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FENOMEN ŠVAJCARSKOG BANKARSTVA

Rezime

Švajcarsko bankarstvo je „generičko ime“ za sistem koji počiva na privatnom bankarstvu uz bankarsku tajnost. U uvodnom delu naglašena je razlika između švajcarskog bankarstva i bankarstva u Švajcarskoj. U drugom delu detaljnije je opisana institucija bankarske tajnosti, a u trećem - izuzeci od nje. U četvrom delu raspravlja se o sadašnjosti i budućnosti švajcarskog bankarstva. Razmotreno je da li je institucija bankarske tajne postala smetnja u novim uslovima za dalji razvoj švajcarskog bankarstva i švajcarskih banaka, kao i da li će u budućnosti tzv. švajcarsko bankarstvo nestati.

Ključne reči: švajcarsko bankarstvo, bankarska tajnost, lično bankarstvo, poreska evazija

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PHENOMENON OF SWISS BANKING

Summary

Swiss banking is a „generic name“ for a system based on private banking and banking secrecy. In the introductory chapter we highlight the difference between Swiss banking and banking in the Switzerland's system. In the second chapter we present a more detailed description of the institution of banking secrecy, while in the third chapter we present the exceptions to it. The fourth chapter elaborates on the present and the future of Swiss banking. It is argued whether in the present circumstances banking secrecy has become disruptive to the further development of both Swiss banking and banking in Switzerland and whether Swiss banking will come to an end in the future.

Keywords: Swiss banking, banking secrecy, personal banking, tax evasion

JEL: G14, G18, G21

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Švajcarsko bankarstvo ≠ bankarstvo u Švajcarskoj

Švajcarsko bankarstvo se često netačno smatra sinonimom za bankarstvo u zemlji Švajcarskoj. Švajcarsko bankarstvo je „generičko ime“ za sistem koji počiva na privatnom bankarstvu uz bankarsku tajnost. Švajcarsko bankarstvo neraskidivo je vezano za pojam bankarske tajne. Bitno je naglasiti da bankarska tajna nije jedini faktor koji je učinio Švajcarsku jednim od najznačajnijih svjetskih finansijskih centara, već mnogi faktori u interakciji, ali je bankarska tajna ipak važna za uspeh švajcarskog bankarskog sektora. Pošto je ta karakteristika ono što je dosta obeležilo sve švajcarske banke, tj. pošto su po njoj švajcarske banke toliko prepoznatljive da je pojava *švajcarsko bankarstvo* faktički postalo sinonim za lično bankarstvo sa jakom bankarskom tajnom, u daljem tekstu koncentrisati na značaj bankarske tajne.

Da bi do kraja otklonili netačno, sinonimsko posmatranje švajcarskog bankarstva, kao specifičnog vida međunarodnog bankarstva, i bankarstva u Švajcarskoj, kao jednoj od najrazvijenijih i najuređenih zemalja na svetu, najpre opisujemo osnovne elemente bankarstva u Švajcarskoj, a potom detaljno analiziramo fenomen bankarske tajnosti.

Švajcarska je jedan od vodećih svjetskih finansijskih centara. Iako ima manje od 0,1% svetskog stanovništva, u njenim bankama se nalazi više od 1/3 (oko 35%) ukupnog svetskog privatnog kapitala (kapitala pojedinaca), što je čini super-silom u međunarodnom bankarstvu. Ju-bi-es (UBS) i Kredi Suis (Credit Suisse) su među vodećim svjetskim mega-bankama. Sve su to razlozi zbog kojih je Švajcarska lider u međunarodnom ošor privatnom bankarstvu i jedan od vodećih svjetskih finansijskih centara.

Švajcarska je specifična već po tome što je zbog svog geografskog položaja dosta izolovana (kontinentalni deo Evrope koji se nalazi na Alpima). Iz te izolovanosti verovatno korene vuče i činjenica da je Švajcarska neutralna država, da nije član Evropske Unije, MMF-a niti Grupacije svetske banke, i da je tek nedavno, u XXI veku, postala član Ujedinjenih nacija.

Tek je u XX veku bankarstvo u Švajcarskoj je postalo međunarodno (u smislu da su klijenti švajcarskih banaka postajali stranci). Iako je taj

trend bio prisutan i pre I svetskog rata, sam rat (I svetski, a još više kasnije i II svetski), ali naročito period između dva svetska rata faktički su doprineli razvoju švajcarskog bankarstva. Pošto je Švajcarska bila vojno neutralna, njeno bankarstvo bilo je otvoreno za građanstvo obe zaraćene strane. Poznato je da se švajcarskom bankarstvu pripisuje neetičnost. To je najviše vezano za slučaj slepog poštovanja bankarske tajne u slučaju računa Jevreja stradali u II svetskom ratu. Pozivajući se na bankarsku tajnu švajcarske banke su jednostavno desetlećima koristile sredstva sa tih računa, da bi se tek 1999. godine nagodili sa naslednicama žrtava i isplatili im ukuno 1,25 milijardi dolara. Period između dva svetska rata je naročito išao na ruku razvoju bankarstva u Švajcarskoj, kada su najveće švajcarske banke po visini kapitala počele da pristižu najveće nemačke i francuske banke. Period posle velike ekonomske krize 1929-1933. godine obeležen je težnjom Hitlerove Nemačke da sve „nemačke fondove“ objedini u nemačkim bankama, za šta su prepreka bile švajcarske banke. Događaji sa tri nemačka špijuna uhvaćenim u industrijskoj špijunaži švajcarskih banaka i kada je nemački državljani Arthur Pfau neuspešno pokušao da ubedi službenika švajcarske UBS banke da mu da uvid u neke detalje nemačkih klijenata (1931. godine) učvrstio je tamošnje vlasti u neophodnost postojanje bankarske tajne i njenoj institucionalizaciji. Treba naglasiti da su se ti događaji zbili pre dolaska Hitlera na vlast u Nemačkoj (1933. godine). Neki, uglavnom ne-Švajcarci, tvrde da je zakon iz 1934. godine donesen da bi sprečio otvaranje stranih banaka u Švajcarskoj. I pre 1934. godine, kao što je to bio slučaj i u većini ostalih zemalja, bankarska tajnost bila je pitanje regulisano najboljom praksom. Tridesete godine XX veka vreme su značajnih ekonomskih i političkih poteškoća. Porezi u Evropi su bili su visoki zbog obnove posle I svetskog rata i otplate reparacija, pa su vlade u Nemačkoj i Francuskoj pokušale infiltriranje u švajcarske banke kako bi otkrile imovinu svojih državljana u njima. Incident poznat kao „Pariska afera“ iz 1932. godine izbio je kada su dva francuska klijenta švajcarske Basler Handelsbank uhapšeni u Parizu dok su pokušavali da nekim francuskim državljanima pomognu u izbegavanju poreza. Tako su francuske vlasti saznale da u toj banci uloge ima

Swiss banking ≠ banking in Switzerland

Swiss banking is often incorrectly regarded as synonymous with banking in the country of Switzerland. Swiss banking is a "generic name" for a system based on private banking implying banking secrecy. Swiss banking is closely related to the concept of banking secrecy. It is important to emphasize that banking secrecy is not the only factor that has made Switzerland one of the most important global financial centres. Instead, there are many factors which interact. Nevertheless, banking secrecy is still important to the success of the Swiss banking sector. Given that this feature has significantly marked all Swiss banks, i.e. given that so many Swiss banks recognized that the phenomenon of Swiss banking has become virtually synonymous with personal banking with strong banking secrecy hereinafter we shall focus on the importance of banking secrecy.

In order to eliminate false end synonymous consideration of Swiss banking, as a specific form of international banking, and banking in Switzerland, one of the most developed and best regulated countries in the world, we will first describe the basic elements of banking in Switzerland, and then thoroughly analyze the phenomenon of banking secrecy.

Switzerland is one of the world's leading financial centres. Although it accounts for less than 0.1% of the world population, its banks cover more than 1/3 (35%) of the world's private equity (capital of individuals), which makes it a superpower in international banking. UBS and Credit Suisse are among the top global megabanks. These are the reasons why Switzerland is a leader in the international offshore private banking and one of the world's leading financial centres.

Switzerland is specific due to its quite isolated geographical position (landlocked county in Europe located in the Alps). This isolation probably represents the root to the fact that Switzerland is a neutral country which is not a member of the European Union, the IMF nor the World Bank Group, and only recently, in the XXI century, became a member of the United Nations.

