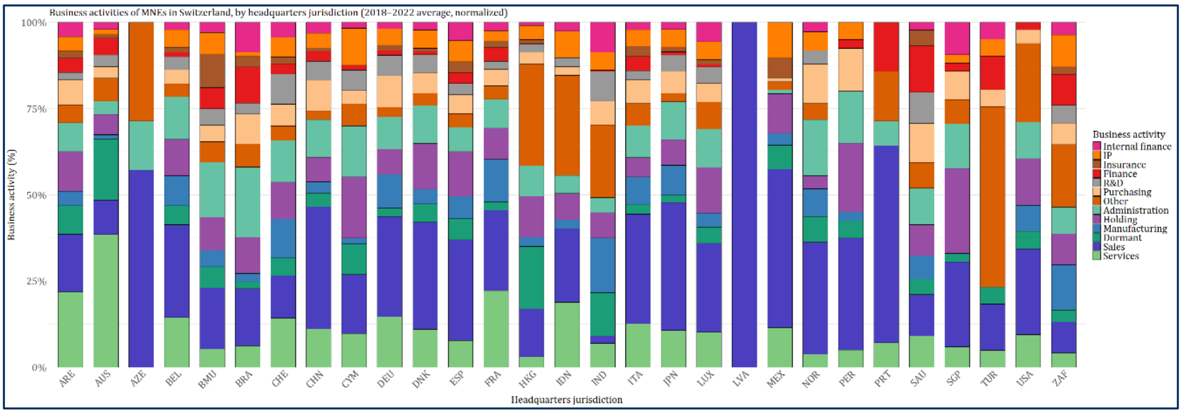

Figure 3: Business activities of MNEs in Switzerland by jurisdiction of headquarters (average 2018–2020).

Source: Own calculation based on CbCR data.

4.2.1.2. Share of US MNEs in Total Tax Revenues

Looking at total tax revenues, it becomes apparent that US MNEs pay approximately CHF 5 billion in corporate income taxes in Switzerland – at least according to the CbCR data. Depending on the year, this corresponds to between 27% and 38% of the corporate income tax payments declared in the CbCR data. Measured against the total corporate income tax revenues of the Confederation, the cantons and the municipalities, which amounted to around CHF 28 billion in 2024, this corresponds to around 18%.[43] The corporate income taxes paid by US groups in these years are somewhat lower than those of the Swiss groups that prepare a CbCR.

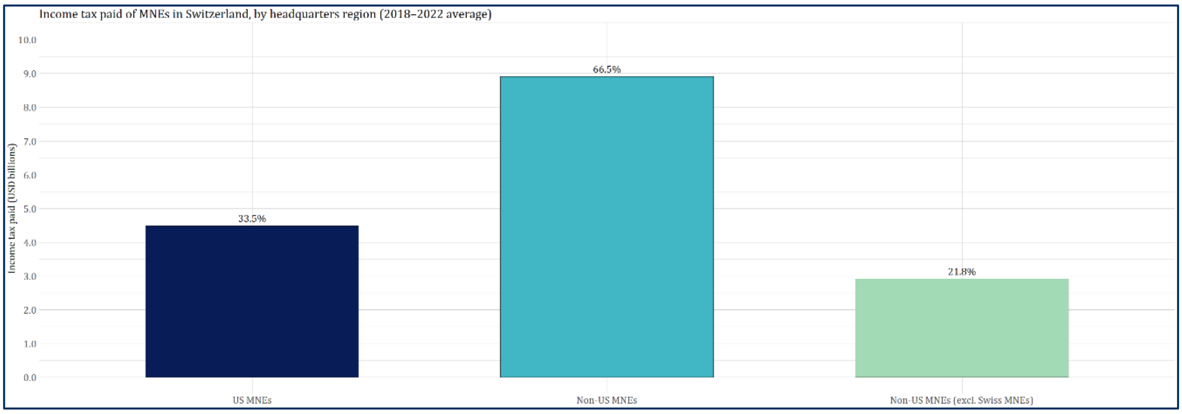

Figure 4: Corporate income taxes of MNEs in Switzerland by jurisdiction of headquarters (average 2018–2022, in USD bn).

Source: Own calculation based on CbCR data.

4.2.2. Reference to the Withholding Tax Data

The withholding tax data do not permit a precise analysis of how much withholding tax revenue originates from US MNEs. There are various reasons for this. The main reason is that, for withholding tax purposes, only the direct recipient country is known, namely where the notification procedure applies, which will regularly be the case in group structures.

[43] Own analysis based on statistics of the Federal Finance Administration (EFV).

Nevertheless, certain conclusions can be drawn from the following figures:

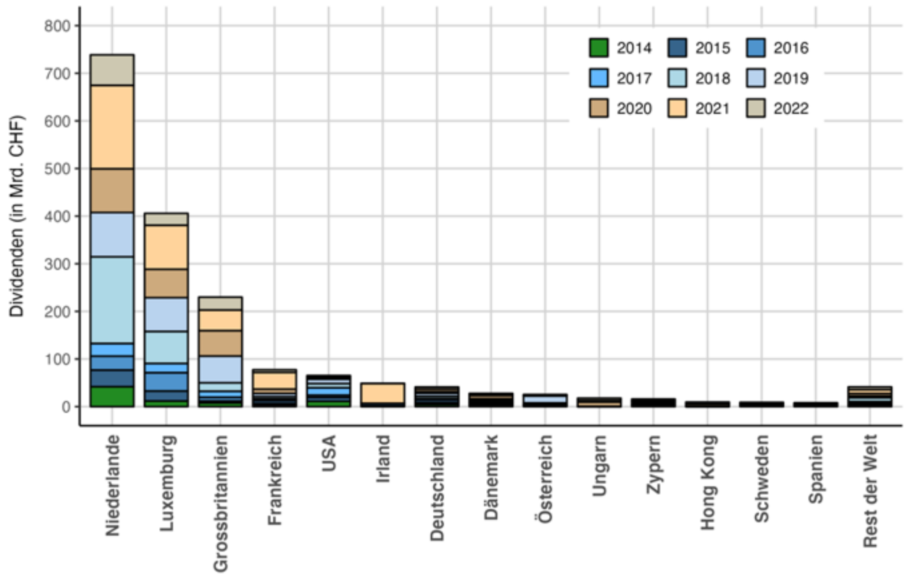

Figure 5: Dividend distributions aggregated by recipient state, 2014–2022 (in CHF bn).

Source: Own calculation based on FTA (ESTV) data.

Within group relationships, by far the most dividends are paid to the Netherlands, Luxembourg and the UK. This can be explained primarily by the fact that these countries are used for intermediate structures of globally active groups. In other words, investments into Switzerland are made via an intermediate company.

As is well known, the Switzerland-US DTA still provides for a 5% residual tax.[44] This residual tax generates relatively low revenues (only around CHF 160 million p.a.[45]). In other words, this is also a strong indication that US groups regularly invest into Switzerland via an intermediate structure. In addition, it can be assumed that German or French groups generally (but not exclusively) invest

44 Art. 10 para. 2 lit. a of the Convention between the Swiss Confederation and the United States of America for the Avoidance of Double Taxation with Respect to Taxes on Income of 2 October 1996 (SR 0.672.933.61) (cit. DTA CH-USA).

45 Own calculation for the year 2022. The data were provided by the ESTV.

directly into Switzerland, since the respective DTA and the AEOI agreement provide for a 0% rate.[46]

It is plausible that the distributions to these countries (above all the Netherlands and Luxembourg) under the notification procedure are, in particular, distributions by subsidiaries of US groups. The profits booked according to CbCR also confirm this statement. By a wide margin, US groups book the most profits (the chart is distorted so that everything could be displayed – see the logarithmic scale on the X axis):

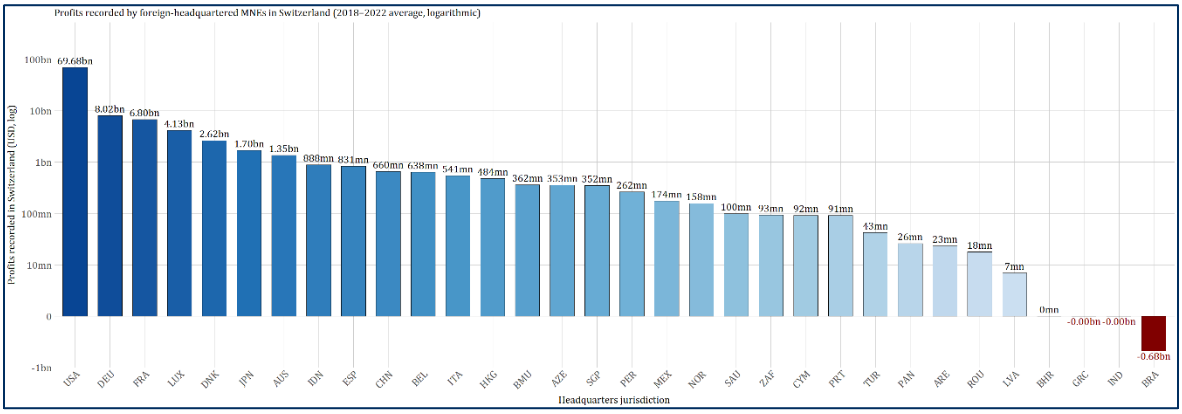

Figure 6: Profits booked in Switzerland by foreign MNEs by jurisdiction of headquarters (average 2018–2022, logarithmic scale).

Source: Own calculation based on CbCR data.

46 Provided that the stated requirements are met, see Art. 9 of the Agreement between the Swiss Confederation and the European Union on the automatic exchange of financial account information to improve international tax compliance of 26 October 2004 (SR 0.641.926.81).

4.2.3. Reference to the Corporate Income Tax Data of the Cantons and the Confederation

Corporate income tax revenues in the cantons have developed very differently. Here is an overview of the direct federal tax:

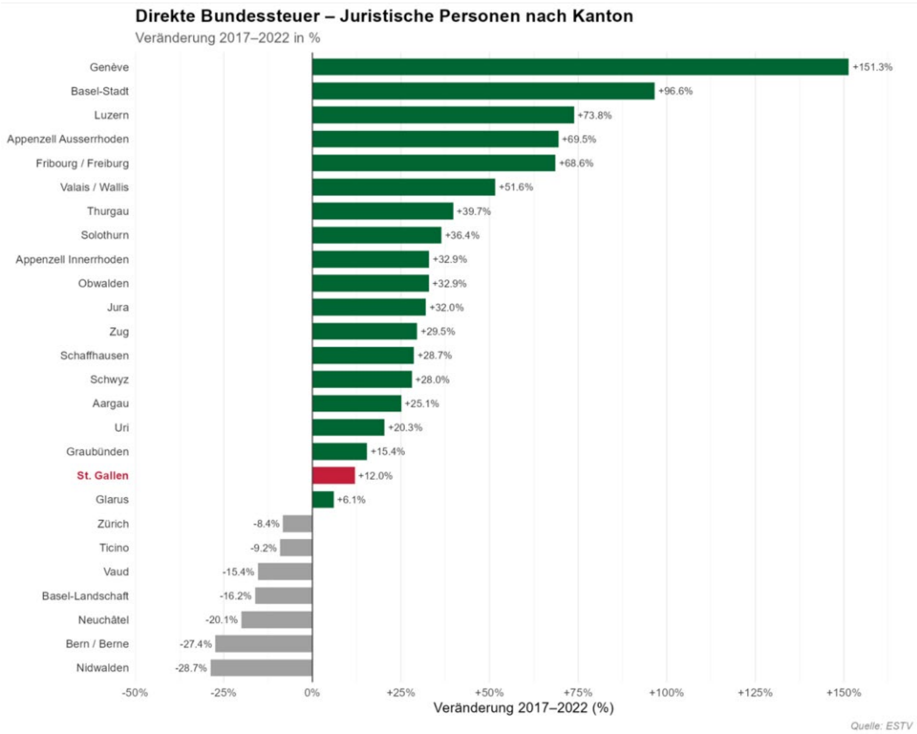

Figure 7: Development of direct federal tax revenues from legal entities by canton, 2017–2022.

Source: Own calculation based on FTA (ESTV) data.

Or presented in absolute figures for the year 2022:

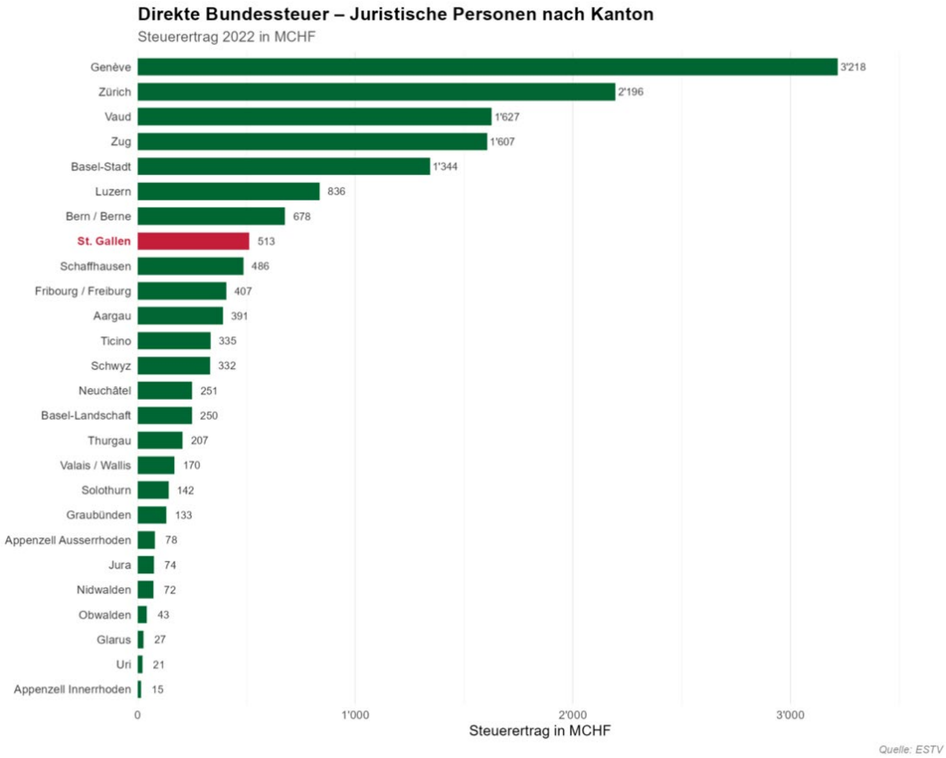

Figure 8: Direct federal tax revenue from legal entities by canton, tax year 2022.

Source: Own calculation based on FTA (ESTV) data.

The following can be concluded from this: Corporate income tax revenues are not directly dependent on the business cycle, i.e. corporate income tax revenues in the cantons do not increase more or less uniformly in line with economic developments. Rather, individual companies can exert a very large influence. This also means – in a negative sense – that the departure of individual companies can have a significantly negative impact on tax revenues, and the arrival of individual companies a very positive one.

4.2.4. Risk of Additional Taxation of Swiss Groups

Deloitte analysed, for the year 2024, how much top-up tax the 50 largest Swiss groups pay, with the study limited to publicly available data and to companies listed in Switzerland (SMI and Swiss Mid-Cap Index).[47] The key results were as follows:

- Total top-up taxes amount to CHF 243.2 million.

- Almost 80% originates from a single corporate group.

- Around one third of all companies examined are burdened by the global minimum tax, at least according to figures disclosed under IFRS or another international accounting standard.

Conducting a similar analysis for 2025,[48] the following figures emerge. Again, it should be made clear that the analysis is limited to publicly available data and focuses on companies listed in Switzerland:

- Total top-up taxes amount to CHF 546 million.

- 43% of the companies are burdened.

47 See Deloitte, OECD Minimum Tax Impact Study, Will expectations of additional tax revenue be met? Analysis of 10 April 2025, available at: <https://www.deloitte.com/content/dam/assets-zone2/ch/en/docs/services/tax/2025/deloitte-tax-oecd-minimum-tax-impact-study.pdf > (last visited on 20.02.2026).

