New Exchange of Information versus Tax Solutions of Equivalent Effect

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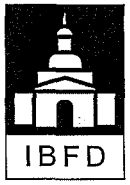

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Chapter 25

Switzerland

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25.1. The source of the EOI system in Switzerland

25.1.1. Double taxation treaties (DTTs)

25.1.1.1. The context

It is well known that for an extensive period of time, Switzerland has followed a very restrictive approach in regard to international exchange of information in tax matters. Under this so-called traditional approach, the main purpose of a tax treaty was considered to be tackling double taxation and not tax evasion.[2] Consequently, the exchange of information (EOI) based on tax treaties was only permitted in order to ensure the application of the tax treaty and not to allow for the application of states' domestic laws. Switzerland's reservation to article 26 of the OECD Model (from 2005 to 2010) illustrated this concept well: "Switzerland ... will propose to limit the scope of this Article to information necessary for carrying out the provisions of the Convention ...."[3]

Facing growing international pressure, the Swiss traditional position has evolved, gradually, first towards the United States, second vis-à-vis EU Member States, which then led, in March 2009, to a major change of policy.[4]

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2. H. Grüniger & A.H. Keller, *Internationale Amts- und Rechtshilfe durch Informationsaustausch*, Archives de droit fiscal suisse (Archives) 60 (1991/92), p. 518; D. Lüthi, *Informationsaustausch im Internationalen Steuerrecht der Schweiz*; in Höhn E., ed., *Handbuch des internationalen Steuerrechts der Schweiz*, 2nd edn, Bern 1993, p. 438.
3. OECD Model Tax Convention on Income and on Capital: Commentary on Article 26, para. 24 (28 Jan. 2003).
4. For a description of this evolution, *see*, inter alia, X. Oberson, *The Development of International Assistance in Tax Matters in Switzerland: From Evolution to Revolution*, 53 Eur. Taxn. 8, 2013, p. 368; J.F. Maraia & P. Sansonetti, Switzerland, in IFA, *Exchange of information and cross-border cooperation between tax authorities*, *Cahiers de droit fiscal international*, vol. 98b, 2013, p. 739; C. Bovet & F. Liegeois, *Cross-border Tax Administration Assistance: "For the Times They Are a-Changin"*, Revue Suisse de droit des affaires (RSDA) 2013, p. 25; R. Waldburger, *Entwicklungen in der schweizerischen Amtshilfepolitik in Steuersachen – ein überblick*, IFF Forum für Steuerrecht (FStR) 2010, p. 80.

25.1.1.2. Evolution of the DTT with the United States

25.1.1.2.1. *In general*

The conclusion of the Switzerland-United States Income Tax Treaty of 1951[5] constituted the first tangible modification. Indeed, it already provided for an EOI in the case of "tax fraud or the like". In the end, the US authorities found this clause to be inadequate, as the Federal Supreme Court (FSC) ruled that this provision of the treaty was limited to demanding a report from the Swiss authorities rather than providing original documents.[6]

The Switzerland-United States Income Tax Treaty of 1996[7] represented a more significant step forward. Within this framework, Switzerland was prepared to exchange information in case of "tax fraud or the like". This notion, fundamentally, goes back to the concept of tax fraud (*escroquerie fiscale*) developed by case law within the framework of international assistance in criminal matters.[8] The interpretation of the notion of "tax fraud or the like" has nevertheless evolved through practice, as demonstrated by the negotiation of an agreement with the US tax authorities to find a way out of the *UBS* case.

Article 10 of the 1996 protocol to the Switzerland-United States Income Tax Treaty (1996) explicitly defines the concept of "tax fraud and the like" in the following terms:

> The parties agree that the term "tax fraud" means fraudulent conduct that causes or is intended to cause an illegal and substantial reduction in the amount of the tax paid to a Contracting State. Fraudulent conduct is assumed in situations when a taxpayer uses, or has the intention to use, a forged or falsified document such as a double set of books, a false invoice, an incorrect balance sheet or profit and loss statement, or a fictitious order or, in general, a false piece of documentary evidence, and in situations where the taxpayer uses, or has the intention to use a scheme of lies ("Lügengebäude") to deceive the tax authority. It is understood that the acts described in the preceding sentence are by way of illustration, not by way of limitation. The term "tax fraud" may in addition include acts that, at the time of the request, constitute fraudulent conduct with respect to which the requested Contracting State may obtain information under its laws or practices.

5. *Convention between the Swiss Confederation and the United States of America for the Avoidance of Double Taxation with Respect to Taxes on Income* (24 May 1951).
6. CH: Federal Supreme Court (FSC), 16 May 1975, ATF 101 Ib 160.
7. *Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income* (2 Oct. 1996), Treaties IBFD (hereinafter Switz.-US Income Tax Treaty).
8. *See* sec. 25.1.7.

Later on, case law and commentators confirmed that the notion of "tax fraud or the like" in article 26 of the US-Swiss treaty corresponds, in fact, to the notion of tax fraud provided by the Federal Law on International Mutual Assistance for Criminal Matters (IMAC).[9] It can thus be concluded that the term "tax fraud" integrates the use of forged documents, as well as cunning behaviour ("scheme of lies").[10] Nevertheless, tax fraud can only be found to exist in the context of special engineering, stratagem or lies.[11]

In order to make article 26 fully efficient, the authorities no longer exchange "tax reports", as under the 1951 version, but instead exchange original copies.[12] In addition, the contracting states reached a mutual agreement in 2003 with regards to EOI based on that provision.[13]

25.1.1.2.2. *The UBS saga*

The UBS affair will remain an emblematic example of issues that can arise within the framework of international administrative assistance in tax matters.[14] The case unfolded in several stages, which reflected the various Federal Administrative Court (FAC) judgments. In a landmark case of 5 March 2009,[15] the FAC examined the validity of a group request (in fact

