

Evasion and fraud: the Swiss distinction

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

The core of the Swiss position was a legal distinction. Swiss tax law distinguishes between tax evasion, the failure to declare income or assets, and tax fraud, the use of forged, falsified or false documents to deceive the tax authorities. Tax evasion is an administrative offence, punished by a fine imposed by the tax authorities. Tax fraud is a criminal offence, punished by imprisonment or a fine imposed by the criminal courts.¹

The distinction determined the scope of Swiss assistance to foreign states. Switzerland provided mutual legal assistance in criminal matters only for offences that were also criminal under Swiss law, so that it assisted foreign authorities in cases of tax fraud while refusing assistance in cases of tax evasion. Until 2009, its double taxation conventions provided for the exchange of information only for the application of the conventions themselves, which left the enforcement of the domestic tax laws of the partner states outside their scope. Banking secrecy, protected by criminal law, prevented banks from providing information to foreign authorities outside these channels.

The result was that a foreign client who deposited undeclared assets in a Swiss bank and did not use forged documents was protected against the tax authorities of his home country. The Swiss bank did not commit an offence by accepting the assets, since tax evasion was not a predicate offence of money laundering. The Swiss authorities did not assist the foreign authorities, since tax evasion was not criminal in Switzerland. Its employees, finally, were prohibited from disclosing the client's identity, under threat of criminal punishment.

The Swiss defenders of the system argued that it reflected a particular relationship between the citizen and the state, based on trust and self-assessment, in which the state did not have unlimited access to the financial affairs of its citizens. They also argued that the high tax rates and weak protection of privacy in other countries justified the search of their citizens

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for a safe place. The critics replied that Switzerland was profiting from the tax evasion of foreign citizens, depriving foreign states of revenues that their democratic processes had decided to collect, and that the distinction between evasion and fraud served as a cover for a business model built on complicity.

1 Notes

1. On the Swiss distinction between tax evasion (Steuerhinterziehung, Art. 175 DBG) and tax fraud (Steuerbetrug, Art. 186 DBG) and its significance for international assistance, see the standard literature on Swiss tax criminal law. To be verified. ↩

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