



Rhône

RUBIK: Where do we stand?

TTN Transnational Taxation Net

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Structure of presentation

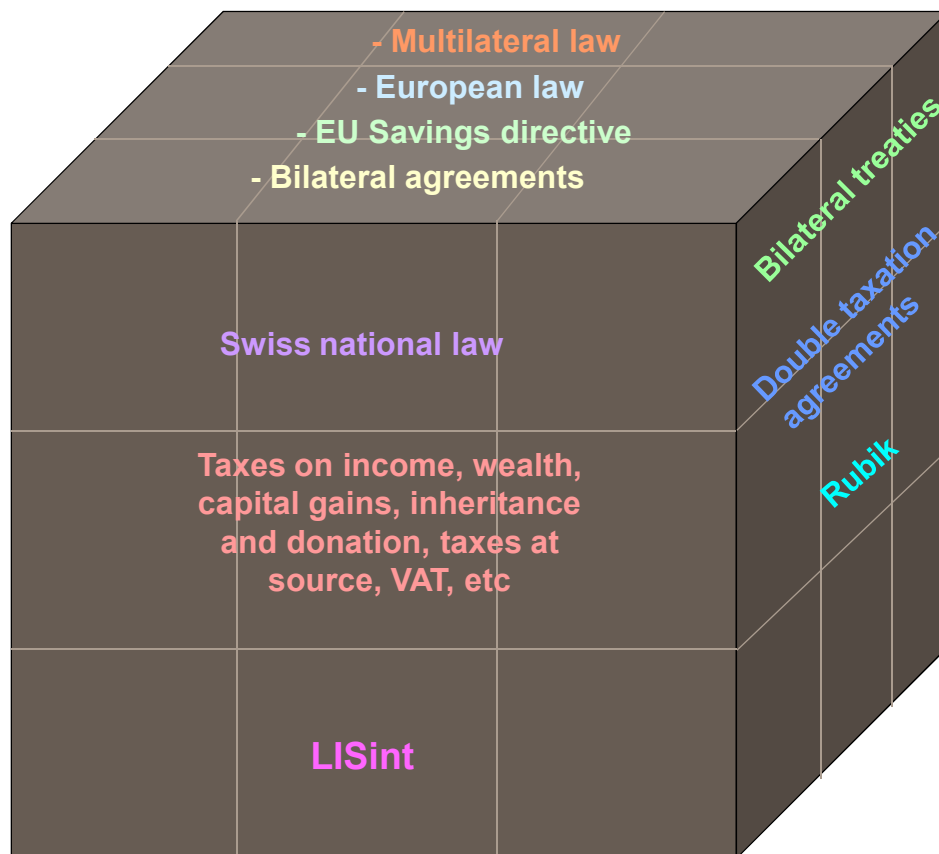
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1. Introduction