9. *See*, in particular, Message of the Federal Council regarding the Switz.-U.S. Income Tax Treaty (1996), p. 992 (hereinafter Message); CH: FSC, 10 Aug. 2006, 2A.608/2005, consid. 1; CH: Federal Administrative Court (FAC), 5 Mar. 2009, A-7426/2008, *UBS*, consid. 5.3.
10. CH: FSC, 27 Jan. 2004, RDAF 2004 II, 10; CH: FSC, 12 Apr. 2002, RDAF 2002 II, 307.
11. CH: FSC, 12 Apr. 2006, 2A.430/2005, consid. 4.4.; CH: FSC, 27 Jan. 2004, RDAF 2004 II 10.
12. *See* Memorandum of Understanding (MOU) (1996), art. 8a.
13. *Mutual Agreement of 23 January 2003, Regarding the Administration of Article 26 (Exchange of Information) of the Swiss-U.S. Income Tax Convention of 2 October 1996.*
14. For a broader description of the saga, *see* X. Oberson, *Récents développements dans le droit de l'assistance internationale ne matière fiscale, notamment avec les Etats-Unis: sept leçons à tirer de "l'affaire UBS"*, in *Genève au confluent du droit interne et du droit international, Mélanges offerts par la Faculté de droit de l'Université de Genève à la Société suisse des juristes*, Genève/Zurich/Bâle 2012, p. 135.
15. CH: FAC, 5 Mar. 2009, A-7342/2008; on this subject, *see* F. Amado & G. Molo, *Das Verbot von "Fishing Expeditions" gemäss dem Entscheid des Bundesverwaltungsgerichts vom 5. März 2009 und den OECD Standards*, AJP/PJA 2009, p. 539; U. Behnisch, *Amtshilfe der Schweiz in Steuer(straf)sachen, insbesondere an die USA: Durcheinandertal*, Archives 77 (2008/09), p. 737 at p. 774.

300 taxpayers), which concerned offshore companies created in order to circumvent the US "qualified intermediary" (QI) regulations. This decision, which is essential in many respects, ruled on two very controversial issues. First, the FAC confirmed that this procedure, namely a group request, complied with the rules of international assistance in tax matters and did not constitute a "fishing expedition". Second, the FAC also recognized that in this case there was a well-founded suspicion of "tax fraud or the like". In particular, the FAC conceded the existence of tax fraud, notably through abusive use of offshore structures in violation of the special confidence relationship created through the legal relationship of the QI. The cunning act consisted of interposing offshore companies in the framework of this confidence relationship, while using the independence of these structures in an abusive way, in other words without the beneficial owner "playing the governance rules" of the company, and therefore ignoring the diverse existing legal spheres.

The communication of the 300 names requested by the United States did not suffice to put an end to this affair. On 19 August 2009, the Swiss Confederation and the United States came to an agreement specifically targeting exchange requests from the IRS.[16] This additional agreement to the tax treaty provides a new specific and detailed definition of the notion of "tax fraud and the like". The agreement sets a range of criteria, which includes some of the relevant factors previously acknowledged (use of forged or falsified documents or schemes of lies) and adds to the list the situation of US taxpayers with repeated failures to report significant amounts. The efforts of the Swiss Confederation to come to an agreement were cautioned by a decision given by the FAC on 21 January 2010. The Court ruled – rightly in the author's opinion – that the UBS agreement, as a mutual agreement, cannot infringe the Switzerland-United States Income Tax Treaty.[17] In accordance

16. *Agreement between the Swiss Confederation and the United States of America regarding information requests from the Internal Revenue Services of the United States of America relating to the UBS law Swiss society, 19 August 2009*, published (French translation) in Archives 78, p. 413 (2009/10); on this subject, *see* Y. Bonnard & G. Grisel, *L'Accord UBS: spécificité, validité, conformité aux droits de l'homme*, Revue de droit administrative et fiscal (RDAF) 2010 II p. 361; T. Cottier, *Tax fraud or the like: Überlegungen und Lehren zum Legalitätsprinzip im Staatsvertragsrecht*, Revue de droit Suisse (RDS) 2011, I p. 97; T. Cottier & R. Matteotti, *Das Abkommen über ein Amtshilfegesuch zwischen der Schweizerischen Eidgenossenschaft und den Vereinigten Staaten von Amerika vom 19. August 2009: – Grundlagen und innerstaatliche Anwendbarkeit*, Archives 78 (2009/10), p. 349; M. Schaub, *Konflikt um Kundendaten: Die Situation der UBS vor dem Abkommen 90*, RDS 2011, I p. 209.

17. CH: FAC, 21 Jan. 2010, A-7789/2009; on this subject, *see*, notably, M. Reich, *Das Amtshilfeabkommen in Sachen UBS oder die Grenzen der Staatsvertragskompetenz des Bundesrats*, IFF Forum für Steuerrecht (FStR) 2010, p. 111.

with the terms of the tax treaty, the notion of "tax fraud or the like" does not include the repeated failures to report significant amounts, as defined in the UBS Agreement's appendix.

To find a solution to this legal imbroglio, the Swiss government agreed on a new protocol with the United States on 31 March 2010 (Protocol 10), which is based essentially on the 2009 UBS Agreement. This Agreement, ratified by the Federal Assembly on 17 June 2010, was consequently elevated to the level of an international treaty able to derogate from the 1996 tax treaty by virtue of the *lex posterior* and *lex specialis* principles. Since then, but only within the specific framework of this Agreement, the notion of "tax fraud or the like" has been extended to include so-called repeated incidences of a failure to report significant amounts. The validity of the "new" UBS Agreement (Protocol 10 of March 2010) was further confirmed by the FAC in a judgment of 15 July 2010.[18]

25.1.1.2.3. *Other on-going procedures against Swiss banks*

There are still on-going procedures against several Swiss banks. The IRS has requested the identities of clients who are US taxpayers and who would not have complied with their tax obligations, as well as the potential involvement of the banks concerned. The case is now handled by the US Department of Justice (DoJ). On 29 August 2013, Switzerland and the United States signed a joint statement in order to find a solution to the various procedures against certain financial institutions. In this context, the DoJ announced a special voluntary disclosure program, which should allow concerned Swiss banks to avoid prosecution in exchange for disclosures and potential penalties.[19]

In this context, it is interesting to mention a recent FAC judgment of 5 April 2012 in a case related to a request addressed to the Credit Suisse bank.[20] The request of the IRS, in fact a group request, was first rejected by the Court because it was not sufficiently clear. However, the principle of "group requests" was indeed endorsed. A new request, more detailed against clients of Credit Suisse, was later accepted by the Supreme Court on 5 July 2013.[21]

18. CH: FAC, 15 July 2010, A-4013/2010.

19. The Joint Statement and the DoJ program can be found on the Swiss Federal Finance Department website: www.dff.admin.ch.

