

Tax offences as predicate offences to money laundering

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

The most important change in Swiss criminal law concerning undeclared foreign assets was the inclusion of serious tax offences among the predicate offences to money laundering. The Federal Act of 12 December 2014 implementing the revised Recommendations of the Financial Action Task Force inserted into Article 305bis of the Swiss Criminal Code a new paragraph 1bis, which entered into force on 1 January 2016.¹ Under that paragraph a qualified tax offence (*qualifiziertes Steuervergehen*) is a predicate offence when the evaded taxes exceed CHF 300,000 per tax period. The underlying conduct is tax fraud within the meaning of Article 186 of the Federal Act on Direct Federal Taxation and Article 59 paragraph 1 of the Tax Harmonization Act. This means tax evasion committed by means of forged, falsified or untrue documents such as business records or salary certificates.²

Article 305bis paragraph 3 extends the offence to cases in which the predicate offence was committed abroad, provided that it is also punishable in the state where it was committed. Through this provision a comparable Italian tax offence, committed with false documents and exceeding the threshold, can be a predicate offence for laundering in Switzerland.³ The new rule applies only to predicate offences committed after its entry into force. Undeclared Italian money deposited in Lugano before 2016 did not retrospectively become the proceeds of a predicate offence, although a subsequent qualified tax offence relating to the income of later years may do so.

For indirect taxes, Article 14 paragraph 4 of the Federal Act on Administrative Criminal Law (VStrR) treats as a crime the qualified fraud in matters of contributions, in particular customs duties and value added tax, committed on a commercial basis or in collaboration with third parties and producing a particularly significant unlawful advantage. The

provision, punishable by a custodial sentence of up to five years, makes such conduct a predicate offence to money laundering. It was first inserted by an act of 2008 that took effect in 2009 and was recast by the reform of 2014 with effect from 1 January 2016.⁴ For Lugano, which handles payments related to cross-border trade with Italy, the provision matters when the proceeds of carousel frauds or customs fraud pass through Swiss accounts.

1 Consequences for financial intermediaries

The predicate offence in Article 305bis paragraph 1bis turned the tax compliance of clients into a question of anti-money laundering law. A Swiss financial intermediary that has reasonable grounds to suspect that assets derive from a qualified tax offence must clarify the background and, if the suspicion is founded, report to MROS under Article 9 of the Anti-Money Laundering Act.⁵ The law firm Lenz & Staehelin summarized the practical consequences in 2015. Banks had to investigate the background of transactions where there were indications of qualified tax offences and report suspicious relationships. They also had to adapt their compliance systems to detect assets derived from such offences, including a risk-based tax screening of new relationships.⁶ The difficulties lay in determining the applicable foreign tax law, in the timing of the offence relative to the deposit and in the threshold, which refers to the tax evaded and not to the assets.

The Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence, which Chapter D.III traces from 1977 to its current version, has long prohibited active assistance in tax evasion. The tax predicate offence added the criminal sanction of the bank's own staff. A relationship manager who, after 2016, knowingly accepted money from an Italian client that derived from a qualified tax offence and helped to conceal it would risk prosecution for money laundering in Switzerland. The Italian voluntary disclosure granted immunity from laundering and self-laundering under Italian law to clients who regularized by 2015. It has no effect on Swiss criminal law, although a regularized client's assets will rarely raise a Swiss suspicion.

For the practitioner. In handling a request concerning an Italian client, a Lugano bank or adviser should keep the following distinctions in mind: - Disclosure to Italian authorities is lawful through administrative assistance (Art. 27 of the convention), through the automatic exchange or with the client's written consent; any other disclosure risks Art. 47 BankA and Art. 271 SCC. - Since 1 January 2016, a qualified tax offence (tax evaded above

CHF 300,000 per period, with false documents) is a predicate offence under Art. 305bis para. 1bis SCC, also when committed abroad (para. 3). - Qualified fraud in customs and indirect taxes is a predicate offence through Art. 14 para. 4 VStrR. - Suspicion triggers the duties to clarify and to report under Art. 6 and Art. 9 AMLA, irrespective of any Italian amnesty.

2 Notes

1. Lenz & Staehelin, "Umsetzung der revidierten GAFI-Empfehlungen", Newsflash, June 2015, https://www.lenzstaehelin.com/fileadmin/user_upload/publications/150604_Newsflash_FATF_CC_AMLA_de.pdf (federal act of 12 December 2014; entry into force of the tax predicate offence on 1 January 2016). ↩
2. Swiss Criminal Code, Art. 305bis para. 1bis, German and English text in [droit-bilingue.ch](https://www.droit-bilingue.ch/de-en/3/31/311.0-305bis-372.html), <https://www.droit-bilingue.ch/de-en/3/31/311.0-305bis-372.html>; Lenz & Staehelin (above) on the reference to forged or untrue documents and to Art. 186 DBG and Art. 59 para. 1 StHG. ↩
3. Art. 305bis para. 3 SCC (above): the offender is also liable "where the main offence was committed abroad". ↩
4. Federal Act on Administrative Criminal Law of 22 March 1974 (VStrR), SR 313.0, Art. 14 para. 4, [droit-bilingue.ch](https://www.droit-bilingue.ch/de-fr/3/31/313.0-14-17.html), <https://www.droit-bilingue.ch/de-fr/3/31/313.0-14-17.html>: conduct "gewerbsmässig oder im Zusammenwirken mit Dritten" in matters of contributions or customs that procures an unlawful advantage "in besonders erheblichem Umfang" is punished with a custodial sentence of up to five years or a monetary penalty. The paragraph was inserted by the Federal Act of 3 October 2008 implementing the revised FATF Recommendations (AS 2009 361) and amended by the Federal Act of 12 December 2014, with effect from 1 January 2016 (AS 2015 1389). ↩
5. Federal Act of 10 October 1997 on Combating Money Laundering and Terrorist Financing in the Financial Sector (Anti-Money Laundering Act, AMLA), SR 955.0, Art. 6 (special duties of due diligence) and Art. 9 para. 1 lit. a no. 2 (duty to report assets that are the proceeds "of a felony or an aggravated tax misdemeanour under Article 305bis number 1bis SCC"), [droit-bilingue.ch](https://www.droit-bilingue.ch/de-en/9/95/955.0-index.html), <https://www.droit-bilingue.ch/de-en/9/95/955.0-index.html> and <https://www.droit-bilingue.ch/de-en/9/95/955.0-9-15.html>. ↩

6. Lenz & Staehelin (above). ↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/lugano-tax-offences-as-predicate-offences-to-money-laundering