48 Shortly before publication of this study, Deloitte published the calculation for 2025 online, see Deloitte, Impact of the OECD Minimum Tax on Switzerland, OECD Minimum Tax Impact Analysis 2026, 23 April 2026, available at: <https://www.deloitte.com/ch/en/services/tax/perspectives/the-oecd-minimum-tax-impact-study.html?icid=toggle_ch_en> (last visited on 27.04.2026). This calculation deviates only minimally from the present calculation – in particular because individual companies published their figures only at a later point in time.

- For the majority of companies (i.e. 58%), the minimum tax has no measurable impact on the effective tax rate (ETR).

Vergleich FY2024 (Deloitte) vs. FY2025

Kennzahl	FY2024 (Deloitte)	FY2025 (eigene Analyse)	Veränderung
Analysierte Unternehmen	43	49 (40 mit Daten)	
Betroffene Gruppen	~15 von 43	17 von 40	—
Total Top-up Tax	CHF 243 Mio.	CHF ~546 Mio.*	+125%
Grösster Beitrag	Roche: CHF 189 Mio.	Novartis: USD 327 Mio.	Wechsel
Avg ETR (alle)	0.23%	0.32%	+0.09 Pp.
Median ETR (alle)	0.00%	0.00%	Unverändert
Avg ETR (>0)	0.68%	0.75%	+0.07 Pp.
Median ETR (>0)	0.30%	0.48%	+0.18 Pp.

* Approximation in CHF (USD 0.80043, EUR 0.93966), Umrechnungskurse gem. ESTV per 31.12.2025. Novartis USD 327 Mio. neu grösster Einzelbeitrag.

Figure 9: Comparison of top-up taxes FY 2024 vs. FY 2025.

Source: Deloitte (fn. 47) and own calculations based on information from the companies' annual reports.

#	Company	Ccy.	Top-Up Tax[49]
1	Novartis	USD	327.0
2	Roche	CHF	155.0
3	Swiss Re	USD	29.0
4	Partners Group	CHF	23.4
5	Julius Bär	CHF	22.0
6	Zurich Insurance	USD	16.0
7	Richemont	EUR	15.0
8	UBS	USD	8.0
9	Straumann	CHF	7.5
10	ABB	USD	7.0
11	Avolta	CHF	3.0
12	Sandoz	USD	3.0
13	SIG Group	EUR	2.7
14	Barry Callebaut	CHF	2.4
15	Sika	CHF	2.3
16	Kühne+Nagel	CHF	1.0
17	Sulzer	CHF	0.9

Figure 11: Top-up taxes of selected Swiss companies.

Source: Own presentation based on information from the companies' annual reports.

49 We refer to the figures according to the publicly available annual financial statements. For the sake of simplicity, these are listed below in abbreviated form: Novartis: calculated from +2.0% impact of Pillar Two tax legislation multiplied by USD 16,352 income before taxes (Annual Report 2025, F-25 f.); Roche, Finance Report 2025, 66; Swiss Re, Annual Report 2025, 172; Partners Group, Annual Report 2025, 102; Julius Bär, Annual Report 2025, 141; Zurich Insurance, Annual Report 2025, 349; Richemont, Annual Report 2025, 106; UBS, Annual Report 2025, 284; Straumann, Annual Report 2025, 248; ABB, Financial Report 2025, 94; Avolta, Annual Report 2025, 199; Sandoz, Integrated Annual Report 2025, 120; SIG Group, Annual Report 2025, 283; Barry Callebaut, Annual Report 2024/2025, 80; Sika, Annual Report 2025, 234; Kühne+Nagel, Annual Report 2025, 64; Sulzer, Annual Report 2025, 131.

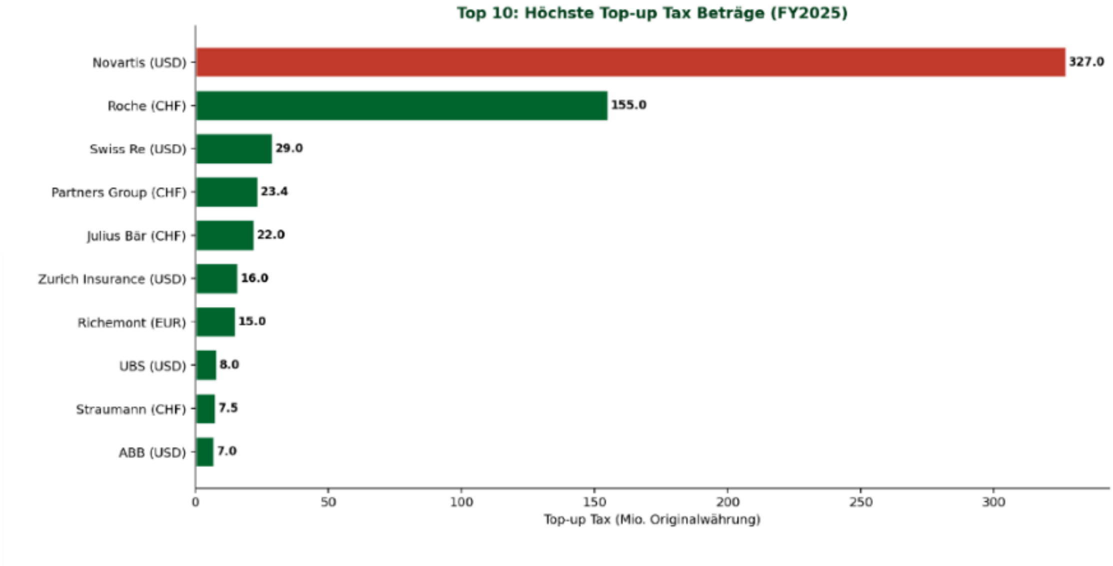

Figure 10: The ten companies with the highest top-up tax amounts.

Source: Own presentation based on information from the companies' annual reports.

These findings should be used with restraint. On the one hand, there is no direct disclosure obligation; disclosure occurs only within the framework of the applicable accounting standard – be it IFRS, US GAAP or Swiss GAAP FER – where the materiality principle applies. In addition, the figures are based on estimates by the companies themselves – the first tax returns have yet to be filed. Moreover, the data say nothing about whether the amounts concern Swiss top-up taxes or top-up taxes abroad (e.g. top-up taxes resulting from a foreign QDMTT). Nor is it apparent from the data in which cantons (for the Swiss portion) the top-up tax primarily arises. It is also almost impossible to estimate how these figures will develop as a result of the amended or new safe harbour rules in the SBS Package.[50] In addition, individual cantons have already increased their ordinary corporate income taxes, so that the risk of taxation abroad is also lower compared to the situation at the time of the popular vote.[51]

It also follows that hardly any statement can be made about the risk of additional taxation if the IIR and the QDMTT were abolished. The risk of additional taxation

50 See in particular the Simplified ETR Safe Harbour, the Substance-based Tax Incentive Safe Harbour and the changes to the Transitional CbCR Safe Harbour in OECD/G20, Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two), Side-by-Side Package, 5 January 2026, 10 ff. (cit. OECD/G20, SbS-Package); see also SUTTER/SONDEREGGER (fn. 30), 302 f.

51 See, for example, Art. 75 StG-SH (fn. 32).

consists in the possibility that Swiss groups would, through the application of the UTPR – in contrast to the domestic QDMTT or the IIR – be exposed to an additional burden, since (so the assumption goes) foreign tax authorities will apply the Model Rules more strictly or at least differently. If, for example, one assumes top-up taxes of CHF 600 million in Switzerland and abroad in accordance with the above calculation and applies an uncertainty factor of one third, the risk of additional taxation for Swiss groups resulting from the abolition of the QDMTT and the IIR would amount to CHF 200 million.

An abolition of the minimum tax would thus mean, on the one hand, that the Swiss treasury would lose part of the CHF 600 million (presumably a large portion of which is attributable to the domestic QDMTT and IIR); on the other hand, there would be a risk that Swiss groups would be subject to a potential additional burden abroad of CHF 200 million. Such a calculation (in particular the determination of the uncertainty factor) is, however, associated with very great uncertainties and is therefore not pursued further below.

4.2.5. Interim Conclusion

The analysis of the development of direct federal tax revenues has shown that both the Confederation and the cantons presumably depend heavily on individual companies for their corporate income tax revenues. Corporate income tax revenues do not develop solely in line with the business cycle.

At the same time, the CbCR data have shown that US MNEs pay approximately CHF 5 billion in corporate income taxes in Switzerland. This corresponds to around 18% (of a total of approximately CHF 28 billion) of total corporate income tax revenues. These corporate income tax revenues are linked to a relatively small number of employees. US MNEs exhibit a significantly higher profitability per employee, which can likewise be inferred from the CbCR data. The corporate income tax revenues are thus attributable to a relatively small number of employees and (presumably) in particular to intellectual property rights. This makes US MNEs particularly interesting from a fiscal perspective. US groups presumably use less infrastructure relative to their corporate income tax payments. At the same time, however, they are also particularly mobile. The activities performed in Switzerland can be relocated relatively easily.

5. Side-by-Side

5.1. Background

The United States had originally agreed to the Pillar Two framework under a Democratic administration but did not adopt any legislation implementing the GloBE rules. At the same time, it was the US position from the outset that it already had a comprehensive international tax system – in particular with GILTI (now "Net CFC Tested Income", or NCTI[52]), the Corporate Alternative Minimum Tax (CAMT)[53] and other rules – although alignments with the minimum tax were certainly also discussed. Shortly after taking office, however, Trump issued an Executive Order declaring that the Global Tax Deal does not apply to the United States.[54]

In addition, the Trump administration threatened with, and by means of, the introduction of Section 899.[55] This provision bears the title "Enforcement of Remedies Against Unfair Foreign Taxes". It is designed as a retaliatory measure against foreign taxes that the Trump administration regarded as discriminatory or as eroding US tax sovereignty. The UTPR falls into the latter category.

Specifically, the provision qualified the following taxes as *unfair foreign taxes*: the UTPR (Pillar Two), Digital Services Taxes (DSTs) and Diverted Profits Taxes. Section 899 consisted of two parts: first, an escalating tax (from 5% to 20%) on income from US investments of foreign investors. Second, a so-called "Super BEAT", which would have subjected foreign MNEs with US business to a tightened BEAT (Base Erosion Anti-Abuse Tax). The effects on the states concerned would have been considerable.

The political agreement on an exemption for US groups (i.e. on an SBS system of the minimum tax and the US tax system) was first reached at G7 level in June

52 See below section 5.3.3.
53 See below section 5.3.5.
54 The White House, The Organization for Economic Co-operation and Development (OECD) Global Tax Deal (Global Tax Deal), Presidential Action of 20 January 2025, available at <https://www.whitehouse.gov/presidential-actions/2025/01/the-organization-for-economic-co-operation-and-development-oecd-global-tax-deal-global-tax-deal/> (last visited 20.02.2026).
55 See, for example, GRAVELLE JANE G., Enforcement of Remedies Against Unfair Foreign Taxes, Library of Congress, available at: <https://www.congress.gov/crs-product/IF13023> (last visited on 20.02.2026).

2025[56] and then formalised on 5 January 2026 as an OECD package within the framework of the Inclusive Framework.[57] We address this below, after which it must be examined whether the US tax system is in fact non-distortive, i.e. whether the US tax system actually produces the same effect as the global minimum tax.

5.2. Side-by-Side Package of 5 January 2026

The aim of the Side-by-Side Package is for the US tax system to exist "side by side" with the minimum tax – i.e. a coexistence as equivalent systems. Specifically, US groups are to be exempted from both the IIR and the UTPR.

The SBS Package contains the following safe harbours relevant to this study:

- The SBS Safe Harbour[58]
- The UPE Safe Harbour[59]

The focus below, however, is on the SBS Safe Harbour. First, however, the legal quality of this document must be addressed.

5.2.1. Legal Quality

As mentioned, on 5 January 2026 the OECD published a document entitled *"Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two), Side-by-Side Package"*. This document also contains the SBS Safe Harbour referred to above.

However, this document has no direct legal effect; the required intention to be bound is lacking.[60] It is not a treaty under international law. It is not even clear who agreed to this document. The press release does state that 147 states

56 See, for example, the press release GOV UK, G7 reach agreement on global minimum tax, available at: <https://www.gov.uk/government/news/g7-reach-agreement-on-global-minimum-tax> (last visited on 20.02.2026).

57 See OECD/G20, SbS-Package (fn. 50), 1 ff.

58 See OECD/G20, SbS-Package (fn. 50), 79 ff.

59 See OECD/G20, SbS-Package (fn. 50), 86 ff.

60 See in particular Art. 2 para. 1 lit. a of the Vienna Convention on the Law of Treaties, in force for Switzerland since 6 June 1990 (SR 0.111). On the binding effect of OECD documents, see also already HONGLER/DOMKE, Methodisches (fn. 7), 89 ff.

agreed.[61] This is, however, an imprecise formulation, presumably even an untruth.

Despite repeated inquiries to the OECD, the adoption process could not be explained in more detail. According to a statement by the OECD media office in an e-mail to one of the authors of this study, the OECD was "not in a position to discuss" the adoption process. It thus remains entirely unclear who agreed to what, and when. It is understood that this is an "agreement by default" process – i.e. a failure to react is treated as consent.

Taken on its own, the document has no binding effect for Switzerland – not even an attenuated one.[62] In addition, it is understood that various states raised a veto against the Package,[63] some of which have since been withdrawn. It remains unclear, however, whether and which states continue to withhold their consent to the Package. We address the possible implementation of the SBS by way of an amendment to the MindStV below in section 6.1.1. First, however, the content must be presented in more detail.

5.2.2. Mechanism

The SBS Safe Harbour operates as follows:

At the election of the Filing Constituent Entity, the Top-up Tax for a jurisdiction for a Fiscal Year shall be deemed to be zero for purposes of the IIR and the UTPR where the Constituent Entities located in the jurisdiction are eligible for the Side-by-Side Safe Harbour ("SbS Safe Harbour"). The Constituent Entities of an MNE Group are eligible for the Side-by-Side Safe Harbour for a Fiscal Year if the UPE of that MNE Group is located in a jurisdiction with a Qualified SbS Regime for the Fiscal Year.[64]

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61 See the following formulation in the OECD press release, International community agrees way forward on global minimum tax package (5 January 2026), available at: <https://www.oecd.org/en/about/news/press-releases/2025/12/international-community-agrees-way-forward-on-global-minimum-tax-package.html> (last visited on 20.02.2026): *"The 147 countries and jurisdictions working together within the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) have agreed on key elements of a package that charts a course forward for the co-ordinated operation of global minimum tax arrangements in the context of a digitalised and globalised economy"*.

62 SUTTER/SONDEREGGER (fn. 30), 312.

63 See, for example, SOONG STEPHANIE, Estonian Government Vetoes OECD Pillar 2 Side-by-Side Proposal, Tax Notes International, 15 December 2025.

64 OECD/G20, SbS-Package (fn. 50), 79.

Application is thus made upon election, and the ultimate parent entity (UPE) must be located in a state with a Qualified SBS regime. The requirements for this are addressed below.

5.2.3. Overview of the Requirements for a Qualified SBS Regime

The SBS Safe Harbour is available only to MNE groups whose UPE is resident in a jurisdiction that has both an eligible domestic tax system and an eligible worldwide tax system. If an MNE group elects this safe harbour, it is, as mentioned, subject to neither the IIR nor the UTPR.[65]

If the Inclusive Framework has determined that a jurisdiction has a Qualified SBS regime, that jurisdiction is listed accordingly in the Central Record.[66] Currently, since 1 January 2026, only the US tax system qualifies as a Qualified SBS regime. As a result, the IIR and the UTPR are effectively neutralised for corporate groups with a UPE resident in the United States. For a Qualified SBS regime to exist in a state, four requirements must be met:

- The state has an eligible domestic tax system

- The state has an eligible worldwide tax system

- The state allows a tax credit for QDMTTs under the same conditions as for all other "Covered Taxes"

- The state introduced its eligible domestic tax system and its eligible worldwide tax system before 1 January 2026, or at a later point in time. In the latter case, the "admission process" differs.