20. CH: FAC, 5 Apr. 2012, A-737/2012.

21. CH: FSC, July 5, 2013 (2C-269/2013) *Credit Suisse*.

25.1.2. The change of paradigm of 2009

25.1.2.1. The context

International pressure also increased through progress of the work of the OECD in regard to the fight against harmful tax competition and the implementation of an international standard relating to the EOI. The intolerance of non-compliance with international standards was accentuated by the 2008 economic crisis, the 2009 London G20 Summit and the efforts of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum).

The change of paradigm occurred on 13 March 2009, when the Swiss Federal Council (SFC) officially announced its agreement to adopt the standard provided by article 26 of the OECD Model (2005), i.e. extensive information exchange upon request in respect of tax matters. The step taken by the SFC was historic, probably the most important in regards to international tax policy in the last 50 years.

On 13 March 2009, the SFC announced publicly a major change of policy. It declared a willingness henceforth to apply the standard defined in article 26 of the OECD Model within the framework of new tax treaties. This standard constitutes the foundation for the EOI on request in tax matters. However, the application of this new standard has to occur under the following conditions:

- procedural rights must be protected;
- administrative assistance must be limited to a case-by-case basis (no fishing expeditions);
- fair transitional solutions need to be found (the principle of non-retroactivity must be respected);
- the norm should in principle apply to taxes that fall within the scope of the applicable tax treaty;
- the principle of subsidiarity as defined in the OECD Model should be respected;
- Swiss domestic laws remain unchanged; and
- finally, dispositions that eliminate discriminatory treatment should be found and, to the extent possible, compensation should be obtained during the negotiations.

By the end of 2008, the OECD, within the framework of the Global Forum, elaborated on a list of projects aimed at stigmatizing jurisdictions that had not implemented the international standard in terms of EOI. During the

London G20 Summit on 2 April 2009, Switzerland was still on a "grey" list of states that had committed to implementing the international standard without having done so in substance.[22] In order to appear on the white list, a state has to sign at least 12 tax treaties implementing the standard of article 26 of the OECD Model or 12 TIEAs. In order not to remain on the grey list, the SFC undertook to renegotiate, as quickly as possible, its tax treaties in order to exceed the 12 tax treaty target. In September 2009, the OECD noted that Switzerland had signed 12 tax treaties and had been moved to the white list.[23]

25.1.2.2. Evolution of the practice

Between October 2010 and June 2011, the Global Forum reviewed Swiss regulations within the framework of the peer review procedure (first stage). It came to the conclusion that Swiss norms are too restrictive in two respects. First, the clause according to which procedural requirements should not be interpreted in a way that obstructs an effective EOI (so-called "anti-frustration clause") does not generally appear in the tax treaties (except the 1996 Switzerland-United States Income Tax Treaty). Second, the rules regarding the identification of the taxpayer and the information holder are too strict. Indeed, (i) identifying the *taxpayer* should also be possible through means other than his name and (ii) identifying the name and address of the information *holder* should only be required to the extent possible.[24]

As a consequence, on 13 February 2011, the SFC announced a change of practice in regard to these two aspects. As of that date, the ongoing or future negotiation of new tax treaties was subject to the updated OECD norm (particularly the "anti-frustration" clause and the text of article 5(5) of the TIEA Model). As far as signed, but not yet ratified, tax treaties are concerned, the Federal Assembly approved the new practice on 17 June 2011. Ten tax treaties that had already been approved by the Federal Assembly (Austria, Denmark, Finland, France, Luxemburg, Mexico, Norway, Qatar, the United Kingdom and the United States) was finally resolved by way of a regulation by Federal decree, subject to a referendum, which was approved by the Federal Assembly on 23 December 2011, with the exception of the new Protocol (2009) to the Switzerland-United States Income Tax Treaty (1996).

22. OECD Global Forum, Progress Report, 2 Apr. 2009.
23. OECD Global Forum, Progress Report, 28 Sept. 2009.
24. "*Dans la mesure du possible*", i.e. in regard to the 2009 Protocol of the France-Switzerland Income and Capital Tax Treaty (1966).

The latter was approved later because of a particular problem pertaining to the admissibility of group requests.

25.1.2.3. Admissibility of group requests

25.1.2.3.1. *Under the new Swiss-US treaty of 2009*

The Protocol of 2009 to the Switzerland-United States Income Tax Treaty (1996), signed on 23 September 2009 and approved by the Federal Assembly on 18 June 2010, raised an additional particular problem. In addition to the adaptation of the practice mentioned previously, the United States demanded that the treaty allow for "group requests" based on patterns of behaviour.

Following a negotiation process, the SFC presented a complimentary report on 8 August 2011, which completes the Message of 6 April 2011, regarding the adaption of this practice to the Switzerland-United States Income Tax Treaty (1996), as amended by the 2009 Protocol. This report aims to ensure that group requests (without the names of the taxpayers) are possible. This was approved by the Federal Assembly on 6 March 2012.

To prevent fishing expeditions, the IRS must in all cases: (i) establish the reasons why the information is needed; (ii) provide a detailed description of the pattern of behaviour; (iii) explain why it can be presumed that the persons concerned displaying that type of behaviour did not meet their legal obligations and (iv) make it plausible that the *information holder* or one of its collaborators engaged in behaviour that was both active and guilty.

25.1.2.3.2. *General admission of "group requests"*

On 17 July 2012, the OECD updated its Commentary on the OECD Model (2010) and clarified the admissibility of "group requests".[25]

The modification regarding group requests did not result in any amendments to the text of the Switzerland-United States Income Tax Treaty (1996), as amended by the Protocol (2009). In addition, it should be emphasized that neither the OECD Model (2010) nor the revised tax treaties that contain the 2009 OECD standards mention that administrative assistance is only granted on a case-by-case basis. It is therefore possible to conclude that

25. *See*, notably, OECD Model Commentary, art. 26, para. 5.2. (22 July 2010).

even before 17 July 2012, group requests were not excluded. Thus, in the author's opinion, the modification of 17 July 2012 only clarifies the existing norm. Consequently, the new practice should be applicable as of this date.[26]

25.1.2.4. Current situation

To date, Switzerland has renegotiated more than 45 DTTs with a clause corresponding to article 26 of the OECD Model.[27]

None of the treaties contain a clause similar to article 27 of the OECD Model in the area of assistance in the collection of tax claims.[28] There is a limited assistance in the notification of tax decision, under the DTT with France (article 28bis, 2009 Protocol) and a limited clause under the DTT with Austria (article 26a).

