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Script

Question 1

What is your analysis of the German Ministry of Finance estimate of collecting €10 billion tax on €42 billion black money ?

Question 2:

What is the impact of the damage to automatic exchange of information ?

Q1: What is your analysis of the German Ministry of Finance estimate of collecting €10 billion tax on €42 billion black money?

Introduction: I am qualified to analyse the agreements loopholes because since 2005, I've spent virtually all my time working with the EU Commission on how to close the loopholes of the EU savings tax directive.

- The good news is Rubik will likely collect €8 billion upfront.
- The bad news is that it should collect €50 billion on €250 billion but loopholes will allow 85% to escape.
- Even worse news is that this agreement sinks automatic exchange of information which would collect €120 billion from Switzerland, Luxembourg and Liechtenstein

So why claim 85% will escape Rubik?

- Investors in Switzerland use loopholes and omissions to circumvent 85% of the EU savings tax.
- In Switzerland the EU savings tax directive only catches €65 billion of the undeclared €500 billion interest earning investments.
- The problem is investors use loopholes to escape the EU savings tax definition of **beneficial owner**.
- … and Rubik has virtually the same loopholes regarding beneficial owner.
- If 85% Swiss bank customers aggressively avoid the small savings tax one can assume investors will be even more keen to avoid the large Rubik taxes.

Why does Rubik have loopholes regarding Beneficial Owner:

- After the Liechtenstein tax scandals in 2008 involving foundations avoid the Swiss Bankers Association rushed a simple 10-page Rubik proposal to avoid German talk of automatic exchange of information.
- Ironically this hasty proposal completely ignored the EU Commission's methods to target the disguising of **beneficial owners**
- Rubik's instead focuses on expanding the definition of "**investments**"
- Hardly any attention went loopholes concerning definition of "**Beneficial Owner**".
- There is no point in having best definition in the world for **investments** if there is no identifiable **beneficial owner** to tax.

Q1: What is your analysis of the German Ministry of Finance estimate of collecting €10 billion tax on €42 billion black money (cont…)

I review nine loopholes of the Swiss-German tax agreement and how they should be closed:

1. Foundations and trusts

- It is rare that an individual opens a Swiss bank account in their own private name.
- German residents often use trusts and foundations to hold their Swiss bank accounts.
- There are no named beneficial owners for these accounts.
- Therefore the bank cannot identify a German **beneficial owner** to apply the tax.

The EU savings tax tackles this by:-

- **The individual who initially funded the structure is regarded as the beneficial owner.**
- The bank is no longer responsible for applying tax on trusts & foundations.
- It is the manager of the trust or foundation which is responsible to apply the tax as soon as income is received
- Tax is **on accounts anywhere the world.** This tackles assets moved to Singapore.
- Switzerland must establish a public register of trusts and directors of foreign companies to ensure the application of tax by managers.

2. Inheritance

- The Swiss bank is supposed to withhold inheritance tax if it becomes aware that the beneficial owner dies.
- It is easy to escape inheritance tax with trusts and foundations because the trustee instructs the bank to pay the initial contributor one month, and pay his wife the next month without informing bank that the initial contributor has died.
  - The inheritance loophole can be tackled by making the trustee – and not the bank – responsible for applying the tax. The trustee knows when the person who set up the trust dies.

3. Foreign bank accounts such as Singapore, Bahamas, etc.

- Fleeing to other tax havens is a major issue for German opposition to Rubik

- The bank's head-office in Switzerland can be obliged to withhold tax on its foreign branches because the Singapore branch is considered the same legal entity as the head office.

Q1: What is your analysis of the German Ministry of Finance estimate of collecting €10 billion tax on €42 billion black money (cont…)

4. Swiss trustees managing accounts outside Switzerland

- Swiss trustees manage accounts all over the world, which is out of Rubik's scope

- The amended EU savings tax obliges Swiss trustees to apply tax on its bank accounts anywhere in the world.

5. Non-Swiss insurance wrappers

- Rubik includes Swiss insurers but most insurance wrappers are from Luxembourg and Liechtenstein
- For Swiss banks the beneficial owner of non-segregated insurance accounts is the foreign insurer.
- This means there is no German resident to apply the tax on.

The EU savings tax amendments tackle this by:

- The insurer anywhere in the EU must apply the tax,
- The **entire** pay-out is treated as interest including the repayment of capital.

6. Commercial companies

Rubik excludes **commercial** purpose companies. This is a major loophole because

- Offshore Hong Kong "trading companies" or Cayman Islands "consulting businesses" are exempt.
- Another simple way to escape the tax is for customers to use their own German company papers to open a Swiss bank account which is exempt from Rubik.

