



The end of Banking Privacy?
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Privacy is a right

■ European Convention on Human Rights

■ ARTICLE 8

- Everyone has the right to respect for his private and family life, his home and his correspondence.
- There shall be **no interference by a public authority with the exercise of this right** except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or **the economic well-being of the country**, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

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Privacy V Secrecy

■ Privacy

- is the freedom from unauthorized intrusion, the right to keep certain matters to oneself.
- It is the recognition that there is no requirement for an individual to reveal every detail in their life to someone else.

■ Secrecy

- at least for this purpose, is more to do with concealment.
- It is an intention to conceal some information that should be disclosed; secrecy has an element of deception and dishonesty.

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Why do customer's need bank secrecy? (Wikipedia Entry)

- To hide it from friends, spouse or other family members.
- To hide it from the employer. (Many employers restrict the ability of their staff to trade shares to prevent conflicts of interest).
- To store embezzled money.
- To launder money.
- To prevent confiscation of money, e.g. in the case of potential bankruptcy.
- Tax evasion (banking secrecy extends to tax agencies being refused permission to examine accounts).
- Tax resistance (by libertarians, or others, who oppose the institution collecting the tax).
- Protection from over-bearing or corrupt local government agencies.
- Protection from litigation.
- For any other reason which requires no-one being able to identify the amount of money you have or have earned/acquired.
- Privacy from press or publicity.
- Protection from criminals.
- Protection from solicitation.
- Simply for privacy. The possession of liquid wealth attracts publicity, which is not always welcome.

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The onshore/offshore debate

- “legitimate privacy” - onshore
- “excessive secrecy” - offshore

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The customer's expectations

- The Tournier Case (1924) established in UK common law four exceptions on the Banker's duty to confidentiality;
 - where the bank is compelled by law to disclose the information
 - if the bank has a public duty to disclose the information
 - if the bank's own interests require disclosure; and
 - where the customer has agreed to the information being disclosed.

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Compulsion By Law-Gateways

- **Prevention of crime**
 - Organised crime/Corruption
 - STRs (AML/CFT 250,000 in UK alone p.a.)
 - Transaction reporting (US BSA and equivalent- 18M p.a. in US alone)
- **Regulatory**
 - Consolidated supervision
 - Market Abuse
- **Evidence in Proceedings**
 - Mutual Legal Assistance
 - Proceeds of crime
- **Taxation**
 - US QI
 - EU Savings Tax Directive
 - OECD
 - Tax Treaties/Tax Data Deals

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Developments in Taxation Legislation

- **EU Savings Tax Directive**
 - Implemented in 2005 for bank interest paid to EU resident individuals
 1. **Information Exchange:** Under the 'information exchange' system, the identity of individual recipients will be disclosed to their home tax authorities.
 2. **Withholding Tax:** When tax is 'withheld', the identity of the recipient is not reported, thus preserving individual confidentiality.
 - Expansion of regime to include;
 - All forms of returns on financial assets including capital gains and dividends
 - Applicable to legal entities (bodies corporate and trusts)
 - Creating a duty for countries with strict bank secrecy rules to transfer information about the identity of account holders.

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Developments in Taxation Legislation

■ OECD

- Model tax convention
- 2004 changes
 - “ If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes... In no case shall... a Contracting State decline to provide information solely because it has no domestic interest in such information”

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Developments in Taxation Legislation

■ US

- LGT/UBS Report & Developments
 - Strengthen QI Reporting of Foreign Accounts Held by U.S. Persons
 - Strengthen 1099 Reporting
 - Strengthen QI Audits
 - Penalize Tax Haven Banks that Impede U.S. Tax Enforcement
 - Attribute Presumption of Control to U.S. Taxpayers
 - Allow More Time to Combat Offshore Tax Abuses

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Developments in Taxation Legislation

■ US

- Stop Tax Haven Abuse Act
 - Establish presumptions to combat offshore secrecy
 - Impose tougher requirements on U.S. Taxpayers using offshore secrecy jurisdictions
 - Authorize special measures to stop offshore tax abuses
 - Strengthen detection of offshore activities
 - Close offshore trust loopholes
 - Strengthen penalties
 - Stop tax shelter patents
 - Require hedge funds and company formation agents to know their offshore clients

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What is an “Offshore Secrecy Jurisdiction”?

“A tax haven is a foreign jurisdiction that maintains corporate, bank, and tax secrecy laws and industry practices that make it very difficult for other countries to find out whether their citizens are using the tax haven to cheat on their taxes. In effect, tax havens sell secrecy to attract clients to their shores. They peddle secrecy the way other countries advertise high quality services. ”

Senator Carl Levin

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Initial list of 34 Offshore Secrecy Jurisdictions under STHAA

- Anguilla
- Antigua and Barbuda
- Aruba
- Bahamas
- Barbados
- Belize
- Bermuda
- British Virgin Islands
- Cayman Islands
- Cook Islands
- Costa Rica
- Cyprus
- Dominica
- Gibraltar
- Grenada
- Guernsey/Sark/Alderney
- Hong Kong
- Isle of Man
- Jersey
- Latvia
- Lichtenstein (*their spelling*)
- Luxembourg
- Malta
- Nauru
- Netherlands
- Antilles
- Panama
- Samoa
- St. Kitts and Nevis
- St. Lucia
- St. Vincent and the Grenadines
- Singapore
- Switzerland
- Turks and Caicos
- Vanuatu

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The LGT impact

- Sale of stolen information on customers to revenue authorities.
- Former employee of LGT Bank in Liechtenstein sold data on about 1,400 people to tax authorities across the world. This was followed by investigations by Germany, the US, the UK, Australia, Italy and others.
- After receiving the stolen data, the German government initiated action against around 600 taxpayers for possible tax evasion.

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Initial Impact

- Liechtenstein announced that financial information on foreign accounts would be made available to other states on a "need to know" basis if Liechtenstein's authorities were convinced their clients would not be excessively penalized e.g. the foreign states were "willing to find sensible solutions."

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Is there a future for Banking Secrecy?

- Fraud
- Tax Evasion
- Bankruptcy
- Money Laundering
- Terrorist Financing
- Embezzlement
- Corruption
- Organised Crime
- Criminal Activity

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Is there a future for Banking Privacy?

- Financial planning
- Lowering of tax burdens
- Estate planning
- Personal safety

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Where is it going?

- The right to privacy should not need reasserting by an individual, in just the same way he has no need to assert his right to liberty itself.
- Gateways for the legitimate exchange of information are not floodgates
- Safeguards are in place to ensure that privacy is maintained
- Criminals can no longer hide behind veils of secrecy
- Regulators are not conduits for tax exchanges

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