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2016 Switzerland

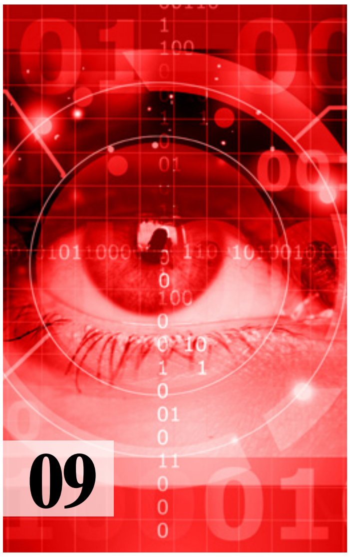
Fighting its Corner

Panama Papers: What do they mean for Switzerland?

Why the wealthy are choosing to call Switzerland home

CRS: How ready are you?

PAM INSIGHT



FEATURES

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As with previous years, the health and prosperity of Switzerland's private banking industry and its ability to attract clients remains a subject of intense focus. The country's financial sector continues to labour under the watchful gaze of the US, EU and global tax authorities with citizens of other jurisdictions facing domestic criticism and prosecution for holding assets in Switzerland.

Despite this, Switzerland remains an attractive destination for the global wealthy and their money. Sound rule of law, world class education opportunities, low tax rates and easy access to Europe are among the attractions that continue to draw UHNWs to the jurisdiction.

The eprivateclient 2016 Switzerland Report looks at a number of key issues facing both clients and the private client sector in the country. Topics covered include the imminent implication of the Common Reporting Standard, the fallout from the Panama Papers leak earlier this year, the blurred lines between privacy and secrecy as well as what hurdles clients will face looking to relocate to Switzerland.

The country remains an important hub within the global private banking industry, how it will respond to regulatory change, increased scrutiny and a changing global economy will remain to be seen.

Will Sidery

editor, eprivateclient

A Neutral Decision

Charles Russell Speechlys' Mark Summers and Grégoire Uldry set out the pros and cons of a move to Switzerland

Mark Summers

partner,
Charles Russell Speechlys'
Swiss office

Grégoire Uldry

partner,
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It is not just the prospect of the tightening of the tax regime for resident non-doms that is causing both the ultra-wealthy and foreign professionals to consider relocation from the UK, the uncertainties and message delivered by Brexit now also play a significant part. In that context Switzerland features high on the list for many as an alternative location for residency. We take a look at some of the pros and cons:

Pros

Quality of life and high standard of living

Due to safety, natural beauty, earning potential and infrastructure the largest Swiss cities (Zurich, Geneva, Bern) regularly rank among the best places to live in the world.

Stability

In a fast evolving and challenging international environment, Switzerland remains remarkably stable from political, economic, legal and social points of views.

Stability (ahead of tax) is what individuals and companies are looking for when deciding whether or not to move to or develop their business in a particular country.

Strong economy

The Swiss economy has, generally speaking, succeeded in adapting itself to the constraints of weak growth in the Euro zone, increased geopolitical conflicts and a Strong Swiss franc. Despite popular belief, Switzerland's prosperity was not and still is not just based on its private banking, chocolate and watch industries (these make up a very small proportion of the Swiss economy even if they are its best known exports). The bedrock of Switzerland's economy is formed from its pharma industry and a manufacturing industry that specializes in high-technology, knowledge-based production. That is balanced with a highly developed service sector, led by financial services that are far broader than wealth management.

Location

Located in the heart of Europe and benefiting from an excellent network of public transport, roads and airports within the country, Switzerland allows for easy access to all European centres.

Competitiveness and innovation

According to the IMD World Competitiveness 2016 Scoreboard, Switzerland is the second most competitive nation in the world. Thanks to its economic and political stability, transparent legal system, exceptional infrastructure, efficient capital markets, and low corporate tax rates Switzerland has one of the world's most competitive economies. To measure Swiss innovation look no further than its number of patent applications: according to the WIPO, Switzerland ranks eighth in the world and, on a "per-capita" basis, it is first.

Tax

Contrary to popular belief, Switzerland is not a tax haven but where you choose to live within it makes a significant difference to your tax.

Individuals are taxed on three different levels (national, cantonal and municipal). Tax is reported and collected at cantonal level. Whilst complex, it is an attractive and competitive tax regime compared to most of Switzerland's neighbours.

A resident of Switzerland subject to ordinary taxation will be taxed on his worldwide income by the Confederation as well as by the canton and municipality in which he resides. The exceptions are on income from real estate, business operations and permanent establishments situated abroad. Tax rates are progressive and vary from canton to canton (approx. 45 percent max in Geneva but only 12 percent max in parts of Schwyz).

