

Before 2008: a secrecy already eroded

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Banking secrecy was not inviolable before 2008. The preceding chapters have shown that it already gave way in criminal proceedings, in international mutual assistance and in the fight against money laundering. In tax matters, Switzerland distinguished between tax evasion, the simple omission to declare, for which it refused assistance as a matter of principle, and tax fraud, which involved the use of forged documents and for which it granted assistance.

The relationship with the United States formed a partial exception. A study published in 2010 notes that the tax treaty between Switzerland and the United States had applied since 1951 beyond tax fraud in the narrow sense, and that an agreement extending the exchange of information to cases of “tax fraud or the like”, defined in a non-exhaustive manner, had been signed in 1996.¹ This opening did not, however, allow the American authorities to obtain information on taxpayers who merely failed to declare their assets.

With the European Union, Switzerland had concluded in the mid-2000s an agreement on the taxation of savings, which provided for a withholding tax on interest paid to European residents, largely passed on to the states concerned, without any automatic exchange of information.² This system preserved the anonymity of clients while contributing to the tax revenues of their states. It would later be replaced by the automatic exchange of information.

The OECD, for its part, had been conducting since the late 1990s a campaign against harmful tax competition and non-cooperative jurisdictions. Switzerland had entered a reservation on the provision of the OECD Model Tax Convention concerning the exchange of information, in order to preserve banking secrecy.³ That reservation would become untenable after the financial crisis of 2008.

Key point. Before 2008, banking secrecy already gave way in criminal matters and, in part, in tax matters towards the United States. The distinction between tax evasion and tax fraud nonetheless protected foreign taxpayers who merely failed to declare their assets held in Switzerland.

1 Notes

1. “La reconfiguration du secret bancaire suisse”, L’Économie politique, 2010/2, consulted on Cairn.info (September 2026). ↩
2. Agreement of 26 October 2004 between Switzerland and the European Community on the taxation of savings, in force on 1 July 2005; Federal Department of Foreign Affairs, “Échange automatique de renseignements en matière fiscale (ancien accord sur la fiscalité de l’épargne)” (Automatic exchange of information in tax matters (former savings tax agreement)), europa.eda.admin.ch (accessed September 2026). ↩
3. OECD, Harmful Tax Competition: An Emerging Global Issue, report approved by the OECD Council on 18 May 1998 (oecd.org). On the withdrawal of the Swiss reservation to Art. 26 of the Model Convention, see below in this chapter. ↩

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