



Communication-026-E-2025-e of 24.07.2025

Top-up tax: consideration of residual tax on distributions from qualifying participations from 1 January 2024

1. Background

The top-up tax (supplementary tax) is calculated based on the provisions of the Global Anti-Base Erosion Model Rules of the Inclusive Framework on BEPS of the OECD¹ and the G20 countries (Global Anti-Base Erosion Model Rules, GloBE Rules²; see Art. 9 and Art. 11 of the Ordinance of 22 December 2023 on the Minimum Taxation of Large Corporate Groups [Minimum Taxation Ordinance, OMinT; SR 642.161]). In accordance with Article 2 paragraph 1 of the OMinT, the GloBE Rules apply by analogy to Swiss top-up tax. In particular, the GloBE Rules are to be interpreted in accordance with the associated Commentary³ and related regulations of the OECD and the G20 countries (see Art. 2 para. 3 of the OMinT).

When calculating the effective tax rate for the top-up tax, covered taxes are an important element (see Chapters 4 and 5 of the GloBE Rules). Covered taxes may also include the non-recoverable Swiss withholding tax (residual tax; see Art. 4.2. of the GloBE Rules).

In principle, covered taxes must be allocated to the constituent entity in which they are recorded (see Art. 4.1.1. of the GloBE Rules). However, Article 4.3. of the GloBE Rules provides for various provisions for the reallocation of covered taxes between different constituent entities.

Article 4.3.2. letter e of the GloBE Rules concerns the allocation or reallocation of taxes on distributions. Consequently, the covered taxes accrued in the financial accounts of a constituent entity's direct constituent entity-owners, that are incurred on distributions from the constituent entity during the fiscal year, are allocated to the distributing constituent entity.

2. Exclusion of certain provisions of the GloBE Rules for Swiss top-up tax

In accordance with Article 2 paragraph 2 letter b of the OMinT, Article 4.3.2. letter e of the GloBE Rules in particular is not applicable to Swiss top-up tax.

The aim of this exclusion is to ensure that the covered taxes of a constituent entity-owner on distributions from qualifying participations that are allocable to the locally resident distributing constituent entity are not taken into account when calculating Swiss top-up tax, in line with the consolidated commentary on the term 'Qualified Domestic Minimum Top-up Tax' ('QDMTT').

¹ Organisation for Economic Co-operation and Development

² The GloBE Model Rules can be viewed free of charge at: <https://www.oecd.org/en/topics/sub-is-issues/global-minimum-tax/global-anti-base-erosion-model-rules-pillar-two.html>.

³ The Commentary to the GloBE Model Rules (hereinafter referred to as the consolidated commentary) can be viewed free of charge at: <https://www.oecd.org/en/topics/sub-is-issues/global-minimum-tax/global-anti-base-erosion-model-rules-pillar-two.html>.

The purpose of this special rule for the qualified domestic minimum top-up tax is to give a jurisdiction the primary right to tax locally resident constituent entities. The rule also aims to avoid complex international allocation rules for foreign taxes in the case of the qualified domestic minimum top-up tax.

However, the consolidated commentary stipulates⁴ that in the case of withholding taxes imposed by the country of the distributing constituent entity on the distributions, these may still be taken into account by the locally resident distributing constituent entity for the qualified domestic minimum top-up tax.

3. Consideration of the residual tax on distributions from Swiss constituent entities for Swiss top-up tax (outbound issues)

It follows from the explanations under section 2 above that the residual tax on distributions of a Swiss constituent entity must be recognised as covered tax for the calculation of Swiss top-up tax at the level of the distributing Swiss constituent entity.

4. Consideration of the residual tax on distributions from foreign constituent entities for Swiss top-up tax (inbound issues)

Under Article 3.2.1. letter b of the GloBE Rules, dividends and other distributions are to be excluded from GloBE income or loss if they qualify as so-called excluded dividends. Article 4.1.3. letter a of the GloBE Rules also excludes the tax expense with respect to income excluded under Chapter 3 from the adjusted covered taxes of the receiving constituent entity. The non-recoverable foreign withholding taxes on such distributions are therefore not to be taken into account when calculating Swiss top-up tax; these are to be allocated to the distributing foreign constituent entity.

This communication on practice was discussed with the Swiss Tax Conference.

⁴ See consolidated commentary on Article 10.1 of the GloBE Rules, Qualified Domestic Minimum Top-up Tax, paragraph 118.30.