HSG update

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