In addition, confirmation by the Inclusive Framework is required.[67] We address these four requirements below. The UPE Safe Harbour, by contrast, applies where the tax regime of a jurisdiction meets only the domestic part of the eligibility criteria. Specifically, an exemption is granted with respect to domestic profits of MNE groups headquartered in those jurisdictions. If an MNE group exercises this safe harbour, it is not subject to the UTPR with respect to profits arising in the UPE state.[68]

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[65] OECD/G20, SbS-Package (fn. 50), 81.
[66] See OECD, Central Record (fn. 40).
[67] See OECD/G20, SbS-Package (fn. 50), 80.
[68] OECD/G20, SbS-Package (fn. 50), 86.

5.2.3.1. Eligible Domestic Tax System

An eligible domestic tax system exists under the following conditions:[69]

- A statutory corporate income tax rate (including the subnational level) of at least 20%.

- The state needs (in simplified terms) a corporate income tax of at least 15% or a QDMTT. This tax must be applicable to a substantial part of the total profits from the activities of in-scope MNEs in the jurisdiction concerned.

- There must also be no material risk that MNEs achieve a tax burden of less than 15% through tax incentives. This is not an assessment of individual cases; rather, this criterion is assessed over time and in the aggregate.

5.2.3.2. Eligible Worldwide Tax System

An eligible worldwide tax system exists where:

- a state has a comprehensive tax regime that applies to all resident companies and also covers foreign income. It must be applied on a broad basis. Any exceptions must be consistent with the objective of a minimum taxation. An exception for particularly highly taxed income, for example, would be permissible.

- The state has substantial mechanisms in unilateral law that address BEPS risks.

- There is no material risk that the foreign activities of in-scope MNEs headquartered in the jurisdiction concerned are subject to an effective corporate income tax burden of less than 15%.

5.2.4. Relationship to QDMTTs

The SBS Package also contains a paragraph on the relationship to QDMTTs. It states that the SBS Safe Harbour does not affect the application of QDMTTs. QDMTTs thus continue to apply – even where the UPE is resident in a country

[69] On the whole, and also on the following chapter, see OECD/G20, SbS-Package (fn. 50), 81 ff.

with a Qualified SBS regime.[70] If, however, the QDMTT were abolished, other countries would not be permitted to levy an IIR or UTPR on the Swiss profits of US groups.

5.2.5. Interim Conclusion

The SBS Safe Harbour does follow formal criteria for deciding whether a system qualifies as Qualified. Ultimately, however, it is solely a political decision which regimes are deemed Qualified. In other words, it is unclear whether the US tax system actually meets all the requirements[71] and whether other countries do not also meet these requirements.

5.3. Overview of the US Tax System Post-OBBBA

5.3.1. Overview

In order to fully understand the effects of the SBS system, selected elements of the US tax system are addressed below. A particular focus lies on the changes introduced by the One Big Beautiful Bill Act (in short: OBBBA).[72] The OBBBA contains various tax advantages that make the US tax system more attractive. These include, for example:[73]

- Adjustments to the interest deduction limitation. This interest deduction limitation has been made less strict by the OBBBA.
- Bonus depreciation for short-lived investments, but also 100% expensing of certain long-term investments.
- Immediate amortisation of R&E expenditures: the OBBBA allows certain "research and experimental" expenditures to be deducted immediately.

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70 See OECD/G20, SbS-Package (fn. 50), 8.

71 On this, see immediately below section 5.3.

72 See H.R. 1 from the 119th Congress (2025-2026), enacted as Public Law 119-21 on July 4, 2025.

73 For an overview of the tax provisions in the OBBBA, see WATSON GARRETT *et al.*, One Big Beautiful Bill Act Tax Policies: Details and Analysis, web entry of 10 February 2026, available at: <https://taxfoundation.org/research/all/federal/big-beautiful-bill-senate-gop-tax-plan/> (last visited on 20.02.2026).

In addition, other provisions have also been amended, which we address below. These are particularly significant in cross-border relationships. Specifically, we address three subject areas:

- FDDEI
- NCTI and BEAT
- CAMT

5.3.2. FDDEI

Under the OBBBA, the former instrument of Foreign-Derived Intangible Income (FDII) was renamed Foreign-Derived Deduction Eligible Income (FDDEI). Under this regime, US companies receive an additional deduction (specifically 33.34%) if they generate income through the "export" of goods or services from the United States. This deduction has also undergone substantively important adjustments.

Analyses show that the predecessor rule, FDII, already resulted in USD 385 billion instead of USD 212 billion in licensing income being booked in the United States.[74] The instrument creates an incentive to generate additional income in the United States and to relocate intangibles to the United States. Various adjustments were made under the OBBBA. A simple example of the current design of the FDDEI:[75]

Assume a US taxpayer earns USD 100 of gross FDDEI as well as further income not qualifying as FDDEI.[76] Assume further that USD 40 of interest and research expenditures would be attributable to the FDDEI. Before the application of any special deduction, the taxpayer would thus have actual net income of USD 60 (USD 100 − USD 40). However, since interest and research expenditures are not allocated to the FDDEI, the special deduction amounts to approximately 33% of USD 100 rather than 33% of USD 60, i.e. the actual net income connected with the FDDEI.[77] These USD 33 are deducted from the actual net income of USD 60, resulting in a taxable amount of USD 27. At a tax rate of 21%, the tax on this

74 See the study cited in: Foreign Income Deduction Advocates Wants Clarity on New Statute, Tax Notes International, 11 November 2025, section III A. The study itself is not accessible.

75 See, with examples, also Sheppard Lee, Not GILTI and Pillar 2, Tax Notes International, 29 September 2025.

76 This so that the limitation by reference to taxable income does not apply (Section 250(a)(2)).

77 See Section 250 (3)(A)(ii) IRC.

amount would be less than USD 6, resulting in an effective tax rate (ETR) of below 10% on the FDDEI. The FDDEI follows a mechanism similar to the former mixed company regime in Switzerland. It is ultimately an export subsidy for US companies.[78]

5.3.3. NCTI and BEAT

The OBBBA also transformed GILTI into the so-called NCTI (Net CFC Tested Income). Various adjustments were made in the process. The exemption for QBAI (Qualified Business Asset Investment) was abolished, as it was for the FDDEI. The NCTI is applied to predefined income on the basis of *global blending*. These are central differences to the IIR. The BEAT also differs from the UTPR in various respects. When the BEAT is applied, it is not "foreign" income that is taxed, but the income of a US company that would otherwise be shifted abroad. In short, neither the NCTI nor the BEAT is identical to the IIR or the UTPR.[79] Nor did the OBBBA adjustments bring about any alignment with the IIR or UTPR.

5.3.4. Tax Credits

The United States has a large number of tax credits at both the federal and state levels. We address their relieving effect in section 5.3.6.2. As far as can be seen, however, the US tax system does not have tightly knit requirements like the Model Rules, under which only Qualified Refundable Tax Credits (QRTCs) or only Marketable Transferable Tax Credits (MTTCs) count as "good" or efficient tax credits.

It is true that the SBS Package also brought about a liberalisation within the global minimum tax through the so-called Substance-based Tax Incentive Safe Harbour.[80] The permissibility of tax credits nevertheless remains restricted under the minimum tax. A detailed comparison of tax credits in the United States and in the countries that have implemented the minimum tax must, however, be left aside within the scope of this study.

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78 See COLE ALAN/DUNN PATRICK, Reviewing the International Tax Provisions in the One Big Beautiful Bill Act, web entry of 6 August 2025, available at: <https://taxfoundation.org/blog/big-beautiful-bill-international-tax-changes/> (last visited on 20.02.2026): "FDDEI is now simply export income that receives a lower effective rate. In other words, this provision is an export subsidy." See on this also AVI-YONAH REUVEN S./IMPARATO DOMENICO/FARRELL JENNIFER E., Can the EU's Foreign Subsidy Regulation 'Discipline' U.S. Subsidies? Tax Notes International, 29 January 2026.

79 See on this also already MATTEOTTI, Gutachten (fn. 35), 41 ff.

80 OECD/G20, SbS-Package (fn. 50), 70 ff.

5.3.5. CAMT

The Corporate Alternative Minimum Tax (CAMT) is likewise a global minimum taxation, applied to companies with profits of more than one billion. Its subjective scope is thus considerably narrower than under GloBE. The tax base of the CAMT is the so-called Adjusted Financial Statement Income (AFSI).

The CAMT liability is the difference between a minimum tax of 15% on the AFSI, taking into account loss carry-forwards and foreign tax credits, and the ordinary tax burden (including the BEAT burden). As a result of the OBBBA, taxpayers are more likely to be subject to the CAMT since, as has been shown, the US tax system has gained attractiveness and with it the risk of achieving a tax burden of below 15%. It can, however, be assumed that the Trump administration will implement relief measures in the application of the CAMT.[81]

If a taxpayer has a CAMT liability in a given year, it receives a CAMT credit against future ordinary tax liabilities and liabilities under the BEAT. In addition, domestic tax credits can be claimed. Once again, it becomes apparent that the CAMT is not comparable to the global minimum tax under the Model Rules. Here, too, *global blending* applies, and there appears to be more flexibility in crediting tax credits and in carrying forward the CAMT liability.

81 See already the U.S. Treasury and IRS issued Notice 2026-7, published on 18 February 2026. This provides initial relief – inter alia also regarding research and development expenses. See on this, for example, Institute of Taxation and Economic Policy (ITEP), Trump Administration Provides Biggest Illegal Tax Cuts Yet for Billion-Dollar Corporations, web entry of 20 February 2026, available at: <https://itep.org/trump-administration-provides-biggest-illegal-tax-cuts-yet-for-billlion-dollar-corporations/> (last visited on 20.02.2026).

5.3.6. Brief Analysis of Publicly Available Financial Data of US Groups

5.3.6.1. General Competitive Advantage Through Lower ETRs

An analysis prepared by EY for the purposes of this study for the years 2019-2024 shows the competitive advantages of US groups compared with EU groups and Swiss groups due to lower ETRs. Looking at a broad group of taxpaying companies, it becomes apparent that the ETRs of US groups tend towards 15%; for EU groups, the ETRs are above 25%. Swiss groups lie in the middle. Clearly, the exact calculation always depends on the selected set of companies and on the applicable accounting standards. These are figures up to 2024 – i.e. not yet taking into account the most recent developments (OBBBA, SBS Safe Harbour).

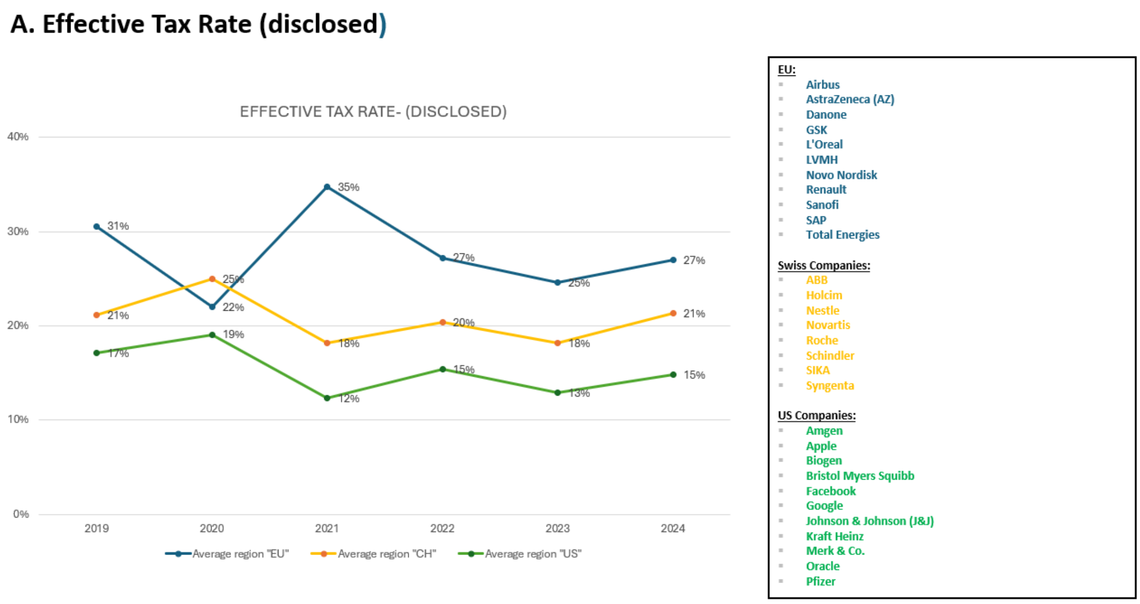

Figure 11: Comparison of the effective tax rates of selected companies from the EU, Switzerland and the US.

Source: EY.

5.3.6.2. Reasons for Low Corporate Income Tax Rates

As is well known, the United States has a statutory corporate income tax rate of 21% at the federal level. Nevertheless, various companies have effective corporate income tax rates far below 21%. Below, we attempt to substantiate this claim with various data. In doing so, we rely on the reconciliations contained in Forms 10-K (i.e. in the annual financial reporting to the US Securities and Exchange Commission, SEC), in which companies disclose the reasons why their effective corporate income tax burden deviates from the statutory corporate income tax burden in the United States (i.e. from the 21%).

For the purposes of this study, the deviations of primary interest are those that can influence value chains in cross-border relationships. In the following, we concentrate in particular on tax credits and the FDDEI (formerly FDII).[82] The percentages listed below refer to the percentage reduction of the effective corporate income tax rate. A percentage reduction of, for example, 2% through an instrument (e.g. FDDEI) results in an effective corporate income tax rate of 19% (i.e. 21%-2%). The amount corresponds in each case to the tax savings achieved through the respective instrument in the year concerned.

- **FDDEI.** A few examples:
    - Pfizer, 2.3% or 172 million[83]
    - Eli Lilly and Company, 1.3% or 334 million[84]
    - Alphabet, 2.5% or 3,931 million[85]
    - GE Aerospace, 3.4% or 338 million[86]
    - Amazon, 0.5% or 522 million[87]

82 In addition, other provisions also have a significant impact on the ETR, some of which have been part of the US tax system since before the OBBBA.

83 Pfizer, Form 10-K for FY 2025, 73, available at <https://s206.q4cdn.com/795948973/files/doc_financials/2025/ar/10-K-without-Exhibits.pdf> (last visited on 16.03.2026).

84 Eli Lilly and Company, Form 10-K for FY 2025, 80, available at: <https://investor.lilly.com/static-files/0d64699c-0cc7-490e-9152-b2ba1de08634> (last visited on 16.03.2026).

85 Alphabet, Form 10-K for FY 2025, 84, available at: <https://s206.q4cdn.com/479360582/files/doc_financials/2025/q4/GOOG-10-K-2025.pdf> (last visited on 16.03.2026).

86 GE Aerospace, Form 10-K for FY 2025, 61, available at: <https://www.geaerospace.com/sites/default/files/geaerospace_10k_01292026.pdf> (last visited on 16.03.2026).

87 Amazon, Form 10-K for FY 2025, 65, available at: <https://www.sec.gov/Archives/edgar/data/1018724/000101872426000004/amzn-20251231.htm#i9e7c0f1183ed47abbb1f061fe4864e14_352> (last visited on 16.03.2026).

- Nvidia, 3% or 4,208 million[88]
- Nike, 5.3% or 205 million[89]
- Microsoft, 1% or 1,236 million[90]
- Abbott Laboratories, 1.7% or 148 million[91]
- Netflix, 5.2% or 657 million[92]

- **Tax credits.** US groups benefit from significant tax credits both within the United States and in other countries. We reproduce in each case the disclosure in the 10-K. This differs from company to company. While some break the figures down by the type of credit, others do so by its use.
  - GE Aerospace: 5.6% or 567 million, divided into energy-related tax credits (213 million) and R&D tax credits (354 million)[93]
  - Alphabet: 2.5% or 3,870 million, divided into federal research credit (2,088 million), foreign tax credits (1,684 million) and other (98 million)[94]
  - Amazon: 3.3% or 3,184 million, divided into R&D tax credits (2,403 million), foreign tax credits (642 million) and other (139 million)[95]

88 Nvidia, Form 10-K for FY 2025/2026, 73, available at: <https://s201.q4cdn.com/141608511/files/doc_financials/2026/q4/10K-NVDA.pdf> (last visited on 16.03.2026).

