

SMPG – Tax sub-group

Telephone Conference Minutes

13th February 2014

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**Attendees**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Country** |  | **First Name** | **Last Name** | **Institution** | **Participation** |
|  | BE | Ms. | Véronique | Peeters | BNY Mellon | Excused |
| Facilitator | N / A | Mr. | Jacques | Littré | SWIFT |  |
|  | CH | Mr. | Reto | Baumgartner | Credit Suisse |  |
|  | DE | Mr | Daniel | Schaefer | HSBC |  |
|  | DE | Mrs | Andreana | Pileri | Commerzbank | Excused |
|  | FR | Mrs.  | Kimchi | Phungtran | BNP Paribas | Excused |
| Co-chair | FR | Mr | Jean-Pierre | Klak | State Street |  |
|  | IT | Mrs | Paola | Deantoni | Societe Generale | Excused |
|  | LU | Mr. | Bernard | Lenelle | Clearstream |  |
|  | LU | Mr | Ludovic | Schwindt | Clearstream | Excused |
|  | LU | Mr | Charles | Boniver | RBC IS | Excused |
| Co-chair | SG | Mr | Jyi-Chen | Chueh | Standard Chartered |  |
|  | UK & IE | Mrs. | Mariangela | Fumagalli | BNP Paribas |  |
|  | US | Mrs. | Sonda | Pimental | BBH |  |
|  | XS | Mrs | Delphine | Haillez | Euroclear |  |
|  | XS | Mrs | Marina | Kotti | Euroclear |  |
|  | ZA | Mr. | Sanjeev | Jayram | First National Bank | Excused |
|  | ZA | Mr | Dale | Van Rayne | First National Bank |  |
|  | ZA | Mr | Yusuf | Basha | First National Bank |  |

**Action**: NMPGs to eventually look for tax experts candidates in their local Markets.

# Approval / comments of December 19th call minutes

No comments.

The minutes are approved.

# Tax Table

No update received on the table.



# WITF/WITL/TAXR MP

**Presentation of updated Jyi Chen’s document (version 2.1 of Feb. 14)**



The group discussed on the different recommendations proposed in the document.

The main changes regarding the previous version are:

1. To announce that TAXR is the major and unique qualifier and is used in the context of primary market
2. to swap the proposal between WITF vs. WITL compared to the original version of the document in recommendations 2 & 3

Review of proposed recommendations

* Recommendation 1 : accepted by the group with the following definition change:

TAXR : *“Percentage of a cash distribution that will be withheld by ~~a tax authority~~* ***the tax authorities of the jurisdiction of the issuer,******for which a relief at source and/or reclaim may be possible.”***

Daniel mentions that in Germany the tax is levied by the agent bank and not by the tax authorities directly. Nevertheless this happens also in many other countries and the tax ends up anyway with the tax authorities at the end.

With the limit of a review of the definition if recommendation 2 option B is accepted which could have an impact on the agreed definition.

* Recommendation 2 – Option A: the proposal is to keep qualifier WITL amending / updating the usage and definition

A discussion takes place about the terms ‘primary’ and ‘secondary listing’ market. It comes out of the discussion that the term ‘primary’ and ‘secondary listing market ’ seems to be a lot confusing since a financial instrument might not be actually listed but just held in the jurisdiction and it might not have necessarily a primary listing either. Also the term “local” in the third § on page 3 of the document is deemed confusing too.

Sonda comments that this should also be checked with some examples from Canada or Japan in the context of the (Double Taxation Treaty (DTT).

The goal of the DTT is to avoid a double taxation for a client but it is not necessarily an issue between Local or Foreign as only one tax rate will be applied.

Also Jacques recommends to update the WITL definition to show clearly that WITL should be viewed in ‘complement’ or offset of TAXR. (see example 3 with Oando Plc in the south African set of examples provided).

ZA agrees to show / say ‘secondary’ in the definition. It will necessarily change the ZA Market Practice when TAXR is used for ZA taxation.

Regarding the rename of WITL, ‘Additional’ can also be a wrong word to use as some Tax authorities can be reluctant to say that their taxation is in addition. And it is also confusing with the qualifier ATAX (Additional Tax).

What about the case if no taxation in the primary market and only in the secondary market?

So TAXR could not be present and what about WITL?

All agree finally that in that case TAXR should be present with the value “0” to clearly mean that there is no withholding tax applied as

Is there a need of a Network Validated rule between TAXR and WITL to be clear with this case?