Capital gains on moveable assets are exempt from taxation.

The taxpayer will also be subject to cantonal and municipal tax on global wealth other than foreign real estate. Tax rates vary from canton to canton (1 percent max in Geneva but only 0.13 percent max in Nidwalden).

Inheritance and gift taxes are levied at cantonal level. Certain cantons (e.g. Schwyz) have no tax, while many exempt transfers to spouses and direct descendants. Taxes are usually progressive and depend on the degree of kinship, the highest rates apply to unrelated recipients.

The attraction for the very wealthy is the alternative of lump-sum taxation (or "forfait"). The individual is taxed on the basis of a deemed income based on the annual living expenses incurred in Switzerland and abroad. The lump-sum taxation arrangement covers income and wealth taxes at all levels but not gift or inheritance taxes. The taxpayer does not usually have to declare his worldwide income and assets. However, lump-sum taxation is not available in all cantons (e.g. Zurich) and the individual cannot undertake gainful employment in Switzerland.

The lump-sum is a negotiated agreement with the cantonal tax authority and reflects a wider feature

> Thanks to its economic and political stability, transparent legal system, exceptional infrastructure, efficient capital markets, and low corporate tax rates, Switzerland has one of the world's most competitive economies

of the Swiss tax system: the taxpayer can get advanced tax rulings. This is particularly useful when the taxpayer moving to Switzerland benefits from structures such as trusts; it is possible to agree the tax treatment of such structures in advance.

Wealth and estate planning

Switzerland has a long tradition of private banking born of its political and economic stability, secure legal system and a dedication to freedom, privacy and individual property.

Swiss law provides for efficient and predictable estate planning. It recognises trusts, enforces foreign wills (foreigners may choose their law of nationality to apply to their estate), deals efficiently with estates, and provides for private or philanthropic foundations.

Cons

Languages

Even though most Swiss speak English in addition to one or two of their national languages, it is highly advisable for any foreigners willing to integrate or be employed to speak the language of their place of residence. The German speaking part of Switzerland (66 percent of the population) can present additional challenges as the written language is High German but the spoken language is in multiple dialects some of which are far removed from High German and hard for a foreigner to learn.

Difficult job market and residency restrictions

Certain financial services sectors have seen significant job losses in the past few years as a result of the move to global tax transparency and the costs of regulation. Furthermore, on 9 February 2014, the Swiss population voted in favour of an initiative against mass immigration. Its implementation remains unclear but it is aimed at limiting the number of foreigners who can migrate to Switzerland each year (including EU citizens). For non-EU citizens there are already significant restrictions on who can live and work; even for many EU citizens permanent residence status (C-Permit) requires five years residency and some cantons (e.g. Zug) require evidence of a decent proficiency in the local language.

High cost of living

Cities like Zurich or Geneva are ranked as the most expensive ones to live in in the world, according to a 2015 UBS study. However, at the same time, the high salaries (coupled with lower taxes in some cantons) allow the inhabitants of these cities to benefit a great purchasing power (second and third in the world according to the UBS study).

Housing / real estate

The Swiss housing market appears very expensive, especially in the Zurich and Geneva areas. Finding accommodation can take a significant amount of time. Most B or C residency permit holders can purchase a home but mortgages are very heavily regulated, requiring large down payments and low multiples of income.

Integration / different mentalities

Integrating into the local community can be difficult. Swiss people have a reputation for being discrete and aloof at first.

It's a small country with small cities With 8 million inhabitants (over a million of whom are foreigners), Switzerland has a smaller population than London. Zurich as its largest city numbers 380,000 (although the metropolitan area is 1.9 million), has a surprising cultural offering for its size. However, it cannot compete with a super city like London for the sheer opportunity and diversity. Other Swiss cities are somewhat smaller and, whilst having some notable cultural highlights, are unlikely to satisfy a true urbanite.

Facts

Total assets administered in Switzerland from 2006 - 2015

Banks in Switzerland	Fiduciary assets Total domestic and foreign All currencies	Fiduciary liabilities Total domestic and foreign All currencies
2006	434,020	434,020
2007	482,945	482,945
2008	382,429	382,429
2009	249,580	249,580
2010	201,829	201,829
2011	180,457	180,457
2012	137,747	137,747
2013	120,736	120,736
2014	115,083	115,083
2015	113,217	113,217

(Source: Swiss National Bank)

Christine Sullivan

attorney,
Fragomen

In the first half of 2016 the Swiss-EU relationship figured prominently in the debate running up to the "Brexit" referendum, with pundits and politicians predicting that a post-Brexit relationship of the UK could be modelled on Switzerland which is not a member of the EU nor the EEA but still has access to the European Single Market, the largest common market in the world.