25.1.3. TIEAs

Following the new policy adopted in 2009, Switzerland also signed in 2013 three TIEAs, namely with the Isle of Man (28 August), Jersey (16 September) and Guernsey (11 September).

25.1.4. OECD Multilateral Convention on Assistance in Tax Matters

Switzerland has also signed, with no reservation, the OECD Multilateral Convention on 15 October 2013. The ratification is in process, subject to approval of the Federal Assembly and a facultative referendum (reservations are still possible during the ratification process).

25.1.5. Rubik agreements

In addition, in order to efficiently prevent international tax evasion, the SFC implemented a bilateral treaty model, which formed the basis of the so-called

26. Dissenting, R. Waldburger, *Sind Gruppenersuchen an die Schweiz rechtlich zulässig?*, FStR 2013, pp. 110, 132.
27. For a constant update, *see* the website of the Swiss Federal Finance Department: www.dff.admin.ch.
28. *See* Maraia & Sansonetti, *supra* n. 4, p. 746.

"Rubik Agreements" (also known as "Withholding Tax Agreements"), with some states, namely the United Kingdom and Austria. These models will be described further on.[29]

25.1.6. FATCA

On 14 February 2013, Switzerland signed an Intergovernmental Agreement (Model 2) with the United States in order to efficiently implement the US Foreign Account Tax Compliance Act (FATCA).[30]

25.1.7. Judicial assistance in criminal tax matters

Based on the IMAC,[31] which has been in force since 1 January 1983, Switzerland only provides criminal tax assistance in the event of tax fraud (*escroquerie fiscale*), as defined in article 3(3) of the IMAC. In order to define this notion, article 24(1) of the Ordinance on the IMAC refers to article 14(2) of the Federal Criminal Administrative Law (CAL).[32] Consequently, "tax fraud" exists in cases where the taxpayer manages, through astute behaviour, to withhold from the public authority a substantial amount representing a tax contribution, a fee or other payment or otherwise impairs its asset. "Astute behaviour" refers to a "cunning act", typically the use of machinations, manoeuvers or schemes of lies (*Lügengebäude*) by the taxpayer.[33] In order to clarify this notion, reference should also be made to article 146 of the Criminal Code.[34]

Following the change of policy in 2009, the SFC also proposed to coordinate the rules of international judicial assistance in tax matters with the rules of administrative assistance. In June 2012, the SFC proposed a pre-draft of modification of article 3(3) of the IMAC. The purpose is to open an international judicial assistance with states having ratified a DTT, in accordance with the OECD standard of article 26. In February 2013, the SFC, however, clarified that this project should be further analysed, in coordination with the

29. *See* sec. 25.7.
30. *See* sec. 25.5.
31. CH: Federal Law on International Mutual Assistance for Criminal Matters (IMAC) (*Loi fédérale sur l'entraide internationale en matière pénale*; RS 351.1).
32. CH: Criminal Administrative Law (CAL) (*Loi fédérale sur le droit pénal administratif*; RS 313.0).
33. CH: FSC, 19 Apr. 1999, ATF 125 II 252.
34. CH: FSC, 4 Apr. 1989, ATF 115 Ib 71.

pending Financial Action Task Force (FATF) recommandations in money laundering of tax crimes.

25.1.8. Implementation in Switzerland

In order to implement the EOI rules in tax treaties, Switzerland issued an application ordinance (Ordinance on administrative assistance according to tax treaties), which entered into force on 1 October 2010. Following this, the Federal Act on international administrative assistance in tax matters of 28 September 2012 was also adopted (IAAT).[35] The IAAT, implemented on 1 January 2013, replaced the Ordinance.

The IAAT is applicable to administrative assistance based on (a) double taxation treaties and (b) other international conventions, which provide for EOI in tax matters (article 1(1) of the IAAT). It also applies to the EOI rules in the Swiss-EU agreement on the taxation of savings.[36] In the author's view, it also covers the implementation rules for the recent TIEAs concluded by Switzerland. The IAAT entails procedural rules and in particular provides rights to the persons involved in the EOI process, namely the right to be heard, the right to be notified and the right to appeal.[37] According to the international standard of the OECD, a pending change of the IAAT, however, would limit the right of notification in order to ensure in case of urgent matters the effective information process.[38]

25.2. The Agreements with the EU

The adoption of the Switzerland-European Union Savings Agreement (2004),[39] which entered into force in July 2005, led to a large-scale renegotiation of many tax treaties with Member States, providing assistance in regard to tax fraud as defined under Swiss law. This new approach led to a

35. On this subject, *see* D. Beti, *La nouvelle loi sur l'assistance administrative internationale en matière fiscale – une vue d'ensemble*, Archives 81 (2012/13), p. 181.
36. *See* sec. 25.2.
37. For more details on the procedural aspects, *see* Bovet & Liégeois, *supra* n. 4, p. 32.
38. *See*, Federal Council, Message relative à la révision de la loi fédérale sur l'assistance administrative fiscale, du 16 octobre 2013.
39. Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48 EC on taxation of savings income in the form of interest payments, OJ L385 (29 Dec. 2004).

modification of Switzerland's reservation on article 26 of the OECD Model (2005). This new version reads as follows:

> Switzerland reserves its position towards paragraphs 1 and 5. It will suggest restricting the application of this article to information which is necessary for the implementation of the dispositions of the convention. This reserve will not be applied to cases of tax fraud which is liable to a prison sentence in virtue of the laws of both contracting States.[40]

With the shift of paradigm in 2009, however, the new DTTs of Switzerland include an even broader clause because article 26 of the OECD Model does not require a tax fraud. It is sufficient that the request is "foreseeably relevant" for the taxation of a taxpayer in the requesting state. Therefore, the new DTTs with EU Members States go further than what was agreed upon in the Saving Agreement.

On this occasion, Switzerland, however, was able to maintain the model of a withholding tax on savings paid by a Swiss paying agent to an EU individual resident, while preserving confidentiality.

Nevertheless, as regards indirect taxes (VAT, excise and Customs duties), Switzerland had to grant a major concession to the European Union by agreeing, in the 2004 Fraud Agreement, to renounce the distinction between tax fraud and tax evasion and open extended administrative and judicial assistance rules.[41]

25.3. Collection and EOI under anti-money laundering legislation

The Directives 2005/60/EC and 2006/70/EC are not applicable to Switzerland. As a member of the Financial Action Task Force (FAFTF), Switzerland has agreed on the principle that serious tax crimes should become a predicate of money laundering.

