

SMPG – Tax sub-group

Telephone Conference Minutes

21st September 2017

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Table of Contents

[Approval / comments on June 16th minutes call 3](#_Toc494818203)

[CA 358. Tax Table – Cleaning of un-used Tax qualifiers 4](#_Toc494818204)

[CA 221. Tax processing flow 4](#_Toc494818205)

[CA 359. Tax Reclaims processing flow 5](#_Toc494818206)

[CA 349. CERT Definition 7](#_Toc494818207)

[CA 346. Conduit Incomes 7](#_Toc494818208)

[CA 343. Deemed events / 871m reporting 8](#_Toc494818209)

[CA 360. Taxation on security distributions 10](#_Toc494818210)

[CA 373 Usage of COIN code for ZA Market 12](#_Toc494818211)

[Other topics 12](#_Toc494818212)

[Next Conference Calls 13](#_Toc494818213)

**Attendees**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Country** |  | **First Name** | **Last Name** | **Institution** | **Participation** |
|  | AU | Mrs | Narelle | Rutter | BP2S | a |
|  | BE | Mrs | Véronique | Peeters | BNY Mellon | Excused |
| Facilitator | N / A | Mr | Jacques | Littré | SWIFT | a |
|  | 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 | a |
|  | FR | Mr | Karim | Djenadi | BP2S | a |
|  | FR | Mrs | Celine | Bohm | BP2S | a |
|  | 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 |
| Co-chair | SG | Mr | Jyi-Chen | Chueh | Standard Chartered | a |
|  | UK & IE | Mrs | Mariangela | Fumagalli | BNP Paribas | Excused |
|  | US | Mr | Paul | Fullam | FIS Global | Excused |
|  | US | Mrs | Vandana | Pasricha | BBH | Excused |
|  | US | Mr | Caleb | Lanfear | BBH | Excused |
|  | US | Mr | Ian | De Sacia | DTCC | Excused |
|  | US | Mr | Steven | Sloan | DTCC | Excused |
|  | XS | Mrs | Delphine | Haillez | Euroclear | a |
|  | XS | Mr | Eric | Marega | Euroclear | a |
|  | ZA | Mr | Sanjeev | Jayram | First National Bank | a |
|  | ZA | Mr | Dale | Van Rayne | First National Bank | a |
|  | ZA | Mr | Yusuf | Basha | First National Bank | a |

# Approval / comments on June 16th minutes call

Last minutes approved

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

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: not used at CSD level. Feedback still pending from all DESSUG CA sub-group

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

LU and XS (Clearstream): not used

**TAXC / IMPU – PREC – TIER rate type codes (Imputed Tax, Precompte, One-Tier Tax).**

Most of countries answered and confirmed non-usage of these qualifier / codes

Please see recap attached

A Change Request has been launched for SR2018 in order to remove these qualifier / codes

**Action:**

Agreed by MWG : topic closed

# 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.

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.

UK: N/A for UK

US: Should Tax election be a part of the Dividend message ? need of a way to elect … but not necessarily within the message.

Euroclear: And also may depend on our systems or furthermore organizational : tax dept included in the income dept

**Action:**

To be discussed again within the Global SMPG in Luxemburg.

# 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.

15/06: Goal to standardize

MT566 ? Not only. Also related to announcement of the Reclaim and relation with the original Dividend payment

US: Linked to the previous case ? Election ? solicitation ? or is it only an information ?

Eg: first is Relief at source, the second one is Reclaim

For XS: difficult to have all in one event. So rather in 2 events

For Dana, Tax event where you have an action and a Tax event when you don’t need to take any action.

FR: example on the Spanish Market: Different report between Custodian.

How the market considers this event ? Reclaim (because it is the legal form) even if it is a Quick refund so TREC will be used for a quick refund that took place within 5 days.

Should we consider the fact that it is a separate process from the dividend ?

For US, it is more a specific case more similar to a quick refund.

So, not exactly the appropriate example

For Spain, we have several cases as explained above

**Action:** To check with Mari the status of this request

# 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)

June 15th update:

The Corporate Actions SMPG agreed on the submission of the Change Request during the April SMPG.

The Change Request has been submitted to SWIFT Standards

**Action:**

Change request approved by the MWG knowing that the reference to account servicer has been removed. Topic closed.

# 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.

Narelle shared the Change Request with the group. It is similar to the one proposed by Australia last year.

**Action**:

Change request approved by the MWG. Topic closed.

# 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.

**Update during March call:**

A Change Request will be proposed for the next release SR2018 by ISITC on the deemed events. Consequently, the US Market participants provided some additional information on this subject:

There are events that are so called ‘Tax Events’ – essentially a corporate action in which there are no entitlements allocated to the investor but for US tax purposes are considered a deemed dividend. U.S. investors may be required to pay tax on these events and non-US investors may have tax withheld from their accounts if they are holding these securities.

There are two event types that are derived under 305(c) and 871(m) of the Internal Revenue Code.

Section 305(c) of the IRC considers that holders of convertible securities may be deemed to have received a dividend as a result of a corporate action on the underlying common stock and financial institutions may have requirements to withhold tax on the deemed distribution and to perform year-end tax reporting for the deemed distribution to holders. In the most common scenario, an issuer pays a dividend on their common stock which triggers a Conversion Rate Adjustment on the issuer’s convertible notes which may be a deemed dividend for US tax purposes.