89 Nike, Form 10-K for FY 2024/2025, 72, available at: <https://www.sec.gov/Archives/edgar/data/320187/000032018725000047/nke-20250531.htm#id35d70b241da413a9a66c3df73f52382_220> (last visited on 16.03.2026); the figure of 205 million results from 5.3% multiplied by income before income taxes.

90 Microsoft, Form 10-K for FY 2024/2025, 74, available at: <https://www.sec.gov/Archives/edgar/data/789019/000095017025100235/msft-20250630.htm> (last visited on 16.03.2026); the figure of 1,236 million results from 1% multiplied by income before income taxes.

91 Abbott Laboratories, Form 10-K for FY 2025, 72, available at: <https://www.abbottinvestor.com/static-files/2cec64ee-cb9c-4880-a582-bdb7af1ad810> (last visited on 16.03.2026).

92 Netflix, Form 10-K for FY 2025, 65, available at: <https://www.sec.gov/Archives/edgar/data/1065280/000106528026000034/nflx-20251231.htm#ie1400fdbdd2e4bd282737fca9a66fd5a_112> (last visited on 16.03.2026).

93 GE Aerospace (fn. 86), 61.

94 Alphabet (fn. 85), 84.

95 Amazon (fn. 87), 65.

- Meta: 6.2% or 5,317 million, divided into R&D tax credits (3,912 million) and U.S. foreign tax credits (1,405 million)[96]
- Nvidia: 1.4% or 1,933 million[97]
- JPMorgan Chase: 3% or 2,144 million, divided into alternative energy credits (1,135 million) and other (1,009 million)[98]
- Bank of America: 4.2% or 1,554 million[99]
- Johnson&Johnson: 7.6% or 2,455 million, divided into NCTI foreign tax credits (1,324 million), Subpart F foreign tax credits (656 million) and other (475 million)[100]
- Pfizer: 18.1% or 1,362 million, divided into GILTI (868 million), Subpart F (369 million), R&D (109 million) and other (16 million)[101]

This brief overview shows that the tax burden can already be reduced significantly through these two instruments alone. As the following considerations show, the tax burden (cash or current tax) currently lies, in some cases, further below 15%.

96 Meta, Form 10-K for FY 2025, 122, available at: <https://www.sec.gov/Archives/edgar/data/1326801/000162828026003942/meta-20251231.htm#icc066a9e83ae4c46b57ee4d9dc9d7021_154> (last visited on 16.03.2026).

97 Nvidia (fn. 88), 75.

98 JPMorgan Chase, Form 10-K for FY 2025, 288, available at: <https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/investor-relations/documents/quarterly-earnings/2025/4th-quarter/corp-10k-2025.pdf> (last visited on 16.03.2026).

99 Bank of America, Form 10-K for FY 2025, 152, available at: <https://investor.bankofamerica.com/regulatory-and-other-filings/select-sec-filings/content/0000070858-26-000157/bac-20251231.htm#idd50fa8ccd704ccba7d633a77cae242f_253> (last visited on 16.03.2026).

100 Johnson&Johnson, Form 10-K for FY 2025, 68, available at: <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000200406/e09b8882-48b1-4fea-a818-66acddf84c4f.pdf> (last visited on 16.03.2026).

101 Pfizer (fn. 83), 73.

5.3.6.3. Further Sources

The very low corporate income tax rates in the United States have also been discussed on various occasions in the media. In particular, the platform ITEP has analysed various financial data. It has focused in particular on the federal taxes paid in the United States. Specifically, there are several larger US groups that pay hardly any corporate income taxes at the federal level despite relatively high profitability. The following overview for the year 2025 illustrates this:[102]

	U.S. income	Current federal tax	Effective tax rate	Taxes owed at federal 21% rate	Amount of tax avoided	% of tax avoided
Alphabet	$141.6 billion	$11.3 billion	8.0%	$29.7 billion	$18.4 billion	61.8%
Amazon	$89.0 billion	$1.2 billion	1.4%	$18.7 billion	$17.5 billion	93.5%
Meta	$78.9 billion	$2.8 billion	3.6%	$16.6 billion	$13.7 billion	83.0%
Tesla	$5.7 billion	$0	0.0%	$1.2 billion	$1.2 billion	100.0%
Total for these 4 companies	**$315.2 billion**	**$15.4 billion**	**4.9%**	**$66.2 billion**	**$50.8 billion**	**76.8%**

Source: Institute on Taxation and Economic Policy, February 2026 • Created with Datawrapper

Figure 12: Overview of the tax burden of selected US MNEs.

Source: Institute on Taxation and Economic Policy (fn. **Error! Bookmark not defined.**).

It is not only the very largest companies that benefit from these low tax rates; this appears to be a general tendency.[103]

5.3.6.4. Shift from Foreign Income to US Income

Under US GAAP, companies have recently been required to disclose how much domestic and how much foreign income they generate. This concerns the presentation under US GAAP, which – as we understand it – is based on the

[102] See Institute of Taxation and Economic Policy (ITEP), Four Big Tech Companies Avoid $51 Billion in Taxes in Wake of One Big Beautiful Bill Act, blog entry of 6 February 2026, available at: <https://itep.org/trump-meta-tesla-alphabet-amazon-obbba-taxes/> (last visited on 20.02.2026).

[103] See also the list at <https://itep.org/corporate-tax-avoidance/> (last visited on 16.03.2026).

booking at the domestic and foreign entities, respectively.[104] This means that income qualifies as foreign income even where an entity is treated as transparent for US tax purposes.

For individual companies, larger relative shifts towards more US income have occurred here in recent years. This would suggest that it has become more attractive to allocate income directly to a US entity. It may, of course, also be connected to the fact that the US business of these companies is growing faster (see, for example, Palantir). We have not, however, carried out a comprehensive analysis, but limit ourselves to individual cases. Some examples follow:

Meta:[105]

Note 14. Income Taxes

The components of income before provision for income taxes are as follows (in millions):

	Year Ended December 31,		
	2025	2024	2023
Domestic	$ 79,644	$ 66,342	$ 43,499
Foreign	6,288	4,321	3,929
Income before provision for income taxes	$ 85,932	$ 70,663	$ 47,428

Figure 13: Distribution of Meta's profits between the US and abroad..

Source: Meta (fn. 96**Error! Bookmark not defined.**), 121.

Nvidia:[106]

	Year Ended		
	Jan 25, 2026	Jan 26, 2025	Jan 28, 2024
		(In millions)	
U.S.	$ 123,181	$ 77,456	$ 29,495
Foreign	18,269	6,570	4,323
Income before income tax	$ 141,450	$ 84,026	$ 33,818

Figure 14: Distribution of Nvidia's profits between the US and abroad.

Source: Nvidia (fn. 88 **Error! Bookmark not defined.**), 73.

[104] See Deloitte, Accounting Research Tool, chapter 14.6. Disclosure of the Components of Income (or Loss) Before Income Tax Expense (or Benefit) as Either Foreign or Domestic, available at: <https://dart.deloitte.com/USDART/home/codification/expenses/asc740-10/deloitte-s-roadmap-income-taxes/chapter-14-disclosure-income-taxes/14-6-disclosure-components-income-or?utm_source=chatgpt.com> (last visited on 20.02.2026). The accounting practice may also differ from company to company and from auditor to auditor.

[105] Meta (fn. 96), 121.

[106] Nvidia (fn. 88), 73.

Pfizer:[107]

(MILLIONS)		2025		2024		2023
	Year Ended December 31,					
United States	$	776	$	(637)	$	(4,411)
International		6,744		8,660		5,469
Income from continuing operations before provision/(benefit) for taxes on income[(a), (b)]	$	7,520	$	8,023	$	1,058

Figure 15: Distribution of Pfizer's profits between the US and abroad..

Source: Pfizer (fn. 83**Error! Bookmark not defined.**), 71.

Palantir Technologies:[108]

	Years Ended December 31,					
	2025		2024		2023	
United States	$	1,584,577	$	426,944	$	174,637
Foreign		72,791		62,229		62,454
Income before provision for income taxes	$	1,657,368	$	489,173	$	237,091

Figure 16: Distribution of Palantir Technologies' profits between the US and abroad.

Quelle: Palantir Technologies (fn. 108**Error! Bookmark not defined.**), 107.

5.3.7. Interim Conclusion

The US tax system offers an attractive environment for globally active groups. It is true that the United States has a higher statutory tax burden than most Swiss cantons and, with the CAMT, also a kind of global minimum tax.

As a result, however, the current US tax system allows groups to significantly reduce their tax burden, particularly also on profits booked in the United States. This leads to competitive disadvantages for Switzerland and for those states subject to the minimum tax system, in two respects:

- On the one hand, Swiss groups have, on average, a higher burden despite lower statutory corporate income tax rates in Switzerland.

107 Pfizer (fn. 83), 71.

108 Palantir Technologies, Form 10-K for FY 2025, 107, available at: <https://investors.palantir.com/files/2025%20FY%20PLTR%2010-K.pdf> (last visited on 16.03.2026).

The SBS does not appear to reduce this difference; on the contrary: as the OBBBA increases the attractiveness of the US tax system, these differences may widen further.

- On the other hand, at least for individual companies, a tendency is discernible for US MNEs to book increasingly US income rather than foreign income, which may be explained by a relocation of intellectual property rights back to the United States. In addition, the SBS was only finalised and published in 2026, and the effects of this shift in attractiveness towards the United States as a location will therefore only become noticeable in the coming months and years. It can also be assumed that the Trump administration, through the Treasury, will attempt to make the system even more attractive. Ultimately, the United States can make its tax system even more attractive in the coming months; Switzerland, by contrast, is dependent on decisions of the Inclusive Framework and the OECD.

6. Options for Action

6.1. Implementation of the SBS

6.1.1. Preliminary Remarks on the Implementation Options

6.1.1.1. Overview

There are, in principle, three options for implementing the SBS in Switzerland, of which the Confederation has chosen option 2:

1. The Federal Council takes the position that no amendments to the MindStV are required and that the SBS Safe Harbour is directly applicable. The IIR would not be applicable to US MNEs as of 1 January 2026.

2. The Federal Council takes the position that no amendments to the MindStV are required. A federal authority (e.g. the ESTV) would, however, publish a practice statement pursuant to which the SBS Safe Harbour is implemented in assessment practice. With the practice statement "Top-up tax: temporal application and exercise of elections under the administrative guideline of 5 January 2026 on the Side-by-Side Package", the ESTV has chosen this path.[109] Specifically, the SBS Safe Harbour is applicable as of 1 January 2026 (provided the requirements are met).

3. The Federal Council amends the MindStV by explicitly stating that the SBS Safe Harbour applies to the Swiss IIR, specifically as of 1 January 2026. Again, the IIR would not be applicable to US MNEs as of 1 January 2026.[110]

In order to evaluate the options, the implementation of the minimum tax in Switzerland in general must first be briefly addressed. As we have set out in detail elsewhere, Switzerland decided to transpose the Model Rules into Swiss law by

[109] See Communication-031-E-2026-d (fn. 4).

[110] The question of retroactivity is not addressed in depth here. Since this would presumably be a retroactive effect in favour of the taxpayers, it would, for example, be permissible to decide in June 2026 that the IIR no longer applies to US groups as of 1 January 2026. It would remain to be examined, however, whether retroactivity back to 1 January 2025 would also be permissible.

means of a direct (and static) reference.[111] The Model Rules (in English) thereby became domestic law, currently in the form of ordinance law. All other documents available on the OECD website can "only" be drawn upon for interpretation or – in the precise wording of Art. 1 para. 3 MindStV – as follows:

The GloBE Model Rules shall be interpreted in particular in accordance with the associated commentaries and associated bodies of rules of the Inclusive Framework on Base Erosion and Profit Shifting of the Organisation for Economic Co-operation and Development and the G20.

The fact that this is ordinance law also means that the Federal Supreme Court is not bound by the norms contained therein should they be unconstitutional. The MindStV is an independent ordinance whose constitutionality can be reviewed. After all, Art. 190 BV refers only to federal acts and international law.[112] Under the former VAT Ordinance (aMWSTV), for example, the question of constitutionality regularly arose and was indeed reviewed by the Federal Supreme Court.[113] The various implementation options and their legal risks are discussed below.

6.1.2. Legal Risks

6.1.2.1. The Question of Competence

After implementation of the SBS Safe Harbour, the position could be taken that the minimum tax no longer serves to prevent a loss of tax revenue but has a purely fiscal purpose. In that case, both the QDMTT and the IIR would be unconstitutional, since the Confederation lacks the competence for a purely fiscal tax. The legal foundations were set out above in section 3.2. This is examined in more detail below.

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[111] HONGLER/DOMKE, Methodisches (fn. 7), 89 ff. In the most recent publications, the Federal Council and the FDF take the view that the Constitution (not the MindStV) requires a dynamic reference: *"A static fixation on the status of December 2021 would therefore contradict the constitutional mandate"* (FDF; Amendment of the Ordinance on the Minimum Taxation of Large Corporate Groups [Minimum Taxation Ordinance, MindStV], Explanatory Report for the Opening of *the Consultation Procedure*, 6 May 2026, 12 f.). This contradicts the earlier statement in the FDF's explanatory notes on the Minimum Taxation Ordinance of 22 December 2023. There, the following is stated: *"For rule-of-law reasons, this is a static reference. Should the GloBE Model Rules be revised, which is not planned in the foreseeable future, the Ordinance would also have to be amended. A dynamic reference would be constitutionally problematic and is not provided for in the transitional provision of the BV"* (p. 13). Emphasis added.

[112] See BSK BV-EPINEY (fn. 14), Art. 190 N 31; SGK BV-LOOSER (fn. 41), Art. 190 N 26.

[113] See, for example, BGE 139 II 460.

Based on the considerations regarding the attractiveness of the US tax system and the significance of US groups for Switzerland as a location, the following picture emerges:

- The risk of losing locational attractiveness through the QDMTT and the IIR is significant with regard to US MNEs. The combination of the SBS Safe Harbour and the attractive tax environment in the United States increases the incentive for US MNEs to relocate business activities of US MNEs from Switzerland to the United States or to build them up directly in the United States.[114]

- For Swiss groups, in the event of an abolition of the QDMTT and the IIR, there is a risk of additional taxation and a legal enforcement risk abroad, i.e. the instruments of the QDMTT and IIR protect against the profits of Swiss groups being taxed (more heavily) abroad. Primarily, however, it is a legal enforcement risk, i.e. companies must potentially enforce in several states that the undertaxed profits are taxed at 15% (and not higher). Due to the *common approach*, however, no additional taxation should occur, since the levying of the minimum tax abroad is calculated according to the same body of rules. It cannot, however, be entirely ruled out that the Model Rules are not applied in exactly the same way everywhere and that additional taxation potentially arises. The considerations above have shown that the risk of additional taxation is very difficult to estimate, since it is already unclear how much top-up tax is actually paid by Swiss groups per year and how high the probability of additional taxation is.[115] The same applies to foreign (non-US) groups with undertaxed profits in Switzerland.

- The activities of EU groups will in any event be subject to additional taxation through the application of the IIR or UTPR. This means that, for EU groups, Switzerland does not fundamentally become more attractive as a result of the abolition of the QDMTT or the IIR.

Although no precise quantification can be made, it is by no means clear that, after implementation of the SBS Safe Harbour, the minimum taxation protects more tax revenue than is lost. Accordingly, there is a risk that, by implementing

[114] On this, see above section 5.3.
[115] See the rough calculation above in section 4.2.4.

the SBS Safe Harbour, the Federal Council is acting outside the competence granted in Art. 129*a* BV. This is because the minimum tax, or at least the QDMTT, no longer has the objective of protecting tax revenue but appears to have primarily a fiscal purpose. This would mean that at least the QDMTT would no longer be constitutional, and this could be asserted by every affected company in appeal proceedings.

