Association de
Banques Privées Suisses
Vereinigung
Schweizerischer Privatbanken
Association of Swiss Private Banks

Banking secrecy for Swiss clients at a crossroads

Yves Mirabaud, Senior Partner, Mirabaud SCA, Geneva
President of the Association of Swiss Private Banks

Bern, 14 January 2016, press conference
Check against delivery.

Ladies and Gentlemen,

After this discussion of the international dimension of our industry, I plan to address a more purely Swiss aspect, namely the scope of banking secrecy for clients residing in Switzerland.

To set the tone for what follows, I would like to start by remarking that the Swiss banking sector as a whole approves the move towards automatic exchange of tax information with foreign countries, as this is the model that the international community has chosen. The importance of the European Union for our country is reflected in the fact that the second automatic exchange agreement Switzerland signed was with the EU. For the global fight against tax evasion to succeed, however, it is essential that other international financial centres implement automatic exchange in the same manner, at the same time and with the same partners as Switzerland. Without this indispensable "level playing field", the problem will simply shift to countries less willing than Switzerland to implement the standard developed by the OECD. Our authorities should keep that in mind.

No foreign pressure

It is important to note that the international standard for automatic exchange of information does not specify that countries must apply the same system at the domestic level. Each country is free to combat tax offences as it sees fit. This principle is central to the upcoming debate on the scope of banking secrecy in Switzerland.

Currently, Swiss tax authorities may obtain information from banks only when the suspected offence is especially serious. In effect, tax evasion – that is, a simple failure to declare – is considered only an administrative offence. However, banking secrecy may be voided in cases involving a criminal offence such as tax fraud. This distinction is due to the fact that in Switzerland, unlike many other countries, tax authorities check every single tax declaration and are therefore able to detect inconsistencies.

Today, in the cases of tax evasion, banking secrecy currently remains in force, with the exception of repeated offences incurring large tax liabilities. The Federal Council would like to make this exception the rule, by allowing tax authorities almost unlimited access to banking data, regardless of the nature of the offence. Conversely, the initiative 'Yes to the protection

of privacy', also known as the Matter initiative, aims to enshrine current practice – already included in Swiss law – in the constitution so as to ensure no further change is possible.

A personal choice for taxpayers

Both our associations are obviously highly sensitive to the issue of privacy; discretion is part of our members' and their employees' DNA. Information concerning clients' assets, income and expenditure, not to mention their status as clients, is strictly confidential and cannot be allowed to leave the bank. No one wants a neighbour, a colleague or the media to gain access to such information against his or her will, and banking secrecy is there to ensure that this does not happen.

Vis-à-vis the tax authorities, however, banking secrecy may be lifted in the case of overriding interest. The real question is whether tax departments should be enabled to act as law-enforcement bodies. There is a philosophical dimension to this question as well, in that it touches on the relationship of trust between the state and its citizens. Consequently, the people should be allowed to decide for themselves. They will get an opportunity to do so when the Matter initiative comes to a popular vote, maybe already in the second half of 2016.

More specifically, the authors of the initiative want to make any disclosure of 'information' to the tax authorities by 'third parties' conditional on obtaining a criminal court order. The Federal Council has come out against this proposal, arguing that it exceeds current practice in many areas (employers, insurance companies, indirect taxes) and would significantly complicate the accurate tax collection by the government.

Consequences of the initiative

What is certain is that, if the initiative is accepted, the state will increase the requirements for banks to ensure that their Swiss clients are tax compliant. If the tax authorities cannot easily obtain the information they want, then banks will have to take more steps to ensure taxpayers meet their fiscal obligations. This is not their responsibility at present, but it may become so in the future, for instance, if withholding tax is no longer collected by the debtor – the entity providing the income – but instead by the paying agent, that is, the banks. If so, withholding tax may be levied not only on Swiss income but also on income from abroad.