It was only in the twentieth century that

banking in Switzerland became international (in the sense that non-residents became the clients of Swiss banks). Although this trend was present before the World War I, the war itself (World War I and even more the forthcoming World War II), but especially the period between the two world wars actually contributed to the development of Swiss banking. Being military neutral, Switzerland and its banking were open to the public of both warring sides. It is known that the Swiss banking is often considered unethical. This is most typically related to the strict following of banking secrecy in the case of accounts owned by the Jews killed in the World War II. Referring to the banking secret, Swiss banks have simply used the funds in those accounts for decades, and only in 1999 they made a deal with the successors of victims to pay them out a total of 1.25 billion USD. The period between the two world wars particularly boosted the development of the banking industry in Switzerland. In the aforementioned period the largest Swiss banks started to outgrow the major German and French banks. The period after the great economic crisis of 1929-1933 was characterized by the aspirations of Hitler's Germany to consolidate the "German funds" in German banks, to which Swiss banks were an impediment. The incidents with three German spies caught in the industrial espionage of the Swiss banks, when the German citizen Arthur Pfau unsuccessfully tried to convince the officials of the Swiss bank UBS to grant him some insight into the details of the German clients (in 1931) fortified the local authorities in their belief about the necessity of banking secrecy and its institutionalization. It should be noted that these events took place before Hitler came to power in Germany (which happened in 1933). Some people - mostly non-Swiss - claimed that the 1934 Swiss law on banks was a deliberate attempt to protect Swiss banks from foreign intrusions. Previously, as had been the case in most countries, banking secrecy was a matter of best practice, but the 1934 federal law took it to a higher level of seriousness. Certainly, the 1930s were a period of considerable economic and political upheaval and uncertainty. In particular, the European taxes were high after the World War I with the aim of collecting funds for the reconstruction and redemption of

1.000 francuskih državljana, što je izazvalo veliki skandal u Francuskoj (Thome, 2009, str. 5-6).

Posle završetka II svetskog rata, Zakon o bankama, a u okviru njega i bankarska tajnost, bio je na snazi već 10 godina. S obzirom da je polovina tog perioda prošla u ratu, Švajcarska nije imala dovoljno vremena da ostvari pozitivne efekte od uvođenja pomenutog zakona. Međutim, nakon završetka rata, dolazi do porasta atraktivnosti Švajcarske kao finansijskog centra. Iako ne glavni, jedan od razloga za to jeste postojanje bankarske tajnosti. U tom kontekstu, interesantno je razmotriti pogled Nezavisne komisije eksperata Švajcarske - II svetski rat (Independent Commission of Experts Switzerland - ICE) iz 2001, kada su izjavili sledeće: „Iz straha od devalvacije valute, političke nestabilnosti, strane kontrole razmene, oduzimanja imanja ili rata, mnogi Evropljani transferuju svoja likvidna sredstva u Švajcarsku tokom dvadesetih i tridesetih godina prošlog veka. Švajcarska tradicionalna neutralnost, međunarodna reputacija švajcarskog finansijskog centra, laka dostupnost u centru Evrope, nedostatak strane kontrole razmene i jak švajcarski franak učinili su Švajcarsku popularnim rajem“ (Vogler, 2006, str. 29).

Prava internacionalizacija švajcarskog bankarskog sektora (u smislu da švajcarske banke počinju da posluju po svetu) dogodila se tek sedamdesetih godina XX veka.

Švajcarska je stekla reputaciju sigurnog utočišta novca i kapitala zbog svoje dugogodišnje ekonomske, političke, pravne i socijalne stabilnosti. Zahvaljujući ekonomskom uticaju,

Švajcarska će nastaviti da koristi prednosti jake valute i niskog nivoa nacionalnog duga. Poslovno okruženje je karakteristično po veoma niskom nivou korupcije, takođe prisutan je i nizak nivo eksproprijacije. Osim toga, visok životni standard i sistem socijalne zaštite će igrati glavnu ulogu u obezbeđivanju socijalne sigurnosti. Ne manje važno od svega, neophodno je napomenuti da je politički sistem u Švajcarskoj zasnovan na principima neposredne demokratije, što samo po sebi garantuje visok stepen kontinuiteta. Sve dok postoje politička i društvena previranja i ekonomske krize u nekim drugim regioima sveta, Švajcarska može da se osloni na svoj status sigurnog utočišta kao ključnog faktora uspeha svoga bankarstva (PWC, 2013, str. 19-20).

Politička stabilizacija Evrope, stvaranje evropskog ekonomskog prostora sa slobodnim kretanjem dobara, kapitala i ljudi, kao i uvođenje evra je jako uticalo na tradicionalnu lokacijsku prednost Švajcarske. Susedne zemlje su ulagale napor da vrata sredstva uložena u inostranstvo u njihove države putem niskih poreskih opterećenja i poreskih amnestija. U isto vreme švajcarska bankarska tajna je u više navrata dovođena međunarodno u pitanje, što je uznemirilo ofšor klijente švajcarskih banaka. Mnogi bogati klijenti smatraju da neoporezovani novac vredi manje nego oporezovani zbog toga što neoporezovani novac nosi veći rizik i ne može se slobodno koristiti. Kao posledica toga postoji tendencija da nove generacije bogatih ljudi u Evropi preferiraju korišćenje legalnih poreski optimizovanih opcija do obične poreske evazije.

war debts, and government agents from both France and Germany attempted to infiltrate Swiss banks to discover what assets their own citizens had placed in the Swiss banks. Notable incidents include the 1932 'Paris Affair' when the French authorities acquired the names of 1,000 politically prominent clients of Basler Handelsbank after two members of its staff were arrested in Paris as they were trying to help some French citizens to avoid paying the coupon tax. This caused a scandal which erupted in France (Thome, 2009, pp. 5-6).

At the end of the War, the Law on banking and banking secrecy had been in force for ten years. More than half of this period had been taken up by the War, during which time there was little chance for the new Swiss law to exert much positive effect. But what can explain the increasing appeal of Switzerland as a financial centre, built up over many long years to the present day, if not banking secrecy? It is interesting in this context to revisit the view of the Independent Commission of Experts Switzerland - Second World War (ICE). In 2001 it stated the following: "Out of fear of currency devaluation, political insecurities, foreign exchange controls, dispossession or war, many Europeans transferred some of their liquid assets to Switzerland during the 1920s and early 1930s. Switzerland's traditional neutrality, the Swiss financial centre's international reputation, its easy accessibility in the centre of Europe, the lack of foreign exchange controls and the strong Swiss franc made Switzerland a popular haven." (Vogler, 2006, p. 29).

The real internationalization of the Swiss banking sector (in the sense that Swiss banks are starting to operate globally) occurred only during the 1970s.

Switzerland earned the reputation of a safe haven due to its long-standing economic, political, legal and social stability. Thanks to its economic clout, Switzerland will continue to benefit from a strong currency and a low level of national debt. The business environment is characterized by very little corruption and arbitrariness as well as a low risk of expropriation. Furthermore, the high average standard of living and the social security system will play a major role in ensuring social stability. And last but not the least, the political system in Switzerland is based on the principles of direct democracy, which in itself guarantees a high degree of continuity. As long as there is political and social turmoil or economic downturn in other regions of the world, Switzerland can rely on its safe haven status as the key success factor for its private banking industry (PWC, 2013, p. 19-20).

The political stabilization of Europe, the creation of the European economic area based on free movement of goods, capital and people, as well as the introduction of the Euro affected the traditional advantage of Switzerland in terms of its location. The neighbouring countries have made efforts to return the funds invested abroad through low taxes and tax amnesties. At the same time, the Swiss banking secrecy has repeatedly been brought into question at the international level, which upset the offshore clients of Swiss banks. Many wealthy clients find that untaxed money is worth less than taxed because untaxed money causes a higher risk and cannot be used freely. As a result there is a tendency that a new generation of wealthy people in Europe prefers the use of legal tax-optimized options to ordinary tax evasion.