If enforcement were successful, the mechanism concerned would be invalidated and, in principle, all years not yet finally assessed would have to be refunded.[116] The procedural particularities would need to be examined.[117] Transposing the MindStV into formal legislation would, at least procedurally, mean that the possible violation of competence could not be enforced in court on account of Art. 190 BV, since federal acts are authoritative for the Federal Supreme Court. In other words, the materialisation of the legal risk could be prevented by transposing the MindStV into a federal act.

6.1.2.2. In the Interest of the Economy as a Whole

As mentioned above,[118] the implementation of the SBS must be "in the interest of the economy as a whole".

The term "economy as a whole" is likely to be understood and applied differently depending on the perspective, namely from the perspective of the legislator on the one hand and from the perspective of a court on the other. From a legislative perspective, the term can be understood in the sense of maximising benefit for the economy as a whole, i.e. as the question of which concrete design of a rule best serves the overall economic performance of the Swiss economy. Other, more generic or programmatic descriptions of the term are also conceivable here. With regard to judicial review by a court, by contrast, the term "economy as a whole" is to a considerable extent a matter of discretion. In such judicial (rather than legislative) discretionary decisions, courts are traditionally – and rightly – reticent.

It is not to be expected that a court would hastily affirm a violation of the provision in question. Only if it could be clearly demonstrated that the implementation of the SBS exclusively protects the particular interests of individual

[116] It can remain open at this point whether the tax must be paid "subject to reservation" in order for a refund to take place.

[117] But see fn. 130.

[118] See section 3.2.4.2.

companies or industries and has no benefit whatsoever for the economy as a whole would a court likely feel compelled to find a violation and to apply the relevant constitutional principles. In practical political terms, Art. 129*a* para. 3 BV is thus more of a policy guideline or a legislative maxim than a judicially enforceable legal claim.

This means that the risk that a court would conclude that an SBS implementation of the global minimum tax is no longer in the interest of the economy as a whole and that a constitutional violation therefore exists is rather low. However, the risk cannot be excluded either. Only a transposition of the MindStV into formal legislation would, on account of Art. 190 BV, at least prevent the enforcement of the constitutional violation.

Despite the challenging nature of judicial review, the legislator – specifically the Federal Council – should analyse carefully whether an implementation of the SBS Package is in the interest of the Swiss economy as a whole (jobs, growth, tax revenues, etc.) or whether, in the new environment, it would not be economically preferable to repeal the minimum tax in its entirety. This is a constitutional obligation.

6.1.2.3. Violation of the Principle of Legality

Two possible violations of the principle of legality arise: on the one hand, through the reference in the MindStV to the Model Rules and through the application of the Administrative Guidance, and on the other hand, through the reference to international accounting standards.

(a) On the Model Rules and the Administrative Guidance

As already mentioned, the MindStV refers both to the Model Rules and to other bodies of regulation. The latter can, however, only be used for interpretation. This is a static reference to the Model Rules.[119] If the Model Rules were amended, the changes would therefore have to be reflected in the MindStV. The same applies if Administrative Guidance results in a substantive change to the Model Rules. These changes would have to be reflected in the MindStV.

If the authorities rely on Administrative Guidance that contradicts the Model Rules, the applying authorities in Switzerland violate the principle of legality,

[119] See HONGLER/DOMKE, Methodisches (fn. 7), 101 ff.

since the taxation is not based on a legal foundation. If this occurs in favour of the taxpayer, judicial review will presumably not take place. If it occurs to the taxpayer's detriment, it is very conceivable that review can take place through the appeal process. This could, for example, be the case with the Administrative Guidance of January 2025, since individual companies are placed in a worse position there. This would, however, have no direct effect on the application of the QDMTT or the IIR under the SBS Package. Rather, a court could, for example, hold that there is no legal basis for the application of the Administrative Guidance of January 2025.

The non-application of the IIR to US groups likewise violates the Model Rules and thus also the principle of legality. Since this constitutes a favourable exception, however, in practical terms no one will take the position that the exemption of US MNEs from the IIR should not be applied.[120]

(b) On the International Accounting Standards

In levying the QDMTT and the IIR, an unknown number of accounting standards is furthermore applied as the basis for the tax base; this without any influence of the legislator. Reference is also made in part to standards of private organisations – as in the case of IFRS or Swiss GAAP FER. This peculiarity has already been discussed in detail elsewhere.[121] What is particularly problematic here is that the decision-making processes – i.e. how a standard comes into being and who elects the responsible persons – are not always transparent and not democratically legitimised.

It is also problematic that this is presumably a dynamic reference, under which the current version of the accounting standards applies in each case.[122] Such dynamic references are, in principle, impermissible for legal questions of some importance. The Federal Supreme Court has not yet ruled on this question of the use of international standards for tax purposes. In a decision on legislative references, however, the Federal Supreme Court states the following:

"Since, in accordance with the principle of legality and the separation of powers (see BGE 128 I 113 consid. 2c and 3c pp. 116 and 121 f.), it is incumbent on the

120 That this could, however, constitute equal treatment in illegality is addressed in section 6.1.2.5.

121 See already, in detail, Berndt *et al.* (fn. 7), 46 ff.

122 On the dynamic reference, see Hongler/Domke, Methodisches (fn. 7), 101 ff. On the problem of the reference to international accounting standards, see already Simonek Madeleine/Hongler Peter, Massgeblichkeitsprinzip und neue Rechnungslegung, FStR 4/2010, 262 ff., with further references.

legislator to enact the important norms itself, only less important norms can be delegated to private parties (see, for the Confederation, RHINOW/SCHEFER, Schweizerisches Verfassungsrecht, 2nd ed. 2009, para. 2733 and 2741 i.f.; on an exceptional rule for the protection of fundamental rights, see BGE 123 I 112 consid. 7c/dd pp. 130 f. and, on a counter-exception, consid. 7c/ee pp. 131 f.); this requires, however, a constitutional delegation competence which designates, inter alia, private parties as law-making subjects and the necessary statutory act of transfer (formal law)."[123]

The provisions determining the tax base are important provisions which, in our view, cannot be fully delegated. The reference to the accounting standards in the definitions of the Model Rules is the central element of the minimum tax and a component of the Swiss legal order. It is not only the dynamic reference that is problematic. Moreover, it is nowhere clearly established (neither in the Constitution nor in a federal act or the MindStV) which standards actually apply in Switzerland.[124] It is true that the Model Rules contain the following definitions:

Acceptable Financial Accounting Standard *means International Financial Reporting Standards (IFRS) and the generally accepted accounting principles of Australia, Brazil, Canada, Member States of the European Union, Member States of the European Economic Area, Hong Kong (China), Japan, Mexico, New Zealand, the People's Republic of China, the Republic of India, the Republic of Korea, Russia, Singapore, Switzerland, the United Kingdom, and the United States of America.*

and

Authorised Financial Accounting Standard, *in respect of any Entity, means a set of generally acceptable accounting principles permitted by an Authorised Accounting Body in the jurisdiction where that Entity is located.*

The references are, however, very generic, and neither the authority nor the taxpayers can discern exactly which standards in which version may be applied.

[123] BGE 136 I 316, consid. 2.4.1.

[124] The reference in the Model Rules is far too generic. It is unclear which standards fall under it and by whom these standards are issued. At the beginning of the project, for example, it was not entirely clear whether the OR might nevertheless fall under it, see SUTTER/SONDEREGGER (fn. 30), 314 ff.; see on this also already, without reference to the MindStV, CAVELTI LUZIUS/CAJACOB MERET, Mindestbesteuerung im internationalen Steuerrecht, Eine kritische Würdigung der Schweizer Umsetzungspläne, Basler Juristische Mitteilungen (BJM), 2022, 221 ff., 244 ff.

Moreover, it is, for example, not apparent where the standards can be found. The publication of enactments is a central element of the principle of legality. Taxpayers, but also the authorities, must have access to the law. This is not ensured here. The main problem lies not in the broad discretion of the authorities, but in the fact that the tax liability and its amount are simply not foreseeable, and that it is not at all clear to the authorities or to the taxpayers what the basis is or can be. After all, reference is made to an indeterminate number of standards, and the Model Rules themselves, together with all accompanying documents, comprise several hundred pages. The complexity is overwhelming. The legislator has not fulfilled its duty to define the tax base in a comprehensible manner at all. It is not clear in all cases exactly how the tax is calculated. Under the principle of legality in corporate income tax law, simple and clearly applicable norms should be developed.[125]

The question arises whether this violation of the principle of legality might be justified constitutionally by another norm – specifically by the competence norm itself.[126] No such justification is apparent. Art. 129*a* para. 3 BV contains no reservation to the effect that the legislator need not adhere to the principle of legality in the implementation. It is true that Art. 129*a* BV states that the ordinance-maker must align itself with international standards. However, the legislator and the ordinance-maker thereby remain obliged to comply with the principle of legality. The only exception to the principle of legality is to be seen in the fact that the Federal Council can legislate by way of ordinance during the first years[127] – not, however, that it need not substantively adhere to the principle of legality in doing so. In other words, all important provisions belong in this ordinance and cannot be delegated to a third party.

The legal situation would be different if the legislator had defined the permissible accounting standards (and the respective version). The legislator could, for example, have listed the individual accounting standards with an indication of the applicable version and how the version can be accessed.[128] This has not

[125] See Bertschinger Michael, Die handelsrechtliche und steuerrechtliche Gewinnermittlung unter dem revidierten Rechnungslegungsrecht, diss. St. Gallen 2020, 65 f. with further references.

[126] On this, concisely, the Federal Supreme Court: *"And finally, it is examined whether the ordinance does not conflict with another constitutional provision, in particular with the fundamental rights guarantees of the citizen, insofar as the authorising constitutional norm does not itself order or accept deviations"* (BGE 125 II 326, consid. 3a).

[127] The question is precisely not whether a sufficient delegation exists in a statute. It is undisputed that the Federal Council has the competence to introduce the minimum tax. What is questionable is whether and to what extent it may, in the course of this implementation, violate other provisions of the BV (to this effect also Cavelti/Cajacob (fn. 124), 241 ff.).

[128] On this, see already Berndt *et al.* (fn. 7), 46 ff.

happened so far, and it is accordingly plausible to assume a violation of the principle of legality. It could be countered that this would undermine the Model Rules, since this very generic reference is envisaged there as a *common approach* and much flexibility is therefore inherent in the system. The Model Rules, however, have no legal quality[129] of their own, and therefore no justification for violating the unilateral principle of legality can be seen in them. Nor does the Constitution give the Federal Council the competence to defy the principle of legality on this question.

(c) Legal Consequences

In summary, there are convincing grounds for assuming a violation of the principle of legality, since there is no statutory basis that makes the tax base of the QDMTT and the IIR determinable. The very generic references to various (in part unknown) accounting standards are insufficient.

If the Federal Supreme Court concludes that a violation of the principle of legality exists, the consequence would be that neither the QDMTT nor the IIR would be applicable. In our assessment, this would affect all pending or suspended assessments at the time of a judgment by the highest court. It is unclear whether this could even affect all formally final rulings, i.e. IIR or QDMTT taxes already assessed. In particular, the question arises whether there might be an obligation to refund taxes already assessed under the QDMTT or the IIR. This would need to be examined in more detail.[130]

It is also important to note that, if individual entities (after such a judgment) nevertheless requested a voluntary assessment of the QDMTT or IIR, there would presumably no longer be any Covered Taxes, since the payment would be made voluntarily.[131] Consequently, this would mean that, depending on the statute of limitations provisions, the IIR or UTPR would apply in other countries.

[129] It is not even clear who agreed to this document. The only claim made is that the members of the Inclusive Framework agreed. This is, however, inaccurate – presumably even untrue. On the adoption of documents by the Inclusive Framework, see already HONGLER (fn. 7), 4 f.

[130] On the theoretical question of the "presumed unalterability" of assessment rulings and court decisions, see LOOSER MARTIN E., Vor Art. 147–153*a,* N 5 f., in: Zweifel Martin/Beusch Michael (eds.), Bundesgesetz über die direkte Bundessteuer, Kommentar zum Schweizerischen Steuerrecht, 4th ed., Basel 2022. A ground for review might possibly be derived directly from Art. 8 BV if some companies were subject to the QDMTT and others were not. In such a case, a judicial balancing will be required between the interest in legal certainty – particularly from a fiscal perspective – and the risk of unequal treatment between companies already assessed and those whose assessment is still pending.

[131] On this, see below section 6.2.1.4.

Transposing the MindStV into formal act would, at least procedurally, mean that the possible violation of competence could not be enforced in court on account of Art. 190 BV, since federal acts are authoritative for the Federal Supreme Court. In other words, the materialisation of the legal risk could be prevented by transposing the MindStV into a federal act. The lack of enforcement would, however, change nothing about the potential unconstitutionality.

6.1.2.4. Incompatibility of the IIR with DTAs

Various authors have examined the potential conflicts of the IIR with DTA obligations of Switzerland and other states.[132] The lines of argument are essentially the following.

(a) In Permanent Establishment Constellations:

In levying the IIR on profits of a foreign permanent establishment, Switzerland violates Art. 7 in conjunction with Art. 23 of its DTAs, since Switzerland regularly applies the exemption method for foreign permanent establishments. Through the application of the IIR, however, foreign permanent establishment profits would be taxed. Switzerland would thereby violate its obligation to exempt such profits under treaty law.

(b) In the Case of Subsidiaries

Even where the IIR is levied not on profits from a permanent establishment but on profits of a subsidiary, a similar problem arises. In that case, the IIR taxes the profit of a company resident abroad even though it has no permanent establishment in Switzerland. This constitutes a violation of Art. 7 of the DTAs, since under this provision a permanent establishment is required for taxation in Switzerland.[133]

It could be countered here that various contracting states already have CFC rules and that similar questions arise in that context. In other words, the IIR would also have to be permissible, since CFC rules are also widely applied in treaty

[132] See CHAND VIKRAM/TURINA ALESSANDRO/ROMANOVSKA KINGA, Tax Treaty Obstacles in Implementing the Pillar Two Global Minimum Tax Rules and a Possible Solution for Eliminating the Various Challenges, World Tax Journal 2022, 3 ff.; DEBELVA FILIP/DE BROE LUC, Pillar 2: An Analysis of the IIR and UTPR from an International Customary Law, Tax Treaty Law and European Union Law Perspective, Intertax 2022, 898 ff. See already HONGLER, Treaty Compatibility (fn. 7), 92.

[133] See, in detail, CHAND/TURINA/ROMANOVSKA (fn. 132), 5 ff. From a Swiss perspective, with reference to the UTPR, see also already MATTEOTTI, Gutachten (fn. 41), 15 ff.

relationships. However, the starting position is different. Historically, CFC rules aim to prevent abusive structures, whereas the IIR serves to achieve a minimum taxation also of business activities with substance abroad.[134] Because of this anti-abuse purpose, CFC rules are indeed treaty-compliant in many cases. It must, however, be particularly borne in mind that, until recently, Switzerland had a reservation in the Commentary on the OECD Model Convention with the following wording:[135]

With respect to paragraph 23, Switzerland considers that controlled foreign corporation legislation may, depending on the relevant concept, be contrary to the spirit of Article 7.

The IIR is, in its design, a very strict CFC rule, since it is applied consistently in the event of taxation below 15% and not only in circumvention constellations. Accordingly, particularly from the perspective of Swiss treaty practice, there is much to suggest that the IIR is precisely not DTA-compliant. Swiss negotiators historically took the view that (strict) CFC rules were not DTA-compliant. As recently as 2018, for example, the following formulation can be found in the dispatch on the MLI:

"Switzerland has no CFC rules and has no interest in other states applying such rules with regard to Swiss group companies. Switzerland takes the view that the profits of Swiss companies cannot be subject to additional taxation abroad solely because the shares of the Swiss company are held by a foreign person."[136]

The amendment of the Commentary and the deletion of the reservation have no dynamic effect but effectively only affect the interpretation of future new or renegotiated DTAs.

If a court were to conclude that the IIR violates Switzerland's DTAs, it must be assumed that this would apply to all DTAs that do not provide for a special norm such as the DTA with France:

[134] A comprehensive treatment of the topic can be dispensed with within the scope of this study.

