

Regularisation from the client's perspective

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For the individual client, the end of banking secrecy was experienced as a sequence of letters. From around 2012 onwards, Swiss banks wrote to their foreign clients asking them to confirm that their assets were declared to their home tax authorities. The banks requested a declaration of tax compliance, sometimes supported by a confirmation from a tax adviser, and announced that they would terminate the relationship of clients who did not provide it. Many clients received such letters from several banks at the same time and found themselves forced to decide within a few months whether to regularise their assets or to close their accounts.¹

The regularisation itself required considerable work. The adviser had to obtain the complete account documentation for the relevant years, which often extended over a decade, including statements of assets, income and transactions. Where the bank no longer held older records or the client had held several accounts in different banks, the reconstruction became difficult. The income had to be calculated according to the tax law of the client's home country, which often treated investment funds, structured products and foreign currencies differently from the Swiss bank statements. In inheritance cases, the heirs frequently knew little about the origin of the assets and had to reconstruct the history of an account that the deceased had kept secret from his family.

The cost of regularisation depended on the size of the assets, the length of the undeclared period and the regime of the home country. Besides the taxes and interest, which in long-standing cases could absorb a substantial part of the assets, the client had to bear the fees of tax advisers, lawyers and, in complex cases, forensic accountants. The legal risk varied as well. Under the German regime, a complete and timely voluntary disclosure led to exemption from punishment, whereas an incomplete disclosure could expose the client to criminal proceedings for the whole period. In the author's practice, the coordination between the Swiss bank, the German

tax adviser and the defence lawyer was often as important as the calculation of the taxes.²

Some clients chose different paths. A number of them closed their accounts and withdrew the assets in cash, moved them to other jurisdictions that had not yet implemented the automatic exchange of information or transferred them into insurance wrappers and other structures that promised continued confidentiality. Most of these strategies proved short-lived, since the automatic exchange of information soon covered nearly all relevant jurisdictions and the banks reported large withdrawals to the authorities in some cases. The German and Swiss authorities also obtained data on transfers of assets out of Switzerland in the years before the introduction of the automatic exchange, which allowed them to identify clients who had sought to avoid regularisation.³

1 Notes

1. On the practice of Swiss banks from about 2012 of requiring foreign clients to confirm their tax compliance (declarations, confirmations by tax advisers) and terminating relationships with non-compliant clients, see the press reports and the publications of the Swiss Bankers Association. To be verified. ↩
2. On the composition of the costs of regularisation (back taxes, interest, surcharges, advisers' fees) and the significance of completeness for the effectiveness of a voluntary disclosure under § 371 AO, see the standard German literature on tax criminal law. To be verified. ↩
3. On the attempts of clients to avoid regularisation through cash withdrawals, transfers to other jurisdictions or insurance wrappers, and the provision of information on outgoing transfers before 2017 (e.g. in the Swiss–German administrative assistance practice), see the press reports and the publications of the tax authorities. Status to be verified. ↩

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