

Tax offences as predicate offences

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The most significant change to the Swiss anti-money laundering regime in the 2010s was the inclusion of serious tax offences among the predicate offences of money laundering. Before 2016, the proceeds of tax evasion were not regarded as criminal assets for the purposes of money laundering, because tax evasion was not a felony under Swiss law. Swiss banks could therefore accept the untaxed assets of foreign clients without committing money laundering, as long as these clients had not committed tax fraud of a qualified kind.

In 2012, the Financial Action Task Force revised its recommendations and required countries to include serious tax crimes among the predicate offences of money laundering, which led Switzerland to change its law. The Federal Act on the Implementation of the Revised Recommendations of the Financial Action Task Force, in force since 1 January 2016, introduced the aggravated tax misdemeanour as a predicate offence. In the field of direct taxes, a tax misdemeanour is aggravated if the offender uses forged, falsified or false documents to deceive the tax authorities and the evaded taxes amount to more than three hundred thousand francs in a tax period. In the field of indirect taxes, such as customs duties and value added tax, qualified tax fraud committed on a commercial scale or in a gang is a predicate offence.¹

The inclusion of tax offences among the predicate offences connected the anti-money laundering regime with the end of banking secrecy for tax purposes, which the next chapter examines. Swiss financial intermediaries must now clarify whether the assets of their clients are tax compliant, at least to the extent that they could originate from an aggravated tax misdemeanour. Where they have a suspicion, they must report it to MROS. The duty applies to foreign tax offences as well as Swiss ones, provided the conduct would be punishable in Switzerland as an aggravated tax misdemeanour.

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The interaction between tax law and money laundering law raises difficult questions for practitioners. The qualification of a foreign tax offence as an aggravated tax misdemeanour under Swiss law requires an analysis of the facts under both foreign and Swiss law, the calculation of the evaded taxes and the assessment of the documents used. The boundary between tax evasion, which is not a predicate offence, and tax fraud, which may be one, depends on the use of false documents, a criterion that the Swiss courts have interpreted in a substantial case law. For a lawyer who practises in tax criminal law in Germany and advises Swiss financial intermediaries, as the author does, the comparison of the German and Swiss concepts of tax evasion and tax fraud is a daily task.

1 Notes

1. Federal Act of 12 December 2014 on the Implementation of the Revised FATF Recommendations of 2012, in force since 1 January 2016: Art. 305bis para. 1bis Swiss Criminal Code (aggravated tax misdemeanour, tax fraud within the meaning of Art. 186 DBG and Art. 59 StHG with evaded taxes exceeding CHF 300,000 per tax period) and Art. 14 para. 4 Federal Act on Administrative Criminal Law (qualified tax fraud in indirect taxes). To be verified. ↩

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