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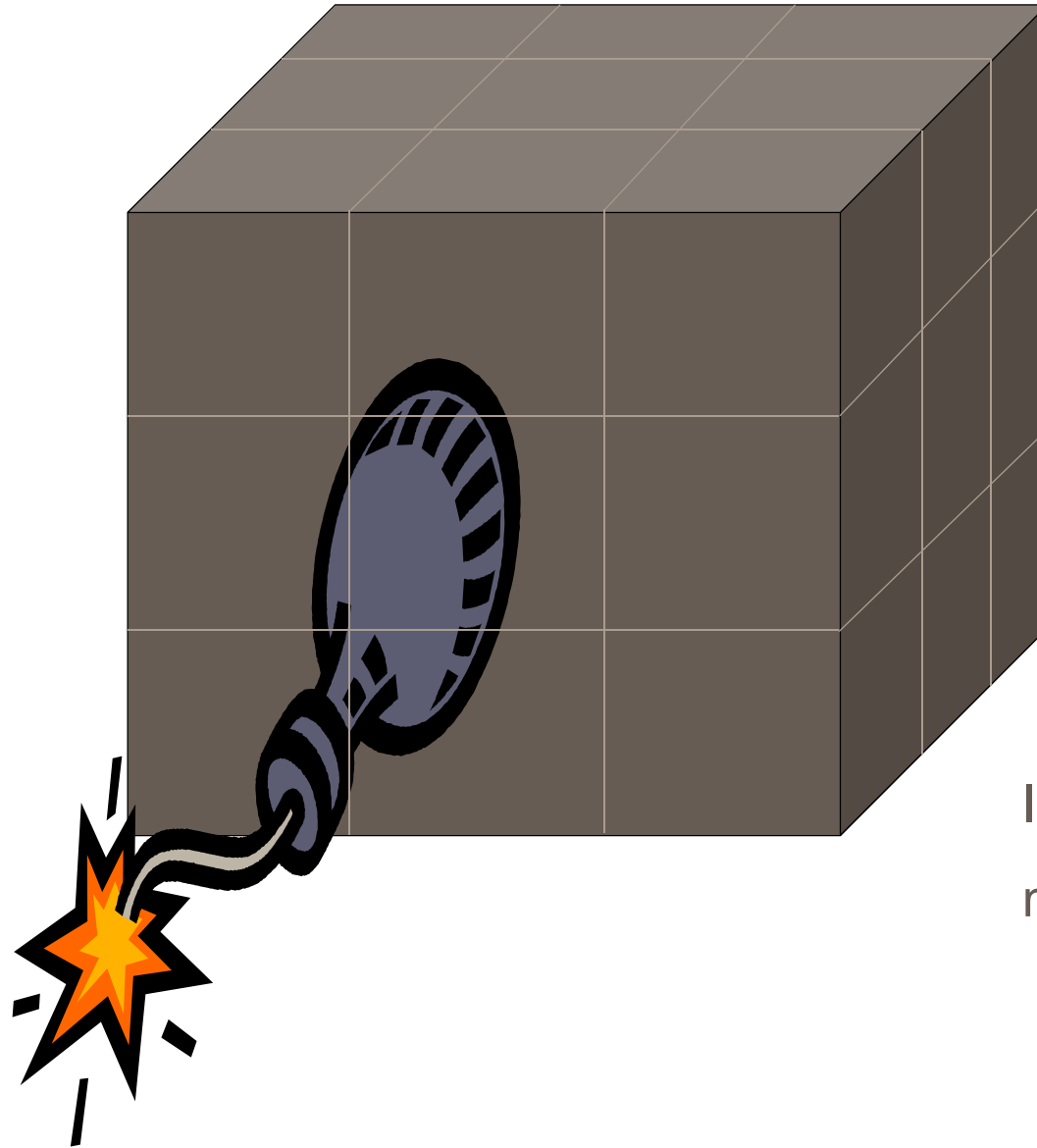


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Fatca
The 4th dimension?



1. Introduction



Is the system
manageable?



2. Key points of the Agreements



2. Key points of the Agreements

A relatively swift negotiation process is followed by a rapid implementation plan

Upfront payment from Swiss banks as a goodwill gesture of proper application of the agreements

Further practical guidance still needed

- **Germany** : Signed on September 21st, 2011 + modification protocol of 5th April 2012
- **UK** : Signed on October 6th, 2011 + modification protocol of 20th March 2012
- **Austria** : Signed on April 13th, 2012
- **April 17th, 2012** : The European Commission has expressly acknowledged that the G and UK Agreements are compatible with EU Law
- **Next step** : **Ratification** by the respective parliaments

- **1st of January 2013 = effective date for the Agreements for UK and Austria, G strong opposition from the left who controls the “Bundesrat”**
- Commitment of Swiss banks to make an upfront payment as a goodwill gesture for proper application of the agreements:
 - 2 bn CHF for Germany (→reimbursed if regularization reaches the amount of 4 bn CHF)
 - 500 mio CHF for UK (→reimbursed if regularization reaches 1,3 bn CHF)
 - n/a for Austria



