

# Swiss tax deal with the US voted down

Marianne Arens  
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Relations between Switzerland and the United States have reached a low point as the result of a tax dispute between the US Justice Department and Swiss banks. Last week, the Swiss parliament rejected the so-called “Lex USA”.

The Council of States, the upper chamber of the Swiss parliament, had previously accepted the bill, the Federal Council (Swiss executive) had urgently recommended it, and Justice Minister Eveline Widmer-Schlumpf had strongly called on the deputies in the National Council (lower house of parliament) to vote for it to avoid dire consequences. Nevertheless, on June 19 the 200-strong National Council voted for a second time not to accept the bill. For the present, the “Lex USA” has failed.

The US Justice Department had demanded wide-ranging information about the banking transactions of American customers, such as names and information about their Swiss banking partners, i.e., Swiss banking staff, advisors and trustees.

The US has developed new regulations—the Foreign Account Tax Compliance Act (FATCA)—controlling the dealings of foreign finance institutions with the American tax authority, the Internal Revenue Service (IRS). In this way, the IRS is being supported by the Justice Department to force international financial institutions to provide detailed information about their customers so they can be clearly identified in relation to any US tax liabilities.

The US government wants to ensure that its citizens pay taxes on all their property, including that abroad. Foreign financial institutions around the world must cooperate with the US authorities if they do not want to be excluded from the US capital markets.

The complete disclosure of data pertaining to bank customers is illegal under current Swiss law, which preserves banking secrecy. Swiss law is particularly designed to make the country an attractive financial centre for global investors. It ensures that Swiss bank managers do not commit an offence when they help customers hide their money from the tax authorities. A tax system that taxes large fortunes at very low rates also increases the worth of Switzerland as a tax haven for big earners and the super-rich.

In Switzerland, simple tax infringements (called “tax avoidance”) are not a criminal offence, and have been protected for 80 years by the country’s banking secrecy laws. Only direct

tax fraud is an official crime that can justify the lifting of bank secrecy.

Data protection legislation, on the other hand, is such that illegally obtained data (i.e., about “tax sinners”) is not admissible in legal proceedings in Switzerland. Swiss bank staff make themselves criminally liable if they contravene banking secrecy.

Switzerland’s business with other people’s money is of great significance for the Swiss economy. UBS and Credit Suisse are among the largest banks in the world. In 2003, they recorded a combined gross yield of 60 billion Swiss francs (US\$44.4 billion), representing over 13 percent of the country’s then gross domestic product of 450.6 billion francs (\$333.4 billion).

Such dependence on its banks is an enormous risk, as was seen in the crisis of October 2008: the National Bank had to shell out over 50 billion francs (\$44.5 billion) to cover the bad debts of UBS resulting from the US subprime crisis.

Switzerland has enjoyed close economic relations with the United States. In 2011, the country exported goods to the value of 21.3 billion Swiss francs (\$23.9 billion) to the US. America is also the most important destination by far for Swiss foreign direct investment. In turn, the US, with a capital stock of almost 80 billion Swiss francs in 2010 (\$81.8 billion), is the third most important source of foreign direct investment into Switzerland. “The United States is an important partner for Switzerland in every regard”, the Swiss foreign ministry states on its home page.

So the Swiss banks cannot afford to defy FATCA. In addition, a conviction by the US Justice Department could soon drive every Swiss bank into bankruptcy. *Finanz und Wirtschaft* writes: “Indeed, no bank has survived that has faced charges in the US—and there can be no doubt about the intentions of the US authorities to file the corresponding charges when the data being demanded is not provided”.

The tax dispute with the American Justice authorities has been running since 2008, when UBS was first made to provide a list of its American customers. Since UBS also revealed the names of the other banks to which customers transferred their accounts, the US judiciary launched proceedings against the private bank Wegelin at the beginning of 2012, driving Switzerland’s oldest bank, with 700 employees, into liquidation.

