

SMPG – Tax sub-group

Telephone Conference Minutes

17th October 2019

Publication: December 2019

Table of Contents

[Approval / comments on June 2019 minutes call 3](#_Toc26876682)

[CA 392 - Foreign Dividend Indicator in South Africa 4](#_Toc26876683)

[CA436 : Tax breakdown 6](#_Toc26876684)

[Former CA 221 – Tax messaging flow (previously closed topic) 7](#_Toc26876685)

[CA 427 New MP to declare a foreign income in regard of the (tax?) domicile of the event's underlying security. 8](#_Toc26876686)

[CA 438 Review GMP1 section 3.14 - (Movement Sequence & Tax Rates) 9](#_Toc26876687)

[CA 447 New MP required for the usage of Rate Type Code CDFI 9](#_Toc26876688)

[CA 449 New MP for the usage of TAXR in Instruction (SR2020 - CR1551) 10](#_Toc26876689)

[AOB.. 10](#_Toc26876690)

[Market updates 12](#_Toc26876691)

[Next Conference Calls 12](#_Toc26876692)

**Attendees**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Country** |  | **First Name** | **Last Name** | **Institution** | **Participation** |
|  | AU | Mrs | Narelle | Rutter | ASX |  |
|  | 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 |
|  | SE | Mr | Urban  | Hane | Nordea | Excused |
| Co-chair | FR | Mr | Jean-Pierre | Klak | State Street |  |
|  | FR | Mrs | Stéphanie | Clarck-Fischer | BP2S |  |
|  | FR | Mrs | Celine | Bohm | BP2S | Excused |
|  | FR | Mr | Ilyas | Alikoglu | Bank of New-York |  |
|  | IT | Mrs | Paola | Deantoni | Societe Generale | Excused |
|  | LU | Mr | Alexander | Reis | Clearstream | Excused |
| Co-chair | SG | Mr | Jyi-Chen | Chueh | Standard Chartered |  |
|  | UK & IE | Mrs | Mariangela | Fumagalli | BNP Paribas | Excused |
|  | US | Mr | Paul | Fullam | FIS Global | Excused |
|  | US | Mrs | Vandana | Pasricha | BBH | Excused |
|  | US | Mrs | Elizabeth | Lanfear | BBH |  |
|  | US | Mr | Caleb | Lanfear | BBH | Excused |
|  | US | Mr | Ian | De Sacia | DTCC | Excused |
|  | US | Mr | Steven | Sloan | DTCC | Excused |
|  | XS | MR | Jean-Paul | Lambotte | Euroclear | Excused |
|  | XS | Mr | Eric | Marega | Euroclear |  |
|  | 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 |

# Approval / comments on June 2019 minutes call

Last minutes approved by participants to the call.
To be confirmed next time if no other feedbacks

# CA 392 - Foreign Dividend Indicator in South Africa

Comments during October 2019 call:
Change request proposed and approved by the Maintenance Working Group (currently under Country vote processing).

Topic closed. Replaced by **CA 447**: new MP on CDFI

A Market Practice has been required due to some reluctance (more particularly from the French Market) on the new short definition of CDFI i.e. ‘Foreign Income’.

Comments during June 13th 2019 call:

The Change Request asking for the definition change of CDFI has been submitted by South Africa for SR2020 review.

This Change Request received the support from Australia

Comments during March 28th 2019 call:

CDFI seems to be good for the South African Market. Nevertheless, there is a need to change the definition to remove reference to Conduit in the short definition.

Regarding investigations on ETYP / ITYP, it has been put on hold due to the preference for CDFI.

|  |  |  |
| --- | --- | --- |
| CDFI | ~~Conduit~~ Foreign Income | Rate relating to a conduit foreign income type or foreign income. |

The group raised the fact that it maybe strange to have a long definition saying both ‘conduit foreign income type ‘ and ‘foreign income’ in the same definition: shouldn’t it be simpler ?