2. Key points of the Agreements

Transitional period

- Until the Agreements come into effect

Impact on relevant clients and contractual partners

- SBA recommendations of March 2011
- Terms of the Agreements
- Rules of conduct required by SBA with implementation of control procedures
- Audits

- Specific conduct must be observed by Swiss banks during this “**transitional period**”

Equivalent to automatic exchange of information in the field of income of capital

- G/UK/A and Switzerland acknowledge that the final withholding tax for the future is equivalent in the long term to the automatic exchange of information for the taxes covered by the Agreements (income and gains)



3. Scope : paying agents - assets - clients



3. Scope : paying agents – assets - clients

- **PAYING AGENTS**
- **ASSETS**
- Only **assets deposited on accounts or deposits** are considered in the scope of the Agreements
- **Out of scope :**
 - Assets placed in a safe deposit box, and
 - True life insurance policies subject to FINMA regulation
- **CLIENTS**
- **Account holders (individuals)** that are **G/A residents / UK resdom**; and
- **Beneficial owners (individuals)** that are **G/A residents / UK resdom** based on :
 - **Swiss due diligence obligation (ex. CDB, Forms A, T, I)**, and
 - **all circumstances known to the bank (actual knowledge)**
 - for assets held by:
 - Domiciliary entities (ex. companies, trusts, foundations, anstalts and similar legal constructions without commercial activity)
 - Insurance wrappers
 - Fiduciary relationships : account holder = John Brown and Form A specifies a G/UK resident of UK domiciliary
- For **joint/collective relations or partnerships** : only the relevant account-holder(s) or partner(s) are concerned. Splitting of assets by number of holders/partners equally or application of another splitting if communicated in writing.



3. In-scope & out of scope – practical situations

- **A priori will be in-scope (subject to further guidance)**
 - **beneficial owners that are G/A residents / UK resdom (Swiss due diligence and actual knowledge) of assets held on account/deposit by :**
 - Domiciliary companies (ex. BVI, Panama, US LLC with single member G/A resident / UK resdom, etc);
 - Revocable trust established by a G/A resident / UK resdom settlor;
 - Irrevocable and non-discretionary trust (distribution of income only) with G/A resident / UK resdom beneficiaries (ex. fixed interest trust);
 - Non-G / UK foundations (also administered outside G/A/UK) - Liechtenstein, Panama - with G/A resident / UK resdom as settlor or G/A resident / UK resdom beneficiaries
 - Insurance wrappers with a G/A resident / UK resdom on form I (unless proof given of tax compatibility under G/A/UK law)

- **Open situations :**
 - Irrevocable and discretionary trusts established by a G/A resident / UK resdom settlor and with determined G/UK/A beneficiaries ?

- **A priori, out of scope :**
 - Companies / or business trusts with commercial activities (with G/A resident / UK resdom as beneficial owners)
 - Irrevocable and discretionary trust with undetermined beneficiaries on form T (ex. family of John Brown)
 - Trusts/Foundation considered as non transparent in G/A/UK
 - Recognised charitable foundations



4. Regularization of the past



4. Specific conditions for opting for regularizing the past

Accounts and deposits in Switzerland on 31.12.2010 AND 31.12.2012* for clients domiciled in G/UK/A on 31.12.2010

- Three cumulative conditions for past regularization:
 - To be a holder or a beneficial owner of a bank account in **Switzerland**,
 - **On December 31st 2010 and on December 31st 2012*, and**
 - Residence in G, A or UK resdom on **December 31st 2010**
- Accounts of clients booked with foreign banks and foreign branches and subsidiaries of Swiss banks are out of scope
- There is no regularization possible for new accounts with assets transferred from outside Switzerland after December 31st, 2010 (exception : 20% rule)

