Tax Justice Network Backgrounder: The Rubik calculations

This background note accompanies our Press Release.

1. The Rubik model: background

The "Rubik" model has two parts. **First**, there is a one-off, lump sum capital payment (to account for evaded past taxes.) A Belgian deal has not been signed so we do not know the rate, but the UK deal levies 21-41 percent of the average value of the capital over the past 10 years, and the average rate is expected at 20-25%. Once this is paid, all past criminal liabilities are cleared. **Second**, the accounts incur withholding taxes on the subsequent income, which in the UK's case ranges between 28-48 percent, plus inheritance taxes, at 40%.

The Tax Justice Network carried out a forensic analysis of Britain's bilateral "Rubik"tax deal with Switzerland, showing that Britain would be lucky if it directly raised one tenth of the £4-7 billion in tax revenues that the politicians have been promising. We have publicly and repeatedly challenged the UK tax authorities, the Swiss tax authorities, the Swiss Bankers' Association and several private tax adviser to find faults in our analysis. None have been found. The European Commission objected to parts of the UK agreement and so it was amended in March, weakening the agreement further.

Germany's Rubik deal, originally pushed forwards by Finance Minister Wolfgang Schäuble for mysterious reasons, has not been ratified, and it seems to be falling apart as German politicians wake up to the loopholes and to its ethical and democratic implications. Germany's *Die Zeit* newspaper said:

> "Most likely, the [Swiss] tax agreement with Germany is doomed to fail."

If Germany's deal fails then Britain's may well fall apart too. If these countries turn against Rubik then any other that *were* to sign risk conflict with those wiser European partners who have shunned the Swiss swindle.

2. The Rubik loopholes

Here are the main loopholes in the Rubik model[1]:

- **Foundations, discretionary trusts and other 'ownerless' structures** –standard tax evasion vehicles – are deliberately and explicitly outside Rubik's scope. Such structures are slippery: while they will ultimately benefit someone (an Italian tycoon, say), that person is not

[1] The Swiss Bankers' Association and others have said that our analysis of the loopholes in Rubik is wrong, because "every beneficial owner has to pay the tax.'" That statement in itself is mostly true, but entirely misleading. The *whole point* of Rubik's loopholes is that you escape being taxed by avoiding being classed as the beneficial owner! Their statement is a bit like saying 'if you get caught in the net, we will catch you' – then whispering '*hey! the trick is: stay away from the net!*"

legally identified as the beneficial owner or beneficiary: the assets are 'ownerless' and therefore outside the scope of a Rubik deal (see Section 3.1. here)

- **Insurance 'wrappers.'** An insurance 'wrapper' is bit like a trust, where the Italian tax evader is entitled to all the economic benefits from the assets in question, but legally speaking it is the insurance company that is the beneficial owner. The legal beneficial owner is not identified as Italian, so it is outside the scope of a Rubik deal.[2]
- **Commercial companies.** Only domiciliary companies falling under Swiss definitions are in scope – and that excludes any untaxed offshore company from somewhere like the Cayman Islands, for instance, where it can be pretended they have a 'commercial' purpose.
- **Fees, donations, loans, royalties**. Rubik only includes investment gains on "bankable" assets. So if your assets are in a safe deposit box in Zürich, or your profits are distributed as, say, a 'consulting fee', these assets are not 'bankable" and are outside Rubik's scope.
- **Foreign bank accounts**. Move your assets from a Swiss subsidiary of the bank to a Singapore subsidiary, and you fall out of scope.
- **Defer, then move.** Rubik lets you defer all your income until you move to another country. So you might set up a deferred pension – then retire to sunny Portugal with your untaxed pension pot, which no bilateral Swiss-Italian deal could touch. Only the EU's multilateral approach could work.

3. Using the European Savings Tax Directive data to calculate possible maximum Rubik revenues for Belgium

Using public data, we can make a very rough estimate of the maximum amount Belgium might raise from a "Rubik" tax deal with Switzerland. We can work this out from data on an existing tax scheme, the European Savings Tax Directive (EUSTD), which is similar enough to Rubik to be able to make a rough estimate.

