Summary:

- Virtually all of the €250 billion German-owned assets in Switzerland will escape the Swiss-German tax agreement due to it having virtually the same loopholes as the EU savings tax.
- It is physically impossible for a bilateral tax agreement with Switzerland to close loopholes because investors use vehicles from other countries where the beneficial owner cannot be identified by the bank, such as foundations or insurance wrappers.
- The only feasible solution to close all loopholes is a multi-lateral agreement which pierces the disguising of beneficial ownership.
- The amendment of EU savings tax and EU mutual assistance & cooperation directives, which closes the loopholes, will be sabotaged because Luxembourg will not agree on automatic exchange if Rubik proceeds.
- Automatic exchange via the amended EU savings tax directive would bring Germany **15 times** the revenue than the loophole-riddled Rubik accord.

A. The source of the Swiss-German tax agreement loopholes

Investors exploit loopholes & omissions to circumvent 85% of the EU savings tax.

- Due to loopholes, the EU savings tax directive only caught €65 billion [1] of applicable €510 billion [2] interest earning capital in Switzerland. This means over 85% escaped, while Liechtenstein circumvents 99% of the EU saving tax.
- Investors exploit loopholes mainly concerning the EU savings tax definition of beneficial owner.
- Rubik has virtually the same loopholes regarding beneficial owner, therefore it is simple to circumvent Rubik.
- As investors aggressively circumvent the relatively minor EU savings tax amounts, it can be assumed the same investors would want to avoid the much higher taxed Rubik agreement.

Reason Rubik has loopholes regarding Beneficial Owner:

- Tax agreements have 3 elements Paying Agent -----→ Beneficial Owner ----→ Investment
- To circumvent a tax agreement one must use a loophole to avoid the definition of one of these three elements
- To avoid automatic exchange of information the Swiss Bankers Association rushed a simple 10-page Rubik which ignored the EU Commission's proposals to pierce the disguising of beneficial owners.
- Rubik instead focused on loopholes concerning the definition of "investments" but minimal effort went into closing the loopholes concerning the 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.

B. Nine Swiss-German tax agreement loopholes 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 individual beneficial owners for accounts held by trusts & foundations.
- Therefore the bank cannot identify a German **beneficial owner** to apply the tax.
- The foundation distributes gains as director fees or loans to the German resident without ever being repaid outside the scope of Rubik.
- Avoidance of tax by using foundations was confirmed in the 2008 Liechtenstein tax scandals.

The EU savings tax tackles this loophole 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 must apply the tax upon income receipt.
- Tax is on accounts anywhere in the world**.** This tackles assets moved to Singapore, etc.
- Switzerland must establish a public register of trusts and directors of foreign companies to ensure the application of tax by managers.

Note: The manager of the trust and foundation is most likely based outside of Switzerland, e.g. Liechtenstein or Jersey. Therefore a bilateral agreement cannot tackle this loophole.

2. Inheritance

- The Swiss bank is supposed to apply inheritance tax if it becomes aware that the beneficial owner dies.
- It is easy to escape inheritance tax with trusts & 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 only be tackled by making the trustee – and not the bank – responsible for applying the tax. The trustee relationship is aware when the settlor dies.

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

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

- It is simple to tackle most foreign accounts - the bank's head-office in Switzerland must be obliged to withhold tax on its foreign branches because the Singapore branch, as a Permanent Establishment is considered the same legal entity as the head office.

4. Swiss trustee managed accounts outside of Switzerland

- Swiss trustees managing assets outside of Switzerland are not in Rubik's scope.

  - The EU savings tax amendment obliges Swiss trustees to apply tax on its bank accounts anywhere in the world, including Singapore, Bahamas, etc.
  - Switzerland must establish a public register of trusts and directors of foreign companies To ensure the application of tax by managers.

5. Non-Swiss insurance wrappers

- Rubik includes Swiss insurers but most insurance wrappers are from Luxembourg, Ireland and Liechtenstein.
- Swiss banks do not identify the underlying owner of foreign insurance issued wrappers if the bank account is not segregated for each individual policy. In most cases the insurer only has one account for all policies.
- For Swiss banks the beneficial owner of these 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 on the policyholder
- The entire pay-out is treated as profit if the income portion is not enumerated.

Note: A bilateral agreement cannot tackle this loophole.

6. Commercial companies

- Rubik excludes commercial purpose companies, which is a major loophole :-
  - "Trading" or "consulting" offshore firms are inexplicably exempt.
- Another simple way to escape the tax is for customers to use their own German domestic company papers to open an undeclared Swiss bank account which is exempt from Rubik.

