

The prohibitions on capital flight and tax evasion today

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The prohibitions of active assistance in capital flight and tax evasion remain in Chapters 6 and 7 of the CDB 20 with substantially the same content as in 1977.¹ Their practical meaning has changed. Italy abolished its currency controls in 1990, so that the transfer of funds from Italy to Switzerland is no longer capital flight in the sense of the CDB. Tax evasion has been transformed by the end of banking secrecy towards foreign tax authorities. Switzerland exchanges information on request according to the OECD standard and has exchanged financial account information automatically with Italy since 2018, for data from 2017 (Chapter E.II). Since 2016, qualified tax offences have been predicate offences to money laundering under Article 305bis SCC, which turns the acceptance of certain untaxed funds into a money laundering risk (Chapter G.IV).²

The prohibition of misleading attestations in Articles 53 to 57 CDB 20 retains independent importance in Lugano. A bank may not issue a statement with false dates, false amounts or fictitious prices, nor attest to fictitious claims or debts, nor split or backdate documents so that a client can present them to his tax authority.³ Requests of this kind still arise in practice, for instance when a client seeks a bank statement for a period or in a form that would conceal assets in an Italian voluntary disclosure or inheritance proceeding. The CDB requires the bank to refuse, and the Swiss criminal provisions on forgery of documents apply independently.

1 Lessons for banks and relationship managers in Lugano

Five decades after Chiasso, the lessons of the affair can be stated in practical terms. The first concerns off-balance-sheet structures. Texon worked because a branch could give guarantees that the head office did not see and route client money through an entity that the bank controlled without owning. Today every guarantee, comfort letter and fiduciary placement

must be recorded in the bank's central systems, and any entity in which bank employees hold functions or which they direct in fact must be disclosed and controlled. The second lesson concerns the personal relationship. Kuhrmeier's strength was his network of Italian clients. That same network became the instrument of the scheme, because nobody else in the bank knew the clients or the borrowers. Modern rules on the four-eyes principle, the rotation of responsibilities and the documentation of the client's profile serve to prevent a relationship from becoming the private property of one manager. The third lesson concerns warnings. The Kreditanstalt received signals in 1968, in the early 1970s and in January 1976 and did not act on them. A bank today must have procedures through which complaints from competitors, discrepancies found by tax authorities and internal suspicions reach the compliance function and are documented. The fourth lesson concerns the profile of the money. Texon recycled Italian flight capital into Italian companies. The CDB of 1977 asked banks only to know who their clients were, while the AMLA now asks them to understand where the money comes from, what it is used for and whether its movements fit the client's profile. The fifth lesson concerns the limits of criminal law. The court of 1979 could punish the branch officers for damaging their bank but not for what they had done to the Italian State. The modern system of due diligence, reporting duties and supervisory sanctions exists precisely because the financial centre cannot rely on criminal law alone to protect its reputation.

For the practitioner. A due diligence checklist for a new relationship with an Italian-connected client in Lugano: - Verify the identity of the contracting partner on an official document (Art. 3 AMLA; Arts 4–19 CDB 20) and complete missing documents within 30 days (Art. 45 CDB 20). - Obtain Form A for the beneficial owner of the assets, Form K for operating entities, Form S or T for foundations and trusts (Art. 4 AMLA; Arts 20–42 CDB 20). - Establish the purpose of the relationship and the origin of the assets, including their tax status in Italy, and document the plausibility check (Arts 6 and 7 AMLA). - Classify the relationship by risk under the bank's AMLO-FINMA criteria and apply additional clarifications for higher risks such as PEPs or domiciliary companies. - Refuse any request for misleading attestations (Arts 53–57 CDB 20) and any active assistance in transfers that breach foreign law (Arts 47–52 CDB 20). - Record every guarantee or fiduciary placement in the bank's central systems. - Repeat identification and Form A when doubts arise (Art. 5 AMLA; Art. 46 CDB 20) and report a well-founded suspicion to MROS (Art. 9 AMLA).

2 Notes

1. SBA, Commentary on the Agreement ... (CDB 20) (above); CDB 20 (above), Arts 47–57. ↩
2. SCC (above), Art. 305bis(1) and (1bis) ("aggravated tax misdemeanour"), as amended by the Federal Act of 12 December 2014, in force since 1 January 2016, <https://www.droit-bilingue.ch/en-de/3/31/311.0-305bis-372.html>.
The liberalization of Italian capital movements in 1990 and the start of the automatic exchange with Italy (data from 2017, first exchange in 2018), treated in Chapters E.II and G.IV. ↩
3. CDB 20 (above), Art. 57. ↩

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