Section 871(m) defines dividend equivalent as payments on certain equity-linked instruments and specified notional principal contracts that reference U.S. source dividends. So for instance, when a U.S. company pays a dividend to their shareholders, derivative securities that reference that U.S. equity may be considered as making a “dividend equivalent payment” under 871(m) even though it may not distribute cash. Holders of the derivative securities are considered to receive a taxable dividend, and if those holders are outside the US will be subject to US withholding tax on the “dividend equivalent payment.”

The distinction between 305c and 871m is based on the underlying product:

305c: convertible bonds

871m: derivatives, Exchange Traded Notes - ETN (eg: swaps)

For the former Australian Change Request, there were 2 parts : 1. Event type and 2. Rate type code.

For the US, the event type is also requested but the rate is not a **deemed** rate. Consequently, the US Change Request will not include the request of a new rate.

The volume at DTC of such events is expected to be high (100 in February on dividend equivalent events), Furthermore, the related securities usually pays on a quarterly basis.

A question has been raised on how to categorize the different categories: 305 / 871 / …?

There is a strong pressure from the clients to know how the custodians will report the information.  
Financial Institutions are expecting Announcements + Cash debit impact

Narelle confirmed that for the AU Market, there is also a need related to the MT566 flow (according to the legislation published in 2015 and that will become live in July 2017).

Why not using DVCA for these events? The issue is that the current definition of DVCA refers to a distribution of cash: ‘Distribution of cash to shareholders, in proportion to their equity holding. Ordinary dividends are recurring and regular. Shareholder must take cash and may be offered a choice of currency’.

Update during June call:

The US and the AU Change Requests have been discussed during the SMPG in April. Both have been submitted to SWIFT Standards. The recommendation of the SMPG is to have one global harmonized solution knowing that one of the differences that appeared is on the ‘deemed rate’: no necessity for the US when it looks really necessary for the Australian Market.

Comment during September call : a request has been send by Narelle regarding the term ‘proceeds’ not really appreciated by the US Market.

During the discussion, it is confirmed that it is just a question of terminology so it should be reviewed locally.

Furthermore, even id it has been proposed jointly by AU and US, it may be used more and more by the whole community. Narelle is really happy to have this Change Request validated. It will be really helpful for the Australian Market.

**Action**:

Change Requests validated by the MWG. Topic to close

# 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

June 15th call:

it is reminded that during the April SMPG, the WG supported the proposal made by Delphine at the December conference call to rather open a cash movement sequence in order to use the rates and amounts over there. No cash amounts should be ever placed in a securities movement sequence or securities quantity in the cash movement sequence.

September call : Sanjeev submitted to the ZA NMPG. Waiting for a feedback

**Action**:

ZA NMPG to come back to Sanjeev

# CA 373 Usage of COIN code for ZA Market



September call:

Sanjeev explained the case and the need of the South African Market

Jyi-Chen has a concern that if we change something for ZA, other countries will also have their own usage of COIN : France, SG, etc …

Questions raised during the meeting:   
How does the info come from ? based on the ISIN ?.

Eg ZA ISIN incorporated in Malta or Anglo-American

Who will send the info : is it static data of the security attribute?

But how to identify a foreign company knowing that the ISIN could start with ZA ?

Couldn’t it be a similar case as it exists with Guernsey and Jersey for the UK ?

**Action:**

ZA Market will provide some example taken from the Market and enrich the case

# Other topics

1. **Question from Delphine related to GMP1**

If a client has an omnibus account for which he provided a breakdown ending in several tax rates applicable.   
We are booking the credit for the full account in one movement ==> a single MT566 should be reported.   
Can we report several cash moves to be able to provide the breakdown?

Comments during March call:

Reminder: the current rule is 1 posting = 1 MT566

Narelle explained that in Australia, they can split between Frank and Unfrank.

So more generally, what about repeatability of qualifiers? TAXR is not repeatable.

We can also refer to the question from the Polish Market on the Pre-Advice of Cash: CA362

Germany will probably have a similar case next year (due to changes in the Tax law).

Comments during June 15th call:

The issue is that a client = an omnibus account, Consequently, for the payment : a single MT566 so a breakdown is necessary to be reported

Should we go to manage several cashmoves?

It seems that BBH has already a similar case, Dana will investigate internally

What Market Practice should we put in place and how should we document the GMP1?

For Global Custodians linked to BP2S : there are several cashmoves

**Action**:

Examples to collect by Tax sub-group participants.

The Tax sub-group will take the opportunity of the CA SMPG Lux meeting to enlarge the audience for this topic

1. **Information about the German Market**

Thomas confirmed that new tax rules are arriving in Germany according to the change of the Tax law (known as new regulation “InvStG”).

For example, the Income on funds will be removed: no more taxation in Germany in 2018 i.e. the current Double Taxation that is currently in place.

1. 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?

**Action**:

Participants to check if they have some topics related to T2S otherwise, the topic will be closed in November.

1. 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.

**Action**:

Participants to check if they have some topics related to CMU, otherwise, the topic will be closed in November

# Next Conference Calls

Thursday 16th November 2017

Thursday 11th January 2018

All calls from 2 to 4 pm CET

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