The EUSTD is a transparency initiative to help European countries tax cross-border income. Switzerland, though not an EU member, is one of the 42 EUSTD participating members. Most EUSTD participants share information about each others' taxpayers' income, though several have opted instead to withhold taxes anonymously and transfer this revenue (after deducting a 25% fee) to the taxpayer's home jurisdiction, while preserving the taxpayer's secrecy.

A large majority of European taxpayers using Swiss banks evade the Directive, but those who do submit to it have two options: either they pay a withholding tax on the interest income earned from their Swiss banks, or their income is declared to their home country. **Table 1** provides the data.

Table 1*: performance of the EU Savings Tax Directive in Switzerland, selected countries, 2011. Source: EU-Zinsbesteuerung, Confederation Suisse, 2012*

[2] Rubik claims that it covers insurance wrappers: but what the Swiss bankers fail to advertise is that only *Swiss* insurance wrappers are in scope: Non-Swiss ones slip the net.

Country*	**1. Sums remitted by Switzerland CHFm, 2011****	**2. Sum withheld by Switzerland CHFm 2011 ***	**3. Interest declared, CHFm, 2011**	*4. Memo: No. of citizens declaring*
Austria	10.9	13.5	15.1	*567*
Belgium	**17.1**	**22.8**	**32.5**	***1189***
Britain	21.4	28.5	68.5	*2979*
Germany	122.1	162.8	420.0	*31,991*
Greece	11.4	15.2	12.2	*1,360*
Italy	65.8	87.7	16.6	*915*
Luxembourg	1.7	2.3	0.4	*36*
Total (all EU countries)	**379.9**	**506.3**	**713.0**	-

* The countries selected are those that have signed or shown interest in a Swiss Rubik deal.
** The amount remitted to the taxpayer's home country is 75% of the total amount withheld by Switzerland. Switzerland keeps the remaining 25% as a fee. So col. 2 is col. 1 divided by 0.75.
Memo: the CHF Swiss Franc is currently fixed at 0.83 Euros.

3.1 How do we use this data to calculate likely maximum Rubik revenues?

The EUSTD and Rubik cover the same universe of European taxpayers.

The EUSTD is currently riddled with loopholes – essentially the same main loopholes in the Rubik model (though Rubik has a broader definition of 'income'.) Those who escaped the EUSTD have already decided to engage in criminal tax evasion, and as Section 2.1 below explains the incentive to evade Rubik is massively higher than the incentive to evade the EUSTD. So those who have escaped the EUSTD will escape Rubik too: we can disregard them.

That leaves those taxpayers who are 'captured' by the EUSTD: essentially, those referred to in Table 1 above: a) those whose income is declared; and b) those where the EUSTD withholds taxes on income and remits it to their home country.

We can also disregard those taxpayers who have opted to have their income declared to their home country, since their Swiss accounts are transparent and clean and therefore outside Rubik's scope. What is left is the assets on which the EUSTD withholds and remits taxes. This is the asset base that Rubik has at least some hope of capturing. If we know that asset base, we can apply Rubik's tax rates to work out potential revenues.

3.2 How do the tax rates differ between the EUSTD and Rubik?

There is one big different between the EUSTD and Rubik: the effective tax rate.

The effective rate under Rubik is massively higher than the EUSTD tax rate, so the incentive to evade Rubik is massively higher.

The EUSTD only collects taxes on *income,* at 35%. So $1 million earning 3 percent in 2012 would yield $30,000, subject to $10,500 tax.

The Rubik model, by contrast, levies both income taxes and a one-off capital charge on the total asset value, typically at a whopping 20-25%. So that $1m asset produces a $200-250,000 charge: twenty to twenty-five times what the EUSTD earns – plus ongoing taxes on income!

This tantalisingly huge capital charge (which is justified as a one-off payment to compensate for past tax crimes, and a guarantee of ongoing secrecy) is the fabled bounty that has been used to lure Germany and other countries into signing Rubik deals with Switzerland.

But remember the old adage: if it seems too good to be true, it probably is.

3.3 So how much money might Belgium earn from a Rubik deal?

To work out how much of this bounty Belgium might actually earn, we work backwards from Table 1 to estimate the size of the undeclared Belgian assets that the EUSTD 'captures': that is, the Belgian-owned assets in Swiss banks that produce those withheld taxes (Table 1, col. 2 above.)