[135] Formerly Art. 1 para. 110 (deleted), see on this OECD, Model Tax Convention on Income and on Capital, Volume I and II, Updated 21 November 2017 (Full Version), available at <http://dx.doi.org/10.1787/g2g972ee-en> (last visited on 6.5.2026).

[136] Dispatch on the approval of the multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting of 22 August 2018, BBl 2018 5389, 5413 f.

XIII. It is understood that the provisions of the Convention do not prevent the Contracting States from implementing the domestic legal provisions on the minimum taxation of corporate groups enacted on the basis of the 'Global Anti-Base Erosion Model Rules (Pillar Two)' developed by the Inclusive Framework of the Organisation for Economic Co-operation and Development.

This provision has, however, so far been the exception.[137] It is, however, (e contrario!) a sign that the DTA negotiators likewise assume that a conflict exists between the IIR (and the UTPR) and DTAs. Nor does Switzerland have a savings clause that would justify the application of the IIR.[138] The risk that a domestic court would reach this conclusion if confronted with it in appeal proceedings is assessed as more likely than not. The main argument against this position is that the IIR does not fall under a DTA at all, since taxes under the IIR are not covered by the substantive scope of Art. 2.[139] As reasoned elsewhere, however, this position is not convincing, since the IIR is also a "tax on profits" or a "tax on income" as provided for in Art. 2, and the application of the DTAs is therefore justified.[140]

This would mean that (if confirmed by the highest court) the IIR could no longer be applied to DTA situations. It can be assumed that the authorities would in that case no longer apply the IIR at all. The IIR would in this case also no longer be a QIIR under the Model Rules, since a partial application of the IIR in non-DTA constellations would not be consistent within the meaning of the definition of the QIIR.[141]

6.1.2.5. Equal Treatment in Illegality

(a) Particularities of Option 1: Implementation Without Amendment of the MindStV and Without a Practice Statement

At the outset, it is undisputed that an exemption of US MNEs from the IIR is explicitly not provided for in the Model Rules. In particular, Art. 2.1 of the Model

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[137] See, however, Art. 24 para. 4 of the Convention between the Swiss Confederation and the Federal Republic of Germany for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital of 11 August 1971 (SR 0.672.913.62).

[138] See Art. 1 para. 2 of the DTA CH-USA (fn. 44). This gives only the United States this right – a unilateral savings clause, so to speak.

[139] See on this NIKOLAKAKIS ANGELO/LI JINYAN, UTPR: Unprecedented (and Unprincipled?) Tax Policy Response, Tax Notes International, 6 February 2023, 743 f. For a minority view, see CHRISTIANS ALLISON/SHAY STEPHEN E., The Consistency of Pillar 2 UTPR with U.S. Bilateral Tax Treaties, Tax Notes International, 23 January 2023, 445 f.

[140] For our own position, see HONGLER, Treaty Compatibility (fn. 7), 92.

[141] See Art. 10.1 (Definitions) GloBE Model Rules.

Rules contains no such exemption. The Model Rules do, however, contain a provision (Art. 8.2.1) on safe harbours with the following wording:

At the election of the Filing Constituent Entity, and notwithstanding Chapter 5, the Top-up Tax for a jurisdiction (the safe harbour jurisdiction) shall be deemed to be zero for a Fiscal Year when the Constituent Entities located in this jurisdiction are eligible for a GloBE Safe Harbour, pursuant to the conditions provided under the GloBE Implementation Framework and applicable for that Fiscal Year.

The SBS Safe Harbour, and with it the exemptions from the IIR, could possibly be subsumed under this provision. For this, however, the conditions under the GloBE Implementation Framework would have to be met *("pursuant to the conditions provided under the GloBE Implementation Framework")*. This GloBE Implementation Framework is defined as follows:

GloBE Implementation Framework means the procedures to be developed by the Inclusive Framework on BEPS in order to develop administrative rules, guidance, and procedures that will facilitate the coordinated implementation of the GloBE Rules.[142]

Such a GloBE Implementation Framework has (as far as can be seen) not yet been published or adopted. A basic requirement of Art. 8.2.1 of the Model Rules is thus lacking. Accordingly, a basic requirement for the adoption of safe harbours in general is lacking. This applies not only to the SBS Safe Harbour but also to other safe harbours. Switzerland would therefore have to implement such safe harbours domestically, because a central requirement for direct application via Art. 8.2.1 – the GloBE Implementation Framework – is missing. Added to this is the additional complexity that it is not always clear which safe harbours still need to be implemented and which do not – even assuming that Art. 8.2.1 would apply.

If the authorities nevertheless apply the SBS Safe Harbour, they violate the MindStV. Since there will presumably be no claimant, the SBS Safe Harbour would be applied not *de jure* but at least *de facto*. The question arises, however, whether other companies could possibly assert a claim to equal treatment in illegality.[143] This is addressed below.

[142] Art. 10.1 (Definitions) GloBE Model Rules.
[143] To the same effect SUTTER/SONDEREGGER (fn. 30), 316.

(b) Particularities of Option 2: No Amendment of the MindStV, but Publication of a Practice Statement

As is now known, the Swiss authorities apply the exemption from the IIR for US groups without the MindStV being amended accordingly. The question thus arises whether other groups could also demand equal treatment, specifically the non-application of the IIR. A group could demand to be treated in a manner contrary to the ordinance as well, in that the IIR – although its requirements are met – is not applied. The company would consequently be claiming equal treatment in illegality.

The Federal Supreme Court's case law on equal treatment in illegality reads as follows:

"5.3. In principle, a person seeking justice cannot evade the correct application of the law in their own case by arguing that the law was applied incorrectly, or not at all, in other cases. However, if the authority deviates from the law not merely in one or a few cases but in consistent practice, and if it indicates that it will not decide in conformity with the law in the future either, the citizen can, on the basis of Art. 8 para. 1 BV, demand to be treated equally, i.e. likewise to be favoured contrary to the law. Only where an authority is unwilling to abandon an unlawful practice does the interest in the equal treatment of those affected outweigh the interest in legality. If the authority does not express its intention, it is to be assumed that it will, on the basis of the considerations of the Federal Supreme Court's judgment, move to a lawful practice (BGE 146 I 105 consid. 5.3.1 p. 112 with references). Insofar as the toleration of unlawful conditions is concerned, the Federal Supreme Court additionally requires that the authority provide proof by its actions, i.e. carry out the necessary building inspections and, on that basis, initiate restoration proceedings (see judgment 1C_398/2011 of 7 March 2012 consid. 3.9, in: ZBl 114 2013 p. 379)."[144]

If a practice statement were to state that the Swiss authorities do not apply the IIR to US groups without a simultaneous amendment of the MindStV, there would be weighty grounds for non-US groups also being able to assert equal treatment in illegality. This is because, in such a case, the authorities would deliberately refrain from applying the law in force in conformity with the statute or ordinance. Conduct in conformity with the law would precisely mean that the IIR – where its requirements are met – also applies to US MNEs. In our view, by

[144] Federal Supreme Court 1C_172/2020 of 24 March 2021, consid. 5.3.

publishing the practice statement on 7 April 2026, the ESTV has issued such a practice statement – this makes it clear that the ESTV deliberately refrains from an application of the MindStV and the Model Rules in conformity with the statute and ordinance, and exempts US MNEs from the IIR despite wording to the contrary.[145]

In other words, in this constellation every affected group could invoke the argument that the IIR should likewise not be applied to it. The reservation of Art. 129*a* para. 3 BV would not stand in the way of this, since, according to its wording, this provision is expressly addressed to the Federal Council as federal legislator[146] *("It may, in order to safeguard ...")* and not to the subordinate administrative authorities. The latter are, by contrast, bound without restriction by the constitutional principle of equal treatment under Art. 8 BV and by the tax-law principles of Art. 127 para. 2 BV.

(c) Particularities of Option 3: Amendment of the MindStV

The Federal Council could also still decide to amend the MindStV and explicitly mention the SBS Safe Harbour. In that case, the problem of equal treatment in illegality would at least not arise, since the unequal treatment would be provided for in the ordinance itself. Under this option, however, the question remains whether the Federal Council still has the competence to do so[147] and whether the principle of legality is complied with.[148]

[145] See Communication-031-E-2026-d (fn. 4).

[146] Formally, the provision is addressed to the "Confederation" – this is, however, to be read as meaning the federal legislator – currently the Federal Council (see also the transitional provision in Art. 197 no. 15 BV).

[147] See above section 3.2.2.

[148] See above section 6.1.2.3.

6.1.2.6. Interim Conclusion

In summary, we see the following legal risks in the implementation of the minimum tax and the SBS Safe Harbour. The colour highlighting serves to separate the legal risks with a high probability and a high extent of damage from those with a low probability and a low extent of damage:

Risk	Probability of occurrence	Damage	Assessment of the risk	Remarks
Lack of competence of the Confederation	3	5 (IIR & QDMTT would be unconstitutional)	Medium	Transposing the MindStV into a federal act prevents legal materialisation (but: not retrospectively)
Violation of the principle of legality	4	5 (IIR & QDMTT would be unconstitutional)	High	Transposing the MindStV into a federal act prevents legal materialisation (but: not retrospectively)
Incompatibility of the IIR with DTAs	4	3 (IIR would be contrary to DTAs)	Medium	Transposition into a federal act brings no improvement, since international law is authoritative for the Federal Supreme Court.[149]
Implementation not in the interest of the economy as a whole	2	5	Manageable	This is primarily a political guideline that is difficult to enforce legally.
Equal treatment in illegality	4	3	Medium	Amending the MindStV would already provide a remedy to minimise the risk

[149] On the possible Schubert practice, see BERNDT *et al.*, (fn. 7), 41 f.

6.1.3. Economic Effects

The economic consequences of implementing the SBS Safe Harbour and of maintaining the minimum tax are essentially the following:

Advantages:

- **Tax revenue in general (QDMTT and IIR):** Maintaining the QDMTT and IIR has the advantage that Swiss groups with a presence in the EU (or other UTPR countries) are not subject to the UTPR, and there is therefore also no risk of additional taxation of "Swiss" profits abroad. The exact loss of tax revenue, or how much tax revenue is protected, cannot be quantified. According to the recently published financial statements, the largest (listed) companies owe top-up taxes in the amount of approximately CHF 250 million (2024) and CHF 600 million (2025), respectively. How much of this will arise in Switzerland (QDMTT or IIR) and how much abroad (QDMTT) is unclear and cannot be reliably estimated either.[150]

- **Legal enforcement costs:** For Swiss groups, the QDMTT and the IIR result in lower legal enforcement costs. These companies do not have to pay taxes under the UTPR in several states, but only, if at all, under the QDMTT and/or IIR and only in Switzerland. At least in theory, the burden should be the same – but under the current system, companies only have to enforce their rights in Switzerland. A quantification of this advantage is not possible within the scope of this study. It should, however, be borne in mind that the materialisation of one of the legal risks likewise entails additional legal enforcement costs, since the QDMTT and IIR may not be collectable in Switzerland at all, and other countries could therefore nevertheless levy a UTPR or IIR.

Disadvantages

- **Tax revenue in general (QDMTT) and locational disadvantage for US investments due to the QDMTT:** Maintaining the QDMTT can cause relocations of business activities to the United States or other countries, in particular because of the attractive US tax environment. Various groups have tax burdens of less than 10% on their US profits (cash taxes).[151] Accordingly, it is plausible that individual US groups will increasingly recognise income in the United

[150] See above section 4.2.4.
[151] See above section 5.3.6.

States (or in a country without a QDMTT) or will no longer realise income in a foreign company (e.g. in Switzerland) that is subject to a QDMTT. In our assessment, this pressure will increase. Particularly attractiveness-enhancing in cross-border relationships are both the new design of the FDDEI and the various tax credits in the United States. **Assuming a relocation of 25% of the tax revenue base, Switzerland would lose corporate income tax revenues of around CHF 1 billion.** At the same time, it will also become difficult to generate new tax revenue through US investments.

- **Locational disadvantage due to the IIR:** The disadvantage of the IIR lies above all in the fact that Switzerland is no longer attractive for intermediate holding structures for MNEs without a presence in the EU (or other UTPR countries). Moreover, the IIR is also a disadvantage for Swiss groups, namely if the UTPR were to be qualified within the EU as contrary to EU law or possibly contrary to DTAs. The IIR has no influence on investments by US MNEs, since, owing to the SBS Safe Harbour, these are no longer subject to an IIR as of 2026.

- **Competitive advantage:** US MNEs have a competitive advantage over Swiss and non-US MNEs. Switzerland, however, cannot counteract this on its own. Most Swiss MNEs maintain a presence in an EU state and therefore remain caught within the global minimum tax. In other words, abolishing the QDMTT/IIR alone would not improve competitiveness compared with US groups. Only the abolition of the UTPR within the EU and other UTPR states would provide a remedy.

- **Jobs:** The SBS makes Switzerland less attractive as a location for US MNEs compared with the United States or other locations with higher tax credits or no QDMTT. Relocations of jobs may occur. US MNEs employ approximately 100,000 people (CbCR data) in Switzerland. Fewer new establishments of US MNEs are also to be expected. No precise estimate of the potential relocations can be given. From an economic perspective, however, the relocation of tax revenue appears to be the primary concern, given the high profitability in Switzerland.

6.1.4. Interim Conclusion

The legal risks of implementing the SBS Safe Harbour are significant and multilayered. They can be fully eliminated neither by amending the MindStV nor by transposing the MindStV into an act of parliament.

The successful enforcement of even just one of the possible legal violations mentioned can result in the advantages of the SBS (in particular legal certainty through payment of the top-up taxes and assertion of the Q-status) no longer being given.

At the same time, the SBS, and maintaining the IIR/QDMTT, entails significant economic risks which, in our assessment, are not neutralised by any positive effects. In summary, there is therefore a strong case for abolishing the minimum tax in the course of this year.

6.2. Loss of the "Q-Status"

6.2.1. Regulatory Foundations

6.2.1.1. Overview of the QDMTT

The QDMTT is mentioned and further described in various OECD documents – in particular also in the definitions of the Model Rules. In February 2023, the OECD published further guidance on the QDMTT. It sets out the "Guiding Principles" of the QDMTT.[152] These were later also incorporated into the Commentary. In simplified terms, they are the following:

- A QDMTT must be consistent with the design of the GloBE Rules.

- The outcome must be consistent with the GloBE Rules.

It is important to emphasise here that the OECD's requirements relate to the qualification as a QDMTT and not to whether a tax counts as a Covered Tax. These are distinct legal questions.

If a tax meets the requirements of a Covered Tax, it must be taken into account for the minimum tax. This is relevant, for example, for the corporate income tax under the DBG and the cantonal tax laws. These meet the requirements of Covered Taxes.

In general, the ordinary corporate income taxes count as Covered Taxes. Excepted, however, are situations in which a specific rule would explicitly provide that a tax which in principle qualifies as a Covered Tax is explicitly not to be taken into account.

The QDMTT must always be seen in connection with the QDMTT Safe Harbour. This is attached to the Commentary on the Model Rules as Annex 3. It was also published separately as an Administrative Guideline.[153] Specifically, it works as follows: The top-up tax for a country is 0 if the entities are subject to a QDMTT. States must ("shall") provide domestically that in these cases neither an IIR nor a

[152] See OECD/G20, Base Erosion and Profit Shifting Project, Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), July 2023, 77 ff., available at: <www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two-july-2023.pdf> (last visited on 20.03.2026) (cit. OECD/G20, Admin. Guidance BEPS).

[153] OECD/G20, Admin. Guidance BEPS (fn. 152), 77 ff.

UTPR is applied. It is, however, not an obligation under international law; rather, it must be transposed by the states into national law, i.e. ultimately national law decides whether the QDMTT Safe Harbour is followed.[154]

At present, however, there are no indications that individual countries are not implementing the QDMTT Safe Harbour. Once again, however, the system creates dependencies. Switzerland is thus dependent on its implementation obtaining Qualified status. This status is granted through a peer review process, which is addressed below; at the same time, Switzerland is dependent on the other states also implementing and applying the QDMTT Safe Harbour domestically.

