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SWISS BANKING SERVICES AND THE SWISS NATIONAL IMAGE

Dr. H. J. Halbherr, Deputy Manager of the Swiss Credit Bank in Zurich, addressed the London Group of the Société Helvétique on Banking with Swiss Banks on 29th May.

(Concluded)

The speaker continued with a reference to:

Taxation Law

He said that attention was often drawn to the question of the bank's disclosure obligation with respect to taxation law. The answer was very simple: Swiss tax legislation did recognise the banker's secrecy obligation. Thus there existed no obligation to supply information either in law suits concerning taxation or in legal proceedings before a Court of Appeal.

Dr. Halbherr said that the authorities were entitled to ask the tax payer for certification and other information to be supplied by his bank and that the law obliged the bank to furnish these. The authorities had no right to request the tax payer to supply from several banks proof regarding possible assets without concrete evidence of existing business connections between the tax payer and the bank in question. The speaker pointed out that such an approach, which would conflict with Swiss principles regarding the relations between citizens and the state, was prohibited by law, and the banks were not only entitled but even obliged not to comply with such requests. It was, therefore, entirely up to the tax payer if he wanted to tell the tax authorities about an account with a bank or not. Dr. Halbherr continued:

"Since banking secrecy remains safeguarded against the fiscal authorities within Switzerland, it is obvious that the same principle must apply with respect to third countries as well. The Swiss authorities have, therefore, always in principle rejected the requests of foreign countries for legal assistance in fiscal matters. This position has sometimes led to the reproach that Switzerland favours international tax evasion. The charge, however, overlooks the fact that it is primarily the task of every country to establish an order, in which its citizens are encouraged to live up to their duties towards the state; the methods best suited to this end must obviously differ from country to country according to national character and tradition. Recently there were rumours that the Swiss may lift the veil of banking secrecy to give the U.S. authorities information about the accounts of American citizens. From what I have said it should be clear that the Swiss authorities will not change their policy even *vis-à-vis* mighty America. Only by a change of the Federal Banking Law could the practice

of banking secrecy be altered. Changing a federal law is subject to the Referendum which would certainly be taken up in this question and it is safe to say that the great majority of the voters would never agree with a change of the present practice.

"Foreign authors sometimes paint a picture of Switzerland as a tax haven, whereas in reality it is a country with average taxation when compared with other Western countries. The Swiss tax system, however, does present various positive aspects which may appear attractive to foreigners and non-residents. In a few Cantons, a foreigner without business activity can take up residence and be taxed on a special flat basis, whereby the amount of the annual tax payments is determined according to his living standard. Like everybody else, non-residents pay 30% withholding tax on the income of securities but they enjoy among other the following advantages: They do not pay any capital gains tax on securities; they can invest large sums under the name of a Swiss bank, but at their own risk on the Euromarket without paying taxes; the non-residents can, aside from other Eurobonds, buy tax-free bonds in Swiss Francs and other currencies underwritten by Swiss banks for first-class foreign borrowers. Many Cantons grant considerable tax privileges to holding, domiciliary and service companies; also trusts and foundations under the laws of Liechtenstein give substantial tax advantages whereby Swiss banks may handle the administration of portfolios involved."

Limitation of Banking Secrecy

Wherever higher public interests are at stake. Then the Swiss banks become subject to the obligation to supply information. The decision whether and when these conditions applied, was obviously not left to the discretion of the bank. In principle they were bound to practise the strictest discretion. They were free from this obligation only when Swiss law explicitly called for exemptions. Such exemptions applied in a number of cases. Not only the Civic Code, the Family Law and the Law of Inheritance, but also the laws of debt collection and bankruptcy were cases in which the banker might be obliged to disclose information. Dr. Halbherr had no time to go into details, but mentioned the Federal Decree regarding the "*presumed ownerless assets of racially, religiously or politically persecuted foreigners or of stateless persons*". It was particularly Jewish circles which claimed after the last war, that there must be 3 to 400 million Swiss Francs hidden in Swiss banks, owned by Jews who were killed in the second world war and that nobody had access to the accounts

because they were anonymous. The application of the cited legal provision showed that most of the accounts had been settled with their respective owners or been claimed by legally entitled persons. Only 9,4 million Swiss Francs was claimed under this special decree and only 61,000 Swiss Francs were proved to be really ownerless.

The Swiss banks, when they open an account, recommend their clients to issue powers of attorney which are designed to continue beyond death, thus preventing the existence of unclaimed property.

The Swiss banks will always disclose information on an account to the legally entitled persons.

Criminal Law

In the foreground of the questions concerning banking secrecy are, however, the Criminal Code and the tax laws. Swiss banks are always ready to grant loyal support to the legitimate requests of the law courts. The banks' obligation to disclose information applies to third countries to whom Switzerland lends legal assistance. A condition for this is, first, that the offence, with respect to which an assistance is asked, to be punishable in Switzerland, in other words, identity of criminal legislation. Secondly, the requested intervention must not run counter to the basic Swiss constitutional concepts. In accordance with these restrictions as recognised by international law, Switzerland does not lend legal assistance in the case of political offences, nor, of course, in respect of offences which are not considered criminal in Switzerland.

By contrast assistance is granted in the case of so-called ordinary offences.

The Gnomes of Zurich

Before closing Dr. Halbherr referred to the Gnomes of Zurich—which are supposed to play a role in cases of international monetary crises, particularly regarding the speculation against Sterling. This gave Mr. George Brown the idea for a scapegoat in the persons of the bankers in Zurich when he labelled them with the nice nickname "Gnomes".

"As truly international bankers the Swiss have a very strong interest in a stable international monetary system, particularly in a strong pound. This is why the three big Swiss banks I mentioned have given 450 million Swiss Francs credit to the British Government a little over a year ago. The Swiss Central Bank or as we call it, the Swiss National Bank, has cooperated substantially in the different actions to support the US Dollar, the British Pound Sterling, the French Franc and a few years back the Italian Lira. Not only has Switzerland been a strong