



# HSG update

AMI-SeCo meeting – 4-5 December 2019  
Item 3.4



# HSG discussion on enhancing the framework to follow-up on non-compliance cases

- Several HSG members expressed the view that there seems to be a degree of complacency among some of the non-compliant T2S markets and achieving compliance by these markets is not treated as a priority.
- The framework of measures to react to non-compliance by the T2S community are based on linking compliance to the migration process, ex ante communication or escalation and ex post naming and shaming.
- With T2S migration completed the implicit 'threat' of non-compliance endangering migration is no longer there for migrated markets
- In 2013 (i.e. before T2S migration), the T2S AG considered that, if non-compliance by markets leads to 'asymmetric access between T2S markets, the AG would consider measures to limit such asymmetry'.
- HSG proposes to carry out an analysis of what concrete measures could be taken against non-compliant markets and come back with its considerations to the next AMI-SeCo meeting.

# Harmonisation of withholding tax procedures – seeking new momentum (I)

- HSG has been discussing to refocus its harmonisation activities and considers that the 3 key areas in post-trade where further harmonisation would be most beneficial are: **corporate actions, withholding tax (WHT) procedures and registration procedures**
- Work streams on corporate actions ongoing under the HSG
- **The HSG is looking into what could be done in the area of harmonising WHT procedures** taking into account:
  - On-going CMH-TF dedicated expert group on tax handling procedures
  - Progress by national tax authorities to implement EC's WHT Code of Conduct
  - Potential update of 2016 T2S AG fact finding on national procedures => creating info-document to help the market

# Harmonisation of withholding tax procedures – seeking new momentum (II)

## Key points on which past harmonisation work streams have agreed:

- Level playing field for WH / information agents (allow non-local, objective criteria)
- Promote relief-at-source
- Promote self-certification at bottom of chain / with authorised intermediaries
- Protect government interests / introduce framework for checking / supervising intermediaries
- Allow intermediaries down the custody chain to take responsibility and pool rate info (no beneficiary level info to be passed up the custody chain)
- Use standardised electronic forms / data exchange (machine readable)
- Efficient refund procedures with pre-set time limit (max. 6 months)
- Set up common info website at EU level
- Harmonised approach to tax payer identification
- Treat market claims as indemnities, eliminate cum-ex

harmonisation

# Harmonisation of withholding tax procedures – seeking new momentum (III)

## 4<sup>th</sup> workshop organised by the EC on WHT Code of Conduct – key takeaways for AMI-SeCo:

- On-going efforts by Member States (MS) on implementing CoC (single point of contact, forms available in English, allowing foreign WHT agents, etc.)
- Despite the progress most MS still lack (fully or partly) digital (online, electronic) procedures to process WHT refund claims or relief-at-source documentation
- The key challenge for digitalising procedures for MS is the lack of secure / robust means to identify foreign beneficial owners (i.e. those who have no national ids)
- Most tax authorities seemed sympathetic to the harmonisation work / proposals done by the AMI-SeCo and other European bodies before
- Yet, some were of the view that standardisation / harmonisation among MS procedures is less important than the individual MS progressing with digitalising their own procedures.
- There seemed to be a broad consensus that harmonisation / common framework for tax residence certification could be highly beneficial
- WHT procedures are expected to be one of the priority areas to be addressed by the [High-Level Forum on Capital Markets Union](#) launched recently

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## Follow-up discussion in HSG on the basis of last AMI-SeCo meeting

- 4CB settlement efficiency reports do not show visible correlation in cross-section samples of T2S markets between use of partial settlement and settlement efficiency
- HSG members considered it counter-intuitive that partial settlement would not help settlement efficiency
- Data may be more meaningful after the partial release functionality is in full use, i.e. it would be worth looking at data samples as of Q1-Q2 2020
- Not clear whether market practice would add value on partial settlement – the issue may not be the ‘how’ but more the ‘whether’
- Some HSG members argued for a recommendation to market participants to accept partial settlement (not to use NPAR) but it was noted that some groups of stakeholders (e.g. buy-side) may not accept partial settlement for good reasons in some circumstances
- It was also noted that industry associations have issued or working on recommendations in this field
- HSG concluded to analyse data from Q1-Q2 and take into account upcoming industry work

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# Portfolio transfers (PTs)

- Long-standing topic on HSG agenda
- Last year HSG agreed to take step-by-step approach and aim for information document on national practices while giving high-level principles for cross-border PTs
- This year a survey was done with NSGs and details of national practices were collected
- Remaining work includes defining high-level principles for cross-border PTs
- Aim is to publish the AMI-SeCo's 'PT handbook' (as a living document) in Q1 2020