The proposal could be: rate relating to a foreign income (eg. Conduit foreign income)

To be documented for the Change Request in order to explain to the whole CA SMPG during April meeting.

Jacques indicates that the Change Request will have to include the definition change for field 90B where CDFI also exists.

Due to the fact that CDFI is a rate type code that needs to be used with the qualifiers GRSS and NETT, the South African Market will provide some examples to show usage of TAXR, WITL and CDFI.

*Information raised after the Tax sub-group call:
According to the above discussion on the long definition, Narelle suggested the following proposal for the long definition: “Rate relating to a ~~condu~~it foreign income type such as conduit foreign income”*

Comments during January 31st 2019 call:

Sanjeev reminds to the group the background of this topic.

TAXR / WITL implementation and related Market Practices were only a partial answer to the South African need => need to identify local and foreign tax + the issuing country

COIN was not appropriate for the usage required by ZA, this is the reason why CDFI (Conduit Income) was proposed by the SMPG

One concern regarding CDFI. This code is coming from the Australian market and Conduit is dedicated to Australia. So proposal to change the definition removing ‘Conduit’ ?

The South African Market will investigate the possible usage of the Conduit Income and if a Change Request is necessary

DSS on ETYP / ITYP will also be investigated

Comment dated Nov 22nd 2018:
Subject re-opened further to the South African request raised during the SMPG in Sydney.
Please see below:

Sanjeev explained the background of the need for a foreign dividend indicator, and their revised proposal for a change of COIN in GMP1. Jyi-Chen reiterated the counterproposal to use TAXR and WITL, and only use WITL for foreign tax when applicable.

The problem is that, depending on the foreign country’s non-reclaimable tax rate (if it is 20% or higher), WITL may not be used since there will be no ZA tax withheld.

Christine commented that it is important to not change COIN in a manner that prevents it from being used as it is currently.

Narelle asked if conduit foreign income could be used instead. It does not reflect the country code, but otherwise should suit.

The South African Market will investigate this proposal.

* Previous comments on this topic:

Subject discussed during the April SMPG.



The key issue for South Africa is to be able to distinguish between a local/domestic and a foreign dividend payment as there are different withholding tax implications and then receiver would also be able to distinguish which DTT (Double Taxation Treaty) is applicable. ZA is currently using COIN whilst but this should only be used when there are multiple distributions as explained in the GMP1 MP.

During a Tax SG conference call it was suggested to also distinguish in which “foreign” country the dividend is paid, hence the second/replacement CR asking for an ICTX qualifier to include the issuer’s country of taxation.

In general, there is not much support for the CR in the group as this information should normally be part of the reference data. However, this information is not in the corporate action announcement. The CR has come from client demand and ZA has changed the listing rules to say this information must be in the market announcement which generates a high volume of client queries.

**Decision of the SMPG**: The SMPG does not endorse the CR but instead asked the South African NMPG to propose an amendment to GMP1 for using COIN for single payment cases.

**Action decided by the global SMPG: Sanjeev/ZA NMPG to propose amendment to GMP1.**

**/////////**

Initial discussions within the Tax sub-group:

Sanjeev proposed for discussion a Change Request that South Africa will present for the next SR 2019 Maintenance session.



Background:
The usage of COIN has been strictly limited so the proposal of ZA is to distinguish Foreign and Local dividend differently than using COIN.

TAXR / WITL are not enough to distinguish what is from the issuing part and the local part of the taxation.

Discussion during the call:

=> Regarding the code, should ZA propose FDIV?
FDIV code already exists as Final Dividend (to distinguish Final Dividend vs Partial Dividend, PDIV). Another code should be chosen.

Nevertheless, it is confirmed during the call that the exact is reviewed by Standards before implementation and maybe different from the original proposal, so nothing urgent on that topic.

Jacques and SWIFT Standards will investigate on their side in due time.

