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# SWISS BANKS – A TOOL FOR TAX EVASION, TAX AVOIDANCE, AND MONEY LAUNDERING

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## Chapter - 1

### 1.1 Introduction

For decades Switzerland has been considered as the ‘grandfather’ of the world’s tax havens. It is one of the largest offshore financial centres in the world and one of the world’s biggest secrecy jurisdictions, also vastly known as “tax havens”.<sup>1</sup> For numerous reasons Swiss Banks are favoured by many, some of the benefits include; low levels of financial risk and very high levels of privacy.<sup>2</sup>

The concept of banking secrecy in Switzerland was first codified with the Banking Act of 1934, therefore making it illegal to disclose client’s information to third parties without the client’s consent, which favoured many individuals involved in criminal activities to store their proceedings in these banks. A London-based Tax Justice Network ranked Switzerland's banking sector as the "most corrupt" in the world in 2018 due to Switzerland’s large offshore banking industry and very strict secrecy laws. The ranking attempts to measure how much assistance the country's legal systems provide to money laundering, and to protecting corruptly obtained wealth.<sup>3</sup> Swiss banks have been involved in a number of criminal cases and as a result had to pay out billions in penalty. Swiss secrecy laws for decades have attracted criminals around the world to store their assets in these banks and use these laws to avoid taxes. However, in the recent years, international pressure has forced Switzerland to sign agreements which compel its banks to exchange information about its clients. One of such agreement is the AEOI which has over 45 countries (including India) agreeing to the common reporting standard. The question remains if these measures are enough to prevent Swiss Banks from being used as tools

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<sup>1</sup> <https://www.topmba.com/jobs/career-trends/switzerlands-tax-haven-what-you-need-know>

<sup>2</sup> <https://www.investopedia.com/ask/answers/08/swiss-bank-account.asp>

<sup>3</sup> <https://www.thelocal.ch/20180131/switzerland-remains-top-of-financial-secrecy-ranking-as-us-rises-to-second/>

for financial crime, this question and many more will be answered and analysed in this research paper.

## **1.2 Research Methodology**

The method of research used in this paper is descriptive. The various sources that have been used in this research paper are primary sources like statutes and case laws as well as secondary sources like books, journals, articles, and websites.

## **1.3 Research Question**

1. How do Swiss Banks Facilitate Tax Evasion, Tax Avoidance, and Money Laundering?
2. Are Swiss Banks Still Effective Tools for Financial Crime?

## **1.4 Literature Review**

**Cambridge University Press, Journal: “THE EMERGENCE OF THE SWISS TAX HAVEN, 1816-1914” < <https://doi.org/10.1017/S0007680520000914>>**

This journal presents a historical perspective on the emergence of Switzerland as one of the major tax havens in the world. The Cambridge University Press did a phenomenal job at recognizing and explaining in detail all the factors that influenced Switzerland in becoming arguably one of the most important tax havens in the world. This journal also highlights what kind of impact tax havens have had in the capitalist system.

“There is general consensus that tax havens have long played a major role in the evolution of the capitalist system on a global scale. There is also no doubt that Switzerland is one of the first, if not the first, tax haven to have emerged, as well as one of the most important in the world. However, knowledge and understanding of the history, particularly the distant past, of tax havens remains lacking, despite the considerable volume of literature devoted to them. Therefore, this article attempts to make two innovative contributions. The first is an attempt to explain the emergence of the Swiss tax haven, by analysing the processes and factors whose intertwining led to its emergence. It thus improves the general understanding of the genesis of tax havens at an international level. The second contribution is to show that already on the eve of World War I, the Swiss Confederation possessed the necessary characteristics for a tax haven.”

