**CA SMPG – Tax Sub-group: Proposals to clarify the usage of TAXR/WITF/WITL tax qualifiers**

As per the recent discussions in the CA SMPG and MWG, the Tax Sub-group was tasked to clarify the usage of WITL / WITF / TAXR.

As an example, in APAC some countries implementing new market practices meet some difficulties with the current withholding tax qualifiers due to the lack of detailed global standards guidelines.

The most common approach is currently to use TAXR, but some countries and/ or institutions may use WITF and/or WITL. So, usage guidelines / market practices are really needed.

This paper intends to outline the key issues and to draft 3 recommendations to help further clarify and harmonize the usage of these qualifiers among our industry.

1. **Definition gaps between “Short” and “Long” definitions**

The misunderstanding / confusion with the usage of WITL / WITF / TAXR comes from the short definitions of WITF and WITL being inconsistent with the long definitions as illustrated below:

|  |  |  |
| --- | --- | --- |
|  | *Short Def* | *Long Def* |
| *TAXR* | *Withholding Tax Rate* | *Percentage of a cash distribution that will be withheld by a tax authority.* |
| *WITF* | *Withholding of Foreign Tax* | *Rate at which the income will be withheld by the jurisdiction to which the income was originally paid, for which relief at source and/or reclaim may be possible.* |
| *WITL* | *Withholding of Local Tax* | *Rate at which the income will be withheld by the jurisdiction in which the account owner is located, for which a relief at source and/or reclaim may be possible.* |

Using the “short” definition of WITL, some institutions may interpret that “Local” refers to the WHT applicable in the local market of the income payment.

However, according the “long” definition of WITL, “Local” refers to the jurisdiction in which the account owner is located.

In addition, TAXR short and long definitions are very generic, but do not specifically mention that tax relief or reclaim may be possible, creating further ambiguity.

**Illustration:**

A local French issuer announces a dividend on the French market that is subject to French WHT.

A French sub-custodian disseminates the information to 2 customers, 1 French local investor and 1 US based Global custodian.

According to the long definition, an acceptable practice would be to use “WITF”.

This could makes sense for the US based global custodian, however it would be confusing for the local French domestic investor, i.e. why a “local” FR WHT is deemed “foreign” by his French sub-custodian?

1. **Recommendations**
2. **Recommendation 1 – Use TAXR as the default qualifier**
3. The SMPG Tax sub-group recommends the usage of TAXR for the most common, straight-forward scenario where an income distribution is subject to WHT applied by the tax authorities of the jurisdiction of the issuer, often defined as the issuer’s “country of incorporation” or “tax domicile”.

**Example:**

i) A company incorporated in Belgium announces a dividend that is subject to local Belgian WHT

* Use TAXR for the BE WHT

ii) The same company announces a dividend on its American Depositary Receipt (ADR) listed in NYSE that is also subject to Belgian WHT

* Use TAXR for the BE WHT

**AND**

1. For sake of clarity, amend the TAXR long definition to reflect that relief at source and/or reclaim may be possible:

*“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.”***

1. **Recommendation 2 – Revised WITL usage and TAXR alternative**

The SMPG tax sub-group would like to propose the two following alternatives for revised WITL usage:

**Option A – Amend WITL definition and usage**

If we adopt recommendation 1, it is also necessary to revise the usage and definition of WITL to avoid any further confusion or ambiguity between TAXR and WITL.

Indeed, based on the current “long definition” of WITL, there is no actual scenario where an account servicer would report a genuine “tax withheld by the jurisdiction of the account owner” as this would typically fall within the account owner own income filing duties.

A new Usage Guideline should be introduced:

WITL should only be used in the context of multi-listed securities and in combination with TAXR.

In a multi-listing scenario, a company is listed in multiple markets: a “primary market” which often corresponds to its country of tax incorporation, but also one or multiple “secondary market(s)”.

Note that there is a single and unique country of tax incorporation for both primary and secondary market(s).

In such case, WITL should reflect the withholding tax, levied by another jurisdiction in complement/ offset of the withholding tax (TAXR), levied by the jurisdiction of the issuer’s country of incorporation.

If there is no applicable TAXR rate or if TAXR rate equals to zero, it is recommended to quote TAXR//0 in order to avoid any ambiguity.