* UK May 31st 2013

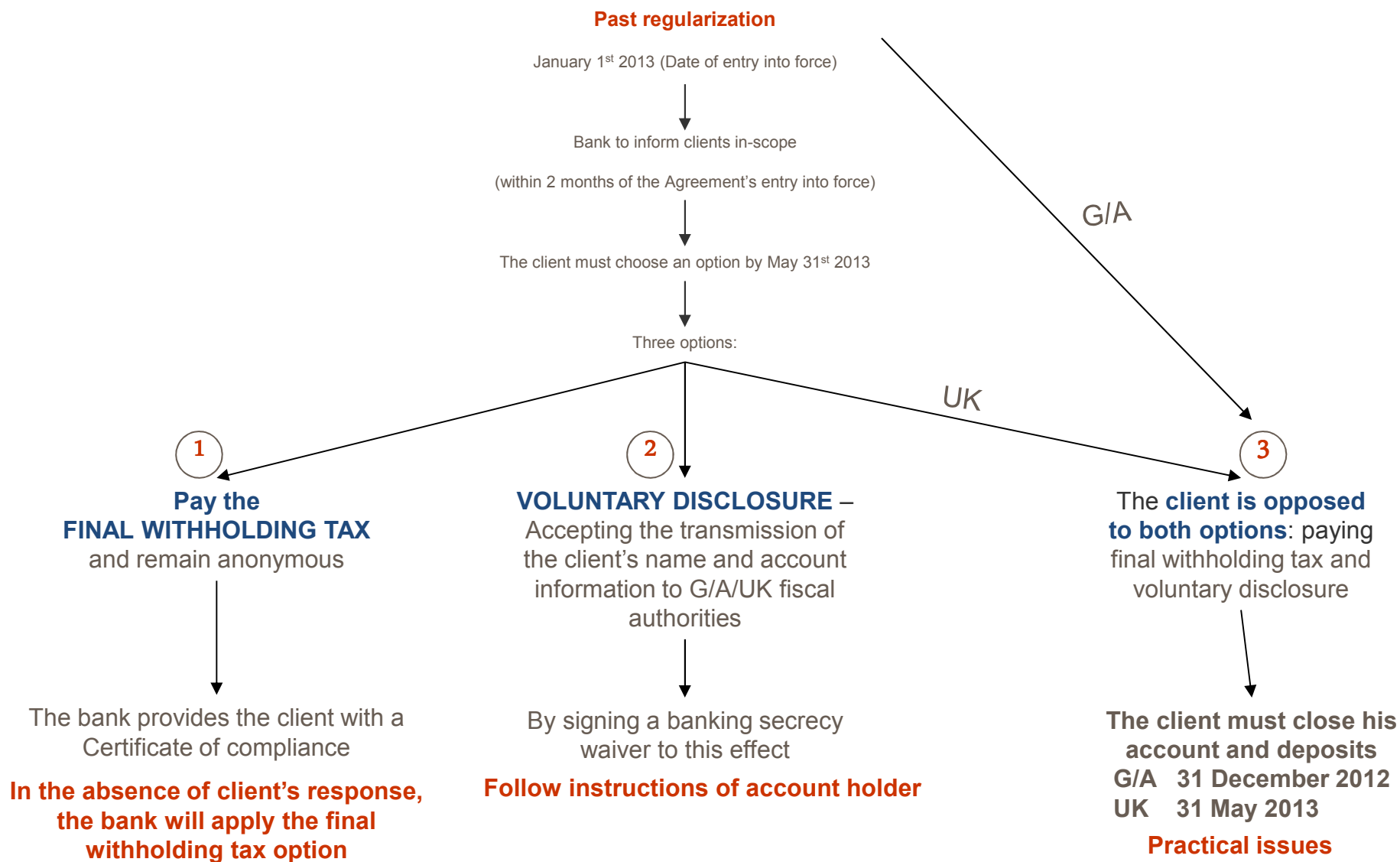


4. Regularization of the past – practical issues

- Transitional period: practical consequences (subject to further guidance)
 - 1) New relevant client / BO with assets transferred from outside Switzerland
→ **out of scope for regularisation; in-scope for future WHT; systemic control (see below)**
 - 2) New relevant client / BO with assets transferred from Switzerland
→ **process specifically described in the Accord**
 - 3) Existing relevant client on 31.12.2010 and 31.05.2013 or 31.12.2012 leaving his country of residence (G/A/UK) between 1.1.2011 and 1.1.2013
→ **in-scope for regularisation but not for future withholding tax**
 - 4) Existing relevant client on 31.12.2010 and 31.05.2013 or 31.12.2012 taking residence in the country (G/A/UK) after 31.12.2010
→ **out of scope for regularisation but in-scope for future withholding**
 - 5) G/A or UK nationals with domicile outside of country of origin – if proof provided to the bank with a G/A or UK passport, the bank needs to obtain tax residency certificate delivered by foreign competent authorities of residence (except Switzerland) ;
if no foreign tax residency certificate → in-scope for past and future withholding



4. Regularization of the past – options





4. Regularization of the past – practical issues

Clients who opted for regularisation by one-off payment must maintain sufficient liquidities

- The client opting for past regularization must maintain sufficient liquidities on his account for the one-off payment for regularisation of the past situation
 - If not, an additional deadline of 8 weeks must be provided to the client
 - If assets are still insufficient → the bank must automatically disclose the identity of the relevant client (forced disclosure)
- **Practical issues**
