

SMPG – Tax sub-group

Telephone Conference Minutes

3rd October 2013

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**Attendees**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Country** |  | **First Name** | **Last Name** | **Institution** | **Participation** |
|  | BE | Ms. | Véronique | Peeters | BNY Mellon | Excused |
| Facilitator | N / A | Mr. | Jacques | Littré | SWIFT |  |
|  | CH | Mr. | Reto | Baumgartner | Credit Suisse |  |
|  | DE | Mr. | Daniel | Schaefer | HSBC |  |
|  | FR | Mrs.  | Kimchi | Phungtran | BNP Paribas | Excused |
| Co-chair | FR | Mr. | Jean-Pierre | Klak | State Street |  |
|  | IT | Mrs | Paola | Deantoni | Societe Generale | Excused |
|  | LU | Mr. | Bernard | Lenelle | Clearstream |  |
|  | LU | Mr. | Ludovic | Schwindt | Clearstream |  |
|  | LU | Mr | Charles | Boniver | RBC IS | Excused |
| Co-chair | SG | Mr. | Jyi-Chen | Chueh | Standard Chartered |  |
|  | UK & IE | Mrs. | Mariangela | Fumagalli | BNP Paribas | Excused |
|  | US | Mrs. | Sonda | Pimental | BBH | Excused |
|  | XS | Mrs | Delphine | Haillez | Euroclear |  |
|  | ZA | Mr. | Sanjeev | Jayram | First National Bank | Excused |
|  | ZA | Mr. | Dale | Van Rayne | First National Bank |  |
|  | ZA | Mr. | Yusuf | Basha | First National Bank |  |

**Remark about the participation of tax experts**

In order to have a more specialized tax view in the group, it is suggested that when possible each Tax sub-group member creates a binomial with a tax specialist from his/her firm or local NMPG.
The Tax sub-group is happy to welcome Ludovic Schwindt from Clearstream who will work jointly with Bernard.

The search for a binomial tax specialist has been launched for APAC and FR and they are waiting for confirmed candidates.

Jacques confirms that an appeal for FTT (Financial Transaction Tax) expert candidates has been launched recently by the global SMPG in order to form a “stand-by” FTT sub-group, should SMPG recommendations be made in the frame of the EU FTT. Some exchange of information
might eventually take place between this new sub-group and the Tax sub-group if necessary.

**Action**: NMPGs to eventually look for tax experts candidates in their local Markets.

# Approval / comments of June 20 call minutes

No comments received. Minutes are approved.

# Tax Table and WITF/WITL/TAXR MP

See updated table below with CH usage info included:



As per recent discussions in the CA SMPG and MWG, it has been asked to the Tax Sub-group 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. The preferred solution is usually to use TAXR, but it also depends on specific client requirements. So, usage guidelines / market practices are really needed.

Bernard ad Ludovic point out the fact that the misunderstanding / confusion with the usage of WITL / WITF / TAXR comes probably from the short definitions of WITF and WITL being inconsistent with the long definitions as illustrated below:

For instance based only on the long definitions provided, WITF is a tax related to the jurisdiction where the issuer is located whilst WITL is a tax related to the jurisdiction where the account owner is located.

|  |  |  |
| --- | --- | --- |
|  | *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.* |

Therefore, only WITF appears to be relevant in a CA income processing but then the short name makes it very confusing and is usually the source of the misunderstanding. In addition, TAXR semantic appears to be the same as the WITF semantic in that case.

The discussions also focused on the ZA Market. In South Africa, TAXR is used for the local tax whilst WITF is used for tax withheld outside of ZA.

This can be used in case of dual listed securities where the foreign tax is specified with WITF. If the foreign tax applied is higher than the local tax, then the local tax is decreased/non-existent (in the frame of a normal DTA - Double Tax Agreement).

The group reminded also that the discussions regarding WITF / WITL / TAXR needs to take into consideration FTT and FATCA subjects.

**Action**: Bernard to provide an example on dual listed securities (expected around the 21/10/2013)

ZA Market also to provide an example of the use of WITF and TAXR for dual securities
involving ZA Market

# Tax processing flow / certification process

See updated flow chart attached below:



Certification

Even if items CA 240 and CA 226 are directly taken care of by the CA SMPG, the Tax sub-group will continue to focus on the certification process.

**Action:** For next conference call, NMPGs to provide feedback on certification process in their country.

# FATCA

This subject has been discussed during the CA MWG for CR 000598. Continue to investigate the subject in relation with the NRA Tax and TAXR (more granularity required ?). Future EU taxation and FTT has to be taken into consideration.

# CA 240 and CA 226

It is confirmed that these 2 topics are directly discussed within the CA SMPG and not in the Tax sub-group (see above).

# CA 200.2 – Options for Tax Treament

Jean-Pierre explained the specific FR Market Practice for mandatory stock dividend (DVSE) which becomes an optional dividend (DVOP) where each tax rate (3 different rates) represents a SECU and a CASH option in the message (i.e. 9 options in total; 3 for cash, 3 for SECU round down and 3 for SECU round up).

The issues with such an MP is the integration challenge, the segregated accounts and the fact that the mandatory DVSE becomes an optional DVOP event.

The group confirmed that the need for any client is to get a tax rate and an amount when it concerns a cash payment. Nevertheless, it is also true that instructions for an optional dividend depends on the taxation.

The solution is either to keep a single option with certification but an instruction must be sent with some more information from the account owner or several options (one per tax rate) are provided.

The discussion turned also around the difference between a breakdown (quantity of shares attached to a certain tax rate) and a beneficial owner list (name of beneficiaries).

In order to have a global overview of the process (outside SWIFT consideration), some questions need to be investigated: what are the document required and when? What the Tax Authorities are requesting?

**Action:**,

* Jean-Pierre to document the above scenario for next conference call.
* NMPGs to communicate which information is requested for Tax Breakdown details or Beneficiary Owner list.

# CA 221 – SR2012 Follow up Items

According to last discussions in the CA SMPG, it is not sure that this item CA 221 is closed even if ZA Market gave a feedback to the Tax sub-group in May 2013.

The CA 221 is the follow up of the following SR2012 CRs:

CR 195 - Update Shares Premium Dividend (SHPR) Event Definition

CR 198 - Update Dividend Option (DVOP) Event Definition

**Action:** For next conference call, ZA NMPG to confirm if they will publish a local Market Practice and / or if the item can be considered as closed.

# Next Conference Calls

* The next conference calls will take place on Thursday 7 November 2:00 pm CET and then on Thursday 19 December 2:00 pm CET.
* A possible physical meeting and / or video conference is also proposed, maybe for next year. Jacques and Bernard will provide more details during the next calls

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