But for some securities, we can have the case where no taxation applied. To investigate via a legal point of view.

Example : Treasury bonds in the UK when normally holder are not taxed.

Nevertheless, we are not in characteristics of the security but in the details related to an Income event. The taxation relates to the event.
So TAXR will be always present but it is not a legal point of view. Tax must be present because it is an Income Advice.

Finally, the group agrees on the following definition proposal:

*WITL: Complementary Withholding Tax - Rate at which the income will be withheld by ajurisdiction, other than the jurisdiction of the issuer’s country of tax incorporation (in complement/offset of the withholding tax) for which a relief at source and/or reclaim may be possible. WITL rate is levied in complement or offset of the withholding tax rate (TAXR) levied by the jurisdiction of the issuer’s tax domicile.*

* Recommendation 2 - Option B : no WITL but instead a repetitive TAXR

Feedback from the US. Please see attached. ISITC recommends to have either a new “source of income” field that applies to the overall distribution or a new “Rate Type Code” defined for TAXR and/or WITL (based on the ISITC SR2014 CR on WITL/WITF). ISITC is not in favour of adding a country code to TAXR.


Regarding FATCA, the tax types will be repetitive.

But for ZA it will be a good thing to distinguish between Nigeria and ZA.

For Nigeria and ZA : couldn’t we use a sub code ?

4th solution : TAXR/specific code/

It looks dangerous to have 2 qualifiers if 2 nationality of the client : FR stock and US client (15pct) and DE client (30pct) even if for Fatca it is necessary and it will work like that.

And the sub-type may go against the definition and it will be difficult to find a correct definition for the sub code.

The country code as an optional format and information can be used at a service level in particular when only one TAXR is reported. Only for information.

Question related to usage of this repetitive rate : will it be used **always** with sub tax rates ?
Sonda will double check if in some cases TAXR will be used without sub type AND in some other cases with sub types.

Definition of WITL should be as easy as possible just to distinguish it from the TAXR definition.

* Recommendation 3 : WITF removed

All agree in order to limit the number of qualifiers. In that case, CR needed for SR 2015.

**Action:**

* Sonda to provide an example (Japanese case ?) that could create confusion regarding the DTT.
* Jyi-Chen and Jean-Pierre to propose an updated definition for WITL + preparation of SR2015 Change Requests

# Tax processing flow / certification process



**Action:**For next conference call, Bernard and co-chairs to prepare an updated document for discussion

# FATCA

Please see above discussion on TAXR. No other updates

# CA 200.2 – Options for Tax Treatment

1. Information required on Tax breakdowns

Some feedbacks received. See attached file



**Action:**,

* NMPGs to review the table to identify if they have some exceptions / discrepancies.

# Other topics

* Jyi-Chen pointed out a potential impact of a Change Request (SR2014 CR000613) that has been accepted for the SR 2014. The CR relates to the fact that for manufactured dividend, it will be possible to indicate different deadlines between the available position and the stock lending position.

So what about taxes in this scenario? There is no direct link with the CR but in 2014, for such a case, everybody will have the possibility to use only one MT564 and no longer the narrative part so what will happened if taxation is different and that the settled position and loan position are taxed differently?

CashMove to be used to distinguish?

**Action:** NMPGs to investigate for further discussion.

* Question from APAC WG :

For subsequence E2 Cash Movement Field 92a: Rate, FLRR is defined twice:

* defined as a ‘Qualifier’ along with ‘GRSS’.
* Defined as a ‘rate type code’ in the qualifier GRSS

What is the use of FLFR as ‘qualifier’ when it is more commonly used under ‘rate type code’? Any reasons for its existence as a ‘qualifier’ in addition to as a ‘rate type code’ – if yes, how is to be interpreted and used?



Statistics from SWIFT are giving 50 /50 between direct code and sub-type code usage.

Jyi-Chen indicated that AU was looking rather for an 20022 solution

Question of the group : Why did we create both formats ? To be searched in the past years

**Action** : Ask AU to participate if possible in the next call but looks difficult to organize according to the little number of AU participants in the APAC NMPG

# Next Conference Calls

Scheduled on: 20th Mar – (April ?) – 15th May – 26th Jun from 2pm to 4pm

* A possible physical meeting and / or video conference is also proposed, maybe for next year.

**Action :** Bernard /Jacques to continue to centralize feedbacks from participants

**------------------------ End of the Meeting Minutes -----------------**