 - No contact/response from the client and insufficient liquidities on the account to regularise the past by 31.05.2013. By default the bank must apply the regularisation for the past but if insufficient funds → mandatory disclosure of the client !
 - What if assets are sufficient but illiquid and the client cannot bring additional liquidities ?



4. Regularization of the past – tax rates

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On average between 20 & 25%

- The effective tax rate will be between:
 - Maximum nominal rate of: **41% (UK and G), 38% (A)**
 - Minimal rate of: **21% (UK and G), 15% (A)**
- On average, it is estimated that clients will effectively pay between **20 and 25%** of their **reference capital (UK and G), around 20% (A)**
- The **date of payment** for the final withholding tax will be **May 31st 2013.**
- **Covers the following taxes : income, wealth, estate capital gain**



5. Special case : UKRND



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Without certification of the UKRND status by May 31, 2013, UKRND will be subject to the one-off payment

- Certification of UKRND status → 31.05.13:
 - UKRND must provide a certificate produced by a lawyer, accounting or tax adviser who is a member of a relevant professional body, confirming that:
 - the client claimed the *remittance basis* in his tax return, that the *remittance basis charge* has been paid (if applicable), and that to the best of his knowledge the UKRND status is not challenged by HMRC

- UK resident non-domiciled has to opt between:
 1. **Opt out:** no exchange of information, no withholding
 2. **Self-assessment method:** taxation of undeclared past remittances and UK source income at the flat rate of 34% (→ income to be communicated by client)
 3. **Capital method:** one-off payment applied (default option!);
 4. **Disclosure:** exchange of information



6. Withholding tax for the future



6. Withholding tax rates & mechanism

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As from 1st January 2013, WT only on income

