

# You May Keep Your U.S. Clients



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Over recent years, pressure from the United States of America in its fight against tax evasion has increased. The reaction of Swiss financial institutions varied, but often was not in the interests of clients. Working with Americans is compelling and rewarding, especially in a new world of tax transparency. It requires, however, working together.

## **Americans represent one of the largest wealth management markets**

According to the 2012 Capgemini RBC World Wealth Report, there are more than three million Americans with more than one million US\$ to invest. This makes the U.S. one of the biggest wealth management markets worldwide. It is estimated that there are some 40 billion US\$ from American private clients in Switzerland, a number making this market even more attractive at a time when most Swiss

banks no longer want to work with U.S. clients. The future also looks positive, with Boston Consulting predicting overall wealth from worldwide American millionaires to surge to 41 trillion US\$ by 2016.

## **Safeguarding U.S. wealth in Switzerland and Liechtenstein**

Switzerland and Liechtenstein represent stable countries with little or no national debt and no history of financial repression or monetary restrictions. This contrasts with many countries around us and makes them safe havens for international wealth.

Some still question the attractiveness of Switzerland for foreign wealth in the absence of tax advantages. Quite wrongly so, as there are many reasons clients keep funds offshore whilst being fully tax-compliant in their resident country. Some clients find Switzerland attractive for its discretion and geo-

graphic location. Others value access to investment possibilities that are more difficult to obtain in their home country and there are those who like to diversify and compare different points of view of their local and Swiss bankers.

Swiss and Liechtenstein wealth managers usually have a long-term view on investments. Combined with a fee-based-only approach it contrasts with the transaction-based investment culture in America. U.S. clients in America are often overwhelmed with frequent trading and many clients value the alternative of a calmer and more reassuring investment style.

Diversification and asset protection are also becoming increasingly important. Diversification refers to more than just different asset classes. It also applies to geographic location of assets and asset managers. "Where are my assets held and managed and do I

have all my eggs in the same basket?" Social factors such as where family members are situated and when they may need access to funds are important to wealthy international families, including those with ties to America.

In an increasingly litigious society, many also seek to place a "nest egg" outside of the reach of their own jurisdiction while being fully transparent to their tax authorities. If done with foresight and the right legal advice as part of an overall estate plan, asset protection can be very effective.

### **Responsibility towards clients**

There are increasing reports of financial institutions discontinuing their business relationships with U.S. clients. Whilst this is understandable, many question the way these "exits" are done and the question of responsibility rises. Whether a banker, an asset manager or a trustee, the moment a client is accepted there is a responsibility towards that client. Circumstances can change, but it is important to think with the client for solutions. There are many.

### **Rules with U.S. clients**

Today, many Swiss and Liechtenstein professionals are knowledgeable on matters relating to U.S. clients and yet it is still confusing and difficult to explain to clients. In general, there are two important U.S. authorities monitoring activities: the Internal Revenue Service (IRS) and the Securities and Exchange Commission (SEC). The IRS calculates and collects taxes from taxpayers who are subject to U.S. taxes, whilst the SEC regulates the providers of investment services and advice.

In times of high debt and low growth, the IRS increasingly targets assets of American taxpayers outside of the U.S. The IRS has enormous reach with their wide definition of a U.S. Person, which includes persons with U.S. citizenship or Green Cards irrespective whether those persons live in the U.S. or abroad. Furthermore, their reach extends towards parties who assisted U.S. Persons with tax evasion.

The SEC, on the other hand, is there "to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation". This consumer

protection applies to solicitation of new investments and provision of investment advice on U.S. territory.

America has in recent years increased pressure on Swiss bankers and asset managers by arresting and sometimes prosecuting them in America for offences under IRS or SEC regulations.

### **Continue to serve your U.S. clients as a bank**

Different motivations continue to lead Swiss and Liechtenstein banks to terminate their relationships with U.S. clients. There are, however, options to continue servicing these clients whilst remaining compliant with U.S. laws and regulations. (We exclude here the current discussions around Fatca.)

A bank can remain a custodian and provide loans without being SEC registered, as long as there is no direct communication with U.S. clients in America. If you do offer custody for U.S. clients, you have the option to either register with the SEC as a foreign registered investment advisor or to appoint an external SEC-registered investment advisor. Some banks have established new SEC-registered entities and pool their U.S. clients in that entity. Others choose to work with external partners that are SEC-registered. Kaiser Partner Financial Advisors is registered with the SEC and works with many banks, enabling them to keep custody of their U.S. clients.

### **Continue to serve your U.S. clients as an independent asset manager**

Asset managers without a place of business in the U.S. may not need to register with the SEC if they collectively manage less than 25 million US\$ from less than 15 clients. If you are an asset manager with more, you should consider your obligations under SEC regulations. Nowadays registering is a relatively easy process. However, ongoing compliance and reporting obligations may be demanding and costly. Finding a custodian bank for your U.S. clients might be the bigger problem. Kaiser Partner Privatbank in Vaduz can offer you custodial services for your U.S. clients, whilst at Kaiser Partner Financial Advisors we are happy to share know-how when it comes to SEC questions.

We would like to point out that when dealing with U.S. clients in a tax-transparent world, it is advisable to obtain know-how on tax-efficient investing. Generally speaking, this means avoiding investment instruments that trigger higher taxes than necessary.

### **Continue to serve your U.S. clients as a trustee**

Being a trustee and director of structures with links to the U.S. often presents a variety of challenges which can be solved if the structure is tax-compliant. Appointing an SEC-registered investment advisor or co-trustee with experience in dealing with U.S. issues and ensuring that communication with U.S. parties and their U.S. advisors is conducted by the SEC-registered asset manager goes a long way towards managing real and perceived risks for trustees.

Kaiser Partner Financial Advisors in Zollikon specializes in U.S.-related matters and works in close collaboration with external trustees and directors to provide complementary services for overall compliant and sustainable long-term solutions. Additionally, the group internal reporting center can help provide U.S. tax-base reports that facilitate the tax filing of beneficial owners that are U.S. taxpayers.

### **Working together is key**

Times have changed and it is no longer possible to only classify one's clients according to their wealth bracket; their tax jurisdiction is important as well. As we see with American clients, a high degree of specialization is required and different partners need to work together to combine their strengths and expertise in the interests of their clients. At Kaiser Partner, we have a long history of collaborating with many partners in banking, asset management, trust services and legal services. Please contact us for further information.

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