The definition of "tax crime" is a question of domestic law. Under current Swiss domestic law, however, tax fraud is characterized as a misdemeanour

40. OECD Model Commentary, art. 26, para. 24 (15 July 2005).
41. Cooperation Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests.

and therefore cannot be an initial crime subject to money laundering rules.[42] A pre-draft federal law has been submitted by the SFC, under which a new "qualified tax fraud" concept would be introduced.[43] In a nutshell, the new qualified tax fraud would be committed, provided (i) a tax evasion of at least CHF 600,000 of taxable amount is committed and (ii) such tax evasion consists either of (a) an astute behaviour designed to deceit the tax authorities or (b) is realized by using false, falsified or inaccurate official documents (such as books of accounts, profit and loss accounts, certificate of salary or official certifications of third parties). The proposal is still pending.

EOI in the area of money laundering would occur in the framework of the IMAC. In other words, the competent criminal federal authorities would obtain the information. It should be mentioned here that, in general, Switzerland applies the principle of "specialty", under which information obtained in criminal assistance may only be used for the purpose of the request, i.e. for criminal purposes.

It is possible, however, that an EOI would also occur under an applicable DTT, pertaining to the underlying criminal tax offences. In this case, according to article 26(2) of the OECD Model, confidentiality rules will apply. Here, the specialty principle should also apply, in the sense that the information obtained may only be used by persons and authorities mentioned under article 26(2) of the OECD Model.[44]

In Switzerland, the rules of the IAAT, notably the principle of confidentiality, are also applicable (article 8). Should Switzerland, as the requested state, discover information which could be interesting for domestic purposes, the question arises as to what extent such information may be used. Under the IAAT, only information transmitted to the competent authorities may be used in order to implement Swiss domestic tax law. However, banking information may only be used if it could have been obtained under

42. Indeed, under art. 305bis of the Criminal Code, money laundering can only concern a behaviour characterized as a crime. Crime is defined as a criminal conduct subject to imprisonment of more than 3 years (art. 10(2) Criminal Code). Under current tax law, both tax fraud, for direct tax purposes (art. 186, Federal Direct Tax Law (DTL); 59 Federal Harmonization Law on Direct Taxes (THL) and in federal taxes (art. 14(2) Criminal federal administrative law (CAL) *escroquerie fiscale*) do not characterize as crimes for the purposes of the Criminal Code. Only qualified tax fraud in organized crime in the framework of goods smuggling can be characterized as a crime (*see* art. 14(4) CAL).
43. *See Avant-projet de loi fédérale sur la mise en œuvre des recommandations du Groupe d'action financière* (27 Feb. 2013); U. Cassani, *L'infraction fiscale comme crime sous-jacent au blanchiment d'argent: considérations* de lege ferenda, RSDA 2013, p. 12; X. Oberson & E. Meler, *Fiscalité et blanchiment d'argent*, FStR 2013, p. 171.
44. *See* OECD Commentary, n. 12, ad art. 26.

Swiss law (article 21(2) of the IAAT). In other words, only in case of tax fraud[45] can banking information obtained in EOI processes be used for Swiss domestic purposes.[46]

25.4. EOI in practice

The author is not aware of any official data on the number of requests; however, some approximate figures can be given.[47] The number of requests received by the Federal Tax Administration (FTA) amounted roughly to 350 in 2011 and 1,500 in 2012. This figure seems to be growing in 2013.

25.5. The new era of exchange of information

25.5.1. FATCA

The United States adopted FATCA in 2010. Final Regulations were published in January 2013. In order to facilitate the implementation of FATCA, two Intergovernmental Agreements (IGAs) have been proposed. According to the IGA Model 1, the contracting states agree to an automatic exchange of information (AEOI) by the Foreign Financial Intermediaries (FFIs) on a reciprocal basis, under the detailed condition of the IGA.

Under IGA Model 2, however, published in November 2012, there is a non-reciprocal flux of information from the FFI to the IRS, based on a declaration of consent by the US customer. The United States may later ask for the names of the recalcitrant US clients under a group request and based on the various statistical data provided by the FFI.

Switzerland signed a Model 2 IGA with the United States on 14 February 2013 (FATCA Agreement). The Federal Assembly also accepted it in September 2013. At the outset, the FACTA Agreement is not formally a system of AEOI. A closer look at it, however shows that is getting close to that because, in the case of recalcitrant taxpayers, the Swiss FFI will communicate to the IRS, in an aggregate manner, the total amount of recalcitrant accounts. On that basis, the IRS will then be in a position

45. *See* art. 186 DTL; 59 THL; 14(2) CAL.
46. For more details, *see* X. Oberson, *La mise en œuvre par la Suisse de l'art. 26 MC OCDE*, FStR 2012, pp. 4, 14.
47. *See also* Maraia & Sansonetti, *supra* n. 4, p. 745.

to send a group request in order to obtain more precise information about the accounts holders (*see* article 5 of the FATCA Agreement). Even in this case, procedural rights of the persons concerned are protected because the Swiss FTA has to render a final decision, which will be notified, without names, in the Official Federal Gazette and on its website (article 5(3)(B) of the FATCA Agreement); the decision is subject to an appeal.

25.5.2. Use of financial intermediaries

Swiss law is very familiar to the use of financial intermediaries (or paying agents) as a vehicle to collect and deliver information.[48] Indeed, the Swiss federal withholding tax (*impôt anticipé*), which is levied at 35% on certain capital investment income (dividend, interests from bonds, investments funds or savings income) from Swiss debtor, is already applicable since decades.

On the international level, Switzerland's strategy for a long time has always favoured a system of withholding tax in order to fight against tax evasion, in lieu of a mechanism of AEOI. This approach has been implemented in the EU-Swiss Savings Agreement and is also a key aspect of the so-called Rubik agreements described in section 25.7.[49]

25.6. Joint audits

There does not seem to be many joint or multilateral audits under Swiss practice so far. However, this possibility already exists under the fraud agreement with the European Union in the area of VAT, excises and Customs duties.

Following the signing by Switzerland of the OECD Multilateral Convention in the Assistance of Tax Matters, and should this treaty be ratified, more joint or multilateral audits in future could be foreseen.

