

SMPG – Tax sub-group

Telephone Conference Minutes

12th December 2019

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Table of Contents

[Approval / comments on June 2019 minutes call 3](#_Toc30602314)

[Approval / comments on October 2019 minutes call 3](#_Toc30602315)

[CA 427 New MP to declare a foreign income in regard of the (tax?) domicile of the event's underlying security. 4](#_Toc30602316)

[CA 438 Review GMP1 section 3.14 - (Movement Sequence & Tax Rates) 5](#_Toc30602317)

[CA 447 New MP required for the usage of Rate Type Code CDFI 6](#_Toc30602318)

[CA 449 New MP for the usage of TAXR in Instruction (SR2020 - CR1551) 6](#_Toc30602319)

[AOB.. 7](#_Toc30602320)

[Market updates 9](#_Toc30602321)

[Tax data in an initial announcement (new topic raised by Urban) 9](#_Toc30602322)

[Next Conference Calls 9](#_Toc30602323)

**Attendees**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Country** |  | **First Name** | **Last Name** | **Institution** | **Participation** |
|  | AU | Mrs | Narelle | Rutter | ASX | Excused |
|  | 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 |  |
| Co-chair | FR | Mr | Jean-Pierre | Klak | State Street |  |
|  | FR | Mrs | Stéphanie | Clark-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 |  |
| Co-chair | SG | Mr | Jyi-Chen | Chueh | Standard Chartered | Excused |
|  | UK & IE | Mrs | Mariangela | Fumagalli | BNP Paribas |  |
|  | US | Mr | Paul | Fullam | FIS Global | Excused |
|  | US | Mrs | Vandana | Pasricha | BBH | Excused |
|  | US | Mrs | Elizabeth | Lanfear | BBH | Excused |
|  | 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 |  |
|  | ZA | Mr | Dale | Van Rayne | First National Bank |  |
|  | ZA | Mr | Yusuf | Basha | First National Bank | Excused |

# Approval / comments on June 2019 minutes call

Last minutes approved in October by the participants to the October call.   
Confirmed during December call.

# Approval / comments on October 2019 minutes call

October call minutes approved

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

Comment during December call:

Regarding the two below options initially mentioned, South Africa will use CDFI knowing that ‘Conduit’ has been removed from CDFI definition.

Consequently, it is agreed to merge this topic with CA 447 and remove this one

…………………………

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**:

Topic merged with CA 447. Consequently, CA 427 can be closed

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

Comment during December call:

Mari explained the case where one dividend could have different tax rates applied and according to the issuer, announced in two separate events.

In the UK Market, it appears that there is one event for the normal dividend and a second event announced with property rate

In other Markets: there are also some cases with multiple components on the distribution so tax rates were repeatable which is no longer the case.

Urban explained that the scenario is not necessarily applicable for Nordics

Alexander and Eric, from their ICSD perspective pointed out that it could relate to some few Markets and some specific instruments… but breaking the STP due to a specific case and specific Market practice.

Sanjeev also identified a similar scenario for South Africa and will provide an example

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

“Ideally each distribution (component) should be communicated in its own movement and we are not aware of instances where a distribution may be subject to more than 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**:

The group will share Market examples they can find.  
Mari and Jean-Pierre will review 3.14 and propose an amended version that will be illustrated with some examples taken from those shared by the group.

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

Comment during December call:

Topic merged with CA 427. No updates

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’.

Misuse concerning TAXR – WITL – WITF where Local and Foreign where always difficult on that.

**Action**:

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

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

Comments during December call:

Mari and JP explained the background related to the SR2020 Change Request only focused on the MT565 and the link with the previous analysis and discussion on the certification processing flow: Scenario 1 – Scenario 2 on MT564.

The majority of current participants of the Tax sub-group were not involved in the initial discussion related to the MT564 and would be happy to re-visit the case.

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**:

JP will send the original document on MT564

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

# AOB

**Tax payments related to trade activity**  **=> Topic on HOLD**  
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?’’*

Comments / additional questions during December call:

Is the case similar to Tax adjustment as for QI in the US ?

We need to clarify if it is related to a payment adjustment or refund because refund may implies other concerns such as tax collection to Tax authorities

Are we in a Quick refund scenario ? but what could be the added value compared to a cancel / replace ?

Similarly to the above question, Is it rather an adjustment on the income payment or an adjustment on the taxation part (Tax reclaim itself) ?

Sanjeev will check how it works in South Africa because this case seems to remind him a similar scenario in the South African Market.

**In addition, Daniel sent also some comments by email:**

*To me, if the tax rate of a payment has been wrong, this is totally different than a tax reclaim.*

*An incorrect payment calls for a reversal and corrected payment.*

*A Tax Reclaim is generally initiated by the investor on a case-by-case basis; sometimes it is based on a standing instruction.*

*A correction of the tax rate as a tax credit would generally not be processed as a tax reclaim credit.*

*Similarly, a correction of the tax rate as a debit should also not be processed as a reverse tax reclaim.*

*If the tax rate or the taxable amount was incorrect, a new MT564 should be sent, correcting the previous announcement. Many actors would not expect to receive an MT564 with corrections of event data once the event has been processed. The only case where 564s should follow 566s would be Market Claims and these messages should not be used to amend important event data.*

*The majority of actors would therefor expect the MT566 to be reversed before receiving an MT564 with corrected event data fields.*

*Therefore, the tax should not be corrected by merely posting a tax reclaim to pay the tax difference amount, but as a reversal and corrected new posting.*

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 new tax sub-group feedback

# Market updates

Attached the follow up file covering the different Market initiatives.



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



# Tax data in an initial announcement (new topic raised by Urban)

Urban would like to discuss with the group the way to manage Tax information in the initial announcement of a Cash dividend

One possibility could be to put the single account in B2 without any tax mentioned but what, from a client point of view, what should be the minimum requirement?

In other words, how mandatory the Tax data should be in our SMPG recommendation, eg: default tax rate , tax rate due to documentation received, etc … ?

**Action**:

To be discussed by the group during the next call

# Next Conference Calls

In 2020, the next calls will take place on the following dates:

6th February – 9th April – 4th June (all calls from 2:00 to 3:30 pm CET)

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