

Property on departure

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The award of 1554 allowed the Locarnese to sell their property, but it did not protect them against forced sales below value, against fines imposed after their departure or against the confiscation of property belonging to members of the community who were prosecuted. Article 26 of the Federal Constitution guarantees property and provides that expropriation and restrictions of ownership equivalent to expropriation are fully compensated.¹ The guarantee applies whether the owner lives in Switzerland or abroad. A change of domicile or of religion has no effect on title. A Swiss authority could not today require a departing owner to sell, could not seize property because of the owner's religion and could impose fines only under a criminal statute in force at the time of the act, in a procedure that respects the guarantees of the Federal Constitution and of the Convention.

Switzerland signed Protocol No. 1 to the European Convention on Human Rights, which protects property in its Article 1, on 19 May 1976 but has never ratified it.² The protection of property against the Swiss state rests therefore on the Federal Constitution and on bilateral investment treaties, which protect foreign investors in Switzerland and Swiss investors abroad. For clients who move assets out of states with weaker protection, the long Swiss tradition of respecting private property irrespective of the owner's residence, nationality or religion remains one of the reasons for choosing Switzerland as the place where assets are held.

The administration of the community's "common goods" by Martino Muralto after 1555 also has a modern echo.³ Families and communities who leave a jurisdiction often keep assets there that cannot be sold at once, such as land, shares in family companies or claims in litigation. Their administration from abroad requires agents, trustees or foundations. Their protection requires access to the courts of the state of origin and the recognition of judgments across borders. Chapter H.IV discusses the

Lugano Convention of 30 October 2007 and the rules on judicial assistance that govern such cross-border claims today.

1 Taxes on departure: from Abzug to exit tax

The *Abzug* and *gabella emigrationis* of the early modern period were levies on the act of leaving. They compensated the ruler for the loss of a taxpayer and of the property that left with him. The Peace of Augsburg treated a "reasonable sum" as the price of emigration.⁴ The treaties of the nineteenth century abolished them between states on a reciprocal basis. The modern Swiss tax system levies no tax on the emigration of individuals as such. When a person moves abroad, unlimited tax liability in Switzerland ends with the departure, and income and wealth are taxed only up to that date. Accrued but unrealized capital gains on private assets are not taxed on departure, since private capital gains are in principle exempt from income tax in Switzerland.⁵ For companies the position is different. Since the reform of corporate taxation in force from 1 January 2020, Swiss tax law taxes the hidden reserves, including self-generated goodwill, of a company that transfers its seat, its effective management or assets abroad, through a fiction of liquidation at the end of tax liability. The federal rule is in Article 61b of the Federal Act on Direct Federal Tax, with corresponding provisions in the cantonal laws, such as § 53c of the tax law of Basel-Landschaft.⁶ Italy taxes the latent capital gains of commercial enterprises that transfer their tax residence abroad under Article 166 of the Italian Income Tax Code (TUIR), with the possibility of paying the tax in six annual instalments.⁷ Germany taxes substantial shareholdings of individuals who leave the country under § 6 of the Foreign Tax Act (*Außensteuergesetz*), and the United States imposes a mark-to-market tax on certain citizens and long-term residents who give up their status under section 877A of the Internal Revenue Code.⁸ Within the European Union, Article 5 of the Anti-Tax Avoidance Directive (Council Directive (EU) 2016/1164) requires member states to apply exit taxation to companies.⁹

Modern exit taxes differ from the old *Abzug* in their justification. They tax gains that accrued while the taxpayer was subject to the departing state's jurisdiction and that would otherwise escape taxation, and they are limited by the principles of equality, legality and, within the European Union, the freedom of establishment. They are nevertheless the functional successors of the early modern levies. They raise the same practical questions that the Locarnese faced: valuation at the moment of departure, liquidity to pay a tax on unrealized value, and the risk that property left behind will serve as security for claims of the former sovereign.

2 Notes

1. Cst. Art. 26, ICL translation (above) ("Property is guaranteed. Expropriation and restrictions of ownership equivalent to expropriation are fully compensated"). ↩
2. humanrights.ch, Überblick (above) (Protocol No. 1 "unterzeichnet am 19.5.1976", not ratified). ↩
3. Pauli Falconi, "Muralto, Martino" (above). ↩
4. Religious Peace of Augsburg, Art. 24 (above). ↩
5. Federal Act on Direct Federal Tax, SR 642.11, Art. 8(2) ("Die Steuerpflicht endet mit dem Tode oder dem Wegzug des Steuerpflichtigen aus der Schweiz [...]"), <https://www.droit-bilingue.ch/de-fr/6/64/642.11-8-11.html>, and Art. 16(3) ("Die Kapitalgewinne aus der Veräusserung von Privatvermögen sind steuerfrei"), <https://www.droit-bilingue.ch/de-fr/6/64/642.11-16-19.html>; Federal Act on the Harmonization of Direct Taxes of the Cantons and Communes of 14 December 1990, SR 642.14, Art. 7(4)(b) ("Kapitalgewinne auf beweglichem Privatvermögen"), <https://www.droit-bilingue.ch/de-fr/6/64/642.14-7-12.html>.
Cantonal real estate gains taxes remain due on the sale of Swiss real estate. ↩
6. Federal Act on Direct Federal Tax of 14 December 1990, SR 642.11, Art. 61b, inserted by the Federal Act on Tax Reform and AHV Financing (TRAF) of 28 September 2018, final vote text, <https://www.parlament.ch/centers/eparl/curia/2018/20180031/Schlussabstimmungstext%201%20NS%20D.pdf> ("Endet die Steuerpflicht, so werden die in diesem Zeitpunkt vorhandenen, nicht versteuerten stillen Reserven einschliesslich des selbst geschaffenen Mehrwerts besteuert"); Kanton Basel-Landschaft, Steuerverwaltung, Steuerbuch, vol. 2, "Aufdeckung stiller Reserven am Ende der Steuerpflicht", <https://kanton.baselland.ch/finanz-und-kirchendirektion/steuerverwaltung-steuerbuch/band-2/unternehmen/downloads-1/aufdeckung-stiller-reserven-am-ende-der-steuerpflicht> (§ 53c StG). The corresponding harmonization rule is Art. 24d(1) of the Federal Act on the Harmonization of Direct Taxes, SR 642.14 ("Endet die Steuerpflicht, so werden die in diesem Zeitpunkt vorhandenen, nicht versteuerten stillen Reserven einschliesslich des selbst geschaffenen Mehrwerts besteuert"), in force since 1 January 2020 (AS 2019 2395), <https://www.droit-bilingue.ch/de-fr/6/64/642.14-24d-42.html>. ↩
7. Federico Migliorini, "Quadro TR: exit tax per i trasferimenti di imprese all'estero", *Fiscomania*, 2 August 2024,

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<https://fiscomania.com/quadro-tr-exit-tax-trasferimenti-imprese-estero/> (applies to commercial enterprises; "rateizzazione dell'imposta, in 6 quote costanti"). See Chapter H.II. ↩

8. § 877A(a)(1) ("All property of a covered expatriate shall be treated as sold on the day before the expatriation date for its fair market value"), Legal Information Institute, Cornell Law School, <https://www.law.cornell.edu/uscode/text/26/877A>. ↩
9. Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, OJ L 193 of 19 July 2016, p. 1, Art. 1 (applies "to all taxpayers that are subject to corporate tax in one or more Member States") and Art. 5(1), <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016L1164>. ↩

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