

2.2.3 Switzerland

Switzerland being a member of the FATF, it implements the FATF recommendations. When implementing the international standard, Switzerland historically had chosen the threshold approach, i.e. defining all felonies⁴¹ to be predicate offences to ML. The Swiss government therefore suggested applying the same threshold by introducing new felonies related to direct taxes and by expanding the existing felony related to smuggling on all federal indirect taxes including VAT, levies, stamp duty and the withholding tax.⁴²

The federal set-up of Switzerland causes the tax law to be fractured into 26 cantonal and several federal tax laws. The Swiss Confederation has no constitutional right to impose taxation on the cantons other than for tax harmonisation purposes (see Art. 126 of the Federal Constitution⁴³), hence the Federal Law on the harmonisation of communal and cantonal direct tax (draft Art. 59⁴⁴ para 1^{bis} being the most important text) was the only mean to introduce new tax felonies below the federal level. At the federal level, the proposed changes affected the Federal Law on direct federal taxation (draft Art. 186⁴⁵ para 1^{bis} being the most important text) and the Federal Law on administrative criminal law (draft Art. 14⁴⁶ para 4 being the most important text).

The results of public consultation of the draft bill showed such strong resistance against introducing new felonies related to direct taxes⁴⁷ that the Swiss government chose the list approach for the first time. This allows for the implementation of FATF recommendation 3 as part of the international standard on AML/CFT without further criminalising taxpayers on the national level. Direct tax fraud has

⁴¹ As defined in Art. 10 para 2 Criminal Code, felonies “... are offences that carry a custodial sentence of more than three years”. The unofficial English translation of the Swiss Criminal Code is available from <https://www.admin.ch/opc/en/classified-compilation/19370083/201601010000/311.0.pdf>, accessed on April 3, 2016.

⁴² All legal texts (in German) can be found at https://www.admin.ch/ch/d/gg/pc/documents/2309/GAFI-2012_Entwurf-BG_de.pdf, accessed on April 3, 2016. For the sake of shortness of this text, this draft law that never came into force can be found in Annex A below.

⁴³ Available in English from <https://www.admin.ch/opc/en/classified-compilation/19995395/index.html>, accessed on April 3, 2016.

⁴⁴ Tax fraud.

⁴⁵ Tax fraud.

⁴⁶ Fraud on benefits and levies.

⁴⁷ See the report on the results of the public consultation (in German) available on <http://www.news.admin.ch/NSBSubscriber/message/attachments/31879.pdf>, accessed on April 3, 2016.