6.2.1.2. Peer Review

As mentioned, a peer review process decides whether a tax counts as a QDMTT. However, no clear guidelines for the peer review process can yet be found online. These rules are yet to be developed.[155] So far, the OECD has published the following:

In June 2024, the OECD published, together with the fourth tranche of Administrative Guidance, a Q&A document containing information on the planned peer review process, which is ultimately intended to determine the qualified status of the IIR, UTPR and DMTT as well as eligibility for the QDMTT Safe Harbour. This document was updated in January 2025.[156] The Q&A document describes a two-stage peer review process:

The process consists of a full legislative review and ongoing monitoring by the Inclusive Framework.[157] The process begins, however, with the transitional qualification mechanism. This is a simplified process, since the Inclusive Framework has not yet had the time or capacity to carry out the full legislative review. Switzerland obtained Qualified status under the transitional qualification mechanism, both for the IIR and for the QDMTT.[158]

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[154] On this, see already above section 3.1.1.

[155] On the whole, OECD/G20, Tax Challenges Arising from the Digitalisation of the Economy – Consolidated Commentary to the Global Anti-Base Erosion Model Rules, 9 May 2025, 366, para. 52 (cit. OECD/G20, Consolidated Commentary).

[156] See OECD, Qualified Status under the Global Minimum Tax – Questions and Answers, January 2025, available at: <https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/qualified-status-under-the-global-minimum-tax-questions-and-answers.pdf> (last visited on 16.03.2026) (cit. OECD, Q&A Qualified Status).

[157] See OECD, Q&A Qualified Status (fn. 156), question 4.

[158] See the entries in OECD, Central Record (fn. 40) on the QIIR and QDMTT.

The transitional qualified status can be lost, for example, if the full legislative review is not carried out within the prescribed time or if the review concludes that the statutory provisions do not qualify. The loss does not, however, take effect retrospectively.[159] Since it was not possible in the short term to carry out a full legislative review for all states implementing the GloBE Rules as of 2024, a simplified transitional mechanism was developed that allows states to temporarily self-certify the qualified status of their legislation.

On 15 January 2025, the OECD published the Administrative Guidance on the Central Record with a list of the states whose legislation has passed through the transitional mechanism for the IIR, DMTT or QDMTT Safe Harbour.[160] The Inclusive Framework will further develop the full legislative review and monitoring process for the peer review exercise. The detailed terms of reference for the full legislative review have not yet been published. The full legislative review is to be initiated at the latest two years after the effective date of a state's legislation – i.e. for states with effect from 2024, presumably still in 2026.

In practical political terms, it must be conceded that countries with a QDMTT make themselves dependent on a non-transparent procedure, in that this hitherto unclear peer review process decides whether the QDMTT actually qualifies as a QDMTT. In other words, it is not a legal decision but a political decision that will be guided by legal guidelines but is not necessarily bound by legal requirements.

6.2.1.3. Switch-Off Mechanism vs. Loss of Q-Status

The switch-off mechanism provides that a country does not lose the Q-status in general; rather, in relation to individual constellations, a QDMTT of one or more MNE group(s) is not accepted for purposes of the IIR and the UTPR. Accordingly, the protection of the QDMTT Safe Harbour is switched off in individual cases ("switch-off"). The reason is that, for certain states, it is not possible in all constellations to levy a QDMTT that fully conforms to the OECD requirements. The OECD specifies various constellations here.[161]

For example, a lack of full implementation of the Administrative Guidance of January 2025 (e.g. due to constitutional requirements) may possibly lead only to a

[159] See OECD, Q&A Qualified Status (fn. 156), question 9.
[160] See OECD, Central Record (fn. 40).
[161] See OECD/G20, Consolidated Commentary (fn. 155), 361, para. 38, lit. a-f.

switching-off of the QDMTT's protective effect in the individual case and not to the disqualification of the QDMTT.[162]

It would, however, also be conceivable that the Q-status would be revoked or deliberately relinquished through the implementation of a DMTT. The loss of QDMTT status is not synonymous with the disqualification of the top-up tax as a Covered Tax. In a first step, disqualification means only that the QDMTT Safe Harbour does not apply.

6.2.1.4. Covered Taxes

(a) In General

The relevant rules on "Covered Taxes" are found in the OECD Model Rules on Pillar Two (Global Anti-Base Erosion Rules) in Article 4 – Adjusted Covered Taxes; in particular in Art. 4.2 ("Covered Taxes"). Systematically, the rules are structured as follows:

- Art. 4.1 defines the "Adjusted Covered Taxes", i.e. the tax amounts relevant for the ETR, as adjusted.
- Art. 4.2 contains the actual definition of "Covered Taxes".
- Art. 4.3 et seq. govern adjustments (e.g. treatment of deferred taxes, loss carry-backs, uncertain tax positions, etc.).

For a better understanding of Covered Taxes, reference must therefore be made in particular to Art. 4.2. Art. 4.2.1 stipulates that Covered Taxes are, in principle (and in simplified terms), taxes that are recorded in the relevant financial statements and:

- are levied on income or profits,
- are levied in respect of retained earnings and equity,
- are levied in connection with eligible distribution tax systems,
- or are economically equivalent to corporate income taxes.

[162] See OECD/G20, Consolidated Commentary (fn. 155), 364 f., para. 49.1.

According to the definition in Art. 10.1, a tax is understood as a *compulsory unrequited payment to General Government*, whereby payments for services of the state (i.e. causal levies [Kausalabgaben] in Swiss terminology) are not covered.[163] Explicitly included, however, are in particular:

- current income and capital taxes,
- certain deferred taxes (subject to later adjustments under Art. 4.4),
- substitute taxes that functionally constitute an income tax (e.g. non-refundable withholding taxes on certain payments).

Not covered, however, are inter alia:

- non-income-related taxes (e.g. sales taxes, payroll levies, wealth taxes),
- the top-up taxes themselves.

The Commentary contains a detailed list of which taxes are not covered. For the purposes of the present study, however, this is of secondary importance.[164]

It appears undisputed that the Swiss corporate income taxes (including the corporate income tax at cantonal and municipal level) qualify as Covered Taxes.[165]

(b) Clarification by the SBS Package

The SBS Package makes further stipulations and clarifications regarding Covered Taxes. It states that conditional or discriminatory taxes do not count as Covered Taxes, or in the words of the OECD:

"The Inclusive Framework agrees that conditional or discriminatory taxes will not be recognised as Covered Taxes and will consider further work on how this will be consistently applied. The qualified status of domestic minimum top-up taxes remains dependent on their consistent and non-discriminatory application to MNE Groups, regardless of whether an MNE Group has elected to apply the SbS Safe Harbour. In light of this, the Inclusive Framework notes the role of the peer review

[163] See OECD/G20, Consolidated Commentary (fn. 155), 119, para. 24.
[164] See OECD/G20, Consolidated Commentary (fn. 155), 122, para. 36.
[165] See STOCKER RAOUL/ENGSTLER PATRICK, §35 N 36, in: Stocker Raoul/Oesterhelt Stefan (eds.), Internationales Steuerrecht der Schweiz, Schriftenreihe Finanzwissenschaft und Finanzrecht vol. 122, Bern 2023.

and ongoing monitoring in connection with the GMT, including the work on Related Benefits".[166]

In concrete terms, this means that a QDMTT (but presumably this also applies to any corporate income tax) that is applied only to companies within the scope of the minimum tax does not qualify as a Covered Tax. The exact implementation is, however, unclear.

Whether this still needs to be implemented by the states or already applies as of 1 January 2026 is unclear and depends on each implementing state. For the present study, however, this means that a corporate income tax (which clearly falls under the Covered Taxes) does not qualify as such if, for example, it were applied only to companies subject to the IIR or UTPR.

6.2.2. Legal Risks

If a QDMTT cannot be applied for constitutional reasons, this does not, according to the OECD, necessarily lead to the revocation of QDMTT status. The OECD states that the QDMTT (if challenged by the taxpayer) is not to be treated as a QDMTT payable.[167] As far as can be seen, however, this applies only to the person challenging the QDMTT and not to all other taxpayers.

If the authority concludes that it cannot collect the QDMTT, the QDMTT does not count as a QDMTT payable under Art. 5.3.2 of the Model Rules. Thought through consistently, this means that if a court were to find that the QDMTT is unconstitutional, this would apply to all pending cases.[168]

6.2.3. Excursus: The Special Question of Retaining the QIIR

It would also be conceivable that Switzerland loses Q-status for the QDMTT but not for the QIIR. The two are assessed independently. A QIIR is defined in the Model Rules as follows:

"Qualified IIR means a set of rules equivalent to Article 2.1 to Article 2.3 of the GloBE Rules (including any provisions of the GloBE Rules associated with those articles) that are included in the domestic law of a jurisdiction and that are

[166] OECD/G20, SbS-Package (fn. 50), 9, para. 25.
[167] OECD/G20, Consolidated Commentary (fn. 155), 175, para. 20.1.
[168] See on the whole also OECD/G20, Consolidated Commentary (fn. 155), 356, para. 12.

implemented and administered in a way that is consistent with the outcomes provided for under the GloBE Rules and the Commentary provided that such jurisdiction does not provide any benefits that are related to such rules."

In other words, what is decisive is that the QIIR results in profits being taxed at at least 15% in each state by means of *jurisdictional blending* (taking into account the precise calculation mechanism).

Retaining the QIIR while simultaneously abolishing the QDMTT would result in Switzerland becoming more attractive again vis-à-vis US groups. However, the profits of EU groups in Switzerland would in principle be subject to the IIR abroad, since no QDMTT would be levied. For non-US groups not subject to an IIR, the profits in Switzerland might also be subject to a UTPR abroad. The domestic profits of Swiss groups might likewise be subject to the UTPR abroad.

6.2.4. Economic Consequences

Various reasons speak in favour of introducing – or, in the case of Switzerland, retaining – the QDMTT:

- **Securing the tax base:** Without a QDMTT, the taxes on undertaxed profits would be levied abroad. With the QDMTT, Switzerland retains the tax revenues.

- **QDMTT Safe Harbour:** The unique selling point[169] of a QDMTT, however, is access to the QDMTT Safe Harbour.[170] This leads to lower legal enforcement costs (a tax under a UTPR need not be paid in every country).

Assuming the Q-status of the QDMTT were lost, two scenarios are conceivable with regard to the economic consequences.

1. **Unlikely scenario:** The revocation of Q-status leads to the disqualification of the taxes paid as Covered Taxes. This would be the case, for example, if the QDMTT in Switzerland were no longer applied to US MNEs but continued to be applied to other groups.

[169] See RANJAN RASMI, Qualified Domestic Minimum Top-Up Tax: Should Developing Countries Adopt It? Bulletin for International Taxation (2024), 103.
[170] OECD/G20, Consolidated Commentary (fn. 155), 354 ff.

2. **Likely scenario:** More likely would be that a state does not obtain Q-status, but the additional taxes paid continue to count as Covered Taxes.

We focus below on the second scenario. The economic disadvantage in that case lies in the fact that those companies that do not benefit from the SBS exemption (i.e. all non-US MNEs) cannot apply the QDMTT Safe Harbour in Switzerland, and the tax burden in Switzerland for purposes of the minimum tax is therefore not per se 0 but must be calculated under the ordinary calculation procedure in the IIR and UTPR states. In concrete terms, this has the following consequences:

- Legal enforcement costs will rise because several countries will be responsible for levying the UTPR. Specifically, each country can carry out its own UTPR calculation. The allocation of the UTPR liability takes place, in principle, according to the share of employees and the book value of tangible assets.[171]

- The risk of double taxation or a higher tax burden increases, since not just one state but several will carry out an assessment.

The exact risk cannot, however, be quantified. We have provided an initial overview of the top-up tax liabilities of Swiss groups above. As also mentioned above, however, caution is warranted in drawing direct inferences from this. Despite this quantitative uncertainty, the question arises as to what effects this has on Switzerland's locational attractiveness.

The essential consequences are the following:

- It is rather unlikely that relocations to a country with Q-status would take place solely on account of the Q-status. The advantages in legal enforcement and in the risk of additional taxation appear too small for relocations to a country with Q-status to occur for these reasons alone.

- It is likely that Switzerland would gain attractiveness among US MNEs and MNEs from states without an IIR. This is because the flexibility under the DBG and StHG is greater than under a national top-up tax. It can therefore be assumed that the loss of tax revenue would be smaller than if the SBS were maintained. Switzerland might even gain additional tax revenue through the aforementioned increases in attractiveness.

[171] See in detail Art. 2.6 GloBE Model Rules.

6.2.5. Interim Conclusion

A loss of Q-status does not eliminate the negative economic consequences. Relocations of profits and employees to the United States or other countries without a QDMTT continue to loom. At the same time, the loss of Q-status brings no significant advantages over the other options. On the contrary, it has negative consequences, above all through the non-application of the QDMTT Safe Harbour. In short: deliberately risking the loss of Q-status (or doing so by taking on risks) appears disadvantageous compared with implementing the SBS (while retaining Q-status) or abolishing the QDMTT/IIR.

6.3. Introduction of a DMTT

6.3.1. Overview

It would be conceivable for Switzerland to align itself with a QDMTT without the legislator directly following, or referring to, the Model Rules. Specifically, the domestic corporate income tax could be adjusted so that the tax burden would be similar to that of a QDMTT.

Under this option, the IIR would be abolished, i.e. the legislative goal would be to restructure the national corporate income tax system in such a way that, despite the global minimum tax, no or only minor additional taxation of domestic profits occurs abroad.

In principle, however, it would also be conceivable to retain an IIR under this option.[172] If the IIR were likewise abolished, this would result in a complete detachment from the project. Accordingly, new developments, for example through new Administrative Guidance, would not "have" to be implemented.[173]

6.3.2. Constitutional Framework

The Confederation has two competences in the area of corporate income tax:

- It may levy a tax on net profit (i.e. a corporate income tax) of at most 8.5%.[174] It has already fully exhausted this competence through the DBG as far as the level of the corporate income tax is concerned.[175]

- It has a harmonisation competence, under which it establishes the principles governing the harmonisation of the direct taxes of the Confederation, the cantons and the municipalities. It currently exercises this competence through the StHG. The determination of tax rates and tax scales is, however, a cantonal competence.[176]

[172] On this, see already above section 6.2.3.

[173] It cannot be excluded, however, that even with formal independence from the Pillar Two project, the latter may continue to have an effect on Swiss tax law. If, for example, the definition of Covered Taxes were amended, Switzerland might also have to adjust its national corporate income tax.

[174] See Art. 128 para. 1 lit. b BV.

[175] See Art. 68 DBG.

[176] See Art. 129 paras. 1 and 2 BV.

In order to achieve an alignment of the tax burden, the following options are conceivable:

1. **Amendment of the MindStV:** The Confederation could amend the Minimum Taxation Ordinance and no longer align itself directly with the Model Rules, but instead create its own profit determination rules for companies falling under the global minimum tax. **Assessment:** It is highly questionable whether the Confederation has the competence for such an amendment; moreover, the legal risks described above remain.[177] The legal uncertainty would not be eliminated. On the contrary: the further the Federal Council were to depart from the Model Rules, the greater the risk of exceeding the competence conferred in Art. 129*a* BV. In addition, there would be two tax systems existing side by side in Switzerland.

2. **Amendment of the Federal Constitution:** The Federal Constitution could be amended so that the Confederation itself would obtain the competence to levy a corporate income tax of more than 8.5% (outside the competence of Art. 129*a* BV). **Assessment:** This path is very burdensome from a rule-of-law perspective and is accordingly not pursued further. The constitutional disruption would be considerable and the outcome highly uncertain.

3. **Amendment of the DBG/StHG:** The Confederation could make amendments both to the DBG and to the StHG (without a constitutional amendment) so that the risk of additional taxation abroad is greatly reduced. **Assessment:** This would be a convincing option from a rule-of-law perspective, as long as the tax rate at the federal level does not exceed 8.5% and no requirements are imposed on the cantons in setting the tax scale or tax rate.

