Swiss Court Tells BNP Paribas to Release French Client's Funds

POSTED ON MAR. 1, 2016

By

WILLIAM HOKE

A Swiss court has rejected a bank's argument that allowing a French citizen to withdraw funds from an account that has not been disclosed to the French government would expose the bank to money laundering charges in France.

The unpublished February 19 decision by the Geneva Court of First Instance against BNP Paribas follows a previous holding by the federal court, which dismissed a similar attempt to block withdrawal on procedural grounds. In that case,[1] a bank argued that the Swiss Financial Market Supervisory Authority (FINMA) told Swiss financial institutions that in order to reduce cross-border risk, they should freeze the accounts of foreign customers whose accounts had not been disclosed to the account holders' home governments.

The federal court held that FINMA's instructions had been informal and were not binding on the banks. It also said that when the case was before the lower courts, the litigant failed to present evidence of its internal regulations requiring the blocking of the accounts.

"It just pointed to the FINMA directive," said Bernard Lachenal of Meyerlustenberger Lachenal. Swiss law prohibits the introduction of new evidence before the appeal court if the evidence was available at the time of the original legal action, Lachenal added.

The Merits of the Case

Tax professionals say the decision by the Court of First Instance, although nonbinding, could be especially important because it was made on the merits of the case. "The court said that the argument that reducing risk of being tried criminally in France was not enough to justify refusing to release the funds," Lachenal said.

Marc Béguin of Wyssa Beguin & Partners said France's anti-money-laundering law applies to cases involving tax evasion. "The court said that the bank could not validly pretend that it cannot perform today . . . client transfer instructions on the basis that such a transfer would violate French anti-money-laundering law because, when the bank accepted the deposits of said funds years ago, it was already at that time [in] violation of the French anti-money-laundering law," Béguin said. "In other words, the crime, if any, had already been committed when the bank accepted the funds . . . and performing the transfer requested today by the client would not change anything in that regard."

Lachenal said BNP Paribas's caution is almost certainly influenced by various European countries' investigations into whether multinational banking companies HSBC, UBS, and Credit Suisse helped account holders avoid taxes in their jurisdictions. (Prior coverage , , , and .) "Most other banks haven't taken such a tough stance," he said.

"Probably because BNP is French and it's more exposed to penalties in France, it is blocking the accounts. Other banks say they'll release funds with a paper trail to show where the funds went so they can't be blamed later. The risk is not as high for them."

Lachenal said he was disappointed by the bank's decision to block the accounts. "After making so much money from their clients for years, now they freeze the accounts," he said. "I think it's not really fair."

Between a Rock and a Hard Place

Lachenal said some BNP Paribas clients face a dilemma because Switzerland has agreed to provide to other countries, beginning in 2018, details about foreigners' accounts that were open the previous year. (Prior coverage .) "Many people with undisclosed accounts are trying to withdraw their funds before 2017 because they will obviously be reported immediately to French authorities," Lachenal said. He added that some account holders had been waiting for the latest court decision because they were reluctant to bring suit themselves because lawsuits are a matter of public record in Switzerland.

BNP Paribas did not respond to a request for comment on whether it will appeal the decision. Lachenal said any appeal would first go to the High Court and then could be taken to the federal court. "Clients are caught between a rock and a hard place," he said. "Ultimately, the federal court will rule in favor of the client, but a decision might not come before 2018 and the information will have already been transferred by that time to French authorities."

Béguin said article 324-1 of the French penal code calls for a prison term of five years for money laundering offenses, including the laundering of evaded taxes.

He said he doubts that banks releasing funds to French account holders will be punished in France, though. "I do not think that a French court would condemn the bank for having performed a bank transfer ordered by a court to which authority the bank is subject," Béguin said. "But . . . the criminal act of assisting money laundering of tax evasion was already committed at the time the bank accepted the funds."

FOOTNOTE

[1] The decision was available in Italian, as of Feb. 29, 2016, at http://www.bger.ch/it/index/juridiction/jurisdiction-inherit-template/jurisdiction-recht/jurisdiction-recht-urteile2000.htm.

END OF FOOTNOTE

DOCUMENT ATTRIBUTES

JURISDICTIONS	FRANCE ITALY SWITZERLAND
SUBJECT AREAS	CRIMINAL VIOLATIONS FINANCIAL INSTITUTIONS FRAUD, CIVIL AND CRIMINAL INDIVIDUAL INCOME TAXATION INTEREST INCOME LITIGATION AND APPEALS TAX AVOIDANCE AND EVASION TAX HAVENS
INDUSTRY GROUPS	BANKING, BROKERAGE SERVICES, AND RELATED FINANCIAL SERVICES
AUTHORS	WILLIAM HOKE
INSTITUTIONAL AUTHORS	TAX ANALYSTS
TAX ANALYSTS DOCUMENT NUMBER	DOC 2016-4236
TAX ANALYSTS ELECTRONIC CITATION	2016 WTD 40-5