Tabela 1. Ključni faktori koji opisuju poslovno okruženju u Švajcarskom privatnom bankarstvu tokom narednih godina

Upravljanje sredstvima	Sigurno okruženje	Bogatstvo generacija	Učinak	Konkurencija	Odliv sredstava
Banke koriste povoljnu političko-ekonomsku situaciju države u okolnostima nestabilnosti EU	Ekonomski rast je pozitivan, ali vrlo mali, pa je samim tim i bogatstvo ograničeno	Neizvesnost investitora i slabljenje EUR i USD se odražava na klijenta, a efekat će zavisići od dužine trajanja ekonomske krize	Privlačenje novih klijenata i kapitala ugroženo je pojačanom konkurencijom između banaka i eksternih menadžera	Privlačenje novih klijenata i kapitala ugroženo je pojačanom konkurencijom između banaka i eksternih menadžera
Prihodi	Trgovačke aktivnosti	Preferencije klijenta	Kamatna stopa	Provizije	Retrocesija
Loš učinak na tržištu kapitala u velikoj meri opterećuju trgovinske aktivnosti. Efekat će zavisići od dužine trajanja ekonomske krize	Skandali ili preferencije klijenata dovode do averzije klijenata prema kompleksnim i struktuiranim proizvodima	Rekordno niske kamatne stope su dosta uticale na profitabilnost banaka. Uticaj zavisi od budućih monetarnih politika ECB, FOMC i SNB	Posle regulisanja ofšor kapitala Švajcarski menadžeri će biti direktna konkurencija stranim, što će povećati pritisak na naknade i provizije	MFID zabranjuje retrocesiju, što je bio veliki izvor prihoda od prodaje proizvoda
Troškovi	Regulativa	Depozitari	Know how	Menadžment odnosa	Tehnologija
Pristupanje EU je povezano sa usvajanjem MFID II standarda (npr. zaštita potrošača iz EU)	FINMA povećava pritisak na depozitare kako	MFID II zahteva značajne investicije u ljudske resurse	MFID II standardi povećavaju administrativni posao menadžmenta odnosa (profilisanje klijenata itd)	Potrebne velike investicije u informacionu tehnologiju

Negativni uticaji

Pozitivni uticaji

Neutralni uticaji

Izvor: PWC, 2013, str. 19

Pozicija bankarstva u Švajcarskoj kao svetskog lidera u ličnom bankarstvu (private banking) je izgrađena na makroekonomskim i mikroekonomskim temeljima. Za razliku od drugih razvijenih zemalja, Švajcarska održava svoju finansijsku stabilnost kroz nizak javni dug i pozitivan budžetski bilans. Pored toga, uzimajući u obzir i stručnjake sa kojima raspolaže, Švajcarska postaje najinovativnija i konkurentnija zemlja širom sveta, čime jača svoj položaj globalnog i svetskog finansijskog centra. Švajcarski bankarski sektor u potpunosti igra ulogu u raspodeli kapitala na ostatak privrede, čime podržava rast i otvaranje novih radnih mesta. Od finansijske krize, krediti za preduzeća pokazuju stopu rasta od 6%, dok za tri najveće ekonomije u Evropskoj Uniji imaju tendenciju pada za 7%. U Švajcarskoj su krediti dostupni po jednoj od najnižih kamatnih stopa

u svetu, samo 2,1% (SFI Knowledge Transfer, 2012, str. 2-3), što ne bi bilo moguće bez čvrstog i zdravog bankarskog sektora. Poslednje ali ne i najmanje važno, Švajcarske banke su najbolje kapitalizovane i kao takve mogu da nastave da posluju kao utočište klijenata širom sveta, posebno tokom turbulentnih vremena.

Švajcarska je poznata je po sigurnim bankama, što je imidž građen desetlećima. Najznačajniji faktori koji su doprineli takvom stanju su:

- politička stabilnost usled činjenice da je Švajcarska vojno neutralna već oko 150 godina,
- ekonomska i stabilnost pravnog sistema,
- najviši poznati stepen nezavisnosti centralne banke, jaka i konvertibilna valuta,
- stabilan bankarski sistem, koji podrazumeva profesionalne usluge,
- tzv. bankarska tajna.

Table 1. Key factors driving the business environment in the Swiss private banking industry over the next few years

Assets under management	Safe haven	Wealth generation	Performance	Competition	Asset outflow
Swiss banks capitalize on Switzerland's role as safe haven as the EU experiences times of political, social and economical instability	Economic growth is very little if even positive in the industry's main markets in the EU. Wealth generation is therefore limited	Uncertainty among investors and weakness of EUR and USD has weighed heavily on client portfolios. Effect depends on duration of economic crisis in EU	Attraction of new clients and assets is being exacerbated by the intense competition among banks and external asset managers	Attraction of new clients and assets is being exacerbated by the intense competition among banks and external asset managers
Revenues	Trading activity	Client preferences	Interest rates	Fees	Retrocession
Poor capital market performance has weighed heavily on trading activity. Clients increased cash levels. Effect depends on duration of economic crisis in EU	Scandals (e.g. Madoff) and product-pushing have led to aversion from client towards complex investment products such as structured products	Record-low interest rates have weighed heavily on banks' profitability. Impact depends on future monetary policy of ECB, SNB and FOMC	After regularisation of offshore assets, Swiss wealth managers will be in direct competition to foreign players. This will increase pressure on fees	MiFid II prohibits retrocession, which have been an important source of product sales income
Expenses	Regulation	Custodian	Know-how	Relationship mgmt	Technology
EU access is tied to the adoption of MiFID II compliant standards (e.g. customer protection for EU residents). Implementations of FATCA and RUBIK are expensive	FINMA increases pressure on custodians to ensure compliance of self-regulated external asset managers as it lacks resources to do it itself	MiFID II compliant standards required by recent FINMA position paper require significant investments in human resources	MiFID II compliant standards increase administrative work of relationship management (e.g. client profiling, meeting protocols, informing the client)	Significant investments needed to implement MiFID II compliant standards in IT systems (e.g. tax-compliant reporting material)

Negative bottom line impact

Positive bottom line impact

Neutral bottom line impact

Source: PWC, 2013, str. 19

The position of banking industry in Switzerland as a world leader in private banking is built upon the outstanding country fundamentals both at the macro-economic and micro-economic levels. Being exceptional among the developed countries, Switzerland maintains its stability as the optimal financial centre through low public debt and positive budget balance. This, along with its abundance of expertise and talent, enables Switzerland to be the most innovative and competitive country worldwide, thus strengthening its position of a global and world-class financial centre. The

Swiss banking sector has been fully playing its role of allocating capital to the rest of the economy, thereby supporting growth and job creation. Indeed, since the financial crisis, corporate lending has increased by 6% whereas it has shrunk by 7% on average in the 3 largest EU economies. Furthermore, loans are available at one of the lowest rates in the world - only 2.1% (SFI Knowledge Transfer, 2012, pp. 2-3), which could not happen without a sound and solid banking sector. Last but not least, Swiss banks are comparatively the best capitalized in the world and as such will continue to operate

Bankarska tajna u Švajcarskom bankarstvu

Švajcarsko bankarstvo je faktički sinonim za takav nacionalni bankarski sistem gde je prisutno ekstenzivno prisustvo instituta tajnosti u bankarskom poslovanju. *Bankarska tajna je praksa da se podaci o klijentu čuvaju kao tajni za sve treće strane, bez obzira da li je reč o privatnim licima ili državnim organima.* Ta institucija (bankarska tajna) temelji se na tome da svaki bančin klijent ima pravo na poverljivost informacija i podataka o njegovom poslovanju sa bankom, a ta poverljivost isključuje mogućnost da treća strana sazna neku informaciju od banke. Bankarska tajna predstavlja proširenje koncepta bankarske diskrecije, koja stavlja bankare pod profesionalnu obavezu da drže klijentove lične i finansijske informacije u strogoj tajnosti. Bankarska tajna podrazumeva da ove informacije nisu dostupne bilo kome, jer ukoliko se otkriju mogu imati negativne posledice po klijenta. Informacije mogu da budu od informacija vezanih za transakcije (iznos, učestalost) do informacija u vezi sa samim postojanjem računa.

Bankarska tajnost u Švajcarskoj ima dugu tradiciju koja seže više od tri stotine godina u prošlost. Jedan od prvih zakona koji regulišu bankarsku tajnu datira sa početka XVIII veka: još 1713. godine, Veliki Sabor u Ženevi usvojio je bankarske propise koji su predviđali da bankar ima obavezu da vodi registar svojih klijenata i njihovih transakcija. Njima je bilo zabranjeno da otkrivaju ove informacije bilo kome drugom osim klijentu, osim uz saglasnost Gradskog veća. Pravo na privatnost je vekovima zaštitni znak bankarskog sistema Švajcarske. Nastala je još i ranije, u XVII veku, da bi se zaštitili francuski hugenoti koji su zbog verskog progona od strane rimokatolika u Francuskoj pobešli u kalvinističku Švajcarsku. Zaštita proganjanih verskih manjina nastavila se i u vreme II svetskog rata, kada su švajcarski zakoni o zaštiti bankarske tajnosti evoluirali i u prvo vreme zaštitili imovinu Jevreja od nacista. Iako su kasnije ublaženi, švajcarski bankarski zakoni bili su zaštićeni brojnim pravnim aktima, kao i praksom u odnosu banka - klijent. Istorijski značaj bankarske tajnosti, zajedno sa praksom velike usmerenosti na investicioni menadžment i privatno bankarstvo sa manjim

brojem bogatijih klijenata pre nego na bankarstvo na malo sa velikim brojem klijenata, dovela je do razvoja i perfektuiranja principa "spoznaj svog klijenta" (Know Your Customer /KYC/ principle) (Rowe, 2012 (a), str. 1).

