

What remains of banking secrecy

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Banking secrecy has not disappeared entirely. Article 47 of the Banking Act still makes the disclosure of client information by bank employees a criminal offence. The confidentiality of client relationships therefore remains protected against private third parties and, outside the legal channels of cooperation, against foreign authorities. For Swiss residents, the tax authorities have no direct access to bank data in cases of simple tax evasion, since the automatic exchange of information does not apply within Switzerland.¹

In 2013, a popular initiative was launched to anchor the protection of financial privacy in the Federal Constitution, under the title "Yes to the protection of privacy". It aimed to prevent the extension of the automatic exchange of information to Swiss residents. Parliament prepared a counter-proposal, but the initiative was withdrawn in 2018 after the Federal Council abandoned its plans to strengthen the access of the tax authorities to bank data in domestic cases.² Domestic banking secrecy thus survives for Swiss residents, while it has ended for foreign residents. This asymmetry reflects the Swiss attachment to the relationship of trust between the citizen and the state, which the Swiss voters were not prepared to abandon for themselves.

The criminal protection of banking secrecy was extended in 2015 to cover persons who disclose information that has been illegally obtained, such as journalists who publish leaked bank data. The extension was criticised by press freedom organisations, and the United Nations Special Rapporteur on freedom of expression expressed concern after the publication of the so-called Suisse Secrets in 2022, which were based on leaked data from Credit Suisse and which Swiss journalists did not publish for fear of prosecution.³ The balance between banking confidentiality and the freedom of the press remains a subject of debate.

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1 Notes

1. On the current scope of Art. 47 Banking Act and the limited access of the Swiss tax authorities to bank information in domestic cases of tax evasion, see the standard literature. To be verified. ↩
2. On the popular initiative "Yes to the protection of the private sphere" (Ja zum Schutz der Privatsphäre), submitted in 2014 and withdrawn in 2018, see the federal records. To be verified. ↩
3. On the extension of Art. 47 para. 1 lit. c Banking Act in 2015 to persons who disclose secret information disclosed to them, and the debate after the "Suisse Secrets" publications of February 2022, see the relevant legislation and press reports. To be verified. ↩

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