48. Id., p. 750.
49. *See* sec. 25.7.

25.7. The "Rubik" Agreements

25.7.1. General facts

In order to find an alternative mechanism to the system of AEOI, Switzerland introduced a bilateral model agreement, commonly referred to as a "Rubik agreement", consisting in the levying of a withholding tax to ensure the tax revenue of the contracting state, while preserving the confidentiality of the taxpayer concerned residing in Switzerland.[50]

To date, agreements of this type have been reached with Germany[51] (signed on 21 September 2011, then modified on 5 April 2012), the United Kingdom[52] (signed on 6 October 2011, then modified on 20 March 2012) and Austria[53] (signed on 13 April 2012), all ratified by the Federal Assembly in May 2012. It is worth noting that the initial versions of the agreements with Germany and United Kingdom were amended by a protocol in order to make them compatible with the EU Savings Directive (2003/48),[54] especially regarding the tax treatment of interest and the problem of succession.[55]

Since the German Federal Assembly failed to ratify the agreement with Germany in December 2012, it has remained ineffective and will therefore not be commented on further in this contribution. The Agreements with the United Kingdom and Austria, however, entered into force on 1 January 2013. Moreover, the Federal Act on International Withholding Tax (IWTA), regulating the implementation of these Agreements, was also implemented on

50. On this subject, *see* A. Lissi & D. Bukara, *Abkommen mit Deutschland und Grossbritanien über die Zusammenarbeit im Steuerbereich*, FStR 2012, p. 42 (Part 1); p. 103 (Part 2).
51. *Abkommen zwischen der Schweizerischen Eidgenossenschaft und der Bundesrepublik Deutschland über Zusammenarbeit in den Bereichen Steuern und Finanzmarkt* (Agreement between Germany and Switzerland on the future tax treatment of capital investment income and the treatment of previously undeclared funds) (21 Sept. 2011).
52. Agreement between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland on cooperation in the area of taxation (6 Oct. 2011) (hereinafter Switzerland-UK Agreement).
53. *Abkommen zwischen der Schweizerischen Eidgenossenschaft und der Republik Österreich über Zusammenarbeit in den Bereichen Steuern und Finanzmark* (Agreement between Switzerland and the Austrian Republic on the future tax treatment of capital investment income and the treatment of previously undeclared funds (13 Apr. 2012) (hereinafter Austria-Switzerland Agreement (2012)).
54. EU Savings Directive: Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, OJ L157 (2003).
55. On this subject, *see* R. Waldburger, *Abgeltungs-steuern im Konflikt mit dem EU-Zinsbesteuerungsabkommen?*, FStR 2012, p. 169.

1 January 2013. Finally, it should be noted that there have been ongoing negotiations with other states, notably Greece, Italy and Spain.

Except for some particularities inherent to the domestic tax laws of these states, the Rubik agreements were built on the same model. They are based on the following three pillars:
- a regularization mechanism for the past that preserves confidentiality;
- a withholding tax, collected by a Swiss paying agent, which enables, for the future, tax due on assets to be settled anonymously; and
- concessions granted to Switzerland.

25.7.2. Regularization of the past

25.7.2.1. Conditions

In order to benefit from the system of regularization of the past, the taxpayer concerned must fulfil the following four cumulative conditions:
(1) be a concerned person in accordance with the Agreement;
(2) hold assets;
(3) with a Swiss paying agent;
(4) within the reference dates set by the Agreement.

"Assets" include all sorts of bankable assets deposited by a Swiss paying agent, notably accounts, securities and structured products. Items that are not considered assets include the contents of safes, real estate, movable assets and insurance contracts subject to the regulation of FINMA (except for insurance wrappers).

The term "Swiss paying agents" includes, notably, banks and securities dealers, as well as all natural and legal persons residing in Switzerland who accept assets from third parties on a regular basis or pay income or gains or make their payments within the framework of their economic activity. This notion corresponds in fact to that defined in the Switzerland-EU Savings Agreement (2004).

25.7.2.2. Consequences

When the conditions set out in section 25.7.2.1. are met, the taxpayer concerned must communicate in writing his choice between a voluntary declaration and a withholding payment to the paying agent.

In regards to a voluntary declaration, the taxpayer concerned authorizes the paying agent to communicate information to the Swiss competent authority, which in turn will transmit it to the foreign authority. The regularization is treated as a voluntary disclosure from the foreign authority with, in principle, a waiver of prosecution, with the exception of serious cases.

The option of a withholding payment is executed by the paying agent through a deduction at source from the assets of the taxpayer concerned. The Swiss paying agent, in particular, computes levies and transfers to the Swiss competent authority one-off amounts. The rate is variable and is calculated according to mathematical formulae that take into consideration various parameters, notably the duration of the banking relationship and the difference between the account's initial and final capital. The rate varies between 21% and 41% for the United Kingdom and between 15% and 38% for Austria. The paying agent issues a certificate to the relevant person confirming that he is no longer liable for the tax on these assets for the periods in question. The certificate is provided with, "extinctive effect", which includes, without limitation, interest, penalties and extra charges. Regarding criminal investigations, the Switzerland-United Kingdom Agreement (2011) sets the limit in a side letter, which states that, to the extent that the relevant person meets the procedures set out and fully cooperates with the HMRC, it is "highly unlikely" that he would be subject to a criminal investigation.

Should the taxpayer not accept the regularization, he must close his accounts and transfer his assets to a third state, at the latest on the date of implementation of the agreement (Austria), or by 31 May 2013 (United Kingdom).

The Switzerland-United Kingdom Agreement (2011) provides for an upfront payment of CHF 500 million, to be settled by the Swiss paying agents. This payment is intended to be balanced out by subsequent payments and then reimbursed to the paying agents. The agreement with Austria does not provide for such a payment.

Similarly, Switzerland has made a commitment to communicate to the UK and Austrian competent authorities a list of the ten main states or territories to which the concerned persons transferred their closed accounts between the time the agreement was signed and 4 months from the implementation date of the agreement.

25.7.3. Withholding tax on income and future gains

Swiss paying agents levy a withholding tax on income generated and gains realized on the assets of the relevant persons.

The purpose of the agreement is to apply tax rates as close as possible to the rates charged by the state of residence of the relevant person. With regard to Austria, the rate is 25% in respect of all forms of income (including capital gains). In the United Kingdom, the system is more complicated and the rate varies depending on the type of income (dividends 40%, other income 48% and capital gains 27%).