Open Arms?

Free movement in the EU and Switzerland: Fragomen's Christine Sullivan looks at the possible scenarios and consequences for HNWIs

Swiss access to the EU Single Market is governed by a series of bilateral agreements (around 120 in total), including one on the freedom of movement of citizens between Switzerland and the EU. In the campaign leading up to the UK referendum, "Leave" supporters pointed to the Swiss bilateral agreements and suggested that similar deals could be negotiated for the UK. In the immediate aftermath of the Brexit referendum and the vote to leave, Swiss–EU bilateral agreements have become more and more relevant to intra-EU mobility discussions, including those affecting European investor migration.

In this context, the fact that Switzerland is currently envisaging a modification of its free movement of citizens deal with the EU in response to a binding national referendum bears striking similarities to the UK referendum and may provide an indication of what Britain can expect after the Article 50 notification to exit the EU is triggered.

> Many are also closely watching negotiations between Switzerland and the EU in the context of the Swiss referendum as a harbinger of what the UK can expect

EU-Swiss free movement provisions and the 2014 referendum

In Switzerland, access to the labour, goods and service markets of the EU is governed by the so-called "Bilaterals I" agreement, one of which is the free movement of citizens agreement. As one of the Bilaterals I, any termination of the free movement agreement would automatically lead to the termination of the six other strongly interlinked agreements that comprise Bilaterals I, undermining Swiss-EU relations.

Reinforcing this stance, leaders of EU institutions have made it clear that in the context of bilateral agreements with Switzerland, the EU would terminate other internal market related arrangements and negotiations should there be any infringement of the free movement of persons principle. Against this backdrop, a binding referendum was held in Switzerland in February 2014 and 50.3 percent voted in favour of amending the Foreigners Law to introduce a quota system to limit migration, including from the EU. The limitations must be implemented three years from the date of the referendum: by February 2017.

This all sounds remarkably similar to the UK referendum, which was about the larger issue of EU membership as a whole, but in many ways focused on freedom of movement and establishment of EU nationals in the UK. Post-Brexit, in addition to looking to the EU-Swiss bilateral agreements as a model for withdrawal, many are also closely watching negotiations between Switzerland and the EU in the context of the Swiss referendum as a harbinger of what the UK can expect when formal Brexit negotiations begin.

Consequently Swiss negotiators feared that the larger implications of the Brexit vote would eliminate any chance Switzerland had of successfully negotiating free movement restrictions before the February 2017 deadline, with the EU reluctant to provide any concessions before the negotiations with Britain began or were even concluded.

However, recently, European Commission President Jean-Claude Juncker confirmed that talks with Switzerland would continue, restoring hope to Swiss negotiators that the mandate of the referendum may still be met. In fact, a meeting between Juncker and the Swiss President Johann Schneider-Ammann is foreseen for 19 September for further discussions.

While many issues are unclear regarding the future agreement between the EU and Switzerland, the indications given so far by EU institutions suggest that all modification of the current free movement regime would be specific to the Swiss case so that is does not impact the future arrangements with the UK following the Brexit vote.

In this context of uncertainty, two scenarios are possible.

The first scenario would exploit the safeguard clause that already exists in the EU-Swiss bilateral treaty on free movement of citizens, allowing – with prior agreement from the EU – restrictions on intra-EU mobility in the event of serious economic and social difficulties. A modification of the safeguard clause itself is also possible. EU negotiators would prefer this scenario as it would not imply major reforms. Taking into account freedom of movement debates between the EU and the UK prior to the Brexit vote, concessions could be limited to restrictions on EU citizens' access to social benefits. While this scenario would not have an impact on financially self-sufficient persons, such as HNWIs, it may not be the preferred option for Swiss negotiators.

Indeed, the 2014 referendum requires a clear decrease in persons moving to Switzerland, regardless of access to social benefits. Therefore a second scenario, could be the introduction of a quota system: quantitative limits to immigration (third country nationals) and intra-EU mobility (EU citizens). This scenario is likely to trigger the termination of other agreements with the EU and deterioration of the commercial relations between Switzerland and the EU. Consequently, the second scenario – depending of course on the design and implementation of the quota system – could impact HNWIs despite their independence from the Swiss welfare system.

Lump Sum Taxation

This would be problematic, as Switzerland has long been a coveted destination for HNWIs and Zurich unsurprisingly features in the top 10 of desirable global cities for HNWIs in Knight Frank's Wealth Report. Excellent schools, property value, international reputation and natural beauty are an undeniable draw, but a key attraction for HNWIs is the lump-sum taxation system that allows foreign nationals to benefit from a favourable tax regime and to obtain residence in Switzerland while not engaged in gainful economic activity.

