

Germany: tax CDs and the failed withholding tax agreement

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The relationship with Germany, which Part K of this book examines in detail, followed a different path. Its point of departure was the purchase of stolen data. In February 2008 it became known that the German Federal Intelligence Service had paid a former employee of the Liechtenstein bank LGT for data on clients of the bank, reportedly in the order of USD 6 million. Among the suspects was Klaus Zumwinkel, the chief executive of Deutsche Post, and more than a thousand names appeared on the data carrier.¹ Although the case concerned Liechtenstein, it established a practice that German authorities soon applied to Swiss banks.

In 2010 the Land of North Rhine-Westphalia bought a data carrier with information on more than 1,100 German clients of Credit Suisse for EUR 2.5 million. The prosecutors in Düsseldorf opened proceedings against employees of the bank for aiding and abetting tax evasion. In September 2011 Credit Suisse agreed to pay EUR 150 million to settle the proceedings, which avoided, in the bank's words, a complex and lengthy legal dispute.² Other banks with a German clientele concluded similar settlements in the following years.³ Each purchase of data triggered a wave of voluntary disclosures in Germany, as clients who feared that their names might be on the next carrier chose to regularise their position.

Switzerland's answer to this pressure was a model that became known as "Rubik". It extended the logic of the EU savings tax agreement to all forms of investment income and to the past. Swiss paying agents would levy a final withholding tax on the income of clients resident in a partner state and a one-off payment on existing undeclared assets, while clients who preferred could authorise disclosure instead. The partner state would receive the revenue without learning the identity of the paying clients and would forgo the purchase of stolen data. Switzerland signed such

agreements with Germany on 21 September 2011, with the United Kingdom on 6 October 2011 and with Austria on 13 April 2012.⁴

The German agreement provided for a one-off payment of between 21 and 41 per cent on undeclared assets and a flat tax of about 26.4 per cent, including the solidarity surcharge, on future income, while the clients' anonymity was preserved. The Bundestag approved it in October 2012. On 23 November 2012, however, the Bundesrat, in which the states governed by the Social Democrats and the Greens held a majority, refused its consent. The opponents argued that the agreement was unfair to honest taxpayers and would have ended the purchases of tax CDs that had brought billions into German public coffers. The Swiss Bankers Association called the decision incomprehensible and purely driven by domestic politics.⁵ A subsequent attempt at mediation between the two chambers failed, so that the agreement never entered into force.⁶

The agreements with the United Kingdom and Austria applied from 1 January 2013. Their life was short. The Austrian agreement was applicable until 31 December 2016 and was terminated by an agreement of 11 November 2016, so that automatic exchange took its place from 1 January 2017.⁷ For the Zurich banks, the Rubik episode was nevertheless important. The one-off payments regularised the past of many British and Austrian clients who would otherwise have left. The failure of the German agreement, on the other hand, meant that German clients regularised their affairs through voluntary disclosures under German law, often under the pressure of their Swiss banks, which were no longer willing to keep undeclared money.

1 Notes

1. "German Tax Evasion Scandal Stirs Outrage", National Public Radio, 28 February 2008, <https://www.npr.org/2008/02/28/19351580/german-tax-evasion-scandal-stirs-outrage>. ↩
2. "Staatsanwaltschaft Düsseldorf: Credit Suisse will Bußgeld von 150 Millionen Euro zahlen", Legal Tribune Online, 19 September 2011, <https://www.lto.de/recht/nachrichten/n/staatsanwaltschaft-duesseldorf-credit-suisse-will-bussgeld-von-150-millionen-euro-zahlen>. ↩
3. Among them were Julius Bär, which agreed with the German authorities in April 2011 on a one-off payment of EUR 50 million to end the investigations: finews.ch, "Julius Bär zahlt 50 Millionen Euro an Deutschland", 14 April 2011,

<https://www.finews.ch/news/banken/5677-julius-baer-zahlt-50-millionen-euro-an-deutschland>; and UBS, which paid about EUR 300 million to settle the proceedings of the Bochum prosecutors in July 2014: Salzburg24, “Rekordstrafe für UBS in deutschem Steuerverfahren”, 29 July 2014, <https://www.salzburg24.at/s24-archiv/rekordstrafe-fuer-ubs-in-deutschem-steuerverfahren-art-53912>. ↩

4. Bundesrat (Germany), press release 183/2012, “Steuerabkommen mit der Schweiz findet keine Mehrheit im Bundesrat”, 23 November 2012, <https://www.vermittlungsausschuss.de/SharedDocs/pm/2012/183-2012.html>; HM Revenue & Customs, “The Swiss/UK Tax Cooperation Agreement and HMRC”, factsheet, <https://assets.publishing.service.gov.uk/media/5a7dc9a240f0b65d8b4e3808/swiss-dis-factsheet.pdf>; Austrian Federal Ministry of Finance, “Steuerabkommen mit der Schweiz und mit Liechtenstein”, <https://www.bmf.gv.at/themen/steuern/internationales-steuerrecht/abkommen-aut-ch.html>. ↩
5. “Deutscher Bundesrat lässt Steuerabkommen platzen”, swissinfo.ch, 23 November 2012, <https://www.swissinfo.ch/ger/politik/deutscher-bundesrat-laesst-steuerabkommen-platzen/34023732>. ↩
6. On 12 December 2012 the mediation committee (Vermittlungsausschuss) of the Bundestag and Bundesrat voted by 19 to 10 against the agreement and asked the federal government to renegotiate it. Switzerland declined to renegotiate: Haufe, “Vermittlungsausschuss: Steuerabkommen mit der Schweiz gescheitert”, BB 2012 Heft 51, 12 December 2012, <https://haufe.de/id/beitrag/die-woche-im-blick-bb-2012-heft-51-s-3169-2-gesetzgebung-HI8472256.html>. ↩
7. Austrian Federal Ministry of Finance, “Steuerabkommen mit der Schweiz und mit Liechtenstein” (n. above). ↩

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