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БАНКОВСКАЯ ТАЙНА КАК ПРЕПЯТСТВИЕ МЕЖДУНАРОДНОМУ АВТОМАТИЧЕСКОМУ ОБМЕНУ НАЛОГОВОЙ И ФИНАНСОВОЙ ИНФОРМАЦИЕЙ

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Аннотация

В статье рассматриваются изменения, произошедшие с банковской тайной в Швейцарии, ее трансформация под влиянием американского закона FATCA и придуманного ОЭСР механизма обмена информацией CRS.

Ключевые слова: банковская тайна, автоматический обмен информацией, ОЭСР, банки, FATCA.

BANK SECRECY AS BARRIER TO THE INTERRNATIONAL AUTOMATIC EXCHANGE OF TAX AND FINANCIAL INFORMATION

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Annotation

The article discusses the changes occurred with bank secrecy in Switzerland, its transformation under the influence of American law known as FATCA and invented by the OECD information exchange mechanism - CRS.

Key words: bank secrecy, automatic information exchange, OECD, banks, FATCA.

The topic of confidentiality and the increase in the level of transparency has been sharply debated for several years, since it is from the victory of one or the other that the further development of the entire banking industry depends.

It all started back in 1934, when the Swiss banking law was adopted [2] and a series of amendments aimed at protecting assets owned by the Jewish people, which became a victim of Nazi Germany. But the time of bank secrecy ended when Switzerland decided to obey the American law FATCA .

In addition to the United States, Switzerland has been pressured by tax authorities in many European countries for more than a year, especially when there was a scandal with declassification of confidential data from the Swiss branch of HSBC's private banking . The information collected about the secret and illegal operations was processed and presented to the public, not only because of the international consortium in, but also a variety of magazines.

At the request of the Consortium in the investigation were declassified documents about the internal operations and the private banking at HSBC Swiss government which is kind of a conduit for illegal storage assets in the amount of $ 120 billion.[1]

The main charges against HSBC were: assistance with the cashing of funds in Switzerland in currencies that were extremely rarely used on the territory of the country; aggressive schemes allowing highly secured individuals to evade taxes in Europe; the provision of undeclared accounts, the so-called "black" accounts, which made it possible to hide funds from local tax services; and finally the bank provided accounts to criminal individuals for corrupt businessmen and other high-risk individuals.

The main charge and the stumbling block between banking secrecy and tax services was the very Law of 1934 [2] , which suggested that the protection of customer accounts is to protect personal information and their financial data not only from third parties but also from local authorities and foreign governments. In Switzerland, numbered bank accounts were especially distributed, which concealed

the name of the account holder even from bank employees, and only a few employees of the bank knew whose names were hidden under the numbered accounts. Certainly for customers, it was perfect, but not for the tax authorities announced that the hunt for those who are evading taxes.

Such legislation allowed Switzerland to attract offshore capital in the amount of 2.4 trillion dollars (according to the estimate of Boston Consulting Group in 2014). This is the order of 25% of the entire offshore market. [1]

Today, banking secrecy has become a relative concept, especially after the impact of the introduction of the US FATCA Law [3] and the OECD General Reporting Standards (CRS) [4] within the framework of automatic information exchange, which has forced the revision of its privacy policy by none of offshore and foreign banks.

The pressure gradually increased, and before the adoption of FATCA and CRS. So in 2009, the bank of Swiss origin UBS was forced to sign the Agreement on the postponement of prosecution with the US government for the mediation of US citizens in tax evasion, which cost the bank $ 780 million and a lengthy legal battle with the US authorities. At the same time, all names of American taxpayers were disclosed. [5]

A little later, in 2013, the oldest bank in Switzerland Wegelin & Co. He was also found guilty of mediating American clients, evaded paying taxes on assets worth more than $ 1.2 billion, and was fined $ 60 million. [6]

These cases can be safely called indicative catalysts, which showed how badly the banking secrecy affects the level of transparency and compliance by taxpayers with their obligations.

In February 2013, Switzerland signed an intergovernmental agreement with the United States (IGA) to fulfill FATCA requirements. In the framework of this model (Model II), the Swiss government agreed to allow its financial institutions to transfer information on bank accounts belonging to US taxpayers directly to the Internal Revenue Service of the United States (IRS).

