



Communication-023-E-2025-e of 18 March 2025

Supplementary tax: Consideration of residual tax on dividends from qualifying participations from 1 January 2024

1. Background

The supplementary tax (top-up tax) is calculated based on the provisions of the OECD¹/G20² Global Anti-Base Erosion Rules (hereinafter GloBE Rules) (see Art. 9 and Art. 11 of the Ordinance of 22 December 2023 on the Minimum Taxation of Large Corporate Groups [Minimum Taxation Ordinance, OMinT³]). In accordance with Article 2 paragraph 1 of the OMinT, the GloBE Rules apply by analogy to Swiss supplementary tax. In particular, the GloBE Rules are to be interpreted in accordance with the associated Commentary⁴ and related regulations of the OECD/G20 countries (see Art. 2 para. 3 of the OMinT).

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

In principle, the 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 attribution or redistribution of taxes on distributions. This means that the covered taxes accrued in the financial statements of the group's direct participants in a constituent entity, that are incurred on distributions received in the financial year, are allocated to the distributing constituent entity.

¹ Organisation for Economic Co-operation and Development

² [Tax Challenges Arising from Digitalisation of the Economy – Global Anti-Base Erosion Model Rules \(Pillar Two\) : Inclusive Framework on BEPS | OECD/G20 Base Erosion and Profit Shifting Project | OECD iLibrary \(oecd-ilibrary.org\)](https://www.oecd-ilibrary.org/taxation/tax-challenges-arising-from-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two-inclusive-framework-on-beps_46333.html)

³ SR 642.161

⁴ [Tax Challenges Arising from the Digitalisation of the Economy – Consolidated Commentary to the Global Anti-Base Erosion Model Rules \(2023\): Inclusive Framework on BEPS | en | OECD \(hereinafter consolidated commentary\)](https://www.oecd-ilibrary.org/taxation/tax-challenges-arising-from-the-digitalisation-of-the-economy-consolidated-commentary-to-the-global-anti-base-erosion-model-rules-2023-inclusive-framework-on-beps_en.html)

2. Exclusion of certain provisions of the GloBE Rules for Swiss supplementary 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 supplementary tax.

According to the Consolidated Commentary to the GloBE Model Rules, this exclusion is required for the "Qualified Domestic Minimum Top-up Tax" (QDMTT).⁵

Without the exclusion of this provision, these taxes incurred on distributions would be recognised as covered taxes for the distributing corporation in accordance with the allocation rule of Article 4.3.2 letter e of the GloBE Rules. With the exclusion of letter e, these taxes cannot be taken into account in the calculation of Swiss supplementary tax, as specified in the Consolidated Commentary to the GloBE Model Rules.

The purpose of this special rule for the recognised domestic minimum top-up tax is to give a jurisdiction the primary right to tax locally resident constituent entities. Furthermore, the exclusion is intended to avoid complicated international allocation rules for foreign taxes in the case of the recognised domestic minimum top-up tax.

However, the Consolidated Commentary to the GloBE Model Rules further stipulates⁶ that withholding taxes levied on the aforementioned distributions in the jurisdiction of the distributing constituent entity are expressly not covered by this exclusion of Article 4.3.2 letter e of the GloBE Rules.

3. Consideration of the residual tax on distributions from Swiss constituent entities for Swiss supplementary tax from 1 January 2024 (outbound case)

It follows from the explanations under section 2 that the residual tax on distributions of a Swiss constituent entity must be recognised as the covered tax for the calculation of Swiss supplementary tax for the distributing Swiss constituent entity.

4. Consideration of the residual tax on distributions from foreign constituent entities for Swiss supplementary tax from January (inbound case)

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 recognised when calculating Swiss supplementary tax; these are to be credited to the distributing foreign constituent entity.

This FTA communication was discussed with the Swiss Tax Conference.

⁵ See Consolidated Commentary to Article 10.1, Qualified Domestic Minimum Top-up Tax, paragraph 118.30.

⁶ See Consolidated Commentary on Article 10.1, Qualified Domestic Minimum Top-up Tax, paragraph 118.30.