

SAFE HAVEN

If you think a Swiss bank account is something that belongs in a spy movie or a thriller, think again, says lawyer Beatrice Stuber. If you're careful, it's a great investment tool.

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In the minds of most Australians, Swiss bank accounts are for secret agents like James Bond, alleged tax dodgers like Rene Rivkin or a place where the Nazis attempted to squirrel away their loot from World War II. But what, if anything, do they offer the average well-heeled investor? For starters, Switzerland is politically stable, has a sturdy currency and offers high-net-worth individuals a place to store their funds which is almost risk-free. It also offers one other essential factor: anonymity. And I don't need to tell you what a comfort that can be.

As the name suggests, a Swiss bank account is an account with one of the Swiss banks or a subsidiary of a foreign bank located in Switzerland. "The term 'Swiss account' means that the Swiss banking laws apply, not whether or not the origin of the bank is Swiss," explains Beatrice Stuber, a lawyer for Schweizer Kobras, a firm that specialises in Swiss, German and Austrian law, and an adviser to the Swiss embassy in Australia.

"In the case of Rene Rivkin, for example, the account in question [in 2003 Rivkin was alleged to have stowed \$53 million from an insurance payout relating to his printing business, Offset Alpine] was with an Israeli bank located in Switzerland."

The Swiss financial hub is one of the largest in the world. Thirty-five percent of worldwide offshore holdings are managed in the country, according to Swiss financial consultancy Micheloud & Co, and there are over 400 Swiss banks in operation—from postal accounts with no minimum deposit to large private banks which require a minimum initial sum of around \$1 million.

The association of Swiss accounts with movies like the James Bond series have contributed to the perception that they are used largely for conducting shady transactions. While this is less so the case today, the stigma is not entirely unwarranted, for two main reasons: the strict privacy of Swiss banking laws and the benefits of Swiss taxation.

In recent years, pressure from the international banking community has forced Switzerland to tighten its stance on money laundering and storing funds gained through criminal practices, such as drug trafficking or arms dealing. But the country has managed to hold on to one important aspect of its banking: its secrecy. Under Swiss law, the account

holder's privacy is stringently protected, not from the bank itself but from the prying eyes of others. A banker who reveals information about you without your consent risks months in prison.

Because of this, it is said that Swiss accounts remain a popular place for the wealthy to hide funds. But for heavily taxed nations like Australia, the country is also a haven from foreign tax agencies. Swiss accounts sustain a 35 percent withholding tax, compared to the 49 percent we pay here, but under Australian law all income generated in a foreign bank account is taxable. However, if the Australian Taxation Office (ATO) don't know about your offshore account, you won't have to pay up—unless you get found out, of course, in which case you'll be up on tax evasion charges. But here too, another little Swiss idiosyncrasy kicks in to protect you.

Switzerland makes a clear distinction between tax evasion and tax fraud. Unlike many countries, Australia included, Switzerland doesn't consider tax evasion a crime; this includes the failure to report or to underestimate income or assets on a tax return. It is forbidden, but the consequence is a fiscal penalty rather than jail.

"Swiss bank secrecy is not lifted for tax evasion, even on the request of a foreign government," explains Micheloud & Co. "The Swiss are unique in that they attach greater importance to the respect of private life than they do to taxation. Banks do not have the right to inform the Swiss tax authorities. They have even less right to inform foreign tax authorities. As Switzerland does not consider tax evasion a crime, it does not comply with requests for judicial co-operation from other governments."

Swiss interest rates on a standard savings account are low, between one and two percent compared to Australia's five percent; however, the country has a proud tradition of investing. In theory, you can instruct a Swiss bank to invest in shares on your behalf and any dividends can be paid back into your Swiss account. You can't bring the funds back into Australia without being hit for additional tax, but you can spend the money offshore. Should you decide to do the lawful thing and declare it, Australia and Switzerland have a double tax avoidance agreement so you won't be hit up for tax twice; the ATO will refund the difference.



FAST FACTS

HOW MUCH DOES IT COST TO OPEN A SWISS ACCOUNT?

Most Swiss high-street banks do not require a minimum deposit for an ordinary current or savings account. However, some of the private bankers and other banks offering private banking and wealth management services do. These vary depending on the bank and service.

WHAT'S THE PROCEDURE?

Most banks encourage you to travel to Switzerland in person to open an account, but it can be done through a local broker or possibly via a local subsidiary of a Swiss bank. If you're considered a high-value customer (in other words, obscenely wealthy) Swiss banks send representatives out to Australia two or three times a year. You can't open Swiss accounts online.

