

Tax offences as predicate offences

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For most of its history Swiss money-laundering law drew a sharp distinction between the proceeds of crime and undeclared money. Money laundering required a felony as predicate offence, whereas the evasion of taxes, whether Swiss or foreign, was at most a misdemeanour. Tax fraud under Swiss law, involving forged or falsified documents, was also only a misdemeanour. An undeclared deposit from a German or Italian client therefore fell outside the scope of Article 305bis SCC, so that a bank accepting it committed no money laundering. Part G of this book described how that distinction lost its commercial meaning between 2008 and 2018. The legal change came through the Federal Act of 12 December 2014 implementing the revised FATF Recommendations of 2012, which had added serious tax crimes to the list of predicate offences for money laundering.

Since 1 January 2016, Article 305bis paragraph 1bis SCC has defined a qualified tax offence as a predicate offence. It covers tax fraud under Article 186 of the Federal Act on Direct Federal Tax and Article 59 paragraph 1 of the Federal Act on the Harmonisation of Direct Cantonal and Communal Taxes, where the evaded taxes exceed CHF 300,000 per tax period.¹ Tax fraud in the area of indirect taxes, customs duties and the withholding tax falls under Article 14 paragraph 4 of the Federal Act on Administrative Criminal Law, which qualifies such fraud committed professionally or in cooperation with others as a felony. That provision had already made smuggling and certain value added tax fraud a predicate offence before 2016.²

The definition is narrower than it first appears. It requires tax fraud, meaning the use of forged, falsified or untrue documents such as business accounts or salary certificates. Simple tax evasion, the omission to declare income or assets, remains outside the scope. The threshold of CHF 300,000 per tax period refers to the amount of tax evaded, which is much smaller

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than the undeclared income from which it results. Because the law is formulated in terms of Swiss tax law, a foreign tax offence is a predicate offence only if it would qualify as a qualified tax offence under Swiss law had it been committed in Switzerland. The practical question for a Zurich bank is therefore whether a foreign client's tax behaviour, measured by Swiss standards, would amount to tax fraud with an evaded tax of more than CHF 300,000 in one year. In most cases the bank cannot answer that question with certainty. The reporting duty is triggered by reasonable suspicion, however, which a pattern of undeclared foreign income combined with falsified documents may well establish.

The practical consequence has been a combination of reporting and tax compliance checks. Since the automatic exchange of information began in 2017 and 2018, and after the regularisation programmes that preceded it, most of the old undeclared money has left Zurich or been declared. What remains of the problem concerns clients from countries outside the automatic exchange of information and structures that conceal the true beneficial owner. The qualified tax offence also affects Swiss domestic clients, because it applies to Swiss direct taxes as well. A Zurich company owner who books private expenses as business costs in falsified accounts and thereby evades more than CHF 300,000 in tax per year commits a predicate offence. A bank employee who knowingly helps him conceal the proceeds commits money laundering.

1 Notes

1. Swiss Criminal Code, Article 305bis, bilingual text on [droit-bilingue.ch](https://www.droit-bilingue.ch), <https://www.droit-bilingue.ch/de-en/3/31/311.0-305bis-372.html>, noting the amendment by the Federal Act of 12 December 2014, in force since 1 January 2016. ↩
2. Art. 14 para. 4 of the Federal Act of 22 March 1974 on Administrative Criminal Law, SR 313.0, inserted by the Federal Act of 3 October 2008 implementing the revised FATF Recommendations (AS 2009 361) and amended by the Federal Act of 12 December 2014 with effect from 1 January 2016 (AS 2015 1389); custodial sentence of up to five years, <https://www.droit-bilingue.ch/de-fr/3/31/313.0-14-17.html>. ↩

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