

From Scudo Fiscale to Automatic Exchange: Italy and the End of Banking Secrecy — overview and summary

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Between 2001 and 2017 the Italian Republic offered its residents five opportunities to bring into the open the money they held abroad without having declared it: three anonymous tax shields and two rounds of voluntary disclosure. On every occasion for which figures were published, the largest single pool of that money was found in Switzerland, most of it in Lugano and the other towns of Ticino. The first *scudo fiscale* ("tax shield") of 2001 charged 2.5 per cent of the declared assets and guaranteed anonymity. The third, in 2009 and 2010, charged 5 per cent and brought more than EUR 104 billion to the surface. The voluntary disclosure of 2015 charged the full tax due, required the client to authorize his Swiss bank to release his account data to Rome on request and recorded that almost seven of every ten euros declared had been held in Switzerland.¹ Between these dates the legal foundations of Swiss-Italian private banking changed beyond recognition. Switzerland accepted the international standard on exchange of information on request in March 2009 and signed a protocol with Italy that allows requests for whole groups of taxpayers in February 2015. Since 2018 it has transmitted the account data of Italian residents to the Agenzia delle Entrate (Italian Revenue Agency) every September under the automatic exchange of information.

This chapter asks how this transformation happened, what it meant for Lugano, and what law now governs the assets that Italian families hold or inherit in Ticino. Its argument is that the end of banking secrecy towards Italy was a negotiated and staged process in which Italian amnesty law and Swiss treaty law moved in step. Each Italian amnesty was timed to exploit a Swiss concession or an international deadline. Each Swiss concession, in turn, was sought in exchange for relief on matters that mattered to Ticino: the Italian black lists, market access for Swiss banks and the taxation of the

cross-border commuters known as *frontalieri*. Lugano lost a large part of its undeclared Italian deposits in the process. A substantial share of the assets nevertheless stayed under Swiss management through the *rimpatrio giuridico* ("legal repatriation") by which Italian fiduciary companies became the nominal holders of accounts that never left Ticino. The modern Lugano private bank serving Italian clients is the product of this sequence.

The chapter builds on Part D, which traced the lira economy, the cash couriers known as *spalloni* and the money laundering cases of the 1980s, and on Chapter E.I, which describes the institutions and the figures of today's Lugano banking market. Chapter E.III treats the independent asset managers and fiduciaries under the Financial Institutions Act, Chapter E.IV the rules on providing financial services into Italy and Chapter E.V the succession, trust and residence questions of Italian families. The present chapter proceeds chronologically from the position before 2001 through the three *scudi*, the European savings agreement, the confrontations of 2009, the voluntary disclosure and the Swiss-Italian Protocol of 2015 to the automatic exchange of information. It then examines the Swiss criminal law that still governs bank confidentiality and the predicate offences to money laundering. It closes with a checklist for the legacy Italian assets and inherited accounts that practitioners in Lugano continue to encounter.

1 Conclusion

The end of banking secrecy between Switzerland and Italy took sixteen years, from the first *scudo fiscale* of 2001 to the first automatic exchange of data in September 2018. It was neither a single act nor a unilateral defeat. Italy used amnesties to bring capital home and to raise revenue. It timed each amnesty to exploit Swiss weakness: the introduction of the euro in 2001, the international crisis of 2009 and the deadline of the voluntary disclosure in 2015. Switzerland conceded step by step: the withholding tax of 2004, the OECD standard of 2009, the Protocol with group requests in 2015 and the automatic exchange from 2017. In return it obtained the admission of its banks' clients to the voluntary disclosure on equal terms, the removal from the Italian black list of 1999 and a new regime for the *frontalieri*. The Roadmap of 23 February 2015 recorded this exchange in a single document.

For Lugano the process meant the loss of a business that had defined the financial centre since 1945. The *scudo ter* alone took tens of billions of euros of Italian assets out of Swiss custody. The voluntary disclosure, the group requests and the automatic exchange then removed the remaining reasons

for holding undeclared money in Ticino. At the same time the Lugano banks retained a larger share of their Italian clients than had been feared. The *rimpatrio giuridico* through Italian fiduciary companies kept assets in Swiss custody after 2009, whereas the voluntary disclosure of 2015 did not require repatriation at all. The clients who remained were those who valued Swiss banking for its stability, its currency, its investment skills and the Italianspeaking relationship manager across the border.

The legal residue of the period remains part of daily practice. Article 47 of the Banking Act still protects client information against private disclosure, while Articles 271 and 273 of the Criminal Code still guard Swiss sovereignty against unofficial requests. Since 2016 the qualified tax offence in Article 305bis paragraph 1bis has made tax compliance a matter of money laundering law. On the Italian side, the presumptions and doubled periods of Article 12 of Decree-Law No. 78 of 2009 still govern the years up to 2023. The *quadro RW* and the IVAFE apply every year, while the inherited account raises questions of succession declarations and self-laundering. The chapters that follow examine the institutions that serve Italian clients in this new environment: the independent asset managers and fiduciaries under the Financial Institutions Act in Chapter E.III, the rules on market access in Chapter E.IV and the succession and residence planning of Italian families in Chapter E.V.

2 In five sentences

Between 2001 and 2017 Italy offered its residents three anonymous tax shields and two rounds of voluntary disclosure, and on each occasion Switzerland, above all Ticino, was the largest source of the assets declared. Switzerland responded in stages, with the withholding tax of the savings agreement in 2005, the adoption of the OECD standard in March 2009, the Protocol and Roadmap with Italy of 23 February 2015 and the automatic exchange of information from 2017. Group requests based on the banks' own exit letters, confirmed by the Federal Supreme Court in 2021, and the annual transmission of account data have since made undeclared Italian money in Lugano untenable. Lugano lost much of its undeclared Italian business but retained substantial assets through the legal repatriation of 2009 and the voluntary disclosure of 2015, which allowed regularized assets to stay in Switzerland. Article 47 of the Banking Act, Articles 271 and 273 of the Criminal Code and the tax predicate offence of Article 305bis still frame the work of Lugano banks, and legacy and inherited Italian accounts require a careful analysis of Italian limitation periods, *quadro RW* penalties and the IVAFE.

3 Notes

1. The figures are documented in the sections below: for the 2009 shield, Fabio Di Vizio, "Lo strano caso di un'emersione a volto coperto. Considerazioni sullo scudo fiscale", *Economia e Politica*, 16 November 2013, https://www.economiaepolitica.it/_pdfs/pdf-1306.pdf; for the voluntary disclosure, "Voluntary disclosure: 3,8 miliardi di gettito e oltre 129mila istanze. Il bilancio dell'operazione presentato al MEF", *Finanza e Fisco*, 9 December 2015, <https://www.finanzaefisco.com/voluntary-disclosure-38-miliardi-di-gettito-e-oltre-129mila-istanze-il-bilancio-delloperazione-presentato-al-mef/> (Switzerland 69.6 per cent of the assets declared). ↩

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