

Mutual assistance and extradition: the law then and now

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

Because the Rich case turned on the rules of international cooperation in criminal matters, the practitioner who advises a trader in Zug today must understand how these rules have changed.

The Federal Act on International Mutual Assistance in Criminal Matters of 1981 governs extradition and other forms of assistance to foreign states. It excluded, and in principle still excludes, assistance for offences that appear to be aimed at reducing fiscal revenue, with the exception of tax fraud, for which assistance may be granted.¹ In the 1980s, the distinction between tax evasion, the mere failure to declare income, and tax fraud, the use of false documents to deceive the tax authorities, was the decisive line. A foreign state that sought the extradition of a person for tax evasion received no assistance from Switzerland. The United States had charged Rich with tax evasion on a massive scale, but the characterisation of his conduct under Swiss law as tax evasion or as tax fraud, and the political character of the sanctions charges, determined the outcome.

Three developments have changed this position fundamentally since the Rich era. The first is the extension of administrative assistance in tax matters. Since 2009, Switzerland has granted assistance under its tax treaties in accordance with the international standard, including for tax evasion. Since 2017 it has also exchanged information on financial accounts automatically with a large number of states.² Foreign tax authorities can now obtain from Switzerland the information they need to assess the tax of their residents, without having to establish tax fraud.

The second is the introduction of qualified tax offences as predicate offences to money laundering. Since 1 January 2016, certain serious tax offences constitute predicate offences, so that assets derived from them are criminal proceeds, and financial intermediaries who handle them may be guilty of money laundering.³ The third is the adoption by Switzerland of

the sanctions of the European Union, which has transformed the position of Swiss traders in relation to international sanctions, as Part E describes.

The practitioner who advises a trader in Zug on the risks of a foreign investigation can no longer rely on the protection that Swiss law offered in the Rich era. Swiss authorities cooperate with foreign prosecutors in most cases of corruption, fraud, money laundering and sanctions violations, so that the documents of a Zug company are available to them through mutual assistance. The remaining protections, such as the requirement of dual criminality for coercive measures, the principle of speciality and the procedural rights of the persons concerned in the mutual assistance procedure, are important procedural safeguards that offer no refuge.⁴

1 Notes

1. Federal Criminal Court, Appeals Chamber, decision RR.2019.303 of 22 April 2020, reproduced on swissrights.ch: under Art. 3 para. 3 IRSG requests are rejected where the proceedings concern an act aimed at reducing fiscal duties, with the exception of proceedings concerning tax fraud (Abgabebetrug, Art. 3 para. 3 lit. a IRSG). ↩
2. Federal Council, report "Amts- und Rechtshilfe in Steuersachen", 18 December 2013, efd.admin.ch, section 4.3.1: on 13 March 2009 the Federal Council decided that Switzerland would adopt the standard of Article 26 of the OECD Model Convention for administrative assistance in tax matters and withdraw its reservation; SIF, "Automatic exchange of information on financial accounts", sif.admin.ch: the legal basis for the AEOI entered into force on 1 January 2017; ESTV, "Automatic exchange of information AEOI", estv.admin.ch: data collected from 2017, first exchange in 2018. Treated in the Geneva volume and in Part F. ↩
3. Peyer Partner Rechtsanwälte, "Steuervergehen und Geldwäscherei", peyerpartner.ch: since 1 January 2016 qualified tax offences (Art. 305bis number 1bis StGB) are predicate offences to money laundering where the evaded tax exceeds CHF 300,000 per tax period. ↩

4. Federal Criminal Court, Appeals Chamber, decision RR.2019.303 of 22 April 2020, swissrights.ch: coercive measures only if the conduct described in the request shows the objective elements of an offence punishable under Swiss law (Art. 64 IRSG); appeal against the closing order together with prior interim orders (Art. 80e IRSG); standing of persons personally and directly affected (Art. 80h IRSG); Federal Criminal Court, decision RR.2010.225 of 16 October 2012, swissrights.ch: under Art. 67 para. 1 IRSG information and documents obtained through mutual assistance may not be used in the requesting state for investigations or as evidence in proceedings for offences for which assistance is not admissible; further use requires the consent of the Federal Office of Justice (Art. 67 para. 2 IRSG). ↩

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/zug-mutual-assistance-and-extradition-the-law-then-and-now