

Fiduciary deposits and the withholding tax

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Swiss law levied a federal withholding tax (*imposta preventiva, Verrechnungssteuer*) on interest paid by Swiss banks on deposits, at a rate that rose from 15 per cent at its introduction on 1 January 1944 to 25 per cent in 1945, 27 per cent in 1959 and 30 per cent in 1967, before the Confederation raised it to 35 per cent from 1976 to obtain additional revenue and to combat tax evasion more effectively.¹ A Swiss resident could recover the tax by declaring the income. A foreign client who did not wish to declare anything to his home State could only recover it under a double taxation treaty, which required the very disclosure he wanted to avoid. The treaty between Switzerland and Italy, for its part, was only signed on 9 March 1976 (Chapter H.III). The withholding tax therefore pushed foreign money out of ordinary Swiss deposits and into fiduciary deposits (*depositi fiduciari, Treuhandanlagen*). In a fiduciary deposit the Swiss bank placed the client's money with a foreign bank in its own name but for the account and at the risk of the client. The interest came from abroad and was not subject to Swiss withholding tax. The volume of fiduciary business grew rapidly from the 1960s and became a characteristic product of Swiss private banking for foreign clients.² The Federal Banking Commission noted in its report for 1977 that it had coordinated with the tax authorities on the definition of "genuine" fiduciary transactions, a sign that the instrument had reached a size that called for regulatory attention.³

1 Companies in Vaduz and Panama

The last link in the chain was the offshore company. A Liechtenstein *Anstalt* (establishment) or foundation, or a company of Panama or the Netherlands Antilles, could hold the account, the securities or Italian real estate in its own name. The Italian owner appeared nowhere. Such companies were founded and administered by lawyers and fiduciaries in Lugano, Chiasso and Vaduz, whose directors were often drawn from the same small group of professionals. The structures also had uses beyond the

concealment of ownership. They could act as buyers or sellers in the invoice schemes described above, as lenders of "foreign" money to Italian companies controlled by the same family, or as purchasers of Swiss real estate in the years when Swiss law began to restrict purchases by foreigners.⁴ The Federal Banking Commission's report for 1977 describes two such constructions in Ticino. The Lugano bank Weisscredit used a Liechtenstein establishment in Schaan, which had collected more than CHF 200 million of foreign funds and was directed in fact from Switzerland. The Chiasso branch of Credit Suisse used the Texon Finanzanstalt in Vaduz to channel money "mainly of Italian origin" outside the control of the bank's head office.⁵ Both cases belong to the history of the Chiasso scandal (Chapter D.III). They show where the logic of the lira economy led when a bank combined the receipt of flight capital with the management of the same money through structures it controlled itself.

The Italian legislator of 1976 recognized the importance of these structures. The law of 8 October 1976, no. 689, which amended the criminal provisions on currency offences adopted earlier that year, made it a separate offence for a resident to conceal Italian assets as the property of non-residents by setting up or participating in foreign entities, punishable by imprisonment of up to three years and a fine of up to five million lire.⁶ The offence was the first Italian rule directed at what Italian tax law later called *esterovestizione*, the foreign dressing of domestic wealth (Chapter H.II).

Common misconception. The Swiss numbered account is often imagined as an anonymous account whose holder is unknown even to the bank. This was never the case. The number replaced the name only in the internal processing of the account, while the bank kept a file with the client's identity, which a small number of senior staff could consult. The account was subject to the same secrecy under Art. 47 of the Banking Act as any named account and, from 1977, to the same identification rules under the banks' code of conduct. Anonymity in the strict sense was achieved by other means: bearer securities kept in a safe deposit box, or an account held in the name of a Liechtenstein or Panamanian company whose beneficial owner was not recorded. It was this second technique that the Swiss due diligence rules after 1977 attacked through the declaration of the beneficial owner (Chapter D.III).

2 Notes

1. Swiss Federal Tax Administration (ESTV), Die eidgenössische Verrechnungssteuer (Dossier Steuerinformationen, October 2024),

<https://www.estv2.admin.ch/stp/ds/d-eidgenoessische-verrechnungssteuer-de.pdf> ("Die VSt wird seit dem 1. Januar 1944 erhoben (Bundesratsbeschluss [BRB] vom 1. September 1943 über die Verrechnungssteuer"); 15 per cent in 1944, 25 per cent from 1945, 27 per cent from 1959, 30 per cent from 1967 and 35 per cent from 1976, raised "um dem Bund zusätzliche Einnahmen zu verschaffen und um die Steuerhinterziehung wirksamer zu bekämpfen"); ESTV, Daten aus der Geschichte der Bundessteuern bis 1999 (August 2022), <https://www.estv2.admin.ch/stp/ds/a-geschichte-bis-1999-de.pdf> (rate raised "für die Zeit vom 1. Januar 1976 bis 31. Dezember 1979 von 30 % auf 35 %" and retained in 1978). Current law: Federal Act on Withholding Tax of 13 October 1965 (VStG), SR 642.21, Art. 13 para. 1 lit. a (35 per cent on capital income) and para. 2 (power of the Federal Council to reduce the rate to 30 per cent, inserted by the Federal Act of 31 January 1975, AS 1975 932, in the version of the Federal Act of 15 December 1978, AS 1979 499), text at <https://www.droit-bilingue.ch/de-fr/6/64/642.21-13-17.html>. ↩

2. On the growth of fiduciary deposits see Swiss National Bank, Das schweizerische Bankwesen, annual volumes from 1970. ↩
3. Federal Banking Commission, Jahresbericht 1977 , 17, <https://www.finma.ch/FinmaArchiv/ebk/d/publik/bericht/pdf/jb77-d.pdf> (coordination with the tax authorities on "echte Treuhandgeschäfte"). ↩
4. On the use of Liechtenstein establishments and Panamanian companies by Italian clients see Francesco Lepori, Il Ticino dei colletti sporchi. I processi bancari dagli anni Settanta a oggi (Locarno: Dadò 2018), listed in Biblioteca cantonale di Bellinzona, Banche in Ticino. Dossier tematico (May 2023), https://www.sbt.ti.ch/dep/drt/4_banche_in_ticino.pdf. ↩
5. Federal Banking Commission, Jahresbericht 1977 (as above), 22–25 (Weisscredit, Banca Commerciale e d'Investimenti, Lugano, and the Finanz- und Vertrauens-Handelsanstalt in Schaan with foreign funds of more than CHF 200 million; Texon-Finanzanstalt and the Chiasso branch of the Schweizerische Kreditanstalt, "Gelder, hauptsächlich italienischen Ursprunges"). ↩

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6. Law of 8 October 1976, no. 689, converting with amendments Decree-Law of 10 August 1976, no. 543, which amended Law of 30 April 1976, no. 159, Art. 1, text at https://www.edizioneuropee.it/law/html/2/zn15_07_00k.html ("reclusione fino a tre anni e con la multa fino a lire 5 milioni"). ↩

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