“To better understand the causes of the transformation of a state like Switzerland into a tax haven, it is necessary to distinguish two spatial scales. On the one hand, this major change resulted from processes and factors that can be called “internal,” “endogenous,” or “pull” in the sense that, fundamentally, they refer to the national space, in which the Swiss state is sovereign, and are largely determined by the Swiss actors themselves. On the other hand, it was caused by processes and factors that can be called “external,” “exogenous,” or “push” in the sense that they took place outside the Swiss borders. This means that they presented themselves to the Swiss actors as specific situations, to which they could react—and actually did react—but which they could not, or could barely, influence directly. At the present stage of my investigations, it seems impossible to establish which of these two spatial scales was more influential. In other words, keeping in mind Palan, Murphy, and Chavagneux's analysis that “to understand tax havens” it is not sufficient to “focus on the territories themselves” but requires that “one needs to appreciate the geopolitical and environmental conditions that gave rise to them in the first place,” I attribute an equally important role to external factors as to internal factors.”

**Christophe Farquet Université de Lausanne, European Historical Economics Society,**  
**Article: “ THE RISE OF THE SWISS TAX HAVEN IN THE INTERWAR PERIOD:**  
**AN INTERNATIONAL COMPARISON” < [http://www.ehes.org/EHES\\_No27.pdf](http://www.ehes.org/EHES_No27.pdf) >**

The Second World War has had a tremendous impact on the world economy and tax regimes around the globe. This article published by the European Historical Economics Society reveals the factors influencing the emergence banking secrecy laws in Switzerland with a comparative analysis to other European Nations.

“The history of tax havens during the decades before World War II is still little known. To date, the studies that have focused on the 1920s and 1930s have presented either a very general perspective on the development of tax havens or a narrow national point of view. Based on unpublished historical archives of five countries (Switzerland, Great Britain, Belgium, France, Germany), this paper offers therefore a new comparative appraisal of international tax competition during this period in order to answer the following question: What was the specificity of the Swiss case – already considered a quintessential tax haven at the time – in comparison to other banking centres? The findings of this research study are twofold. First, the 1920s and 1930s appear as something of a golden age of opportunity for avoiding taxation through the relocation of assets. Most of the financial centres granted consistent tax benefits

for imported capital, while the limited degree of international cooperation and the usual guarantee of banking secrecy in European countries prevented the taxation of exported assets. Second, within this general environment, the fiscal strategies of a tax haven like Switzerland differed from those of a great financial power like Great Britain. Whereas the Swiss administration readily placed itself at the service of the banking community, British policy was more balanced between the contradictory interests of the Board of Inland Revenue, the Treasury, and the English business circles.”

“The role of taxation in the transformation of Swiss banks into a refuge for capital flight after World War I has already been identified by several historical studies. The costs of war and reconstruction brought about considerable tax increases in the former warring countries, which in turn increased the incentive to relocate assets in order to escape tax controls. In contrast, the attractiveness of the Swiss financial centre was reinforced by the maintenance in Switzerland of a low tax burden and the guaranteed rigorous respect of bank secrecy by the administration.<sup>2</sup> In external relations, these tax benefits were also vigorously defended in the face of the incipient international pressure occurring from the beginning of the 1920s.<sup>3</sup> From these different studies, the overall idea emerges, then, that an active policy of fiscal attractiveness was pursued in Switzerland and that this played a crucial role in the internationalization of the Swiss financial centre that began during the interwar years.”

## **1.5 Hypothesis**

Swiss banks no longer aid financial crime to a great extent as modern day international laws have limited the effectiveness its banking secrecy laws.

## **1.6 Scope and Objective**

This research paper will present an in-depth analysis on banking in Switzerland and financial crimes that it has been involved in. Emergence of Swiss banks and its banking secrecy laws from a historical perspective, the concept of tax havens, and numerous cases relating to swiss bank secrecy laws will be discussed in this research paper.

## **Chapter – 2**

### **2.1 How do Swiss Banks Facilitate Tax Evasion, Tax Avoidance, and Money Laundering?**

In the past couple of decades the Swiss banking sector has come under the radar of a number of nations that have uncovered citizens hiding money in Swiss bank accounts to avoid paying taxes.<sup>4</sup> Switzerland being a tax haven plays as a vital instrument that facilitates individuals and organizations around the world to hide their money in Swiss Banks. Numerous journals have pointed out that Switzerland is the oldest as well as the most important tax haven in the world. In 1971, the seminal report published by the Economist Intelligence Unit opened with this sentence: “The oldest established of the modern tax havens is Switzerland.”<sup>5</sup> However, before proceeding further with this analysis, it is very important to understand what a tax haven is and how it functions.