Interest is regulated by the Switzerland-EU Savings Agreement (2004). In fact, the two systems are coordinated. As the rate provided in the Savings Agreement (35%) is higher than the Austrian tax rate (25%), the taxpayer can request reimbursement of the overpayment. However, since the UK rate is higher (48%), the Swiss paying agent levies an additional rate of 13%.

Inheritances also fall within the scope of the agreements and are subject to a 40% rate (United Kingdom). Austria does not levy such a tax.

Similar to the regularization of the past, the relevant persons are also able to authorize the Swiss paying agent to declare the income and gains concerned to the foreign competent authority through the Swiss competent authority.

25.7.4. Accompanying measures

In order to permit the proper functioning of these agreements, accompanying measures have been adopted.[56] They consist fundamentally of implementing mechanisms to ensure that the system will be respected and that, with the exception of the two main options (voluntary disclosure and withholding tax), the persons concerned and paying agents will not circumvent the obligations set out in the agreements.

In order to avoid, in particular, the reintroduction of new untaxed funds by taxpayers who have regulated their situation, the agreements provide for a specific mechanism for the EOI that goes beyond that provided by a tax treaty. Thus, according to the Switzerland-United Kingdom Agreement

56. *See* M. Weidmann & C. Suter, *Sicherstellung des Abkommenszwecks*, FStR 2012, p. 127.

(2011), the contracting state may submit specific information requests in so far as the requesting state's enquiry indicates the identity of the concerned taxpayer and plausible reasons why it is necessary to control the tax situation of this particular taxpayer. In this instance, should the concerned person hold an account in Switzerland, the Swiss competent authority communicates the name of the bank concerned and the number of accounts held. However, the number of requests is limited (500 per year). Fishing expeditions are prohibited. The Switzerland-Austria Agreement (2011) does not include such a system. Exchanges of information must be based solely on the tax treaty.

In addition, an anti-abuse clause was agreed,[57] which stipulates that Swiss paying agents must not knowingly manage or encourage the use of artificial arrangements whose sole or main purpose is the avoidance of taxation of the relevant persons under the provisions of the Agreement in respect of relevant assets. Any paying agent that does not respect this clause is required to pay to the competent authority an amount equivalent to the tax owed.

25.7.5. Concessions to Switzerland

Switzerland's main aim is to achieve via these agreements an effect sustainably equivalent to that of AEOI. A common declaration to this effect has been made by the relevant states, as well as in article 1 of the agreements.

Similarly, these states have declared that they renounce any efforts to actively acquire data stolen from Swiss banks. Moreover, they have committed, at least in theory ("highly unlikely" according to the terms of the agreement with the United Kingdom), not to prosecute the Swiss paying agents and their employees involved in offences committed before the agreements were signed.

Finally, Switzerland has also managed to obtain, even if in a relatively non-binding manner, facilities for the cross-border delivery of financial services by Swiss companies (access to the market).[58]

57. E.g. *see*, art. 34 of the Switzerland-UK Agreement (2011).
58. *See* the Memorandum on the Austria-Switzerland Agreement (2012) and the Switzerland-UK Agreement (2011).

25.7.6. Future steps

As demonstrated above, Rubik agreements have the merit of combining confidentiality and compliance with different tax obligations. However, following the refusal of the German Federal Assembly to ratify the Rubik agreement and the recent evolution of tax information exchange, especially in Europe, which indicates a significant rise of the AEOI, one may wonder if Rubik agreements constitute a sustainable solution for Switzerland in the long term. In the author's opinion, this fact does not change the usefulness of these agreements, which can function as a transitory solution by regulating the past and forming the basis for a future regime, which will most certainly arise within the following years as Switzerland continues to develop its EOI system in accordance with international standards. In the author's view, an interesting alternative to the Rubik agreement for solving the past is represented by the Liechtenstein-United-Kingdom LDF.[59]

Indeed, following a recent report of experts published in June 2013,[60] it has been declared that Switzerland is willing to discuss the adoption of an AEOI, in the event that this latter becomes a worldwide standard. However, in Switzerland's view, such a global standard would have to apply to all important financial centres, in respect of a level playing field. In addition, existing gaps must be closed in the identification of beneficial owners in the case of legal entities and trusts, as well as of other financial constructs.

25.8. The legitimacy of tax solutions other than EOI

25.8.1. Use of stolen data or whistle-blower programme

It is the author's view that use of stolen data obtained within the framework of an EOI under a DTT violates the good faith principle granted in article 26 of the Vienna Convention.[61] This rule is indeed implicit in article 26 of

59. The Liechtenstein Disclosure Facility (LDF) is an agreement reached between the Government of Liechtenstein and the United Kingdom (HMRC), valid from 1 Sept. 2006 to 5 Apr. 2015, which provides for a voluntary disclosure of UK taxpayers. Contrary to the Rubik system, the name of the taxpayer is disclosed during the process.
60. *Rapport du groupe d'experts "Développement de la stratégie en matière de marchés financiers", Exigences réglementaires relatives à la gestion de fortune transfrontière en Suisse et options stratégiques*, commonly known as "the Brunetti Report".
61. Oberson, *supra* n. 46, p. 17; same opinion, Maraia & Sansonetti, *supra* n. 4, p. 754; A. Donatsch, S. Heimgartner & M. Simonek, *Internationale Rechtshilfe under Einbezug der Amtshilfe im Steuerrecht*, Zurich 2011, p. 164.

the OECD Model so that an express mention is in this author's view not necessary.

The opinions, however, are contrasted in Switzerland. A draft proposal of the IAAT, which was issued in early 2013, would introduce a modification of article 7(c), which would disallow the use of stolen data only if they were *actively* obtained by illegal behaviour under Swiss law. The consultation process, which took place between August and September 2013, demonstrated, however, a strong opposition to such a proposal, so that it was finally deleted.[62] As of now, the use of stolen data therefore remains prohibited in Swiss law.

There are no whistle-blower reward programmes in Switzerland.

25.8.2. Voluntary disclosure programmes

So far, there is no effective tax amnesty programme in Switzerland. There has been some discussion in the media from certain political parties, but no draft proposal for such programmes actually exists.

