

The OECD standard and the grey list

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The UBS case coincided with a global offensive against tax havens. In the wake of the financial crisis, the G20, meeting in London in April 2009, declared that the era of banking secrecy was over and called on the OECD to publish a list of jurisdictions that did not comply with the international standard on the exchange of information for tax purposes. The standard, set out in Article 26 of the OECD Model Tax Convention, required the exchange of information on request for the enforcement of domestic tax laws, regardless of banking secrecy and of the distinction between evasion and fraud.¹

Switzerland had maintained a reservation to Article 26, refusing to exchange information in cases of tax evasion. On 13 March 2009, anticipating the G20 summit, the Federal Council announced that Switzerland would withdraw its reservation and adopt the OECD standard in its double taxation conventions. Despite this announcement, the OECD placed Switzerland on its grey list of jurisdictions that had committed to the standard but had not yet implemented it. Switzerland negotiated revised conventions with a dozen states within months and was removed from the list in September 2009.²

The decision of 13 March 2009 was the end of banking secrecy as a protection against foreign tax authorities in cases of tax evasion. It did not yet mean automatic exchange, since information was exchanged only on request and the requesting state had to identify the taxpayer and show that the information was relevant. It did not apply retroactively to periods before the entry into force of the revised conventions. But it abandoned the principle on which the business model of cross-border private banking had rested for decades.

1 Notes

1. On the G20 summit in London of 2 April 2009, the OECD list of jurisdictions not having substantially implemented the internationally agreed tax standard (the "grey list") and Article 26 of the OECD Model Tax Convention, see the OECD publications. To be verified. ↩
2. On the decision of the Federal Council of 13 March 2009 to adopt the OECD standard on the exchange of information (withdrawal of the reservation to Article 26) and the removal of Switzerland from the OECD grey list after the conclusion of twelve revised double taxation conventions (September 2009), see the publications of the Federal Department of Finance. To be verified. ↩

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