WITL definition should also be revised as follows:

|  |  |  |
| --- | --- | --- |
| *WITL* | *~~Withholding of Local Tax~~* Complementary Withholding Tax | *Rate at which the income will be withheld by a jurisdiction, other than the jurisdiction of the issuer’s country of tax incorporation, ~~in which the account owner is located~~, 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.* |

This can be illustrated by current practice in South African (“ZA”) market on multi-listed securities that attract both a “foreign” (i.e. non-ZA) WHT and a “local” ZA WHT.

ZA market’s current practice is TAXR is used for the local (ZA) WHT whilst WITF is used for the tax withheld outside of ZA.

**Example:**

Oando PLC is a company incorporated in Nigeria with primary listing in Nigeria and secondary listing in South Africa

Currently, for the stock listed through the Johannesburg Stock Exchange (JSE), the dividend announcement would quote the Nigerian WHT under “WITF” and the South African WHT under “TAXR”

* + By applying “Recommendation 2 - option A”, the dividend announcement would quote the Nigerian WHT under **“TAXR”** and the South African WHT under **“WITL”.**

This would bring overall consistency with the global practice under Recommendation 1, i.e. TAXR to reflect the WHT applied by the jurisdiction of the issuer’s country of incorporation.

It would also address the specific local market requirement to reflect the “local” South African WHT that applies as a complement/ offset of the Nigerian TAXR.

**Note:** in the case of dual listed companies (“DLC”) where there are dual primary markets, TAXR would reflect the WHT levied by the jurisdiction of the respective primary market/ country of incorporation

**Example:**

Unilever has a DLC structure where Unilever PLC (GB00B10RZP78) is incorporated in the UK and Unilever NV (NL0000388619) is incorporated in the Netherlands.

Unilever NV dividend will be subject to Dutch WHT which will be reported under TAXR

Unilever PLC dividend will be subject to UK tax regime. Currently, no WHT is applicable on UK dividends, but hypothetically, TAXR should also be used if a UK WHT were applicable.

**OR**

**Option B – Repetitive TAXR with Country code**

During the discussion about *CR598 “Add new Tax type code and Exemption type code”* and *CR588 “Add Financial Transaction Tax Rate and Amount”* at SR2014 CA MWG, the need for providing further granularity in terms of the country of the tax jurisdiction was raised, given the increasingly complex tax regulations around the globe (e.g. US FATCA, French and Italian FTT, EU FTT, etc.).

An action item was assigned to the SMPG Tax subgroup to further explore potential solutions.

The SMPG Tax subgroup is of the opinion that there would be an added value to quote the country code of the jurisdiction that is levying a specific TAXR rate. This would provide greater transparency and clarity, especially for cross-border investors.

As such, an alternative to “*Option A - Amend WITL definition and usage”* would be to adopt the following usage:

* + Leveraging SR2014 approved CR598, TAXR will become repetitive if there are multiple withholding tax levied
  + Submit a Change Request for SR2015 to add a sub field with country code to reflect the respective Tax jurisdiction as a new optional format.
  + Note that there won’t be an aggregated TAXR rate: each individual TAXR would reflect its respective tax rate

**Example:**

Oando PLC is a company incorporated in Nigeria with primary listing in Nigeria and secondary listing in South Africa

For the stock listed through the Johannesburg Exchange (JSE), the dividend announcement would quote the Nigerian WHT under “TAXR//NG/rate” and the South African WHT under “TAXR//ZA/rate”

OR

**Option C – Repetitive TAXR + Add a new Tax sub-type under TAXR: “CPLT” for “Complementary” tax**

Another option suggested by the group is to add a new tax sub-type “CPLT” Complementary Tax

**Example:**

Oando PLC is a company incorporated in Nigeria with primary listing in Nigeria and secondary listing in South Africa

For the stock listed through the Johannesburg Exchange (JSE), the dividend announcement would quote the Nigerian WHT under “TAXR/rate” and the South African WHT under “TAXR//CPLT/rate”

1. **Recommendation 3 – WITF usage to be discontinued**

The SMPG Tax subgroup is of the opinion that, in view of recommendations 1 and 2, the usage of WITF should be discontinued, as it would have no business purpose anymore.

As such, the SMPG Tax subgroup is recommending a CR for SR2015 to remove WITF, subject to further consultation and analysis of current usage across the community