Nevertheless, a voluntary disclosure programme is in force. It can be summarized in a very simple way. In case of a "spontaneous" declaration to the competent tax administration, a taxpayer will be able to avoid any fines related to the tax due. However, the tax that should have been declared will be levied retroactively during a period of 10 years (plus late interest). In case of inheritance, the heirs also have the same possibility, with regards to the amounts not declared by the deceased persons, and the tax will be calculated only for the last 3 years.

25.8.3. Human rights and right to privacy

25.8.3.1. Article 6 of the ECHR

Under Swiss case law, the principles laid down in article 6 of the European Convention on Human Rights (ECHR) do not apply in the framework of international administrative assistance in tax matters.[63] According to the

62. *See*, Federal Council, *Message sur la modification de la loi sur l'assistance administrative fiscale, du 16 octobre 2013*.
63. *See* CH: FSC, 5 July 2013, 2C-269/2013 (*Credit Suisse*), consid. 6; *see also* CH: FAC, 15 July 2010, A-4013/2010 (*UBS*), consid. 5.4.2.

opinion of the FSC, decisions taken under international assistance are not "criminal" within the meaning of article 6(1) of the ECHR because they pertain exclusively to the implementation of international obligations based under a treaty.[64] In the author's view, this opinion is not convincing, however.[65] Indeed, should the request of information refer to tax fraud or tax evasion, which is characterized as a criminal offence by the ECHR, the principles of article 6 of the ECHR should apply. In particular, the persons involved should have the right to remain silent.

25.8.3.2. Right to privacy

The right to privacy is part of the Swiss Federal Constitution and of article 8 of the ECHR. In a landmark case,[66] pertaining to the *UBS* case, the FAC had to deal with this issue. In a nutshell, the Court judged that even if these rights may be restricted under a process of administrative assistance, they are not absolute and can be subject to a restriction provided the following conditions were met: (i) legal basis; (ii) respect of the principle of proportionality and (iii) maintenance of the "core" of the privacy right. In this case, the Court confirmed that those conditions were met. In the particular case, the legal basis of the infringement was found in the international treaty of 31 March 2010 ("UBS agreement"), between the United States and Switzerland.

In the same vein, the SFC, in the *Credit Suisse* case, confirmed that the request of the IRS, based on article 26 of the DTT with the United States (the 1996 version), did not violate privacy rights of the persons involved, even in the case of a group request.[67] Indeed, in the latter, the facts described in the request gave sufficient elements of a "tax fraud and the like" and the principle of proportionality was respected, according to the Supreme Court.

25.8.3.3. Attorney-client privilege

The attorney-client privilege applies under Swiss law. It is protected in case of international assistance in tax matters, according to article 26(3) of the

64. Id.
65. *See* Oberson, *supra* n. 46, p. 15; *see also* Bonnard & Grisel, *supra* n. 16, p. 398; dissenting, inter alia, R. Zimmerman, *La coopération judiciaire en matière pénale*, 3rd edn, Bruylant/Berne 2009, n. 225; Donatsch, Heimgartner & Simonek, *supra* n. 61, p. 55.
66. *See* CH: FAC, 15 July 2010, A-4013/2010 (*UBS*), consid. 5.4.4; *see also*, CH: FSC, 15 July 2013, 2C-269/2013 (*Credit Suisse*), consid. 7.
67. CH: FSC, id., consid. 7.

OECD Model. It only covers traditional activities of lawyers, which does not include financial activities or the position as a member of the board of directors. Under a recent case, the FSC confirmed that a lawyer representing a client in a domestic audit procedure is performing a classical activity, covered by the attorney-client privilege.[68]

25.8.3.4. Procedural rights

Procedural rights are granted in the process of international assistance in tax matters.[69] These rights include the right to be notified, the right to be heard and the right to appeal.[70] The scope of these procedural rights, especially the unlimited right to be notified, has been criticized during phase 1 of the peer review process by the OECD Global Forum, in the sense that it could prevent an effective EOI according to the OECD standard. A draft modification of the IAAT is currently pending, which should provide for some exceptions in the rules of notification.[71]

25.9. Conclusions

Since 2009, there have been significant changes in Switzerland's policy with respect to the international EOI on tax matters. The effort to limit tax fraud, initiated in 1984 by the IMAC, was successfully maintained for more than 10 years, even within the framework of the Switzerland-United States Income Tax Treaty (1996). However, the UBS affair and global developments led to the end of this last bastion. The date of 13 March 2009, the date of the adoption of the OECD standard in regard to article 26 of the OECD Model (2010), will certainly be mentioned in Switzerland's history of international tax law.

As of that date, an evolution of international practice began to take place. Since March 2009, Switzerland has amended more than 45 tax treaties in accordance with the international standard on EOI. Likewise, Switzerland adapted its practice in February 2011 (especially on the identification of the taxpayer concerned and the information holder) in order to make it compatible with the standard currently acknowledged by the Global Forum.

68. CH: FSC, 20 Aug. 2012, 1B-380/2012; *see also* Maraia & Sansonetti, *supra* n. 4, p. 753.
69. *See* Oberson, *supra* n. 46, p. 15; Maraia & Sansonetti, id., p. 754.
70. E.g. *see* CH: FAC, 15 July 2010, A-4010/2010, consid. 4.2.
71. *See* sec. 25.7.

Moreover, in July 2012, Switzerland accepted the principle of "group requests" within the framework of article 26 of the OECD Model (2010). This further led, in October 2013, to the signing of three TIEAs and of the OECD Multilateral Convention on Mutual Assistance in Tax Matters.

As a result of these developments, it can be concluded that, to date (November 2013), Switzerland's tax policy, now compatible with international standards, did not benefit from significant concession from its main adversaries.

Nonetheless, Swiss tax policy continues to evolve. The Rubik agreement model constitutes an important challenge for Switzerland's future policy, which is to show that this model, which combines both respect for the state of residence's tax provisions and confidentiality in the source state, namely Switzerland, can serve as an alternative to the AEOI. However, given the more recent developments (as described in Section 25.7.6.), the Rubik agreements – perhaps in a modified form – may also serve as an intermediary step on the path to an AEOI provided that, as detailed above, the conditions required by Swiss authorities are fulfilled.

With the "big bang" in the development of EOI, careful attention should then be given to the definition of a common standard, effectively applied by all the major partners, and of rules of protection of the persons involved.[72]

72. X. Oberson, *General Report*, in IFA, *Exchange of information and cross-border cooperation between tax authorities, Cahiers de droit fiscal international*, vol. 98b, 2013, p. 57.