We know that Rubik's potential asset pool is somewhat larger than the EUSTD's pool, because Rubik targets a broader definition of income than the EUSTD does. The EUSTD covers only fixed income products, which represent 55 percent of the total potential assets[3]; Rubik's potential asset pool includes other assets such as equities, and is therefore 1.6 (1 divided by 0.55) times larger than the asset pool potentially covered by the EUSTD. So we multiply our number for Belgian assets 'captured' by the EUSTD by 1.8 to get an estimate for the size of Belgian assets potentially 'captured' by a Swiss Rubik deal.

Once we have that, we apply the 20-25% estimated capital charge (see Section 2.1 above) to those assets, to produce an estimated revenue sum from the one-off capital charge.

But we also know from Section 2 that – given the massively higher incentive to avoid Rubik, and its many easy loopholes – this figure for the potential capital charge must be the extreme upper limit of what Rubik might capture. The true figure must be far smaller, since many more people will want to evade Rubik.

3.4 The Rubik capital charge: details

[3] Clients investing in Swiss banks usually have particularly conservative portfolios: Helvea estimated 50-60% in fixed income and cash.

To calculate the size of undeclared Belgian assets 'captured' by the EUSTD, we take the data for taxes withheld by Switzerland and remitted to Belgium under the EUSTD, then assume a reasonable 3% interest rate and a 27.5% tax rate, to estimate the underlying asset base. (See Table 2 below.)

Table 2: Implied assets 'captured' by EUSTD, by country

Country	Taxes withheld CHFm, 2011	"Withheld:" Implied assets CHF bn
Austria	13.5	1.7
Belgium	**22.8**	**2.8**
Britain	28.5	3.5
Germany	162.8	19.7
Greece	15.2	1.8
Italy	87.7	10.6
Luxembourg	2.3	0.3
All Europe	**506.3**	**61.3**

So the EU STD 'captured' roughly CHF 2.8 bn, (or €2.3bn) of Belgian assets last year, through the withholding tax option.

Because Rubik covers a broader definition of interest income, including equities as Section 3.0 above explains, we multiply this number by 1.8, to get €4.2 billion of assets potentially captured by a Swiss Rubik deal.

So the Rubik capital charge, at an expected average 20-25% rate of the €4.2 billion asset base, raises an approximate maximum **€1bn for Belgium.**

Reminder: because of the loopholes and massively higher incentive for evasion, this is an extreme upper limit: there is *no way* that Belgium will get this much revenue. The likely total is far smaller.

3.5 The ongoing income taxes, inheritance taxes.

Essentially, we can disregard the ongoing income taxes levied under Rubik because to the extent that the relevant assets are 'captured,' Belgium is already receiving them under the EUSTD.

If Belgium did sign a deal, it may well negotiate an inheritance tax addition to its agreement, which would likely produce the following revenue.

Assume that 2.5% of taxpayers die each year, and a 50% inheritance tax rate on the assets when the taxpayer dies, we would see annual income of 1.25% of the value of the assets. In Belgium's case, with an absolute maximum €4.2bn assets 'captured' by Rubik, that would earn an absolute maximum of €50 million per year over and above what the EUSTD would yield.

That is, again an extreme upper limit, not a forecast – and the EUSTD Amendments would – if and when the "Rubik" block is swept out of the way – raise far, far greater sums.

4. The implications for Belgium

The Tax Justice Network recently estimated that there are $21-32 trillion in financial assets owned offshore, essentially beyond the reach of tax authorities. Former Greek Prime Minister Papandreou, citing these figures in August, said that if offshore tax havens had been properly tackled, Greece would probably have avoided a bailout. There are indeed many billions in Greek (and Belgian) assets in Swiss banks – but Rubik won't catch them.

Even the maximum possible one-off capital charge from a Rubik deal is insignificant when compared to Belgium's €180-200 billion annual budgets.

The price Belgian and European citizens would pay for this is colossal: Rubik not only guarantees secrecy and impunity for criminal tax-evading élites, but it will sabotage the key EUSTD Amendments which would close most of the big loopholes and collect far greater sums than Rubik ever could.

The overall effect will be to reduce tax collections in Belgium and in Europe.

In short, the "Rubik" tax model is a swindle.