

SMPG – Tax sub-group

Telephone Conference Minutes

15th September 2016

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**Attendees**

For Euroclear, Eric Marega replaces Marine Kotti

Darren Giles is also joining the Tax sub-group in order to represent the Australian Market.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Country** |  | **First Name** | **Last Name** | **Institution** | **Participation** |
|  | AU | Mr | Darren | Giles | NAB | Excused |
|  | BE | Mrs | Véronique | Peeters | BNY Mellon | Excused |
| Facilitator | N / A | Mr | Jacques | Littré | SWIFT | Excused |
|  | CA | Mr | Cairbre | Cowin | RBC IS | Excused |
|  | CH | Mr | Reto | Baumgartner | Credit Suisse | Excused |
|  | DE | Mr | Daniel | Schaefer | HSBC | Excused |
|  | DE | Mr | Thomas | Rockstroh | Clearstream | Excused |
| Co-chair | FR | Mr | Jean-Pierre | Klak | State Street |  |
|  | FR | Mr | Karim | Djenadi | BP2S | Excused |
|  | FR | Mrs | Celine | Bohm | BP2S |  |
|  | FR | Mrs | Alexandra | Sellam | BP2S | Excused |
|  | IT | Mrs | Paola | Deantoni | Societe Generale | Excused |
|  | LU | Mr | Nicolas | Godfrey | Clearstream | Excused |
|  | LU | Mr | Bernard | Lenelle | Clearstream |  |
|  | LU | Mr | Charles | Boniver | RBC IS | Excused |
| Co-chair | SG | Mr | Jyi-Chen | Chueh | Standard Chartered |  |
|  | UK & IE | Mrs | Mariangela | Fumagalli | BNP Paribas |  |
|  | US | Mr | Paul | Fullam |  | Excused |
|  | XS | Mrs | Delphine | Haillez | Euroclear |  |
|  | XS | Mr | Eric | Marega | Euroclear |  |
|  | ZA | Mr | Sanjeev | Jayram | First National Bank |  |
|  | 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 on June 23rd minutes call

Previous minutes approved

# Tax Table

Statistics provided by Jacques based on 3 months traffic in 2014 (please see attached)



Some feedbacks already received:

**NRES.**

ZA : no specific Non-resident taxation

Euroclear : NRES not used

SG : apparently not

DE : to be investigated

FR : it is used by some institutions. Further analysis to perform within the French NMPG

**TAXC / IMPU – PREC – TIER rate type codes (Imputed Tax, Precomplete, One-Tier Tax).**

Euroclear : ‘never seen’

ZA : not used for the moment but to be analyzed

SG : not used

DE : to be investigated

FR : Apparently not used; To be confirmed by a deeper check by all institutions

Proposal to go back to the Country / Market that requested the above qualifiers and double check with this Market.

**Action:**

All NMPGs to confirm usage or not of NRES qualifier and IMPU, PREC, TIER rate types codes.

The subject will be also shared with the CA SMPG members in order to cover a larger scope of countries.

The group will also require new statistics from SWIFT in order to identify which countries are using these codes. The goal is also to have a more recent extract

# Tax processing flow

* 1. Certification process

  

Feedback received from several Markets. Please see attached.  
Some are still missing.

As per the current answers, the final proposal may result into a mix solution



Reminder of the last discussions:

In order to find out the best solution that we would be able to harmonize, should we have an IT approach and analysis ? Should we have a preference for the cheaper scenario ?

The needs are different depending on the country. Furthermore, we have to keep in mind that the process is always based on paper made documentation that our Tax teams have to manage.

Comments during May call:

UK&IE : The Tax process described is not applicable to the UK&IE markets. Nevertheless, Mari got some feedback from the UK&IE NMPG participants i.e. Global Custodians. As a consequence, the feedback relates to other countries than UK&IE.

The conclusion is that all global custodians except one (but a major one), prefer the scenario 1 (‘one event’ scenario) where certification is within the dividend announcement.

Despite of the excel spreadsheet sent to the group in order to choose between scenario 1 and   
scenario 2, it appears that it will be difficult to identify any preference.

**Action:**

Regarding the certification processing flow, the Tax sub-group will share with the CA SMPG that no consensus has been found and that no final choice can be done between scenario 1 and scenario 2.   
As a consequence, no Market Practice can be implemented on this process.

* 1. Tax Reclaims processing flow

Regarding some other topics that may be analysed by the Tax sub-group on the Tax flows, Mari raised the point regarding Tax Reclaims processing flow.

* Should it be a TREC event or is it something linked to the original DVCA event?
* In case of a separate event, should it be the same CORP reference as the original DVCA?

Some discussions during the call:

First of all, the scope must be clear: what type of reclaim are we talking about ? Is it the ‘quick’ reclaim (also called quick refund) or the ‘standard’ reclaim?