Švajcarska bankarska tajna je u moderno vreme stvorena od strane švajcarskog zakona o bankama iz 1934. godine, i dovela je do stvaranja čuvenih švajcarskih banaka (Swiss bank). Kada je novac deponovan na švajcarske bankarske račune, bankari su obavezni da ovaj podatak drže u strogoj tajnosti. Njima nije dozvoljeno da otkriju čak ni postojanje računa osobe uz saglasnost deponenta. Ako se sumnja na trgovinu nedozvoljenim sredstvima, nelegalne aktivnosti, insajdersko trgovanje, može da dođe do odstupanja od bankarske tajne.

Poverljivost je u savremenom odnosu banka - klijent kodifikovana ne samo bankarskim zakonima, već i Ustavom Švajcarske konfederacije. Član 13. švajcarskog ustava garantuje svim građanima "uživanje prava na poštovanje privatnog i porodičnog života, što uključuje i podatke koji se odnose na prihode i imovinu". Prema članu 47 švajcarskog Zakona o bankama, svakome ko je na bilo koji način uključen u bankarski sektor strogo je zabranjeno odavanje informacija o klijentima (Rowe, 2012, str. 2).

Sve zemlje u principu imaju bankarsku tajnu odnosno norme, pravila i propise koji štite informacije klijenata, koje ne bi smele da budu deljene od strane banke sa bilo kim. Razlika je jedino među zemljama u nivou tajnosti koji se održava u toj zemlji, ali ona je najviše izražena u Švajcarskoj. Švajcarske banke su kroz istoriju jako držale do bankarske tajne, iako su samu tu instituciju „legalizovale“ (tj. pravno u nacionalni sistem ugradile) tek 1934. god. Do tada je bankarske tajnovitost bila pravno neregulisana, ali je bila prisutna u poslovanju. Za ovo postoje istorijski razlozi. Najpre, već spomenuti izolovani geografski položaj i neutralnost. Geografski položaj je uticao i na činjenicu da se švajcarski bankarski sektor nije razvijao kao bankarski sektori u ostalim zemljama - kao podrška privredi posle industrijske revolucije. Nasuprot tome švajcarska privreda ima tradiciju zanatstva, pa se švajcarski bankarski sektor razvio ne oko investicionog, već oko ličnog bankarstva. Kasnije, kao logičan nastavak tog istorijskog

as safe havens to clients, especially during these turbulent times.

Switzerland is well known for its safe banks, which is an image built for decades. The most important factors that contributed to such an image are:

- political stability due to the fact that Switzerland has been military neutral for about 150 years,
- economic stability as well as stability of the juridical system,
- the highest known level of central bank independence, strong and convertible currency,
- stabile banking system with professional services,
- banking secrecy.

Banking secrecy in Swiss banking

Swiss banking is virtually synonymous with a national banking system with extensive presence of banking secrecy. Banking secrecy is a practice which implies that the client's data are kept secret from all third parties, regardless of whether these are private individuals or state authorities. Banking secrecy is based on the fact that each bank's client has the right to confidentiality of information and data about his operations with a bank, and this confidentiality excludes the possibility for a third party to find out any information from the bank. Banking secrecy is an extension of the concept of banking discretion, that puts bankers under a professional obligation to keep the client's personal and financial information in strict confidence. Bank secrecy implies that this information is not accessible to anyone, because otherwise there may be negative consequences for the client. This information may be related to the transaction (amount, frequency) or the very existence of the account.

Banking secrecy in Switzerland has a long tradition that goes back to the past for over three hundred years. One of the first laws regulating bank secrecy dates back to the beginning of the eighteenth century: in 1713, the Grand Assembly in Geneva adopted a banking regulation which prescribed that bankers have an obligation to maintain a register of their clients and their transactions. They were

forbidden to reveal this information to anyone other than the client, except with the consent of the City Council. The right to privacy has been a rich tradition and a hallmark of the Swiss banking system for centuries. Originally established to protect French Huguenots fleeing from religious persecution in the 17th century, the Swiss banking secrecy laws later evolved to assist the European Jews and others to protect assets from the Nazis. Although recently relaxed, Switzerland's unique bank secrecy laws are protected in numerous legal codes as well as in the bank-client relationship. The historic importance of customer secrecy, along with a heavy focus on investment management and private banking for the wealthy rather than large-scale retail banking, has led Switzerland to help develop and underscore the importance of the 'Know Your Customer' (KYC) principle (Rowe, 2012(a), p. 1).

In modern times the Swiss banking secrecy originates from the Swiss Banking Act of 1934, and has led to the evolution of the famous Swiss banks. When the money gets deposited in Swiss bank accounts, bankers are required to keep this information strictly confidential. They are not allowed to disclose the existence of the person's account even with the consent of the very depositor. Cessation of banking secrecy is allowed in the cases of the suspicion of money laundering, illegal activities, or insider trading.

Not only is Switzerland's bank-customer confidentiality codified into the Swiss law, but it is also protected by the constitution of Switzerland. Art. 13 of the Swiss Constitution grants every person 'the right to receive respect for his/her private and family life, including that related to income and assets'. Art. 47 of the Swiss Banking Act essentially requires for anyone acting as a banker or related to banking to be strictly banned from revealing customer information (Rowe, 2012, p. 3).

In every country technically there is banking secrecy, i.e. norms, rules and regulations that protect customers' information, which should not be shared by the bank with anyone. The only difference between countries is in the level of secrecy, which is most pronounced in Switzerland. Swiss banks have historically held strong to banking secrecy, although it was not "legalized" (i.e. incorporated into the national

i kulturološkog trenda, bankarski sektor u švajcarskoj radio je u relativno većoj meri nego u ostalim zemljama hipotekarne poslove i, još kasnije, portfolio menadžment. Pošto je u svim tim poslovima poverljivost jako važna, to je i razlog za razvoj i važnost bankarske tajne.

Pod bankarskom tajnom podrazumevaju se svi poslovni odnosi klijenata sa bankom. Ovo podrazumeva sve informacije, bile one poslovne ili lične prirode, dobijenih u vezi sa poslovnim transakcijama i konsultacijama sa klijentom. Ona pokriva sve kontakte sa bankom prilikom otvaranja računa, čak i ako račun nije otvoren. Na osnovu zakona o bankama samo klijent može ovlastiti banku da obelodani informacije. Međutim, član 273 krivičnog zakonika Švajcarske proširuje pokrivenost i pretvara u krivično delo otkrivanje informacija od strane banke, čak i nakon što joj je odobreno od strane klijenta u specijalnom sporazumu. Pored toga, pokrivenost švajcarske bankarske tajne traje neograničeno, čak i nakon zatvaranja računa i nakon ispunjenja ugovornih obaveza. Takođe, svi ljudi koji rade za banku i koji su u kontaktu sa njom, obavezni su da čuvaju sve informacije o klijentu. Kao i kompanije, i banke moraju da zaštiti podatke koji su direktno povezani sa njenim klijentima, ali takođe kao bilo koja druga kompanija mora da se uveri u sigurnost operativnih i strateških informacija, što može biti najmanje važno za menadžment i oblikovanje preduzeća. Važno je da ovi podaci budu klasifikovani i obrađeni potpuno i ispravno. Često ovi podaci imaju važnost za kompaniju sve dok ne postanu dostupni konkurenciji i javnosti.

Kršenje bankarske tajnosti, bilo ono namerno ili ne, u Švajcarskoj je strogo kažnjivo. Shodno tome, švajcarski bankar koji otkrije informacije o klijentu bez njegovog pristanka može biti kažnjen novčano do 50.000 CHF. Primenjuje se dvostruko kažnjavanje. Ako je indiskrecija načinjena zbog nehata, maksimalna novčana kazna iznosi 30.000 CHF.