In recent years lump-sum taxation has been scaled back, with several cantons abolishing the regime locally. Swiss voters rejected a national abolition of lump-sum taxation in 2014, but a tightening of eligibility requirements took effect on 1 January 2016, including:

- Swiss residents will no longer be eligible for lump-sum tax in the year of their arrival in or return to Switzerland.
- Cohabiting spouses are eligible for lump-sum tax only if both spouses meet the regime's requirements.
- At federal level, calculation of the minimum taxable income will change.
- Cantons must also set a minimum taxable income amount, but are free to determine this amount.

In spite of restrictions on the lump-sum taxation regime, the possibility of an immigration quota system and the aftershocks of Brexit, Switzerland remains an attractive and respected option for our HNW clients, even with an investment migration program that is less straightforward than those offering shorter and less expensive routes to permanent residence and citizenship in comparable jurisdictions.

Switzerland has always offered security and stability in times of uncertainty, particularly from a financial vantage, and the implication of current uncertainties in the UK and beyond remain to be seen. Many in the wealth industry are watching closely to see what effect the decision to leave the EU will have for the UK as a top destination for HNWI migration and what this will mean for other top HNWI locations, with Switzerland a notable standout. Early signs are that the lower value of the British pound is drawing investors to the UK, particularly from Asian countries.

However, we may see that British HNWIs look to Swiss and other investor migration options if freedom of movement for UK nationals is limited by the withdrawal agreement with the EU, to secure alternative residence and nationality for themselves and their families on the European continent.

Facts

Total Banking Staff in Switzerland 2006 - 2015

Banks in Switzerland	Total domestic and foreign			Domestic			Foreign		
	Total staff	Male	Female	Total staff	Male	Female	Total staff	Male	Female
2006	127,921	78,930	48,992	104,245	65,010	39,234	23,677	13,919	9,758
2007	136,200	83,775	52,426	108,820	67,748	41,071	27,381	16,027	11,354
2008	135,740	83,490	52,249	110,122	68,522	41,601	25,617	14,969	10,648
2009	129,807	80,928	48,879	107,546	68,072	39,473	22,262	12,856	9,406
2010	132,010	82,012	49,998	107,997	67,787	40,210	24,013	14,225	9,788
2011	132,540	82,142	50,398	108,098	67,793	40,305	24,442	14,349	10,093
2012	128,904	80,116	48,788	105,156	66,332	38,824	23,748	13,784	9,964
2013	127,133	78,863	48,270	105,763	66,582	39,181	21,370	12,281	9,089
2014	125,289	77,592	47,697	104,053	65,521	38,531	21,237	12,071	9,166
2015	123,889	76,552	47,337	103,041	64,696	38,345	20,847	11,856	8,991

(Source: Swiss National Bank)

US hypocrisy
in the face of its challenging Swiss 'secrecy'

How can Switzerland combat the US when it comes to age old balance between privacy and secrecy, asks Zedra's Bart Deconinck

Bart Deconinck
group deputy chairman, Zedra

The corporate world continues to be in a mad rush to be more transparent and in many ways we must all welcome such change to ensure the appropriate standards of client conduct and corporate governance are adhered to. But within the context of international tax jurisdictions, unchecked demands for change without material progress being made must always raise questions especially where the fundamental rights of the individual are being eroded on a potentially permanent basis. Yet we must still ask ourselves whether the ubiquitous "exchange of information" being demanded by regulators will deliver the desired improvements in global standards and create a better more transparent environment for individuals and corporates the world over. While the rest of the international community seek a degree of uniformity, the US remains a law unto itself which for many makes its requirement for more client information both disagreeable, and even untenable.

Take for example the international regulatory drive by the OECD and its Global Forum on Transparency and Exchange of Information for Tax Purposes. Demands that all countries should fall in line have resulted in a mixed response at best where a willingness to participate will, by necessity, mean the erosion of an individual's right to privacy. The exchange of ownership information, access to financial accounts, and disclosure on the beneficial ownership of companies have all had and will continue to have an immediate impact on privacy. In a quest to weed out the criminal element, the baby will likely be thrown out with the bathwater and the vast majority of law abiding, tax compliant citizens will pay the price as they watch their privacy, essentially a basic human right, and their tax and other account information highly visible.

Clients are understandably worried about exposure, especially those that live in less stable parts of the world where extortion and kidnap may be the likely result of a more transparent environment. If the objective is to out those few bad apples, why should the remainder of the mass affluent bracket be subjected to the same degree of exposure?

Overwhelming international pressure has resulted in a major clean-up of Swiss banks. One solution that seems to have worked well in its Financial community is a now rigorous compliance with international tax transparency requirements and procedures that scrutinise client assets and activity before they can be instructed. Notwithstanding some reputational damage, the Swiss wealth management community will long remember the cost and scale of the audits and fines imposed by the US government but ultimately this process has ushered in a new era of heightened compliance.

