

SMPG – Tax sub-group

Telephone Conference Minutes

15th December 2016

Publication: January 2017

Table of Contents

[Approval / comments on October 27th minutes call 3](#_Toc472934927)

[CA 358. Tax Table – Cleaning of un-used Tax qualifiers 3](#_Toc472934928)

[CA 221. Tax processing flow 4](#_Toc472934929)

[CA 359. Tax Reclaims processing flow 4](#_Toc472934930)

[CA 349. CERT Definition 5](#_Toc472934931)

[CA 346. Conduit Incomes 5](#_Toc472934932)

[CA 343. Deemed events / 871m reporting 6](#_Toc472934933)

[CA 360. Taxation on security distributions 7](#_Toc472934934)

[Other topics 8](#_Toc472934935)

[Next Conference Calls 8](#_Toc472934936)

**Attendees**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **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 |  |
|  | 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 | Excused |
|  | FR | Mrs | Alexandra | Sellam | BP2S | Excused |
|  | IT | Mrs | Paola | Deantoni | Societe Generale | Excused |
|  | LU | Mr | Nicolas | Godfrey | Clearstream | Excused |
|  | LU | Mr | Bernard | Lenelle | Clearstream | Excused |
|  | LU | Mr | Charles | Boniver | RBC IS | Excused |
| Co-chair | SG | Mr | Jyi-Chen | Chueh | Standard Chartered |  |
|  | UK & IE | Mr | Gabriel | Sampaio | BNP Paribas |  |
|  | US | Mr | Paul | Fullam | FIS Global | Excused |
|  | US | Mrs | Vandana | Pasricha | BBH | Excused |
|  | US | Mr | Caleb | Lanfear | BBH | 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 | Excused |
|  | ZA | Mr | Yusuf | Basha | First National Bank | Excused |

.

# Approval / comments on October 27th minutes call

Jacques highlighted that the numbering used for Tax topics was not correct according to the list of the CA items of the Corporate Actions SMPG. It has been amended below accordingly

CA 350 => CA358                               Cleaning of Un-used Tax Qualifiers

CA 351 => CA359                               Tax Reclaim Processing

CA352 => CA360                                Taxation on security distributions

# CA 358. Tax Table – Cleaning of un-used Tax qualifiers

Last comments and updates highlighted in green.

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

In accordance with the SR2016, WITL code has been removed from the table.



Feedbacks already received:

**NRES.**

ZA : no specific Non-resident taxation

Euroclear : NRES not used

SG : apparently not

DE : to be investigated

FR : Confirmed that the French NMPG participants don’t use NRES code.   
One participant is using it but only for internal purpose

**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.

Jacques also informs the group that a request for updated statistics from SWIFT has been raised officially by the Corporate Actions SMPG. No answer received yet but it seems that it will be difficult to get them.

**Action:**

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

The subject has been shared with the CA SMPG members in order to cover a larger scope of countries.

UK to come back on these qualifiers.

Jean-Pierre will prepare a recap spreadsheet to share with the CA SMPG

# CA 221. 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.

Comments from the US during October call:

This topic is still under discussion within the US Market (ISITC) nevertheless, DTCC in its transformation project has chosen the ‘1 event’ scenario.

**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.

# CA 359. 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?

Additional comments from the previous calls:

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.

During Dec 15th call, Euroclear confirms that they use TREC with a CORP reference similar to the CORP ref of the related DVCA making the link between the 2 events.

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

Gabriel will send a flow description in order to help the group to investigate on this topic.

# CA 349. 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.

# CA 346. 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

# CA 343. 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

Comment from the German Market:   
With the new German tax law for funds that will be introduced in Germany next year, we will also have "deemed" events for funds, comparable to the Australian events.   
This topic will therefore be very interesting for the German market, too and we would like to contribute to the discussions to ensure that the proposed solution can also be used in Germany, once implemented.

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.

Eric (Marega) presented the attached document which represents the ICSD analysis on the 871m regulation.



Eric also illustrated the on-going discussions on the 871m topic during October call:

Some guidance from IRS is still expected for November. The final scope of instruments for 2017 is also to be published.

Some issuers are ready but some others not. That represents an issue for Data providers.

Consequently, the ICSDs cannot be liable on that.

Question also about the reporting by the Custodians : broker / dealers should be the only parties involved.

In other words, for the custodians, it appears difficult to report something on assets that they don’t hold and Corporate Actions messages are not built for such reports.

We also have to take into consideration that there is a Fund Accounting impact of the 871m.

Furthermore, data required on complex products (tri-party repos, swaps, …) may be difficult (or even impossible) to get.

It is confirmed that it is too early, for the moment, to discuss about the format of the messages related to the 871m topic.

Dec 15th update:

The IRS published, beginning of December, the guidance for 2017 and 2018: scope and rules  
There will be interim rules. There was a workshop beginning of December between the major players.   
2 options, proposed by the ICSD community, are under discussion:

Option A:   
Issuer to make an actual cash distribution including the taxation part. Unfortunately, it looks unlikely to have large volumes on that because the majority relates to cashless deemed payment.   
The consequence is again a withholding on cashless events with a manual process of around 100 000 spreadsheets for the declaration. The conclusion is that there is no other choice for these issuers than to handle themselves the withholding Tax.

Option B:  
Issuers (helped by the issuer agents) will deduct 30% by default and remit the tax withheld to IRS.  
The taxation will be reported to the final beneficiary (1042S) and the refund will be managed directly with the IRS.

Option A and B will be at Issuer level.

The custodians will be impacted in any case somewhere in the chain.   
In particular, in relation with the new QDD status (Qualified Derivatives Dealer).

**Action**:

1. Jyi-Chen and Jean-Pierre to begin their discussion with Darren to analyze the AU case.
2. Follow-up by the group on the 871m if any update

# CA 360. 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.

Discussions during Dec 15th call :

Why not in sequence E? Sanjeev explained that, in sequence E, it would be impossible to show the Tax calculated on the entitlement.

Delphine suggested to use the Cashmove to indicate the Tax to debit.

Another proposal is to use the Taxation indicator : 22F : TXAP and the price 90a – CAVA (Cash Value for Tax)

Gabriel explained that, in the UK, the issuers are used to advise about the taxability of an event and then the tax is applied when the distribution of the securities is performed.

Sanjeen explained that there is the same taxation applied to all beneficiaries, it could be OK but how does it work if the rate is different ? Gabriel explained that, in the UK, it is a 1 for 1

**Action**:

South Africa to provide an example in order to have more details on this case.

Gabriel will provide the UK example

All participants to review this case for next time.

# Other topics

FLFR

The Change Request proposed for the SR 2017 (remove it as a qualifier) has been accepted by the MWG and validated by the Country vote => **topic closed**

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.

# Next Conference Calls

Thursday 26th Jan 2017

Thursday 16th March

Thursday 20th April

Thursday 15th June

All calls from 2 to 4 pm CET

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