

Forbidding ramparts of Swiss banking secrecy laws **APRIL 01, 2014**

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THE United State's pursuit of UBS, Switzerland's biggest bank, for helping rich Americans avoid taxes, shook the Swiss financial sector to its core, and represented the first breach in the Alpine state's once-impregnable system of bank secrecy laws, which date back to the 1930s.

The US Senate passed FATCA, a law requiring foreign financial institutions to share their American clients' information with the Internal Revenue Service. The Department of Justice began investigating 14 banks for helping US citizens to evade taxes, with a view to exacting punishment and admissions of guilt. A further 106 Swiss banks have applied for a new wider programme to settle with the US as part of a deferred prosecution agreement.

At least seven former Credit Suisse employees have been indicted for allegedly helping Americans evade taxes, but none has been arrested to face the allegations. Credit Suisse has agreed to pay a \$196.5m fine to settle with the Securities and Exchange Commission allegations that it advised US clients without registering with the regulator.

The US and UBS reached a settlement over the criminal investigation into the bank, with UBS agreeing to pay a \$780m fine and turn over about 300 customer names to the US government. However, no sooner had this settlement been agreed, than the US justice department said that it was still seeking, through a civil lawsuit, to force UBS to disclose the holders of 52,000 accounts with about \$14.8bn in assets.

The information the US gleaned from this process helped it to broaden its pursuit of tax evaders to the Swiss banking sector as a whole. Early last year it forced Wegelin & Co., the oldest Swiss private bank, to close. Last October Bank Frey, another small bank under investigation, also said that it would stop doing business.

The stalemate is over an un-ratified amendment of a treaty between Switzerland and the US. If it is ratified by the Senate, Swiss banks will turn over names of clients if the US can show the bank aided and abetted tax evasion. Under the existing 1996 treaty, Swiss banks can provide information in cases of tax fraud, but not tax evasion. An amendment agreed in 2009 and ratified by Switzerland in 2010 would have brought tax evasion into its scope, but is un-ratified by the US.

Attempts to pass a law that would have enabled Swiss banks to comply with US prosecutors' conditions for entering deferred prosecution agreements without breaching local secrecy laws foundered last year. The Bern parliament huffily rejected the law – the product of a deal carefully negotiated with the US – on national sovereignty grounds.

A new double-tax treaty negotiated between Washington and Bern has also been blocked – in the US Senate. That would have eased disclosures by enabling Swiss banks to reveal the details of US customers accused of tax evasion rather than just fraud as at present. Ironically perhaps, senators objected to the idea of Americans' tax information being shared with foreigners.

If the financial crisis has produced anything good it is heightened awareness among voters and politicians of the ease with which big money can be salted away untaxed and unseen. Since 2009 when UBS buckled under pressure from US prosecutors and agreed

to pay fines and pass on information about tax-evading US citizens, the trend has been strongly in the direction of increased information sharing with tax authorities.

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