- The savings tax amendments tackle this loophole by including all companies which are untaxed
- Also include onshore companies whose bank accounts do not have a commercial purpose.

Q1: What is your analysis of the German Ministry of Finance estimate of collecting €10 billion tax on €42 billion black money (cont…)

7. Non-investment income

- Rubik only includes investment gains on bankable assets.
- Foundations can distribute gains as non-investment income such as director's fees, consulting charges, salaries, non-repaid loans, donations, royalties, copyright payments, and rental income.
- Safety deposit boxes are specifically exempted from scope, allowing customers to hide assets as cash

- The EU savings tax amendments tackles this by ensuring trusts and foundations apply tax as soon profits received, not when distributed
- Rubik should also include other income as per the EU Mutual Assistance & Co-operation Directive such as rent, director fees, wages, pensions and royalties
- Cash safety boxes should also be in scope.

8. Delay cashing investment until retire outside Germany

- Place assets in a tax deferred scheme such as insurance
- Surrender the investment only after retiring in say Spain because Rubik won't apply if you are not a German resident – this gives Germans a way to save for a tax-free pension.
  - With the EU savings tax there is no motivation for an investor to do this as tax applies no matter where in EU you are resident

9. Artificial channelling of income payments via economic operators established outside Switzerland

- The bank pays to another foreign bank for eventual credit to the beneficiary.

The amended EU savings tax tackles this circumvention by obliging the bank to apply tax if it knows the eventual recipient is a beneficial owner.

- ☞ It is impossible for a bilateral agreement to tackle many of these loopholes where investors use arrangements outside of Switzerland to hold Swiss accounts which disguise their ownership.
- ☞ The only solution is a multi-lateral agreement such as the amended EU savings tax with automatic exchange of information.

Q1: What is your analysis of the German Ministry of Finance estimate of collecting €10 billion tax on €42 billion black money (final)

I estimate German black money in Switzerland is €250 billion versus the MoF figure of €42 billion.

- Germany accounts for between one-third and two-thirds of EU savings tax, therefore safe to assume Germany accounts for one-third of European money, which is CHF 500 billion. The Germany Ministry of finance assumes half of this.
- The German ministry of finance assumes half of the money in Switzerland belongs to pensions and investment funds which is highly implausible.
- German ministry of finance reduces its estimates by 50% again because the assets are over 10 years old. There should be no reduction on black money estimates on older assets
- German MoF assumes 25% will flee to other tax havens. I believe it is too late to flee and why flee when there are so many other loopholes.

The MoF had to have been guided by the Swiss Banking Association to severely underestimate the amount of black money. A low figure hides the inefficiency and loopholes. If only €8 billion is collected it doesn't look bad on an estimate of is €42 billion total capital, instead of €250 billion!

I estimate Rubik will collect tax on 15% of €250 billion which €8 billion

Liechtenstein wants to offer automatic exchange of information to Germany but only based on Rubik with all these loopholes. Keep in mind Liechtenstein circumvented 99% of the savings tax using foundations and their subsidiaries in Singapore.

Question 2: What is the impact of the damage to automatic exchange of information ?

Germany would collect 15 x fiscal revenues with automatic exchange of information with Switzerland, Luxembourg and Liechtenstein compared to Rubik.

- Regularisation - €120 billion with automatic exchange information versus € 8 billion Rubik.
- Annual tax & inheritance - €12 billion with automatic exchange information versus €1 billion million Rubik

Tax revenues would be from:-

- Switzerland on €250 billion assets
- Luxembourg – another 60% of Switzerland: Note that Luxembourg is virtually same problem size as Switzerland, is delaying the EU savings tax yet hardly gets any attention from Germany compared to Switzerland
- Lichtenstein – another 10% of Switzerland
- Swiss Trusts with foreign accounts - 10% of Switzerland
- Branches in Singapore, Bahamas - 10% of Switzerland

But if Rubik proceeds:-

- Switzerland will never agree to automatic exchange in the future
- Luxembourg & Liechtenstein will never agree to automatic exchange of information. Bear in mind that Luxembourg has 60% of European Switzerland’s assets and Liechtenstein has 10% of European assets.
- Switzerland may not accept the EU savings tax amendments as they will claim Rubik satisfies EU Member States demands
- Luxembourg will continue to veto EU savings tax amendments
- LU will not agree to the EU directive on Mutual assistance & cooperation regarding capital gains & dividend