

Article 47 of the Banking Act: what bank client secrecy still protects

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Article 47 of the Banking Act (BankA) still makes a breach of banking secrecy a criminal offence, although the protection it gives has narrowed profoundly since 2008. This article sets out what the provision continues to cover, which procedures now override it and how the Federal Supreme Court has drawn the boundaries in its case law on group requests and stolen data. For compliance officers and counsel dealing with Swiss accounts, the line between the two spheres determines what a bank may disclose, when and to whom.

1 The provision and its penalties

The Banking Act, which descends from the federal law of 1934, protects the banker's professional secrecy through criminal sanctions. According to the French-language Wikipedia entry on banking secrecy, consulted in September 2026, Article 47 currently provides for a custodial sentence of up to three years for an intentional breach and a fine of up to CHF 250,000 where the breach results from negligence. The provision yields to statutory duties to provide information and to give evidence. It also gives way to international administrative assistance and to the automatic exchange of information, both of which now operate as ordinary channels of disclosure.

Two further regimes sit alongside it. The revised Federal Act on Data Protection (FADP), in force since 1 September 2023 according to the Federal Office of Justice, imposes duties of transparency, security and documentation that add to banking secrecy. Where a bank outsources functions such as information technology to providers that may be located abroad, FINMA circular 2018/3 on outsourcing, in force since 1 April 2018 according to the authority's release of 5 December 2017, keeps the institution responsible for the outsourced activities, which must preserve the confidentiality of client data.

2 What the secret still covers

Banking secrecy has not disappeared. It continues to protect clients against third parties, the public and competitors, so that an unauthorised disclosure to any of them remains punishable. To a large extent it also shields taxpayers resident in Switzerland from the Swiss tax authorities, which cannot obtain bank information directly outside criminal tax proceedings. This domestic protection has itself been the subject of political debate. The Federal Council recommended rejection of the popular initiative "Yes to the protection of privacy" (item 15.057), as a party release of 26 August 2015 reported. From 19 May to 5 September 2016, the Economic Affairs and Taxation Committee of the National Council then consulted on a direct counter-proposal designed to write banking secrecy into the Federal Constitution, according to the Parliament's website.

3 What it no longer covers: assistance and group requests

What has gone is the protection that the secret once gave foreign taxpayers against their own tax authorities. Before 2009, Switzerland refused assistance for simple tax evasion, understood as a mere failure to declare, while granting it for tax fraud involving the use of forged documents. The Federal Council decided on 13 March 2009 to adopt the OECD standard on administrative assistance and withdrew the Swiss reservation to Article 26 of the OECD Model Tax Convention on 20 March 2009, as Pascal Saint-Amans explained in *La Vie économique* in June 2009. Since then, foreign authorities have been able to obtain bank information on request, including in cases of simple evasion, provided that their request is sufficiently precise.

The automatic exchange of information adds a yearly transmission of account data on residents of partner states to the tax administrations of those states. Requests for administrative assistance allow further information to be obtained on top of that flow. Undeclared assets of foreign clients therefore no longer have a place in Swiss banks.

Foreign authorities first addressed individual requests about identified taxpayers before turning to categories of taxpayers defined by patterns of behaviour, for instance account holders who had not answered their bank's demand for proof of tax compliance. In ATF 143 II 136, a judgment of 12 September 2016, the Federal Supreme Court held that a Dutch group request based on such a pattern was admissible without naming the taxpayers concerned. A French request covering some 40,000 UBS accounts led to judgment 2C_653/2018 of 26 July 2019, published as ATF

146 II 150. According to the commentary published by the Centre de droit bancaire et financier on 12 December 2019, the request included a list A of 1,130 accounts, 97 % of whose holders were domiciled in France, while France had given an assurance on 11 July 2017 that it would respect the principle of speciality.

These proceedings raised delicate questions about the sufficient identification of the persons targeted, the use of the information obtained and the protection of data on persons who were not concerned. Clients affected by a request may assert their rights before the Swiss courts, which explains the abundant case law that has grown up around administrative assistance.

4 Stolen data and good faith

Leaked data tested the boundary from another direction. Hervé Falciani, an IT specialist at the Geneva subsidiary of a British bank, took client data that reached several European tax administrations. According to the French-language Wikipedia entry on SwissLeaks, he was convicted in absentia on 27 November 2015 and sentenced to five years' deprivation of liberty for economic espionage. In ATF 143 II 224, a judgment of 17 March 2017, the Federal Supreme Court refused assistance to France because the French request rested on the Falciani data although France had undertaken not to use them, relying on Article 7 letter c of the Tax Administrative Assistance Act (TAAA) and on the principle of good faith.

In mutual assistance in criminal matters, the Federal Criminal Court requires the requesting authority to dispel any suspicion once serious indications suggest that its request rests on stolen bank data, as the Centre de droit bancaire et financier noted on 2 January 2019. Switzerland has also strengthened the criminal repression of the disclosure and exploitation of unlawfully obtained bank data. Criminal protection nevertheless has limits as a deterrent, since those prepared to accept the consequences may be tempted by large foreign rewards. Bradley Birkenfeld, the former UBS manager whose information set off the American proceedings, received a reward of USD 104 million, as *Le Temps* recalled in its 2019 feature on ten years without banking secrecy. Effective tax compliance of the client base, which deprives stolen data of their value, remains the only durable protection for an institution.

5 What to take from it

A criminal offence with a narrower field. Article 47 BankA still punishes intentional and negligent breaches. Its protection now operates chiefly against private parties and, for Swiss residents, against direct access by the domestic tax authorities.

Tax transparency prevails abroad. Administrative assistance on request and the automatic exchange of information have removed the shield that foreign taxpayers once held against their own authorities.

Procedural safeguards still count. Precision of the request, speciality and good faith, as the Federal Supreme Court has applied them, mark the limits within which Swiss authorities pass bank information abroad.

6 Sources

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