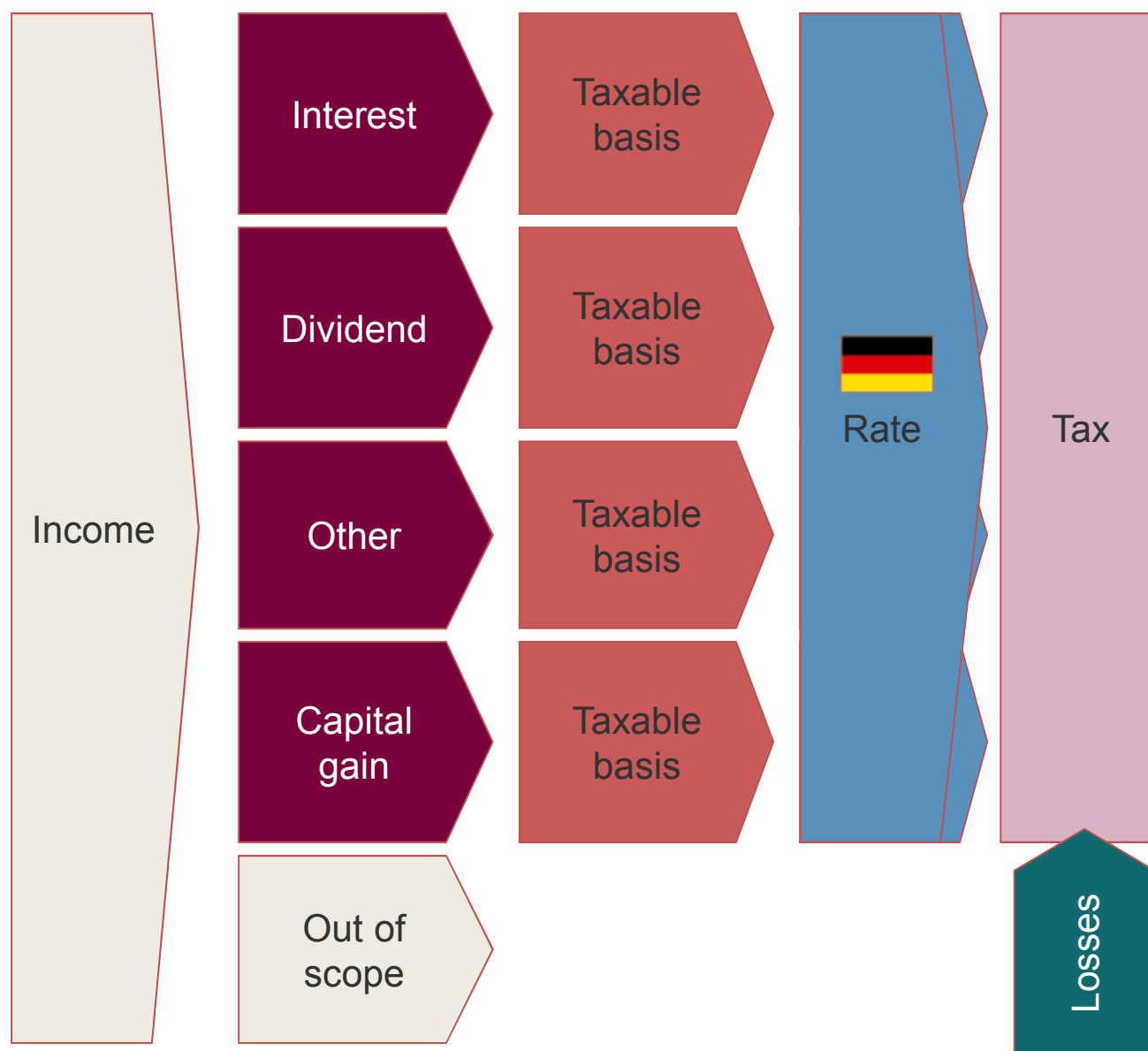
- As from 2013, application of a final tax withholding on all income generated by assets deposited in Switzerland and capital gains
- The client can choose between Three options:
 - an annual, anonymous, withholding taxation on such income (regardless of whether the client regularized the past or not) and cap gain; or
 - an annual, anonymous, withholding taxation on income and cap gain, with voluntary disclosure for interests subject to the Savings tax directive
 - a voluntary declaration
- The G tax rate will be **26,375%** (tax rate applicable in G)
- The UK tax rate will be:
 - **48% on interest income and other income**
 - **40% on dividends**
 - **27% on capital gains**
- The A tax rate will be 25%
- Certificate issued by Swiss paying agent to the client at the end of the year
- UKRND have to attest their status annually
- Anonymous withholding for estate tax (UK: 40% G: 50%)
- No regularisation of donation tax for G



6. Withholding tax for the future: overview

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- Classification of income is key for UK clients as the tax rate varies
- No universal definitions
- Coordination tables
- For A possibility to apply G rules for 2013