### **Tax Havens**

According to Investopedia, ‘Tax Havens’ are countries that offer overseas individuals or organizations minimal or even no tax liabilities for their bank deposits in an economically and politically stable environment. They have tax advantages for wealthy businesses and individuals, and great potential for misuse in illegal tax avoidance and evasion schemes.<sup>6</sup> The most common use of tax havens by the wealthy legally is using them as a means to stash money earned abroad while avoiding paying taxes in the individual’s home country or country of residence. Nevertheless, the illegal use of tax havens is to hide money from tax authorities at home as the tax haven can be beneficial to the wrongdoer by not cooperating with the foreign tax authorities. However, in the past couple of years, due to increasing international political pressure, Swiss banks being forced to cooperate with foreign tax fraud authorities. In short, tax havens are jurisdictions with very low taxes and no necessary requirements for residence of foreign organizations and individuals who are willing to stash money in the financial institutions of these tax haven jurisdictions. Features of a tax haven include;

- i. Minimal or no taxes on specific types of income
- ii. Financial Secrecy Laws
- iii. Lack of Transparency
- iv. No Requirements for Substantial Activities

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<sup>4</sup><https://www.swissinfo.ch/eng/swiss-bank-pays-up-to-settle-german-tax-evasion-probe/46565544#:~:text=Switzerland's%20Migros%20Bank%20has%20agreed,tax%20evasion%20issues%20with%20Germany.&text=In%20recent%20years%2C%20the%20Swiss,accounts%20to%20avoid%20paying%20taxes.>

<sup>5</sup> Doggart, Tony and Voûte, Caroline, Tax Havens and Offshore Funds (London, 1971)

<sup>6</sup> <https://www.investopedia.com/terms/t/taxhaven.asp>

Switzerland perfectly fits into the definition of a tax haven and matches all the features, and every year since the financial crisis has been ranked among the top three tax havens in the world. Swiss banks have a big reputation and are renowned around the world for their discreet and sophisticated services. In fact, Switzerland has been considered to be a tax haven since the 1920s, with its trusted system offering financial stability and growth opportunities to its clients. It also offers privacy and security perks however it is not completely tax free, additionally, Switzerland is very politically and economically stable. As a matter of fact, Swiss banks are such a preferable tax haven that 30% of the US Fortune 500 companies have subsidiaries in the country.<sup>7</sup>

Over the years a number of Swiss Banks have been involved in cases relating to tax evasion, so much so that numerous Swiss banks such as UBS, Julius Bar, and Credit Suisse have shelled out a penalty to avoid prosecution in the neighbouring EU countries. Having appealed against a 4.5 billion euro tax evasion penalty imposed in 2019, a Swiss bank by the name of UBS is still awaiting a court verdict in France,<sup>8</sup> another Swiss bank called Migros has agreed to pay 2.4 million euros to clear up its tax evasion issues with Germany, and such cases are numerous. The biggest factor that facilitates tax evasion through Swiss banks is the country's bank secrecy and client confidentiality laws that have been in place since the early 1700s. Swiss bank secrecy laws were first codified in 1934 in the Federal Act on Banks and Savings Banks, and although these laws were used to protect assets of Nazi prosecution victims during the Second World War, ever since then until recently these laws have also been tools for wealthy individuals and organizations to facilitate activities such as hiding assets, tax evasion, and other financial crimes. These banking secrecy laws prohibit the disclosure of client's information under a variety of policies. While Swiss citizens are entitled to complete banking secrecy protections, foreign clients are afforded with some of the world's most stringent bank-client confidentiality protections. The client, in exchange for the services, is charged with a so called "low, lump-sum option on the money they bank" after which the tax authorities of Switzerland consider the tax burden settled. After the passing of the Banking Law of 1934, during WW2 as European nations began to increase taxes to finance war, Swiss banker travelled all across Europe to advertise banking secrecy that helped the wealthy move their assets and holdings into Swiss bank accounts to avoid taxation. As of 2018, the Tax Justice Network has mentioned that the Swiss banking sector is the "most corrupt in the world" due to its very strict secrecy laws and

