

The decision of 13 March 2009 and the grey list

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

The UBS case unfolded against a changing international background. In the autumn of 2008 the financial crisis had shifted the attention of the leading economies to public revenues, and tax havens became a prominent theme of the Group of Twenty. The German finance minister, Peer Steinbrück, had threatened Switzerland with the “whip” and compared it to Indians who needed to fear the cavalry, remarks that caused lasting resentment in Switzerland.¹ The OECD prepared lists of jurisdictions that had not committed to its standard on the exchange of information, which was laid down in Article 26 of its Model Tax Convention. Switzerland, together with Austria, Luxembourg and Belgium, had entered a reservation to that article and thus did not accept the exchange of information in cases of simple tax evasion.

On 13 March 2009, less than a month after the UBS settlement, the Federal Council announced that Switzerland would adopt the OECD standard and withdraw its reservation to Article 26. The legal scholar Peter V. Kunz, writing a few weeks later, summarised the change: Switzerland would henceforth exchange information in cases of tax evasion as well as fraud, although only in individual cases on a concrete and reasoned request from a foreign authority, so that “fishing expeditions” remained excluded. Banking secrecy in the domestic relationship between the Swiss taxpayer and the Swiss tax authorities remained untouched.² The Federal Council left the domestic law unchanged and announced that it would negotiate new or revised double taxation agreements containing the standard clause, which meant that the change would take effect treaty by treaty and would apply only to periods after the entry into force of each revision.

The decision was taken under visible pressure, and its timing mattered. On 2 April 2009 the Group of Twenty met in London. On the same day the OECD published a list of jurisdictions that had committed to its standard but had not yet substantially implemented it. Switzerland appeared on this

so-called grey list.³ Swiss politicians resented the listing, since Switzerland had already announced its move and was itself a founding member of the OECD. The criterion for removal was the signature of at least twelve agreements containing the new standard.

The Federal Council pursued the negotiations with unusual speed. On 24 September 2009, the President of the Confederation, Hans-Rudolf Merz, signed a new double taxation agreement with Qatar. With it, Switzerland had signed twelve agreements containing a clause on extended administrative assistance, and the OECD Secretariat removed the country from the grey list.⁴ In the following years the network expanded. By November 2013 Switzerland had concluded agreements with more than fifty states and territories that contained the new standard.⁵

The decision of 13 March 2009 marked the point at which the distinction between evasion and fraud ceased to protect foreign clients against their own tax authorities. It did not by itself make information flow, because every request still had to identify the taxpayer, state the tax purpose and satisfy the conditions of the relevant treaty. For a client whose home state had concluded a revised agreement, however, the protection of the Swiss account now depended on whether his tax authority knew enough to formulate a request. From that point onwards, the value of banking secrecy for an undeclared foreign client lay in the practical obstacles to discovery. The purchase of stolen data, the pressure on banks to cooperate and the introduction of group requests would progressively remove those obstacles.

1 Notes

1. “Steinbrück peitscht, die Schweiz spioniert”, swissinfo.ch, 5 May 2017, https://www.swissinfo.ch/ger/wirtschaft/analyse_spion-im-dienst-ihrer-majestaet/43160522, which quotes the remark about the whip (2008) and the comparison with the Seventh Cavalry at Yuma (2009). ↩
2. Peter V. Kunz, “OECD-Musterabkommen und die Schweiz: Wie den Vorbehaltsverzicht umsetzen?”, *Die Volkswirtschaft*, 1 June 2009, <https://dievolkswirtschaft.ch/de/2009/06/kunz/>. Kunz noted that revised double taxation agreements implementing the change could be subject to optional referendums. ↩
3. “Switzerland pays the price for banking secrecy”, swissinfo.ch, 30 August 2012, <https://www.swissinfo.ch/eng/business/switzerland-pays-the-price-for-banking-secrecy/33393118>. The article records the listing in April 2009 and the removal in September 2009. ↩

4. Federal Council, “Switzerland removed from OECD ‘grey list’”, press release, 24 September 2009, <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-29205.html>. ↩
5. Federal Council, Amts- und Rechtshilfe in Steuersachen – Gleichbehandlung (n. above). ↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/zurich-the-decision-of-13-march-2009-and-the-grey-list