What does this law mean in practice? Each financial intermediary has to identify the tax residence(s) of his clients and undertake every year all clarifications necessary to avoid any suspicion that the funds of the client might be undeclared tax-wise. Why would he have to? Because if any suspicion arises, the financial intermediary would have to investigate on the tax due by his client at the client’s tax residence(s). This is very complicated and costly, because a legal opinion would have to be requested in every case. Once it would be established that the client is suspected to have evaded tax in the amount of at least CHF 300’000 per tax period, a suspicious activity report would have to be sent to the Swiss FIU, called Money Laundering Reporting Office of Switzerland MROS.

This legal text means that the financial intermediaries in Switzerland have to know the principles of the tax systems of all tax residences of their clients, and update this knowledge and apply it every year. It remains a secret how the Swiss government and parliament came to such a complicated solution. It would have been a much more practical implementation if the law would set the threshold at a certain amount of assets under management, i.e. CHF 1 million or 500’000. But linking the predicate offence to ML in Switzerland to an amount of tax evaded (which in most cases consist of offshore tax from a Swiss perspective) is just making it the most impractical possible.

To the contrary of the Austrian law, Art. 305bis number 3 Criminal Code clearly states that “the offender is also liable to the foregoing penalties where the main offence was committed abroad, provided such an offence is also liable to prosecution at the place of commission”, i.e. the predicate crime being punishable under the lex loci delicti. Point 5 of the interpretive note to FATF recommendation 3 seems to be implemented.

While the introduction of the aggravated direct tax misdemeanour in Art. 305bis Criminal Code has gained a lot of attention, the extension of the existing fraud on contributions and levies in Art. 14 para 4 of the Federal Law on administrative criminal law (Bundesgesetz über das Verwaltungsstrafrecht; VStrR) to cover all indirect taxes has passed almost unnoticed. There is no de minimis threshold in Art. 14 para 4 VStrR like there is in Art. 305bis Criminal Code. But there is at least one important element in Art. 14 para 4 VStrR, which is the extension to cover all federal indirect taxes including VAT, levies, stamp duty and the withholding tax. Taking the example of a hidden distribution of profits, i.e. a refund from a foreign company owed to company A in Switzerland, that is directly being paid to company B in Switzerland which has the same sole shareholder as company A. The fact that the recipient of the refund is not the company to which it is owed makes the transfer appear as an indirect

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53 From the website of MROS https://www.fedpol.admin.ch/fedpol/en/home/kriminalitaet/geldwaescherei.html, accessed on April 3, 2016, the annual reports can be downloaded, in German, French, Italian and English.