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<sup>7</sup> <https://www.topmba.com/jobs/career-trends/switzerlands-tax-haven-what-you-need-know>

<sup>8</sup> <https://www.swissinfo.ch/eng/swiss-bank-pays-up-to-settle-german-tax-evasion-probe/46565544>

large offshore banking industry that allows money laundering and hiding illegally obtained money. Breaching of the Swiss banking secrecy law is a punishable offence which amounts to a maximum of five year imprisonment and a fine of 250000\$ under Article 47 of the Banking Law of 1934. Swiss authorities have been fighting a running battle with Rudolf Elmer, 53, a former senior employee of the Julius Baer bank who posted internal paperwork on internet sites which, he claims, reveals tax evasion and money laundering by individuals. Elmer imprisoned for 30 days and told he will be charged for breaking the secrecy laws.<sup>9</sup> In 2008, a UBS employee by the name of Bradley Brikenfled was arrested by American authorities and pleaded guilty to organising tax fraud, according to him, UBS staff routinely broke laws forbidding foreign bankers to tout for business among wealthy individuals from the US. They travelled to a yachting events sponsored by UBS, lying on their visa forms about the purpose of their visit, along with laptops with heavily encrypted files and deploying counter-surveillance techniques for which they were specially trained. Swiss tax regimes are also extremely beneficial for the wealthy and big industries; Switzerland taxes households instead of individuals and this lowers and simplifies taxation for wealthy couples. It also very beneficial for foreign corporations to set up office in Switzerland as the local government offers significant tax breaks to companies that hold 10% shares of other companies. The Swiss government reduces the amount of taxes a corporation owes on profit based on the number of shares it owns. Therefore, shell companies take advantage of this low taxation and set up operations in Switzerland.<sup>10</sup>

## **2.2 Are Swiss Banks Still Effective Tools for Financial Crime?**

The majority of overseas wealth of Switzerland originates from France, Saudi Arabia, and Germany. The fight against financial crimes through Swiss banks has been ongoing for years. However the cases in the recent years have been plenty;

### **Renzo Gadola Case**

A swiss banker and investment manager by the name of Renzo Gadola who worked for a renowned swiss bank UBS from 1995 to 2008, was arrested for helping US citizens evade paying taxes through offshore financial tools. While working in UBS, it was alleged that Gadola not only helped US citizens evade taxes but actively discouraged them from joining the Internal Revenue System program which provided amnesty for American tax evaders who

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<sup>9</sup> <https://www.theguardian.com/business/2009/feb/05/tax-gap-avoidance-switzerland>

<sup>10</sup> <https://www.estv.admin.ch/estv/en/home/fta/swiss-tax-system/swiss-tax-system.html>

voluntarily disclosed their accounts. The US government charged 36 of Gadola's clients with tax evasion.<sup>11</sup>

### **Belgium Tax Investigation**

In the June of 2014, Marcel Brühweiler, the chief executive of UBS in Belgium, was arrested on the grounds of alleged fraud. It was alleged that UBS Belgium actively recruited rich Belgians, proposing to funnel funds to secret Swiss accounts which enabled tax avoidance.

### **French Tax Investigation**

A swiss bank's wealth management banker allegedly broke the law by helping French taxpayers in hiding their assets in the bank's controlled offshore assets to evade taxes. The bankers intended to direct their French client's assets to the bank's Switzerland operation, rather than keeping the money in France. After multiple arrest warrants against the bank's employees and despite numerous appeals in court, in February 2019, a French court fined the bank \$4.9 Billion for helping clients evade taxes.

### **Israeli Tax Investigation**

Three of Israel's largest banks, Mizrahi-Tefahot, Bank Hapoalim, and Bank Leumi, were under investigation by US authorities in 2011. The banks were suspected in helping American clients evade tax. In 2014, 28 people were arrested by the Israeli authorities and the investigation revealed thousands of swiss bank accounts held by Israelis. "We suspected that the vast majority of money held in the accounts is not reported to the tax authority" said the Israeli Tax Authority<sup>12</sup>. In March of 2018, the Israel State Attorney's Office filed multiple indictments against 11 Israelis for deceit, fraud, filing a false return and omitting income from a tax return.

