

The turning point of 2009: an outlook

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This book tells the end of banking secrecy for foreign clients in Part G, and only the outline of the turning point needs to be recorded here. The distinction between tax evasion and tax fraud, which had protected foreign clients since the 1930s, came under sustained attack after the financial crisis of 2008. The UBS affair in the United States, triggered by the disclosures of the former UBS banker Bradley Birkenfeld in 2007, together with the purchase of stolen data carriers by German tax authorities showed that the protection could be circumvented, and the threat of listing Switzerland as an uncooperative jurisdiction at the G20 summit of April 2009 made its defence politically untenable.¹

On 13 March 2009 the Federal Council decided to adopt the OECD standard on the exchange of information in tax matters and to withdraw its reservation on Article 26 of the OECD Model Convention. It announced that information would be exchanged only on concrete and justified requests and that the new standard would be implemented through the renegotiation of the double taxation agreements.² From that day the distinction between evasion and fraud no longer protected foreign clients against requests from treaty partners. The automatic exchange of financial account information, to which Switzerland committed in 2014 and which it applied from 2017 and 2018 onwards, completed the transformation.³

Two points of this outlook matter for the present chapter. First, the turning point of 2009 did not repeal Article 47. The provision remained in force and was even extended in 2015. What changed was the scope of the exceptions: the duties to provide information to Swiss authorities, which Article 47 had always reserved, now included duties to assist foreign tax authorities under the treaties and later under the Federal Act on the International Automatic Exchange of Information in Tax Matters. Second, the transformation concerned foreign tax authorities only. The domestic

position, in which Swiss tax authorities have no general access to bank information in the ordinary assessment procedure, remained unchanged. The Federal Council's plans to extend mutual legal assistance in criminal matters to mere tax evasion, pursued from 2009 onwards, were first postponed and finally abandoned on 29 August 2018, after the tax criminal law revision had been abandoned on 15 November 2017.⁴

1 Notes

1. Jean François Tanda, "Bankgeheimnis am Ende: Aufstieg und Niedergang eines Mythos", SRF News, 18 December 2017, <https://www.srf.ch/news/wirtschaft/bankgeheimnis-am-ende-aufstieg-und-niedergang-eines-mythos>. ↩
2. Kunz, "OECD-Musterabkommen und die Schweiz" (2009), on the decision of the Federal Council of 13 March 2009 and the planned implementation through bilateral double taxation agreements, including the constitutional question of an optional referendum on the revised treaties. ↩
3. Tanda, "Bankgeheimnis am Ende", SRF (2017), on Switzerland's acceptance of the automatic exchange of information in 2014 and its entry into force for more than eighty states in 2017 and 2018. ↩
4. Federal Office of Justice, "Ausdehnung der Rechtshilfe bei Fiskaldelikten" (see above), with the chronology of the Federal Council's decisions of 29 May 2009, 29 June 2011, 15 June 2012, 20 February 2013, 4 November 2015, 15 November 2017 and 29 August 2018. ↩

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