

## Voluntary disclosure in the neighbouring countries

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The end of banking secrecy created a demand that the tax laws of the neighbouring countries had to meet. Clients who had held undeclared assets in Switzerland for years or decades needed a way of regularising their past without exposing themselves to the full rigour of criminal law. Germany, France and Italy each answered this demand in their own way, reflecting different legal traditions and political priorities. Their regimes determined the behaviour of thousands of clients of Swiss banks, including many clients of the Basel banks, whose catchment area extends into southern Germany and Alsace.

In Germany, the voluntary disclosure under § 371 of the Fiscal Code (*Abgabenordnung*) has a long tradition. A taxpayer who corrects or completes his incorrect declarations before the offence has been discovered and before the authorities have opened proceedings against him is exempted from criminal punishment, provided that he pays the evaded taxes and interest. When the wave of data purchases after 2008 led to a sharp increase in such disclosures, the legislator responded by tightening the conditions. A reform of 2011 abolished the partial disclosure, so that the taxpayer must now disclose all offences relating to the same type of tax. A further reform, in force since 1 January 2015, lowered the threshold above which exemption from punishment requires an additional payment, introduced graduated surcharges and extended the disclosure to at least the last ten calendar years.<sup>1</sup>

The public debate in Germany was shaped by several prominent cases in which voluntary disclosures failed because they were incomplete or came too late. The most widely reported was the case of the president of a leading football club, whose disclosure concerning an account at a Swiss bank was held ineffective and who was convicted of tax evasion in 2014. Such cases showed taxpayers and advisers that a voluntary disclosure must be complete, timely and carefully prepared. Advisers in Germany and

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Switzerland learned to reconstruct account histories with great precision, since every omission could invalidate the exemption from punishment.<sup>2</sup>

France chose an administrative procedure. In June 2013, after a political scandal involving a minister with an undeclared Swiss account, the government issued a circular that set out the conditions for the regularisation of undeclared foreign assets. A special unit of the tax administration, the *Service de traitement des déclarations rectificatives* (STDR), handled the applications, which were subject to reduced penalties depending on whether the taxpayer had inherited the assets or had built them up actively. The unit received tens of thousands of applications before it closed at the end of 2017, many of them concerning accounts in Switzerland.<sup>3</sup>

Italy, which had used several tax amnesties with anonymous repatriation in previous decades, introduced a voluntary disclosure procedure by a law of December 2014, with a first window in 2015. Unlike the earlier *scudi fiscali*, the procedure required the taxpayer to disclose his identity and to pay the taxes due, with reduced penalties and exemption from punishment for certain offences. Its success depended in part on the readiness of Switzerland to cooperate, and the two states signed a protocol in February 2015 that amended their double taxation convention and opened the way to the exchange of information. Italy later reopened the procedure for a second window.<sup>4</sup>

### 1 Notes

1. On § 371 AO and its reforms by the Schwarzgeldbekämpfungsgesetz of 28 April 2011 (abolition of partial disclosure) and by the law amending the Fiscal Code of 22 December 2014, in force since 1 January 2015 (threshold of EUR 25,000, graduated surcharges under § 398a AO, ten-year disclosure period), see the standard German commentaries on the Fiscal Code. To be verified. ↩
2. On the conviction of Uli Hoeneß by the Regional Court of Munich II in March 2014 for tax evasion after an incomplete voluntary disclosure relating to an account at a Swiss bank, and its effect on the practice of voluntary disclosures in Germany, see the press reports and the published judgment. To be verified. ↩
3. On the French regularisation procedure under the circular of 21 June 2013 (circulaire Cazeneuve), the STDR (2013–2017), the distinction between "passive" and "active" taxpayers and the number of applications received, see the publications of the French Ministry of

Finance and the reports of the French Court of Audit. Status to be verified. ↩

4. On the Italian voluntary disclosure under Law no. 186 of 15 December 2014, the first window in 2015, the second window (2016/2017) and the protocol between Switzerland and Italy of 23 February 2015 amending the double taxation convention, see the Italian legislation and the publications of the State Secretariat for International Finance. Status to be verified. ↩

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