

The reopening of 2002–2003

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The results of the first window disappointed the government's revenue expectations. Decree-Law No. 282 of 24 December 2002, converted by Law No. 27 of 21 February 2003, reopened the shield on the same terms for assets held abroad on a later reference date. The reopening ran into 2003.¹ The economic research institute NENS, citing figures published by *La Repubblica* and *Il Sole 24 Ore*, records that the original shield and its reopening together brought to the surface EUR 73.1 billion. Of this total EUR 43.2 billion were repatriated and EUR 29.9 billion regularized, a sum exceeding 4 per cent of Italian GDP. The revenue was modest: about EUR 1.1 billion from the first window and EUR 0.7 billion from the reopening, together some EUR 1.8 billion.² The low charge of 2.5 per cent and the absence of any tax on the past income made the operation a bargain for the declarants. Critics argued that it rewarded evaders at the expense of honest taxpayers.

Programme Legal basis Charge Assets declared Scudo 2001–2002 DL 350/2001, L. 2.5 % or 12 % in EUR 73.1 bn 409/2001 bonds (with reopening) Reopening 2003 DL 282/2002, L. 27/2003 2.5 % included above Scudo ter 2009– Art. 13-bis DL 78/2009, 5 %, later 6 % and EUR 104.5 bn 2010 L. 102/2009 7 % Voluntary L. 186/2014 full tax, reduced EUR 59.6 bn disclosure 2015 penalties Voluntary Art. 7 DL 193/2016, L. full tax, self- see text disclosure bis 2017 225/2016 assessed

*Table 1: Italian regularization programmes for assets held abroad, 2001–2017.
Sources as cited in the text.*

1 The Italian fiduciary company

The instrument that made the shields workable for Swiss clients was an old Italian institution. The *società fiduciaria* has been regulated since Law No. 1966 of 23 November 1939, which subjected companies that administer the

property of third parties or act as their nominee to authorization by the Ministry of Industry, today the Ministry of Enterprises.³ Under the fiduciary mandate (*mandato fiduciario*) the company holds assets in its own name but on the account and on the instructions of the client, who remains the owner for tax purposes. Italian tax law treats the fiduciary company as a withholding agent for the income it collects on behalf of its clients and as an intermediary for the purposes of the monitoring rules. A client whose foreign assets are administered through an Italian fiduciary company is therefore relieved of the obligation to declare them in the *quadro RW*, because the company applies the Italian taxes and reports the flows itself.⁴

This combination of nominee ownership and Italian tax compliance made the fiduciary company the natural channel of the shields. In 2001 and again in 2009 it could receive the confidential declaration, pay the charge, take the assets under mandate and keep the name of the client from the tax authorities, while the securities remained deposited with the Swiss bank in the name of the fiduciary. The larger fiduciary companies, including those owned by Italian banking groups, later came under the supervision of the Bank of Italy as financial intermediaries, which subjected them to prudential and anti-money laundering rules comparable to those of the banks.⁵ For Lugano the fiduciary company was both a competitor and a partner. It took the client relationship to Milan, but it often left the custody and the portfolio management in Ticino.

2 Notes

1. NENS, Un nuovo scudo fiscale (undated study, after March 2008), https://www.nens.it/sites/default/files/UN%20NUOVO%20SCUDO%20FISCALE%20282%29_1.pdf, citing Decree-Law No. 282/2002 converted by Law No. 27/2003. The decree, "Disposizioni urgenti in materia di adempimenti comunitari e fiscali, di riscossione e di procedure di contabilità", was published in Gazzetta Ufficiale No. 301 of 24 December 2002, https://www.gazzettaufficiale.it/gazzetta/serie_generale/caricaDettaglio?dataPubblicazioneGazzetta=2002-12-24&numeroGazzetta=301, and Law No. 27 of 21 February 2003 converting it in Gazzetta Ufficiale No. 44 of 22 February 2003, https://www.gazzettaufficiale.it/gazzetta/serie_generale/caricaDettaglio?dataPubblicazioneGazzetta=2003-02-22&numeroGazzetta=44. ↩
2. NENS, Un nuovo scudo fiscale (above), citing La Repubblica of 26 October 2002 and Il Sole 24 Ore of 4 March 2008: EUR 43.228 billion

repatriated, EUR 29.872 billion regularized, revenue EUR 1.1 and 0.7 billion. ↩

3. Law No. 1966 of 23 November 1939, "Disciplina delle società fiduciarie e di revisione", Art. 1, and its implementing regulation, Royal Decree No. 531 of 22 April 1940. ↩
4. Agenzia delle Entrate, circular No. 38/E of 23 December 2013, section on the exemption from the quadro RW for assets entrusted to resident intermediaries, including fiduciary companies under a mandate with "intestazione". ↩
5. Art. 199 of Legislative Decree No. 58 of 24 February 1998 (TUF) and Art. 106 of Legislative Decree No. 385 of 1 September 1993 (TUB), as amended by Legislative Decree No. 141 of 13 August 2010, on the registration of fiduciary companies controlled by banks or exceeding certain thresholds in a special section of the register of financial intermediaries. ↩

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