Certainly, there are critical questions that need answers such as basic entitlements to confidentiality, whether information conforms to international standards of accuracy and is sufficiently up to date, and where it will be stored and archived. Despite degrees of willingness from the international community, the US would never endorse the new global standards of automatic exchange of information as it would likely damage its financial market, whether it can rightly be accused of sheltering taxable assets owned by foreign taxpayers or not. For many, this somewhat double standard approach from the US is hard to accept especially in the light of its relentless campaign to break the Swiss banking community and in doing so "out" its clients. Yet there is also a growing acceptance that the US will not just roll over on this matter and as such it may be best left alone.

It may therefore seem a strange argument to demand yet more regulation, yet regulation of the right kind especially that which focuses on an appropriate level of due diligence around prospective clients could deliver better results. This would result in an easier route to an international standard in the sharing of information, maintain the requirements for greater transparency and ensure that all clients are more rigorously audited prior to engagement. Although some jurisdictions (like the Channel Islands) already apply higher standards of client due diligence, it is by no means a level playing field. It is clear that if all jurisdictions adopted the same higher standards, the need for further exchange of information would become less relevant and thus privacy would be enhanced.

> Overwhelming international pressure has resulted in a major clean-up of Swiss banks

Perhaps there are lessons to be learnt from the Swiss financial community despite the reputational fall out it had to endure to find a sweeter moral high ground. Subject clients to a more forensic analysis ahead of any instruction, create an international standard and process but in doing so recognise and protect everyone's right to a more acceptable degree of privacy.

Getting your ducks in a row

How prepared are you and your clients for the advent of the Common Reporting Standards asks Ninel De-Faveri-Senmanche

Ninel De-Faveri-Senmache
partner and chief executive FINAKEY Multi-Family Office

Everybody knows that Automatic Exchange of Information (AEOI) and Common Reporting Standards (CRS) are about to be implemented by a large number of jurisdictions.

As at 28 June 2016, 83 countries have signed up to the multi-lateral competent authority agreement (MLCAA) on AEOI. Early adopters will start exchanging information in 2017, while a number of other countries will commence in 2018. Nevertheless, more than 100 countries have committed to adopt AEOI, including Switzerland.

As of 1 July 2016, Switzerland has signed AEOI agreements with 37 countries, including France, Germany, Italy and the UK, Europe's four largest economies and, historically, four of Switzerland's largest sources for private banking and wealth management business.

But not everybody knows exactly what the implications will be for advisers and their clients, in the context of the possible outcomes that could result from the collection and transfer of previously confidential information.

The objective of CRS is to enable tax authorities to assess and levy taxes where applicable. However, some of the information that will be transferred under AEOI has no tax implications. For example, last month, the OECD confirmed that a Protector of a trust, even without powers of appointment, is a reportable person under CRS. Armed with information relating to a Protector, the relevant tax authority may seek to assess the Protector's tax liability with regards to the trust and could embark upon a lengthy process of requesting further information, which will generate a needless administrative burden. Ultimately, the cost of complying with this additional bureaucracy will probably have to be borne by the client.

International families are naturally concerned about AEOI and CRS, as most large economies have signed up to MLCAA, including India, China, UK and all European countries, including Switzerland. For many reporting institutions, such as banks, custodians, insurance companies, asset managers and professional advisers, fiduciaries, structures like trusts and foundations, there are significant challenges, both in complying with the new rules and at the same time in protecting the privacy of their clients. In the context of CRS, these organisations are primarily concerned about assembling the information required by law, according to the agreements signed by their home jurisdiction, in order to be ready – in the case of Switzerland – to start transferring information on 1 January 2018.

Understanding what information is ready to be transferred

Reporting institutions are requesting account holders to complete multiple forms, with varying levels of detail and complexity. Some reporting institutions appear less concerned about the impact or effects that AEOI may have on their clients and are purely focused on ensuring that they comply with the new requirements.

This puts all of the pressure onto professional advisers, to ensure that the information which reporting institutions collect is correct and up-to-date, in order to avoid the time, cost and inconvenience of unwarranted tax assessments, where the burden of proof will inevitably fall, both on them and their clients. It is incumbent upon the clients – and, therefore, a good idea for advisers – to check with reporting institutions what information they currently have on their files, to ensure that any changes that have been made and which were communicated to the institutions concerned have indeed been accurately reflected in their records. This is a case of making sure the potholes are covered, to avoid falling into them after AEOI commences.