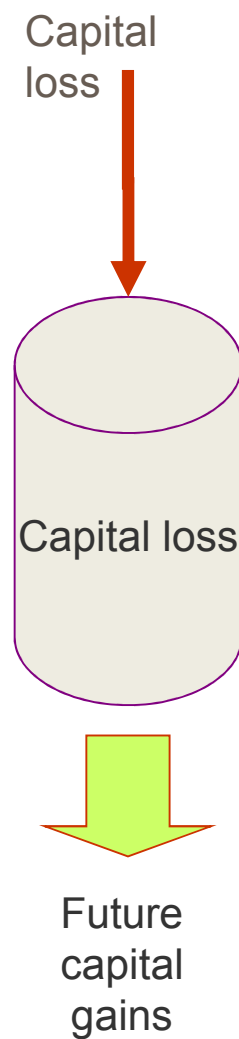
6. Loss carry-forward - UK

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Compensation limited to capital gains

Only carry-forward, by the same paying agent

Client can ask for a confirmation of the year-end loss balance
→ Balance set to nil
→ Use of the attestation to compensate gains by other paying agent





6. Relationship with other withholding taxes

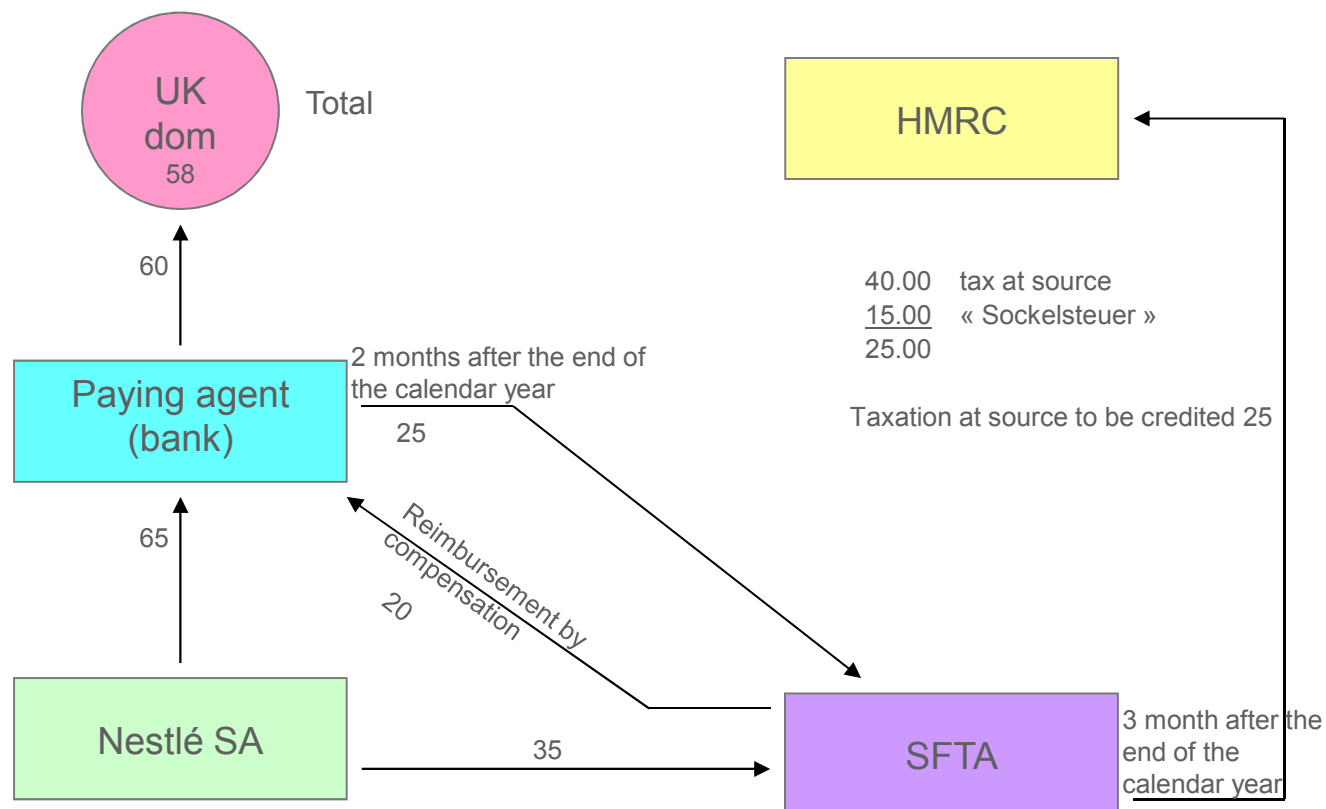
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EU savings tax remains fully applicable