It is agreed that the quick one relates to the Certification process

Consequently, the case here relates to the standard reclaim.

The quick reclaim needs to be documented in order to distinguish it.

For the standard Tax reclaim, should it be always TREC ? Do we documented something in the Certification scenarios analysis?

What should be the best practice for the link between the Reclaim payment and the original dividend payment?

Due to the long period that may occur between the reclaim payment and the original dividend, it is agreed that using the same CORP for both events or applying a linkage may be difficult.  
Nevertheless, the group also agree that it is important to put in place and communicate on the best practices even if sometimes it may be not possible to follow them.

Consequently, there will be a recommendation but with a specific note in order to lower the pressure to the community.

ZA : no TREC in their Market.

**Action:** All NMPGs to come back with their comments on this topic

* 1. CERT Definition

|  |  |  |
| --- | --- | --- |
| CERT | Certification Deadline Date/Time | Deadline by which the beneficial ownership of securities must be declared. |

The definition change couldn’t be proposed during the last SWIFT Maintenance Working Group session because it hasn’t been documented as such.

The business case is, anyway, accepted but the recommendation is to propose a dedicated Change Request to the CA SMPG.

Bernard proposed a new definition for CERT:

“Deadline by which the certification must be sent to the account servicer”.

During the discussion, other cases than beneficial ownership has been already identified as being a part of the Certification deadline:

* Non-US certification
* Tax rate breakdown (for Markets where omnibus accounts are allowed)

**Action:**

All participants are required to document cases where certification is not dedicated to beneficial ownership.  
These cases will be used to document the business case for the future Change Request.

# Conduit Incomes

A Change Request proposed by the Australian Market for the SR 2017 has been rejected by the MWG for further analysis.   
The topic will be discussed in the Tax sub-group in order to see which solution can be found to the business case presented.

The original Change Request was to create Rate type codes and amounts for Conduit foreign incomes.

An Australian company may declare that some or all of the dividend that is paid is Conduit foreign income. Conduit foreign income has a different taxation status for domestic and non-resident investors.

**Action**:

Jyi/Chen / Darren / JP to work together on this topic in order to share the result of their investigations with the whole group

# Deemed events / 871m reporting

A Change Request proposed by the Australian Market for the SR 2017 has been rejected by the MWG for further analysis.   
The topic will be discussed in the Tax sub-group in order to see which solution can be found to the business case presented.

The original Change Request was to create rates and amounts qualifiers in order to communicate to shareholders the taxable part of a ‘deemed payment’: non-resident withholding tax based on a Cash amount that hasn’t been distributed

A link has been made between the original Change Request presented by the Australian Market and the 871m reporting. The 871m relates to the specific scope of Derivatives. The similarity between the two subjects is due to the fact that a Taxation is applied on a basis amount that has not been received by the taxable party.

Nevertheless, it is agreed that it is probably too early to discuss about the format of the messages related to the 871m topic.

**Action**:

In addition to the details already provided during the call by Eric Marega, a presentation of the 871m ICSD analysis will be done during the October call

# Other topics

FLFR

The Change Request proposed for the SR 2017 (remove it as a qualifier)   has been accepted by the MWG. Waiting for the Country vote for final acceptance

**Action**:

Follow up on the country vote.

T2S

Thomas pointed out that due to T2S Harmonization, several subjects are on the table. Couldn’t we take advantage of this moving period to harmonize some Tax topics via T2S working groups, the CAJWG or any other industry working groups?

CMU (Capital Markets Union)

Mari shared with the group that there is an European initiative : the CMU action plan and this initiative includes the resolution of the last Giovannini barriers : those related to Taxes.

Taxation on security distributions

During our conference call held on 15 September ZA raised an enquiry with regards to tax on security distributions and cash fractions. Please some detail in that regard below.

1. Currently all rate and amount codes/qualifiers to withhold taxes are available in the cash movement blocks (sequence E2 and D2) of the MT564 and MT566. Therefore in instances where tax is applicable to security entitlement the effects thereof are being communicated in narrative fields. Resultantly, due to the narrative, STP is affected thereby possibly requiring manual invention. ZA will appreciate it if we could investigate the possibility of making the tax codes/qualifiers for rates and amounts available in the securities movement blocks (sequence E1 and D1) the MT564 and MT566.   
We are of opinion that this will improve communication and possibly increase STP.

2. Similarly there is also a challenge in communication when the cash fraction (CINL) is taxable.   
An example would in a DVOP, whilst the security entitlement in itself is not taxable the cash fraction is still considered to be a dividend and thus withholding taxes become applicable. We are not aware of a market practice or standard in this regard and the context is communicated in narrative fields. We will appreciate guidance in this regard and also efforts to possibly improve communication and automation.

**Action**:

All participants to review this case for next time.

# Next Conference Calls

27th Oct, 15th Dec

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