Izuzeci od principa bankarske tajnosti i razlozi protiv nje

Međutim, danas se princip bankarske tajnosti u Švajcarskoj ne sprovodi neselektivno, kako je to bio slučaj u prošlosti. Postoje izuzeci od pravila tajnosti u nekoliko slučajeva:

- kada se klijent sa tim saglasi svojevolljno. Ako švajcarski sud dobije zahtev od stranog suda za uvid u stanje i poslovanje računa određenog građanina on ne postupa automatski po tom zahtevu.
- kada švajcarski zakon tako propisuje. Godine 1998. donesen je zakon koji nalaže švajcarskim bankama da sve sumnjive transakcije prijave uspostavljenoj Kancelariji za pranje novca.
- kada švajcarski sudovi tako nalože. Oni to rade kada su u pitanju:
 - domaći civilni i kriminalni slučajevi, i umešanost stranaca. Neka krivična dela mogu zahtevati da se odstupi od bankarske tajne, kako bi pravda bila zadovoljena. Ovi slučajevi su: trgovina nedozvoljenim sredstvima, razne nelegalne aktivnosti, pranje novca, poreska prevara i drugi. Međutim, u situacijama gde informaciju zahtevaju inostrani pojedinci i institucije, krivično delo mora biti kažnjivo u obe države da bi se informacije obelodanile.
 - građanski slučajevi. Bankarska tajna može biti ukinuta i u slučaju razvoda, nasledstva, duga ili bankrotstva (kada treće lice potražuje sredstva klijenta). Međutim, u praksi je veoma teško otkloniti bankarsku tajnu, jer se mora dokazati pred švajcarskim sudom da račun postoji, a u Švajcarskoj je to mnogo kompleksniji postupak. Bankarska tajna u Švajcarskoj je ograničena posebnim odredbama privatnog prava sadržanim u švajcarskom Građanskom zakonu, kao i sa nekoliko obaveza javnog prava. Ti izuzeci nisu obezbedili nikakvu pomoć insajderskoj trgovinskoj istrazi koji teže da zaobiđu bankarsku tajnu. Deo problema je u tome što insajdersko trgovanje nije krivično delo u Švajcarskoj.
- bankarska tajna može da bude poništena kada se banka ili firma nalaze pred stečajem. Najznačajniji argument protiv bankarske tajne i onaj koji stvara mnogo polemike, odnosi se na poresku evaziju. Tvrdi se da zbog činjenice da zemlje kao što su Švajcarska ne otkrivaju informacije u vezi sa svojim klijentima, omogućava se stanovništvu drugih zemalja da svoja sredstva ulažu u te zemlje

legal system) until 1934. Until then, the banking secrecy was not legally regulated, but was present in the everyday operations. For this there are historical reasons. First, it was due to the aforementioned isolated geographic position of Switzerland and its neutrality. Furthermore, the geographical position also affected the Swiss banking industry's direction of development: it did not develop as the banking sectors in other countries - to support the economy after the industrial revolution. On the contrary, the Swiss economy has a traditionally well-developed craftsmanship sector, and the Swiss banking sector developed not in the direction of investment banking, but in the direction of private banking. Later, as a natural continuation of the historic and cultural trends, the banking sector in Switzerland was involved relatively more extensively than in other national economies in mortgage operations and, later still, portfolio management. Since in all these transactions confidentiality is very important, this is the origin of the development and importance of banking secrecy.

The term "banking secrecy" covers all business relationships between bank clients and the bank itself. This includes all information, whether professional or personal in nature, obtained related to business transactions with the client or in consultations with him. It also covers all clients' contacts with the bank in the process of opening an account, even if the account does not get opened in the end. According to the actual Swiss Law on Banks, only the client can authorize the bank to disclose information. However, Article 273 of the Swiss Criminal Code extends the coverage and turns into a criminal offense the disclosure of information by banks, even if approved by the client in a special agreement. In addition, the coverage of the Swiss banking secrecy lasts indefinitely, even after closing the account and after the fulfillment of contractual obligations. Also, all banks' employees, as well as those contacted by banks, are required to keep all client information confident. Just like companies, banks need to protect data directly linked to their clients, but also just like any other non-banking company, banks need to ensure confidentiality and safety of operational and strategic information of clients, which may

be the least important for the management of aforementioned client-companies. It is vital that this information gets classified and processed properly. These data are often important for the company only until they become available to competition and the public.

Violation of banking secrecy in Switzerland, whether intentional or not, is strictly forbidden. Accordingly, a Swiss banker who discloses information about a client without his consent can be fined up to 50,000 CHF. Double punishment principle is being applied. If an indiscretion was made by negligence, the maximum fine is 30,000 CHF.

Exceptions to the principle of banking secrecy and reasons against banking secrecy

Today, however, the principle of banking secrecy in Switzerland is not implemented indiscriminately, as was the case in the past. There are exceptions to the rule of banking secrecy in specific cases such as:

- if the client agrees with that. If a Swiss court receives a request from a foreign court for insight into the business account of a certain citizen, it does not act upon the request automatically.
- if the Swiss law stipulates so. In 1998 a Law was passed mandating the Swiss banks to report all suspicious transactions to the newly-established Office for Money Laundering.
- if Swiss Courts order. They do so in the following cases:
 - the domestic civil and criminal cases, and the involvement of foreigners. Some offenses may be required to reveal banking secrecy in order to ensure justice. These cases are: trade in illegitimate funds, various illegal activities, money laundering, tax fraud, etc. However, in situations where the information is required by foreign individuals and institutions, the offense must be punishable by law in both states for the information to be disclosed.
 - in civil law suits. Bank secrecy can be lifted in cases of divorce or inheritance, but also in debt collection or forced liquidation

i samim tim izbegnu plaćanje poreza na ta sredstva. Razlog koji omogućava ovakve aktivnosti je što Švajcarska ne smatra poresku evaziju za krivično delo i stoga za razliku od poreske prevare, kada će ona otkriti podatke vezane za klijenta ukoliko postoji izgrađen slučaj protiv tog pojedinca, ona to neće učiniti u slučaju dokazane poreske evazije. Švajcarski zakon pravi razliku između poreske prevare (tax fraud) koja se smatra krivičnim delom, i poreske evazije (tax evasion) koja se ne smatra krivičnim delom. Ta razlika potiče od koncepta gde obveznik sam prijavljuje prihode (self-declaration) i služi da bi se očuvale lične slobode. Ovakav zakonski tretman ima čvrste korene u švajcarskoj pravnoj tradiciji a potvrđen je i referendumom. Slučajevi kakvi su *nenamerne* greške i propusti (errors and omissions) prilikom poreske prijave smatraju se poreskom evazijom, ne smatraju se krivičnim delom, ali su kažnjive iznosom do nekoliko puta većim od iznosa koji nije prijavljen. Poreskom prevarom se smatraju situacije kada poreski obveznik *namerno* koristi neregularne isprave ili krivotvori podatke na zvaničnim dokumentima, kako bi obmanuo poreske organe i samim tim izbegao porez, što se smatra kriminalnim činom (Swiss Bankers Association, 2010, str. 69-70).

Organizacija za ekonomsku saradnju i razvoj (OECD) je tvrdila da je prisustvo centara sa bankarskom tajnom dovodi do veoma nezdravih oblika poreske konkurencije koja ograničava sposobnosti zemalja da oporezuju sopstvene državljane. Argument je da će svaki takav potez dovesti do priliva sredstava u ove centre i tako ublažiti poresku osnovicu kod kuće. Sa postojanjem bankarske tajne, teško je čak i dokazati postojanje tih prihoda, a kamoli oporezovati ih.