Switzerland has signed the Foreign Account Tax Compliance Act (FACTA), which obligates the country's banks to reveal information about its US client or face penalties. Similar agreements have also been signed with the EU which was said to effectively end privacy for EU swiss bank account holders, in short, according to the Financial Secrecy Index report, Swiss banks will exchange information with developed countries if they deemed absolutely necessary

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<sup>11</sup><https://www.bloomberg.com/news/2011-08-02/ex-ubs-banker-lack-charged-with-conspiring-to-help-americans-evade-taxes.html>

<sup>12</sup><https://www.reuters.com/article/us-israel-ubs-ag-taxevasion/israel-tax-evasion-probe-at-ubs-leads-to-28-arrests-idUSKBN0JM1OJ20141208>



but however will continue to hide the assets of citizens of developing countries such as India, Brazil, and a number of African countries and so still remains in the top three position on the Financial Secrecy Index as of 2020.<sup>13</sup>

Switzerland accepting the Automatic Exchange of Information (AEOI) standard was also a huge step towards fighting financial crime in Switzerland. The AEOI is the exchange of information between countries without the need to request it, the purpose it is to reduce global tax evasion.<sup>14</sup> Switzerland has been implementing the AEOI standard since January 1 2017. Since then, the reporting Swiss financial institutions have been collecting information from their clients to be transmitted, provided the clients are tax residents in an AEOI partner state of Switzerland. This information is transmitted once a year to the competent authority in the partner state. The first exchange took place in autumn 2018. The country reviews of the AEOI began in 2020. In order to ensure the integrity of the AEOI standard from the outset, its key elements were pre-audited in a process since 2017. The first element of this step-by-step pre-audit is compliance with the provisions on confidentiality and data security.<sup>15</sup> The AEOI agreement has been signed between Switzerland and 40 countries and last year 10 more countries were added including India. However, the information about the contributions to NGOs and other similar organizations, as well as details on investments in digital currencies still do not fall within the framework of the AEOI.<sup>16</sup>

## **Chapter – 3**

### **3.1 Conclusion**

Banking in Switzerland dates to the early 18<sup>th</sup> century through the country's merchant trade and has, over the centuries, grown into an international industry that is highly regulated and complex. As reputed as the Swiss banking industry is for its stability and customer service, it also highly known to have served as a tax haven for the wealth of dictators, mobsters, arms dealers, despots, corrupt officials, corrupt politicians and tax cheats of all kind. A recent study from a consulting firm, Boston Consulting Group published that no country in the world manages as many foreign assets as Switzerland, an astonishing figure close to \$2300 billion.

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<sup>13</sup> <https://www.financialsecrecyindex.com/introduction/fsi-2018-results>

<sup>14</sup> <https://www.revenue.ie/en/companies-and-charities/international-tax/aeoi/what-is-aeoi.aspx>

<sup>15</sup> <https://www.internationaltaxreview.com/article/b1qhp9yx08s1mp/switzerland-steps-up-crs-implementation>

<sup>16</sup> <https://timesofindia.indiatimes.com/business/india-business/india-gets-3rd-set-of-swiss-bank-details-under-automatic-info-exchange-framework/articleshow/86934907.cms>

The sum corresponds to almost a third of all foreign assets worldwide followed by financial institutions from Hong Kong and Singapore, but even they don't manage half as much foreign capital as Swiss Banks.<sup>17</sup> A multitude of various investigations by authorities from a number of different countries have proven that Swiss banks, because of their strict bank secrecy and client confidentiality laws do play a major role in various financial crimes ranging from tax evasion to fraud and money laundering. Over the years Swiss banks were compelled to pay exorbitant amounts of money as penalty for their actions and due to immense international pressure were forced to get into agreements where they now have to exchange information about their clients without request. The reputation of Swiss banks being tools for financial fraud is beginning to die to the implementations of AEOI standards, however there are a number of shortcoming in what information can be exchanged according to AEOI and a large number of countries who are still not part of it and for the citizens of those countries, the Swiss banking system can still be used as an effective tool for financial crime and due to its convenient tax regime, Switzerland remains to be one of the largest tax havens in the world.

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