

The Swiss side of the border

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

Swiss law did not change in response. Switzerland did not grant mutual assistance for currency offences. Its banks were under no legal duty to ask an Italian client whether he had complied with the Italian rules. The due diligence agreement concluded between the Swiss National Bank and the Swiss Bankers Association in June 1977, after the Chiasso scandal, introduced a first private law rule on the subject. Banks undertook not to provide active assistance to the flight of capital from countries that restricted the export of funds, for example by receiving clients abroad by appointment outside their own premises to accept funds or by taking part in compensation transactions abroad (Chapter D.III).¹ The agreement did not oblige banks to refuse flight capital that the client brought to Switzerland himself. The distinction between passive acceptance and active assistance became the defining line of Swiss practice towards foreign flight capital for the next three decades, and it remains in the current version of the code of conduct.²

The coincidence of dates in March 1976 is instructive. Five days after the Italian government made the export of capital a crime by the decree-law of 4 March, the two States signed in Rome on 9 March 1976 the convention for the avoidance of double taxation on income and capital, which Chapter H.III discusses. The convention provided for the exchange of information only to the extent necessary for its proper application and for the prevention of abuse and did not oblige Switzerland to assist Italy in the pursuit of tax evasion by Italian residents with Swiss accounts. That remained the position until the Protocol of 23 February 2015 introduced exchange of information on request according to the international standard.³ For almost four decades, therefore, the treaty that governed the tax relations between the two States coexisted with an Italian criminal law against capital export and a Swiss refusal to help enforce it.

The Italian exchange controls were dismantled within the European Community's liberalization of capital movements, which Italy completed in 1990. The criminal offence of illegal capital export disappeared with them. In its place Italy introduced the duty to report foreign assets in the annual tax return, the *monitoraggio fiscale* that has governed Italian residents' holdings in Switzerland since 1990 (Chapter G.IV).⁴

Essentials. The decree-law of 4 March 1976, no. 31, converted by Law 159 of 30 April 1976 and amended twice in the same year, made the unauthorized export of currency and securities and the creation of assets abroad a crime in Italy, punishable for large amounts by one to six years' imprisonment and fines of up to four times the value. Residents had to declare pre-existing foreign assets by 19 November 1976 and repatriate liquid assets by 19 February 1977. Switzerland did not grant assistance for currency offences. Its banks agreed in 1977 only to refrain from active assistance to capital flight.

1 Notes

1. Federal Banking Commission, Jahresbericht 1977 (as above), 18–20 (agreement of 2 June 1977 on due diligence in the acceptance of funds and the handling of banking secrecy). The examples of active assistance are those of the CDB of 1998, Art. 7 (as above). ↩
2. Swiss Bankers Association, Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB 20), https://www.swissbanking.ch/_Resources/Persistent/6/2/e/e/62eec3df0685e359c5a376dfca79dec8b908ea9c/SBA_Agreement_CDB_2020_EN.pdf, Arts. 47–50 (in force 1 January 2020). ↩
3. Convention between Switzerland and Italy for the avoidance of double taxation and for the settlement of certain other questions in the field of taxes on income and on capital of 9 March 1976, SR 0.672.945.41, Art. 27, amended by Art. I of the Protocol of 23 February 2015, approved by the Federal Assembly on 18 March 2016 and in force since 13 July 2016 (AS 2016 2769; BBl 2015 6825), text at <https://www.droit-bilingue.ch/de-fr/0.6/0.67/0.672.945.41-27-30.html>. Swiss Federal Council, Botschaft zur Genehmigung eines Protokolls zur Änderung des Doppelbesteuerungsabkommens zwischen der Schweiz und Italien of 12 August 2015, BBl 2015 6825, <https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/fga/2015/1575/de/pdf-a/fedlex-data-admin-ch-eli-fga-2015-1575-de-pdf-a.pdf> (convention signed in Rome on 9 March 1976, protocol signed in

Milan on 23 February 2015; the original clause was limited to "den Austausch der Informationen [...], die zur ordnungsgemässen Anwendung des Abkommens und zur Vermeidung von Missbräuchen notwendig sind"). Details in Chapter H.III. ↩

4. Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty, Art. 1(1) (abolition of "restrictions on movements of capital taking place between persons resident in Member States") and Art. 6(1) (compliance "no later than 1 July 1990"), text at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31988L0361>. ↩

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-the-swiss-side-of-the-border