

SMPG – Tax sub-group

Telephone Conference Minutes

26th January 2017

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Table of Contents

[Approval / comments on December 15th minutes call 3](#_Toc477256236)

[CA 358. Tax Table – Cleaning of un-used Tax qualifiers 3](#_Toc477256237)

[CA 221. Tax processing flow 4](#_Toc477256238)

[CA 359. Tax Reclaims processing flow 4](#_Toc477256239)

[CA 349. CERT Definition 5](#_Toc477256240)

[CA 346. Conduit Incomes 5](#_Toc477256241)

[CA 343. Deemed events / 871m reporting 6](#_Toc477256242)

[CA 360. Taxation on security distributions 7](#_Toc477256243)

[Other topics 9](#_Toc477256244)

[Next Conference Calls 11](#_Toc477256245)

**Attendees**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Country** |  | **First Name** | **Last Name** | **Institution** | **Participation** |
|  | AU |  |  |  |  |  |
|  | 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 |
|  | FR | Mrs | Emmylou | Delval | BP2S |  |
|  | 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 |  |
|  | US | Mr | Caleb | Lanfear | BBH | Excused |
|  | XS | Mrs | Delphine | Haillez | Euroclear |  |
|  | XS | Mr | Eric | Marega | Euroclear | Excused |
|  | ZA | Mr | Sanjeev | Jayram | First National Bank | Excused |
|  | ZA | Mr | Dale | Van Rayne | First National Bank | Excused |
|  | ZA | Mr | Yusuf | Basha | First National Bank | Excused |

No more AU representative for the moment, Darren Giles having left NAB.

# Approval / comments on December 15th minutes call

Last minutes approved

# 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: not used

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

UK: not used

**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

UK: not used

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:**

During the global SMPG in Zurich, the Tax sub-group explained to the CA SMPG that no consensus had 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. Jean-Pierre will prepare a recap spreadsheet accordingly.

# 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**:

Subject on hold. Waiting for an AU representative

# 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).

Additional comments during January call:

In August 2016, the CA MWG had recommended in the interim only to use the event type: “OTHR” pending a potential new change request for SR 2018.

It is not cleat today whether it is up to the Issuer or the (I)CSD to withhold the tax.

It seems that the position taken by the UK Market during the MWG was already 871m oriented.

About regulation 302, 304, 305c, it is not clear either what needs to be done at this stage.

**Action**:

1. AU scenario on hold.
2. UK : to check if the subject is UK taxation related or rather to underlying US securities so linked to the IRS
3. For 871m, it looks too early for a potential Change Request

# 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.

Sanjeev 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

Please see attached example from the UK Market.



Sanjeev also provided 2 examples: one with tax on cash fractions and another with tax on shares.

1. Mediclinics International Limited – Scheme of arrangement

Company made a scheme of arrangement to shareholders.

Shareholders afforded an option to elect for the repurchase option or an exchange option to receive Al Noor shares.

Repurchase option was subject to dividends withholding tax, issue price of the stock was utilised to determine the dividend rate and shareholders had to pay DWT on the stock they received even though they did not receive cash.

Withholding of tax (DWT) on security entitlement was processed manually and reported to the tax authority accordingly.

1. Brait Se (BAT) – Bonus Share Issue with a Cash Dividend Alternative (dividend with option)

Issuer declared bonus issue however shareholders could elect to receive cash option.

Receipt of stock is of capital nature thus is not taxable.

Fractions arising out of share entitlements are rounded down thus fractional cash entitlements are payable.

Fractional rate is different from dividend rate however the fraction is taxable.

Withholding of tax (DWT) on fractional cash payouts, currently not possible via system.



Comments during January call:   
Rate will depend on the client taxation. The maximum rate is always announced in the MT564 and MT566 depends on the client => to see how it works in South Africa and if case applicable

**Action**:

All participants to review this case for next time.

# Other topics

Question from the Italian Market on TAXR – WITL usage

The Italian Market raised the following question related to usage of TAXR and WITL

**CASE 1 - Foreign dividend with a tax withheld at source in the foreign jurisdiction** **and on Italian market.**   
  
The original gross dividend of 1 EUR is announced by the issuer on the foreign market.   
Then, a foreign tax is applied at source (15%) and the resulting amoutn (0.85 EUR) is received in Italy.   
In addition to that, the local Italian tax (26% or any other tax rate) is applied and withheld by Bnp on a taxable basis of 0.85 EUR.   
  