However, under this agreement, Switzerland still defended part of its banking secrecy. The matter is that, based on the Lexis Nexis Guide to FATCA Complian created by Professor William Byrnes and Roberto Munro, Switzerland within the IGA with the US has the following rights: Financial institutions must obtain permission from their clients in advance, to transfer their data to the US tax service".[7] In this case, you need to act quickly. If the account holder refuses, the financial institution may not file data about it with the IRS. Since this would violate the rules of bank secrecy of Switzerland, which are still in force. However, "unnamed" aggregates are reported and the number of accounts that, from the point of view of FATCA, belong to "intractable account holders".

Also in the analysis created by Byrnes and Munroe, it says "Switzerland, in particular, did not insist on a mutual mechanism, as it would contradict its official position on automatic information exchange."[7]

The next step in the struggle for transparency was the agreement on the introduction of CRS in 2014. On the basis of this agreement, OECD countries, as well as third countries not members of the OECD, agreed to introduce an automatic and systematic exchange of information on all local and foreign bank accounts.

We can safely call this a trend of modernity, when the OECD agitates everyone and everyone to join the automatic exchange of information .

Despite all the efforts and attempts to make Switzerland transparent, the ideal is still very far. The Tax Justice Network (TJN) in 2015 appropriated Switzerland the highest transparency rating based on their level of confidentiality and the size of offshore operations.[8]

TJN says that "the efforts of Switzerland - usually occurred under pressure against Swiss banks, and not on the country itself - which to some extent can be summed up as the civilian groups Alliance Sud and Berne Declaration called the "Zebra Strategy": white money for the rich and strong countries; black money for the weak and developing countries. These factors remind us why, along with aggressive pressure on the financial sector, Switzerland remains the single most important confidential jurisdiction."[8]

In this case, the Swiss themselves have repeatedly said that the problem does not lie in one Switzerland, there are a lot of jurisdictions that require no less attention. So, for example, the USA successfully stores money in Latin America, the United Kingdom has the Channel Islands. The list can be continued for a very long time, but the point is that Switzerland and its banking secrecy is "not a universal evil", but a business that many countries have.

Thus, we can conclude that banking secrecy is still alive, and though about to largely lost its force in respect of public bodies, however this does not mean that banks are no longer protects banking is, by and and assets against foreign exchange risk of their storage in one country, or from other potential risks when working through a local bank.

References:

1. HSBC scandal rages on / Adri van Zyl/ Accounting Weekly [electronic resource]. - Access mode - URL: https://accountingweekly.com/hsbc-scandal-rages-on/ (date of application 30.05.2018)
2. Swiss Federal Act on Banks and Saving Banks [electronic resource]. – Access mode – URL: https://assets.kpmg.com/content/dam/kpmg/ch/pdf/ch-banking-act-en.pdf (date of application 30.05.2018)
3. IRS: Foreign Account Tax Compliance Act (FATCA) [electronic resource]. - Access mode - URL: https://www.irs.gov/pub/irs-utl/froug.pdf (date of application 30.05.2018)
4. OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters / OECD / OECD publications. - 2014. p. 308. http://dx.doi.org/10.1787/9789264216525-en
5. UBS fined $780 million in tax evasion scandal / Sara Hansard / Investment News [electronic resource]. – Access mode – URL: http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html (date of application 30.05.2018)

6. Switzerland's oldest Bank closes the door after tax evasion scandal [electronic resource]. – Access mode – URL: http://www.datamark.com.br/en/news/2013/1/switzerland-s-oldest-bank-closes-the-door-after-tax-evasion-scandal-136995/ (date of application 30.05.2018)

7. William Byrnes & Robert J. Munro. Guide to FATCA and CRS Compliance / William Byrnes & Robert J. Munro. - P:Matthew Bender & Company, Inc, 2013. - p.1296

8. Nick Shaxson. Switzerland is handing back looted money. How big a deal is this? / Nick Shaxson / Tax justice network [electronic resource]. – Access mode – URL: https://www.taxjustice.net/2016/06/15/switzerland-handing-back-looted-money-big-deal/ (date of application 30.05.2018)