> One of the key ways to reduce the potential impact of AEOI is to simplify clients' affairs

Keeping it simple

Irrespective of the common standards adopted by the OECD, countries that are implementing AEOI all have different levels of professional experience and sophistication, as do individual reporting institutions within each jurisdiction. Therefore, it is reasonable to expect that they will have differing levels of capacity to properly receive, store, exchange and use the information sent to them by more advanced countries like Switzerland. Equally, they all have different local priorities, so the passing of legislation will, in some cases, probably be delayed. Nevertheless, advisers must assume that relevant information will have to be ready by the deadlines set.

One of the key ways to reduce the potential impact of AEOI is to simplify clients' affairs and, if possible, reduce the number of jurisdictions concerned with any particular ownership or control structure. For example, one might want to consider making changes, where possible, if a trust has a protector residing temporarily in a jurisdiction where you would not want to have your data exposed, or if co-trustees are living in different jurisdictions, whilst all the other elements of the trust reside in a jurisdiction where it cannot be moved. Now might also be the time to reimburse loans, or make distributions.

Naturally, clients should maintain an appropriate level of risk diversification. Nevertheless, this is a time for them to think about what levels of complexity they need to have in place going forward and which core jurisdictions they want to continue using. It is also an ideal opportunity for them to consider their key financial and professional relationships and, more specifically, which ones they might want to bring to an orderly close, as part of a rationalisation process, to limit the administrative burden of multiple reporting and any inconvenience or cost which may result.

Privacy vs. Secrecy

What Do Clients Really Want?

Confidentiality remains as important to clients as ever, McDermott Will & Emery's David Adler examines why

David Adler
partner,
McDermott Will & Emery

Confidentiality is of course a central value for professional advisors and the private clients they act for. The concept of confidentiality should not be conflated with "secrecy", which, in many discussions concerning financial transparency seems now to be a code word for tax evasion and other improper uses of the global financial system and legal structuring.

The last several years have clearly brought watershed events to the operating environment for private client advisors in Switzerland. The scope of diligence that financial institutions and fiduciaries in Switzerland now conduct as a matter of course in onboarding new clients, and the degree of information sharing as between financial institutions and fiduciaries, on the one hand, and tax authorities, on the other, would have been unthinkable just ten years ago.

One of the most remarked upon unknowns of the emerging world of international financial information exchange is he ability of jurisdictions to safeguard the financial information that is being generated by regimes like FATCA and the Common Reporting Standard as well as to use the information for its intended purpose – combating tax evasion and money laundering.

The concern is that transparency initiatives are generating huge amounts of financial information that could be used by bad actors to target individuals for political or criminal purposes. Examples of large scale data breaches are of course not restricted to Switzerland or to financial institutions. If the United States can be struck by WikiLeaks, or Mossack Fonseca by the Panama Papers, how confident can people be that the tax authorities in each of the scores of countries that have undertaken to implement the Common Reporting Standard will ensure that the sensitive financial information entrusted to them will not fall into the wrong hands? With precedents like Yukos in Russia, who can be certain that financial information will not be used politically? With the history of kidnappings for ransom in Latin America, who can warrant that mishandled financial information will not become another weapon for criminals?

The foregoing reasons perhaps contribute to the historical deep value that the Swiss have accorded to privacy and confidentiality in respect of one's financial affairs. To be sure, this value was abused and used opportunistically, as became clear in the U.S. Department of Justice's recent investigations of many Swiss financial institutions, and this has contributed to the conflation of the concepts of financial privacy and tax secrecy. As a consequence, Swiss financial institutions and fiduciaries have had to give ground and accustom themselves to doing business in a world where deep diligence and expansive information sharing is the order of the day.

It is worth noting one paradox in the development of this world of increasing transparency and international cooperation in tax matters. The United States, which, historically, has been a major force for transparency – witness FATCA and the Department of Justice investigations of the Swiss banks – has become, because of the light diligence requirements required of U.S. domestic financial institutions, and because of its non-adoption of the Common Reporting Standard, a jurisdiction that people will consider if they are trying to mitigate certain types of information reporting, if they are trying to maximize – dare we say it – secrecy. How little information needs to be disclosed to organize a corporation or limited liability company in Delaware, or Nevada, or Wyoming, or in any number of U.S. states, and then to open a bank or brokerage account for that corporation or limited liability company (and how little information the bank or brokerage house will ask for in respect of the beneficial owners of that entity), is well known and has been criticized. However, there has been some momentum in the United States recently to expand the diligence requirements that domestic U.S. financial institutions will be obligated to conduct in respect of accounts maintained by legal entities, as well as calls from the Commissioner of the Internal Revenue Service for the United States to adopt the Common Reporting Standard.

