

Swiss banking secrecy: enacted in 1934, ended in 2017 — and what is left of it

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Swiss banking secrecy was never an absolute secret, and it has not disappeared. What entered into force in 1934 was a criminal provision; what ended in 2017 was its effect against foreign tax authorities. Confusing the two produces bad advice in both directions — clients who believe a protection that no longer exists, and clients who abandon a protection that still does.

1 What existed before 1934

The banker's duty of confidentiality is older than the statute. It followed from the law of mandate, which obliges an agent to keep his principal's affairs to himself, and from the protection of personality in the Civil Code. A breach gave rise to a claim in damages and could justify termination.

What it did not give rise to was criminal liability. An employee who sold information to a foreign authority or a newspaper committed a civil wrong, and prosecution depended on finding another offence.

2 1934: the criminal provision

Article 47 of the Banking Act closed that gap. It penalises anyone who discloses a secret entrusted to him in his capacity as an officer, employee, agent or liquidator of a bank. Three features distinguish it from the civil duty.

- **Prosecution is ex officio.** No complaint by the client is required; the state prosecutes on its own motion.
- **The duty survives the relationship.** It binds after the employment ends.
- **It protects the client, not the bank.** The bank cannot release itself from it.

The reasons for enactment remain disputed among historians. The banking crisis of the early 1930s, the case of the Basler Handelsbank in Paris in 1932, and the espionage of foreign authorities on Swiss territory all belong to the record. The account that became popular after the war — that the statute was created to protect Jewish assets from National Socialist seizure — does not withstand the sources.

3 The exceptions, then and now

The secret has never been absolute. It yields, and has always yielded, in defined situations.

To whom	On what basis
Criminal authorities	compulsory measures in domestic proceedings; mutual legal assistance in foreign ones
Supervisory authorities	FINMA's information rights under the supervisory statutes
Heirs of the client	to the extent of their entitlement to the estate
Debt enforcement and bankruptcy bodies	attachment, enforcement and insolvency proceedings
Foreign tax authorities	the agreements on automatic exchange of information
The reporting office	duties and rights to report under the Anti-Money Laundering Act

4 2008 to 2017: how the change happened

The turning point was American and bilateral before it became multilateral.

On 18 February 2009 UBS paid 780 million dollars to the United States and handed over client data; 4,450 accounts were later transmitted to the tax authority. In 2010 the United States enacted FATCA, which obliged foreign financial institutions to report accounts of American persons or suffer withholding. On 29 August 2013 came the programme for Swiss banks, under which institutions could regularise their position by disclosing their cross-border business and paying penalties. Geneva houses paid: Lombard Odier 99.8 million dollars in 2015, Pictet 122.9 million dollars in 2021.

The multilateral track followed. The agreement between Switzerland and the European Union of 27 May 2015 entered into force on 1 January 2017,

with the first exchange in 2018. By the federal act of 26 September 2025 the exchange extends to crypto assets and digital assets, bringing service providers for such assets within the same reporting logic as banks.

5 What remains, precisely

Article 47 continues to apply. In practice it continues to matter in situations that have nothing to do with tax:

- A divorcing spouse seeking information about accounts needs a legal title, not an interest.
- A journalist receiving leaked client data from an employee is receiving the product of an offence.
- An employer, a business partner or a creditor cannot obtain account information by asking.
- A foreign authority outside the exchange mechanisms must go through mutual legal assistance, with its conditions and its remedies.

What has gone is the effect against the tax authorities of partner states within the automatic exchange, and the practical possibility of holding undeclared assets in a Swiss account without the authority of the client's residence learning of it.

6 The advisory consequence

The most common failure in advising on this subject is not a wrong statement about Article 47. It is silence about the reporting channels that operate alongside it. A client who is told that bank client secrecy applies, without being told that the balance and income of the account will be reported annually to the authority of his state of residence, has been given a true statement and a false impression.

The workable formulation distinguishes three questions and answers them separately: who is asking, on what legal basis, and through which channel. Article 47 answers the first; the exchange agreements and the assistance rules answer the second and third.

7 The economic balance

The prediction that the end of tax secrecy would empty the centre has not been borne out. Swiss private banks managed a record of some 3,500 billion francs in 2025, with net new money of 96 billion. What shifted is the basis of the business: from discretion to performance — investment

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results, structuring competence, market access, and the quality of legal advice.

That shift also changed who the client is. A depositor whose principal requirement was invisibility had little reason to pay for anything else. A client whose assets are declared, and who is choosing a jurisdiction for stability, legal certainty and the ability to execute complex arrangements, is buying a service that can be described, compared and charged for. The centre is in a more defensible position now than it was in 2008, and it took the loss of a statute's practical effect to get there.

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