Sadašnjost i budućnost Švajcarskog bankarstva

U cilju efikasnijeg čuvanja privatnih podataka klijenata, svaka švajcarska banka uvela je specifičnu informacionu tehnologiju koji se naziva „Mreža za račune privatnog bankarstva“ (Personal Banking Account Network - PBAN). Pomenuta mreža predstavlja dodatni mehanizam zaštite klijenata, na kojoj se nalaze podaci o računima klijenata, ali su

oni obezbeđeni sa čak tri nivoa bezbednosti. Mogućnost upada u sistem i nelegalnog pribavljanja podataka od strane trećih lica ovim putem se svela na minimum. Pored pomenuta tri nivoa bezbednosti, uvedena su brojna ograničenja za pristup mreži, kako u Švajcarskoj tako i u inostranstvu. Na primer, jedna od švajcarskih vodećih banaka tvrdi da filijale švajcarskih banaka koje se nalaze u SAD-u nemaju kompjuterski pristup mreži za račune privatnog bankarstva koju koristi sedište švajcarske banke. Međutim, jedna stvar je ostala nedorečena, tj nejasna. Postavlja se pitanje da li takva izjava znači da zaposleni u filijalama švajcarske banke u inostranstvu nemaju potrebne lozinke za pristup sistemu ili se pak ističe neprobojnost same mreže od strane inostranih banaka. Na kraju, postoji još jedan vid zaštite poverljivosti podataka o pojedinim računima. Naime, švajcarske banke su uvele posebne sisteme za pretragu na nivou svake pojedinačne filijale. To dalje implicira, da iako se radi o istoj banci, jedna filijala ne može pokrenuti pretragu o računima koji se nalaze u drugoj filijali. Takva praksa je u jednoj situaciji dovela do toga da je švajcarska banka pogrešno navodila okružnog tužioca Ciriha kada je poricala da se jedan račun obeležen brojem nalazio u datoj banci. Međutim, banka je izvršila samo pretragu računa koji su se nalazili u filijali u Cirihi, ne i u onoj u Luganu (Chaikin, 2005, str. 102-103).

U novije vreme Švajcarska je usvojila mnoge zakone koji se bave nelegalnim finansijskim aktivnostima. Donošenjem ovakvih zakona, proširena je saradnja sa ostalim zemljama. Švajcarsko bankarstvo je u zadnje vreme promenilo status. Švajcarska smatra da praksa bankarske tajnosti ne štiti one koji posluju nelegalno, jer Švajcarska daje pomoć stranim zemljama u rešavanju finansijskih malverzacija. Ovaj zakon se smatra strožijim nego kod drugih razvijenih zemalja.

Postavljaju se pitanja da li je institucija bankarske tajne postala smetnja u novim uslovima za dalji razvoj švajcarskih banaka i da li će u budućnosti tzv. švajcarsko bankarstvo nestati. Da bi odgovorili na ova pitanja treba razumeti da je u današnjem međunarodnom bankarstvu relativno veći finansijski kriminal (računajući i pranje novca) nego u prošlosti,

proceedings (when a third party claims the client's deposit). However, in practice it is very difficult to eliminate bank secrecy, since it must be proved to the court that the account exists, which is much more complicated in Switzerland. Bank secrecy in Switzerland is limited by the special provisions of the private law contained in the Swiss Civil Code, as well as by a number of obligations under the public law. These exceptions have not provided any assistance to insider trading investigation that aspire to avoid the banking secret. Part of the problem is due to the fact that insider trading is not a crime in Switzerland.

- if a bank or firm is facing bankruptcy.

The most important argument against banking secrecy and the one that creates a lot of controversy relates to tax evasion. It is argued that due to the fact that countries like Switzerland do not disclose information relating to their clients, it is possible for the population of other countries to invest their funds in the country and thus evade taxes on these funds. The reason that allows this kind of activity is that Switzerland does not consider tax evasion a criminal offense and therefore, unlike tax fraud, when it discloses information related to the client if there is a case against that individual, it will not do so in the event of proven tax evasion. The Swiss legal system differentiates between tax evasion and tax fraud. This differentiation is based on the concept of self-declaration and serves to protect individuals. *Unintentional* errors and omissions in an individual's declaration of income and assets are deemed tax evasion. In Switzerland, they do not constitute a criminal act, but are punishable with a fine which may be several times the amount that was not declared. On the other hand, situations in which tax payers *intentionally* use irregular documents or forge the data on official documents, in order to deceive tax authorities and thereby evade the tax, are deemed tax fraud and a criminal act subject to criminal proceedings (Swiss Bankers Association, 2010, str. 69-70).

Organisation for Economic Co-operation and Development (OECD) has argued that the existence of centres with bank secrecy causes

very unhealthy forms of tax competition, limiting the ability of countries to tax their own citizens. The argument is that it leads to an inflow of funds to these centres and thus alleviates the tax base in resident countries. Given the existence of banking secrecy, it is difficult to even prove the existence of these revenues, let alone tax them.

Present situation and the future of Swiss banking

In order to achieve a more efficient level of keeping the clients' private information confidential, all Swiss banks have a private banking account network (PBAN) which provides a secure method of accessing private bank information. In some Swiss banks there are three levels of security in accessing numbered accounts through computer password entry. This is complemented by sophisticated surveillance and auditing systems which are designed to prevent unauthorized access to the computer of the PBAN. Another protective measure for private banking accounts is the imposition of limitations on computer access to private banking information in both Switzerland and overseas. For example, one of the Switzerland's leading banks claims that US branches of Swiss banks have no computer access to Swiss banks' headquarters PBAN. It is not clear what this means, for example, whether it is technologically impossible to penetrate the PBAN from foreign countries, or that the relevant passwords etc. are not available to US-based employees of the Swiss bank. Finally, Swiss banks insulate the identity of specific bank accounts by installing different search systems in relation to different branches of the same bank. Employees of a Swiss bank at one branch cannot carry out a search of other branches to determine whether a person has a Swiss bank account. Financial privacy is further cemented by the practice of using different numbering systems in relation to bank accounts located in different branches. This led in one case to a Swiss bank misleading the District Attorney of Zurich by denying that it had a specific account number of a client in circumstances where the Swiss bank carried out a search of the Zurich branches, but not the Lugano branches of the bank (Chaikin, 2005, pp. 102-103).

što je u kombinaciji sa i dalje prisutnim institutom bankarske tajne predstavlja opasnost u poslovanju. Takođe, pitanje izbegavanje poreza kao motiv stranaca¹ da otvaraju račune u švajcarskim bankama nameće bankarsku tajnu kao potencijalnu opasnost i smetnju u poslovanju. To je spoznala i švajcarska država dopustivši nedavno mogućnost da američke vlasti imaju uvid u visinu računa svojih državljana u švajcarskim bankama, čime su državljani te zemlje izuzeti iz zaštite koju pruža primena bankarske tajnosti.

Za davanje informacija u vezi sa računima klijenata agencijama za sprovođenje zakona u određenoj zemlji, neophodno je formalno uputiti zahtev švajcarskom pravosuđu, uz pretpostavku da novac vlasnika računa potiče od nelegalnih aktivnosti, koje su kao takve prepoznatljive u švajcarskom zakonodavstvu. Trenutno je aktuelno oporezivanje imovine koju stranci imaju u Švajcarskoj. U Švajcarskoj je dozvoljeno pokretanje privatne tužbe protiv banke u slučaju davanja poverljivih informacija o računima klijenata. Pored krivične kazne, oštećeni klijent može da započne parnični postupak i da tuži banku za naknadu štete.

Ofšor lično bankarstvo je bilo pod znatnim pritiskom prethodnih nekoliko godina, kako od strane strožijih nadnacionalnih propisa, tako i od pojedinačnih državnih inicijativa. Međutim, Švajcarska je uspela da zaustavi neto odliv sredstava. U 2009. Švajcarska se našla u međunarodnoj pravnoj drami koja se odnosila na ono što bi neki naveli kao najznačajnijom karakteristikom Švajcarske političko-ekonomske tvorevine: bankarsku tajnu. U ovom sukobu našli su se poreski zakon SAD-a i dobro afirmisano i žestoko zaštićeno načelo Švajcarskog zakonika. S jedne strane, Ministarstvo pravde SAD-a je zahtevalo od UBS-a, globalne finansijske kompanije sa sedištem u Švajcarskoj, da objavi imena 52.000 Amerikanaca za koje se sumnja da su uspostavili bankovne račune u Švajcarskoj kako bi izbegli porez. S druge strane, Švajcarska je želela da podrži svoji 300 godina staru testiranu praksu garantovanja tajnosti švajcarskim bankarskim

klijentima (Schottenstein, 2010, str. 351).