=> Should we have the exact country or only an indicator?

Some feedbacks / comments already received from main actors in South Africa is to indicate a country code and not only indicator.

Regarding multi listed securities in Scandinavian countries, Urban said that it may be interesting. To be checked if it could be applicable

**Action**:

Topic closed

# CA436 : Tax breakdown

Discussion during October call:

Dedicated new topic created to cover this subject : **CA 449**
Consequently, topic CA 436 can be closed

Change request proposed by the SMPG (see attached)



Discussion during June 13th 2019 call:

Question: Is this request for reconciliation purpose?

Mari: not necessarily. If the account is segregated, there is no issue but with an omnibus account, there is a need to provide the appropriate tax to apply

What about the documentation? it will depend on the market. The account servicer will review what is possible as per documentation. It may happen that it generates a documentation request.

We need to pay attention that local Market practices are in line with that

Several people confirm that this request is a very good idea to Excel files in particular in relation with GDPR

Identification of the Beneficial Owner: should it be a Tax ID ?

Regarding the MT567, it should provide the result of the breakdown and not only a feedback due to the fact that MT565 is wrong.

For the MT567, also: maybe the nature of this message should change and identify different scenarios.

The MT567 should indicate Tax rates issues, but also that the Beneficial Owner is not recognized.

Maybe by using a reference and not necessarily to disclose the BO

Should we also think about the MT564 ? Here, we are back to the old CA221: the proposed Change Request is not here to re-open the long discussion we had in the past on that.

Any need for MT566 also ? How should it work ? Jyi-Chen reminded to the group that there is a possibility to have an MT566 with different rates. They were already some previous discussions on this topic and the conclusion was to write a Market practice on that..

**Action**:

Topic closed

# Former CA 221 – Tax messaging flow (previously closed topic)

Discussion during October call:

Dedicated new topic created to cover this subject : **CA 438**Consequently, we can close – again – the topic CA 221

Discussion during June 13th 2019 call:

The GMP1 (parts 3.14 and 13.3) is incorrect and was written prior to the CR1294 related to TAXR – WITL.

Several questions have been raised by various institutions to SMPG co-chairs

Consequently, there is a need to provide a new text which is consistent with the CR1294 + examples of MT564 and MT566 to provide.

Discussions during March 28th 2019 call:

Even if no consensus had been found on the certification process and the way to use MT564, Mari raised an issue with BENODET for the tax breakdown: in the BENODET sequence there is no way to put the tax rate at which the sender of the MT565 is requesting the beneficial owner to be paid

The case is related to omnibus accounts with a tax pool :

Client 1: 50 shs rate 1

Client 2: 15 shs rate 2

These details need to be sent in the MT565

A change request may be necessary if we want to use MT565 for tax breakdown.
Consequentially, a change request may be required in the MT567 to report that the rate indicated is not acceptable

Discussion during the meeting:

First of all, need to see who uses the MT565 for tax breakdown?

Thomas is using MT565 … but to check how according to the rates indicated in the message.

In Italy, on DVCA Mandatory, there is an omnibus account structure so on the maximum rate.
But it is necessary to indicate afterwards the exact rate and position on which the client is entitled

For XS: it may depend also on the different certificate types

SE: not heard about MT565 used for breakdown

Due to regulatory constraints (eg GDPR), the spreadsheet is not recommend so usage of a SWIFT massage should answer also answer this need.

There will be also a need to add somewhere the ISO country code to apply the appropriate rate

Mari also raised the fact that there is a need to review the GMP1 document.

In fact, within SR2018, CR1294 remove the option to repeat TAXR and WITL in seq. E and E2 of MT564 and seq. D and D2 of MT566.