- The savings tax amendments tackle this loophole by including all companies which are untaxed

Note: An additional method is to include in scope all onshore taxable companies if the bank account does not have a commercial purpose.

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 money in 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 pension
- Surrender the investment only after retiring in say Spain because Rubik won't apply if you are not a German resident – gives customers a way to save tax-free long-term.

- With the EU savings tax there is no motivation for an investor to do this as tax applies either upon receipt or upon distribution no matter where in EU you are resident

Note: A bilateral agreement cannot tackle this loophole.

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.

C. Estimated German assets in Swiss banks

Billions CHF		Estimates by Germany Ministry Finance	Estimates by Mark Morris
(i)	Overall German assets in Swiss banks	260	500
(ii)	Less: institutional assets e.g. pensions	(130)	(130)
(iii)	Less: prescribed or half-taxed income	(70)	(0)
(iv)	Less: already moved to other tax havens	(10)	(0)
(v)	Less : Voluntary declared	-	(70)
	Estimate German black money	CHF 50	CHF 300
	Estimate German black money EUR	**€42 billion**	**€250 billion**

(i) Overall German assets : **CHF 500 billion**

- Swiss manage CHF 2.7 trillion[4] foreign money
- 50% - 60% [5] is European : CHF 2.7 trillion x 55% = CHF 1.5 trillion
- One-third[6] of EU savings tax collected in Switzerland goes to Germany and two-thirds[6] voluntary disclosure of interest is German
- Therefore at least one-third of the CHF 1.5 trillion European money is German owned : CHF 1.5 trillion x 33.3% = CHF 500 billion

(ii) Less institutional money: **CHF 130 billion**

- MoF estimates 50%. Implausible that German pensions or investment funds would place significant assets with Swiss banks.
- Generously estimate 25% institutional owned : CHF 500 billion x 25% =CHF 130 billion.

(iii) Less assets prescribed over ten years or partially taxable : **Nil**

- MoF estimates 50%. 10 year-old money or non-taxed income has nothing to do with reducing the regularisation of past assets.
- No reduction in estimates: Nil

(iv) Less moved to other tax havens : **Nil**

- MoF estimates 25%.
- The initial estimate is based on the money currently in Switzerland. Customers who want to flee have already moved their accounts : Nil

(v) Less money voluntary declared: **CHF 70 billion**

- 20%[7] individual's money declared : CHF (500 – 130) billion x 20% ≈ CHF 70 billion

The German Ministry of Finance figures under-estimate black assets in Swiss banks

- German Ministry of Finance estimates - €42 billion.
- Mark Morris estimate based on public available statistics - €250 billion

A German Ministry of Finance estimate of black money which is significantly lower than actual will hide the tax agreement's loopholes:-

- German black assets in Switzerland are entirely unknown to the German Ministry of Finance due to banking secrecy.
- The only estimates available are guided by the Swiss Bankers Association (SBA).
- It is in the SBA's interest that the black asset estimate is as low as possible so that small amounts of actual tax collected from the loophole-riddled agreement look as if the agreement is efficient.
- €10 billion collected on €42 billion looks like no loopholes exist when in fact €10 billion collected on €250 billion would reveal that 85% escapes.

D. Estimated Rubik revenues versus automatic exchange of information via amended EU savings tax

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

- **Regularisation/ Penalty** - €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
- Lichtenstein – another 10% of Switzerland
- Swiss Trusts with foreign accounts - 10% of Switzerland
- Branches in Singapore, Bahamas - 10% of Switzerland

Expected fiscal income	**Rubik**	**Automatic exchange**
Capital identified	€ 38 billion (a)	€ 475 billion (b)
Penalty vs. Regularisation	**€ 8 billion** (c)	**€ 120 billion** (d)

Tax on annual investment gains	€ 500 million (e)	€ 6 billion (f)
Tax on inheritance per year	€ 500 million (g)	€ 6 billion (h)
	€ 600 million per year	**€ 12 billion per year**

(a) [€250 billion German black money] - [85% escaping through loopholes] = €38 billion
(b) [€250 billion Switzerland] + [€150 billion Luxembourg] + [€25 billion Liechtenstein] + [€25 billion trusts managing foreign assets] + [€25 billion foreign branches] = €475 billion

(c) €38 billion x [21% rate] ≈ €8 billion
(d) €475 billion x [26% penalty rate] ≈ €120 billion