Today, the US judiciary has 14 Swiss banks in its sights,

accusing them of holding untaxed deposits. The state-owned banks in the cantons of Zurich and Basel are also affected. Under a deal proposed by the US tax authorities, if they provide information about where the money comes from, where it is then transferred to and who was involved in the transactions, they will only receive a flat-rate fine of between 8 billion and 10 billion Swiss francs (\$8.4-10.6 billion).

In order to provide the legal grounds for cooperating with FATCA, Switzerland's banking secrecy now suddenly appears to be a great obstacle, and parliament was called on to pass the "Lex USA" using expedited proceedings. According to Finance Minister Widmer-Schlumpf, a law passed by parliament could not be watered down and certainly not repealed by the government acting alone.

At the same time, the issue was also raised in negotiations with the European Union. EU finance ministers are also demanding that Switzerland abandon its banking secrecy in its previous form, and end the widespread practice of tax avoidance. The EU Markets in Financial Instruments Directive (MiFID) seeks to ensure that third countries such as Switzerland can only advise customers when they have a branch in the EU, which is not the case for many Swiss banks.

Switzerland has been eager to cooperate with the EU financial authorities. In mid-June, on the recommendation of a commission of experts, the Swiss government proposed collaboration with the EU regarding the so-called Automatic Information Exchange. The Swiss government hoped that in this way the EU would avoid demanding overly strict conditions.

On June 12, the Council of States, which contains the direct representatives of each canton (and so of the banks under canton control), agreed a nonpartisan bill enacting the "Lex USA". However, a week later, the deputies in the National Council refused to slaughter the holy cow of banking secrecy, leaving this thankless task to the government.

This decision by the National Council was far from principled. Representatives of each party, from the social democrats to the conservative Swiss Peoples Party, had their own reasons for a "no" vote, so as not to displease their own clients. The *Neue Zürcher Zeitung* commented on June 14: "Our militant parliamentarians are galloping like Hussars... Manoeuvring is taking place before and behind the scenes. Power-political considerations are being paired with partisan tactical tricks and personal interests... But this is how politics works."

Following rejection of the law, parliament commissioned the government to ensure that Swiss banks could cooperate with the US authorities. The government could now use individual rulings or even a regulation it enacts unilaterally to allow the banks to provide the data.

The Swiss Bankers Association (SBVg) has issued a statement saying they expect the government to "do everything in its power to ensure that a legal framework is created that

nevertheless renders the implementation of the US program possible". The banks need "legal certainty"; otherwise the consequences "for the financial centre and the entire Swiss economy are incalculable".

It is clear that the government's course is being determined by the financial elite, and not by parliament. The government will now do everything to agree with the US Justice authorities, and the banks will pay their fines running to billions. This will massively reduce the tax revenues flowing to the Swiss state. The results will be social cuts and tax and price rises at the expense of working people.

For a long time, there have been massive jobs cuts and outsourcing in the financial services sector (banking and insurance). UBS and Credit Suisse are the front-runners when it comes to forcing through savings at the expense of the workforce. Since 2008, UBS has cut over 16,000 jobs, and wants to destroy a further 10,000 by 2015, with 2,500 of these being in Switzerland. Credit Suisse is also proceeding to slash several thousand jobs.

Insideparadeplatz.ch, a web site providing financial news from Zurich, reports that UBS has just outsourced 60 to 80 jobs in its personnel department to Cracow in Poland. Other banks have also transferred entire departments, e.g., data collection or back office, to India or Eastern Europe. Credit Suisse has also moved a part of its paperwork function to Poland.

Moreover, banking staff, trustees and lawyers who deal with American customers must reckon with their names and personal data being handed over to the US Justice authorities without their knowledge. They could be placed on a "black list" in the US. Without every facing a charge or even being informed, they could be arrested immediately if they land at a US airport.

Taking all aspects into consideration, it is clear that the current tax dispute is not only about closing tax loopholes. It is about cutting down an unwanted competitor in the global finance markets. Both the US and the EU want to seal off their own markets from foreign competitors, and the Swiss banks are being left out in the cold. Increasingly, the tax dispute is becoming the expression of a ruthless global fight between major financial institutions.



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