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## The end of the banking secrecy 2017

Dear Sir or Madam,

There is a debate going on in Federal Parliament about enshrining banking secrecy in the constitution, with the aim of protecting privacy.

### **What is the current status of banking secrecy?**

For persons domiciled abroad, it is extremely cumbersome to either open a bank account in Switzerland or even to maintain it; this also applies to Swiss companies which are in foreign hands. Generally, the banks insist on seeing evidence that banking assets are liable to tax abroad. Offshore structures are therefore no longer possible with Swiss bank accounts. Managing a Swiss bank account may well cost a foreign company CHF 20'000 per year in basic fees, and this does not include the additional costs to ensure compliance is adhered to. On top of that, the Automatic Exchange of Information leads to complete transparency. Thus, banking secrecy has ceased to exist.

The trail-blazers of this transparency were, on the one hand, the OECD and the G20 nations, with their pressure on Switzerland, and on the other hand, the major Swiss banks who saw their international business opportunities in jeopardy, and thus actively implemented internationally acceptable bank customer regulation. For many foreign customers, this has led to expensive tax proceedings, as it has to many Swiss living abroad.

For persons domiciled in Switzerland, however, it is still easy to open both bank accounts and numbered accounts. The banks assume that the declaration of revenues and assets is the customer's responsibility. Within the foreseeable future, and quite likely before the end of 2017, the banks will demand from all customers with a numbered account that they provide evidence of having paid taxes, otherwise the relationship with non-compliant bank customers will be annulled. This will lead to a regulation similar to that for foreign customers. In the end, the only viable solution is non-punishable voluntary disclosure to avoid this predicament. Dissolving asset positions and transferring them into different bank deposits will be impossible without evidence of having paid taxes.

From a penal point of view, protection of bank/client confidentiality does not exist. If criminal prosecution authorities wish to receive information about a bank's customer, then this information, by means of a disclosure order, will be delivered without further ado. The only thing the bank does is to check whether the request has been made in a formally correct manner. Further checks are not made, whether or not there is any justification for the annulment of the bank/client confidentiality. The customer will not be informed about this by the bank either, or if then, only a year or two after disclosure. This means that the customer is unable to state his or her position on the disclosure of banking information in criminal proceedings. Banking information is unreservedly and immediately at the authorities' disposal, without the customer having any right of appeal, and without the possibility of checking whether the annulment of the bank/client confidentiality has formally followed the rule of law. De facto, bank/client confidentiality does not exist.

Enshrining banking secrecy in the constitution is absolutely necessary to ensure that privacy has the best possible protection. This is not about promoting tax evasion but about ensuring that the procedural rights of those affected are fairly maintained. There is need for action.

Kind regards  
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