

## Policy Document

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### Banking Secrecy - A Controversial Issue

**According to a current estimate, Swiss Banks hold approximately 2,000 billion francs from people in foreign countries in safe custody. Around 40% of the assets managed by Swiss banks could, therefore, originate from foreign private customers. 14.5% – 20.5% of the assets originate from institutional investors in foreign countries. The possible economic consequences of Switzerland giving into the banking secrecy dispute would therefore be far more significant than assumed so far. What is the SAAM's position regarding the current discussion?**

Independent asset managers are not subject to banking secrecy. In the long term, however, their business dealings will suffer if the good reputation of the financial market place is battered. Much more is at stake for the smaller asset management consultancies than for the large banks. Because of their size, it is not possible for them to set up foreign bases and pursue an own „onshore strategy“.

Unlike the large Swiss banks, independent asset managers often have no possibility of serving their clients in foreign countries. Most clients' countries of residence do not permit cross-border provision of asset management services from Switzerland. In addition, the Swiss fiscal legislation (stamp tax) lessens the attractiveness of such operations.

Most foreign clients do not invest their assets in Switzerland for tax reasons. There are other more deciding factors: the high legal security, the quality of services and (particularly for non-European clients) the free movement of capital (i.e. the absence of foreign exchange export and import restrictions), to name a few. Tax evasion and tax fraud are criminal offences – in Switzerland too<sup>1</sup>.

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<sup>1</sup> The statement heard time and again that tax evasion – unlike tax fraud – is not a crime in Switzerland, is simply wrong. Tax evasion in Switzerland is an offence and it is punished by very high fines (tax penalties). The difference to other countries lies mainly in that prosecution and penalisation is assigned to the internal revenue office rather than the law enforcement authorities.

The question of it being legitimate, and under which circumstances, for a country to be an advocate for foreign tax evaders is a complex matter. It would deserve to be discussed in detail<sup>2</sup>. Regrettably, the intensity of the debate, the purely legalistic argumentation and the „language of power“ of the G20 countries do not allow for this.

At least it can be determined that historical perception of the phenomenon „Tax fraud via Swiss assets“ is very often the „logical consequence“ of illegal currency export, or rather illegal currency possession<sup>3</sup>. The SAAM's point of view, however, is that free movement of capital is a basic right of each individual. This view corresponds to the agreements with the European Union. Countries that deny their citizens this basic right should therefore not benefit from Swiss administrative assistance in tax fraud affairs. In this case, the violation of tax laws is only the logical consequence of the unlawful restriction of the free movement of capital.

Granting administrative assistance in cases of simple tax evasion with no connection to fraudulent transactions<sup>4</sup> will most likely be the price for sound economic relationships with other countries in the future. Switzerland can accept this, if the countries that insist on administrative assistance actually accept fair economic relationships.

From a Swiss point of view, the basic task of distinguishing between tax evasion and tax fraud must not be regarded as the sole position to take. Many economic partners have accepted this differentiation in economic policy negotiations in the past, because Switzerland, in turn, has accepted discrimination in many areas of market access. If the acceptance of the basic principle „no administrative assistance for tax fraud“ is dropped, then there is no longer a basis for Switzerland to put up with more economic discrimination in market access.

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<sup>2</sup> The exodus of capital and the resulting tax evasion has been described, not without cause, a „small sanctuary“ by a renowned Swiss criminal law teacher. The transferral of asset items to another country is always an expression of distrust or even fear of one's own country. The history of previous centuries shows that such mistrust or a citizen's fear is not always unfounded.

<sup>3</sup> In the European Union, the free movement of capital has applied only since 1994. Before then, in many EU countries, there were some considerable restrictions for individuals with regards to capital export and possession of foreign currency. Many non-EU countries still have such restrictions today.

<sup>4</sup> As in, for example, the falsification of the accounts.

This applies in particular to the freedom of provision of cross-border asset management services, by (primarily, but not only) those independent asset managers in Switzerland who have remained barred for years by member states of the EU on unconvincing grounds. The upcoming negotiations with the economic partners cannot, therefore, only be limited to negotiating new double taxation agreements but must also take the mutual economic relationships as a whole into consideration. Whoever discriminates the Swiss economy that relies on export cannot expect administrative assistance in tax matters. This calls for the demand to be made, in no uncertain terms, of the following points from the countries that expect the Swiss authorities to give in to tax evasion matters:

- The admission of Swiss financial service providers (banks, collective investments, and independent asset managers) in the provision of cross-border services with regards to administration and safe-keeping of private and commercial assets as well as pension funds and other institutional assets.
- Bank client confidentiality should not be subject to negotiation in the future, either. Granting administrative assistance in tax matters in general is not tangent to banking secrecy. Only the parameters for the provision of information in cases that have breached this confidentiality are to be expanded.
- The idea of a transparent citizen contradicts Swiss tradition and the local understanding of civil liberty. Without sufficient suspicion with regards to violation of the law, citizens' privacy takes precedence over governmental intervention. Thus the German-French ideas for a regular exchange of tax data<sup>5</sup> information must be rejected.
- Should Switzerland abandon the difference between tax evasion and tax fraud, then Swiss politics must urgently put the international competitiveness of the Swiss financial market back on top of the political agenda. Concessions in return for respecting the Swiss protection of privacy are no longer appropriate.

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<sup>5</sup> Should an agreement of the exchange of information occur at a later date, the data conveyed would be strictly limited to tax information. Information that Swiss banks elevate in connection with the fulfilment of duties (which go far beyond the standards other countries have set) of combatting and preventing money laundering and the financing of terrorism, must be strictly excluded from such an exchange of information.

- Administrative assistance in tax matters for countries that restrict companies based in their territories in free capital movement must be excluded in future too.
- To stimulate the Swiss financial centre, the first measures to be taken must be those that promote the export of services, because this will lead to saving existing jobs and creating new jobs in Switzerland. Besides the already mentioned reduction of foreign market access obstacles through the bilateral channel, legislative measures are to be met in Switzerland in the following areas:
  - Taxation:
    - Abolishment of stamp tax, because this makes the management of assets deposited abroad from Switzerland more expensive and distorts the competition;
    - Complete untaxing of combined investments on the level „collective investment“;
    - Creation of an attractive tax system for trusts and family foundations in Switzerland;
    - Substantial tax relief for companies (particularly in the case of the abolishment of tax privileges for discretionary earnings from holding companies);
    - Abolishment of issue tax, because this makes the issue market in Switzerland more expensive and distorts the competition;
    - Abolishment of the EU interest taxation agreement.
  - Regulation:
    - Further flexibility of the collective investment legislation, particularly in the fields of collective capital investments for qualified investors, such as shelf registration and admission of single investor funds;
    - Political and governmental support and promotion of the Swiss financial market regulation (including self-regulation) abroad.
  - Aliens Act:
    - Attractive regulation of parameters for the relocation of wealthy foreigners to Switzerland.