

FATCA Brings End to Switzerland's Time-honored Tradition of Bank Secrecy

“There is only one thing in the world worse than being talked about, and that is not being talked about.”ⁱ Oscar Wilde’s insightful observation about mankind’s proclivity toward public recognition does have exceptions. For example, men and women throughout the ages have often sought confidentiality in their financial affairs, chiefly through banking in jurisdictions with a tradition of bank secrecy.

Usually, the customer seeks “assurances from the bank that it will not disclose account information to curious tax inspectors, anxious creditors, and intrusive relatives.”ⁱⁱ On occasion, the customer “may seek to hide his identity from the bank itself, as well as from third parties.”ⁱⁱⁱ To this end, the customer may open an anonymous account.

An anonymous account is a bank account where the accountholder’s name is kept secret. The purpose behind an anonymous account is to keep to a bare minimum the number of bank employees who have *access* to the client’s account.^{iv} The idea is simple: the fewer the number of bank employees that know the identity of the accountholder, the less vulnerable the accountholder will be in the event that such an employee becomes the target of an inquiry (or bribe) from a third party who wants access to this information.^v

The classic numbered account is legendary in pop culture, making it a story element in countless film noires. You know the one I’m talking about. A spy from right out of the pages of a “James Bond” thriller struts into a Swiss bank, hands over a note with some writing on it, and passes it to his private banker in exchange for a briefcase full of cash.

In some cases, the money is “dirty,” and the spy is attempting to conceal its illegal source from government authorities. In others, the money is “clean,” but the spy seeks to hide it from government authorities in order to avoid having to pay taxes on it. Either way, the intrigue and suspense that this storyline creates is enough to keep moviegoers on the edges of their seats.

There are certain aspects of this pulp fiction that do not stray too far from reality. For example, numbered accounts *do* offer increased privacy.^{vi} In the usual case, “a customer’s name, address, and signature are provided in the account opening agreement.”^{vii} But “only the account number is entered in the general bank system.”^{viii} The numbered account is then “assigned to an individual account manager for personal handling.”^{ix} The file containing the customer’s name “is maintained separately from the numbered account, with only key personnel having access to it.”^x

As owners of anonymous bank accounts have grown accustomed to expect, depositing and withdrawing money is based upon an agreed form of communication between the account manager

and the customer. And in cases when that communication “is not face-to-face, such as when the accountholder calls the bank or issues written instructions, a secret code is used *in addition* to the account number.”^{xi}

Once upon a time, it could work that way. Back then the world was a much different place. For example, a banker might “sign up a customer for an offshore bank account at the same time he sold him an offshore company or an offshore trust.”^{xii} In those days, governments were smaller and less aggressive in collecting taxes. Today, governments – both big and small – are facing a financial crisis of epoch proportions.^{xiii} They are looking anywhere and everywhere for taxable sources of income in order to replenish their coffers. Not even your mattress is safe.

Only recently have governments come to realize something that has been staring them in the face for decades: that there is no more rich a source of taxable income that has been virtually untouched than unreported offshore accounts, which hold as much as \$ 600 billion of the world’s wealth.^{xiv} Very simply, the taxes and penalties that stand to be collected from these accounts alone could single-handedly lift a nation out of its debt crisis.

The other way in which anonymous accounts have caught the ire of government officials is their illicit use in money laundering. How might a criminal use an anonymous account as a vehicle to launder the proceeds of his ill-gotten gain? First, he might deposit his bennies into a numbered account through a wire transfer from another bank.^{xv} Because the numbered account is anonymous, the criminal has the piece of mind of knowing that there will be few, if any, inquiries into where the funds originated from. Second, when he wishes to use the funds, he need only transfer them to an account in his name in a large onshore jurisdiction, such as the United States.^{xvi}

By filtering the criminal proceeds through these anonymous accounts, onshore banks will be unable to trace the source of the funds.^{xvii} Requests for information by other jurisdictions will fall on deaf ears. In other words, they’ll either be declined because the information is not available or because of laws protecting financial secrecy.^{xviii}

A combination of the economic crisis that most governments find themselves in today along with the risk that anonymous accounts could be used as vehicles to facilitate international tax evasion has been the death knell for bank secrecy. For better or for worse, these accounts have gone the way of the dinosaur. And like dinosaurs, the only place that they still “live” are in books and movies.

While the Swiss banking system’s reputation for concealing numbered bank accounts under a cloak of anonymity was once considered sacrosanct, the seal was broken on this time-honored back in 2013 when it signed an international agreement with the OECD (Organization for Economic Cooperation and Development) to fight tax evasion. Since then, other international agreements, such as the FATCA, have continued to chip away at the remaining vestiges of bank secrecy. Today, these

agreements have marked the end of bank secrecy in Switzerland as the world once knew it.

ⁱ Oscar Wilde, *The Picture of Dorian Gray* 2 (Isabel Murray ed., Oxford University Press 1974) (1891).

ⁱⁱ William W. Park, *Anonymous Bank Accounts: Narco-Dollars, Fiscal Fraud, and Lawyers*, 15 *FDMLJ* 652 (1992).

ⁱⁱⁱ *Id.*

^{iv} *Numbered Account* (The Asset Protection Law Center) <http://www.rjmintz.com/numbered-account.html>, last visited: Nov. 27, 2010.

^v G. Philip Rutledge, *Article: Bank Secrecy Laws: An American Perspective*, 14 *Dick. J. Int'l L.* 601 (1996).

^{vi} *Numbered Account* (The Asset Protection Law Center) <http://www.rjmintz.com/numbered-account.html>, last visited: Nov. 27, 2010.

^{vii} *Id.*

^{viii} *Id.*

^{ix} *Id.*

^x *Id.*

^{xi} *Id.*

^{xii} *Id.*

^{xiii} *Id.*

^{xiv} Richard A. Johnson, *Why Harmful Tax Practices Will Continue After Developing Nations Pay: A Critique of the World's Initiatives Against Harmful Tax Competition Offshore: The Dark Side of the Global Economy*, 26 *B.C. Third World L.J.* 351, 370 (2006).

^{xv} Richard K. Gordon, *On the Use and Abuse of Standards for Law: Global Governance and Offshore Financial Centers*, 88 *N.C.L. Rev.* 501, 563 (2010).

^{xvi} *Id.* at 563-64.

^{xvii} *Id.* at 564.

^{xviii} *Id.*