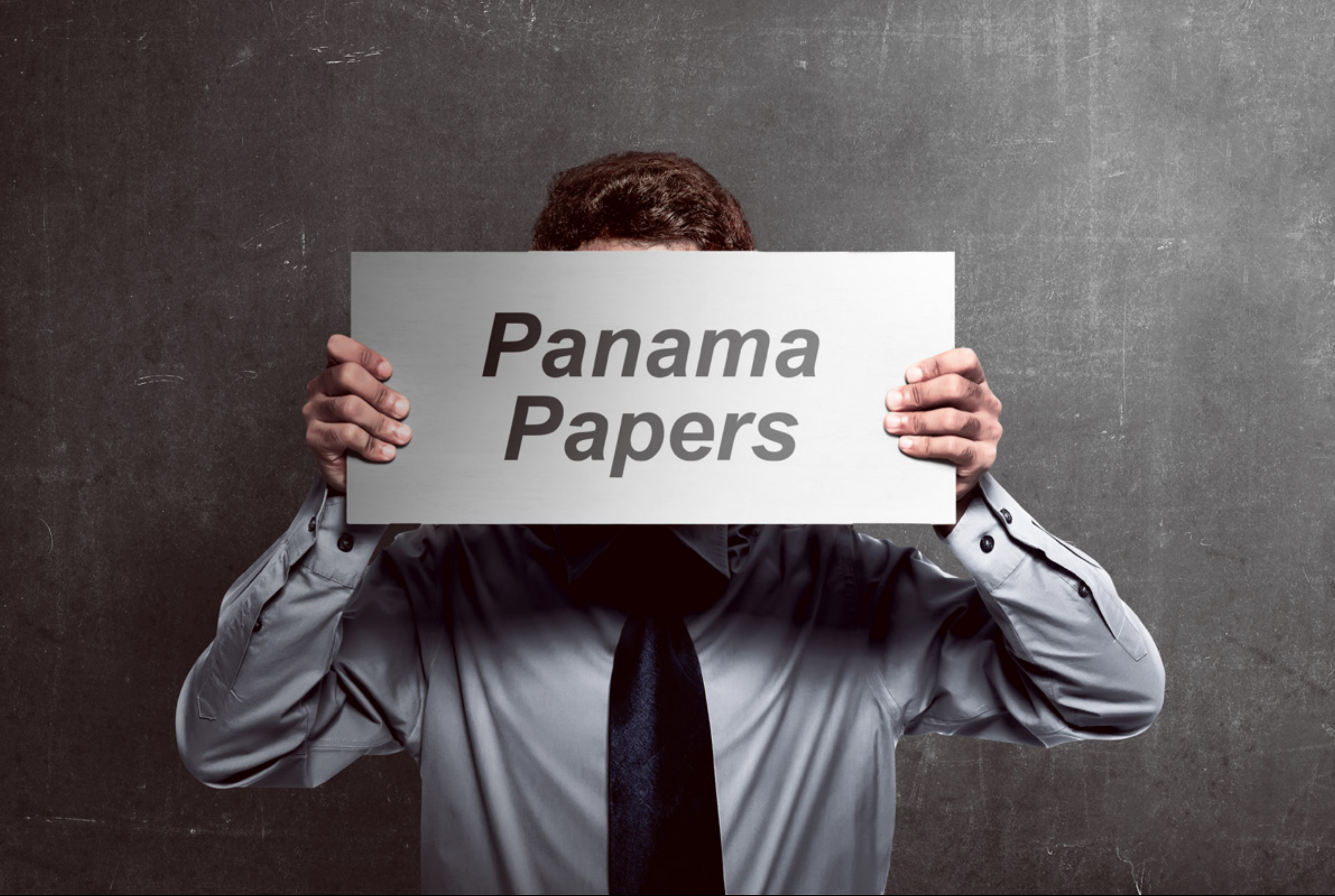
Clients often seek certainty as an overriding value. Whatever the information reporting landscape is, they are happy to participate in it so long as there is a fair assurance that the information reported will be used for its intended purposes, and only those purposes. The issue faced by private clients and their advisors in the contemporary landscape is the concern that data may be breached and misappropriated, the concern that transparency initiatives are generating massive amounts of financial information – often with quite an attenuated connection to the computation of tax liability, if in fact any connection – that could be misused for any one of many sinister ends: politically driven tax investigations or asset seizures, kidnappings for ransom, public shaming, etc. It is incumbent upon policy makers and government officials to assure customers of the global financial system that the array of transparency initiatives will not open a Pandora's box of unintended consequences.