WHAT DOCUMENTATION WILL YOU NEED?

The bank will want official identification papers, such as a valid passport or identity card with a photograph. It will also check your address via an exchange in correspondence. The bank may also ask for documentation proving the origin of your funds, such as the contract for a house sale, a statement from a foreign bank or a receipt from the sale of securities.

WHAT QUESTIONS WILL THE BANK ASK?

The bank is obliged to ask about the origin of the funds and the nature of your professional business and will also want to get an idea of your typical financial transactions. The bank will also ask about your future plans, for example whether you intend to buy a house, start a business or retire. If you are asking the bank to manage an investment portfolio, it will also ask how much risk you are willing to accept. In short, the more the bank knows about you, the more it can tailor its advice and service to your individual needs.

Stuber points out that customers would be afforded the same rights to privacy if they banked in the United Kingdom or Austria, but it is the particularities of the Swiss legal system that allow it to refuse judicial co-operation with other nations for tax evasion. "In accordance with the principle of non-discrimination, foreign nationals are treated in the same way as Swiss nationals and benefit from the distinction established by Swiss law," says Micheloud & Co.

On the other hand, tax fraud, such as falsified documents, is a crime in Switzerland, and under these circumstances an account holder's identity, along with statements and documentation, may be exposed with the consent of a Swiss judge.

In 2003, this distinction between evasion and fraud caused the Australian Investment and Securities Commission (ASIC) no end of trouble in its pursuit of Rivkin. The Swiss denied ASIC investigators access to documents relating to tax evasion, leading the Australian media to condemn them. Former Labor leader Mark Latham even went so far as to suggest outlawing Swiss accounts.

WHICH BANK?

The two 'big' banks—UBS AG (www.ubs.com) and the Credit Suisse Group (www.credit-suisse.com)—together account for over 50 percent of the balance sheet total of all the banks in Switzerland.

DEBUNKING THE MYTHS

There is no such thing as an 'anonymous' account in Switzerland. Under Swiss law, the bank must know who you are. Anonymous accounts at Swiss banks exist only in the imagination of thriller writers.

The procedure for opening a 'numbered' account is exactly the same as for any other type of account, but instead of your name the account carries a number. This is an internal security measure to restrict knowledge of the customer's identity to a small group of employees in the bank. Apart from this, a 'numbered' account enjoys no additional privileges in terms of confidentiality.

HANDY SITES

The Swiss National Bank is the equivalent of Australia's Reserve Bank—www.snb.ch/e/snb

The Swiss Bankers' Association has a full list of Swiss banks—www.swissbanking.org

The Swiss banking regulator will verify whether a bank is licensed to operate in Switzerland. Look under 'Supervised Institutions'—www.cfb.admin.ch

NEGOTIATING WITH THE TAX MAN

You don't have to be wealthy to open a Swiss account, but if you want the really lucrative tax breaks it certainly does help. Despite being roughly the same size as Tasmania, Switzerland has 26 different cantons (the Australian equivalent of states), each of which, in the 1980s and 90s, had the ability to negotiate individual tax arrangements with people and corporations. Rumour has it Formula One racing driver Michael Schumacher, who lives near Lake Geneva, enjoys a reduced flat tax rate. The canton of Fribourg is also said to have struck a deal with a big German company, agreeing to a reduced tax rate based on the firm making a fixed level of investment into the community. The practice has now been outlawed, though some suggest it still occurs.

In their defence, Stuber says the Swiss are simply operating within the boundary of their own legal framework. Even tax authorities of the Swiss cantons (the Australian equivalent of states) don't have the right to demand information from a bank in Switzerland. Still, ASIC has certainly taken a more active role in shutting down Swiss brokers of dubious character operating in Australia, securing a federal court injunction against Victorian operator, Pacific Blue Online, in June 2004. So if you're thinking about taking advantage of overseas tax laws, it's also worth taking note of the increased scrutiny by ATO auditors.

You also still have to provide proof of where your money comes from. "The banks have to understand the economic origin of the money," says Stuber. If the bank sees a perplexing transaction, it can override its secrecy laws and investigate you and the money can be blocked.

"I think that's something that people really have to know," says Stuber. "Investing in Swiss bank accounts is not for people with something to hide; it's a legal investment tool in a very safe political environment, with a very strong currency, with great service." ■