U poređenju sa drugim evropskim državama, u Švajcarskoj se primenjuju dosta niže poreske stope kod oporezivanja dohotka ne samo pravnih lica, nego i fizičkih. Što se međudržavne razmene informacija tiče, Švajcarska je stavila rezervu na član 26. OECD Model konvencije, tako da poreskim organima drugih država pruža samo informacije neophodne za pravilnu primenu konvencije, dok zadržava pravo da uskrati informacije koje bi pomogle u pravilnoj primeni domaćeg zakonodavstva od strane države. Izuzetke predstavljaju slučajevi razmene informacija sa organima Sjedinjenih Američkih Država, Nemačke i Norveške, sa kojima Švajcarska ima zaključene poreske ugovore. Slična je i situacija u oblasti pružanja informacija iz bankarske sfere: razmenjuju se samo informacije za koje je to izričito predviđeno klauzulama u zaključenim poreskim ugovorima. Međutim, kada je reč o informacijama koje je neophodno pružiti stranim poreskim organima u cilju sprečavanja i otkrivanja poreske utaje ili prevare počinjene u inostranstvu, pomoć se pruža prema odredbama Zakona o međunarodnoj višestrukoj pomoći iz 1981. godine. Kao što je u oblasti razmene informacija stavila rezervu na OECD-ovu Model konvenciju, tako Švajcarska ne sledi dosledno ni preporuke ove organizacije u pogledu nezaključivanja, odnosno otkazivanja postojećih ugovora sa državama-poreskim rajevima. Da bi prihodi koje pravna i fizička lica ostvare u inostranstvu bili izuzeti od plaćanja švajcarskog poreza, potrebno je voditi računa da li je to ekonomski opravdano, nezavisno od toga da li je sedište preduzeća u državi sa visokim porezima ili u poreskom raju. Upravo zbog toga se i sama borba protiv poreske evazije ne zasniva na nekim posebnim pravilima, nego na primeni opštih pravila o zabrani zloupotrebe prava (Stojanović, 2010, str. 273-275).

Kao rezultat zaključenja novijih poreskih sporazuma i poreske amnestije, tajnost švajcarskog bankarstva postaje sve krhkija. Ovakav proces vodi do regulisanja ranije neoporezovanih sredstava koji su u prošlosti

1 Švajcarska je pre nekoliko godina vratila 684 miliona dolara bivšeg predsednika Markosa Filipinima i 700 miliona dolara od fonda generala Sanija Abače Nigeriji, a zajedno sa ostalim državama Peru je vratila više od 180 miliona dolara bivšeg vladinog zvaničnika.

In recent years Switzerland has adopted many laws on illegal financial activities. The adoption of these laws extended cooperation with other countries. Swiss banking has lately changed its status. Switzerland believes that the practice of banking secrecy does not protect those who operate illegally, since Switzerland provides assistance to foreign countries in addressing financial fraud. This law is considered to be stricter than in other developed economies. There are some questions whether the institution of bank secrecy has become a nuisance in the new circumstances for further development of Swiss banks and whether Swiss banking will disappear in the future. To answer these questions it should be understood that in today's international banking financial crime, including money laundering, is relatively more present than in the past, which, combined with the still present institute of banking secrecy, poses a risk to the business. Also, the issue of tax evasion as a motive for foreigners¹ to open accounts in Swiss banks imposes banking secrecy as a potential threat and obstacle in business. The Government of Switzerland realized this, and recently allowed the possibility for the US authorities to have access to data on the US citizens' account balance in Swiss banks, which excluded US nationals from the protection granted by banking secrecy to all other nations.

To reveal information on a bank client's account to law enforcement agencies in a particular country, it is necessary to formally address a request to the Swiss judiciary, assuming that the account holder's money originates from illegal activities, recognized as such in the Swiss legislation. At this moment the issue of property tax of foreigners owning property in Switzerland is ongoing. In Switzerland it is allowed to file a private lawsuit against the bank if it reveals confidential information about the customers' accounts. In addition to criminal penalties, the aggrieved bank's client can initiate civil action and sue the bank in order to compensate the damages.

Offshore personal banking was under

considerable pressure in the past few years, both by stricter supranational regulation, and of individual national initiatives. However, Switzerland has managed to stop a net outflow of funds. But, in 2009, as world markets teetered on the brink of a global financial meltdown, Switzerland found itself enmeshed in an international legal drama revolving about what some would cite as the most prominent feature of Switzerland's political-economic constitution: bank secrecy. The dispute pitted United States tax law against a well-established and fiercely protected tenet of Swiss law. On the one side, the U.S. Department of Justice demanded Swiss-based UBS AG (UBS) release the names of 52,000 Americans suspected of establishing private Swiss bank accounts for the purposes of evading taxes; and on the other, Switzerland sought to uphold its 300-year-old time tested practice of guaranteed secrecy for Swiss banking clients (Schottenstein, 2010, str. 351).

In comparison with other European countries, Switzerland applies much lower tax rates on income taxation not only to business, but also to individuals. Concerning international information exchange, Switzerland has hesitated regarding Article 26 of the OECD Model Convention. Therefore, Switzerland shares with other countries' tax authorities only the information necessary for the application of the Convention properly, while it retains the right to withhold information that would help other countries' national legislation. The exceptions are in case of information exchange with the authorities of the United States, Germany and Norway, countries with which Switzerland has signed tax treaties. Similar is the situation with regards to the provision of information in the banking industry: only information strictly listed in the signed tax treaties is being exchanged. However, when it comes to information that is necessary to provide foreign tax authorities to prevent and detect tax evasion and fraud committed abroad, support is provided by the Act of Multiple International Assistance (1981). As in the information exchange hesitation to

1 Couple of years ago Switzerland paid back to the Philippines 684 million dollars of the former President Marcos, and \$ 700 million to Nigeria of the general Sani Abaca's fund. Together with other countries, Switzerland paid back to Peru more than \$ 180 million of a former government official.

u određenoj meri bili zaštićeni bankarskom tajnošću. regulisanje je trenutno u punom jeku i očekuje se da se nastavlja u kratkom periodu. Krađa podataka u nekoliko švajcarskih banaka je trajno i ozbiljno oštetila reputaciju Švajcarske kao finansijskog centra sa najvišim standardima privatnosti i diskrecije. Of-šor privatni klijenti su ostali u neizvesnosti, a klijenti sa imovinom koja se neoporezuje su se izjasnili. Mnogi klijenti već koriste ili će koristiti deo svojih sredstava za plaćanje kazni za regulisanje njihovine imovine, što će dovesti do smanjenja obima stranog kapitala kojim se upravlja u Švajcarskoj. Manji deo klijenata će potpuno povući svoja sredstva i vratiti ih u svoju zemlju.

Prisustvo centara sa bankarskom tajnom dovodi do oblika poreske konkurencije koja ograničava sposobnosti zemalja da oporezuju sopstvene državljane. Svaki takav potez će dovesti do priliva sredstava u ove centre i tako ublažiti poresku osnovicu u matičnoj zemlji. Razlog zašto obezbeđenje bankarske tajne posebno stvara probleme je zbog toga što su neke države koje imaju niže poreze (poreski raj) voljne da podele informacije o sredstvima nerezidenata. Postojala bi mogućnost da zemlje tih nerezidenata pronađu način da oporezuju prihode koje njihovi državljani zarade u inostranstvu. Sa postojanjem bankarske tajne, teško je čak i da se dokaže postojanje tih prihoda, a još teže da se oporezuju.

Švajcarska je 19. novembra 2014. godine potpisala konvenciju Organizacije za ekonomsku saradnju i razvoj (Organisation for Economic Cooperation and Development - OECD) i na taj način se pridružila desetinama drugih zemalja-potpisnica. Potpisivanjem konvencije prihvatila je obavezu razmene informacija po jedinstvenom standardu radi sprečavanja poreske evazije, s tim što je odobren period do 2018. godine do kada se mora izvršiti implementacija pomenutih standarda. Prvim delom pomenute konvencije definisani su principi za razmenu informacija. U dokumentu je navodeno (OECD and Council of Europe, 2011, str. 14):

- Čl. 4 - Opšta odredba: strane će razmeniti bilo koju informaciju, posebno onih koji su predviđeni ovom sekcijom, koje su relevantne za administraciju ili izvršenje domaćih zakona koji se tiču zakona

obuhvaćenih ovom konvencijom.

- Čl. 5 - Razmena informacija na zahtev: na zahtev zemlje podnosioca, zemlja od koje se zahteva će obezbediti sve informacije u vezi sa članom 4 koji se odnose na određenu osobu ili transakciju. U slučaju da informacija koja se nalazi u poreskim dokumentima zemlje od koje se zahtevaju informacije, ta država će preduzeti sve neophodne mere da obezbedi zemlji podnosiocu zahtevane informacije.
- Čl. 6 - Automatska razmena informacija: u vezi sa kategorijama slučajeva i u skladu sa procedurama koje će se odrediti u njihovom međusobnom sporazumu, stranke će automatski razmeniti informacije navedene u čl. 4.