(e) €38 billion x [5% assumed gain] x [25% income tax rate] ≈ €500 million
(f) €475 billion x [5% assumed gain] x [25% income tax rate] ≈ €6 billion

(g) €38 billion x [2.5% death] x [50% tax rate] ≈ €500 million
(h) €475 billion x [2.5% death] x [50% tax rate] ≈ €6 billion

E. The Swiss-German tax agreement is detrimental to other EU cross-border tax agreements

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

References

[1] EU savings tax in Switzerland applied on fixed income capital 2011: €65 billion

- Withheld : **CHF 506 million**
    - Tax rate 2011 : 35% six months, 20% six months – average 27.5%
    - Interest tax was applied on : CHF 506m[6] ÷ 27.5% = CH 1.84 billion
    - Fixed income capital : CHF 1.84 billion ÷ 3.25%[10] = CHF 56 billion => €47 billion

- Voluntary declared 2011 : **CHF 713 million**
    - Fixed income capital : CHF 713 million ÷ 3.25%[10] = CHF 22 billion => €18 billion ← [1b]

Total interest earning capital caught by EUSD : €47 billion + €18 billion = €65 billion

[2] Undeclared EU owned interest earning assets in Swiss banks: €500 billion

- CHF 2.7 trillion foreign assets => €2.25 trillion
- 55%[5] from EU : €2.25 trillion x 55% = €1.25 billion
- Individual-owned is total less 25% institution : €1.25 billion x 75% = €940 billion
- Undeclared EU assets => Individual-owned less 10%[3] declared : €940 billion x 90% = €850 billion
- 60%[9] fixed income capital : €850 billion x 60% = €500 billion undeclared EU interest earning capital

[3] Total European voluntary declared assets in Switzerland: less than 10%

- Interest declared : CHF 713 million[6]
- Interest earning capital is CHF 713 million ÷ 3.25%[10] ≈ CHF 22 billion
- Total European assets: CHF 1.5 trillion less 25% institution = CHF 1.1 trillion
- Interest earning assets proportion 60%[9] : CHF 1.1 trillion x 60% = CHF 660 billion
- Total declared proportion is CHF 22 billion ÷ CHF 660 billion ≈ less than 10%

[4] Total foreign assets managed by Swiss banks 2011: CHF 2.7 trillion

Source : *Swiss Bankers Association* http://www.swissbanking.org/en/home/finanzplatz-link/facts_figures.htm

Assets under management in Switzerland (2011)	Assets under management (CHF bn)	Share in %
Domestic clients	2,600	49%
Foreign clients	2,700	51%
Total	**5,300**	**100%**

[5] Proportion of capital assets in Switzerland from EU: 50% - 60% : 55% average

- Helvea study, May 2009 - UBS publishes data on its Wealth Management operations by domicile of client indicating 56% of the total derives from Europe.
- Swiss foreign bankers association, comprising mostly of banks from Europe, hold 20% of Swiss bank customer assets. The majority customers of these banks are non-Swiss, mostly from Europe

References

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Département fédéral des Finances DFF

[6] EU savings tax results for Switzerland 2011

Accord sur la fiscalité de l'épargne / statistique du 01.01.2009 au 31.12.2011

Parts en CHF - UE – Retenue d'impôt (art. 1 de l'Accord) parts 75 % par pays (art. 8 de l'Accord)

	31.12.2009	31.12.20010	31.12.2011	
Allemagne	109'273'962	107'865'863	122'095'389	31% avg
Autriche	9'015'681	9'515'465	10'984'412	
Belgique	16'213'424	16'191'792	17'052'978	
Bulgarie	398'071	323'270	465'548	
Chypre	646'008	550'574	654'029.	
Danemark	1'520'753	1'189'428	1'322'146	
Espagne	26'330'376	26'959'247	35'023'328	
Estonie	195'032	106'503	141'548	
Finlande	877'818	808'760	818'371	
France	52'255'293	46'908'597	55'603'617	
Grèce	7'951'029	7'835'110	11'362'503	
Hongrie	1'751'007	1'840'406	2'378'731	
Irlande	968'927	658'502	893'552	
Italie	122'981'381	57'061'677	65'844'931	
Lettonie	292'127	134'018	181'930	
Lituanie	229'697	289'294	627'383	
Luxembourg	1'448'405	1'309'422	1'694'706	
Malte	511'892	394'922	584'993	
Pays-Bas	13'201'432	10'253'066	10'560'906	
Pologne	2'452'693	2'182'275	3'011'800	
Portugal	6'358'103	5'566'076	6'810'792	
République tchèque	2'301'363	1'935'143	2'861'256	
Roumanie	771'228	625'168	965'181	
Royaume-Uni	17'578'072	18'383'562	21'393'545	
Slovaquie	401'758	369'381	504'259	
Slovénie	362'110	355'076	529'236	
Suède	4'825'206	4'420'325	5'522'551	
Total	**401'112'859**	**324'032'933**	**379'889'635**	

