OECD Minimum Tax

OECD Minimum Tax: Valid Criticism, *But Withdrawing Today Is Not the Solution*

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At a glance

- Criticism of the minimum tax is justified.
- However, withdrawing from it today would be largely detrimental.
- Because there is considerable uncertainty surrounding the minimum tax, the upcoming legislative process must be open and flexible.

A leading tax policy think tank recently wrote that part of its job is to speak uncomfortable truths. The uncomfortable truth in this case was that temporarily suspending gasoline taxes to ease the burden on consumers struggling with inflation does little good and, above all, has drawbacks. “It sounds reasonable. It feels like relief. And it wins votes. ***Too bad it doesn’t work.***” (Daniel Bunn, Tax Foundation)

The debate over the OECD minimum tax brings this statement to mind. Switzerland did not seek out the minimum tax, and the idea of getting rid of it again is appealing. The tax is cumbersome and expensive to administer. It does not strengthen our country’s position as a business location. Designed on the drawing board at OECD headquarters in Paris, many of the regulations have not been fully thought through. The uncertainties are correspondingly great. A case before the European Court of Justice calls into question an entire component of the tax (the UTPR, which Switzerland has not, however, implemented). A new paper from the University of St. Gallen, commissioned by the Swiss-American Chamber of Commerce, also draws attention to the problematic aspects of the minimum tax. The paper received widespread media attention, but its content has been little discussed. The paper’s central recommendation is that Switzerland abolish the minimum tax as soon as possible, preferably before the end of this year.

There are problems, yes, but leaving would still be detrimental

The paper has been noted in business circles, and the points raised in it are considered relevant. In particular, the view that the U.S. has gained a competitive advantage by opting out of the minimum tax—ironically, the U.S. was jointly responsible for introducing the tax in the first place—is widely shared. It is also understandable that there is widespread legal uncertainty. However, the notion that the Federal Supreme Court would overturn Switzerland’s implementation due to an insufficient legal basis—as discussed in the paper as a likely scenario—is considered rather doubtful. On one point, however, virtually all business circles agree: as desirable as withdrawing from the minimum tax might be, the benefits of such a move would be minimal, and the drawbacks would clearly outweigh them, at least for the foreseeable future.

It remains to be seen whether the goals can be achieved

Switzerland introduced the minimum tax for two reasons: to prevent the outflow of tax revenue and to provide legal certainty for affected companies with revenue exceeding 750 million Swiss francs. Switzerland will likely achieve the first goal, as it has implemented the necessary rules in a timely manner. Problems may arise if Switzerland's implementation is challenged abroad. This should not actually happen, because the Swiss regulatory framework was reviewed by the OECD and deemed acceptable, at least for the first tax year (2024). Having been granted the so-called "Q(ualified)-Status," the results of Swiss tax assessments should be readily recognized by the other minimum tax countries. If this were not the case, the goal of legal certainty would be called into question. Swiss companies are filing their first tax returns by the end of June. Subsequently, the results and relevant data will be exchanged among the minimum tax countries. According to reports, implementation is proceeding slowly in many places. This creates uncertainty and potentially additional work for companies. Whether these are the inevitable teething problems of a challenging and untested concept or practical manifestations of excessive complexity and overly ambitious goals remains to be seen.

Despite all the uncertainty, getting involved offers the best protection right now

For the time being, it is reasonable to expect that the minimum tax will provide protection against foreign claims. Without a minimum tax in Switzerland, Swiss companies would still have to comply with foreign requirements, but they would not be able to benefit from simplifications and, above all, would not be protected by Q-status. In this scenario, companies fear high compliance costs and pressure to make additional tax payments, even if they could prove that they met the 15 percent minimum tax requirement in Switzerland. If they fail to provide such proof, the tax would have to be paid abroad, causing tax revenue to flow out of Switzerland. Among leading business locations, Switzerland would stand alone as an "island," raising reputational concerns. It is unclear whether—and to what extent—Switzerland could benefit from this new freedom despite all the disadvantages. Unlike the U.S., Switzerland cannot claim to have a system comparable to the minimum tax. Switzerland cannot even meet the requirement that the official tax rate be 20 percent. The St. Gallen paper acknowledges this and instead recommends a new, separate tax system for large companies that incorporates elements of the minimum tax and is also based on the 15 percent tax burden threshold, but at the same time allows for greater flexibility than the minimum tax. Whether a solution along these lines is a viable path for Switzerland is open to debate. Until there is clarity on the best solution, Switzerland and its companies must remain protected from foreign interference and pressure. At the moment, the enforcement of the minimum tax offers the best guarantee of this.

Flexibility is essential

The minimum tax is currently being implemented by ordinance. The Federal Council must submit a bill by the end of 2029. Work on this will begin shortly. The business community will be involved in the process and will contribute constructively in the interests of companies and the business location. In addition to systemic issues (questions regarding the tax base), discussions will focus in particular on business location promotion instruments, as the Federal Council outlines in a new report on Switzerland as a tax location. International developments and minimum taxation requirements call for further development of the tax system to maintain the location's attractiveness. Alternative location-based measures, such as direct contributions and tax credits, should be examined more closely, as should tax deductions, some of which have already been implemented in the cantons since the last corporate tax reform. From the Federal Council's perspective, the focus is on promoting research, innovation, and "asset-based" value creation (i.e., business activities based on genuine economic substance and not merely on a post office box).

The Federal Council also intends to take into account lessons learned during the initial phase of implementing the minimum tax. This is both appropriate and important. As long as the minimum tax is still enforced on the basis of ordinances, Switzerland can, in principle, respond flexibly to changes. Criticism of the minimum tax is growing, including within the EU, where the uneven playing field is clearly recognized. Other countries besides the U.S. are considering withdrawing from the minimum tax. None of this will help bolster the tax's legitimacy. The flexibility to react quickly when necessary must also be present in the legislative process and should be appropriately enshrined in a future minimum tax law, should it come to that. Given how notoriously uncertain the minimum tax is, an open, responsive approach is essential.

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