

# Bank Secrecy

## Why bank secrecy has become increasingly important

The concept of a numbered, or "private" account began before World War II. The Swiss created the accounts to keep the financial assets of war refugees secret and private. Swiss banking laws made it a serious offense, subject to heavy fine and imprisonment, for any bank or bank employee to reveal even the existence of a banking relationship.

Bank secrecy faced an even greater challenge in the years after World War II. The allied governments believed that Nazi officials had deposited gold and other assets in Switzerland, demanding disclosure of bank records of all non-Swiss depositors. The Swiss refused to comply, stating that they had been neutral during the war, and respected the privacy of all individuals. Thinking that the Swiss would back down on their demands, the U.S. government seized all Swiss assets in the United States. Switzerland remained firm and refused to offer any information. A compromise was worked out, and the Swiss government paid the U.S. approximately \$60 million dollars for the return of Swiss assets. No bank information was ever released.

In May 1984 Swiss voters went to the polls to vote on a referendum that would have reduced bank secrecy in Switzerland. The voters rejected the proposal by a 3 to 1 margin. After the vote in 1984, the Federal Court expressly declared that bank secrecy would not be affected by revision of the 1934 Swiss Banking Law.

## Bank Secrecy Laws Worldwide

Tax havens around the world have varying degrees of bank secrecy protection. Some have formal secrecy laws in place, while others rely on the English common law rule of confidentiality. Although English common law requires banks and their employees to maintain confidentiality, it is possible (although technically very difficult) to breach the English common law rule of confidentiality.

Tax havens with formal bank secrecy laws will often have specified penalties for breaking bank secrecy. For example:

- Antigua's Offshore Banking Secrecy Act and the International Business Corporation Act (28/1982 sub section 244 1-5 "Confidential matters protected") prohibits the unauthorized disclosure of information pertaining to a clients affairs to a third party. The Act provides criminal penalties of up to US\$50,000 or a prison term not to exceed one year for any disclosure concerning the business affairs of a client or transaction.
- Bank secrecy in Austria is certified by the Austrian Banking Act, Section 23, which states: "*The banks, their shareholders, their partners, members of their various bodies, employees as well as all other persons in any way acting for the banks may not disclose or make use of secrets which have been entrusted or made accessible to them solely due to the business relationships with customers. The obligation to maintain secrecy shall apply without time restriction. Whoever discloses or makes use of facts which are subject to bank secrecy in order to obtain financial benefit*

*for himself or a third party, or to cause disadvantages to another, shall be sentenced by the court to imprisonment of up to one year or a penalty of up to 360 days court rates."*

- The Bahamas Bank and Trust Company Regulatory Act prohibit the unauthorized disclosure of information pertaining to a clients affairs to a third party, without the customer's written permission. The Bahamas secrecy laws are imposed on all bank and trust companies, their directors, officers, employees, attorneys, auditors, and outside agents. Only by Supreme Court Order can information be supplied about any account. A fine of US\$15,000 applies to any person disclosing details of accounts contrary to the Bank and Trust Company Regulatory Act.
- Swiss bank secrecy is fixed in article 47 of the Federal Law on Banks. It applies not only to everyone working within the bank, at whatever level, but also to members of its external auditors, even if the holders of private information are no longer working with the bank. Switzerland's bank secrecy law makes it a criminal offense for a *"bank or any of the bank's employees to divulge information of any kind to any individual, institution, public or private, with respect to any bank customer."* Any infringement of the law can lead to criminal prosecution. The penalty for breaking bank secrecy is a minimum fine of SFr50,000 or six months in jail. If the act has been committed by negligence, the penalty shall be a fine not exceeding SFr30,000. The violation of professional secrecy remains punishable even after termination of the employment relationship.

Most other jurisdictions with bank secrecy laws have similar penalties.

### **Are there situations where bank secrecy does not apply?**

Bank secrecy may be lifted under certain extreme conditions involving criminal activity, such as drug-related money laundering, robbery, fraud, and the finance of terrorism. Some tax haven countries, including the Bahamas, the Cayman Islands, the Isle of Man, Liechtenstein, and others, have passed specific statutes that release bank secrecy in cases of insider trading and securities fraud.

Note that in virtually all tax haven jurisdictions, bank secrecy is maintained in cases involving taxation, and is the primary reason that tiny countries such as Liechtenstein and the Bahamas have become major international banking centres. The old adage that capital flows where it is treated well certainly applies to jurisdictions that offer bank secrecy.

Something to think about.

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