If the initiative is refused, on the other hand, the government will probably go ahead with its planned reform of the criminal tax law, broadening the scope for the authorities to access banking data. The merest hint of evasion will give tax departments cause to request information from banks. All undeclared account could potentially be exposed, within limits to be defined by Parliament.

The Federal Council was right to postpone its reform of the withholding tax and the criminal tax law until after the vote on the Matter initiative. The result of that vote will give strategic direction to our tax system. The people of Switzerland should decide for themselves how they wish to meet their tax obligations going forward: either through a withholding tax, as today, or by allowing greater exchange of information between the banks and the tax authorities. Our industry can adapt to either of these scenarios, but in both cases a coherent tax system is essential.

A coherent tax system: either taxes or information

What do we mean by a coherent tax system? One that provides either taxes or information, but not both; which ensures that taxpayers bear full responsibility for their tax obligations; and which does not make banks responsible for analyses and investigations that fall under the purview of the tax authorities.

If the initiative is accepted, meaning that banks may not provide more information than today, it will indicate a clear preference for a "safeguard" tax. In the case where banks are in the future tasked with collecting withholding tax according the paying-agent principle, the conditions of this tax must be clearly defined: it should be levied only on clients who live in Switzerland. Exempting clients living abroad would stimulate the Swiss bond market, since bonds could be issued in Switzerland without their yields being liable to a 35% withholding tax, which is difficult to claim back. Automatic exchange of information would ensure that clients residing abroad fully declare such income.

Conversely, if the initiative is refused, nothing will change. Some interest groups would interpret that result in a way that the Swiss people agree to grant the tax authorities greater access to their banking data. It is likely that the authorities will want to make it easier to lift banking secrecy if it suspects tax evasion. To limit unwarranted snooping, however, a court order should be required in all cases. If the reform of criminal tax law goes ahead, there will be no need to reform the withholding tax for Swiss clients. For foreign clients, on the other hand, it will still be important to make bonds tax-exempt. And since tax authorities will be able to verify the income of Swiss clients, the withholding tax on bonds can also be scrapped for them.

Switzerland's current tax system is predicated on a delicate balance between banking secrecy and withholding tax, which acts as a safeguard and an incentive for Swiss taxpayers to fully declare their income. Any change in this combination must achieve a new balance: if one component is weakened, the other must be weakened too. Lifting banking secrecy to disclose income that has already been subjected to withholding tax would give the state a double advantage and should therefore be avoided.

Transitioning to a new world

Finally, assuming that all hidden and untaxed income will in the future either be disclosed to the tax authorities or subject to a withholding tax, there is strong justification for offering the concerned taxpayers a simple and attractive way to become tax compliant, as neighbouring countries have done. Switzerland has specified this as a condition for accepting automatic exchange with other countries, so why not implement similar measures at home? Members of the Federal Parliament have introduced several tax amnesty initiatives, and Federal Councillor Eveline Widmer-Schlumpf has indicated that she is not opposed in principle. The idea is not to cancel all tax debts without penalty, but, in the context of a major change of the tax system, to allow for a limited-time reduction in the statute of limitations compared to the current rule of ten years. At present, only the past three years are subject to additional tax assessments in the case of inheritance. Will we not all be heirs to a bygone time at some stage?

* * *

In short, we believe that the scope of banking secrecy should not be left to the banks to decide on behalf of their Swiss clients. Banks can either collect more safeguard tax or provide more information to the tax authorities, depending on what the Swiss people and Parliament decide. But they are unwilling to take the place of the tax authorities in determining whether a tax obligation exists for a given client, not to mention that they do not have the technical means to do so. Moreover, it seems that all these modifications to the current tax system would create more work for the banks, which may explain why several of them oppose the changes.

At any rate, the withholding tax should be revised so that it does not apply to foreign clients, at least with regard to bonds. For Swiss clients, on the other hand, if the rules of the game change, and undeclared income is disclosed or taxed at source, a simplified tax amnesty procedure should be introduced.

Thank you for your attention.