In light of this change, Mari thinks we need to change GMP1 where in section 3.14 we state:

*When multiple prices/fees and rates are announced for an option, each should be specified within its own movement sequence. An exception is use of ”Interest Rate Used For Payment”, ”Gross Dividend Rate”  and  “Net Dividend Rate”, and the applicable tax rates (for instance. ”Withholding Tax Rate”),* ***when several rates can be included in the same movement sequence.***

Instead, we should recommend to use different movements if we have different income and tax rates and maybe provide an example as the one in 13.3 is for a TEND and doesn’t really carry any tax information.

**Action**:

Topic closed

# CA 427 New MP to declare a foreign income in regard of the (tax?) domicile of the event's underlying security.

How to declare a foreign income in regard of the (tax) domicile of the events underlying security to identify that relevant money is not coming from the home domicile?

Comment received by email from South Africa prior to October call:

“There may be 2 options 1) the suggestion to use XF with COIN and if I remember correctly XF would indicate that the income source is foreign source and cannot necessarily be associated with a specific jurisdiction/country and 2) the other option would be to use the CDFI rate and amount type code to indicate the distribution comes from a foreign source.  It therefore may be prudent for the MP to provide both options.”

Input from Frankfurt April 2019 SMPG meeting discussions:
COIN is designed to be used when the country is known.

There are two alternative solutions, assuming the CDFI CR (see CA392 above) is accepted:

• Either Use CDFI for the non-US components, or

• Use COIN, with XF to say foreign (in this case, equal to non-US)

• Use COIN with US for all US components

COIN was created, because for many payments/distributions, the important/available information in a lot of cases is that the income/revenue was NOT generated in a certain country but abroad, e.g. non-US, non-FR, etc….

Australia resolved this with SR2018's CDFI, but others have no such qualifiers/codes available.

Thus the proposition would be to set up a MP to use XF as meaning eXternal/Foreign when used with COIN.

**Action**:

Mari, Jyi-Chen and Jean-Pierre will propose a new Market Practice

# CA 438 Review GMP1 section 3.14 - (Movement Sequence & Tax Rates)

Comment received by email from South Africa prior to October call:

“Ideally each distribution (component) should be communicated in it’s own movement and we are not aware of instances where a distribution may be subject to more that 2 withholding taxes, i.e. as announced by the issuer and the local. We acknowledge though that a distribution may be subject to multiple taxes, e.g. withholding, capital, income, transfer tax, etc. Furthermore, we’re of opinion that blended rates (made up of 2 or more rates) do not provide the required clarity and therefore we should encourage that each component should be communicated as a separate movement. The use of blended rates could then be considered for a specific market practice, i.e. only for that particular market.”

Input from Frankfurt April 2019 SMPG meeting discussions:
Mari described the background.

Different component of income distribution should have the relevant tax rate in the same cash movement block as per section 3.14 MP. However, it is no longer fully possible to follow section 3.14 after CR1294 in SR2018 stopped TAXR and WITL tax rates from being repeated.

It’s no longer possible to have several rates repeated in the subsequence so the market practice is no longer correct.

Dividend, real estate, capital return should be in different movement subsequences with the applicable tax rates. If you have the same tax rate then it’s ok to show all income in one subsequence.

**Action**:

Mari and Jean-Pierre will review 3.14 and propose an amended version.

# CA 447 New MP required for the usage of Rate Type Code CDFI

Comment during October call:

A Market Practice has been required during the last Maintenance Working Group (MWG) due to some reluctance (more particularly from the French Market) on the new short definition of CDFI i.e. ‘Foreign Income’.

**Action**:

Mari, Jyi-Chen and Jean-Pierre will propose a new Market Practice

# CA 449 New MP for the usage of TAXR in Instruction (SR2020 - CR1551)

Comment during October call:

The next SR 2020 will allow usage of the qualifier TAXR in sequence C (BENODET) of the MT 565.

As stated in the MWG minutes: The usage of the TAXR rates in the MT565 would be for specific use cases and it should not be used directly with income MAND event but rather in the context of WTRC events linked to mandatory income events.