- Swiss anticipatory tax (impôt anticipé)
 - 35% levied by debtor;
 - Non-recoverable amount (according to G/A/UK double taxation convention “Sockelsteuer”) credited against final tax
 - Recoverable part: refund processed by paying agents for clients
- EU savings tax
 - 35% levied on interest
 - G/A: difference (=8.625%) not refunded to client
 - UK: credited against 48% tax
- Third states withholding taxes
 - Non-recoverable amount (according to applicable G/A/UK tax treaties) credited against final tax
 - Refund of recoverable amount depends on clients, but usually not possible anonymously



Dividend – simplified example DTA UK - Switzerland





7. Systemic control



7. Systemic Control

Request by the G/UK authorities
formally simplified under the
Agreements

No need to provide the bank's name

No fishing expedition

- **Possibility given to G/UK Tax Authorities to control the proper application of the Agreements** by Swiss banks
- Formally simplified process for information requests
 - tax payer name, address and - if known - date of birth, professional activity, etc
 - plausible grounds of fiscal irregularity
 - the name of the bank is not necessary
- **The Agreement caps the number of information requests** to be addressed to Switzerland
 - **D : between 900 and 1300** for the first two years of its application (2013/2014)
 - **UK : 500 max per year** for the first three years
 - caps to be adjusted in the future
- This procedure is independent from the ordinary tax assistance procedure under the existing Double taxation convention



7. Systemic Control – when obligation to communicate

Clients are responsible for their tax compliance with their tax authorities

- Obligation for Swiss banks to provide information relating to tax years as from 2013 (entry into force of the Agreement) if conditions are met only on the existence of a bank account for the requested taxpayer(s)

- Switzerland (the FTA) will provide **no client information** if :
 - a) the taxpayer has no account or deposit; or
 - b) if (cumulatively):
 - the client has regularized his past tax liabilities on all assets deposited on effective date of the Accord,
 - he is subject to annual final withholding tax as per the Accord,
 - no change of beneficial ownership as from 31.12.2010
 - no new assets in excess of 20% have been transferred on the account(s) as from 31.12.2010 in which case new assets are defined here as assets which were not subject to full regularisation for the past



7. Systemic control – practical situations

- **Thus, risk of communication for the following situations :**
 - New relevant clients who opened an account after 31.12.2010 and deposited assets from outside Switzerland
 - Existing relevant clients on 31.12.2010 with partial regularisation
 - New relevant clients who opened an account after 1.1.2013 and deposited assets from Switzerland without certificate of compliance from a Swiss bank for past tax liabilities
- **Federal Tax Authorities will decide after 1.1.2013 on a case by case basis based on information received from Swiss banks upon requests**



7. Systemic control – Anti-abuse

Art. 34 Anti-abuse

1.

2. Swiss paying agents shall not knowingly manage or encourage the use of artificial arrangements whose sole or main purpose is the avoidance of taxation of the relevant persons under the provisions of this Agreement in respect of relevant assets.

3. Notwithstanding that the relevant person is the party liable to the withholding tax in accordance with Article 19 paragraph 4, where a Swiss paying agent acts contrary to paragraph 2, the Swiss paying agent shall be liable to a payment which amounts to the withholding tax avoided. The payment shall be made to the competent authority of Switzerland, which shall transfer it to the competent authority of the United Kingdom. The Swiss paying agent may exercise a right of redress against any such relevant person who participated in such arrangements.

There are no circumstances in which the United Kingdom should retain amounts paid twice in respect of relevant assets. Where amounts have been paid twice, the competent authority of the United Kingdom shall refund the overpayment to the competent authority of Switzerland.

4.

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