

## 1990: the criminalisation of money laundering

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The preparatory work on criminal provisions against money laundering was launched in 1986.<sup>1</sup> At the international level, the Financial Action Task Force was created in July 1989, on the initiative of France, at the G7 summit held in Paris, in response to the threat facing the banking system and financial institutions.<sup>2</sup>

In 1990, Switzerland introduced two new offences into its Criminal Code: money laundering, in Art. 305bis, and lack of due diligence in financial transactions, in Art. 305ter.<sup>3</sup> The second provision penalises anyone who, in the exercise of their profession, accepts, holds on deposit or assists in investing or transferring assets belonging to a third party without verifying the identity of the beneficial owner with the diligence required by the circumstances. According to the *Tribune de Genève*, it took thirteen years for the obligations of the Due Diligence Agreement to acquire the force of law, with Art. 305ter exposing a banker who fails to verify the identity of the beneficial owner of an account to up to one year's imprisonment.<sup>4</sup>

The criminalisation of money laundering marked a break. The protection of clients' privacy could no longer serve as a screen for assets of criminal origin. Bankers became criminally liable if they knowingly accepted such assets, or if they neglected to verify the identity of their beneficiaries. Banking secrecy was lifted in criminal proceedings, and institutions had to put due diligence procedures in place.

This break nevertheless remained incomplete. Money laundering presupposes a predicate offence, and tax evasion was not one of them at the time. The undeclared assets of foreign taxpayers therefore did not fall within these provisions. The Federal Anti-Money Laundering Act, adopted a few years later, would extend the due diligence obligations to all financial intermediaries and create a reporting office.<sup>5</sup> Part H will examine this framework in detail. The tax question would be settled only at the end of the crisis of 2008 to 2017, which Chapter III of this Part traces.

| Date | Milestone                                                                      |
|------|--------------------------------------------------------------------------------|
| 1977 | Chiasso scandal; first Due Diligence Agreement of the banks                    |
| 1979 | conviction of the principal culprits in the Chiasso affair                     |
| 1986 | launch of the preparatory work on criminal provisions against money laundering |
| 1989 | creation of the FATF at the G7 summit in Paris                                 |
| 1990 | introduction of Art. 305bis and 305ter of the Swiss Criminal Code              |

**Caution.** The criminalisation of money laundering in 1990 did not apply to assets that were merely undeclared to foreign tax authorities, in the absence of a predicate offence. The distinction between criminal assets and untaxed assets structured the financial centre for nearly twenty years, until the crisis of bank client secrecy.

## 1 Notes

1. University of Geneva, document cited above. ↩
2. University of Geneva, document cited above. ↩
3. University of Geneva, document cited above, which mentions the creation of the offences under Art. 305bis and 305ter of the Swiss Criminal Code; on the introduction of Art. 305ter in 1990, see also Tribune de Genève, 30 May 2016. ↩
4. Tribune de Genève, 30 May 2016, cited above. ↩
5. Federal Act of 10 October 1997 on Combating Money Laundering and Terrorist Financing (Anti-Money Laundering Act, AMLA; LBA, SR 955.0), in force since 1 April 1998, which created the Money Laundering Reporting Office within the Federal Office of Police; “Rétrospective des 25 ans de la loi sur le blanchiment d’argent”, La Vie économique, March 2023. ↩

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