**Action**:

Mari, Jyi-Chen and Jean-Pierre will propose a new Market Practice

# AOB

**Tax payments related to trade activity**
i.e. Stamp Duty, VAT, FTT, Cap Gain Tax etc.

Input from Brussels September 2019 SMPG meeting discussions:
Mari and Christine, as co-chairs of the CA SMPG met co-chairs of the Settlement & Reconciliation Working Group. Topic on hold for the Tax sub-group for the moment.

Comments during June 13th  2019 call:

During the physical SMPG meeting in April, the subject has been shared between both co-chairs from Corporate Actions and Settlement/Reconciliation working groups.

BBH is requested to write a white paper to explain the different scenarios and requirements

Attention point raised on Capital gain Tax: different methods depending on the country eg: Thailand vs Indonesia pre-settlement vs post settlement

During June 13th call, Eric suggested that a good example could be the taxation related to section 305C ; US domestic deemed dividend

Comments during March 28th 2019 call:

The US Market added some few bullets for this topic

- Specific trade transactions in a subset of markets are subject to certain taxes (e.g. Stamp duties, Transaction Tax, CGT).  Custodians and sub custodians are often times in the “middle” of the process to ultimately effect payment.
- Client behavior and sub custodian practices aren’t consistent and the process is bifurcated. There is lack of visibility regarding end-to-end oversight of transactions from sub to custodian and down to Beneficial owner for transactions that are subject to these taxes; Process historically has been isolated to cash debit and manual in most banks
- There is limited ability to track,  validate and ensure payments have been processed.  Multiple touch points within banks to determine if payments are processed

- BBH has proposed to the SMPG tax sub group to consider building a swift payment (Transaction tax debit) to allow for more transparency, controlled environment and streamlined process.
- Other participants in this call should engage internally to seek out what the current process is and consider if the new tax debit message would be helpful

Topic raised in January 2019 as follows:

The US Market raised a new subject to discuss / investigate within the Tax sub-group: taxation that relates to Securities settlement activity.

Jean-Pierre highlights that, in France, when the Financial Transactions Tax (FTT) has been implemented the Market Practice was jointly established between the Settlement / Reconciliation NMPG and the Corporate Actions NMPG.

Consequently, we’ll have to pay attention to the fact that, depending on the subject we’ll discuss,
we’ll have to include the Settlement / Reconciliation group in these discussions.

**Action**:

Topic on hold

**Tax “Refunds” in the Opposite Direction.**

The Tax sub-group has been contacted in order to investigate on a specific scenario so called ‘Tax “Refunds” in the Opposite Direction’

Please see below the scenario that has been proposed:

‘’We’ve had a query about fields etc that could be used when too little tax is applied to a payment and more money needs to be debited, kind of a reverse of a tax refund / reclaim (eg tax applied was 15% and it should have been 20%).

I can’t see anything in Standards or Market Practice around this so just wondered if this had come up before and if there’s a way it should be done?

For example, could we apply the ADDB//TAXR field and TXRC rates and amounts but just make it a debit instead of a credit?’’

Discussion during October 2019 call:

The group was wondering why the process was not proposed or managed via a Cancel / Replace? Referring to the example: 'Tax applied was 15% and it should have been 20%',
1. Is the need only to communicate the difference between the two tax rates / amounts applied
or
2. Is there any posting adjustment on client account?

Nevertheless, in both cases, the group would recommend a Cancel / Replace process.

JP will come back to the requestor in order to get some more documents or Market examples on this case in order to clarify the business scenario.
The group also asked how often this case appears?

**Action**:

JP to liaise with the requestor and provide tax sub-group feedback

# Market updates

As agreed during June 2019 call, please find attached a new follow up file covering the different Market initiatives.



Please find also below an extract limited to Countries + expected implementation dates



# Next Conference Calls

12th December 2019

In 2020, the calls will take place mid-February, mid-April, mid-June

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