Parts en CHF - UE – nombre de communications (art. 2 de l'Accord) et total des intérêts bruts par pays

	nombre 2009	Intérêts 31.12.2009	nombre 2010	Intérêts 31.12.2010	nombre 2011	Intérêts 31.12.2011	
Allemagne	23'874	434'867'588	27'496	497'959'816	31'991	420'030'315	64% avg.
Autriche	367	15'184'455	394	12'703'587	567	15'034'039	
Belgique	687	22'304'731	863	30'284'571	1'189	32'510'053	
Bulgarie	15	1'488'566	16	1'998'636	18	853'227	
Chypre	170	8'870'172	156	3'323'407	208	2'686'607	
Danemark	67	926'881	74	829'130	91	833'998	
Espagne	466	7'816'767	607	10'061'448	1'004	18'605'058	
Estonie	4	54'295	3	4'084	4	11'653	
Finlande	70	548'693	74	491'372	75	588'554	
France	1'448	13'997'188	1'899	28'736'19	2'547	33'158'260	
Grèce	70	1'698'265	365	3'336'20	1'360	12'119'842	
Hongrie	26	942'509	30	553'497	52	1'528'907	
Irlande	95	3'794'015	145	4'717'541	200	4'874'115	
Italie	589	17'998'746	642	16'578'94	915	16'555'965	
Lettonie	9	92'774	7	71'786	8	43'280	
Lituanie	6	42'373	13	143'138	16	283'523	
Luxembourg	36	278'128	38	230'665	60	446'109	
Malte	207	3'261'623	203	3'317'376	185	5'330'461	
Pays-Bas	1'346	30'920'083	1'692	35'296'18	1'994	34'833'288	
Pologne	129	3'933'859	126	2'966'046	207	4'448'381	
Portugal	136	6'259'585	241	5'329'111	937	20'106'717	
Tchèque	121	3'068'051	127	2'717'804	158	4'814'474	
Roumanie	30	1'083'954	32	1'301'326	47	585'372	
Royaume-Uni	2'797	85'740'868	2'723	64'046'395	2'979	68'460'360	
Slovaquie	16	112'400	31	283'026	39	400'711	
Slovénie	12	81'841	13	32'784	17	174'992	
Suède	149	5'525'074	169	8'352'375	301	13'764'606	
Total	**32'942**	**670'893'49**	**38'179**	**735'666'47**	**47'169**	**713'082'879**	

References

[7] German voluntary declaration in 2011: Less than 20%

- Interest declared : CHF 420 million[6] => € 350 million
- Interest earning capital assets is €350 million ÷ 3.25%[10] = €12 billion
- Total German assets €250 billion
- Interest earning assets proportion 60%[9] : €250 billion x 60% = €150 billion
- Total declared proportion is €12 billion ÷ €150 billion ≈ less than 10%
- Generously assume 20% declared

[8] Total interest earned by Germans: € 4.9 billion -> CHF 6 billion

- Total assets owned by Germans €250 billion
- Proportion of interest earning assets 60%[9] : €250 billion x 60% = €150 billion fixed income
- Interest earned @ 3.25% [10] : € 150 billion x 3.25% = € 4.9 billion is CHF 6 billion

[9] Estimate of proportion of interest earning assets in Swiss banks: 60%

- Swiss balanced funds average 50% fixed income
- Cautious environment in Swiss banks for hidden wealth set up for inheritance planning
- Fiduciary deposits alone account for 20% foreign assets
- Fixed income funds dominate portfolios
- Fixed income includes capital guaranteed notes & reverse convertibles & Swaps & Floaters

[10] 2011 average interest rate: 3.25%

- LIBOR 12-months 2%
- 10-year Bund 3%
- Other Euro bonds 4%
- Global high yield 6%
- Swaps 4%
- Convertible bonds 9%
- USA bonds 3%
- **Average ≈ 3.25% p.a.**