**Question:**

* which qualifier 92a has to be used to clearly define the different components of the dividend and to make clear that  the Italian tax is applied on the amount already deducted by the foreign tax (our "frontiera/cross border amount")
* How these amounts are the reflected on the 19B qualifiers?

**CASE 2 - Foreign dividend where the foreign tax applied at source changes considering the fiscal status of the beneficial owner**. **(US dividend)**   
  
The original gross amount (1 USD) is subject to a foreign tax rate different considering the fiscal status of the beneficial owner:

* It could be 30% for client not documented/not eligible for a Double Taxation Agreement favourable rate: so taxable basis for Italian tax is 0.70 USD
* It will be 15% for client documented/QI compliant and then eligible to a reduced tax rate: so taxable basis for Italian tax is 0.85 USD

The original amount (deducted with the 30% or the 15% considering the status of the underlying client) is then subject to the local Italian tax   
  
**Question:**

* which qualifier 92a has to be used to clearly define the different components of the dividend and to make clear that  the Italian tax is applied on the amount already deducted by the foreign tax (our "frontiera/cross border amount")
* How these amounts are the reflected on the 19B qualifiers?

*The difference between CASE 1 and CASE 2 is that:*

* *in the Case 1 the taxable basis for the second level tax (WITL) is almost fixed (original gross dividend minus the fixed foreign tax)*
* *in the Case 2, the taxable basis for the second level tax could change, being the original gross dividend minus a foreign tax that changes according to the fiscal status of the final beneficiary.   
  It means that it's something that it could not be determined a priori by the agent bank: how can we reflect - let's say - these two different tax options (TAXR at 15% or TAXR at 30%)?.   
  In the end, how could we inform properly the client reflecting in the MT564 that the second level taxable basis could change upon the breakdown of the positions held by QI compliants clients and not-QI ones? For me, this is an additional question closed to the determination of the second level taxable basis.*
* First comments already provided by Jacques to the Italian Market

There is indeed no way today in the market practice and the Standards to specify if the taxable basis is the original gross rate or the gross rate minus the foreign tax. It was assumed in the group that the taxable basis would rather be the initial gross rate and this was not challenged during the CA WG discussion of this new MP.

Regarding CASE 1, this is how the rates and amounts should be used for an Entitled balance of 100 and a gross dividend of 1 EUR in a 564:

:16R:CASHMOVE

:22H::CRDB//CRED

:19B::ENTL//EUR62,9

:19B::GRSS//EUR100,

:19B::TAXR//EUR15,

:19B::WITL//EUR22,1

:19B::NETT//EUR62,9

:98A::PAYD//20YYMMDD

:98A::VALU//20YYMMDD

:92F::GRSS//EUR1,

:92F::NETT//EUR0,629

:92A::TAXR//15,

:92A::WITL//26,

:16S:CASHMOVE

Comments during January call:

How is it processed exactly in Italy ? In 2 steps : 1. 85% and then 2. Additional taxation on these 85% remaining? As per the explanation from the Italian Market, it seems that it is the way it works.

Shouldn’t we have a local Market practice rather than a new rule in GMP1 ? it seems to be a rare case.

This case looks to be similar to the Belgian Tax applied on the Net for non-Belgian customers

Should we have a new indicator to create to distinguish if WITL is applied on the gross or on the net?

For Case 1, are we talking about Tax election or only tax payment? If payment, it means that election has been managed separately

Case 2 seems to be N/A because it depends on the certification processed that should have took place beforehand. Meaning that the rate applied is 30% before certification and if certification has been processed: 15% applied.

The best thing would be to have the original example from the Italian Market

**Action**:

Jacques will liaise with the Italian Market to get a copy of the announcement and message samples.

Feedback / agreement to get from the Italian Market on the template.

If necessary, the last step would be a change of the current GMP1

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 16th March

Thursday 20th April

Thursday 15th June

All calls from 2 to 4 pm CET

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