Facts

Total assets administered in Switzerland from 2006 - 2015

Banks in Switzerland	Number of institutions	Balance sheet total	Operating result	Profit / loss (result of the period)	Fiduciary transactions	Number of staff
2006	331	3,194,197	24,919	20,092	434,020	127,921
2007	330	3,457,897	8,820	9,795	482,945	136,200
2008	327	3,079,613	-31,247	-30,514	382,429	135,740
2009	325	2,668,223	2,935	2,390	249,580	129,807
2010	320	2,714,526	7,766	10,638	201,829	132,010
2011	312	2,792,965	13,175	12,996	180,457	132,540
2012	297	2,778,284	3,929	186	137,747	128,904
2013	283	2,849,157	7,627	10,517	120,736	127,133
2014	275	3,041,720	4,371	7,370	115,083	125,289
2015	266	3,026,150	6,917	15,829	113,217	123,889

(Source: Swiss National Bank)



Lessons from the Panama Papers

The future for Switzerland

Just four months ago the Panama Papers were dominating the news; much has changed since then but can the private wealth industry move on and prosper after so many damaging revelations?

Emily Osbourne

senior associate,
Stephenson Harwood

Panama was a popular jurisdiction because it offered a high degree of confidentiality and was reasonably good value for money. However due to Mossack Fonseca's prolific incorporation agent activities, the majority of which were BVI companies, the impact of the Panama Papers was not solely confined to those using Panamanian companies.

Impact in Switzerland

Switzerland was a notable victim of this; it was the European country with the most Mossack Fonseca incorporated companies connected to it and a high number of intermediaries who used their services.

It might be reasonable to suppose that the private wealth industry in Switzerland would be particularly hard hit by the revelations. Certainly there are signs that the global banking community will not escape unscathed, with HSBC recently announcing that the fallout from the

Panama Papers could be of "significant impact". However the world of Swiss private banks is far removed from the HSBC business model and perhaps the Swiss banks have already had their "moments of significant impact" with deals with the IRS, investigations by the authorities in Switzerland and of course the RUBIK Agreement between the UK and Switzerland.

The aspect of the Panama Papers overlooked in the sensationalist rush to expose as many well-known names as possible is that it is not illegal to have an offshore company, nor to wish to keep that information private. Whilst many of those uncovered may have links to unlawful conduct or "dirty" money, the majority were probably created for legitimate wealth planning reasons. Indeed, a recent survey by the financial services research and insight firm Verdict Financial found that the most commonly given reason for investing offshore was to access a greater range of investment options. Tax planning came a close second, but it is not the primary nor only factor which leads to the creation of offshore structures. Political and economic instability is another driver for wealthy individuals looking for somewhere safe to keep their money, and this is one reason why Switzerland has been, and will remain, a popular jurisdiction for the world's wealthy.

With all that in mind, what is the future for Switzerland now that the media has moved on from the Panama Papers and the private wealth industry has had some time to pick up the pieces and move forwards?

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Transparency

In common with more than 80 other jurisdictions, Switzerland has committed to the Common Reporting Standard (CRS) and will be exchanging information from 2017. This is a massive administrative burden for the industry, particularly for fiduciaries who have to grapple with concepts that seem at times alien to trust law and operation, despite some familiarity with the concepts from FATCA.

Much of the rest of 2016 is therefore likely to be centred on carrying out reviews of existing clients to decide who is a reportable person and whether they are resident in a jurisdiction which has signed up to CRS. A certain amount of restructuring is also likely in the case of trusts; the OECD's insistence on including protectors as reportable persons regardless of the nature of their involvement in the running of the trust may see a slow-down in the recent trend for settlors to appoint protectors.

Banking

Switzerland's banks have long held appeal to the world's wealthy, initially for their widely prized banking secrecy and now for their perceived stability and cautious approach. Secrecy may be over following Switzerland entering into exchange of information agreements and signing up to CRS, but discretion can still be relied on.

Despite competition from various quarters, it seems likely that Switzerland will continue to be viewed as a safe haven for client money, which in turn drives demand for fiduciaries and other wealth management professionals in Switzerland.

Cyber security

Another aspect of the Panama Papers which was somewhat glossed over is that it is believed that the data came from a hacker, who in turn received information on the firm's security systems from a disgruntled employee.

A key question which existing and new clients will be asking going forwards must surely be "how safe is my data with you?". Whilst no system is infallible, the recent trend of whistleblowing and hacking will require private wealth professionals to maintain stringent safeguards to protect their client's data from falling into the wrong hands.

Conclusion

The Panama Papers highlighted Switzerland's historic role in creating offshore structures shrouded in secrecy, but times have changed and Switzerland has recognised that and moved forwards too. There are challenges ahead for the private wealth profession in grappling with increasing transparency, client demands and reputation management but it is likely Switzerland will remain a safe haven for the world's wealth for some time to come.