

The political-offence exception and the fiscal exception

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The nineteenth-century practice described above, that persons who had fled because of political offences were not extradited, survives in the Federal Act on International Mutual Assistance in Criminal Matters of 20 March 1981 (Mutual Assistance Act, IMAC, SR 351.1). Under Art. 3(1) IMAC a request is not granted if the proceedings concern an act which, in the Swiss view, is of a predominantly political nature, a violation of military service obligations or an act directed against the national security or military defence of the requesting state.¹ Art. 3(2) IMAC excludes the politicaloffence plea for genocide, crimes against humanity, war crimes and particularly reprehensible acts such as hostage-taking or hijacking. The law thus preserves the core of the asylum tradition and limits it where modern international law demands.

The same article contains a second exception that is of greater importance for the financial centre. Under Art. 3(3) IMAC a request may be refused if the proceedings concern an offence aimed at reducing fiscal duties or taxes, or an offence that violates regulations on currency, trade or economic measures. Mutual assistance is nevertheless granted under Part Three of the Act, the part on "other assistance" such as the production of bank documents, if the proceedings concern duty or tax fraud, and under any part of the Act for aggravated duty or tax fraud.² The structure of Art. 3 IMAC, enacted after the Federal Council's dispatch of 8 March 1976, reflects an older analogy. Fiscal and currency offences were regarded, like political offences, as offences against the state and not against persons or property, which a foreign state could not expect Switzerland to help enforce. For decades this exception protected Italian clients against assistance in proceedings for tax evasion and for breaches of Italy's currency laws, which until 1990 restricted the export of capital.³

The analogy between political and fiscal offences has largely collapsed. Mutual assistance in criminal matters between Switzerland and Italy is governed by the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and the bilateral agreement of 10 September 1998 that supplements it (SR 0.351.945.41), which allows, among other things, direct transmission between the judicial authorities of Ticino and those of Italy.⁴ On 23 February 2015 Switzerland and Italy signed a protocol amending the double taxation convention and a roadmap for continued dialogue on financial and tax questions, with the stated aim of simplifying the regularization of untaxed assets before the introduction of the automatic exchange of information.⁵ In October 2018 the Federal Tax Administration carried out its first automatic exchange of financial account information, covering about two million accounts.⁶ Chapter E.II describes the Italian side of this transition. For the purpose of this chapter it suffices to note that, in relation to taxes, the privileged status of the fiscal offence has given way to an obligation of transparency. The political-offence exception, by contrast, still applies.

1 Notes

1. Federal Act on International Mutual Assistance in Criminal Matters of 20 March 1981 (Mutual Assistance Act, IMAC), SR 351.1, Art. 3(1) and (2), English text reproduced at <https://www.droit-bilingue.ch/en-de/3/35/351.1-3-7.html> (consulted 4 October 2026). ↩
2. IMAC, Art. 3(3) (above). ↩
3. IMAC, preamble, English text at <https://www.droit-bilingue.ch/en-de/3/35/351.1-preamble-2.html> (consulted 5 October 2026), referring to the "Dispatch of the Federal Council of 8 March 1976" (BBl 1976 II 444). On the Italian currency legislation see Chapter D.II. The liberalization of Italian capital movements in 1990. ↩
4. Federal Office of Justice, list of authorities entitled to direct correspondence with foreign judicial authorities, PDF, <https://www.e-doc.admin.ch/dam/rhf/it/data/strafrecht/behoerden/direktverkehr-i.pdf.download.pdf/direktverkehr-i.pdf> (consulted 4 October 2026), citing "RS 0.351.945.41: Accordo del 10 settembre 1998 tra la Svizzera e l'Italia che completa la Convenzione europea di assistenza giudiziaria in materia penale del 20 aprile 1959" and listing the judicial authorities of Ticino. Chapter H.IV treats mutual assistance with Italy in detail. ↩
5. Federal Council, media release "Switzerland and Italy sign agreement on tax issues", 23 February 2015,

<https://admin.ch/gov/en/start/documentation/media-releases.msg-id-56318.html> (consulted 4 October 2026). ↩

6. Federal Tax Administration, media release "First exchange of information on around 2 million financial accounts", 5 October 2018, <https://admin.ch/gov/en/start/documentation/media-releases.msg-id-72420.html> (consulted 4 October 2026). ↩

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