Dugo vremena je Švajcarska odolevala pritsku evropskih zemalja. Međutim, na njen račun su bile usmerene brojne kritike. Možda najjače kritike su bile u pogledu olakšavanja poreske evazije i utaje poreza strogom primenom bankarske tajnosti. Napad je predvodila SAD. Obe velike banke su optužene za pomaganje američkim građanima u slučaju poreske evazije. I Credit Suisse i UBS su priznale da su krive (nakon što je priznala krivicu, Credit Suisse je morala da plati kaznu od čak 2,6 milijardi dolara) (Gumbel, 2014, str. 1). Kako bi sačuvala ugled kao velikog finansijskog centra i da bi pružila podršku u borbi protiv poreske evazije, Švajcarska odlučuje da potpiše konvenciju OECD, zajedno sa još 50 drugih zemalja. Na ovaj način se obavezala da će obezbediti sve informacije na zahtev određene zemlje ukoliko se na taj način može sprečiti poreska evazija. Takvim korakom Švajcarska je napustila svoje tradicionalne principe o čuvanju bankarske tajnosti i sistemu procenjivanja koji je podrazumevao da je klijent u obavezi da prezentuje sve podatke o svojoj imovini. Prihvaćanjem konvencije, značajno se smanjila uloga bankarske tajnosti kao jedne od specifičnosti švajcarskog bankarstva (postoje čak i ekstremna mišljenja da je potpisivanjem konvencije, kao i sporazuma sa SAD, bankarska tajnost ostala samo zvanično, dok je nezvanično prestala da postoji). Bitno je ipak istaći da se na teritoriji Švajcarske primenjuje i dalje ista pravila. Dakle, rezidenti imaju ista prava na privatnost kao i pre, čak i prilikom utvrđivanja

the OECD Model Convention, Switzerland also does not consistently follow the OECD recommendations in terms of non-concluding, i.e. cancellation of existing contracts with the tax haven countries. In order to exempt revenues made abroad from taxes paid to the budget of Switzerland, it is necessary to consider whether it is economically justified, regardless of whether the headquarters of the company are in the country having high tax rates or is a tax haven. This is why actions against tax evasion are not based on some specific rules, but on the general rules related to the prohibition of abuse of rights (Stojanović, 2010, str. 273-275).

The existence of centers with banking secrecy causes such forms of tax competition, which limits the ability of countries to tax their own citizens. This would cause inward flows of funds to these centers and thus alleviate the tax base in their country of residence. The reason why existence of banking secrecy could make problems is because some countries with lower taxes (i.e. tax havens) which are willing to share information about the funds of non-residents, generate the possibility for the countries of these non-residents to find a way to tax the income earned by their citizens abroad. With the existence of banking secrecy, it is difficult even to prove the existence of these revenues, let alone to tax them. On 19th November 2014 Switzerland signed the Convention of the Organisation for Economic Cooperation and

Development (OECD) and thus joined dozens of other countries. By signing the Convention Switzerland agreed to exchange information according to the uniform standards in order to prevent tax evasion. The period until 2018 is granted for the implementation of aforementioned standards. The first part of the Convention defines the principles for the exchange of information. The Convention states the following (OECD and Council of Europe, 2011, p. 14):

- Article 4 - General provisions: The Parties shall exchange any information, in particular as provided in this section, that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the tax covered by this Convention.
- Article 5 - Exchange of information on request: At the request of the applicant State, the requested State shall provide applicant State with any information referred to in Article 4 which concerns particular person or transaction. If the information available in the tax files of the requested State is not sufficient to enable it to comply with the request for information, that State shall take all relevant measures to provide the applicant State with the information requested.
- Article 6 - Automatic exchange of information: With respect to categories of

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poreske obaveze. Do promene je došlo samo u ophođenju sa inostanstvom.

Dakle, bankarska tajnost nije nestala, već i dalje postoji kao obaveza za sve švajcarske banke. Promenila se njena uloga u poreskim pitanjima. Švajcarske banke, kao i švajcarske poreske vlasti, više nemaju pravo da odbiju da pruže informacije o imovini poreskog obveznika pozivajući se na bankarsku tajnost. Međutim, u odsustvu specifičnog zahteva, ni jedna informacija se nikome neće obezbediti. Prikaz informacija će se odbiti u slučaju neosnovanih zahteva, ali se mogu obezbediti na grupni zahtev. I u principu, biće obezbeđena u sudskom postupku na osnovu prava koje ima pojedinac po švajcarskom zakonu (Trojanov, 2014, str. 1). Sa druge strane, bankarska tajnost će nastaviti da štiti klijente banke od nelegitimnih zahteva za dobijanje informacija od strane trećih lica poput novinara, kreditora itd, dok je njena primena, odnosno pravo da se povuče bankarska tajnost za sada ostala i opstala u istim slučajevima kao i ranije (na primer, kriminalne aktivnosti, utvrđivanje nasledstva itd).

Zaključak

U radu je razmatran fenomen švajcarskog bankarstva. Ukazano je na specifičnosti bankarstva u Švajcarskoj, kao i ostalih specifičnosti koje su vodile ka uspostavljanju sistema koji je opsluživao zanatstvo pre nego industriju. Vremenom se razvio sistem koji generičkim imenom nazivamo švajcarskim bankarstvom, koji je samo nastao u Švajcarskoj, a odlikuje ga prevashodno lično bankarstvo uz primenu bankarske tajnosti. U radu značajan deo zauzima rasprava da li će institucija bankarske tajnosti opstati pod pritiscima najmoćnijih zemalja sveta koje zbog nezajažljive potrebe za punjenjem svojih budžeta prate tragove novca svojih državaljana. Pritisci su sve jači poslednjih godina i čini se da bi mogli uticati na ukidanje bankarske tajnosti, iako ona za sada ipak odoleva i opstaje.

cases and in accordance with procedures which they shall determine by mutual agreement, two or more Parties shall automatically exchange the information referred to in Article 4.

For a long time Switzerland had resisted the pressure of the European countries. However, abundant criticism has been directed on its account. Perhaps the strongest criticism was in terms of its facilitating tax evasion and tax fraud by strict application of banking secrecy. The attack was led by the United States. Both major banks have been accused of facilitating tax evasion of the US citizens. Credit Suisse and UBS acknowledged their guilt (after months of sparring with the U.S. Justice Department, Credit Suisse, one of the two big Swiss banks, pled guilty to conspiring to aid tax evasion and agreed to pay a \$2.6 billion fine) (Gumbel, 2014, str. 1). In order to preserve the reputation as a major financial center, and to provide support in the fight against tax evasion, Switzerland decided to sign the OECD Convention, along with 50 other countries. This way it committed to provide all the information at the request of certain countries if they can thus prevent tax evasion. Thereby Switzerland abandoned its traditional principles concerning the protection of banking secrecy and its assessment system which implied that the clients are obliged to present to the bank all details about their property. With the signing of the Convention, the role of banking secrecy as one of the peculiarities of the Swiss banking has been significantly reduced (there are even extreme opinions that the signing of the Convention, as well as agreements with the United States, mean that banking secrecy remained only formally in existence, while unofficially it ceased to exist). However, it is important to point out that on the territory of Switzerland the same rules are still applied: residents have the same right to privacy as before, even when determining the tax liability. The change occurred only overseas.

So far, the Swiss banking secrecy has not died. It still exists as a legal obligation incumbent on Swiss banks. However, in taxation matters, its scope has significantly changed. Swiss banks or Swiss Tax Authorities will no longer be able to refuse to disclose information on financial assets held by tax payers by referring to banking secrecy as their excuse. However, in case of no specific request, no information will be provided to anyone. Disclosure of information can be refused in case of unsubstantiated requests, but may be granted in case of group requests. And in principle, it will be provided in legal proceedings granting due process rights in Switzerland to the persons concerned (Trojanov, 2014, p. 1). On the other hand, banking secrecy will continue to protect banks' clients from illegitimate demands for obtaining information by third parties such as journalists, creditors, etc., while its application has for now remained and survived in the same cases as it has been before (for example in cases of criminal activity, determining inheritance, etc.).

Conclusion

The paper has discussed the phenomenon of Swiss banking. The specific nature of banking in Switzerland was considered, as well as other characteristics that led to the establishment of a system that has served the trade rather than industry. Over time, it developed into a system whose generic name is Swiss banking, created in Switzerland, and characterized primarily by personal banking with the use of banking secrecy. Significant portion of the paper is devoted to the question whether the institution of banking secrecy will survive under the pressure of the most powerful economies in the world, and their hunger for filling their budgets following the money trail of their residents/nationals. The pressure has been getting stronger in recent years and it seems to be able to influence the abolishment of bank secrecy, although for now it still resists and survives.