We focus below on option 3 and set out in concrete terms what would have to be changed.

[177] See in particular section 6.1.2.1.

6.3.3. What Would Have to Be Changed?

6.3.3.1. Overview

Swiss corporate income tax law under the DBG and StHG differs from the income calculation under the Model Rules mainly in two respects (although numerous further differences exist):[178]

1. The underlying accounting standard differs – the Swiss GAAP (OR[179]) vs. IFRS/US GAAP/Swiss GAAP FER
2. Different adjustment rules are provided for – Model Rules vs. DBG/StHG.

Below, we address these two areas separately. In addition, the tax rate would have to be adjusted, which is discussed subsequently in a separate chapter.

6.3.3.2. Adjustment of the Accounting Standard

(a) Overview

The differences between the OR and the international accounting standards have already been discussed on various occasions.[180] Below, IFRS is addressed by way of example, since this standard dominates Swiss consolidated financial reporting.[181] With the "true and fair view" principle, IFRS pursues a presentation corresponding to the economic circumstances and uses a mixed valuation concept of historical cost and current valuation, with different methods applying depending on the balance sheet item (fair value, value in use, etc.). The OR, by contrast, under the principle of prudence, regularly relies on acquisition cost (Art. 960*a* OR) and, moreover, expressly permits the creation of hidden reserves through additional depreciation, value adjustments and provisions (Art. 960*a* para. 4 OR). In essence, the differences concern, on the one hand, the valuation of individual balance sheet items and, on the other hand, the recognition of changes in value through profit or loss and the treatment of prior-year errors.

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[178] In addition to these two main differences, numerous further differences exist.

[179] Federal Act on the Amendment of the Swiss Civil Code (Part Five: Code of Obligations) of 30 March 1911 (SR 220) (cit. OR).

[180] See, for example, BÖCKLI PETER, Neue OR-Rechnungslegung, Zurich/Basel/Geneva 2014, 1 ff.; BERNDT *et al.* (fn. 7), 98 ff.

[181] BERNDT *et al.* (fn. 7), 97.

- (A) Property, plant and equipment and investment property. Subsequent measurement under the OR is at amortised acquisition cost using standardised depreciation rates in accordance with the ESTV circular.[182] IFRS additionally permits the revaluation model under IAS 16, under which measurement at fair value takes place periodically. In addition, property, plant and equipment under IFRS is subject to an impairment test under IAS 36 where there are indications of impairment. For investment property, IAS 40 goes even further and permits ongoing fair value measurement through profit or loss.

- (B) Intangible assets, goodwill and impairment tests. IFRS has so-called impairment tests (IAS 36), which examine whether the carrying amount of an asset exceeds the recoverable amount. For assets with an indefinite useful life – notably derivative goodwill and brands – such an impairment test must be carried out annually; scheduled amortisation does not take place. Under Swiss tax law, derivative goodwill, for example, must be amortised on a scheduled basis (40% declining balance or 20% straight line).[183]

- (C) Financial instruments. The OR recognises financial instruments in principle at acquisition cost and permits the creation of fluctuation reserves (Art. 960*b* para. 2 OR). IFRS 9, by contrast, distinguishes three measurement categories – FVTPL (Fair Value Through Profit or Loss, i.e. changes in value flow through the income statement), FVTOCI (Fair Value Through Other Comprehensive Income, i.e. recognition in other comprehensive income) and Amortised Cost – with ongoing fair value measurement being mandatory, in particular, for trading portfolios and derivatives.

- (D) Inventories. Both standards have a lower-of-cost-or-market principle, but Swiss tax law permits the so-called inventory reserve of one third (Warendrittel) as a flat-rate undervaluation, which has no equivalent under IFRS. In addition, IAS 2 restricts cost formulas to FIFO and average cost, while the OR also permits LIFO and HIFO.[184]

- (E) Provisions. IFRS requires discounting for long-term provisions (IAS 37), while the OR is based in principle on the nominal value principle (Art.

[182] ESTV, Merkblatt A/1995, Abschreibungen auf dem Anlagevermögen geschäftlicher Betriebe.
[183] Berndt *et al.* (fn. 7), 104 f.
[184] Berndt *et al.* (fn. 7), 106 f.

960*e* para. 1 OR). In addition, the OR permits special provisions that may not be recognised under IFRS.[185]

- (F) Structural deviations. In addition to the valuation differences, there are two further structural deviations. First, for certain changes in value, IFRS provides for recognition in Other Comprehensive Income (OCI) or in equity (and not in the income statement) – such as revaluation reserves (IAS 16), actuarial gains and losses (IAS 19) or changes in value on instruments classified as FVTOCI (IFRS 9), which are recognised in OCI. The OR does not have this distinction; all value adjustments flow through the income statement. Second, IAS 8 requires a retrospective adjustment of the comparative figures (restatement) in the case of material prior-year errors, while the OR corrects errors prospectively in the current year.[186]

As a result, an acceleration in the timing of profit recognition and, in part, (quasi-)permanent differences in reported profits would be likely. However, a clear statement about the effects is difficult to make, not least because various options also exist under IFRS.

Empirical studies from the EU area confirm, for the majority of the constellations examined, an increased tax burden when IFRS is used as the tax base.[187] A reliable generalisation is, however, only possible to a limited extent, since the concrete effects depend heavily on the business model and balance sheet structure of the respective company.

(b) Implementation

It would be possible to make these changes in national accounting law (i.e. in the OR) or to permit one or more international accounting standards as the tax base as well. The latter would be simpler from a legislative perspective. An intensive discussion was already conducted around 15 years ago as to whether and in what form this is permissible.[188] The proposal at the time for a provision in the OR had the following wording:

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[185] BERNDT *et al.* (fn. 7), 107.
[186] See HONGLER PETER/HÜWELER JAN-MARIUS, Die Bilanzberichtigung, FStR 4/2022, 440 ff.
[187] BERNDT *et al.* (fn. 7), 113.
[188] See SIMONEK/HONGLER (fn. 122), 262 ff.

Art. 962 para. 1 draft OR*

If the undertaking prepares financial statements in accordance with a recognised accounting standard, it may dispense with preparing the annual accounts under this title.

A similar provision could allow an approximation of the burden under the Model Rules without, however, establishing a direct link. The amendment could also be made not in the OR but in the DBG, as follows:

[1] Corporations and cooperatives that prepare their financial statements in accordance with one of the following recognised accounting standards may, upon application, request that the net profit determined in accordance with that standard, instead of the net profit under commercial law pursuant to Article 58 paragraph 1, be deemed authoritative for the corporate income tax:

a. International Financial Reporting Standards (IFRS) of the IFRS Foundation;

b. United States Generally Accepted Accounting Principles (US GAAP) of the Financial Accounting Standards Board;

c. Accounting and Reporting Recommendations (Swiss GAAP FER) of the Foundation for Accounting and Reporting Recommendations.

[2] The application must be submitted to the competent assessment authority before the beginning of the first tax period for which the recognised accounting standard is to be authoritative. The application must be accompanied by a declaration as to which standard is applied.

[3] The taxpayer is bound by the choice of standard for at least three consecutive tax periods. A return to the net profit under commercial law pursuant to Article 58 paragraph 1 is possible at the earliest after expiry of this period and must be notified to the assessment authority in writing at the latest before the beginning of the tax period concerned.

[4] A change of the recognised accounting standard during the binding period under paragraph 3 is permissible only for important reasons. The taxpayer must set out the reasons in the application. A change of standard triggers a new minimum binding period of three tax periods.

[5] The net income determined in accordance with the recognised accounting standard shall be adjusted for the tax-law corrections pursuant to Articles 59–67. Article 58 paragraphs 2–4 apply mutatis mutandis.

[6] The taxpayer must submit to the assessment authority, for each tax period, a reconciliation statement showing the differences between the net profit under the recognised accounting standard and the net profit under commercial law pursuant to the Code of Obligations.

[7] The Federal Council shall regulate the details, in particular:

a. the requirements for accounting and auditing;

b. the design of the reconciliation statement;

c. the treatment of transitional effects upon a change of the authoritative net profit;

d. the precise specification of the applicable accounting standards (in particular in temporal terms);

e. the recognition of further accounting standards.

The following, in particular, must be taken into account:

- It must be established by law which international accounting standards are permissible (e.g. US GAAP, IFRS and Swiss GAAP FER)

- It must be established by law in each case which version of a standard is applicable. This competence could possibly be delegated to the ordinance-maker. This would need to be examined in more detail.

6.3.3.3. Adjustments to the Correction Rules

The correction rules provided for in the Model Rules differ from the correction rules in the DBG and StHG. Examples of adjustments to approach an alignment would include the following:

- **Treatment of dividends and capital gains:** A switch from indirect relief under Art. 69 DBG to a direct exemption as provided for in Art. 3.2.1 lit. b (dividends) and lit. c (capital gains) of the Model Rules. At the same time, the requirements for applying the exemption would also have to be adjusted.[189]

- **Bribes and fines:** The treatment of bribes and fines would have to be aligned. Art. 3.2.1 lit. g of the Model Rules is not identical to Art. 59 DBG.

- **Deduction of tax expense:** The Model Rules explicitly provide that the net tax expense is not deductible.[190] As is well known, however, federal, cantonal and municipal taxes are deductible in the Swiss corporate income tax system.[191]

- **Gains or losses from the disposal of assets and liabilities in connection with GloBE reorganisations.** Here, too, an alignment would be required.

- **Alignment of incentives.** Differences exist here: Switzerland continues to have incentives that are not "refundable". The Model Rules recognise only QRTCs and MTTCs[192] and, since the SBS Package, the QTIs. An alignment might be required here.

6.3.3.4. Adjustment of the Tax Rate

In addition to the adjustments to the permissible accounting standards and the adjustments to the correction rules, the tax rates might also have to be aligned at cantonal level. Here, individual cantons have in part already implemented a higher burden through multi-tier scales that does not equally affect small and medium-sized enterprises.

6.3.4. Legal Risks

6.3.4.1. Lack of Competence

As has been set out, the risk of a lack of competence can be reduced by (i) amending not the MindStV but the DBG and StHG and (ii) continuing to leave the increase of tax rates to the cantons. Such an implementation would, in our view,

[189] See on this HUG THOMAS, Problemfelder des Beteiligungsabzuges im Lichte der GloBE Model Rules auf Basis IFRS, FStR 2022 (special issue), 345 ff.
[190] Art. 3.2.1. lit. a of the GloBE Model Rules.
[191] Art. 59 DBG.
[192] See on this OECD/G20, Admin. Guidance BEPS (fn. 152), 30.

be consistent with the allocation of competences provided for in the BV.[193] Moreover, a violation of the Constitution could not be enforced procedurally before the Federal Supreme Court at all, on account of Art. 190 BV.

6.3.4.2. Violation of DTAs

As long as the IIR were repealed, there would also be no violation of Switzerland's treaty obligations.[194]

6.3.4.3. Principle of Equal Treatment

It could be argued that two tax systems are being created – one for companies that use an internationally recognised accounting standard as the tax base and one for those that rely on the OR. This objection is, however, weakened by the fact that ultimately every company has the option of calculating the taxable net profit on the basis of an international accounting standard. Moreover, any constitutional violation would not be enforceable on account of Art. 190 BV.

6.3.4.4. Violation of the Ability-to-Pay Principle

It is sometimes argued that taxation based on an international accounting standard violates the ability-to-pay principle, since, in particular, unrealised profits would be taxed. Opinions diverge here, however, depending on how far-reaching the inferences drawn from the ability-to-pay principle are. According to one reading,[195] it would, for example, be problematic that a switch to international accounting standards would suddenly lead to the taxation of unrealised profits. According to another reading,[196] the ability-to-pay principle allows the legislator much greater latitude here, and the legislator is in principle free to use an international accounting standard as the basis. A possible violation of the ability-to-pay principle could, again, not be enforced owing to the authoritative status of federal acts under Art. 190 BV and the absence of constitutional jurisdiction.

6.3.4.5. Lack of Qualification as Covered Taxes

The question is whether this optionality in the choice of the tax base jeopardises the qualification as a Covered Tax. The requirements for Covered Taxes were

[193] In particular with Art. 128 and Art. 129 BV.
[194] On this, see above section 6.1.2.4.
[195] See, for example, still SIMONEK/HONGLER (fn. 122), 270 ff., with further references.
[196] See HONGLER/DOMKE, Verfassungsvorgaben (fn. 20), 67 ff.

explained above.[197] Although optionality exists regarding the choice of accounting standard, in our view it would still be an unconditional payment to an authority and thus a tax. However, the definition of Covered Taxes always entails a certain dependence on the Inclusive Framework that cannot be controlled.

This is because, ultimately, individual countries or the Inclusive Framework could reach a different decision. It should, however, be noted that the GloBE rules themselves also contain optionality, in that, for the QDMTT, states can explicitly provide that a standard deviating from the consolidation standard may be used. In other words, optionality as such cannot be harmful.

6.3.5. Economic Effects

For Swiss groups, this option, compared with maintaining the minimum tax, gives rise to additional legal enforcement costs through the threatened application of the UTPR abroad. This, of course, only if the IIR is repealed. In the case of a DMTT, there is no possibility of benefiting from the QDMTT Safe Harbour. The magnitude of this burden cannot be quantified within the scope of this study.

The risk of **additional taxation** depends on whether the UTPR can actually be enforced. In addition, the risk depends on how large the remaining differences are between the burden under the minimum tax pursuant to the MindStV and a DMTT. Furthermore, retaining the IIR would need to be examined separately.

Retaining the IIR has the advantage that Swiss groups with a presence in the EU (or other UTPR countries) are not subject to the UTPR, and there is therefore also no risk of additional taxation of "Swiss" profits abroad. The exact loss of tax revenue, or how much tax revenue is protected, cannot be quantified. As set out above, the largest Swiss groups declare top-up taxes in their financial statements in the amount of approximately CHF 250 million (2024) and CHF 600 million (2025), respectively. How much of this will arise in Switzerland (QDMTT or IIR) and how much abroad (QDMTT) is unclear and cannot be reliably estimated either.[198] The introduction of a DMTT would certainly reduce additional taxation abroad significantly.

The intervention in national tax law under this option is, however, not marginal. This also increases uncertainty regarding tax revenues. It would be advisable

[197] See above section 6.2.1.4.
[198] See above section 4.2.4.

here to model the more precise effects of a change in the tax base and the correction rules within the framework of a consultation procedure.

6.3.6. Interim Conclusion

In our view, this option merits closer examination. The legal risks caused by the SBS implementation could be avoided. However, the risk of additional taxation abroad cannot be excluded, and for Swiss groups this approach would cause additional legal enforcement costs.

The fiscal effects of a change in the tax base and the correction rules cannot yet be precisely quantified within the scope of this study. It is advisable to make use of the consultation procedure for this purpose. Independently of the global minimum tax, this project could serve to modernise the Swiss corporate income tax more generally.

6.4. Potential Qualification of the Swiss Tax System as a Qualified SBS Regime

The question arises whether the Swiss tax system could be qualified as a so-called Qualified SBS regime and would thus fall within the scope of the corresponding SBS Safe Harbour mechanism. As mentioned, the requirements are the following:[199]

- has an eligible domestic tax system;
- has an eligible worldwide tax system;
- provides a foreign tax credit for QDMTTs on the same terms as any other creditable Covered Tax; and
- enacted its eligible domestic tax system and eligible worldwide tax system prior to 1 January 2026 or a later date in accordance with the procedures set out in paragraph 27 of this document.

The last requirement cannot be met by Switzerland at all. This scenario is correspondingly unlikely. In general, it is very unlikely that the Swiss tax system

[199] OECD/G20, SbS-Package (fn. 50), 79 f.

(despite a conceivable alignment with the US system) would qualify as an SBS regime. This is not conceivable in practical political terms.

The study nevertheless shows why the SBS Safe Harbour is dangerous from a locational policy perspective: Switzerland remains dependent on a regulator (OECD/Inclusive Framework) that is strongly shaped by the United States. At the same time, the United States itself is no longer subject to this regulation, and Switzerland has *de facto* no access to this privileged treatment. That is a dangerous combination.